

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

DAVID WILKENFELD,

Index No.

*Plaintiff,*

-against-

PLATINUM PROPERTIES EMPIRE, LLC, PLATINUM  
PROPERTIES REALTY, LLC, PLATINUM  
PROPERTIES 1 LLC, PLATINUM PROPERTIES AND  
ASSET MANAGEMENT LLC, PLATINUM  
PROPERTIES, INC., PLATINUM PROPERTIES LLC,  
PLATINUM PROPERTIES OF NEW YORK LTD,  
PLATINUM PROPERTIES OF THE EMPIRE STATE  
CORP., DANIEL HEDAYA, and  
SNR DENTON US LLP, as ESCROW AGENT,

*Defendants.*

**VERIFIED  
COMPLAINT**

Plaintiff, DAVID WILKENFELD, by his attorneys, ADAM LEITMAN BAILEY,  
P.C., for his verified complaint, alleges as follows:

**THE PARTIES**

1. At all times hereinafter mentioned, the plaintiff David Wilkenfeld (“Wilkenfeld”) is the named Purchaser on a Contract of Sale dated November 1, 2012 (the “Contract of Sale”) for the purchase of Unit PHC (the “Unit”) of the 200 Chambers Street Condominium (the “Transaction”).
2. Upon information and belief, the defendants Platinum Properties Empire, LLC, Platinum Properties Realty, LLC, Platinum Properties 1 LLC, Platinum Properties and Asset Management LLC, Platinum Properties, Inc., Platinum Properties LLC, Platinum Properties of New York LTD, and Platinum Properties of the Empire

State Corp (collectively “Platinum”) are companies registered in the State of New York.

3. The specific Platinum entity that is liable to the Plaintiff for the actions alleged herein is unknown, but, upon information and belief, it is one of the named Platinum entities, and, unless determined otherwise, it is believed that all of the Platinum entities are operated and controlled by, and/or are responsible to, a single managing authority who dominates each of the named Platinum entities.
4. SNR Denton US LLP (“SNR”), is a law firm with offices at 1221 Avenue of the Americas, New York, NY 10020-1089, that is named as the Escrow Agent in the Contract of Sale and is sued herein solely as Escrow Agent for purposes of determining the proper distribution of a certain part of an Escrow Fund established upon execution of the Contract of Sale.
5. Platinum was engaged by the Seller to act as the Seller’s broker in the Transaction, and, as such, Platinum represented the Seller in connection with the negotiations conducted between the Seller and Wilkenfeld that led to the execution of the Contract of Sale.
6. Upon information and belief, the defendant Daniel Hedaya (“Hedaya”) is the President of Platinum, and he was also the individual broker-Selling Agent representing the Seller in the negotiations that led to the execution of the Contract of Sale.

## **RELEVANT BACKGROUND**

7. In or about October 2011, Wilkenfeld became aware that the Unit was listed for sale.
8. The Unit was listed with Hedaya and Platinum as the Seller's broker.
9. Wilkenfeld visited the Unit several times while contemplating purchasing it, and, on these occasions, he met with Hedaya. On more than one occasion, during his meetings and in several telephone conversations with Hedaya, Wilkenfeld and Hedaya had occasion to discuss the Unit's square footage, the Unit's common charges, and the Unit's real estate taxes.
10. Wilkenfeld also viewed Platinum's website and the StreetEasy website to obtain information concerning the Unit that prospective purchasers like Wilkenfeld would use to determine whether to negotiate an offer price to purchase the Unit.
11. Upon information and belief, the information posted on the StreetEasy website, concerning properties that are for sale, is provided to StreetEasy by brokers representing the sellers of the listed properties.
12. Upon information and belief, the information posted on the StreetEasy website concerning the Unit's square footage, common charges, and real estate taxes, was provided to StreetEasy by Platinum and Hedaya.
13. In addition to information concerning properties that Platinum represents, Platinum's website also provides information to the consuming public at large concerning Platinum's history, accomplishments, and standing in the Real Estate industry for the purpose of being engaged as a broker for Real Estate transactions in New York City and elsewhere, but, particularly, within the Borough of Manhattan.

