

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by ERIC
T. SCHNEIDERMAN, ATTORNEY GENERAL OF THE
STATE OF NEW YORK,

Plaintiffs,

- against -

O. ALDON JAMES, JR.,

Defendant.

Index No.
Assigned to:

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to appear in this action by serving an answer to the verified complaint on the plaintiffs' attorney within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after completion of service where service is made in any other manner than by personal delivery within the state. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the verified complaint.

The basis of venue is Section 503(a) of the Civil Practice Law and Rules because

the Attorney General maintains offices at 120 Broadway, New York, New York 10271.

New York, New York
September 21, 2012

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York

By


David E. Nachman
*Enforcement Section Chief and
Senior Counsel*
Charities Bureau
120 Broadway
New York, New York 10271
(212) 416-8390
NY Bar No. 1764562

Of Counsel:

Jason R. Lilien, *Bureau Chief, Charities Bureau*
Barbara L. Quint, *Assistant Attorney General*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by
ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

Plaintiffs,

- against -

O. ALDON JAMES, JR.,

Defendant.

Index No.
Assigned to:

**VERIFIED
COMPLAINT**

The People of the State of New York, by their attorney, Eric T. Schneiderman, Attorney General of the State of New York (the "Attorney General," or "Plaintiff"), for their complaint allege as follows:

NATURE OF THE ACTION

1. This action seeks redress for the enormous waste and misappropriation of charitable assets that occurred when the long-time head of a not-for-profit organization lost sight that the organization existed not to serve his own private ends and reputation, but rather that he was the organization's fiduciary, responsible to serve its interests loyally, transparently and without self-dealing.

2. The organization at issue in this suit is the National Arts Club (the "Club"), a venerable membership society founded in 1898 to promote public interest in the arts. Since 1906, the Club has occupied the landmarked Tilden Mansion at 15 Gramercy Park South and has been an important contributor to the cultural life of New

York City. Three U.S. Presidents and countless distinguished painters, sculptors, literary figures, photographers, filmmakers and other artists have been members of the Club since its inception over a century ago.

3. The wayward officer and director in this case is defendant O. Aldon James, Jr. ("James"). In 1986, with the support of his close friend, mentor and confidant, the attorney and long-time Club member Steven U. Leitner ("Leitner"), James was elected to the Club's Board of Governors (the "Board") and as the Club's President. From that time and until James finally was ousted as President of the Club in March 2011, James exercised nearly absolute control over the Club's operations and affairs.

4. James cemented that domination by using all the powers available to him as President, his knowledge of the Club's membership, his round-the-clock presence as a tenant of the Club, and a unique mixture of charm, intimidation, secrecy and deception. Over time, James came to wield unrestrained control over who would serve as a Governor of the Club, what was (and was not) brought to the attention of the Board, the composition of the Board's committees, the selection of the Club's accountants, the Club's finances, books and records, even the Club's checkbook and debit card.

5. By appointing his confidant Leitner to key positions within the Club, James also ensured that he and Leitner maintained control over the use of the Club's valuable real property -- the offices, transient rooms and other spaces available for rent or public use in the Tilden Mansion facing Gramercy Park, as well as the Club's residential apartments in the "Studio Building" connected to the south side of the

Tilden Mansion.

6. To reinforce his control, James gave his twin brother, John James, free reign of the premises and a loud voice at Board meetings, which John used to help James exert his authority and control over the Club.

7. Like James and Leitner, John James resided at the Club; unlike them, he was never a Governor of the Board and held no formal Club position or title. As James knew, John James had pleaded guilty to criminal tax charges arising from his fraudulent use of the Club's tax-exempt status in connection with a jewelry business that John conducted on Club property. Notwithstanding his brother's criminal history and at times threatening demeanor, James permitted John James regularly to attend Board meetings, where other Board members found him hostile and disruptive. James also gave his brother free access to the Club's offices and supplies, and regularly included him in many of the activities on which James wasted and misspent Club monies on his own and his brother's personal expenses.

8. James systematically misused the power he accumulated at the Club to benefit himself, John James and Leitner in a number of ways that also caused substantial harm to the Club. The most costly waste of the Club's assets engineered by James involved the misappropriation, for his, John James' and Leitner's benefit, of an extraordinary number of apartments and other rooms in the Studio Building and the Tilden Mansion.

9. James, Leitner and John James each leased an apartment at the Club for a substantially below-market rent. For James, however, this was not enough; he used his power at the Club to usurp for himself, for Leitner and for John James the

personal use and occupancy of as many as eight other Club apartments as well as offices, board rooms and other Club spaces -- all for no rent whatsoever. James and his brother personally benefited from this arrangement not only by gaining additional living space at no cost, but also by acquiring valuable and convenient storage spaces to hoard the enormous volume of items they acquired in their frequent shopping sprees around the City, many of which they purchased using the Club's debit card and Club checks that James carried in his pockets and would write out on the spot. Leitner benefited as well, gaining a rent-free office through his friend James' misuse of Club property.

10. James' take-over of Club apartments and other spaces -- without cost -- was never approved by the Club's Board. James' conduct unjustly enriched himself, his brother and Leitner, and since 2006 it deprived the Club of not less than \$1.5 million in much-needed income the Club could have realized from the rent of these apartments and other spaces. James' waste of this valuable Club resource is especially reprehensible because the Board explicitly recognized in 2006 that the Club's Gramercy Park neighborhood had become a "hot" rental market, and James was in a unique position to help the Club capitalize on the resulting income-generating opportunity instead of diverting Club spaces for his, his brother's and his friend's personal use and enjoyment.

