

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

RICHARD EDELMAN,)	
)	
)	
Plaintiff,)	
)	
v.)	Case: 1:14-cv-1140 (RDM)
)	Assigned: Moss, Randolph D.
SECURITIES AND EXCHANGE)	Description: FOIA
COMMISSION,)	
)	
Defendant.)	
)	

SECOND DECLARATION OF SAMUEL T. KLUCK

I, Samuel T. Kluck, declare as follows:

1. I am a Legal Branch Chief in the Office of Real Estate and Commodities (“Office of Real Estate”) in the Division of Corporation Finance (“CF”) of the United States Securities and Exchange Commission (“SEC”). In this position, which I have held since February 2008, I serve as a supervisor and senior legal adviser for the Office of Real Estate and CF.

2. From February 2012 through October 2013, one of my duties was serving as a reviewer on the Form S-4 registration statement filed by Empire State Realty Trust, Inc. (“ESRT”) with the SEC. ESRT owns, among other things, the Empire State Building (“ESB”) in New York City. In February 2012, ESRT filed the Form S-4 registration statement that involved a consent solicitation to approve the consolidation of several properties, including ESB, into ESRT which would then qualify as a real estate investment trust. I, along with Angela McHale and David Orlic, two other attorneys in the Commission’s CF, reviewed the registration statement and related filings.

3. In making this declaration, to assure the accuracy of this declaration to the best of my information and belief, I have relied on my personal knowledge, on information I have

obtained from others in connection with the review of ESRT's registration statement, and on information in files that CF routinely maintains in the ordinary course of its business.

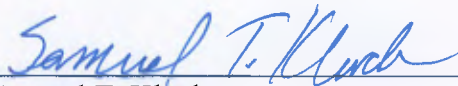
4. In reviewing ESRT's registration statement and related filings in this matter, the role of the CF staff was to comment on any potential disclosure deficiencies under the federal securities laws that the staff perceived in those filings. The CF staff did not make any policy determinations on whether the ESRT transaction was fair to investors, nor pass upon its merits, fairness or the accuracy of the disclosure.

5. During my review of ESRT's registration statement, I interacted with many investors who held interests in ESB. I received many emails, telephone calls, and written correspondence from these investors regarding their concerns. A number of these investors expressed their fear that ESRT management would retaliate against them if ESRT discovered that they submitted complaints to the SEC regarding the transaction. In addition, a number of investors communicated with me and asked for confidentiality. In response to these inquiries, I told them, in substance, that the SEC would try to keep their names, comments and complaints confidential but could not guarantee confidentiality.

6. I am not aware of any CF records of those investors who contacted the SEC and requested that their comments and complaints be kept confidential.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on May 10, 2017.



Samuel T. Kluck
Legal Branch Chief
Division of Corporate Finance
Securities and Exchange Commission