**PHC Square Footage and Common Charges**

14. Platinum's website and the StreetEasy website listed the approximate square footage of the Unit as 4,700 square feet, the common charges as \$3,870 per month, and the real estate taxes as \$1,142 per month.
15. The actual square footage of the Unit is 4,548 square feet, the actual common charges are \$5,199.25 per month, and the actual real estate taxes per month are \$2,196.66.
16. Wilkenfeld considered the listed, but inaccurate, square footage, common charges, and real estate taxes information very desirable, and he considered all of that information to be determining factors in deciding to make an offer of \$13,000,000 to purchase the Unit.
17. Although Platinum's website contained a disclaimer as to the accuracy of any of the information provided therein regarding the Unit, Wilkenfeld trusted that Platinum and Hedaya, who also claimed on the Platinum firm website to provide "competence and professionalism" for "one of the fastest growing Real Estate firms in Manhattan," would not knowingly, or negligently, either provide StreetEasy with information, or make representations to the general public, concerning the Unit's square footage, common charges, and real estate taxes that they knew, or had reason to know, were inaccurate, and therefore false and misleading.
18. In Wilkenfeld's meetings and discussions with Hedaya, concerning all of the terms relevant to Wilkenfeld's making a determination of whether to offer to purchase the Unit, Hedaya did and said nothing to dissuade Wilkenfeld from believing that

the Unit's square footage, common charges, and real estate taxes were as stated in the Platinum website and/or on the StreetEasy website. Indeed, by his words and actions, Hedaya actively encouraged and supported Wilkenfeld's belief in the accuracy of the square footage, common charges, and real estate taxes information provided in the Platinum website and as also shown on the StreetEasy website.

19. Specifically, in one or more meetings with Hedaya, Wilkenfeld expressly questioned Hedaya regarding the representation on the Platinum and/or StreetEasy website that the Unit's square footage was 4,700 square feet and not the 4,548 square feet shown in the Condominium offering plan. In response, Hedaya falsely represented that the 152 square foot difference was attributable to certain hallway space that the Condominium had granted to the owner of the Unit when three separate condominium units were combined to form the single unitary Unit (the "Hallway Space").
20. However, Wilkenfeld has since learned, after execution of the Contract of Sale, that the actual differential attributable to the alleged addition of Hallway Space appurtenant to the Unit is not 152 square feet. Upon information and belief, the additional Hallway Space allegedly appurtenant to the Unit is only 56 square feet. Accordingly, the actual square footage attributable to the combined unit of 4,548 square feet and the alleged appurtenant Hallway Space is 4,604 square feet and not 4,700 square feet.
21. As a result of Wilkenfeld's initial review of Platinum's website and the StreetEasy website, and his meetings and discussions with Hedaya, Wilkenfeld was induced to make an offer to purchase the Unit.

22. Although the Contract of Sale contained information regarding the actual common charges and real estate taxes for the Unit, the Contract of Sale was presented to Wilkenfeld for hurried execution by email during the traumatic period of Hurricane Sandy and its aftermath in New York City, and Wilkenfeld felt pressured to execute the Contract of Sale, to secure his purchase of the Unit, without taking any extended time to review all of the terms and provisions of the document.
23. Wilkenfeld did not learn of the actual square footage of the Unit or of the actual common charges and real estate taxes until sometime after execution of the Contract of Sale.

**Platinum's and Hedaya's Dual Agency**

24. With full knowledge of their role as the Seller's broker and their duty of undivided loyalty to the Seller, Platinum and Hedaya did not advise Wilkenfeld that it was advisable that he engage his own independent "buyer's broker" in negotiations concerning the price to purchase the Unit.
25. Hedaya and Platinum did not disclose that, if Wilkenfeld did not retain his own independent "buyer's broker," Hedaya and Platinum would be deemed to be acting as "dual agents" on behalf of both the Seller and Wilkenfeld, and that, although a real estate broker may represent both the buyer and seller, the broker (as dual agent) can do so only if both the buyer and seller give their informed consent in writing.
26. Moreover, Hedaya and Platinum never disclosed to Wilkenfeld that, despite their "dual agency" status in the Transaction, they had a legal obligation to work solely in the Seller's best interest and not at all in Wilkenfeld's interest.