11. Officially, James drew no salary or other compensation from the Club for his full-time service as President, and he utilized that fact to convey the impression that he was a wealthy and generous supporter of the Club's mission. In reality, however, James lived off the Club; he regularly treated the Club's property as

his own in order to fund nearly every aspect of his comfortable lifestyle. In addition to his rent-free use of multiple Club apartments and other spaces, for years he took many of his meals in the Club's dining room and, unlike every other member, never was charged for that privilege; he took livery services throughout the City, often numerous times a day, even on occasion out of New York State, charging all these expenses to the Club; he, Leitner and John James made regular excursions to thrift stores, flea markets, and auction houses throughout the City, where James purchased all manner of clothing, accessories, bric-a-brac, minor artworks and other items, again at the Club's expense; and he charged the Club for numerous personal meals at restaurants and coffee shops in the Club's Gramercy Park neighborhood and elsewhere. None of these and other personal expenses that James charged to the Club, amounting to more than \$250,000 from 2006 to March 2011 alone, were approved by the Board.

12. The common thread in this behavior was James' treatment of the Club and its property as his personal domain. For James, the National Arts Club was his: he lived there, he ran it, he had no life outside of it, and he considered himself therefore entitled to do with the Club's property as he pleased.

13. James was subpoenaed to testify in the Attorney General's investigation of his actions at the National Arts Club. Invoking his 5th Amendment privilege against self-incrimination over 500 times, James declined to answer any of the Attorney General's substantive questions. His silence in the Attorney General's investigation has not stopped him, however, from waging a relentless legal campaign, costing the Club additional hundreds of thousands of dollars to litigate, over the

Club's efforts to hold him accountable and recover some of the monies his misconduct caused the Club to lose. In one of James' few public comments on that battle, he was recently quoted as saying: "I'll throw the money off the roof of the building before I give it to them."

14. In bringing this action, the Attorney General seeks a judgment, among other things: (a) directing James to account for all funds and other property obtained by him, his brother John James, and his friend Leitner as a result of his wrongdoing; (b) requiring James to make restitution for all losses to the Club which are the result of his waste, misappropriation and breaches of fiduciary duty; (c) permanently enjoining James from serving as an officer, director, or trustee of any charitable entity organized under the laws of New York or that solicits charitable contributions in New York; (d) directing James to account and make restitution for his misconduct in connection with one of the Club's restricted funds, and (e) awarding the Attorney General costs, disbursements and fees.

PARTIES AND OTHER RELEVANT ACTORS

15. The Attorney General is responsible for overseeing the activities of New York not-for-profit corporations and the conduct of their members, officers and directors, in accordance with New York's Not-for-Profit Corporation Law ("N-PCL"), the Estates, Powers & Trusts Law ("EPTL"), the Executive Law ("Exec. L."), and his common law *parens patriae* authority.

16. Defendant O. Aldon James, Jr. joined the Club as a member in 1980. From 1986 to March 2011, James served as the President and a Governor, or Board member, of the Club. At all relevant times, James resided at the Club at 15 Gramercy Park South, New York, New York.

17. Non-party Steven U. Leitner joined the Club as a member in 1964, and has served as an officer or a director of the Club at various times from the 1980's to early 2008. Beginning in 1986, Leitner was in charge of "Rentals" and the "Dining Room" at the Club; in 1989, he was appointed the Club's Assistant Treasurer and began serving on its Development Committee; he served as a Board Governor (director) for at least six years at different points in time; and beginning in at least 2000 and continuing until March 2011, he was a Chair or co-Chair, and at times the sole member, of the Club's House Committee, a standing committee of the Board with responsibility for rentals, maintenance and security of the Club's apartments and other real property. At all times relevant herein, Leitner resided at the Club at 15 Gramercy Park South, New York, New York.

18. Non-party John James is James' twin brother. At all times relevant herein, John James was a member, but not an officer or Governor, of the Club, and resided at the Club at 15 Gramercy Park South, New York, New York.

19. Non-party National Arts Club was established in 1898 and, after the N-PCL took effect, became a Type B corporation as defined in N-PCL §201. The Club's Certificate of Incorporation defines its purposes as follows:

to promote the mutual acquaintance of art lovers and art workers in the United States; to stimulate and guide toward practical and artistic expression the artistic sense of the American people; to maintain in the City of New York a Club House, with such accommodations and appurtenances as shall peculiarly fit it for social purposes in connection with art; to provide proper exhibition facilities for such lines of art, especially applied and industrial art, as shall not be otherwise adequately provided for in the same city; and to encourage the publication and circulation of news, suggestions and discussions relating to the fine arts.

At all times relevant herein, the Club was designated a tax-exempt organization by the

Internal Revenue Service pursuant to Internal Revenue Service Code §501(c)(3), and registered with the Attorney General's Office pursuant to the N-PCL and EPTL.

JURISDICTION AND VENUE

20. The Attorney General brings this action on behalf of the People of the State of New York under N-PCL §§112, 513, 717, 719 and 720, EPTL §8.1-4, Exec. L. §§172-b and 175, and under his *parens patriae* authority.

21. Section 112(a)(7) of the N-PCL gives the Attorney General authority to maintain an action "[t]o enforce any right given under this chapter to members, a director or an officer of a Type B or Type C corporation. The attorney general shall have the same status as such members, director or officer."

22. Under N-PCL §720(b), the Attorney General may bring an action against directors or officers of a not-for-profit corporation with respect to any of the causes of action set forth in N-PCL §720(a):

(1) To compel the defendant to account for his official conduct in the following cases:

(A) The neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets.

(B) The acquisition by himself, transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of his duties.

(2) To set aside an unlawful . . . transfer of corporate assets, where the transferee knew of its unlawfulness.

23. Under EPTL §8-1.4(m), the Attorney General may institute appropriate proceedings to secure the proper administration of a not-for-profit corporation.

24. Under N-PCL §§715 and 717, directors and officers of a not-for-profit corporation are required to act with undivided loyalty and good faith towards the

corporation. This duty of loyalty strictly prohibits directors and officers from exercising their corporate powers for their private or personal gain.

25. Under N-PCL §717, directors and officers of a not-for-profit corporation also must act with diligence, care and skill. This fiduciary duty requires directors and officers to manage the financial affairs of the corporation prudently, reasonably and in the interests of the corporation.

