

**OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
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. 15-050

39 Lispenard Project, LLC,

Respondent.

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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 Respondent 39 Lispenard Project, LLC, in connection with an offering of securities constituting participation interests in real estate and cooperative interests in realty.

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 39 Lispenard Project, LLC (“39 Lispenard” or the “Company”) is a New York limited liability company that acted as an unregistered syndicator of securities constituting participation interests in real estate involving two conjoined buildings located at 39-41 Lispenard Street and 326-332 Canal Street in TriBeCa, New York, NY (the “Clark Building”), as defined by under GBL § 352-e and Part 16 of Title 13 of the New York Codes,

Rules and Regulations (the “Part 16 Regulations”), which govern real estate syndication offerings.

2. 39 Lispenard also acted as an unregistered sponsor of cooperative interests in realty involving the offering and sale of condominium units in the Clark Building to the public without filing an offering plan as required by GBL § 352-e, *et. seq.*, and governing NYAG regulations.

II. Respondent’s Legal Obligations Under the Martin Act

3. Pursuant to the Martin Act, securities constituting participation interests in real estate—whether in an undeveloped plot of land, in a previously existing building, or an investment company or fund—are known as “real estate syndications.” *See* GBL § 352-e.

4. Before the promoter of a real estate syndication (or his or her agent, including a licensed real estate broker or salesperson) publically solicits, offers, advertises, or sells to investors interests in a syndicate, such syndication offerings must be registered with the NYAG pursuant to GBL § 352-e, unless the promoter seeks an exemption from filing pursuant to GBL § 352-g and such exemption is granted. *See id.*

5. The proposed syndication is registered with the NYAG by the filing of a written statement or prospectus concerning the anticipated offering containing a full and fair summary of all material aspects of the offering pursuant to the Part 16 Regulations.

6. Exemptions from filing with the NYAG are permitted by GBL § 352-g under certain circumstances, as delineated in Real Estate Policy Statements published by the NYAG’s Real Estate Finance Bureau numbered 100 through 105. For example, where the syndication or transaction involves an offering pursuant to Regulation D, Rule 506 of the U.S. Securities and

Exchange Commission, a “notification filing” with the NYAG (using NY Form 99) is required. *See* REFB Policy Statement 100; *see also* 17 C.F.R. § 230.501 *et seq.*

7. An offeror, or “sponsor,” of an offering of real estate securities involving cooperative interests in realty, including condominiums, in or from the State of New York is required to file with the NYAG an offering plan that must disclose the detailed terms of the transaction to prospective purchasers. *See* GBL § 352-e(1)(b).

8. It is “illegal and prohibited” for a sponsor of a condominium offering plan to sell, or offer to sell, condominium units to the public prior to the acceptance for filing of the offering plan by the NYAG. *See* GBL § 352-e(2).

9. It is also “unlawful” for a sponsor of a condominium offering plan to sell, or offer to sell, condominiums to the public in or from New York without first having filed a broker-dealer registration statement with the NYAG. *See* GBL § 359-e(3).

10. A syndicate that is required to file an offering statement or prospectus pursuant to GBL § 352-e is also required to file with the NYAG an annual report of the syndicate’s operations, including an annual balance sheet and profit and loss statement certified by an independent certified public accountant, within four months after the end of its fiscal year. *See* GBL § 352-e(8).

III. Respondent’s Plan to Develop the Clark Building at 39 Lispenard Street

11. On or about August 19, 2011, Peter Moore signed a contract of sale (the “Contract”) for the purchase of the residential floors (floors 2 through 6) of the Clark Building for approximately \$12 million from a separate entity known as MM Canal, LLC.

12. Peter Moore (“Moore”) is an individual who resides in New York State and was the former manager and a principal of Respondent 39 Lispenard Project, LLC. Moore is also an architect licensed by the State of New York.

13. The Contract provided, among other things, that the Clark Building would be converted by the MM Canal and the Company into a two unit condominium—consisting of a commercial unit (the “Lower Unit”) and a residential unit (the “Upper Unit”), which in turn comprised 10 separate apartments, prior to renovations, among the two adjacent buildings that made up the Clark Building.

14. MM Canal, LLC retained the Lower Unit (the commercial unit) and Moore, on behalf of the Company, purchased and obtained title to the Upper Unit (the residential unit). The Lower Unit is not at issue here.

15. On June 8, 2012, the Company, submitted to the NYAG an application for a no-action letter to create a two unit condominium (consisting of the Lower and Upper Units) in the Clark Building.

16. The supporting documents comprising the no-action letter application specified that following the purchase of the Upper Unit by the Company, a subsequent offering plan or no-action letter application would be filed with the NYAG that would combine the two apartments on each floor to create a single floor-through apartment that would be suitable for luxury condominium conversion.

17. Specifically, on August 31, 2012, Moore affirmed in an affidavit submitted to the NYAG in furtherance of the no-action application that: (i) all but one of the 10 residential units were vacant; (ii) “no offers or solicitations of interest” would be made on any of the apartments

in the residential unit; and (iii) no subdividing of the apartments would occur without an amendment to the no-action application or the filing of an offering plan.