27. Pursuant to Real Property Law (“RPL”) §443(3)(b), at their first substantive contact with Wilkenfeld, Hedaya and Platinum were obliged to provide to Wilkenfeld the New York State Disclosure Form for Buyer and Seller (the “Disclosure Form”) which advises a buyer (a) that a broker engaged by a seller must represent the seller’s interest with undivided loyalty in securing a buyer for the seller’s home at a price and on terms acceptable to the seller, and only a broker engaged by a buyer can represent the buyer’s interest with undivided loyalty in negotiating the purchase of a home at a price and on terms acceptable to the buyer, and (b) that, in connection with a dual agency, “the agent will not be able to provide the full range of fiduciary duties to the buyer and seller.”
28. RPL §443(3)(b) further obliged Hedaya and Platinum to obtain Wilkenfeld’s signed acknowledgement of his receipt of the Disclosure Form at their first substantive contact with him.
29. At no time, either at their first substantive contact with Wilkenfeld, or at any subsequent time during pre-contract negotiations, did Hedaya or Platinum provide the Disclosure Form to Wilkenfeld.
30. Wilkenfeld’s attorneys gave notice, on February 8, 2013, to Platinum, Hedaya, and SNR as Escrow Agent, of Platinum/Hedaya’s failure to comply with RPL §443(3)(b) at the first substantive contact between Wilkenfeld and Platinum/Hedaya, or at any time thereafter.
31. Wilkenfeld is aware that Platinum and Hedaya now contend (a) that they tendered to Wilkenfeld a purported Disclosure Form, disclosing their dual agency to him, on October 3, 2011, but (b) that Wilkenfeld refused to sign the document. Wilkenfeld

categorically denies that Platinum or Hedaya ever tendered a Disclosure Form to him at any time, and avers instead that any such purported document is a recent fabrication and completely fraudulent in nature.

32. Wilkenfeld was at all relevant times unaware of the legal obligation Hedaya and Platinum had (a) to provide the Disclosure Form to him, and (b) to obtain his signed acknowledgement of his receipt of the Disclosure Form from them.
33. Upon information and belief, Hedaya and Platinum, with full knowledge of their RPL §443(3)(b) legal obligations to Wilkenfeld, deliberately and intentionally failed to provide the Disclosure Form to Wilkenfeld and/or to advise Wilkenfeld of their legal obligation of undivided loyalty to the Seller, in order to mislead Wilkenfeld into believing that they would act as “honest brokers,” on behalf of both the Seller and Wilkenfeld, to assist in negotiating a Transaction purchase price acceptable to both parties.
34. Upon information and belief, Hedaya and Platinum acted at all relevant times during pre-contract negotiations solely in their own interest to obtain from Wilkenfeld an offer to purchase the Unit at the smallest possible reduction from the Seller’s desired price, but one nevertheless acceptable to the Seller, that would provide Hedaya and Platinum the highest commission possible from the Transaction.
35. In reliance on his mistaken belief that Hedaya and Platinum were acting honestly, fairly, in good faith, and in his best interests, Wilkenfeld agreed to make an offer to purchase the Unit for the purchase price of \$13,000.000.