26. Under N-PCL §715, contracts and other transactions between a corporation and one or more of its directors and officers, including the payment of compensation, must be disclosed to or known by the board of directors, which must authorize any such contract or transaction without counting the vote of any interested board member. In the absence of the requisite disclosure and approval by disinterested directors, such transactions are voidable unless they were fair and reasonable to the corporation at the time the board acted.

27. Under N-PCL §513, directors of a not-for-profit corporation have a duty of obedience to its corporate purpose. They must administer funds in accordance with the purpose specified in the corporation's certificate of incorporation.

28. Under N-PCL §719(a)(1), a director who "vote[s] for or concur[s] in any of the following actions shall be jointly and severally liable to the corporation for the benefit of . . . the ultimate charitable beneficiaries of its activities . . . :

(1)The distribution of the corporation's cash or property to members, directors or officers . . ."

29. Under Exec.L. §172-b(2), a person who signs an annual report required to be filed with the Attorney General certifies that the statements in the report are true and correct to the best of his knowledge. Under Exec.L. §175, the Attorney General is

authorized to commence actions for violations of Exec. L. Article 7-A, including against any person who, acting on behalf of a charitable organization, the Attorney General has reason to believe has included a materially false statement in a report required to be filed pursuant to Exec. L. §172-b.

30. The Attorney General also has common law *parens patriae* authority to protect the public interest in charitable property.

31. Because the Attorney General maintains offices in New York County, defendants reside in New York County, and the defendants' acts originated there, venue is properly laid in New York County, as provided in New York Civil Practice Law and Rules §503(a).

STATEMENT OF FACTS

James' Domination and Control of the Club and Its Property

32. At all times relevant herein, James used his position as President of the Club's Board of Governors to control the Board and the Club in a number of ways.

33. James sat on and controlled the Club's Nominating Committee and determined every candidate for Governor who was nominated for election by the Club's membership from at least 2006 through March 2011. He also unilaterally filled open Governor vacancies and selected each of the individuals who served as Club officers during this period.

34. James also controlled who chaired and served on the many committees of the Board.

35. From at least 2006 until early 2011, James set the agenda for and ran every meeting of the Board. Although another individual, Jo Ann Bonn, held the title

of Board Secretary during this period, in fact it was James who functioned as the secretary of the Board, preparing the minutes of Board meetings -- minutes that often mischaracterized or omitted material details of what actually was discussed at Board meetings.

36. From at least 2006 until his ouster in early 2011, James ensured that the Board received only limited financial information and that the information it did receive was sanitized so as to obscure from the Board's attention both his own financial misconduct and significant weaknesses in the Club's financial controls.

37. James' ability to use the Club's charitable assets for a wide variety of personal expenditures was greatly aided by his control over and direct access to the Club's financial accounts. From the time it was issued in as early as January 2005, James had sole control of the Club's only debit card, which was linked directly to the Club's Chase Bank operating account. James also was a signatory on all Club bank accounts. He had access to the Club's checkbook in the bookkeeper's office and routinely carried with him blank Club checks which he would write out by hand as his personal needs required. Although the Club's Board at various times set pre-approval and dual signature requirements at either \$5,000 or \$10,000 thresholds, James routinely disregarded these requirements.

38. James' ability to take personal advantage of these weaknesses in Club financial controls was enhanced by his power to install in key positions individuals who either lacked the will or wherewithal to know what he was doing or, knowing it, nevertheless chose to tolerate his misconduct and not report it to the Board.

39. Thus, James selected as Board Treasurers individuals who lacked the background, experience or interest to conduct any in-depth review of the Club's financial condition or present any comprehensive financial reports to the Board. For many years, James' hand-picked Treasurer was an elderly Club member whose given name was David J. Darol, but who was more commonly known as Jason de Montmorency, "Jason the Treasurer" or simply, "Jason." James kept de Montmorency in the Treasurer's position until his death at the age of 87 in August 2010, well past the point when he was able to function effectively. Throughout his tenure as Treasurer, de Montmorency received substantial benefits thanks to James' largesse with Club monies, including free use of the Club's dining room and numerous chauffeur-driven rides around New York City that James arranged for him at Club expense.

40. After de Montmorency's death, James prevailed upon Club member Jo Anne Bonn, who was serving formally as Club Secretary, to assume the additional title of Treasurer. Like de Montmorency, Bonn lacked a financial background or experience, and she assumed the Treasurer role only reluctantly, in response to James' pressure.

41. As carried out by both de Montmorency and Bonn, the Treasurer's role was perfunctory, with neither performing any substantive review of the Club's accounts or oversight of James' spending.

42. James also ensured that the bookkeeping function at the Club remained under his tight control. The Club's two principal bookkeepers were long-time Club employees who reported directly to James and were beholden to him for their jobs;

like all other Club employees, they were subject to being fired at James' whim and on a moment's notice.

43. James further solidified his control over the Club's bookkeeping by bringing in an outside accountant to serve in effect as the Club's chief financial officer. The accountant had been retained by James since the beginning of James' reign as President in 1986; he reported to James; he owed his position and loyalty to James; and he carried out James' wishes in directing the Club's bookkeeping staff and in what he communicated, and failed to communicate, to the Club's Board.

44. James took further steps to conceal his financial improprieties by ensuring that the Club's Audit Committee remained a weak and beholden body that would not exercise any meaningful oversight of his conduct.

45. For many years, the Club had no Audit Committee. In early 2004, at the suggestion of the Club's then outside auditors, James finally acquiesced in the formation of an Audit Committee. The first four members of the Committee, including Jason de Montmorency, were handpicked by James to ensure that the Committee's review of the Club's finances would be neither probing nor energetic. By 2006 or early 2007, and until James was forced to give up the Presidency of the Club in early 2011, the Club's Audit Committee consisted of just one individual, a loyal supporter of James who was not herself a member of the Board and who also proved to be entirely ineffective as a check on James' financial misconduct.

46. One of the prime responsibilities of the Club's one-person Audit Committee was to serve as the liaison between the Club's outside auditors and the Board. Each year, the Club's auditors noted material weaknesses in the Club's

financial controls; yet each year, instead of taking effective steps to correct those weaknesses, the Audit Committee member prepared presentations to the Board that either omitted mention of the noted weaknesses or sought to minimize them by emphasizing that the auditors had given the Club a "clean" opinion.

