

**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
REAL ESTATE FINANCE BUREAU**

-----X

In the Matter of the

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

AOD No. 15-114

101 West 78th, LLC; Newcastle Realty Services, LLC;
and Margaret Streicker Porres,

Respondents.

-----X

ASSURANCE OF DISCONTINUANCE

Pursuant to the Martin Act, New York General Business Law ("GBL") § 352 *et seq.*, and New York Executive Law ("Executive Law") § 63(12), ERIC T. SCHNEIDERMAN, Attorney General of the State of New York (the "NYAG") investigated the conduct of 101 West 78th, LLC; Newcastle Realty Services, LLC; and Margaret Streicker Porres (collectively "Respondents"), in connection with an offering of real estate securities in New York State.

This Assurance of Discontinuance ("Assurance") contains the findings of the NYAG's investigation and the relief agreed to by the NYAG and Respondents.

FINDINGS

I. The Respondents

1. Respondent 101 West 78th, LLC, a Delaware limited liability company, is the named sponsor of an offering of condominiums located at 101 West 78th Street in Manhattan. 101 W 78 Mezz LLC, a Delaware limited liability company, is the sole member of 101 West 78th, LLC. 101 West 78th Holding LLC is the sole member of 101 W 78 Mezz LLC. 380 Columbus Sponsor LLC is a member of 101 West 78th Holding LLC.

2. Respondent Newcastle Realty Services, LLC ("Newcastle") is a New York limited liability company.

3. Respondent Margaret Streicker Porres is the founder and president of Newcastle. Porres is a member of 380 Columbus Sponsor LLC and is the named principal of the offering of condominiums located at 101 West 78th Street in Manhattan.

II. Respondents' Martin Act Obligations

A. Disclosure Obligations

4. The Martin Act requires that before a sponsor (or developer) of a condominium may offer or sell units, the sponsor must submit an offering plan to NYAG. GBL § 352-e(2).

5. When a sponsor submits a proposed plan, NYAG reviews the plan to confirm that it contains the disclosures required by law. *Greenthal & Co. v. Lefkowitz*, 32 N.Y.2d 457, 462 (1973).

6. Under the Martin Act, a plan must provide an adequate factual basis with which potential purchasers may make a judgment of whether to invest and "shall not omit any material fact or contain any untrue statement of fact." *Id.* § 352-e(1)(b).

7. Where an occupied building is converted to cooperative or condominium ownership, the Act requires that immediately after the plan is submitted, the sponsor must serve a copy of the proposed plan, which is known as a "red herring," upon tenants. GBL § 352-eeee(2)(f); 13 NYCRR § 23.1(g). While the plan is under review by NYAG, the developer is obligated to revise the plan to reflect material changes to the proposed offering, and to inform NYAG of any such material changes. *Id.* § 23.1(h).

8. If disclosures in a proposed plan appear sufficient, NYAG accepts the plan for filing and the sponsor is permitted to begin marketing and selling units. GBL §352-e(2).

9. Prior to any closings, a plan must be declared “effective.” A plan may be declared effective only if purchase agreements have been executed for a certain minimum number of units. *See, e.g.* GBL § 352-eeee(1)(b).

B. Tenant Protection Obligations

10. The Martin Act provides certain rights and protections for tenants who live in buildings undergoing conversion. For example, a conversion can take place under an “eviction plan” or under a “non-eviction plan.” *See* GBL § 352-eeee(1)(b) and (c). Under a non-eviction plan, like the one here, a tenant may not be evicted on the basis that they failed to purchase under the plan. *Id.* at § 352-eeee(2)(c)(ii).

11. A tenant who occupies a unit at the time the plan is accepted for filing by NYAG has an exclusive right to purchase the unit they occupy for a period of ninety days from the date the plan is accepted. *See* 13 NYCRR § 23.3(n)(1)(i).

12. If a tenant remains in the building on the date that a plan is declared effective and does not purchase a unit, the tenant becomes a “non-purchasing tenant.” *See* GBL 352-eeee(1)(e). Where a non-purchasing tenant resides in a rent-regulated unit, the statute ensures that the protections of rent regulation remain in place post-conversion. *Id.* at § 352-eeee(2)(c)(iii). If a non-purchasing tenant is in a market-rate unit, they are protected from unconscionable rent increases for as long as they reside in the unit. *Id.* at § 352-eeee(2)(c)(iv).

C. Limitations on Removing Tenants

13. To assure that tenants residing in buildings slated for conversion are able to make a fully-informed choice between the housing alternatives available to them, i.e., whether to buy their unit, remain as renters, or move, NYAG regulates buyout agreements during the conversion process. A buyout occurs where a sponsor “buys out” the remaining rights and interests in a

tenant's lease; in exchange for a lump sum, the tenant agrees to surrender their lease and vacate the unit.

