

**NEW YORK STATE ATTORNEY GENERAL
REAL ESTATE FINANCE BUREAU**

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In the Matter of the
Investigation by ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York, of

AOD No. 15- 217

165 E 66 Residences, LLC,

Respondent.

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ASSURANCE OF DISCONTINUANCE

Pursuant to New York Executive Law (“Executive Law”) Section 63(12) and New York General Business Law (“GBL”) Sections 349, 350 and 352 *et seq.*, ERIC T. SCHNEIDERMAN, Attorney General of the State of New York (the “NYAG”) has investigated the conduct of 165 E 66 Residences, LLC (“Respondent”).

This Assurance of Discontinuance (“Assurance”) contains the findings of the NYAG’s investigation and the relief agreed to by the NYAG and the Respondent.

FINDINGS

I. The Respondent

1. Respondent is a Delaware limited liability company and is the named sponsor of a proposed offering of condominium units at the premises located at 165 East 66th Street, New York, New York (the “Building”).

II. Respondent’s Legal Obligations under Martin Act

2. The Martin Act regulates and governs practices in the public offer and sale of securities, including the sale of condominium units. *See* GBL § 352 *et seq.*

3. The Martin Act requires that before a sponsor of a condominium offers or sells units, the sponsor must submit an offering plan to the NYAG. *See* GBL § 352-e(2).

4. The offering plan must provide an adequate factual basis with which potential purchasers may make a judgment of whether to purchase. GBL § 352-e(1)(b). To that end, the offering plan “shall not omit any material fact or contain any untrue statement of material fact.” Id.

5. The Martin Act also contains protections for tenants. Indeed, the legislature has stated that the purpose of the Martin Act is to promote homeownership “while at the same time, protecting tenants in possession who” do not purchase their units. “[It] is imperative to assure that such conversion will not result in unjust, unreasonable and oppressive rents and rental agreements affecting non-purchasing tenants.” See 1982 N.Y. Laws, ch 555, §§ 1, 9.

6. Under GBL § 352-eeee, a tenant who occupies a unit at the time a plan is accepted for filing by the NYAG has an exclusive right to purchase the unit they occupy for a period of ninety days. See also 13 NYCRR § 23.3(n)(i).

7. Once the plan is accepted for filing by the NYAG, in order for the Sponsor to close on the sale of units in a condominium, the developer must “declare the plan effective,” by entering into purchase agreements representing 15% of the units in the building with either tenants in occupancy or bona fide purchasers with an intent to reside in the unit under contract. See GBL § 352-eeee(1)(b).

8. Under a non-eviction plan, like the plan at issue here, any tenant in occupancy who forgoes the right to purchase gains certain protections under the Martin Act as a non-purchasing tenant upon the plan being declared effective. See GBL § 352-eeee (1)(e). Non-purchasing tenants may not be evicted if they fail to purchase their unit, are provided automatic lease renewals, and are protected from unconscionable rent increases. See GBL § 352-eeee(2)(c)(ii).

9. NYAG prohibits sponsors from buying out tenants prior to the plan's acceptance, unless the buy-out offers are explicitly disclosed in the offering material. In addition, NYAG prohibits tenants from accepting offers until the plan is accepted for filing by NYAG. *See* July 9, 1986 Policy Memo, "Buyout Offers."

III. Respondent's Conduct in Connection with the Proposed Offering

10. The Building is a 20-story residential rental building containing, presently, 150 residential units, 34 of which are rent stabilized.

11. On February 28, 2014, Respondent submitted to NYAG an offering plan to convert the Building to condominium units (the "Plan"). The Plan represented that the offering was a non-eviction plan in which no tenants would be evicted by reason of the conversion to condominium ownership.

A. The Execution of Early Termination Lease Provisions

12. Beginning in or about October 2013 and continuing through at least October 2014, as market-rate leases in the Building expired, the Respondent began renegotiating leases inserting early termination riders.¹

13. The termination rider states in relevant part:

If Landlord shall at any time during the Term of this Lease decide to demolish or substantially renovate the Building or any part of it including the subject premises, Landlord shall have the right to terminate this Lease as of the last day of any month thereafter upon not less than three (3) months' prior written notice by Landlord to Tenant.

