

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK, by	:
LETITIA JAMES, Attorney General	:
of the State of New York,	:
	:
Plaintiff,	:
	:
- against -	:
	:
XI HUI WU, A/K/A STEVE WU,	:
XIAO RONG YANG, TCJ CONSTRUCTION INC.,	:
and 345 OVINGTON LLC,	:
Defendants,	:
	:
- and -	:
	:
SHIMON AVRAHAMI, YECHIEL SHIMON SPREI,	:
A/K/A SAM SPREI, and JOHN DOE #1 – #10,	:
	:
Relief Defendants.	:
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**SUMMONS**

Index No.  
IAS Part

Plaintiff designates New York  
County as place of trial.

TO THE ABOVE-NAMED DEFENDANTS:

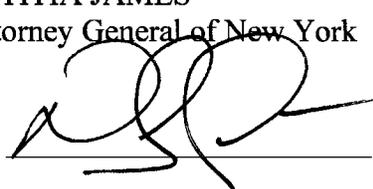
YOU ARE HEREBY SUMMONED to answer in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer,

judgment will be taken against you by default for the relief demanded in the complaint.

Filed: November 2, 2022  
New York, New York

LETITIA JAMES  
Attorney General of New York

By



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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X	:	
PEOPLE OF THE STATE OF NEW YORK, by	:	
LETITIA JAMES, Attorney General	:	
of the State of New York,	:	
	:	
Plaintiff,	:	<b><u>VERIFIED COMPLAINT</u></b>
	:	
- against -	:	Index No.
	:	IAS Part
XI HUI WU, A/K/A STEVE WU,	:	
XIAO RONG YANG, TCJ CONSTRUCTION INC.,	:	
and 345 OVERTON LLC,	:	
	:	
Defendants,	:	
	:	
- and -	:	
	:	
SHIMON AVRAHAMI, YECHIEL SHIMON SPREI,	:	
A/K/A SAM SPREI, and JOHN DOE #1 – #10,	:	
	:	
Relief Defendants.	:	
-----X	:	

The People of the State of New York, by their attorney Letitia James, Attorney General of the State of New York, as and for her Complaint, respectfully allege on knowledge as to their own conduct and upon information and belief as to the conduct of others as follows:

1. Xi Hui Wu, A/K/A Steve Wu—a self-proclaimed New York City builder and real estate developer—and his ex-wife Xiao Rong Yang engaged in a years-long scheme of deception, fraud, and illegal conduct in connection with the development of the residential apartment building located at 345 Ovington Avenue, in Bay Ridge, Brooklyn, New York (“the Building”).
2. Wu took advantage of Chinese-immigrants or first-generation Chinese-American nationals by unlawfully attempting to sell non-existent real estate securities for units in the Building. However, as the Building was not legally a condominium and no condominium

declaration was ever filed with the New York City Department of Finance, the Building was never divided into individual tax lots and therefore there were no property interests to transfer to the unsuspecting purchasers.

3. In addition to defrauding these victims, as no deeds to the individual units existed, Wu, along with Yang, failed to place the purchase money deposits, or in some instances payment for the full purchase price, into segregated escrow accounts as required under New York law. Wu and Yang thereafter dissipated these funds to pay for personal or business expenses and deceived the victims and the Office of the Attorney General (“OAG”) to further perpetuate their fraudulent scheme.

4. OAG began the instant investigation of Wu and his businesses after learning during the regulatory review process of converting the Building into a condominium, that he made numerous material misrepresentations in his offering plan in violation of Article 23-A of the N.Y. General Business Law (“GBL”), commonly referred to as the “Martin Act,” and the regulations promulgated thereunder relating to the offer and sale of securities, including participatory interests in real estate.

5. OAG’s investigation revealed that Wu defrauded at least twenty (20) prospective purchasers (and likely more) by purporting to sell to them real estate securities that did not exist. As a result of this illegal conduct, Wu personally and through his companies stole more than \$5 million from these victims.

6. OAG’s investigation also revealed that Wu violated the rules governing the property tax exemption program under Section 421-a of the N.Y. Real Property Tax Law by

improperly renting out apartments in the Building without providing tenants the protections of New York Rent Stabilization Law.<sup>1</sup>

7. Defendant Yang was deeply involved in the scheme. Yang not only shared in the proceeds of Wu's fraud, but actively participated by serving as the collecting agent, bookkeeper, managing agent, and disbursing clerk for the payments to Wu.

8. OAG brings this action to, among other things, compel Defendants to disgorge all funds stolen from the purported purchasers and to permanently bar Defendants from offering or selling real estate securities in the State of New York.

### PARTIES

9. Plaintiff is the People of the State of New York, by its attorney, Letitia James, the Attorney General of the State of New York.

10. Defendant Wu is an individual residing in and conducting business in New York City.

11. Defendant Yang is an individual residing in and conducting business in New York City. Yang was formerly married to Wu.

12. Defendant TCJ Construction Inc. is a domestic business corporation with its principal place of business located in New York City at 554 67<sup>th</sup> Street, 2<sup>nd</sup> Floor, Brooklyn, NY 11220. TCJ Construction Inc. is owned solely by Defendant Wu. At all relevant times, TCJ Construction Inc. was the principal builder of the Building.

13. Defendant 345 Ovington LLC is a domestic limited liability company with its principal office and place of business in New York City. 345 Ovington LLC was the nominal

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<sup>1</sup> The term "Rent Stabilization" is used herein to refer to the system of rent regulation enacted in 1969, as amended, governing tenancies in multi-family New York City buildings, generally consisting of six or more units.

sponsor of a condominium project and the sole owner of the Building. Wu is a manager and member of 345 Ovington LLC.

14. Relief Defendant Shimon Avrahami (“Avrahami”) is an individual residing in the State of New Jersey and conducts business in the State and City of New York. On or about December 4, 2019, Avrahami purchased an unknown number of shares in 345 Ovington LLC. Avrahami is named as a Relief Defendant to ensure that complete relief is accorded among the parties and that he is not inequitably affected by a judgment in this action.

15. Relief Defendant Yechiel Shimon Sprei (“Sprei”) is an individual residing in the State of New York and conducts business in the State and City of New York. On or about December 4, 2019, Sprei purchased an unknown number of shares in 345 Ovington LLC. Sprei is named as a Relief Defendant to ensure that complete relief is accorded among the parties and that he is not inequitably affected by a judgment in this action.

16. Relief Defendants John Doe #1 – John Doe #10, are individuals residing in or doing business in the State and City of New York, who assisted Defendants in fraudulently obtaining or transferring funds that belonged to the purported purchasers of the apartments in the Building.