47. As yet another means to exercise control over the Board and the Club, James regularly allowed his twin brother, John, to attend and participate in Board meetings, even though John was not a Club Governor. John James was an unpredictable, occasionally abusive and threatening presence at the Club, prone to intimidating members and publicly shouting at them, and he was often disruptive at Board meetings as well. Yet rather than take steps to protect the members of the Board and of the Club from his brother, James gave him free reign of the premises and continued to invite John to Board meetings until the end of his tenure as Club President.

James' Waste and Misuse of the Club's Charitable Assets

48. In violation of his fiduciary duties to the Club, James abused his position of control and influence to misappropriate and waste significant amounts of the Club's monies and real estate assets.

49. As further detailed below, this misappropriation and waste took numerous different forms, including the rent-free, unauthorized personal use of multiple Club apartments and other Club spaces made by James, his brother and his friend Leitner; James' use of the Club's treasury to finance his clique's frequent shopping forays around New York City; James' indiscriminate use of limousines and taxis at Club expense; James' use of the Club dining room as his free personal

commissary for lunch and dinner and his use of Club monies to fund countless breakfasts, coffees and other personal meals at establishments outside the Club; and James' repeated use of the Club's debit card and checking account as his personal piggybank to finance his and his brother's eccentric habits and other hobbies, from used vintage clothing collections to antiques magazines and more.

50. At his sworn examination taken in the Attorney General's investigation on February 28, 2012, James repeatedly invoked the Fifth Amendment when asked about his use of Club monies to fund his and his brother's personal expenses. His testimony below typifies how he answered all such questions:

Q: Now, in fact, you used the club's monies over the years to pay for a number of your personal expenses; isn't that correct?

A: On advice of counsel, I decline to answer any question pursuant to my rights under the Fifth Amendment of the Constitution.

Q: Did you also use the club's money to pay for certain of your brother John's expenses?

A: On advice of counsel, I decline to answer any question pursuant to my rights under the Fifth Amendment of the Constitution.

51. The substantial personal benefits that James derived from his position at the Club were nowhere reported in the Club's annual filings with the Attorney General's office, which included the Club's IRS Forms 990. Those filings, signed by James himself, reported that he received no salary and no financial benefits as Club President. James thus falsely led the Club's members, and the broader public, to believe that his service to the Club was an uncompensated act of generosity, when in reality the Club was funding a substantial portion of James' living expenses.

The Waste and Misappropriation of Apartments and Other Club Spaces

52. By virtue of their positions, respectively, as President of the Club and as the sole or dominant member of its House Committee, defendant James and his confidant Leitner controlled the occupancy of the Club's residential apartments in the Studio Building and its rentable spaces in the Tilden Mansion -- including who could rent them and on what terms.

53. For many years, through at least June 2011, Leitner and James were tenants of the Club with leased apartments in the Studio Building. Since approximately 1964, Leitner leased Apartment 2D, where he paid a substantially below-market rent, and beginning as early as 1988, James leased Apartment 2C, where he too paid a substantially below-market rent. In or about 1999, after a leak caused water damage to Apartment 2C, James took up residence in Apartment 10A without any lease or rent payment while continuing to rent Apartment 2C. In addition, beginning in approximately 1986, James permitted his brother John James to lease conjoined Apartments 3A and 3B at a rent dramatically below market.

54. In addition to Apartment 10A, at various points in the 1990s and 2000s, James, John James and Leitner came to occupy additional spaces at the Club, all without any lease agreement and for no rent.

55. At various times, James, John James and Leitner occupied, without lease, rent, or Board approval, approximately 15 spaces at the Club in addition to the three apartments they leased for below-market rents. These "Misappropriated Spaces" consisted of apartments in the Studio Building as well as office spaces, apartments, transient rooms and meeting rooms in the Tilden Mansion. One of the

Misappropriated Spaces, Apartment 10A, became James' nominal residence; Leitner used another as his personal office; and a majority of the rest were used as storage rooms, where James and his brother hoarded the vast accumulation of bric-a-brac, books and magazines, vintage clothing and other items that they acquired on their regular shopping excursions and where James housed most of his collection of birds and fish.

56. In 2006, the Club commissioned its then attorney and its Audit Committee member to gather and schedule all existing lease agreements and their terms. At a Board meeting held in November 2006, the Board resolved to use this schedule of leases as the basis for adopting a standard form of lease for future rentals and to require that the terms of all future lease agreements be reviewed and approved by the Board.

57. At the same November 2006 meeting, the Board also ratified the below-market rental terms of the leases that James and his brother John had to apartments 2C and 3A&B (it took no action with respect to Leitner's leased apartment). When the Board did so, however, it did not have all the material facts: neither James nor Leitner revealed to the Board that James had not lived in Apartment 2C for at least six years, or that James was occupying apartment 10A rent-free, or that John James was occupying spaces at the Club in addition to Apartments 3A&B.

58. In late 2006, when the Board was placing all this attention on the subject of "leases," James knew perfectly well that maximizing the income-generating potential of the Club's rental spaces was important to the Board --

indeed, the Board explicitly discussed the "greater income possibilities" the Club could realize as a result of Gramercy Park's "red hot" rental market -- and that achieving this goal required the rentable spaces to be leased to paying tenants. Yet throughout the Board's discussion of this issue in 2006, and for the next nearly five years, James never disclosed to the Board that he, John James and Leitner were occupying and using the Misappropriated Spaces without any lease and without paying any rent for these units.

59. At his February 28, 2012 sworn examination in the Attorney General's investigation, James again repeatedly invoked the Fifth Amendment when asked to explain his, Leitner's and John James' occupancies at the Club:

Q: And there were multiple use[s] of apartments and other spaces at the NAC after this meeting made by you, by your brother John, and by your friend Steven Leitner, that also were not the subject of any lease, and never reviewed or approved by the board of governors, isn't that true?

