

**HELLER, HOROWITZ & FEIT, P.C.**  
**Attorneys for Defendants**  
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**Eli Feit (EF3530)**  
**Stuart A. Blander (SB 2510)**

**Hearing Date:**  
**September 9, 2008**  
**10:00 A.M.**

**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

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**In re:**

**CHAPTER 7**

**KOLLEL MATEH EFRAIM, LLC, a/k/a**  
**MATEH EPHRAIM, LLC, a/k/a KOLEL**  
**MATEH EFRAIM,**

**CASE NO. 04-16410 (SMB)**

**Debtor.**

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**ROBERT L. GELTZER, as Chapter 7**  
**Trustee of the Estate of Debtor KOLLEL MATEH**  
**EFRAIM, LLC, a/k/a MATEH EPHRAIM LLC,**  
**a/k/a KOLEL MATEH EFRAIM,**

**ADV. PROC. NO. 08-01265 (SMB)**

**Plaintiff,**

**-against-**

**NOTICE OF MOTION**

**JACK LEFKOWITZ and ABRAHAM**  
**STEINWURZEL,**

**Defendants.**

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**PLEASE TAKE NOTICE**, that upon the Memorandum of Law and the Affidavit of Stuart A. Blander, and the exhibits thereto, the undersigned will move this Court before the Hon. Stuart M. Bernstein, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, Bowling Green, New York, New York, on the 9<sup>th</sup>

day of September, 2008 at 10:00 A.M., or as soon thereafter as counsel can be heard, for an Order pursuant to Bankruptcy Rule 7012(b)(6), dismissing the Complaint on the grounds that (i) the plaintiff, as Chapter 7 Trustee, whose rights are determined by state law and are entirely derivative of the rights of the Debtor, does not have standing to assert a cause of action against the defendants, who are the sole owner and manager, respectively, of the Debtor, for the alleged breach of their fiduciary duties to the Debtor; (ii) the Complaint fails to plead any facts indicating that the defendants profited personally from the subject transactions or that the subject transactions do not fall within the protections of the “business judgment rule”; and (iii) under the “Occupancy Agreement” under which the Debtor occupied the subject Property, the Debtor was not permitted or authorized to permit third parties to utilize the Property on a rental basis, which is the *gravamen* of the alleged breach of fiduciary duty.

If you have good reason to object to the granting of the motion, you must do so in writing and state with particularity the grounds for the objection and you must file and serve the objection upon the undersigned and the Court in accordance with the applicable rules and the briefing schedule established by Judge Bernstein.

Dated: New York, New York  
August 5, 2008

**HELLER, HOROWITZ & FEIT, P.C.**

By: \_\_\_\_\_/s/  
Stuart A. Blander (SB2510)

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**TO:** BRYAN CAVE LLP  
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