#### **VENUE AND JURISDICTION**

17. The Court may exercise personal jurisdiction over Defendant Wu because he resides in New York City and the acts complained of herein occurred in this jurisdiction.

18. The Court may exercise personal jurisdiction over Defendant Yang because she resides in New York City and the acts complained of herein occurred in this jurisdiction.

19. The Court may exercise personal jurisdiction over Relief Defendant Avrahami, a New York licensed real estate broker, because he conducts business in New York and the acts complained of herein occurred in this jurisdiction.

20. The Court may exercise personal jurisdiction over Relief Defendant Sprei because he resides in New York, conducts business in New York City, and the acts complained of herein occurred in this jurisdiction.

21. The Court may exercise personal jurisdiction over TCJ Construction Inc. because it is a domestic corporation with its principal office and place of business in New York City, and the acts complained of herein occurred in this jurisdiction.

22. The Court may exercise personal jurisdiction over 345 Ovington LLC because it is a domestic company with its principal office and place of business in New York City and the acts complained of herein occurred in this jurisdiction.

23. Venue is properly laid in New York County because the Attorney General has her principal office in New York County.

#### **STATUTORY AND REGULATORY FRAMEWORK**

24. The Attorney General brings this action on behalf of the People of the State of New York under the New York Executive Law, the New York General Business Law, the New York General Obligations Law, and the New York Banking Law.

25. Under the Martin Act, the Attorney General is authorized to bring an action in this Court seeking injunctive relief, restitution, damages, disgorgement, penalties, and costs on behalf of the People of the State of New York “[w]henver ... any person, partnership, corporation, company, trust or association has engaged in ... fraudulent practices ....” GBL § 353(1).

26. The Martin Act proscribes fraudulent practices in connection with the sale of securities generally and contains provisions specifically relevant to the sale of shares in a condominium, including, *inter alia*, the following:

- a. GBL § 352-e(1)(a) requires a sponsor to file an offering plan with the Department of Law (a.k.a., OAG) prior to the offer and sale of real estate securities to the public and makes it illegal for the sponsor to omit any material fact in the offering plan;
- b. GBL § 352-e(1)(b) outlines the information required in the offering plan, and includes, among other things, such additional information as will afford purchasers an adequate basis upon which to base their judgment and not omit any material fact or contain any untrue statement of a material fact;
- c. GBL § 352-c provides that it shall be illegal and prohibited for any person, partnership, or corporation to make any representation or statement which is false when the person who made the representation or statement (i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have the knowledge concerning the representation or statement made;
- d. GBL §§ 352-e(2-b) and 352-h provide that any person or entity that sells real estate securities (condominiums) must not commingle the down payments with the sponsors' own money and must retain the deposits in escrow accounts, to be held in trust by the seller, which remain the property of the purchasers, until the sales transaction has closed or consummated.

27. Part 20 of 13 NYCRR (“Regulations”) contain the rules and regulations issued by OAG pursuant to GBL § 352-e(6) that are applicable to the offering plans for the conversion of unoccupied or new real property to condominium ownership. Among the regulatory provision relevant to this special proceeding are the following:

- a. Section 20.1(b) provides that “An offering plan must at a minimum: (1) contain in detail the terms of the transaction and be complete, current and accurate; (2) afford potential investors, purchasers, and participants an adequate basis upon which to found their judgment; (3) not omit any material fact; (4) not contain any untrue statement of a material fact; (5) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale; (6) nor contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances; and (7) not contain any representation or statement which is false, where the sponsor or the person who made such representation or statement: (i) knew the truth; (ii) with reasonable effort could have known the truth; (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation or statement made.”
- b. Section 20.3(o)(2) and (3) provides that the sponsor of a condominium shall comply with the escrow and trust fund requirements of GBL §§ 352-e(2-b) and 352-h and this regulation and all funds paid by purchasers shall be handled in accord thereto.
- c. Section 20.5 provides, among other things, that a Sponsor of an offering plan for real estate securities must amend the offering whenever there are “material

changes of facts or circumstances affecting the property or the offering” which must be disclosed in the offering or amendment thereto.

28. Under the General Business Law, the Attorney General is authorized to bring an action in this Court seeking injunctive relief and restitution on behalf of the People of the State of New York “[w]henver . . . any person, firm, corporation or association or agent or employee thereof has engaged in or is about to engage in” any deceptive acts or practices in the conduct of business. N.Y. Gen. Bus. Law § 349(b).

29. Under the Executive Law, the Attorney General is authorized to apply to this Court for an order of injunctive relief, restitution, damages, disgorgement, and costs on behalf of the People of the State of New York “[w]henver any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business.” N.Y. Exec. Law § 63(12).

30. Under the General Obligations Law, the Attorney General is authorized to bring an action or proceeding in this Court seeking injunctive relief and costs in the name of the People of the State of New York “[i]f it appears . . . that any person, association, or corporation has violated or is violating any of the provisions” of Title 1 of the General Obligations Law, which governs money deposited as security to be held in trust. N.Y. Gen. Obl. Law § 7-109.

31. Under New York Banking Law § 590(2)(a) no person or entity may “engage in the business of making mortgage loans without first obtaining a license” from the New York State Department of Financial Services (“DFS”) in accordance with their regulations.

32. Under New York Banking Law § 599-c(1) no person “shall engage in the business of a mortgage loan originator with respect to any dwelling or residential real property in

[New York] without first obtaining and maintaining annually a license” from the DFS in accordance with their regulations.

33. Plaintiff has served Defendants with a pre-litigation notice as required by General Business Law § 349(c).

### FACTUAL ALLEGATIONS

34. On or about January 7, 2013, Wu, through his then wholly-owned special purpose entity Defendant 345 Ovington LLC, submitted to OAG’s Real Estate Finance Bureau an offering plan (the “Offering Plan”) for a newly constructed twenty-five (25) unit condominium in the Bay Ridge Section of Brooklyn, New York. The Offering Plan was submitted pursuant to Part 20 of OAG’s regulations governing vacant or newly constructed condominiums and was assigned file number CD13-0002.

35. The Offering Plan was accepted for filing by OAG on or about March 24, 2015, and the Building was named “The 345 Ovington Condominium.”

36. Pursuant to OAG’s regulations then in effect, once an offering plan was accepted for filing a sponsor may declare a condominium “effective” upon entering into bona fide purchase agreements for at least fifteen per cent of the units to be offered for sale and submitting an effectiveness amendment to OAG.

37. After an effectiveness amendment is accepted for filing by OAG, the sponsor is then required to file and record a Declaration of Condominium to have the New York City Department of Finance (“NYCDOF”) divide the property in separate tax lots for each condominium unit. A building owner may not transfer title to individual condominium units until after NYCDOF divides the property into separate tax lots.

