THE ASSOC IATION OF THE BAR
OF THE CITY OF NEW YORK
Office of the Attorney for
the Committee on Grievances
43 West 43rd St.,
Einar Chrystie, Attorney

Telephone Vanderbilt 3-0447

March 19, 1938.

Mr. Maurice M. Lichtmann,
310 Riverside Drive,
New York, N.Y.

Dear Sir:

The matter which you brought to our attention some time ago has been taken up for consideration.

I enclose a copy of a statement received from Messrs. Greenbaum, Wolff & Ernst to whom we sent a copy of your letter of February 11th last. I have been directed to advise you that it has been determined that the matter is not one in which we can take any further action. I have only one copy of the statement. Will you please bring the enclosed copy to the attention of Mrs. Lichtmann and Miss Grant together with this letter.

Very truly yours,

(sig.) EINAR CHRYSTIE

EC/S
Encl.

(COPY)

STATEMENT OF GREENBAUM, WOLFF & RRNST ANSWERING LETTER OF FRANCES R. GRANT, ET AL, DATED FEBRUARY 11, 1938.

The Foreclosure Suit and Reorganization.

In 1932 Manufacturers Trust Company, as substituted trustee, commenced an action to foreclose a first mortgage of $2,075,000. on premises 310 Riverside Drive, New York City, which were owned by Roerich Museum, a non-stock educational corporation. There were twenty-eight defendants including Roerich Museum, the mortagagor. Deficiency judgements were sought against the mortagagor and against Louis L. Horch and Maurice M. Lichtmann, guarantors on the bond. The other defendants were the State of New York and occupants of the building, and no money judgement was sought against any of them.

We were retained by Louis L. Horch. At his request we appeared for and answered for Roerich Museum, Louis L. Horch and Maurice M. Lichtmann; and in due course thereafter served a notice of appearance for certain of the other defendants, but as none of these other defendants had any financial interest in the matter no answer was interposed on behalf of any of them and they subsequently defaulted.

The foreclosure was a complicated proceeding and was vigorously litigated between the trustee representing the bondholders on the one hand and the mortgagor on the other. The use to which the property was put gave rise to this controversy. The building had been erected to house certain educational activities. The lower floors had been specially constructed for and were devoted primarily to these purposes. The upper floors consisted of apartments, a few of which were occupied by some members of the educational staff. The building had been financed by a bond issue and aid from Mr. Horch, who had put over $1,000,000 of his own money into the enterprise. He had retired from a profitable business to devote himself to this educational work. The foreclosure action threatened the very existence of these activities. We contended that the continuance of the educational facilities was not only vital to the property but was of benefit to the bondholders, because the lower floors of the building were not usable for any other purpose and these educational activities attracted tenants to the property at higher rents than similarly situated properties and therefore the bondholders were benefited by permitting the use of this space for such work. An additional substantial monetary advantage to the bondholders was the fact that these educational activities enabled the property to receive partial tax exemption. The questions arising out of this situation were the ones litigated in the foreclosure proceedings.

After numerous court proceedings and negotiations extending over a long period, a plan of reorganization was finally formulated. Charles C. Burlingham, Esq. was designated Referee by the Supreme Court to pass upon the fairness of the plan. After hearings Mr. Burlingham filed a report recommending the approval of the plan. His report was confirmed by Mr. Justice Shientag on June 26, 1934. The property was sold at foreclosure to Riverside Drive & 103rd Street Corporation, a corporation organized by the bondholders, and in February, 1935, pursuant to the plan, the property was acquired by Master Institute of United Arts, Inc., a stock corporation organized under the Education Law.

None of the individual defendants except Mr. Horch had any financial interest whatsoever in the matter. Mr. Lichtmann. although a guarantor on the bond, has testified that he never put any money into the property. He also testified in a supplementary proceeding examination held on November 4, 1937 that he is without funds. That he had no financial interest in the matter is further bonne out by the fact that although the deficiency claim against him was for over $1,000,000., he did not attend any of the hearings thereon even as a spectator. All our fees and expenses were paid by Mr. or Mrs. Horch or the Roerich Museum. No bill was ever rendered to any of the other defendants and no compensation received from any of them. It was Mr. Horch who gave us instructions and he was the person with whom we confered and who made decisions,- the other individual defendants being nominal parties.

Suits in regard to ownership of stock of
Master Institute of United Arts, Inc.

It was some time after the property had been sold at foreclosure and conveyed in February, 1935 to another corporation - Master Institute of United Arts, Inc., an educational corporation authorized to issue stock - that any controversy arose. As appears in the letter of complaint, it was "subsequent to that date" that a dispute arose. For the first time Frances R. Grant and certain of the other parties claimed that each of them owned a share of stock in Master Institute of United Arts, Inc. The dispute did not relate to Roerich Museum, which we had represented in the foreclosure action, but related to Master Institute of United Arts, Inc. The claimants retained Messrs. Plaut & Davis in December, 1935 and started various proceedings and actions based on such alleged ownership of stock. The respondents in one of these proceedings included Master Institute of United Arts, Inc., but Mr. and Mrs. Horch were not parties thereto, while defendants in the actions were Master Institute of United Arts, Inc. and Mr. and Mrs. Horch and were represented by our firm. In the litigations involving Mr. and Mrs. Horch we made the same contentions as were made on behalf of the corporation as to the ownership of its stock. All of these litigations revolved around facts existing many years before we knew any of the people concerned, and, of course, had nothing to do with the foreclosure proceeding.

