

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BENJAMIN MASON, MD.

Plaintiff,

-against-

Civil
Action No:

COMPLAINT

HYMAN HAYES ASSOCIATES, LLC., MYLES HYMAN,
MICHAEL ANTHONY CONTRACTING CORP. and
MICHAEL PERNA,

Defendants,
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This is an action by BENJAMIN MASON, M.D.(“Mason”) against HYMAN HAYES ASSOCIATES, LLC. (“HHA”), MYLES HYMAN (“HYMAN”), MICHAEL ANTHONY CONTRACTING CORP. (“MACC”) and MICHAEL PERNA (“PERNA”), for *inter alia* violations of antitrust, unfair competition and racketeering laws. HHA and MACC have engaged in an unlawful conspiracy to defraud plaintiff by rigging the bidding process which preceded the construction of the Mason Eye Surgery Center at 105-12 101st Avenue in Ozone Park, New York.

JURISDICTION AND VENUE

1. Plaintiff Mason seeks compensatory, punitive and statutory relief pursuant to the Sherman Act, the Clayton Act and the Racketeer Influenced and Corrupt Organizations (“RICO”) Act as well as New York State statutory and common law causes of action.

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1337. The Court also has ancillary jurisdiction over plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.

3. This Court has personal jurisdiction over Defendants HHA, Hyman, MACC and Perna, based on their activities within this jurisdiction, including but not limited to, operation of significant aspects of their businesses that are the subject of this Complaint.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b), (c).

THE PARTIES

5. Plaintiff Mason, by and through his undersigned attorneys, brings this action under federal and state antitrust laws, the RICO Act, breach of contract and fraud, against Defendants HHA, Hyman, MACC and Perna to challenge defendants' illegal and anticompetitive conspiracy to monopolize, prevent competition and defraud the plaintiff by rigging bids in the construction of the Mason Eye Surgery Center.

6. Plaintiff Benjamin Mason is a resident of the state of New York, county of Queens.

7. Defendant HYMAN HAYES ASSOCIATES LLC ("HHA") is a New York limited liability company with its principal place of business in Albany, New York. Defendant Myles Hyman ("Hyman") is a principal of HHA.

8. Defendant MICHAEL ANTHONY CONSTRUCTION CORP. ("MACC") is a New York domestic business corporation with its principal place of business in New Hyde Park, New York. Defendant Michael Perna ("Perna") is a principal of MACC.

FACTS

9. In 2013, plaintiff Mason intended to commence the construction of his eye surgery center, the Mason Eye Surgery Center, located at 105-12 101st Avenue, Ozone Park, New York. For this project, he retained defendants HHA as architects and project managers. Among other things, it was the responsibility of HHA to set the initial parameters of project by

creating the architectural design to be followed by the eventual general contractor for the construction of the Eye Center. It was also the responsibility of the HHA defendants to handle all aspects of the bidding process for the selection of a general contractor to construct the Center.

10. Consistent with industry practices and the process agreed upon between plaintiff and defendant HHA, bidders were to submit bids via certified or registered mail. They were not to submit bids by e-mail alone.

11. On June 3, 2013, HHA notified plaintiff Mason that three (3) bids had been received all in the approximate range of \$3 Million. The three bids that were received were from defendant MACC, a second came from “VDR Builders” and a third came from “Nicor Construction Inc.” Of all three bids, only MACC stated in their email that they had emailed a hard copy.

12. Around June 1, 2013, defendant Hyman informed plaintiff Mason by email that he expects all bids will be about three million dollars (\$3,000,000) depending on rough structure estimate prior to completion of drawings. Defendant Hyman misrepresented to plaintiff that rough estimates were sufficient for accurate bids. However, upon information and belief, rough estimates are not sufficient to obtain accurate bids.

13. The bids of VDR and Nicor were similar in price, i.e. all in the range of \$3 Million, but the actual numbers in the breakdown for numerous aspects of project and its pricing were completely unrealistic.

14. Additionally, since bidders were told that their bids had to be submitted via registered mail and email submissions would not be considered without a mailed in submission, the bidding process was set up to steer plaintiff Mason to MACC.

15. It was not until 2015 that plaintiff Mason finally found out that HHA actually conducted the bidding process by e-mail.

16. After the completion of the bidding process, HHA and Hyman failed to negotiate the prices with the other two bidders entirely.