38. After purportedly executing four (4) purchase agreements, Wu submitted an effectiveness amendment (the “Effectiveness Amendment”) to OAG on September 14, 2015. Ultimately, however, these purchasers rescinded the four (4) purchase agreements.

39. Wu never filed or recorded a Declaration of Condominium with NYCDOF and thus, pursuant to the New York Condominium Act (N.Y. Real Property Law, Article 9-B), the Building is not legally a condominium.

40. Because no Declaration of Condominium was ever filed or recorded, NYCDOF never subdivided the Building—and crucially—there were no separate deeds created to sell or transfer units to potential purchasers.

41. As the property was never subdivided into separate tax lots, Wu could not legally sell or transfer title to any of the twenty-five (25) units in the Building to prospective purchasers.

42. The Building is still one single tax lot in Kings County, New York as of the date of this Complaint: Block 5872 and Lot 68.

#### Sponsor’s Violations of the New York Real Property Tax Code

43. In or about 2014, OAG, along with other local government authorities, commenced a New York City-wide investigation into potential violations of the New York Real Property Tax Law § 421-a (“Section 421-a” or “§ 421-a”). Sponsor and the Building were among those that were part of the investigation.

44. In connection with its review, OAG obtained evidence that Wu reported to the New York City Department of Housing Preservation (“HPD”) that the Building would be a converted to a condominium meant to promote homeownership and thus qualified for the § 421-a tax benefits. However, Wu instead rented apartments in the Building during the condominium conversion process in violation of law and was operating a residential rental business.

45. OAG regulations generally prohibit a sponsor from renting apartments in newly constructed condominiums before sponsor has transferred title to any individual apartment to a *bona fide* purchaser.

46. However, in very limited circumstances, OAG regulations permit a sponsor to rent apartments in newly constructed condominiums before sponsor has transferred title to any individual apartment to a *bona fide* purchaser. Specifically, OAG regulations provide a “safe harbor” where the rented apartments are leased exclusively to *bona fide* purchasers who have not yet closed on the sale of a contracted-for unit (i.e., “interim purchasers”) and where the offering plan fully discloses this option to all purchasers.

47. Wu’s Offering Plan contained a disclosure regarding leasing to interim purchasers. However, as detailed below, OAG learned during its investigation that Wu also leased many apartments to “non-interim purchasers” in violation of the representations in the Offering Plan, OAG regulations, and HPD Rules.

48. OAG was concerned that the residents living in and occupying the units at the Building were traditional tenants (and not interim purchasers) and thus would be entitled to the protections and benefits of the Rent Stabilization Laws<sup>2</sup> as a result of the Building receiving § 421-a Benefits.

49. Basic protections under the New York City RSL include, among other things, being provided a rent stabilized lease and being charged rents (and annual increases) that comply with rules and policies provided for by the NYC Rent Guidelines Board. *See generally* New

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<sup>2</sup> Basic protections under the New York City RSLs include, among other things, being provided a rent stabilized lease and being charged rents (and annual increases) that comply with rules and policies provided for by the NYC Rent Guidelines Board. *See generally* New York City Administrative Code § 26-501 *et seq.*) and the Rent Stabilization Code (the “RSC”), codified at 9 N.Y.C.R.R. § 2520.1 *et seq.*

York City Administrative Code § 26-501 *et seq.*) and the Rent Stabilization Code (the “RSC”), codified at 9 N.Y.C.R.R. § 2520.1–*et seq.*

50. On August 25, 2015, OAG jointly issued, with HPD and the New York State Division of Homes and Community Renewal (“HCR”), a letter informing Wu that the Building was not in compliance with its obligations under § 421-a and OAG would deem its then-filed condominium Offering Plan abandoned if Wu did not respond to the letter.

51. When no response was received indicating that Wu wished to remain in compliance with its § 421-a obligations, a final agency letter was issued by OAG to him on December 8, 2015, notifying Wu that OAG deemed the condominium’s original Offering Plan abandoned.

52. In early 2016, Wu responded to OAG and represented that the residents living in the Building were not “tenants” under a traditional lease, but genuine “interim purchasers” who had executed purchase agreements under the originally filed Offering Plan. Therefore, Wu argued, the Building’s residents were exempt from the RSL protections.

53. Relying upon these representations, OAG consented to permit the Wu to file an amended and restated offering plan under Part 23 of OAG’s regulations (pertaining to an *occupied* dwelling) (the “Proposed Amended and Restated Plan”).

54. Wu subsequently submitted a Proposed Amended and Restated Plan to OAG on April 25, 2016. However, the Proposed Amended and Restated Plan was never accepted for filing by OAG. By letter dated May 23, 2016, OAG detailed for Wu numerous deficiencies in the Proposed Amended and Restated Plan, including uncertainty over his representations to OAG about the status of the claimed interim purchasers.

OAG’s Second Investigation into Steve Wu and 345 Ovington

55. As a result of, among other things, the failure to file a corrected Amended and Restated Plan, OAG commenced a new inquiry into the status of the alleged interim purchasers and their purchase agreements.

56. In response to requests for information, Wu, through his then-counsel, produced seventeen (17) single-page agreements purportedly representing contracts of sale for condominium units at the Building. Each agreement recited that there was a down payment of \$5,000 per unit (totaling \$85,000), which were held in escrow by another attorney, acting as escrow agent.

57. OAG subsequently learned that many of the residents in the Building were ethnic-Chinese and spoke and read limited English.

58. None of the single-page agreements conformed to the purchase agreement disclosed in the originally filed Offering Plan or the proposed Amended and Restated Plan, as was required per OAG regulations, and a number of the improper single-page agreements were composed in both Chinese and English. Wu's use of a purchase agreement in languages other than English was not disclosed in either the original Offering Plan or the Proposed Amended and Restated Plan.

59. At the time that OAG's second investigation commenced, OAG learned that that eighteen (18) units in the Building were purportedly sold, and OAG eventually learned that there were actually twenty (20) attempted sales; however, Wu initially only produced to OAG seventeen (17) single-page agreements as "proof" of the purported sales.

60. Based upon the purported sale of eighteen (18) units at the Building, there should have been at least \$90,000 deposited in the Building's escrow account. In addition, the

investigation revealed that many of the purported purchasers provided additional monies to Sponsor and Wu that were not held in escrow.

61. Wu admitted during an investigatory interview by OAG that he personally funded the \$90,000 in the escrow account after executing the purchase agreements but that he failed to deposit any of the purchasers' additional down payment funds into the escrow accounts. Wu also admitted that he used the down payments for other purposes. No other funds were deposited into these escrow accounts.