14. During the course of its investigation the NYAG was informed by tenants that representatives of the Respondent told tenants that the rider would not be exercised and that it

¹ The early termination riders were included in these market-rate leases based on the advice of and drafted by Respondent's counsel, Adam Leitman Bailey, P.C., who handled landlord tenant matters for Respondent.

was merely inserted into the new lease to protect tenants who wanted to purchase their apartments without having to wait for their entire lease term to expire. These statements, if made, were untrue.

15. Respondent either renegotiated existing leases or entered into new lease agreements with the termination rider with at least 82 market-rate tenants.

16. Respondent sent early Notices of Termination to 82 market-rate tenants in the Building setting a termination date of February 28, 2015 (“the Notices of Termination”).

B. The Early Termination of Leases

17. The Notice of Termination states that the Respondent “has elected to substantially renovate the Building and/or certain parts of it, including the subject premises” and in accordance with the termination rider, tenants’ “lease and tenancy are terminated effective February 28, 2015.”

18. The NYAG has found that, for a vast majority of units, substantial renovations were not planned. Respondent disputes this finding.

19. Upon receipt of the Notice of Termination, certain tenants requested to stay beyond the notice term and the Respondent accommodated those requests by giving them the option of either vacating by February 28, 2015, or remaining in their units and executing a “Stipulation of Settlement” that allowed them to stay until June 30, 2015, as holdover tenants. The Stipulation of Settlement also provided that the tenants were to execute a final judgment of possession, consent to a warrant of eviction and “forever abandon and surrender any claims to tenancy of the apartment, and acknowledge that Tenant is merely holding over.” This resulted in market-rate tenants losing the ordinary tenancy rights provided by their leases and at law, which leases, in many cases, would otherwise still have been in effect if not for the Notices of

Termination, and potentially prevented the tenants from gaining the Martin Act tenant protections they otherwise would be entitled.²

C. Buy-out Discussions

20. According to Respondent, agents of Respondent, including Respondent's counsel, Adam Leitman Bailey, P.C., attempted to identify candidates for buy-outs and discussed buy-outs of rent stabilized tenants during the "red herring" stage of the conversion, which buy-outs, unless disclosed and entered into after the plan is accepted for filing, are prohibited by the NYAG. *See* July 9, 1986, NYAG Policy Memo, "Buyout Offers."

21. No buy-out offers were made and none were entered into.

PROSPECTIVE RELIEF

WHEREAS, Respondent neither admits nor denies the truth of NYAG's Findings in paragraphs 1 through 23 above, and neither admits nor denies that Respondent has violated any law, rule, or regulation with respect to the offer and sale of real estate securities; and

WHEREAS, the NYAG is willing to accept the terms of this Assurance pursuant to Executive Law Section 63(15) and to discontinue its investigation; and

WHEREAS, the Respondent is willing to accept the obligations imposed by this Assurance;

THEREFORE, IT IS HEREBY UNDERSTOOD AND AGREED by and between the Respondent and the NYAG that:

A. Respondent shall continue to cooperate with NYAG and shall remedy any and all omissions and misstatements in the Plan;

² Respondent's counsel, Adam Leitman Bailey, P.C., has acknowledged drafting and advising Respondent to send the Notice of Termination, and recommending the use of, drafting, negotiating, and securing the Stipulation of Settlement.

B. Respondent does not intend to combine any units at the time acceptance for filing and the Plan will offer 150 units.

C. Within thirty (30) calendar days from the execution of this Assurance, Respondent shall make a payment in the amount of one million, five hundred-thirty thousand dollars and zero cents (\$1,530,000.00) by wire transfer directly to the City of New York, Acting through its Department of Housing Preservation and Development (the "City"), which payment shall be used exclusively by the City to fund housing initiatives in the New York City area for "persons of low income" and "families of low income" as defined by N.Y. Private Housing Finance Law Section 2(19). The City, acting through HPD, shall deposit the monies into the fiduciary fund established by HPD and known as the Affordable Housing – AG Settlement Fund. The undersigned Assistant Attorney General shall provide wiring instructions;

D. To the extent not already done, Respondent shall immediately provide all Building occupants lease extensions (whether the lease has expired), extending the lease term to at least December 31, 2015. Notices to that effect will be sent to Building occupants (to the extent not already done) as soon as possible. Respondent may increase rent, where the lease term prior to Notices of Termination would have expired, by a maximum of 3%. For lease terms that would not yet have expired prior to Notices of Termination, the rent in such leases will remain;