18. As a result of representations in Moore's affidavit made on behalf of the Company, the no-action letter was issued by the NYAG on September 20, 2012.

19. The declaration of condominium for the Upper Unit (a.k.a. "Unit 1001") was recorded on December 20, 2012 in the New York County Registers Office.

20. On or about February 6, 2013, the Company closed on the sale of the Upper Unit.

IV. The Respondent Unlawfully Offers Real Estate Securities to the Public

21. Following the purchase of the Clark Building, but before making the requisite filings with the NYAG to offer securities constituting participation interests in real estate and cooperative interests in realty (in violation of the Martin Act and the Executive Law), Respondent began soliciting investors to purchase an ownership interest in the Company. In exchange for investing in the Company, an investor would be a tenant in common of the property owned by the Company, and would also be allocated a apartment at the Clark Building, with allocations based on the size of the investment. The investors, taking possession of the allocated apartments, planned to then arrange for Moore (or one of the co-investors) to file an offering plan with the NYAG under Part 20 for the conversion of a vacant building to condominium ownership.

22. Neither the Company nor any of its investors requested an exemption from the NYAG pursuant to GBL § 352-g or made a securities filing with the U.S. Securities and Exchange Commission.

23. Additionally, in procuring investors, Moore identified, marketed, offered and ultimately sold to members specific apartment units (each taking up an entire floor) within the Clark Building. Moore reached out to potential investors through his network of associates and acquaintances from past ventures. He also solicited investors publicly, hiring a prominent real estate firm and using their brokers and online and print advertising to reach a wide audience.

24. Moore and his agents excluded the apartment assignments to various investors from the Company's various operating agreements, but did, however, memorialize them in other non-public Company documentation, including mortgage loan documents that were ultimately obtained by the NYAG.

25. On or about February 18, 2013, Moore signed a contract with real estate brokerage firm Town Residential LLC ("Town") granting it and its associated brokers the exclusive right for a four month term to publically sell participation interests in the Company, which included the allocation of Apartments number 2 and 3 in the Clark Building.

26. The Town contract provided that the public offering was an interest in "an LLC 'Tenants in Common' offering to potential purchasers until the Condominium Offering Plan is submitted and approved by the Attorney General and individual units are apportioned."

27. The exclusive agreement with Town provided for the offering of the "(LLC) sale at a (finished) price of \$5,500,000 for Unit #2 and for \$4,200,000 for Unit #3."

28. The signatories of the agreement were Moore on behalf of the Company and an authorized representative of Town.

29. On or about July 25, 2013, Moore and Town extended the exclusive right to sell contract previously executed, but limited it to marketing Apartment Unit #2 for an additional period of six months.

30. The signatories of this extension agreement were Moore on behalf of the Company and Wendy Maitland, Town's then Senior Managing Director of Sales.

31. Pursuant to the exclusive agreement to sell, Town and its brokers took part in the marketing of securities constituting participation interests in real estate by offering Apartment Units 2 and 3 in the Clark Building for sale to the public, despite the fact that Town and its brokers were aware that no offering plan had been accepted for filing by the NYAG. Town and its brokers also marketed the penthouse (6th Floor) Unit, but apparently on a non-exclusive basis.

32. Town conducted the offering through substantial online advertisements via Town's website, other real estate websites, printed marketing materials and brochures, direct marketing to buyers' brokers through e-mail solicitations and telephone calls, as well as walk-throughs at the premises and personal conversations and sales pitches.

33. In order for the development plan to succeed, the Clark Building needed to be vacant since the types of investors sought were interested in developing unoccupied luxury loft residences.

34. The Contract between Moore and MM Canal required that MM Canal use "commercially acceptable means for vacating the premises (excluding litigation)" in order to deliver a vacant building. In the period prior to closing, Moore was required to pay a sum in escrow to cover MM Canal's lost rental revenue. To cover the rental monies Moore owed to MM Canal in the interim, Moore leased several apartments to generate cash.

35. Shortly after closing on the Clark Building, Moore and the Company began to evict the remaining month-to-month tenants by cancelling their tenancies.

36. On or about, April 17, 2013, the NYAG received a complaint from tenants living in the Clark Building, apartment 4A, and facing eviction (the “4A Tenants”). The market-rate tenants, who by that time were month-to-month following expiration of their lease on February 28, 2012, were engaged in litigation in the New York Housing Court.

37. The 4A Tenants referred the NYAG to an advertisement on StreetEasy (<http://streeteasy.com>), which showed that that apartment 4A was being offered as “AN LLC ‘TENANTS IN COMMON’ OPPORTUNITY” and that the “Offering Plan [was] to be submitted Spring 2013 and work to begin this summer.” The broker listed was Town Residential.

38. Ultimately, the 4A Tenants settled their housing court matter with Moore and the tenant moved out of the unit in the late Summer or early Fall of 2013.