17. Subsequently, plaintiff requested HHA and Hyman to hold another bid for the project, considering the discrepancy in the bids, which defendants HHA and Hyman refused to do stating that it was against industry norms.

18. Prior to MACC's bid being accepted, defendants HHA and Hyman misled plaintiff by leading him believe that a fourth contractor, Moon Star Construction, who plaintiff had been in contact with, was dishonest and his bid should not be considered, thereby steering plaintiff away from any contractor that was not MACC.

19. Shortly after the bids were submitted in June 2013, and negotiations with MACC were being conducted by HHA, HHA sent plaintiff an email stating that they would like to cancel the "payment and performance bond" for the project. HHA indicated to plaintiff that these bonds will lead to an increase in the project cost and caused extra expenses to the plaintiff but HHA was well aware that the cost of these bonds were part of the bids and the bid documents.

20. HHA stated that these bonds will be necessary in the event that MACC files for bankruptcy. HHA misled plaintiff once again stating that these bonds would be used when the General Contractor does not finish the job or fails to pay the subcontractors.

21. Furthermore, HHA failed to negotiate the reduction of the bid price with MACC, which is about 3% on a project like this. HHA, failed to waive the same condition for the other two bidders that could have led to reduction in the bids.

22. Ultimately, and in reliance on the bidding process managed by HHA and Hyman, plaintiff retained MACC as the general contractor.

23. The bidding process, as executed by defendants HHA and Hyman, and in collusion with defendants MACC and Michael Perna, clearly show a bias towards MACC which ultimately resulted in the contract being awarded to MACC. The combined conduct of the defendants together resulted in a bidding process that was anti-competitive; not garnering the lowest bid on what should have been an open market.

24. In addition, once the project began, defendant MACC immediately began demanding additional money, and refused to continue the project though having been timely paid. Plaintiff complied with defendant's unreasonable demands initially.

25. Once MACC had been selected, HHA and MACC failed to add changes requested by Department of Buildings and Fire Department of New York to the bids, around July 2013. HHA and Hyman confirmed to plaintiff via emails in June and July of 2013 that such additions and considerations will be added before the final award of the contract, which HHA supposedly reviewed and approved before forwarding them to the plaintiff.

26. HHA and MACC never discussed or shared with plaintiff, the DOB and FDNY changes before providing plaintiff with the contract, leading plaintiff to believe that such changes were included. This collusion resulted in unnecessary change orders that profited MACC and HHA and caused significant delays in the project.

27. In August 2013, HHA and its engineering specified the wrong generator for the project. HHA and Hyman signed off on a TR1 application and forwarded the same to the DOB through the expeditor having forged the plaintiff's signature, thereby making the plaintiff responsible for any and all errors in specifications.

28. The generator specifications were changed to a different generator, after the purchase and delivery of the wrong generator. Both MACC and HHA were aware of the code and the wrong generator, which was shared with plaintiff only after the delivery of the wrong generator.

29. As a result of HHA and MACC's misrepresentation, plaintiff was forced to purchase a new generator and incur the costs of multiple change orders that benefited HHA and MACC, while delaying the project once again.

30. MACC is now seeking compensation for this delay, which was wholly the responsibility of HHA and MACC's misdeeds concerning the wrong generator specifications.

31. MACC repeatedly submitted false payment certifications to the Architect and Chase bank. They failed to pay subcontractors on time while certifying and representing the wrong information concerning their payments to the subcontractors. This resulted in the enrichment of MACC and multiple mechanics liens on the plaintiff's projects along with substantial delays.

32. MAC specified 21 weeks for completion of the project. HHA and MACC were well aware of the multiple changes requested by FDNY and DOB, which would have added to the completion time of the project.

33. Despite adjusting pricing and time line, HHA and MACC approved these change orders after the start of the project in September 2013, asking for extra delay money.

34. After the project was almost complete, MACC refused to execute the closing documents without a payment of an additional \$498,000. On information discovered by plaintiff, MACC completed the necessary building certifications, and sent them to the financing institution for the project Chase Bank, when in fact they had not paid the subcontractors.

35. On August 26, 2014, plaintiff terminated his relationship with MACC due to their delays and failures to pay subcontractors.