14. Specifically, NYAG requires that buyout offers to tenants made after the red herring is submitted be disclosed in the red herring. *See* NYAG Policy Memorandum entitled "Buyout Offers" (July 9, 1986). And, NYAG requires that tenants not *accept* a buyout offer until the plan is accepted for filing. *Id.* This ensures that tenants have full and fair disclosure of all options mandated by the Martin Act before choosing among them.

III. Respondents' Obligations under the New York City Building Code

15. The New York City Department of Buildings ("DOB") requires an applicant for a building permit to certify whether the building where the work will be done is occupied or vacant and whether the units are subject to rent regulation.

16. One reason for this certification is that New York City Building Code requires that a developer file a "tenant protection plan" with DOB if a building undergoing construction contains occupied dwelling units. *See* N.Y.C. Admin. Code § 28-104.8.4.

17. The Building Code requires that the tenant protection plan outline the means and methods to be employed to protect occupants' health and safety, and must address a wide range of issues including temporary fire protection measures, dust containment procedures, maintenance of egresses, pest control, limitation of noise, lead and asbestos abatement, and structural safety. *Id.*

IV. Respondents' Offering and NYAG's Investigation

18. According to the representations made in the offering plan, the property at 101 West 78th Street (the "Property") is a 7-story apartment building containing 43 residential units and one commercial unit.

19. Respondent 101 West 78th, LLC purchased the Property in a transaction that closed on December 28, 2012.

20. On June 27, 2013, Respondents 101 West 78th, LLC and Porres submitted to NYAG an offering plan to convert the Property to condominium ownership (the "78th Street Plan").

21. The 78th Street Plan represented that the offering was a non-eviction plan in which no tenants would be evicted for failure to purchase a unit under the plan.

22. The 78th Street Plan represented that twelve of the 43 units at the Property were subject to the Rent Stabilization Law and that 3 units were subject to the laws governing rent control. The 78th Street Plan represented that 7 units were vacant, which would leave 21 units as occupied and not subject to rent regulation.

23. The 78th Street Plan represented that the offering would be comprised of 43 residential units. The 78th Street Plan contains a schedule of unit prices which shows 44 residential units and a price for each unit.¹ The 78th Street Plan represented that the units would be offered in "as is" condition as of the date that the 78th Street Plan was served on tenants.

24. In the 78th Street Plan, Respondents 101 West 78th, LLC and Porres certified that they understood that they have primary responsibility for compliance with the Martin Act and related regulations.

25. Respondents 101 West 78th, LLC and Porres further certified that they had read the entire offering plan and investigated the facts set forth in the offering plan and the underlying facts. 101 West 78th, LLC and Porres asserted that they had exercised due diligence to form a basis for their certification.

¹ The 78th Street Plan refers at times to 43 units and at other times to 44 units.

26. With respect to the representations in the 78th Street Plan, Respondents 101 West 78th, LLC and Porres certified that the offering plan set forth the detailed terms of the transaction and was complete, current and accurate. Further, 101 West 78th, LLC and Porres certified that the 78th Street Plan did not omit any material fact, contain any untrue statement of material fact, or contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale.

27. Respondents 101 West 78th, LLC and Porres also certified that the 78th Street Plan did not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances. 101 West 78th, LLC and Porres also certified that the 78th Street Plan did not contain any representation that was false where they knew the truth, with reasonable effort could have known the truth, made no reasonable effort to ascertain the truth or did not have knowledge concerning the representation.

28. On or around August 29, 2013, after the 78th Street Plan had been submitted to NYAG, four investment funds established and managed by GTIS Partners LP ("GTIS"), a Delaware limited partnership and real estate investment firm, entered into a joint venture with 380 Columbus Sponsor to develop the Property. The investment funds became members of 101 W 78 Holding LLC.

29. As part of NYAG's review of the 78th Street Plan, it requested that Respondent 101 West 78th, LLC submit a set of buildings plans approved by DOB. On August 15, 2014, 101 West 78th, LLC submitted building plans to NYAG. Unlike the floor plans in the 78th Street Plan, the building plans filed with DOB showed that many units in the building were to be combined to make larger apartments. The August 15 building plans showed only 24 units, instead of the 44 units reflected in the 78th Street Plan.

30. Because the DOB plans submitted were not consistent with the 78th Street Plan, NYAG began to review Respondents' DOB filings. That review showed the following.

