

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

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WALTER ARNSTEIN, INC.,

Index No.: 654254/2019

Plaintiff,

- against -

AX TRADING GROUP, INC. and VICTOR
ANGERMUELLER,

Defendants.
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STATE OF NEW YORK) ss.
COUNTY OF NEW YORK)

I, SAMUEL ARNSTEIN, being duly sworn, deposes and states:

1. I am the Vice President of the Plaintiff, WALTER ARNSTEIN, INC. ("Plaintiff" or "Landlord"), in this action. I am duly authorized to make this affidavit for Plaintiff.

2. I submit the affidavit in support of Landlord's motion for summary judgment and other relief.

3. I am over the age of eighteen years and under no legal disability.

4. I make this affidavit based on my own personal and direct knowledge of the facts and circumstances stated herein, as well as based on a review of business records maintained by Landlord in the normal course of business. I specifically have personal and direct knowledge of facts and circumstances relating to the tenancy of the defendant, AX TRADING GROUP, INC. ("Tenant") as well as Tenant's payments (and nonpayment) to Landlord. I also have personal and direct knowledge of the recordkeeping practices of Landlord and, in fact, have been personally and directly involved in the keeping of Landlord's business records including as pertains to the facts and circumstances at issue in this action.

5. Plaintiff was in control of the entire 19th floor of 6 East 45th Street, New York, New York (the “Premises”), among others, pursuant to a lease made with a non-party, dated July 29, 2005, as modified by a certain Modification of Lease and Additional Space Agreement, dated February 22, 2008, and as modified by a certain Second Modification of Lease Agreement dated as of June 1, 2009 (the “Over-Lease”). A true and correct copy of the Over-Lease is annexed hereto as Exhibit A.

6. Plaintiff, as sublessor, and Tenant, as subtenant, entered into an Agreement of Sublease dated as of November 1, 2015 (the “Sublease”). Pursuant to the Sublease, Plaintiff leased the Premises to Tenant, a financial-sector company, for commercial purposes pursuant to certain terms. A true and correct copy of the Sublease (with exhibits) is annexed hereto as Exhibit B.

7. Defendant, VICTOR ANGERMUELLER (“Guarantor”), guaranteed Tenant’s obligations under the Sublease pursuant to a Guaranty of Sublease dated as of November 1, 2015 (“Guaranty”). A true and correct copy of the Guaranty (redacted to omit confidential personal information) is annexed hereto as Exhibit C.

8. It is my understanding that Tenant is a financial-sector company and that Guarantor is an investment banking and securities advisor having a senior position with Tenant as well as an indirect ownership interest in Tenant. *See* Exhibit D.

9. Tenant occupied the Premises during the full term of the Sublease (November 1, 2015 through and including December 31, 2018).

10. LATE FEES. During the term of the Sublease, Tenant was habitually late in the payment of rent. Specifically, for at least 33 months, Tenant failed to pay its monthly rent on time, accruing at least \$23,718.75 in late fees. A full ledger showing all of Tenant’s payments to

Landlord (as well as the monthly rent owed, late fees owed, as well as other fees) is annexed hereto as Exhibit E. Of the total amount of late fees, the sum of \$20,981.25 remains outstanding and unpaid.

11. USE AND OCCUPANCY. After the expiration of the Sublease's term (on December 31, 2018), Tenant then held-over for the months of January 2019, February 2019, and March 2019. Pursuant to the Sublease, Tenant owes use and occupancy in an amount equal to \$35,937.50 (which is 2.5 times the term's monthly rent of \$14,375) per month for each of these three holdover months. These use and occupancy charges are reflected on the ledger annexed hereto as Exhibit E. The total use and occupancy Tenant owes, none of which has been paid, amounts to \$107,812.50.

