

As filed with the Securities and Exchange Commission on January 5, 1999

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported) December 31, 1998

ACADIA REALTY TRUST

(Exact name of registrant as specified in its charter)

Maryland	1-12002	23-2715194
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(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

20 Soundview Marketplace Port Washington, New York	11050
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(Address of principal executive offices)	(Zip Code)

(516) 767-8830

(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

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ITEM 5. Other Events

On December 31, 1998, the Registrant entered into an agreement, among the Registrant, Jack Wertheimer, Jr. and Marvin L. Slomowitz (the "Settlement Agreement") with respect to certain legal actions brought by Mr. Wertheimer in federal district court and in state court stemming from the termination of Mr. Wertheimer's employment with the Registrant.

The Settlement Agreement provides for, among other things, (i) mutual releases of the parties thereto, (ii) indemnification by the Registrant of Mr. Wertheimer for actions taken by him as an officer of the Registrant (other than fraudulent conduct), and (iii) a payment of settlement consideration as follows: (w) \$1,000,000 by December 31, 1998, (x) \$900,000 on or prior to April 1, 1999, and (y) five (5) annual payments of \$200,000 each for a period of five (5) years commencing January 10, 2000 (the "Annual Payments"). The Annual Payments will be secured by a standby letter of credit and are subject to acceleration by Mr.

Wertheimer upon a default of the Registrant.

Mr. Wertheimer, the former President of the Registrant, filed a complaint against the Registrant, its Trustees and the Registrant's former in-house General Counsel and Chief Financial Officer in state court in December 1994, followed by a complaint in federal district court in November 1995. The federal complaint, which, like the state court action, was filed in connection with the termination of Mr. Wertheimer's employment, included a civil RICO action in which Mr. Wertheimer alleged that the Board of Trustees conspired with Mr. Slomowitz (the "Principal Shareholder") to terminate Mr. Wertheimer's employment. Further, Mr. Wertheimer alleged that the defendants engaged in securities fraud in connection with the Registrant's initial public offering, and that the Principal Shareholder had defrauded or overcharged the Registrant in various corporate transactions. The federal complaint sought treble damages under RICO, as well as damages arising from Mr. Wertheimer's alleged wrongful termination of employment, invasion of privacy, intentional infliction of emotional distress, fraud and misrepresentation. The motions to dismiss the RICO and tort claims filed by the Registrant and the other defendants were granted in part and denied in part by the court in December 1996. Specifically, the court dismissed Mr. Wertheimer's claims for wrongful discharge, fraud, negligence and misrepresentation, but declined to dismiss the remainder of the claims at that time. In their answer to the federal complaint, the defendants denied all allegations of wrongdoing, and the Registrant and the Principal Shareholder also filed counterclaims against Mr. Wertheimer alleging that Mr. Wertheimer made material misrepresentations in connection with his hiring and breached his employment contract and fiduciary duties to the Registrant.

On December 31, 1998, the Registrant issued a press release, a copy of which is attached hereto as Exhibit 99.1, announcing the Settlement Agreement.

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ITEM 7. Financial Statements, Pro Forma Financial Information and Exhibits.

(c) Exhibits.

10.1 Settlement Agreement, dated December 31, 1998, among the Registrant, Jack Wertheimer, Jr. and Marvin L. Slomowitz.

99.1 Press Release, dated December 31, 1998.

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2

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ACADIA REALTY TRUST
(Registrant)

Date: January 4, 1999

By: /s/ Kenneth F. Bernstein

Name: Kenneth F. Bernstein
Title: President

792154.3

3

SETTLEMENT AGREEMENT AND GENERAL RELEASE

WHEREAS, the parties to this Settlement Agreement and General Release have been involved in lawsuits in the United States District Court for the Middle District of Pennsylvania at No. 3:CV-95-1935, captioned Jack Wertheimer, Jr. v. Mark Centers Trust, et al. and in the Court of Common Pleas of Luzerne County, Pennsylvania at No. 6437-C of 1994, captioned Wertheimer v. Mark Centers Trust, et al., (the "Lawsuits");

WHEREAS, the parties to this Settlement Agreement and General Release, without admitting any liability or fault and in order to avoid the expense and inconvenience of further litigation, desire to settle the Lawsuits and all other possible claims, whether related to the Lawsuits or not;