36. Wilkenfeld's offer to purchase the Unit at a purchase price of \$13,000,000 was accepted by the Seller, and Wilkenfeld entered into the Contract of Sale with the Seller on November 1, 2012.
37. Upon execution of the Contract of Sale, in accordance with the terms of the Contract of Sale and the Second Rider to the Contract of Sale, Wilkenfeld delivered a Downpayment of \$2,600,000.00 to SNR as Escrow Agent, and on or about January 24, 2013, Wilkenfeld delivered an additional \$2,600,000.00 as a supplemental Downpayment to SNR as Escrow Agent, for a total Downpayment amounting to \$5,200,000.00 (the "Escrow").
38. The Contract of Sale names Platinum as the only broker involved in the Transaction.
39. Upon information and belief, upon execution of the Contract of Sale, Platinum became entitled to receive at the Closing of the sale, as a commission from the Seller, a percentage of the purchase price, the exact amount of which is unknown, but believed to be no less than 4% of the total purchase price, or approximately \$520,000.00 of the total sum of the Downpayment held in Escrow by SNR.
40. By reason of Hedaya's and Platinum's failure to provide Wilkenfeld with the Disclosure Form and/or to fully advise Wilkenfeld of their obligation of undivided loyalty to the Seller, (a) Wilkenfeld was deprived of a broker representative whose duty it would have been to negotiate the best purchase price possible with undivided loyalty to Wilkenfeld, (b) the purchase price agreed to in the Contract of Sale cannot be deemed the best purchase price that could have been negotiated by a broker representative with undivided loyalty to Wilkenfeld, and (c) upon the

Closing of the Contract of Sale, which Wilkenfeld is contractually obliged to fulfill, and the breach of which would result in Wilkenfeld's forfeiture of the entire Escrow, Wilkenfeld will suffer damages, the full extent of which is presently undetermined, between the actual purchase price agreed to in the Contract of Sale, and the undetermined purchase price that would otherwise have been negotiated between the Seller and Wilkenfeld. Wilkenfeld was also deprived of a broker representative whose duty it would have been to obtain accurate information concerning the actual square footage and common charges prior to the execution of the Contract of Sale.

**AS AND FOR A FIRST CAUSE OF ACTION**

**(Declaratory Judgment of Wilkenfeld's Statutory Right of Recovery under RPL §442-e)**

41. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if the same were fully set forth herein.

42. RPL §443(3)(b) provides as follows:

A seller's agent or landlord's agent shall provide the disclosure form set forth in subdivision four of this section to a buyer, buyer's agent, Tenant or tenant's agent at the time of the first substantive contact with the buyer or tenant and shall obtain a signed acknowledgement from the buyer or tenant, except as provided in paragraph e of this subdivision. (Emphasis added).

43. RPL 442-e provides as follows:

In case the offender shall have received any sum of money as a commission, compensation or profit by or in consequence of his violation of any provision of this article, he shall be liable to a penalty of not less

than the amount of the sum of money received by him as such commission, compensation or profit and not more than four times the sum so received by him, as may be determined by the court, which penalty may be sued for and recovered by any person aggrieved and for his use and benefit, in any court of competent jurisdiction. (Emphasis added).

44. Accordingly, Wilkenfeld is entitled to a declaratory judgment that, upon the Closing of the Contract of Sale and the release of the Escrow to the Seller, such portion of the Escrow that would otherwise be dispensed by the Escrow Agent to Platinum and Hedaya, as a commission for acting as the Seller's broker in the Transaction (or approximately \$520,000.00)(the "Commission Escrow"), shall be recoverable by Wilkenfeld as one fourth of the penalty provided by RPL 442-e, by reason of the violation by Platinum and Hedaya of RPL §443(3)(b), through their failure to provide the Disclosure Form to Wilkenfeld at their first substantive meeting in connection with the showing of the Unit.
45. Wilkenfeld is further entitled to a declaratory judgment that, in addition to the one-fourth penalty amount recoverable by Wilkenfeld from the Escrow, he shall be entitled to recover an additional three-fourths penalty amount (or approximately \$1,560,000.00) directly from Platinum and Hedaya.
46. Wherefore, Wilkenfeld is entitled to a declaratory judgment declaring that, upon the Closing of the Contract of Sale, he shall be entitled to recover a total penalty from Platinum and Hedaya in the amount of \$2,080,000.00.