31. On June 25, 2013, two days before Respondents 101 West 78th, LLC and Porres submitted the 78th Street Plan to NYAG, an application for a building permit for the Property was filed on behalf of Respondent Newcastle with DOB. The June 25 application discloses that the construction contemplated at the Property involved a change in the number of dwelling units at the building. The June 25 application states that the Property had 42 "existing" dwelling units and that only 24 dwelling units would remain after construction.

32. On October 6, 2013, in a filing submitted to DOB in connection with the applications for building permits, Respondent Newcastle certified that the Property did not contain any occupied units that would remain occupied during construction. Respondent Newcastle further certified that the Property did not contain any accommodations subject to rent regulation laws. These certifications were incorrect.

33. On January 10, 2014, Respondent Newcastle submitted documents to DOB in connection with the June 25 application. Those documents state that the number of units at the Property was to be reduced from 42 to 24.

34. On March 18, 2014, in a filing submitted to DOB in connection with the applications for building permits, Respondent Newcastle certified that the Property did contain occupied units that would remain occupied during construction. Respondent Newcastle further certified that the Property did contain accommodations subject to rent regulation laws.

35. On April 17, 2014, Respondent Newcastle submitted to DOB an application for another building permit. In connection with that application, Respondent Newcastle filed documents with DOB that state: "This application is filed to combine apartments"

36. On October 1, 2014, NYAG asked Respondent 101 West 78th, LLC to submit an affidavit detailing the occupancy status of each unit, whether each unit was regulated, whether buyouts had occurred, and, if they had, when the tenant would or did vacate the unit.

37. On November 6, 2014, 101 West 78th, LLC submitted an affidavit from Respondent Porres.

38. According to the November 6 affidavit, Respondents concluded 12 buyout agreements during the “red herring” phase. These buyout agreements are prohibited by NYAG.

39. Two of the twelve prohibited buyout agreements related to units that were subject to rent regulation. These units were prematurely deregulated through the buyout agreements.

40. Currently, there are a total of eleven tenanted units at the Property. These units are 21, 31, 52, 56, 62, 63, 66, 71, 73, 74 and 76 (the “Tenanted Units”).

41. On January 12, 2015, NYAG brought a petition under Section 354 of the Martin Act against 101 West 78th, LLC, Newcastle and Porres. The petition sought entry of an order against Respondents requiring them to provide discovery relating to the 101 West 78th Street offering and barring them from proceeding with construction at the property pending NYAG’s investigation (the “Order”).

42. On January 12, 2015, Justice Marcy Friedman, Supreme Court, New York County, signed the Order.

43. In the period following January 12, 2015, Respondents have provided discovery to NYAG.

44. NYAG finds that Respondent’s foregoing conduct in paragraphs 1 through 40 above violates the Martin Act, Part 23 of Title 13 of the New York Codes, Rules and Regulations, the New York City Building Code and Executive Law § 63(12).

PROSPECTIVE RELIEF

WHEREAS the Respondents neither admit nor deny NYAG's Findings set forth above;
WHEREAS the Respondents have cooperated with NYAG's investigation of this matter;
WHEREAS NYAG is willing to accept the terms of this Assurance pursuant to the Martin Act and Executive Law Section § 63(15) and to discontinue its investigation; and
WHEREAS the Respondents are willing to accept the obligations imposed by this Assurance;

WHEREAS pursuant to a separate agreement between Respondents and GTIS, GTIS has agreed to become the sole member of 101 West 78th, LLC, subject to receipt of lender approval;

WHEREAS GTIS becoming the sole member of 101 West 78th, LLC is a not a requirement of NYAG under this Assurance, and 380 Columbus Sponsor LLC, Newcastle and Porres exiting 101 West 78th, LLC is not a requirement of NYAG under this Assurance;

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

A. Respondent 101 West 78th, LLC shall provide to each tenant of a Tenanted Unit a rent concession equal to the monthly rent for that tenant's unit, for a period of 24 months beginning on June 1, 2015 and ending on May 31, 2017 (the "Rent Concession").

B. Within fifteen (15) calendar days from the execution of this Assurance, Respondents shall reimburse the following tenants in the following amounts: Marjorie Magid and Steven Shatz, two thousand four hundred sixteen dollars and zero cents (\$2416.00); Susan Barron, two thousand eight hundred dollars and zero cents (\$2800.00); Angela Salerno, one thousand five hundred dollars and zero cents (\$1500.00). Such reimbursements represent legal

fees expended by each of the named tenants in connection with Respondents' challenge to these tenants' rent regulated status;

C. Respondent 101 West 78th, LLC shall provide new unit doors for the Tenanted Units at the Property, as are or are to be installed in other units at the Property;