NOW, THEREFORE, on this 31st day of December, 1998, for the mutual promises and consideration contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. Acadia Realty Trust, formerly known as Mark Centers Trust, shall pay to Jack Wertheimer, Jr. (i) \$1,000,000 on or before December 31, 1998, (ii) \$900,000 on or before April 1, 1999, and (iii) five payments of \$200,000 each on or before January 10, 2000, January 10, 2001, January 10, 2002, January 10, 2003, and January 10, 2004 respectively. Payment shall be made by wire transfer sent to Comerica Bank - Texas, Dallas, Texas, ABA #111000753 for credit to Jack Wertheimer, Jr., Account No. 7833028512, Attention: Michael W. Hendrix, Vice President or to such other account as Wertheimer may from time to time designate in writing.

2. Acadia Realty Trust also agrees to defend, indemnify, and hold harmless Wertheimer from and for any loss or liability resulting from claims threatened or brought against Wertheimer based on (i) any act or omission committed by Wertheimer related to his employment with Mark Centers Trust or term on the Board of Trustees or (ii) relating to any claims referenced in the Lawsuits, including but not limited to claims for abuse of process, malicious prosecution, wrongful use of civil proceedings, or shareholder derivative claims or governmental proceedings.

3. If any of the payments due under this Agreement is not received by Wertheimer on or before its respective due date, then Wertheimer may, at his option, deliver notice of nonpayment to Acadia Realty Trust as set forth in paragraph 4 below. If the missed payment is not received within three (3) business days following the date on which the notice of nonpayment is received by Acadia, then every installment not yet paid shall be accelerated and shall become immediately due and payable and counsel for Wertheimer may appear for Acadia and have the Prothonotary of the Court of Common Pleas of Luzerne County, Pennsylvania enter judgment by confession against Acadia.

THIS PARAGRAPH SETS FORTH A WARRANT OF AUTHORITY FOR AN ATTORNEY TO CONFESS JUDGMENT AGAINST ACADIA REALTY TRUST. IN GRANTING THIS WARRANT OF AUTHORITY TO CONFESS JUDGMENT AGAINST ACADIA REALTY TRUST, ACADIA REALTY TRUST HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, AND, ON THE ADVICE OF THE SEPARATE COUNSEL OF ACADIA REALTY TRUST, UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS ACADIA REALTY TRUST

Upon the occurrence of a default of this Agreement and Acadia Realty Trust's failure to cure such Default after notice, Acadia hereby irrevocably authorizes and empowers any attorney of any Court of record in the Commonwealth of Pennsylvania to appear for and to enter and confess judgment against Acadia Realty Trust, at any time or times and as of any term, for the principal amount of this Agreement, with or without declaration and without stay of execution, together with interest and costs including reasonable actual attorney's fees. The authority granted to Wertheimer to confess judgment shall not be exhausted by one exercise but shall continue until Acadia Realty Trust has paid all sums required to be paid by Acadia Realty Trust under this Agreement.

4. Notices of nonpayment shall be sent by facsimile transmission and by a national overnight courier, such as UPS or Federal Express, to Kenneth F. Bernstein, Acadia Realty Trust, 805 Third Avenue, 9th Floor, New York, NY 10022, fax no. (212) 421-2341 and Robert Masters, Esquire, Acadia Realty Trust, 20 Soundview Marketplace, Port Washington, NY 11050, fax no. (516) 767-8834. Acadia will notify Wertheimer in writing of any change in the persons to whom or addresses to which notices of nonpayment are to be sent. Such notice from Acadia shall be sent by facsimile transmission and national overnight carrier to Wertheimer at 4605 Arcady Avenue, Dallas, Texas 75209, fax no. (214) 559-9949 and Raymond Wendolowski, Esquire, Koff, Wendolowski, Ferguson & Mangan, P.C., 22 East Union Street, Suite 115, Wilkes-Barre, Pennsylvania 18701, fax no. (570) 825-1299.