36. Because of the subsequent conduct of the MACC defendants, initially facilitated by the HHA defendants, numerous subcontractors filed mechanics liens against the plaintiff. The plaintiff was led to believe that the subcontractors had already been paid as evidenced in the certifications submitted by MACC to Chase Bank. If MACC did not pay the subcontractors, then they had submitted fraudulent certifications for payment to the bank.

37. As a direct and proximate result of the collusion and deceptive practices between HHA and MACC (and their principals) outlined above, plaintiff incurred monetary damages in excess of two million dollars (\$2,000,000.00).

**FIRST CAUSE OF ACTION:
VIOLATION OF SECTION 1 OF THE SHERMAN ACT**

38. Plaintiff incorporates the allegations of paragraphs 1 through 21 as if fully set forth herein.

39. Defendants HHA and MACC conspired and colluded to defraud plaintiff by extracting large sums of money from him.

40. HHA and MACC's conspiracy further included a collusive agreement to engage in unfair business conduct with the object of capitalizing on the profits made through the construction of the Mason Eye Surgery Center outlined above.

41. Defendants' conspiracy also included the elimination of normal and aggressive competition between general contractors, including competitors of MACC, who would have offered a more competitive price.

42. Upon information and belief, HHA and MACC entered into the conspiracy, and acted in furtherance of their conspiracy, with the bad faith intent to harm competition, reduce output and increase prices.

43. HHA and MACC's conspiracy and conduct in furtherance of their conspiracy has had a direct and substantial effect on interstate trade and commerce.

44. Due to HHA and MACC's anticompetitive conspiracy and conduct in furtherance of their conspiracy, plaintiff has been directly and significantly injured by the elimination of aggressive competition.

45. HHA and MACC's anticompetitive conspiracy and conduct in furtherance of their conspiracy have no legitimate business objective and constitute *a per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

46. Upon information and belief, among other things, the conspiracy includes *a per se* unlawful refusal to deal except on common terms, an agreement to exclude competitors of MACC from competing in the relevant market.

47. Alternatively, HHA and MACC's conspiracy unreasonably restrains competition in the relevant markets and violates Section 1 of the Sherman Act under the Rule of Reason.

48. Defendants are liable under Section 1 of the Sherman Act to plaintiff for damages in an amount to be proven at trial, including, without limitation, the lost business, expenses and reduction in company value plaintiff has suffered as a direct result of the conspiracy, which damages should be determined pursuant to 15 U.S.C. §15(a), plus interest, costs and expenses, including attorneys' fees.

**SECOND CAUSE OF ACTION:
VIOLATION OF SECTION 2 OF THE SHERMAN ACT**

49. Plaintiff incorporates the allegations of paragraphs 1 through 49 as if fully set forth herein.

50. HHA and MACC conspired to monopolize and maintain their monopoly of construction projects, and to attempt to monopolize the commercial construction market.

51. HHA and MACC conspired and reached a collusive agreement to engage in predatory and anticompetitive conduct to secure long-term exclusive contracts from the plaintiff, acting in a commercial capacity as a market participant, and thereby to foreclose competition in the relevant market and destroy potential competitors.

52. Upon information and belief, HHA and MACC entered into the conspiracy with the specific intent of enrichment and to foreclose competition in the market for construction projects in the New York area and maintain their dominant position in that market and have effectively precluded competitive threats to their dominance of this market by rigging bids.

53. Upon information and belief, defendants entered into the conspiracy with the specific intent to foreclose competition and acquire a monopoly in the market for construction services to commercial customers. As a result of HHA and MACC's conspiracy, and their conduct in furtherance of their conspiracy, other competitors have been excluded from, among other things, participating in and being awarded substantial construction contracts from commercial customers such as the plaintiff.

54. HHA and MACC's conspiracy to foreclose competition monopolize and maintain their monopoly position among commercial construction projects in the New York area, and to attempt to monopolize the commercial market, and their conduct in furtherance of the conspiracy, have no legitimate business objective.

55. HHA and MACC's conspiracy and conduct in furtherance of their conspiracy has had a direct and substantial effect on interstate trade and commerce.

56. Due to HHA and MACC's anticompetitive conspiracy and conduct in furtherance of their conspiracy, others in the industry have been directly and significantly injured by being excluded from the commercial market.

57. HHA and MACC's unlawful conspiracy and conduct to foreclose competition, acquire and maintain a monopoly in the commercial market, and to attempt to monopolize the commercial construction market for the purposes of enrichment and defrauding the plaintiff, violate Section 2 of the Sherman Act, 15 U.S.C. § 2.