62. Wu also admitted during this interview that he sold the units at prices that were not the stated prices disclosed in the Offering Plan or the Proposed Amended and Restated Plan, as required by OAG's regulations.

63. OAG also discovered that most residents claimed to be either "condo unit owners" themselves or had been renting directly from individuals they believed to be condominium unit owners. However, Wu never legally transferred title to a unit to any purchaser (nor could he) because a legal condominium was never created.

64. Wu also executed notes and residential mortgages to several of the purported purchasers. Wu received monthly payments on these mortgage notes from these individuals.

65. OAG subsequently learned that Wu used substantial portions of the monies he received from the residents for the purported "sale" of units to make payments to third parties and to pay his construction loan and development loan.

66. Nearly all of the deceived "purchasers" in the Building were also paying Wu and Yang what they believed to be monthly condominium common charges or maintenance fees of varying amounts, but totaling thousands of dollars monthly in the aggregate, notwithstanding that there was no legal right to collect such maintenance because a legal condominium was never

created. This repeated and persistent illegal conduct continued at least and until Wu allegedly sold shares in 345 Ovington LLC to Relief Defendants Avrahami and Sprei in December 2019.

67. Defendant Yang participated with Wu in the collection and accounting of these funds, including the monthly maintenance payments and rents collected, and funneled the proceeds to Defendants TCJ Construction's and 345 Ovington LLC's various bank accounts.

68. In light of this information, OAG requested additional information and documentation from Wu concerning each alleged "purchase" of a condominium unit in the Building. Wu provided copies of interim leases or affidavits purportedly from each resident detailing the nature of their respective purchases from him.

69. Wu also represented to OAG that a few units were vacant. Documents offered to OAG by Wu contained numerous misrepresentations and outright false statements all in furtherance of his scheme and to obscure the extent of his original fraud and misrepresentations.

70. In or about late November 2018, OAG received a complaint from an aggrieved interim purchaser claiming that all their escrow deposit funds had been stolen by Wu and that they had been defrauded.

71. Shortly thereafter, OAG learned that the Building was pledged as security for a note with an outstanding principal amount, at that time, of approximately \$5.8 million and was the subject of a foreclosure action in Kings County Supreme Court. *See Maxim Credit Group, LLC v. 345 Ovington LLC*, Index No. 520464/2018 (Kings Co. Sup. Ct.).

72. On June 25, 2020, Relief Defendant Avrahami filed a Summons and Notice against Defendants Wu and 345 Ovington LLC (among others not party to this proceeding). No further proceedings have occurred in that matter. *See Shimon Avrahami v. 345 Ovington LLC, et al.*, Index No. 510942/2020 (Kings Co. Sup. Ct.).

73. More recently, on April 13, 2021, an additional foreclosure action was filed in Kings County Supreme Court alleging that Defendants Wu and 345 Ovington LLC (among others not party to this proceeding) had pledged the Building against a \$2,750,000.00 mortgage note. *See Chun Peter Dong v. Xi Hui Wu, et al.*, Index No. 508613/2021 (Kings Co. Sup. Ct.).

74. Finally, on June 2, 2021, Relief Defendant Avrahami filed an action against Relief Defendant Sprei to execute upon a confession of judgment by Sprei in favor of Avrahami. *See Shimon Avrahami v. Shimon Sprei*, Index No. 513265/2021 (Kings Co. Sup. Ct.). Among the pleadings was attached the settlement agreement between Avrahami and Sprei that recites their alleged purchase of 345 Ovington LLC and the Building from Wu on December 4, 2019 for \$1,500,000.00.

75. Despite months of communications between Wu and his counsel, on the one hand, and OAG on the other, Wu and his then-counsel never disclosed to OAG the existence of the initial \$5.8 million foreclosure action nor the subsequent alleged sale of his interest in 345 Ovington to Avrahami and Sprei in late 2019.

76. OAG immediately thereafter commenced a formal investigation and issued subpoenas to Defendants Wu and 345 Ovington LLC for testimony.

77. From December 2018 to February 2020, approximately nineteen (19) aggrieved unit “purchasers” retained counsel and filed private civil actions in Kings County Supreme Court for, among other claims, breach of contract and common law fraud. *See Taofa Xu vs. 345 Ovington*, Index No. 525647/2018 (Kings Co. Sup. Ct.) (fraud, breach of contract, unjust enrichment, conversion, negligent misrepresentation, breach of fiduciary duty, and fraudulent concealment); *Ya Hong Chen vs. 345 Ovington*, Index No. 509606/2019 (Kings Co. Sup. Ct.) (same); *Zhi Dong Chen, et al. vs. 345 Ovington*, Index No. 510255/2019 (Kings Co. Sup. Ct.)

(same); *Ying Jie Li vs. 345 Ovington*, Index No. 510260/2019 (Kings Co. Sup. Ct.) (same); *Chin How Tan vs. 345 Ovington*, Index No. 510271/2019 (Kings Co. Sup. Ct.) (same); *Qi Lin Li vs. 345 Ovington*, Index No. 510272/2019 (Kings Co. Sup. Ct.) (same); *Peng Chu Chan vs. 345 Ovington*, Index No. 510292/2019 (Kings Co. Sup. Ct.) (same); *Frank Zheng vs. 345 Ovington*, Index No. 510302/2019 (Kings Co. Sup. Ct.) (same); *Hai Ni vs. 345 Ovington*, Index No. 510306/2019 (Kings Co. Sup. Ct.) (same); *Jian Li Chen vs. 345 Ovington*, Index No. 510308/2019 (Kings Co. Sup. Ct.) (same); *Suet Ying Kwok vs. 345 Ovington*, Index No. 510310/2019 (Kings Co. Sup. Ct.) (same); *Yuk Yam Cheung vs. 345 Ovington*, Index No. 510317/2019 (Kings Co. Sup. Ct.) (same); *Shu Zhen Zheng vs. 345 Ovington*, Index No. 510324/2019 (Kings Co. Sup. Ct.) (same); *Jia Yi Ouyang vs. 345 Ovington*, Index No. 510326/2019 (Kings Co. Sup. Ct.) (same); *Sau Yam Cheung vs. 345 Ovington*, Index No. 510343/2019 (Kings Co. Sup. Ct.) (same); *Sing Tat Chan vs. 345 Ovington*, Index No. 510517/2019 (Kings Co. Sup. Ct.) (same); *Ai Ming Zheng vs. 345 Ovington*, Index No. 510517/2019 (Kings Co. Sup. Ct.) (same); *Zhang Jiang Lin vs. 345 Ovington*, Index No. 512006/2019 (Kings Co. Sup. Ct.) (same); and *Xing Ping Lee vs. 345 Ovington*, Index No. 504169/2020 (Kings Co. Sup. Ct.) (same). Eighteen (18) of the above actions were consolidated under a single umbrella action. *See Ya Hong Chen, et al. vs. 345 Ovington*, Index No. 0509606/2019 (Kings Co. Sup. Ct.). The purported purchaser of Unit 5E has not filed an action against Defendants.