3

5. Simultaneously with execution of this Agreement, Acadia shall establish an escrow fund in the amount of \$1,000,000 with Battle Fowler LLP as escrow agent. The escrow fund will collateralize Acadia's obligation to make the \$900,000 payment on April 1, 1999 and the five \$200,000 payments and will be released upon presentation to Wertheimer of a mutually acceptable standby irrevocable letter of credit to secure the payments that have not yet been made at the time the letter of credit is provided. The irrevocable letter of credit shall either have a termination date, or be renewable for a period, coextensive with the payment obligations hereunder and shall specify a draw down procedure identical to the payment procedure set forth in Paragraph 4 and Schedule A of the Escrow Agreement attached hereto as Exhibit A. Additional terms applicable to the escrow fund are set forth in the Escrow Agreement attached hereto as Exhibit A. The irrevocable letter of credit shall be obtained from a domestic commercial bank with a deposit base of at least \$500 million. Wertheimer shall pay the costs or fees associated with obtaining the irrevocable letter of credit up to a maximum of 1.5% of the amount of the letter of credit. In the event that the costs or fees associated with obtaining the letter of credit exceed 1.5% of the letter of credit amount, then Acadia will pay the excess costs or fees if it still intends to provide a letter of credit. Upon request of Acadia, Wertheimer agrees to provide to Escrow Agent a written acknowledgment of receipt of the mutually agreeable irrevocable letter of credit.

6. In the event of a change in control at Acadia, then every installment not yet paid under this Agreement shall be accelerated and shall become immediately due and payable. For purposes of this Agreement, change in control means the sale or disposition of a majority of Acadia's outstanding capital stock, property, assets or business; or a third

4

person including a "group" as used in Section 13(d)(3) of the Securities Exchange Act of 1934 (the "Exchange Act"), becomes the beneficial owner, directly or indirectly, of 51% or more of the combined voting power of Acadia's outstanding voting securities; or the consolidation of Acadia with or merger into any other entity on a basis whereby Acadia is not the surviving entity; or the consolidation of Acadia as a result of an unaffiliated entity being reverse merged into Acadia whereby control is changed pursuant to the definitions of

this paragraph.

7. Wertheimer hereby releases and discharges Acadia Realty Trust (f/k/a Mark Centers Trust), Marvin L. Slomowitz, Marcia Corporation, Lawrence Longua, Bernhardt Denmark, Harvey Shanus, Joseph Castle II, John Vincent Weber, Marvin Levine, Steven Pomerantz, and Joshua Kane (collectively, "Defendants") and each of their past, present, and future employees, representatives, attorneys, agents, predecessors, subsidiaries, divisions, affiliates, directors, officers, shareholders, successors, and assigns, from all claims or causes of action -- known or unknown, suspected or unsuspected, and whether involved in the Lawsuits or not, and including but not limited to all claims for attorneys' fees and costs -- which against Defendants he ever had, now has or hereafter may have, arising out of or based on any event from the beginning of the world to the date of this Settlement Agreement and General Release.

8. Wertheimer covenants, agrees, and represents that he has not and will not file or otherwise initiate any type of proceeding with a governmental agency based on the subject matter of the Lawsuits.

5

9. Acadia Realty Trust, formerly known as Mark Centers Trust, and Marvin L. Slomowitz, in his individual capacity, hereby release and discharge Wertheimer and his representatives, agents, attorneys, successors, and assigns from all claims or causes of action -- known or unknown, suspected or unsuspected, and whether involved in the Lawsuits or not, and including, but not limited to all claims for attorneys' fees and costs -- which against Wertheimer they ever had, now have or hereafter may have, arising out of or based on any event from the beginning of the world to the date of this Settlement Agreement and General Release. Acadia will use reasonable efforts to secure full and complete general releases for Wertheimer from each of the other Defendants.

10. While agreeing to compromise and settle this Lawsuit, the parties deny liability to each other. It is understood and agreed that by entering into this Settlement Agreement and General Release, the parties in no way admit any liability to each other. Nothing in this Agreement shall constitute precedent or evidence in another proceeding, with the exception that this Agreement shall be admissible evidence in any proceeding to enforce the terms hereof.

11. Promptly upon execution of this Agreement, counsel for the parties shall file with the Courts the documents necessary to obtain the dismissal of the Lawsuits with prejudice.

12. Wertheimer, on the one hand, and Acadia Realty Trust and Slomowitz, on the other, each agree that they will not make disparaging remarks about the other or publicize any statements or opinions concerning Wertheimer's experience as an officer of Mark Centers Trust.