**AS AND FOR A SECOND CAUSE OF ACTION**

**(Injunctive Relief against SNR as Escrow Agent)**

47. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if the same were fully set forth herein.
48. By reason of all the facts and circumstances previously alleged herein, Plaintiff is entitled to injunctive relief against the Escrow Agent SNR (a) enjoining SNR from releasing any portion of the Escrow to Platinum and Hedaya at the Closing of the Contract of Sale, and (b) enjoining SNR to retain the Commission Escrow in Escrow, pending the determination by the Court as to the proper and legal disposition of the Commission Escrow.

**AS AND FOR A THIRD CAUSE OF ACTION**

**(Common Law Fraud against Platinum and Hedaya  
for Failure to Disclose their Dual Agency)**

49. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if the same were fully set forth herein.
50. By reason of all the facts and circumstances previously alleged herein, and in particular the failure of Platinum and Hedaya to disclose their dual agency to Wilkenfeld, Wilkenfeld has suffered damages the full extent of which is presently undetermined, between the actual purchase price agreed to in the Contract of Sale, and the undetermined purchase price that would otherwise have been negotiated between the Seller and Wilkenfeld.

51. Platinum and Hedaya at all relevant times knew that they were required to disclose their dual agency status to Wilkenfeld, but deliberately and intentionally failed to disclose such status to him.
52. Platinum and Hedaya at all relevant times knew that they owed their undivided loyalty to the Seller in the negotiation of the purchase price of the Unit, but acted and spoke in such manner as to lead Wilkenfeld to believe that they would act honestly, fairly, in good faith, and in his best interest during the negotiation of the purchase price of the Unit.
53. Platinum and Hedaya knew or had reason to know that Wilkenfeld would trust and rely upon them to act honestly, fairly, in good faith, and in his best interest during the negotiation of the purchase price of the Unit.
54. Wilkenfeld did trust and rely upon Platinum and Hedaya to act honestly, fairly, in good faith, and in his best interest during the negotiation of the purchase price of the Unit.
55. Wilkenfeld was deceived and misled by Platinum and Hedaya to his detriment in the negotiation of the final agreed purchase price of the Unit.
56. Accordingly, Wilkenfeld is entitled to a monetary judgment in his favor and against Platinum and Hedaya in an amount the full extent of which is presently undetermined, between the actual purchase price agreed to in the Contract of Sale, and the undetermined purchase price that would otherwise have been negotiated between the Seller and Wilkenfeld.

**AS AND FOR A FOURTH CAUSE OF ACTION**

**(Common Law Fraud and/or Negligent Misrepresentation  
against Platinum and Hedaya For Providing Misleading Square  
Footage and Common Charges Information)**

57. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs with the same force and effect as if the same were fully set forth herein.
58. By reason of all the facts and circumstances previously alleged herein, and in particular Platinum's and Hedaya's inaccurate and false representation of the Unit's square footage and common charges, Wilkenfeld has suffered damages the full extent of which is presently undetermined, between the actual purchase price agreed to in the Contract of Sale, and the undetermined purchase price that would otherwise have been negotiated between the Seller and Wilkenfeld.
59. Platinum and Hedaya at all relevant times knew or had reason to know that the square footage and common charges information posted on the Platinum website was inaccurate and false.
60. Platinum and Hedaya at all relevant times knew or had reason to know that prospective purchasers like Wilkenfeld would rely upon the square footage and common charges information for the Unit posted on the Platinum website in determining whether or not to offer to purchase the Unit.
61. Platinum and Hedaya at all relevant times knew or had reason to know that Wilkenfeld did rely upon the square footage and common charges information for the Unit posted on the Platinum website in determining whether or not to offer to purchase the Unit.