58. HHA and MACC are liable under Section 2 of the Sherman Act to plaintiff for damages in an amount to be proven at trial, including, without limitation, the lost monies, expenses and reduction in property value plaintiff has suffered as a direct result of the conspiracy, which damages should be trebled pursuant to 15 U.S.C. § 15(a), plus interest, costs and expenses, including attorneys' fees.

**THIRD CAUSE OF ACTION:
VIOLATION OF SECTION 7 OF THE CLAYTON ACT**

59. Plaintiff incorporates the allegations of paragraphs 1 through 58 as if fully set forth herein.

60. The continued activities of HHA and MACC would have the effect of substantially lessening competition in the market for commercial construction contractors.

61. The continued activities of HHA and MACC would have the following effects, among other things:

- a. competition in the market for construction contractors would be substantially diminished;

- b. competition in the sale of contractor services to commercial customers would be significantly lessened as the would eliminate the bids entered by other contraction;
- c. HHA and MACC, would possess a market dominance sufficient to continue engaging in anticompetitive conduct, and would exercise their market power to exclude competition from rivals,
- d. HHA and MACC will engage in predatory and anticompetitive conduct in the bidding process for construction contracts to commercial customers.

62. Architects and project managers, such as HHA, play a key role in the completion of construction project. Their collusion with construction contractors would have the effect of eliminating other businesses that would lose money as a result of the lack of contracts, and perpetuating a monopoly. Thus, it is very unlikely that there will be additional entry into the relevant markets in the next few years.

63. The continued activities of HHA and MACC will have a direct and substantial effect on interstate trade and commerce.

64. The collusion of HHA and MACC will cause significant injury to other businesses in the industry, by providing Defendants greater market power to effectuate their anticompetitive conduct, exclude competition and facilitate predatory conduct in the bidding for construction contracts and construction project services to commercial customers.

65. The combination of HHA and MACC's activities would consolidate their dominant positions into a monopoly in commercial construction projects and, would substantially lessen competition in the markets for the construction contractors and related

launch services to government and commercial customers, and is unlawful pursuant to Section 7 of the Clayton Act, 15 U.S.C.8.

**FOURTH CAUSE OF ACTION:
RICO CONSPIRACY - 18 U.S.C. § 1962(d)**

66. Plaintiff incorporates the allegations of paragraphs 1 through 65 as if fully set forth herein.

67. This is a cause of action against HHA for conspiracy to undertake the HHA-MACC Anticompetitive Enterprise in violation of 18 U.S.C. § 1962(d).

68. HHA, Hyman, MACC and Perna together with others known and unknown to plaintiff, have unlawfully, fraudulently, and intentionally conspired together to plan and perpetrate a fraudulent scheme to carry out the common purpose of the HHA-MACC Anticompetitive Enterprise. The common purpose of the HHA-MACC Anticompetitive Enterprise is (a) to deprive competitors of the benefits of fair, lawful and aggressive competition on the merits, including price, for the awarding construction contracts by the commercial customers; (b) to corrupt the procurement process for the awarding of construction contracts; and (c) to conduct other illegal activities in furtherance of their scheme to defraud customers like the plaintiff.

69. HHA continues to harm irreparably plaintiff, other customers and competitors. As a direct and proximate result of defendants' wrongful actions described herein, plaintiff has sustained damages as described above, and will continue to accrue and sustain damage in the future on an ongoing and continuing basis.

RICO Enterprise

70. HHA is a corporation capable of holding a legal or beneficial interest in property and therefore is a "person" within the meaning of 18 U.S.C. § 196 l(3).

71. HHA and Hyman, together with others known and unknown to plaintiff, have unlawfully, knowingly and intentionally conducted and are continuing to conduct an enterprise referred to herein as the "HHA-MACC Anticompetitive Enterprise," an association-in-fact. The common purpose of the HHA-MACC Anticompetitive Enterprise is enrichment, to eliminate fair, lawful and aggressive competition in the market for commercial construction projects in the New York area. HHA's illegal conduct in furtherance of the common purpose of the HHA-MACC Anticompetitive Enterprise has harmed competitors in the market construction contracting services.

72. The HHA-MACC Anticompetitive Enterprise constitutes a RICO enterprise within the meaning of 18 U.S.C. § 1961(4) that is engaged in, or the activities of which affect, interstate or foreign commerce.