D. Respondent 101 West 78th, LLC shall install an auto-assist front door at the Property;

E. Respondent 101 West 78th, LLC shall provide proper and correct labeling on the front-door intercom at the Property;

F. Commencing on July 1, 2015 and continuing until the renovation of the Property contemplated as part of the conversion to condominium ownership (the "Renovation") is complete, Respondent 101 West 78th, LLC shall provide the tenants of the Property with monthly written updates as to the status of the Renovation; such updates shall include notice of construction events planned for the upcoming four week period, notice of anticipated disruption of water, utility or other services at the Property, and notice of any known health or safety issues implicated by the Renovation;

G. Commencing on July 15, 2015, Respondent 101 West 78th, LLC shall hold monthly meetings with the tenants of the Property to advise the tenants of the status of the Renovation and to answer questions from the tenants as to the Renovation;

H. Respondents shall comply with all laws and regulations relating to the rent regulated units at the Property; with respect to Respondent 101 West 78th, LLC, such compliance shall include timely provision of all required lease renewals, services, repairs and maintenance to the tenants of the Tenanted Units;

I. Respondents shall not apply to the Division of Housing and Community Renewal ("DHCR") for rent increases on the Tenanted Units on the basis that the Renovation or any relief provided for in this Assurance constitutes a Major Capital Improvement or an Individual Apartment Improvement, as those terms are used in the New York City Rent and Eviction Regulations and the Rent Stabilization Code;

J. Respondents shall not apply to DHCR for a deregulation order as to the Tenanted Units on the basis that the Renovation constitutes Substantial Rehabilitation, as that term is used in the Rent Stabilization Code;

K. Respondents shall not violate the Martin Act, any regulations thereunder or other laws or regulations;

L. Respondents shall pay the sum of one million, two hundred-thirty-five thousand dollars and zero cents (\$1,235,000.00) by wire, payable to the New York City Department of Finance (the "City"), or such other entity as may be designated in writing by the City, acting through its Department of Housing Preservation and Development ("HPD"), as restitution (the "Restitution Funds") for the loss of five rent regulated units at the Property

M. Respondents shall deliver the Restitution Funds to the City within fifteen (15) business days of the execution of this Assurance; the undersigned Assistant Attorney General shall provide wiring instructions. The City, acting by and through HPD, shall use the Restitution Funds to finance projects for "persons of low income" and "families of low income," as defined in N.Y. Private Housing Finance Law Section 2(19);

N. Within fifteen (15) business days of the execution of this Assurance, Respondents shall pay NYAG by wire transfer the sum of three hundred fifty thousand dollars and zero cents (\$350,000.00) for the NYAG's expenses; the undersigned Assistant Attorney General shall

provide wiring instructions;

O. Respondents agree that that they shall be jointly and severally liable for delivery of the payments set forth in paragraphs B, L, M, and N above, it being understood that Respondent Porres shall not be personally liable to take the actions set forth in paragraphs A, C, D, E, F, and G.

MISCELLANEOUS

P. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by Respondents and their counsel and 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 NYAG in its sole discretion.

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

R. Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Respondents 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 Respondents' (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which NYAG is not a party.

S. 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.

T. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and 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.

U. 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.

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

W. 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 Respondents:

James L. Bernard
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038-4982
(212) 806-5684

If to NYAG:

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

X. All correspondence related to this Assurance must reference Assurance No. 15-114;

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

Z. 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 NYAG.

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

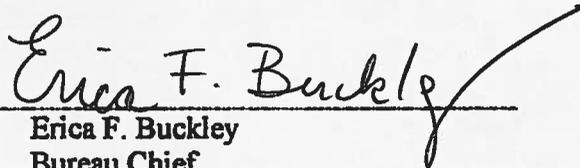
BB. NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. NYAG is willing to accept this Assurance pursuant to New York Executive Law Section 63(15), in lieu of commencing a statutory or any other proceeding. This Assurance shall be governed by the laws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

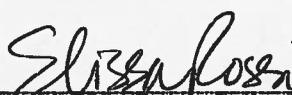
CC. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

DD. 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 Respondents and the
NYAG as of May 29, 2015.

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

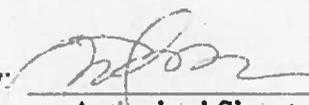
By: 
Erica F. Buckley
Bureau Chief
Real Estate Finance Bureau

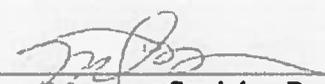
By: 
Elissa Rossi
Assistant Attorney General
Real Estate Finance Bureau

101 West 78th, LLC
a Delaware limited liability company

By: 
Authorized Signatory

Newcastle Realty Services, LLC
a New York limited liability company

By: 
Authorized Signatory


Margaret Streicker Porres