A: On advice of counsel, I decline to answer any question pursuant to my rights under the Fifth Amendment of the Constitution.

Q: Did you explain why, after this meeting, you chose to occupy apartments and not advise the board they were being occupied without a lease?

A: On advice of counsel, I decline to answer any question pursuant to my rights under the Fifth Amendment of the Constitution.

Q: Can you explain why you permitted your brother to occupy apartments and other spaces at the National Arts Club without a lease, and chose not to advise the board of governors of that fact?

A: On advice of counsel, I decline to answer any question pursuant to my rights under the Fifth Amendment of the Constitution.

Q: Can you explain why you permitted your friend, Mr. Leitner, to occupy and use other spaces at the NAC after this meeting, without advising or seeking the approval of the board of governors of the

NAC?

A: On advice of counsel, I decline to answer any question pursuant to my rights under the Fifth Amendment of the Constitution.

60. At no time from 2006 through James' ouster in early 2011 did James make any effort to realize the sorely-needed "greater income possibilities" that could have accrued to the Club from rehabilitating the Misappropriated Spaces for rent and marketing them to the potential tenants, transient lodgers, and organizations that the Club could readily have attracted.

61. By occupying and allowing his brother John and his friend Leitner to occupy the Misappropriated Spaces rent-free, James caused enormous waste of the Club's potential income-generating properties. James also reaped substantial personal benefits without disclosing these benefits.

62. The waste and unauthorized use of the Misappropriated Spaces caused by James resulted in the loss to the Club of not less than \$1,500,000, before interest, since 2006.

The Flea Market, Thrift Shop, Antiques and Auction Purchases

63. For years, James and his brother used the Club's charitable funds to purchase vast quantities of assorted personal items which they hoarded in the Misappropriated Spaces -- plates, glasses, cups and saucers; small and not-so-small sculptures and paintings; prints; vintage and other used clothing; books and magazines; and yet other items, most of which could variously be described as "bric-a-brac," "tschotckes," "stuff" or "junk".

64. Many of these items were purchased during shopping forays that James and/or John James, often accompanied by Leitner, conducted to New York City flea

markets, galleries, thrift shops and auction houses, usually on Fridays or over the weekend. In groups of two or three, they would return to the Club with their haul, often carried in large blue shopping bags, and if an item were too large or heavy to carry, they would arrange to have it delivered.

65. James and his brother John James were regular patrons of various thrift shops around New York City, from which James and his brother acquired a substantial amount of vintage clothing including, among other items, used blazers, rings, hats, ties and other accessories. James financed these purchases with Club monies in a variety of ways: by using the Club's debit card, by hand-writing checks, and by directing the Club's bookkeepers to reimburse John James with Club money for purchases that John had made with his own funds.

66. Between January 2008 and March 2011 alone, James caused the Club's debit card to be used to buy over \$18,500 in personal items, mainly clothing and accessories, at the following thrift shops: 3rd Avenue Thrift Shop, Angel Street Thrift Shop, Goodwill Industries, Housing Works Thrift Shop, New York City Opera Thrift Shop, Salvation Army Thrift Shop and Vintage Thrift Shop. James bought thousands of dollars of additional personal thrift shop items using Club checks that he wrote out by hand.

67. At his February 28, 2012 sworn examination in the Attorney General's investigation, James again invoked the Fifth Amendment when asked about his use of Club funds for these thrift shop purchases. For example:

Q: There are also charges to the Salvation Army. What corporate purpose was served by purchasing items at Salvation Army stores?

A: On advice of counsel, I decline to answer any question pursuant to my rights under the Fifth Amendment of the Constitution.

68. The James brothers' and Leitner's shopping trips also took them to established flea markets around New York City, with the Garage Flea Market on 25th Street near Avenue of the Americas being one of their favored venues. James regularly used Club funds to pay for these purchases-- either writing out by hand one of the Club's checks that he carried around on his person or, less frequently, offering the vendor the Club's debit card.

69. Flea market vendors who carried items that were especially attractive to the James brothers received significant amounts of Club money for the items that were purchased on these shopping forays. From 2006 through March 2011, for example, using principally handwritten checks drawn from the Club's account at Chase, James paid one vendor \$16,350 in Club funds; another vendor nearly \$10,500 in Club monies, and four other vendors more than \$3,100, \$2,885, \$2,400, and \$1,900, respectively, in Club funds -- for items bought not for the Club, but for the private use and enjoyment of one or more members of James' clique. A large number of other flea market vendors, as well as certain shops such as Antiques on the Mall and Westchester Antiques, received additional, smaller amounts of the Club's money for personal items.

70. To disguise the personal nature of these Club-financed purchases, James directed that most of them be recorded as expenses in one of the "Flowers & Decorations" accounts in the Club's expense ledgers. As James knew, these entries in the Club's books and records were false: the purchases were not flowers, and they were not made to decorate the Club; instead they piled up, year after year, in one of

the many spaces at the Club misappropriated by James and his brother to hoard their collection of personal items.

71. At his February 28, 2012 sworn examination in the Attorney General's investigation, James again invoked the Fifth Amendment when asked about the concealment of his personal expenses in the Club's "Flowers and Decorations" accounts:

Q: Did the club have more than one florist?

A: On advice of counsel, I decline to answer any question pursuant to rights under the Fifth Amendment of the Constitution.

Q: Did it have as many as 20 florists?

A: On advice of counsel, I decline to answer any question pursuant to rights under the Fifth Amendment of the Constitution.

Q: Do you know why so many names appear under the flowers and decorations category in the club's expenses?

A: On advice of counsel, I decline to answer any question pursuant to rights under the Fifth Amendment of the Constitution.

Q: The flowers and decorations account, how did it come about that the flowers and decorations expense category captured so many vendors who are not florists?

A: On advice of counsel, I decline to answer any question pursuant to rights under the Fifth Amendment of the Constitution.