78. The defrauded “purchasers” obtained judgments against Wu and 345 Ovington LLC and subsequently on July 27, 2022, filed an involuntary petition in bankruptcy pursuant to Section 303 of the United States Bankruptcy Code against 345 Ovington LLC. *See In re 345 Ovington LLC*, Case No. 1-22-41782-jmm (E.D.N.Y. Bank.).

79. As a result of its investigation, OAG discovered that during the period May 21, 2012, through July 26, 2016, Wu and 345 Ovington executed purchase agreements for units 1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3E, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E with members of the public.

80. Recently, OAG learned that Wu may have also sold Unit 1B to Zheng Wen Tang, who purportedly paid Wu \$120,000 in deposits, and Unit 3D to Andrew Mak, who purportedly paid Wu \$91,000 in deposits in 2013. Neither of these purchasers have filed actions against Wu.

81. The foregoing conduct constitutes the persistent and repeated unlawful public offering of real estate securities in New York without a valid accepted offering plan on file with OAG in contravention of the Martin Act and OAG's regulations.

82. Additionally, OAG discovered that the down payments of the various purchasers had not been deposited into escrow accounts as required by the Martin Act, OAG's regulations, the Offering Plan, and other laws, but were ostensibly utilized by Wu to make payments on the notes, to make payments to contractors and subcontractors constructing the Building, and for other expenses, all in violation of applicable law.

83. Pursuant to investigatory subpoenas dated January 28, 2019, Defendants Wu and 345 Ovington LLC, accompanied by their new counsel, appeared at OAG's offices in Manhattan on July 3, 2019, and on October 4, 2019, respectively, to provide testimony. On each occasion, Wu, 345 Ovington LLC's sole principal and owner at the time, admitted in sum or substance that he:

- a. Repeatedly and publicly marketed and sold in New York securities in a purported condominium before an offering plan was accepted for filing by OAG;

b. Repeatedly failed to deposit any down payments or proceeds of any sales of condominium securities into escrow accounts;

c. Made false representations to OAG that the five (5) unsold condominium units owned by the Sponsor were vacant of any tenants or occupants; and

d. Offered, originated, and serviced residential mortgage loans to at least four (4) purchasers although unlicensed to do so.

84. OAG also determined through its investigation that Wu misrepresented the nature of the condominium transaction to purported purchasers by selling them non-existent condominium units without an accepted offering plan on file with OAG and failed to deliver deeds to the purchasers. The investigation also revealed that Wu and Sponsor procured simple purchase agreements written in English and Chinese and represented to the purchasers that an offering plan would soon be accepted for filing by OAG when Sponsor knew such representation was false.

85. Sponsor also rented the five (5) remaining apartments (Units # 1A, 1B, 2E, 3D, and 4E) in violation of the RSL and § 421-a since those tenants were not charged rent stabilized rents, failed to receive rent stabilized leases, and 345 Ovington LLC failed to register the rents with DHCR.

86. Defendants' many violations of City and State law also include the following:

a. Violations of security deposit laws, 9 N.Y.C.R.R. § 2525.4 and N.Y. General Obligations Law § 7-103, by repeatedly failing to place tenants' security deposits in trust accounts, and comingling tenants' security deposits with Defendants' general funds;

b. Deceptive business practices, N.Y. General Business Law § 349, by marketing and selling condominium units to purchasers before a valid offering plan was accepted for filing by the Attorney General, deceiving purchasers about the legal status of the Building and Defendants' inability to transfer title to any apartment unit for value to any purchaser, and about their rights; and

c. Deceptive business practices, N.Y. General Business Law § 349, by offering purchase agreements that failed to comply with governing law and regulations, deceiving prospective purchasers about the legal status of the Building, and about their rights.

87. As part of a continuing scheme, Wu persistently lied and made misrepresentations to OAG in his regulatory filings and communications, in responses to OAG requests for information, and verbally through counsel, concerning his unlawful sales activity, his illegal rental activity, his collections of maintenance fees, his collection of rents, the true status of the occupants of the Building, and the dummy escrow account, which he self-funded to obscure the fact that he was diverting funds for his own use.

88. Wu also repeatedly and persistently failed to disclose that he was improperly converting the purchase money deposits, purchase money mortgage payments, maintenance fees, and monthly rents and using it for purposes that were improper and unlawful in violation of the Martin Act, OAG's regulations, the RSL, and the Executive Law.

89. Wu's and Yang's scheme and deception continue to this day.

### **FIRST CAUSE OF ACTION**

#### **Offering Real Estate Securities for Sale in New York without a Valid Accepted Offering Plan on File with the Department of Law – Violations of the Martin Act**

90. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

91. Plaintiff asserts the First Cause of Action against Defendants Wu and 345 Ovington LLC.

92. The Martin Act (New York General Business Law §§ 352-e(1)(a) & (2)) provides that it is illegal for any person or entity to “to make or take part in a public offering or sale in or from the state of New York of securities constituted of participation interests or investments in real estate, mortgages or leases ...” unless there is an offering plan or prospectus on file with the Attorney General which comports to any regulations promulgated by the Attorney General pertaining to such offering in real estate securities.

93. Defendant 345 Ovington LLC was, at all relevant times, the owner of the Building. Defendant Wu was, at all relevant times, the owner of and a principal in 345 Ovington LLC.

94. Defendants Wu and 345 Ovington LLC marketed and purported to sell units 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E to members of the public for millions of dollars.

95. When Defendants Wu and 345 Ovington LLC sold these units, there was no valid and accepted offering plan filed with the Attorney General.

96. By reason of the conduct alleged above, Defendants have violated Sections 352-e(1)(a) & (2) of the New York General Business Law for each offer or purported sale.

## SECOND CAUSE OF ACTION

### **Illegal Sales of Real Estate Securities – N.Y. Exec. Law § 63(12) Violation of N.Y. G.B.L. §§ 352-e(1)(a) & (2)**

97. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

98. Plaintiff asserts the Second Cause of Action against Defendants Wu and 345 Ovington LLC.

99. Executive Law § 63(12) authorizes the Attorney General to bring a special proceeding when any person or entity engages in repeated illegal acts or persistent illegality in the conduct of business.