12. CLEANING FEE. Tenant finally "vacated" the Premises on March 31, 2019, but when it did so it left behind cabinets and other belongings, leaving the Premises in disarray. Photographs accurately and correctly depicting the belongings and furnishings left behind by the Tenant once it quit the Premises are annexed hereto as Exhibit F. Landlord hired a cleaning company to clean the Premises and remove Tenant's belongings, for which Landlord paid \$2,000. *See* Exhibit G. No amount of this cleaning fee has been paid. This \$2,000 cleaning fee is also reflected on the ledger annexed as Exhibit E.

13. PORTER WAGE ESCALATION FEES. Pursuant to the Over-Lease, Landlord was charged, and paid, porter wage raise charges. *See* Exhibit H. Pursuant to the Sublease, these fees are chargeable to Tenant. For the Premises, the porter wage escalation charges which Tenant owes amount to a total of \$43,428.70, as follows:

- a. For 2015, the amount of \$1,110.97 (as prorated from November 16, 2015 through December 31, 2015);
- b. For 2016, the amount of \$10,953.88;
- c. For 2017, the amount of \$12,709.20;
- d. For 2018, the amount of \$14,457.52;
- e. For 2019, the amount of \$4,197.13 (as prorated through March 31, 2019).

14. No part of the total of \$43,428.70 for these fees has been paid.

15. REAL ESTATE TAXES. Pursuant to the Over-Lease, Landlord was charged, and duly paid, real estate taxes. The amounts paid by Landlord are as follows:

Real Estate Taxes	Amount Landlord Paid
2015	$\$720.29 + \$4044.76 + 4044.76 = \$8,809.81$
2016	$\$5,063.17 + \$5,063.17 = \$10,126.34$
2017	$\$5,447.61 + \$5,447.61 = \$10,895.22$
2018	$\$5,930.08 + \$2,965.04 = \$8,895.12$
2019	\$0.00
Total:	\$38,726.49

A true and correct copy of a ledger indicating these payments is annexed hereto as Exhibit I.

Pursuant to the Sublease, Tenant is required to pay these real estate taxes. The amounts which Tenant owes, but has failed to pay, are as follows:

Real Estate Taxes	Amount Tenant Owes
2015 (prorated from Nov. 16, 2015 through Dec. 31, 2015)	$(\$720.29 + \$4044.76 + 4044.76) \times (45/365) = \$1,086.14$
2016	\$10,126.34
2017	\$10,895.22
2018	\$8,895.12
2019	\$0.00
Total:	\$31,002.82

As Tenant has failed to pay any portion of the real estate taxes, the amount of \$31,002.82 should be added to their judgment.

Item	Amount Outstanding
Term Rent	\$0.00

Term Late Fees	\$20,981.25
Porter Wage Raise Fees	\$43,428.70
Real Estate Taxes	\$31,002.82
Holdover Use and Occupancy	\$107,812.50
Holdover Late Fees	\$5,390.62
Cleaning Fee	\$2,000.00
Total:	\$210,615.89

16. Towards the end of end of the Sublease's initial term, Tenant expressed a desire to remain at the Premises. While there was some discussions regarding Tenant remaining, the parties never negotiated this possibility, and certainly never reached any agreement about extending the term of the Sublease. Landlord in no way ever granted Tenant permission to not vacate at the expiration of the Sublease's term. When Tenant held over from January 1, 2019 through March 31, 2019, it did so as a holdover pursuant to Section 17 of the Sublease. Tenant failed to pay any use and occupancy or any other payment for the three months in which it heldover.

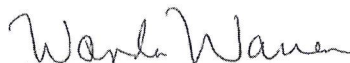
WHEREFORE, Plaintiff's motion should be granted in its entirety.

Dated: New York, New York

January 23, 2020


SAMUEL ARNSTEIN

Sworn to before me this 23rd
day of January, 2020


Notary Public

WANDA WARREN
Notary Public - State of New York
No. 01WAG385287
Qualified in Kings County
My Commission Expires Dec. 31, 2022