Unlawful Conduct and Pattern of Racketeering Activity

73. HHA, Hyman and others acting on their behalf have conducted the activities of the HHA-MACC Anticompetitive Enterprise through a pattern of racketeering activity in furtherance of their ongoing scheme to eliminate fair, lawful and aggressive competition in the market for construction contractor services, to corrupt the commercial bidding process of procuring contracts and to harm competitors, in the market for contractor services. This pattern of racketeering activity includes the use of the U.S. mails, and private and commercial interstate carriers, and the interstate use of wires, to devise and execute a scheme to defraud and to obtain money or property by means of false and fraudulent pretenses, representations and promises, and the interstate transportation of property obtained by theft, conversion, or fraud having a value of more than \$5,000.

74. HHA, Hyman, and those acting in concert with and on behalf of them, have unlawfully, knowingly, and intentionally engaged in two or more acts indictable under the Federal Mail Fraud Statute, 18 U.S.C. § 1341, the Federal Wire Fraud Statute, 18 U.S.C. § 1343, and the Federal Interstate Transportation of Stolen Property Statutes, 18 U.S.C. § 2314 and 2315, and have therefore unlawfully, fraudulently, and intentionally engaged in predicate acts of racketeering within the meaning of 18 U.S.C. § 1961(l)(B).

75. HHA, Hyman, and those acting in concert with and on behalf of them, unlawfully, knowingly, and intentionally used the U.S. mails, private or commercial interstate carriers, and interstate wires, in furtherance of their scheme to defraud competitors in the commercial contracts market and to deprive them of their property rights, including, but not limited to, the following. Each of the following mailings and/or interstate wire communications constitutes a separate act of racketeering and were all undertaken with the specific intent to be part of and in furtherance of the frauds perpetrated upon plaintiff:

- a. HHA and Hyman failed to conduct the bidding process by registered mail as agreed upon between HHA and plaintiff;
- b. HHA and Hyman failed to provide plaintiff with the MACC bid, which was sent by “registered mail”;
- c. HHA and Hyman failed to timely provide plaintiff Mason with a copy of all the bids, whether received by mail or e-mail;
- d. According to a computer analysis, the bid was created by HHA and Hyman at 1:46 PM on June 3, 2013;
- e. MACC’s bid file was created and/or modified on June 5, 2013 at 2:37 PM, which is in violation of the bidding process;

- f. VDR builder's bid file was created and/or modified on June 6, 2013 at 4:49 PM, which is in violation of the bidding process;
- g. Nicor Construction's bid file was received on June 3, 2013 at 3:00 PM, which is after the bid was supposedly closed.

Continuity and Relatedness of the Pattern of Racketeering

76. Defendants' racketeering activity constituted a pattern of racketeering activity within the meaning of 18 U.S.C. §1961(5). Defendants' racketeering activity was both related and continuous. As to relatedness, the predicate acts of racketeering activity are related to the same or similar purposes, results and participants, and have the same goal, namely the enrichment of Defendants and other possible members of the enterprise at the expense of plaintiff Mason, and have the same methods of commission and are otherwise inter-related by distinguishing characteristics, and are not isolated incidents. The pattern of racketeering activity was sufficiently continuous under either the closed-end or open-end continuity standards. Upon information and belief, the racketeering activity began in 2013 and continued, with regard to the plaintiff specifically until 2014. The racketeering activity was a regular way for HHA-MACC Anticompetitive Enterprise to conduct business. Moreover, the racketeering activity would have continued unabated if it had not been discovered and terminated, satisfying the open-end standard.

77. Upon information and belief, the projects specifically identified herein are not the only ones where defendants perpetrated their scheme to defraud plaintiff. Discovery will disclose what other portions of the project may also have been involved.

RICO Injury

78. Plaintiff has been directly and proximately caused injury and financial loss by reason of Defendants' violation of 18 U.S.C. §1962. Accordingly, plaintiff is entitled to recover

threefold the damages it has sustained, as well as its costs of this suit, including reasonable attorneys' fees, all pursuant to 18 U.S.C. § 1964(c).