James' Use of the Club's Dining Room as His Own

72. James further abused his position at the Club by treating its dining room as his personal kitchen.

73. James made virtually daily use of the Club's dining room, which is located on the second floor of the Club's Tilden Mansion. James had a regular table,

Table 34, with seating for up to four diners. On some occasions, James ate at his table alone; at other times, he was joined by other Club members or outsiders, who might order a drink or a snack, or share a full meal with him as they kept him company.

74. Club policy and practice required that, except at Board or Committee meetings, all members had to pay for their dining room meals and drinks by signing a chit to authorize adding the amount of the chit to the member's monthly bill.

75. For all the meals and beverages consumed at his table, however, James "comped" himself -- that is, he exempted himself and his party from the Club requirement that members pay for their meals and drink. He did not sign chits for the meals and beverages that he consumed alone or with others. Instead, with James' knowledge and under his direction, the dining room staff simply added James' initials to the chit, indicating that the meal or bar charge was for his account, and the bookkeeping office charged his chits to "Board," indicating that the Club itself was to assume the entire cost of James' tab.

76. From 2006 through March 2011, James personally consumed, and hosted for consumption by others, meals and drinks for which any other member of the Club would have been charged no less than \$94,000, but for which James paid the Club nothing.

77. In addition, at James' direction, the Club "comped" many of the meals consumed in the Club's dining room by Jason de Montmorency, James' hand-picked elderly Treasurer. Those meals, which usually consisted of black bean soup, filet of

sole and perhaps some sherry, cost the Club additional thousands of dollars over the years.

78. James' free use of the Club dining room for his and his companions' meals and drinks, as well as his decision to let de Montmorency dine there for free, were not authorized by the Club's Board. They constituted yet another waste of Club assets by James.

James' Use of Club Funds for Personal Restaurant and Coffee Shop Meals

79. James' waste of Club assets on meals and drinks was not limited to those that he consumed in the Club's dining room. Without Board authorization, and without any documentation to support a legitimate business purpose for these purchases, James caused the Club to spend tens of thousands of dollars on meals and beverages that he and/or his guests consumed at New York City restaurants, coffee shops and bars. Many of these expenditures were at breakfast spots, since James already had a handy venue, the Club dining room, where he could consume his lunches and dinners at Club expense.

80. James is an avid consumer of caffeinated beverages. One of his favorite local spots was the Blue Dog coffee bar, conveniently located near the Club and just across the street from the Garage Flea Market where he, his brother and Leitner could often be found on their weekend shopping trips. From 2008 to March 2011 alone, James charged the Club over \$2,385 for hundreds of discrete food and beverage purchases at the Blue Dog. Consistent with his tendency to go shopping on weekends, many of these charges were incurred on weekend days, and on some occasions, James put three or four separate charges at the Blue Dog on the Club's

debit card in a single day.

81. Another favored spot where James used Club funds for his personal dining was L'Express, on Park Avenue South between 19th and 20th Streets. At this restaurant, which has an ample brunch menu, James spent over \$2,840 of the Club's monies on his personal meals.

82. James also used Club funds to cover thousands of dollars in personal meals at other restaurants, such as Maialino, City Crab & Seafood and the Gramercy Park Hotel Bar, mostly in the Club's Gramercy Park neighborhood.

83. None of these improper restaurant charges that James caused the Club to assume, amounting to over \$20,000 from 2006 to March 2011, were approved by the Board. Nor were they supported by a receipt or any other contemporaneous substantiation of a legitimate business purpose.

James' Extravagant, Unauthorized Personal Use of Limousines and Taxis

84. The Club retained a considerable number of employees in its dining room, its service and custodial staff, as doormen and in other capacities. To help cover its employees' transportation costs, the Club provided them with Transit Checks so they could travel to and from their jobs on public transportation at a reduced fare.

85. James, however, did not have any need for a Transit Check; instead, he regularly used the Club's charitable funds to travel around the City in limousines and taxis, and occasionally allowed certain favored Club members and guests to do so as well.

86. The Club maintained an account with UTOG 2-Way Radio limousine

company ("UTOG"), which James freely used as his personal car service. During the period 2006 to early 2011, James caused the Club to accrue over \$52,600 in UTOG limousine charges for his personal benefit -- either to ferry himself around the City, or for a Club employee performing a mission for him, or for a favored Club member. Many of these trips involved multiple stops, and substantial waiting time -- sometimes costing the Club hundreds of dollars on a single trip.

87. In addition, when New York City's yellow cabs began accepting payment by credit or debit card, James quickly adapted so that the Club would pick up the cost of his frequent uses of taxis as well. In the period 2006 to early 2011, the Club debit card, controlled exclusively by James, was used for hundreds of taxi trips, sometimes more than three per day, totaling over \$9,780.

88. James never obtained the Board's authorization for his profligate use of Club resources on personal limousine and taxi cab travel.

Additional Waste and Misuses of Club Charitable Assets by James

89. Apart from the outright instances of self-dealing set forth above, in breach of his fiduciary duties, James used his power at the Club to waste the Club's assets in additional ways as well.

90. Without Board authorization, James used Club funds to purchase for himself and his brother thousands of dollars of books and other items from Barnes & Noble, from Borders and Beacon Press, and from the University Presses of Virginia, Florida and New England, to name only several of the sources that supplied the books that the James brothers stored in the spaces they controlled.

91. James also caused the Club to pay thousands of dollars to buy

magazines, journals and periodicals for his and his brother's private enjoyment. Among many others, these included: People Magazine, Reader's Digest and New York Magazine; Hollywood Reporter, Variety, Vogue and Vanity Fair; Architectural Digest, Art & Antiques, Good Housekeeping, and House & Garden; Business Week, Forbes, Money and The Wall Street Journal; Delaware Today and Maine Antique Digest; and Johns Hopkins White Papers, Mayo Clinic Health Letter and Diabetes Self Management.

92. In addition, from 2007 to March 2011, James also used, or allowed others to use, the Club's debit card to make hundreds of purchases, amounting to approximately \$4,000, for toiletries and other items at CVS, Duane Reade and Walgreens. None of these purchases was supported by receipts or any other documentation to suggest they were made for legitimate Club purposes, and they were not authorized by the Board.