100. The Martin Act (New York General Business Law §§ 352-e(1)(a) & (2)) provides that it is illegal for any person or entity to “to make or take part in a public offering or sale in or from the state of New York of securities constituted of participation interests or investments in real estate, mortgages or leases ...” unless there is an offering plan or prospectus on file with the Attorney General which comports to any regulations promulgated by the Attorney General pertaining to such offering in real estate securities.

101. Defendants Wu and 345 Ovington LLC repeatedly and illegally sold units in 345 Ovington to members of the public for millions of dollars.

102. Defendants sold from the about May 21, 2012, through July 26, 2016, worthless real estate securities for units 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E.

103. When Defendants Wu and 345 Ovington LLC repeatedly sold the units referenced above, there was no valid and accepted offering plan filed with the Attorney General.

104. By reason of the conduct alleged above, Defendants have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

### **THIRD CAUSE OF ACTION**

**Failing to Deposit Purchase Funds Into Escrow Accounts – Violations of the Martin Act  
(N.Y. G.B.L. §§ 352-e(2-b), 352-h; 13 NYCRR § 20.3(o)(2-7))**

105. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

106. Plaintiff asserts the Third Cause of Action against Defendants Wu and 345 Ovington LLC.

107. The Martin Act (New York General Business Law §§ 352-e(2-b), 352-h; 13 NYCRR § 20.3(o)(2-7)) provides that any person or entity that sells real estate securities (condominiums) must not commingle the down payments with the Sponsors' own money and must retain the deposits in escrow accounts, to be held in trust by the seller, which remain the property of the purchasers, until the sales transaction has closed or consummated.

108. Defendants Wu and 345 Ovington LLC collected down payments from purchasers to whom it offered and sold real estate securities in a purported condominium for units 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E and failed to deposit the proceeds collected thereunder in secure escrow accounts.

109. Defendants instead commingled the down payments with their own funds and used them to pay for personal expenses.

110. Defendants also failed to notify the purchasers of the name and location of the banks holding the escrow deposits.

111. Defendant Wu subsequently created sham escrow accounts for a number of units sold and funded each account with \$5,000 paid from his own funds in order to further his deception and obscure his theft of the proceeds of the sales.

112. By reason of the conduct alleged above, Defendants have violated Sections §§ 352-e(2-b) and 352-h of the New York General Business Law and 13 NYCRR § 20.3(o)(2-7) for each deposit.

#### **FOURTH CAUSE OF ACTION**

##### **Failure to Safeguard Escrow Deposits – N.Y. Exec. Law § 63(12) Violation of N.Y. G.B.L. §§ 352-e(2-b), 352-h; 13 NYCRR § 20.3(o)(2-7)**

113. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

114. Plaintiff asserts the Fourth Cause of Action against all Defendants.

115. Executive Law § 63(12) authorizes the Attorney General to bring a special proceeding when any person or entity engages in repeated illegal acts or persistent illegality in the conduct of business.

116. The Martin Act (New York General Business Law §§ 352-e(2-b), 352-h; 13 NYCRR § 20.3(o)(2-7)) provides that any person or entity that sells real estate securities including interests in condominiums units, must not commingle the down payments with the Sponsors' own money and must retain the deposits in escrow accounts, to be held in trust by the seller, which remain the property of the purchasers, until the sales transaction has closed or consummated.

117. The Defendants repeatedly collected down payments for the sales of real estate securities in a purported condominium for units 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E.

118. Defendants repeatedly commingled such down payments with their own funds.

119. Defendants also repeatedly failed to notify the purchasers of the name and location of the banks holding such down payments.

120. By reason of the conduct alleged above, Defendants have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

### **FIFTH CAUSE OF ACTION**

#### **Fraud and Misrepresentation in Connection with the Sale or Offering of Real Estate Securities (Fraud) – Violations of the Martin Act**

121. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

122. Plaintiff asserts the Fifth Cause of Action against Defendants Wu and 345 Ovington LLC.

123. The Martin Act (New York General Business Law § 352-c) provides that it is illegal for any person or entity to commit any acts of fraud or make misrepresentations in connection with the offer or sale of real estate securities in New York.

124. Defendants Wu and 345 Ovington LLC offered and purported to sell to New York residents real estate securities claimed to be associated with condominium units in the Building.

125. Defendants Wu and 345 Ovington LLC falsely and fraudulently executed individualized, mixed handwritten and typewritten contracts of sale in mixed English and Chinese languages, which were not the standard English-language boiler-plate typewritten form contracts of sale disclosed in the submitted offering plan, all to the detriment of the purchasers.

126. Defendants Wu and 345 Ovington LLC falsely and fraudulently offered and sold to New York purchasers worthless securities to condominium apartments when he could not legally transfer anything of value since the Building was not subdivided by the NYCDOF into

separate tax blocks and lots, as part of an accepted offering plan on file with OAG, and therefore no deeds to the realty were legally capable of being tendered at closing.

127. By reason of the conduct alleged above, Defendants have violated Section 352-c of the New York General Business Law for each purported sale of real estate securities.

### **SIXTH CAUSE OF ACTION**

#### **Statutory Fraud – N.Y. Exec. Law § 63(12)**

128. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

129. Plaintiff asserts the Sixth Cause of Action against all Defendants.

130. Executive Law § 63(12) authorizes the Attorney General to bring an action when any person or entity engages in repeated fraudulent acts or persistent fraud in the operation of a business.

131. Fraud under Executive Law § 63(12) is broadly defined to include “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions.”

132. Defendants have engaged in repeated and persistent fraud in the operation of their real-estate business.

133. Defendants Wu and 345 Ovington LLC repeatedly and persistently offered and purported to sell to New York residents real estate securities for units 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E at the Building.

134. Defendants Wu and 345 Ovington LLC repeatedly and persistently executed fraudulently individualized, mixed handwritten and typewritten contracts of sale in mixed English and Chinese languages, which were not the standard English-language boiler-plate

typewritten form contracts of sale disclosed in the submitted offering plan, all to the detriment of the purchasers.

135. Defendants Wu and 345 Ovington LLC repeatedly and persistently fraudulently sold to New York purchasers worthless securities to condominium apartments when he could not legally have transferred anything of value since 345 Ovington Avenue was not subdivided by the NYCDOF into separate tax blocks and lots, as part of an accepted offering plan on file with OAG, and therefore no deeds to the realty were legally capable of being tendered at closing.

136. Defendants repeatedly and persistently collected the down payments of the sales of securities and fraudulently failed to place the deposits into escrow trust accounts in accordance with the Martin Act.