39. Notwithstanding, at the time Moore executed the “no action letter” affidavit, he made a false statement when he swore that, as of August 31, 2012, other than the second floor, the building was “currently vacant”—unequivocally Unit 4A was occupied by tenants, who were slated to be evicted several months later.

40. As a result of the potentially false “no action” application filing and Town’s public advertisement seeking investors in the unregistered syndication, on or about August 14, 2013, the NYAG issued subpoenas to the Company as well as Town Residential and MM Canal LLC.

41. The NYAG also requested that Town pull its public advertisements for the Clark Building pending the outcome of its Martin Act investigation.

42. Pursuant to the subpoena, the Company began its rolling production of documents to the NYAG starting on October 30, 2013 and continued until July 31, 2014.¹

43. On or about February 25, 2014, 39 Lispenard, through its then attorney Lewis Kuper, Esq., filed an offering plan under 13 NYCRR Part 20 (vacant) (the “Part 20 Plan”) that was materially deficient. The NYAG delivered to Mr. Kuper a deficiency notice on or about March 27, 2014 detailing the numerous errors and omissions that required correction.

44. The NYAG then rejected the Part 20 Plan for filing on May 7, 2014, due to the Company’s failure to remedy the offering plan’s numerous deficiencies before the deadline for corrections had passed.

45. Additionally, the Part 20 Plan contained a number of material omissions, including nondisclosure of several principals of the Company and failing to disclose that the Company had been under investigation by the NYAG.

PROSPECTIVE RELIEF

WHEREAS, the Respondent neither admits nor denies the NYAG’s Findings set forth above;

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

WHEREAS, Respondent desires to resolve its issues with the NYAG and is willing to accept the obligations imposed by this Assurance; and

WHEREAS, the NYAG and Respondent each believes that the obligations imposed by this Assurance are prudent and appropriate;

¹ MM Canal and Town separately produced documents to the NYAG on or about September 13, 2013.

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

A. In consideration of the making and execution of this Assurance, 39 Lispenard agrees to neither subdivide the apartments in the Upper Unit nor offer for sale any apartment until it submits to the NYAG an offering plan setting forth the terms and conditions of the sale of units in the Clark Building in compliance with GBL §§ 352-e, and 352-eeee, and 13 NYCRR Part 23.

B. 39 Lispenard shall also pay the statutory maximum filing fee of \$30,000.00 required by GBL § 352-e(7)(a) at the time of filing their condominium offering plan;

C. In the event the only occupants of apartments at the Clark Building are investors in the unregistered syndicate, then Respondent 39 Lispenard may request an exemption from the four to six-month notice requirements of GBL § 352-e(2). The exemption request must be made pursuant to GBL § 352-g and should be set forth in the attorney transmittal letter at the time of submission of the offering plan to the NYAG;

D. Within 10 days of the execution of this Assurance, 39 Lispenard agrees to pay to the Department of Law the sum of \$5,000.00 in civil penalties, costs and fees;

E. 39 Lispenard shall not hereafter make or take part in a public offering or sale in or from the State of New York of any securities, as governed by GBL § 352-e, *et seq.*, unless and until there shall have been an offering plan accepted by filing with the NYAG, an offering statement or prospectus that is kept current in conformity with law and with the NYAG's regulations, or the Respondent has received an exemption from filing from the NYAG;

MISCELLANEOUS

F. All correspondence related to this Assurance must reference Assurance No. 15-050;

G. The NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to the NYAG by the 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.

H. 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.

I. 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.

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

K. This Assurance shall be binding on and inure to the benefit of the Respondent and the NYAG 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.

L. 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.

M. 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.

N. 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:

Jon Holden, Manager
39 Lispenard Project, LLC
39 Lispenard Street
New York, New York 10013

With a copy to:

Jeffrey C. Ruderman, Esq.
CYRULI SHANKS
420 Lexington Avenue, Suite 2320
New York, New York 10170
Tel (212) 661-6800
Fax (212) 661-5350
Email: jruderman@cshzlaw.com

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

O. 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.

P. Pursuant to Executive Law § 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.

Q. 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.

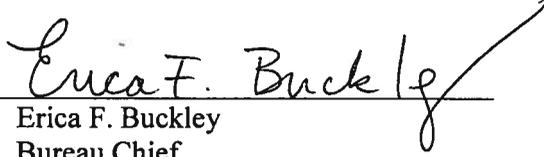
R. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The NYAG is willing to accept this Assurance pursuant to New York Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State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

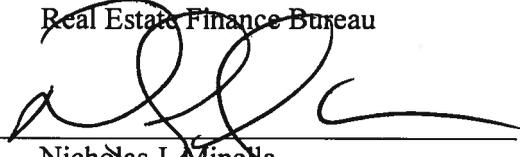
S. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

T. 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
April 13
as of ~~February~~, 2015.

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

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

By: 
Nicholas L. Minella
Assistant Attorney General
Real Estate Finance Bureau

39 Lispenard Project, LLC

By: 
Jon Holden
Manager