James' Invasion of a Restricted Endowment in Connection with the Club's Façade Restoration Project

93. James personally presided over, and grossly mismanaged, the Club's largest capital project of the past seven years, the restoration of a portion of the sandstone façade of the Club's historic, landmarked Tilden Mansion.

94. The initial contract for the façade restoration project, which commenced in 2006 with a contractor personally selected by James without any competitive bidding, was for only \$158,300. Over the following years, however, the project evolved without any clear definition of its expanded scope, without clear documentation, and without meaningful disclosure to or informed approvals by the Board. In all, James caused the Club to pay over \$709,000 to the contractor whom

the Club hired, for a façade project that even now, shortly after its conclusion, may require further restoration and repair.

95. In an effort to finance the enormous costs James was running up on the restoration of the façade, the Club initiated a capital campaign, but the funds raised by the campaign proved inadequate to cover the mushrooming costs James incurred. As a result, most of the cost of the restoration work was paid from the Club's general operating funds.

96. In early 2009, to finance the now out-of-control restoration costs, James directed the Club to invade the Joseph Kesselring Fund, a restricted fund of the Club that had been established by the estate of Charlotte Kesselring (widow of Joseph Kesselring, the author of *Arsenic & Old Lace*) to support and recognize the accomplishments of aspiring playwrights. At James' direction, the Club transferred \$274,000 from one of its Kesselring Fund accounts into its operating account, from which the funds were then used to cover both operating and capital expenses, including payments to the façade contractor.

97. James falsely described the transaction to the Board as a loan from the Kesselring Fund. In fact, there was no loan agreement, and the donors of the restricted fund had not agreed to any such loan or to the use of the endowment fund for capital renovations. When asked about his use of the restricted Kesselring Fund at his sworn examination in the Attorney General's investigation on February 28, 2012, James again invoked the Fifth Amendment:

Q: Did you understand that the NAC had certain funds which were restricted funds?

A: On advice of counsel, I decline to answer any question pursuant to

my rights under the Fifth Amendment of the Constitution.

Q: Did you understand that the Kessel[ring] Fund was a restricted fund, to be used solely for its stated purpose?

A: On advice of counsel, I decline to answer any question pursuant to my rights under the Fifth Amendment of the Constitution.

Q: Did you cause the NAC to borrow against the Kessel[ring] Fund in order to finance capital improvements?

A: On advice of counsel, I decline to answer any question pursuant to my rights under the Fifth Amendment of the Constitution.

Q: You understand it was your responsibility, as an officer of the club, and the senior officer of the club, not to invade restricted funds?

A: On advice of counsel, I decline to answer any question pursuant to my rights under the Fifth Amendment of the Constitution.

Q: The board of governors ever authorize you to cause the invasion of any restricted funds at the club?

A: On advice of counsel, I decline to answer any question pursuant to my rights under the Fifth Amendment of the Constitution.

Q: Can you identify a single meeting or document in which the club authorized you to invade or cause the invasion of a restricted fund for purposes other than that restricted fund's stated purpose?

A: On advice of counsel, I decline to answer any question pursuant to my rights under the Fifth Amendment of the Constitution.

98. The \$274,000 withdrawn by James from the Kesselring Fund for payment of operating and capital expenses has not been restored to the Fund.

CAUSES OF ACTION¹

FIRST CAUSE OF ACTION For Breach of Fiduciary Duty Under N-PCL §§717 and 720

99. As an officer and director of the Club, James owed the Club the fiduciary duties of loyalty and care.

100. James breached his duty of loyalty and care by engaging in a pattern of conduct whereby he put his own financial and personal interest above the interests of the Club.

101. In applying funds and assets of the Club to his, Leitner's and John James' personal use, and in failing to properly administer and maximize the value of the Club's rental apartments and office spaces, James failed to discharge his fiduciary duties to the Club "in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions" as required by N-PCL §717(a).

102. James' breaches of duty constituted "the neglect of or failure to perform or other violation of his duties in the management and disposition of corporate assets committed to his charge" within the meaning of N-PCL §720(a)(1)(A).

103. James' receipt of unlawful payments and benefits in breach of his fiduciary duties to the Club constituted "[t]he acquisition by himself, transfer to others, loss or waste of corporate assets due to [. . .]neglect of, or failure to perform, or other violation of his duties" within the meaning of N-PCL

¹ Pursuant to Rule 3014 of the Civil Practice Law and Rules, the allegations in paragraphs 1 through 98 above are deemed repeated and adopted in each cause of action.

§720(a)(1)(B).

104. The Attorney General is entitled to judgment directing James to account for his official conduct pursuant to N-PCL §720(a)(1), and to the extent that he fails to account for the lawfulness of such payments and benefits, to make restitution and pay damages to the Club for all payments and the value of all benefits received by him or by others on account of his misconduct in an amount to be determined at trial.

SECOND CAUSE OF ACTION
For an Accounting and Restitution of Value Wasted Under
N-PCL §§720(a)(1)(B) and 719(a)(1)

105. The monies and benefits that James directed to himself, Leitner and John James constitutes loss and waste of the Club's assets due to the neglect of or failure to perform or otherwise act in violation of James' duties to the Club.

106. Without Board authorization, James distributed to himself and others the Club's cash or other property resulting in the waste of such not-for-profit assets.

107. James knew of the unlawfulness of his acquisition, distribution, or waste of Club assets.

108. The Attorney General is entitled to a judgment a) requiring James to account for his conduct in transferring to others, receiving, otherwise benefitting from, or wasting Club assets, and b) granting to the Club the full amount of monies and assets improperly wasted by James, with payment of

interest from the dates of James' transfers and other unlawful acts.

THIRD CAUSE OF ACTION
Restitution and Injunctive Relief for Failure to Properly
Administer Charitable Assets Under EPTL §8-1.4

109. Under EPTL §8-1.4(a), James was a trustee of the Club and therefore responsible for the proper administration of its charitable assets. James failed to properly administer the Club's charitable assets in that he took for himself and others monies and other assets belonging to the Club without the authorization of the Board.