137. Defendants repeatedly and persistently deposited the proceeds of the sale of securities into the accounts of 345 Ovington LLC and/or TCJ Construction, Inc. and fraudulently used the proceeds for personal expenses.

138. Defendants repeatedly and persistently charged and collected monthly maintenance fees from the purchasers of the condominium real estate securities despite the fact that no legal condominium had been created due to there not being recorded in the files of the NYCDOF a Declaration of Condominium.

139. By reason of the foregoing conduct alleged above, Defendants have engaged in repeated and persistent fraudulent conduct in violation of Executive Law § 63(12).

## **SEVENTH CAUSE OF ACTION**

### **Fraud and Misrepresentation in Connection with the Sale or Offering of Real Estate Securities (Misrepresentation) – Violations of the Martin Act**

140. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

141. Plaintiff asserts the Seventh Cause of Action against Defendants Wu and 345 Ovington LLC.

142. The Martin Act (New York General Business Law § 352-c provides that it is illegal for any person or entity to commit any acts of fraud or make misrepresentations in connection with the offer or sale of real estate securities in New York.

143. Defendants Wu and 345 Ovington LLC offered and attempted to sell to New York residents real estate securities associated with the Building.

144. In connection with the offer and sale of real estate securities, Defendants Wu and 345 Ovington LLC proffered representations to the public and OAG in its Offering Plan submissions. Defendants specifically represented that the Building was vacant.

145. This representation, however, was false because there were either tenants, occupants, or residents living in units 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E at the time Defendants Wu and 345 Ovington LLC made these representations.

146. By reason of the conduct alleged above, Defendants have violated Section 352-c of the New York General Business Law.

### **EIGHTH CAUSE OF ACTION**

#### **Fraud and Misrepresentation in Connection with the Sale or Offering of Real Estate Securities (Misrepresentation) – Violations of the Martin Act and 13 N.Y.C.R.R. § 20.5**

147. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

148. Plaintiff asserts the Eighth Cause of Action against Defendants Wu and 345 Ovington LLC.

149. The Martin Act (New York General Business Law §§ 352-e(1)(a) & (2)) provides that it is illegal for any person or entity to “to make or take part in a public offering or sale in or from the state of New York of securities constituted of participation interests or investments in real estate, mortgages or leases ...” unless there is an offering plan or prospectus on file with the Attorney General which comports to any regulations promulgated by the Attorney General pertaining to such offering in real estate securities.

150. Section 20.5 of title 13 of the NYCRR provides, among other things, that a Sponsor of an offering plan for real estate securities must amend the offering whenever there are “material changes of facts or circumstances affecting the property or the offering” which must be disclosed in the offering or amendment thereto.

151. Defendants Wu and 345 Ovington LLC offered real estate securities on multiple occasions to multiple New York purchasers at prices that did not comport with the prices disclosed in the submitted offering plan.

152. Defendants Wu and 345 Ovington LLC were required under OAG’s regulations to file an amendment or update its draft submission with OAG and disclose the prices offered to purchasers.

153. Furthermore, Defendants Wu and 345 Ovington LLC were required under OAG’s regulations to file an amendment or update its draft submission with OAG in order to disclose the sales of securities that they made regarding units 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E.

154. By reason of the conduct alleged above, Defendants have violated Sections 352-e(1)(a) & (2) of the New York General Business Law and 13 NYCRR § 20.5.

### **NINTH CAUSE OF ACTION**

#### **Security Deposits N.Y. Gen. Oblig. Law § 7-103**

155. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

156. Plaintiff asserts the Ninth Cause of Action against Defendants Wu and 345 Ovington LLC.

157. New York General Obligations Law § 7-109 authorizes the Attorney General to bring a special proceeding whenever it appears to the Attorney General that any person has violated any of the provisions of the General Obligations Law pertaining to money deposited for rental of real property. N.Y. Gen. Oblig. Law §§ 7-101 to 7-109.

158. Under the General Obligations Law, a landlord must not commingle a tenant's security deposit with the landlord's own money and must provide written notice to the tenant that indicates the name and address of the bank in which the security deposit is located and the amount of the deposit. N.Y. Gen. Oblig. Law § 7-103(1)-(2). Whenever the security deposit is for the rental of property containing six or more family dwelling units, the landlord must deposit it in an interest-bearing account. *Id.* at § 7-103(2-a).

159. Defendants collected security deposits for the rental of a property that contained six or more residential apartments, to wit, the Building.

160. Defendants failed to place any such security deposits in interest-bearing accounts.

161. Defendants also commingled such security deposits with their own funds.

162. Defendants also failed to notify tenants of the name and location of the bank's holdings such deposits.

163. By reason of the conduct alleged above, Defendants have violated Section 7-103 of the New York General Obligations Law.

### TENTH CAUSE OF ACTION

#### Common Law Fraud – N.Y. Exec. Law § 63(12)

164. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

165. Plaintiff asserts the Tenth Cause of Action against Defendants Wu, Yang, and 345 Ovington LLC.

166. The essential elements of common law fraud in New York are false representation of a material fact, scienter, deception, and injury. *See Channel Master Corp. v. Aluminum Ltd. Sales, Inc.*, 4 N.Y.2d 403, 407 (1958).

167. Defendants have engaged in repeated and persistent common law fraud in the operation of their real-estate business.

168. All of the fraudulent acts actionable under Executive § 63(12) as statutory fraud in relation to the operation of the Building also meet the elements of common law fraud.

169. Defendants Wu and 345 Ovington LLC repeatedly and persistently offered and attempted to sell to New York residents real estate securities purportedly associated with the Building for units 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E.

170. Defendants Wu and 345 Ovington LLC repeatedly and persistently executed fraudulently individualized, mixed handwritten and typewritten contracts of sale in mixed

English and Chinese languages, which were not the standard English-language boiler-plate typewritten form contracts of sale disclosed in the submitted offering plan to the detriment of the purchasers.

171. Defendants Wu and 345 Ovington LLC repeatedly and persistently fraudulently sold to New York purchasers worthless securities to condominium apartments when he could not legally have sold them anything of value since 345 Ovington Avenue was not subdivided by the NYCDOF into separate tax blocks and lots, as part of an accepted offering plan on file with OAG, and therefore no deeds to the realty were legally capable of being tendered at closing.

172. Defendants repeatedly and persistently collected the down payments of the sales of securities and fraudulently failed to place the deposits into escrow trust accounts in accordance with the submitted offering plan and the Martin Act.

173. Defendants repeatedly and persistently deposited the proceeds of the sale of securities into the accounts of 345 Ovington LLC and/or TCJ Construction, Inc. and fraudulently used the proceeds for personal expenses.