E. Unless the Respondent abandons or withdraws the Plan, all senior citizens and disabled persons in occupancy in the Building, will be given the opportunity to elect to become non-purchasing tenants and elect to become "Eligible senior citizens" and "Eligible disabled persons" pursuant to GBL § 352-eeee(1)(f) and (g). To the extent the Plan is not withdrawn or abandoned, as non-purchasing tenants, these seniors and disabled persons enjoy all the

protections of such status under the Martin Act, including that they may not be evicted if they fail to purchase their unit, are provided automatic lease renewals, and are protected from unconscionable rent increases;

F. Respondent represents that no buy-outs of rent stabilized tenants will take place after the offering plan is accepted for filing by NYAG. If Respondent ultimately determines to engage in efforts to buy-out rent stabilized tenant(s) after the plan is accepted for filing, a schedule will be submitted by amendment to the Plan setting forth the proposed monetary terms of the buy-out offers;

G. Respondent will provide to the NYAG documentary proof of the fulfillment of the terms of paragraphs B, C and D above within ten (10) calendar days of the deadline made applicable to each paragraph by this Assurance;

H. Respondent shall not hereafter violate any provision of Article 23-A of the New York General Business Law, the Executive Law or any other law, regulation or rule relating to the public offer of securities constituting interests or investments in real estate, including but not limited to condominium and cooperative interests in realty, in or from the State of New York;

I. Within fifteen (15) calendar days of the execution of this Assurance, Respondent shall pay the NYAG by wire transfer the sum of two hundred twenty five thousand dollars and zero cents (\$225,000.00) for the NYAG's costs and expenses; the undersigned Assistant Attorney General shall provide wiring instructions;

J. Respondent agrees that it shall be liable for delivery of the payments set forth in paragraphs B, E, and I.

K. All correspondence related to this Assurance must reference Assurance No. 15-

217;

MISCELLANEOUS

L. The NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to the NYAG by Respondent and its counsel and the NYAG's own factual investigation as set forth in the Findings above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the NYAG in his sole discretion.

M. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondent in agreeing to this Assurance.

N. Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Respondent shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Respondent's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the NYAG is not a party.

O. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance, and any purported amendment of this Assurance that is not memorialized in a writing signed by all parties shall be deemed null and void.

P. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and any wholly owned, controlled, or related successors or wholly owned, controlled,

or related assigns, provided that no party, other than the NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the NYAG. No unaffiliated subsequent owner of the Building or any unaffiliated part thereof shall be bound by this Assurance, unless any subsequent owner shall become a Successor Sponsor under the offering plan.

Q. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the NYAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

R. To the extent not already provided under this Assurance, Respondent shall, upon request by the NYAG, provide reasonable documentation and information necessary for the NYAG to verify compliance with this Assurance.

S. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the Respondent:

Stuart M. Saft, Esq.
Holland and Knight
31 West 52nd Street
New York New York 10019
(212) 513-3308

Allan Starr, Esq.
Starr Associates LLP
245 Fifth Avenue, Suite 1102
New York, New York 10016
(212) 620 2686

If to the NYAG:

Bureau Chief
Real Estate Finance Bureau

Office of the Attorney General
120 Broadway, 23rd Floor
New York, New York 10271
(212) 416-8100

T. Acceptance of this Assurance by the NYAG shall not be deemed approval by the NYAG of any of the practices or procedures referenced herein, and Respondent shall make no representation to the contrary.

U. Pursuant to New York Executive Law Section 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by the NYAG.

V. If a court of competent jurisdiction finally determines that Respondent has breached this Assurance, Respondent shall pay to the NYAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

W. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The NYAG is willing to accept this Assurance pursuant to New York Executive Law Section 63(15), in lieu of commencing a statutory or any other proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

X. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

Y. This Assurance may be executed in one or more counterparts, by either original signature or signature transmitted by facsimile transmission or electronic mail, and each copy so executed shall be deemed an original.

IN WITNESS WHEREOF, this Assurance is executed by the Respondent and the NYAG
as of October 4, 2015.

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York

By: 
Erica F. Buckley
Bureau Chief
Real Estate Finance Bureau

By: 
Richard Shore
Assistant Attorney General
Real Estate Finance Bureau

165 E 66 Residences, LLC
a Delaware limited partnership

By: 
Sadie Simpson
Vice President