110. The Attorney General is entitled to appropriate relief for James' failure to properly administer the Club's charitable assets entrusted to his care, including judgment a) directing James to make restitution to the Club of all Club monies and the value of all Club assets improperly diverted or administered by him, with interest, and b) permanently enjoining James from serving as a director, officer or other fiduciary of any charitable organization incorporated, organized or authorized to do business or solicit charitable contributions in New York.

FOURTH CAUSE OF ACTION
For Breach of Fiduciary Duty Under N-PCL §§717 and 720
for Failure to Properly Administer Assets Received for Specific Purposes

111. The Club held assets consisting of funds donated with a direction to apply them to specific purposes.

112. In breach of his fiduciary duties, James caused not less than \$274,000 of such restricted funds to be applied for the Club's general operating and capital expenses, with the result that funds restricted by their gift instruments to a particular purpose were improperly reduced.

113. The Attorney General is entitled to judgment directing James to account for his conduct with respect to the Kesselring Fund pursuant to N-PCL §720(a)(1), and to the extent that he fails to account for the lawfulness of such conduct, to make restitution to the Club's Kesselring Fund in the amount of the improper reduction of its funds, with interest.

FIFTH CAUSE OF ACTION
Against James Pursuant to Exec. L § 175(2)(d) for Filing False Documents
with the Attorney General in Violation of Exec. L. § 172-b(1)

114. From 2006 through 2010, the Club filed with the Charities Bureau of the Attorney General's office the "Annual Filing for Charitable Organizations", also called the "CHAR500", including a copy of the Club's Internal Revenue Service Form 990 and all schedules thereto as well as an independent auditor's report, as is required of it pursuant to Exec. L. §172-(b)(1).

115. As Club President, James signed these annual filings and the Forms 990 that were annexed to them. Above the line on which James signed the CHAR500, the form reads, "We certify under penalties of perjury that we reviewed this report, including all attachments, and to the best of our knowledge and belief, they are true, correct and complete in accordance with the laws of the State of New York applicable to this report."

116. Above the line on the Form 990 that James signed, the form similarly reads: "Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete."

117. Between at least 2006 and 2010, the Forms 990 that the Club filed with the

Attorney General's office contained material misstatements that James knew or should have known were false. Among other things, the Forms stated that James received no compensation or benefits from the Club, when, in fact, he was paying substantially all of his living expenses with the Club's funds.

118. Pursuant to Exec. L. §175(2)(d), the Attorney General is entitled to a judgment against James a) for restitution of all compensation and benefits that the Club failed to report in filings the accuracy of which James falsely certified, b) removing James and permanently enjoining him from serving as a Governor, officer or member of the Club and of any other charitable entity organized under New York law or which solicits charitable contributions in New York, c) enjoining James from soliciting or collecting charitable contributions in New York, d) awarding the Club damages, in an amount to be determined at trial, caused by James' violations of the Executive Law, and e) awarding the Attorney General the costs associated with this action.

PRAYER FOR RELIEF

WHEREFORE, the Attorney General, on behalf of the People of the State of New York, respectfully requests judgment:

(a) directing James to account for his conduct as a director and officer of the National Arts Club; received from the Club or conferred on others, in an amount to be determined at trial;

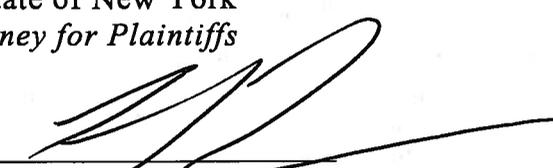
(b) directing James to make restitution and pay damages to the National Arts Club on account of all payments and benefits improperly received by him or conferred by him on others, and on account of the waste of corporate assets that he caused;

- (c) imposing liability on James for all National Arts Club losses arising from his self-dealing, waste and breaches of fiduciary duty;
- (d) directing James to account for his conduct with respect to the National Arts Club's Kesselring Fund, and to the extent that he fails to account for the lawfulness of such conduct, to make restitution to the Kesselring Fund in the amount of the improper reduction of its funds;
- (e) directing James to make restitution to the Club of all compensation and benefits that the National Arts Club failed to report in filings with the Attorney General that James certified to be accurate;
- (f) removing and permanently enjoining James from serving as a Governor, officer or member of the National Arts Club;
- (g) permanently enjoining James from serving as a director, officer or other fiduciary of any charitable entity organized under New York law or which solicits charitable contributions in New York;
- (h) permanently enjoining James from soliciting or collecting charitable contributions in New York,
- (i) awarding interest on all sums required to be paid by James at the highest rate allowed by law;
- (j) awarding the Attorney General the costs, disbursements and fees associated with this action; and

(k) granting such other and further relief as this Court deems just.

New York, New York
September 20, 2012

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York
Attorney for Plaintiffs

By 

David E. Nachman

*Enforcement Section Chief and
Senior Counsel*

Charities Bureau
120 Broadway
New York, New York 10271
(212) 416-8390
NY Bar No. 1764562

Of Counsel:

Jason R. Lilien, *Bureau Chief, Charities Bureau*
Barbara L. Quint, *Assistant Attorney General*

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

David E. Nachman, being sworn, says:

I am Enforcement Section Chief and Senior Counsel in the Charities Bureau of the office of Eric T. Schneiderman, Attorney General of the State of New York, and am duly authorized to make this verification; and

I have read the foregoing complaint and know the contents thereof, which on information and belief, I believe to be true. The grounds for my belief are investigative materials contained in the files of the Attorney General's office.

The reason this verification is not made by Plaintiffs is that Plaintiffs are a body politic and the Attorney General is their duly authorized representative.



DAVID E. NACHMAN

Sworn to before me this 20th
day of September 2012



Notary Public

ANDREW P. DAVIS
NOTARY PUBLIC NEW YORK STATE
QUALIFIED IN RENSSELAER CO.
COM. EXPIRES 3/30/2015