79. As a direct and proximate result of HHA's willful and unlawful participation in and conduct of the HHA-MACC Anticompetitive Enterprise through a pattern of racketeering in violation of 18 U.S.C. §1962(c), plaintiff has been injured in its business and property. Plaintiff has sustained damage and will continue to accrue and sustain damage in the future on an ongoing and continuing basis.

80. HHA's pattern of unlawful competitive practices has subverted the contractor procurement process. HHA has had an improper and unlawful advantage in the construction bid process through their deceptive bidding practices.

81. HHA's and MACC's conduct has excluded potential new entrants from the construction contractors' business by corrupting the procurement process for the awarding of construction contracts. By corrupting the process, HHA and MACC have destroyed any pretense of fair competition in the selection of construction contractors by the commercial consumer and have deprived other competitors of the benefits of a competitive marketplace. In a competitive marketplace, MACC and others like VDR and Nicor would compete aggressively and lawfully on the merits for construction contracts.

82. The absence of fair, competitive bidding for construction contracts in the procurement process prevents others from competing on the merits of its superior cost structure and experience. HHA's and MACC's unlawful conduct has precluded fair competition and caused significant injury to other competitors.

83. HHA's and MACC's conduct also has eliminated the possibility of any price competition amongst construction contractors. After HHA corrupted the bidding process, both

HHA and MACC acquired the construction project from plaintiff and successfully weeded out any other competitors.

**FIFTH CAUSE OF ACTION:
VIOLATION OF THE DONNELLY ACT
(UNREASONABLE RESTRAINT OF TRADE)**

84. Plaintiff incorporates the allegations of paragraphs 1 through 83 as if fully set forth herein.

85. HHA and MACC conspired and reached a collusive agreement to engaged in deceptive practices of rigging the bidding process, forcing plaintiff to enter into a long-term exclusive contract with MACC, as a result of which plaintiff incurred significant damages.

86. HHA and MACC's conspiracy of bid rigging further included a collusive agreement to engage in unfair business conduct with the object of suppressing competition in the selection of construction contracts and eliminating viable competitors.

87. Upon information and belief, HHA and MACC entered into the conspiracy of bid rigging, and acted in furtherance of their conspiracy, with the bad faith intent to harm competition, reduce output and increase prices.

88. HHA and MACC's conspiracy of bid rigging and conduct in furtherance of their conspiracy have had a direct and substantial effect upon trade and commerce in the State of New York.

89. Due to HHA and MACC's anticompetitive conspiracy and conduct in furtherance of their conspiracy of bid rigging, others in the industry, have been directly and significantly injured by the exclusion from the commercial construction market to compete in the commercial markets.

90. HHA and MACC's anticompetitive conspiracy and conduct in furtherance of their conspiracy for bid rigging have no legitimate business objective and unreasonably harm competition in the State of New York.

91. HHA and MACC are liable under Section 340 and 341 of the New York Donnelly Act to plaintiff for damages in an amount to be proven at trial, including, without limitation, enrichment, loss of business, delay in business, financial hardships and reduction in asset value that plaintiff has suffered as a direct result of the conspiracy, which damages should be trebled pursuant to the Donnelly Act, plus interest, costs and expenses, including attorneys' fees.

**SIXTH CAUSE OF ACTION:
VIOLATION OF THE DONNELLY ACT
(CONSPIRACY TO RIG THE BIDDING PROCESS AND TO MONOPOLIZE THE
COMMERCIAL CONSTRUCTION MARKET)**

92. Plaintiff incorporates the allegations of paragraphs 1 through 91 as if fully set forth herein.

93. HHA and MACC conspired to rig the bidding process, foreclose competition, to monopolize and attempt to maintain their monopoly of the commercial construction market.

94. HHA and MACC conspired and reached a collusive agreement to engage in predatory and anticompetitive conduct to secure long-term exclusive contracts from plaintiff, acting in a commercial capacity as a market participant, and thereby to foreclose competition in the relevant market and destroy viable competitors, and other potential new entrants.

95. Upon information and belief, HHA and MACC entered into the conspiracy with the specific intent to foreclose competition in the market for the construction contracts and to protect and maintain their dominant positions in that market.

96. Barriers to entry in the market for construction contracts are extremely high. The experience, expertise and the time required to enter the market along with the high costs, keeps

new entrants from attempting to procure construction contracts. In addition, each contract once acquired can take years and substantial capital to complete.