62. Platinum and Hedaya intentionally and/or negligently misrepresented the Unit's square footage and common charges on the Platinum website, despite knowing or having reason to know that the square footage and common charges information was inaccurate and false.
63. The disclaimer of any liability contained on the Platinum website, regarding any inaccurate information appearing therein concerning the Unit, is void and unenforceable and against public policy, because, as between Platinum and Hedaya on the one hand and Wilkenfeld on the other, Platinum and Hedaya had every opportunity to investigate and determine the accurate information concerning the Unit's actual square footage and common charges; and Wilkenfeld had no access to such information other than through Platinum and Hedaya.
64. Wilkenfeld had every right to rely upon the "competence and professionalism" with which Platinum and Hedaya promoted themselves on the Platinum website as a basis for justifiably relying upon the square footage and common charges information for the Unit appearing on the Platinum website.
65. Through their words and actions, Platinum and Hedaya also encouraged and supported Wilkenfeld's belief in the accuracy of the square footage and common charges information for the Unit presented on the Platinum website.
66. Accordingly, Wilkenfeld is entitled to a monetary judgment in his favor and against Platinum and Hedaya in an amount the full extent of which is presently undetermined, between the actual purchase price agreed to in the Contract of Sale, and the undetermined purchase price that would otherwise have been negotiated between the Seller and Wilkenfeld.

**WHEREFORE, PLAINTIFF DEMANDS JUDGMENT AS FOLLOWS:**


- A. On the First Cause of Action, a declaratory judgment declaring that, upon the Closing of the Contract of Sale, Plaintiff Wilkenfeld shall be entitled to recover, under RPL §442-e, a total penalty from Platinum and Hedaya in the amount of \$2,080,000.00;
- B. On the Second Cause of Action, injunctive relief against the Escrow Agent SNR (a) enjoining SNR from releasing any portion of the Escrow to Platinum and Hedaya at the Closing of the Contract of Sale, and (b) enjoining SNR to retain the Commission Escrow in Escrow, pending the determination by the Court as to the proper and legal disposition of the Commission Escrow;
- C. On the Third Cause of Action, a monetary judgment in Plaintiff Wilkenfeld's favor and against Platinum and Hedaya in an amount the full extent of which is presently undetermined, between the actual purchase price agreed to in the Contract of Sale and the undetermined purchase price that would otherwise have been negotiated between the Seller and Wilkenfeld;
- D. On the Fourth Cause of Action, a monetary judgment in Plaintiff Wilkenfeld's favor and against Platinum and Hedaya in an amount the full extent of which is presently undetermined, between the actual purchase price agreed to in the Contract of Sale and the undetermined purchase price that would otherwise have been negotiated between the Seller and Wilkenfeld; and



E. Such other and further relief as this Court deems just and proper.

**Dated: New York, New York**  
**March 27, 2013**

**ADAM LEITMAN BAILEY, P.C.**

By: 

**Adam Leitman Bailey, Esq.**  
**John M. Desiderio, Esq.**  
**Donald B. Mitchell, Esq.**

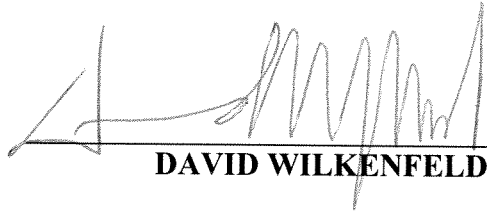
**120 Broadway, 17<sup>th</sup> Floor**  
**New York, New York 10271**  
**(212) 825-0365**

*Attorneys for Plaintiff David Wilkenfeld*

**VERIFICATION**

**STATE OF NEW YORK** } ss:  
**COUNTY OF NEW YORK**

**DAVID WILKENFELD**, being duly sworn, deposes and says, that he is Plaintiff in the foregoing action; that he has read the foregoing Verified Complaint; that he knows the contents thereof; and that, to his knowledge, the Verified Complaint is true, except as to matters stated therein to be alleged upon information and belief, and, as to those matters, he believes it to be true.

  
\_\_\_\_\_  
**DAVID WILKENFELD**

Sworn to before me this  
26<sup>th</sup> day of March, 2013

  
\_\_\_\_\_  
**NOTARY PUBLIC**

MEGAN EISS-PROCTOR  
Notary Public, State of New York  
No. 02E16154937  
Qualified in New York County

MEGAN EISS-PROCTOR  
Notary Public, State of New York  
No. 02E16154937  
Qualified in New York County  
Commission Expires 10/23/2014