6

13. The terms of this Agreement inure to the benefit of, and are binding upon the heirs, successors, and assigns of the parties hereto, and Wertheimer's right to receive payments under this Agreement is assignable to Wertheimer's successors, assigns, and heirs.

14. Wertheimer acknowledges and agrees that he is liable for and will pay all taxes for which he personally is responsible under federal and state law as a result of the payments made to him under this Agreement. Wertheimer shall defend, indemnify, and hold harmless Acadia for any claim arising from Wertheimer's failure to pay such taxes when due.

15. The prevailing party in any lawsuit alleging a breach of this Agreement shall be entitled to recover the reasonable attorneys' fees and costs incurred in connection with such a lawsuit.

16. The parties to this Agreement acknowledge that they have carefully read this Settlement Agreement and General Release and have had it explained to them by their attorneys. They warrant and represent that they relied upon their own judgment and that of their legal counsel regarding the proper, sufficient, and agreed-upon consideration for the terms and provisions of this Agreement and that no statement or representation by the other parties or their agents, employees, officers, directors, or legal representatives has influenced or induced them to execute this Agreement.

17. Acadia's Board of Trustees has approved the terms of this Agreement and has authorized Acadia to enter into this Agreement.

18. This Agreement contains the complete and final agreement between the parties regarding the settlement and compromise of the Lawsuits. No modification or other

7

change to this Agreement shall be effective unless set forth in writing duly executed by or on behalf of the parties.

19. This Agreement is to be governed by the laws of the Commonwealth of Pennsylvania and any lawsuit alleging a breach of this Agreement shall be filed in, and only in, the state or federal courts located in the Commonwealth of Pennsylvania.

20. This Agreement may be executed in counterparts and facsimile signatures shall have the same effect as original signatures.

7a

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned have hereunto set their hands on the date(s) indicated.

12/31/98

DATE

/s/ Jack Wertheimer, Jr.

JACK WERTHEIMER, JR.

ACADIA REALTY TRUST

12/30/98

DATE

By /s/ Robert Masters

ROBERT MASTERS
Senior Vice President

12/30/98

DATE

/s/ Marvin L. Slomowitz

MARVIN L. SLOMOWITZ

[GRAPHIC OMITTED]

FOR IMMEDIATE RELEASE
December 31, 1998

FOR MORE INFORMATION CONTACT:
Suzanne R. West, Investor Relations @ 212.421.8830

NEW YORK, December 31, 1998 -- Acadia Realty Trust (NYSE:AKR), a New York-based real estate investment trust, formerly known as Mark Centers Trust ("MCT"), announced today that it has resolved a significant litigation exposure.

The litigation stemmed from a complaint filed by a former officer of MCT who claimed wrongful termination. The settlement of \$2.9 million will be paid over a period of six years, with a significant portion to be paid in 1998. A Company spokesperson noted that the settlement is consistent with new management's original underwriting in connection with its investment in MCT.

According to Kenneth F. Bernstein, Acadia's President, "Since assuming control of MCT in August 1998, new management has implemented an aggressive turnaround policy. We have actively sought to resolve outstanding problems, dispose of non-core and under-performing assets, and take other essential steps to position Acadia for superior earnings growth. The resolution of this longstanding litigation is another tangible sign to investors that we are serious about correcting the previous problems that limited the growth of this Company."

Acadia Realty Trust, headquartered on Long Island, NY, is a self-administered equity real estate investment trust structured as an UPREIT, which specializes in the operation, management, leasing, renovation and acquisition of shopping centers and multi-family properties. The Company currently owns and operates 58 properties totaling approximately 11.5 million square feet, primarily in the eastern half of the United States. Acadia's executive offices are located in Manhattan.

Certain items in this press release may constitute forward-looking statements within the meaning of the Private Litigation Reform Act of 1995 and as such may involve known and unknown risk, uncertainties and other factors which may cause the actual results, performances or achievements of Acadia to be materially different from any future results, performances or achievements expressed or implied by such forward-looking statements. Such forward-looking statements speak only as of the date of this document. Acadia expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in Acadia's expectations with regard thereto or change in events, conditions or circumstances on which any such statement is based.

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