97. Upon information and belief, HHA and MACC entered into the conspiracy with the specific intent to foreclose competition and acquire monopoly power in the market on construction projects of commercial customers. As a result of HHA and MACC's conspiracy and their conduct in furtherance of their conspiracy competitors have been excluded from, among other things, participating in the bidding of construction contract. There is a dangerous probability that, as a result of Defendants' predatory and exclusionary conduct described herein; defendants collectively will obtain monopoly power in the market for construction projects.

98. HHA and MACC's conspiracy to foreclose competition, to monopolize and attempt to monopolize the commercial market, and their conduct in furtherance of the conspiracy, have no legitimate business objective.

99. HHA and MACC's conspiracy and conduct in furtherance of their conspiracy have had a direct and substantial effect on trade and commerce in the State of New York.

100. Due to HHC and MACC's anticompetitive conspiracy and conduct in furtherance of their conspiracy others in the industry have been directly and significantly injured by being excluded from the commercial market.

101. HHC and MACC unlawful conspiracy and conduct to foreclose competition and acquire and maintain monopolies in commercial construction markets violate Section 340 of the New York Donnelly Act.

102. HHC and MACC are liable under Section 340 and 341 of the New York Donnelly Act to plaintiff for damages in an amount to be proven at trial, including, without limitation, the lost business and reduction in company value plaintiff has suffered as a direct result of the

conspiracy, which damages should be trebled pursuant to Section 340 and 341 of the Donnelly Act, plus interest, costs and expenses, including attorneys' fees.

**SEVENTH CAUSE OF ACTION:
FRAUD**

103. Plaintiff incorporates the allegations of paragraphs 1 through 102 as if fully set forth herein.

104. The actions of Defendants as alleged herein constitute fraud, including but not limited to fraudulent misrepresentation.

105. Plaintiff reasonably relied on false material representations by Defendants in making the payments to them described herein with respect to the projects specifically identified. Such misrepresentations included, but were not limited to, representations that the bids solicited by HHA and prepared by the MACC Defendant contractors were procured competitively, without collusion, and, in fact, represented the lowest bids for the work solicited; representations that HHA would monitor and oversee the work of the Defendant contractors; representations that MACC paid the subcontractors and representations that the Defendant contractors did, in fact, perform all of the work that they contracted to perform. If plaintiff had known that Defendants' representations were false, it would not have made those payments.

106. To the extent that Defendants made similar false material representations in connection with other parts of the projects, plaintiff likewise reasonably relied on those false representations in making payments to Defendants on those projects.

107. If plaintiff had known that defendants' representations were false as alleged herein, it would not have continued its business relationships with defendants.

108. Plaintiff has been damaged by the fraudulent misrepresentations and other fraudulent conduct of defendants and has lost large sums of money, the amount of which will be proven at trial.

EIGHTH CAUSE OF ACTION
Breach of Contract

109. Plaintiff incorporates the allegations of paragraphs 1 through 108 as if fully set forth herein.

110. There existed between the parties herein a written contract for numerous services necessary for the construction project at issue.

111. Defendants breached the Contract by failing to perform thereon with respect to the numerous terms and conditions which bound them to perform under the Agreement.

112. As a result of defendants' breach of the Agreement, plaintiff is due and owing an amount to be determined at trial but in excess of \$2 Million (\$2,000,000).

WHEREFORE, plaintiff prays for the following relief:

- 1) Judgment against all Defendants, jointly and severally, for the full amount of damages proven at trial;
- 2) Restitution of all amounts proven to have been obtained by Defendants through fraudulent means;
- 3) Judgment against all Defendants, jointly and severally, for treble damages for violation of 18 U.S.C. §1962;
- 4) Judgment against all Defendants, jointly and severally, for treble damages for violation of section 7 of the Clayton Act;

5) Judgment against all Defendants, jointly and severally, for treble damages for violation of section 340 and 341 of the Donnelly Act;

6) Judgment against all Defendants, jointly and severally, for treble damages for fraud perpetrated on plaintiff;

7) Interest; and

8) Costs and attorneys' fees.

Dated: November 19, 2015
Forest Hills, New York

Jeffrey Benjamin

Jeffrey Benjamin, Esq. (JB-2475)
JEFFREY BENJAMIN, P.C.
Attorneys for Plaintiff
118-21 Queens Blvd., Suite 501
Forest Hills, New York 11375
(718) 263-1111
(718) 425-0692 (Fax)