As stated above, at that time the foreclosure proceedings had been concluded and the property sold. However, there was sfill pending the question of a deficiency judgement against Roerich Museum, Louis L. Horch and Maurice M. Lichtmann. There were likewise pending suits against Mr. Horch and Mr. Lichtmann by bondholders to enforce their guaranty, all but one of which had been consolidated with the deficiency judgement proceeding. Before the trial on the deficiency judgement claim one of the partners of Greenbaum, Wolff & Ernst telephoned to Mr. Plaut of Plaut & Davis and called Mr. Plaut's attention to the pendency of the claim for deficiency judgement and the unconsolidated bondholders' suit and asked Mr. Plaut whether he wished to take over the representation of Mr. Lichtmann in these matters. After discussion Mr. Plaut stated that since the interests of Mr. Horch and Mr. Lichtmann were not conflicting in these matters he prefered that we continue to represent Mr. Lichtmann therein, and we did so, at Mr. Plauts request. The hearings on the deficiency have been concluded but no decision has been rendered by the Court. Some bondholders' claims were settled without suit and it is our understanding that the consideration

paid upon such settlements was paid entirely by Mr. Horch and Mr. Lichtmann did not contribute anything whatsoever thereto.

The complainants were unsuccessful in their various actions and proceedings to establish their alleged ownership of stock in Master Institute of United Arts, Inc. These actions and proceedings (except those which had been dismissed by Mr. Justice Wasservogel) were referred by the Supreme Court to George Frankenthaler, Esq., as Referee. In a lengthy opinion the Referee upheld, on the facts, the contention that the claimants were merely Mr. Horch's nominees. The Referee said:

> "The facts, together with all the surrounding cir cumstances, support the contention of the defendant Louis L. Horch to the effect that he and the Plaintiffs agreed in 1922 (long before we represented any of the parties) that a corporation was to be organized which he was to control, that pursuant to that understanding the defendant corporation (Master Institute of United Arts, Inc.) was organized, that the sole consideration for the stock issued upon its organization (in 1922) was furnished by Horch, that the stock when issued was his property, that certificates of stock were written in the names of the plaintiffs (Roerichs, Lichtmanns and Grant) solely as nominees of the defendant Louis L. Horch because of his and his attorney's (not our firm) belief that trustees of an educational corporation had to hold qualifying shares and that the stock certificates were at the time of issue endorsed in blank by the nominal holders and left with the defendant Louis L. Horch (in November 1922)." (Parenthetical matter added)

The judgements entered thereon have been appealed to the Appellate Division, which Court has not yet rendered its decisions.

Contentions as to tenure "for life."

In their letter complainants apparently contend that they were entitled to occupy apartments in the premises rent free "for life." It is intimated that we made this contention on their behalf in the foreclosure action. No such contention was ever made by us nor did we ever assure them or any of them that any such right had been acquired for them or was being acquired for them under the plan of reorganization or otherwise. The plan of reorganization provided that if the new owner of the property continued the educational activities it would be entitled to use, rent free, certain space in the building and certain designated apartments, namely, Nos. 1706, 1707, 2004, 2401 and 2404, for its workers "so long as said apartments are used for living quarters for the staff engaged in such Museum, cultural or educational purposes." Indeed one of the complainants, Frances R. Grant, in an affidavit in the foreclosure action verified September 16, 1932, stated that the privilege of free rent given to certain members of the staff, including herself and Mr. Lichtmann, were being given "as a part of their compensation for services rendered by them" and "in return for their said services" and "by way of compensation." In another affidavit verified by her on September 28, 1932 she likewise stated: "If these officers, trustees and employees did not receive their apartments free of rent it would be necessary to compensate some of them and to increase the

compensation of others." In an opinion (N.Y. L.J. October 21, 1932) dealing with the use of the educational space and with the apartments occupied by the staff, Mr. Justice Shientag stated:

> "In view of the large number of vacancies now existing in the building it cannot be seriously urged that the temporary occupancy of certain apartments of the building by those in charge of the educational work is resulting in any prejudice to the bondholders." (Underscoring added)

It is thus abundantly clear that the plan of reorganization, so far as free apartments were concerned, permitted workers to be partly compensated by free living quarters. It is equally clear that no one contended even during the foreclosure that any occupants of the apartments were entitled to free rent "for Life", and at no time was there any agreement or understanding that any person or persons would be guaranteed a life tenure of free rent on the premises.

The Opinion of the Committee on Professional Ethics

The complainants state that the question of professional ethice here involved was presented to the Committee on Professional Ethics on October 20, 1936 and refere to the opinion rendered by that Committee. The facts assumed in the first four sentences of the question presented to the Committee show its inapplicability to the present situation. The question begins:

> "A corporation has five stockholders who are also members of its board of directors. It acquires a piece of real estate and gives a bond and mortgage. The bond is g guaranteed by two of its stockholders, A and B. Foreclosure proceedings are begun against the corporation's property and a deficiency judgement is asked against A and B."

The corporation which owned the real estate in the present case upon which the mortgage was being foreclosed was Roerich Museum, a non-stock corporation, which acquired the property from Mr. Horch in 1928. The corporation had no stock at any time and, of course, the complainants were not, and do not claim to have been, stockholders of it. The bond was not guaranteed by any of its stockholders. There were no stockholders and there could be no factions between stockholders.

Accordingly the situation posed in the hypothetical case presented to the Committee as to a dispute "among the stockholdersof the corporation" could not have applied and did not apply to this situation. The Committee makes it clear that its opinion is based upon the existence of a "particular faction of the stockholders." In the instant case our representation of the corporation, which had no stockholders, could not have conflicted with the representation of Mr. Horch and Mr. Lichtmann, who guaranteed the corporation's obligations, nor with our representation of Mr. Horch and and another corporation in a dispute which subsequently arose as to the ownership of stock in that other corporation.

We shall be pleased to furnish any additional information which may be desired.

Dated: March 16, 1938 GREENBAUM, WOLFF & ERNST