174. Defendants repeatedly and persistently charged and collected monthly maintenance fees from the purchasers of the condominium real estate securities even though no legal condominium had been created due to there not being recorded in the files of the NYCDOF a Declaration of Condominium.

175. By reason of the conduct alleged above, Defendants have engaged in repeated and persistent fraudulent conduct, meeting the elements of common law fraud, in violation of Executive Law § 63(12).

### **ELEVENTH CAUSE OF ACTION**

#### **Deceptive Business Practices – N.Y. Exec. Law § 63(12) Violation of New York General Business Law § 349**

176. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

177. Plaintiff asserts the Eleventh Cause of Action against Defendants Wu, Yang and 345 Ovington LLC.

178. Under the New York General Business Law, “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.” N.Y. Gen. Bus. Law § 349(a).

179. Defendants have engaged in deceptive and misleading consumer-directed conduct.

180. Defendants have commingled down payments and security deposits with their own funds.

181. Defendants have misled prospective purchases by deceiving them about the legal status of their condominium apartments.

182. Defendants have misled purchasers by using non-standard contracts of sale with non-standard terms and conditions in the English and Chinese languages.

183. Defendants have misled purchasers by claiming an offering plan was duly accepted by OAG, when in fact it was not.

184. By reason of the conduct alleged above, Defendants have engaged in repeated and persistent deceptive acts and practices in the conduct of business in violation of GBL Article 22-A, § 349.

## **TWELFTH CAUSE OF ACTION**

### **Issuing and Underwriting Mortgages without a License – N.Y. Exec. Law § 63(12) Violation of New York Banking Law §§ 590(2)(a) and 599-c**

185. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

186. Plaintiff asserts the Twelfth Cause of Action against Defendants Wu and 345 Ovington LLC.

187. Under New York Banking Law § 590(2)(a) no person or entity may “engage in the business of making mortgage loans without first obtaining a license” from the New York State Department of Financial Services (“DFS”) in accordance with their regulations.

188. Under New York Banking Law § 599-c(1) no person “shall engage in the business of a mortgage loan originator with respect to any dwelling or residential real property in [New York] without first obtaining and maintaining annually a license” from the DFS in accordance with their regulations.

189. Defendants Wu and 345 Ovington LLC originated and provided five (5) mortgage loans to five (5) New York purchasers of condominium units at 345 Ovington Avenue, namely Units 1C, 1D, 1E, 2B and 3C.

190. Defendants Wu and 345 Ovington LLC drafted the five (5) mortgage notes; established an interest rate; calculated and adopted amortization schedules; designed payment terms; and collected payments (interest and principal) thereunder.

191. Defendants Wu and 345 Ovington LLC originated the mortgages and conducted the aforementioned mortgage business with respect to 345 Ovington Avenue despite not first obtaining licenses authorizing such activity from the DFS.

192. By reason of the conduct alleged above, Defendants Wu and 345 Ovington LLC have engaged in repeated and persistent illegal conduct in violation of N.Y. Executive Law § 63(12).

**THIRTEENTH CAUSE OF ACTION  
(1 Count)**

**Unjust Enrichment**

193. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

194. Plaintiff asserts the Thirteenth Cause of Action against Relief Defendants Avrahami, Sprei, and John Does #1-12.

195. Relief Defendants Avrahami, Sprei, and John Does #1-12 received the benefits of Defendants fraud originating from Avrahami's, Sprei's, and John Doe's #1-12 ownership of the Sponsor entity and thus enriched at the expense of the twenty (22) defrauded unit owners.

196. Accordingly, by reason of the above conduct alleged it is against equity and good conscience to permit Avrahami, Sprei, and John Doe #1-12 to retain any of the proceeds of Defendants' fraud.

**FOURTEENTH CAUSE OF ACTION**

**N.Y. Exec. Law § 63(12)  
Violations of 9 NYCRR § 2522.5**

197. The Attorney General repeats and re-alleges, as though fully set forth herein, paragraphs 1-89.

198. Plaintiff asserts the Fourteenth Cause of Action against Defendants Wu, Yang and 345 Ovington LLC.

199. Executive Law § 63(12) authorizes the Attorney General to bring a special proceeding when any person or entity engages in repeated illegal acts or persistent illegality in the conducting of business.

200. Section 2522.5 of Title 9, NYCRR (“the Rent Stabilization Code”) sets forth the obligations of owners of rent stabilized accommodations with respect to issuing leases and lease renewals. Owners must provide rent-stabilized tenants the option of a one-year or two-year lease both upon issuing the initial vacancy lease and upon renewal of that lease. 9 NYCRR § 2522.5(a)(1), (b)(1). Owners may not issue an initial vacancy lease with a rent that is more than the legal regulated rent plus all authorized increases. 9 NYCRR § 2522.5(a)(1). All rent-stabilized leases must be accompanied by a rider describing the rights and duties of owners and tenants under Rent Stabilization. 9 NYCRR § 2522.5(c).

201. Defendants Wu, Yang and 345 Ovington LLC repeatedly failed to comply with 9 NYCRR § 2522.5 when issuing leases to tenants in Sponsor-owned units in the Building.

202. Beginning in 2013, Defendants Wu, Yang and 345 Ovington LLC issued illegal leases which did not comply with Rent Stabilization. These leases also listed illegal rents and failed to give the tenant the option of a one- or two-year term. The leases were exclusively for a one-year term.

203. Defendants Wu, Yang and 345 Ovington LLC failed to provide legal renewal lease forms which listing legal rents and offering terms compliant with the law.

204. By engaging in repeated conduct that violated 9 NYCRR § 2522.5 Defendants Wu, Yang and 345 Ovington LLC engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

**PRAYER FOR RELIEF**

Wherefore, it is respectfully requested that the Court issue an order and judgment as follows:

- A. Permanently enjoining all Defendants from further engaging in the fraudulent and unlawful acts and practices alleged in the Verified Complaint pursuant to N.Y. Exec. Law § 63(12), and N.Y. Gen. Bus. Law §§ 349 and 353;
- B. Permanently enjoining Defendants Wu, Yang, and 345 Ovington from directly or indirectly engaging in the issuance, offering for sale, promotion, negotiation, advertisement, sale or distribution of securities in or from the State of New York as governed by Article 23-A of the N.Y. Gen. Bus. Law, pursuant to N.Y. Exec. Law § 63(12) and N.Y. Gen. Bus. Law § 353;
- C. Permanently enjoining Defendants Xi Hui Wu and Xiao Rong Yang from directly or indirectly engaging in any business or activity related to real estate development, real estate finance, construction, property development, or the transaction involving any interest in real estate in the State of New York, other than their own personal residences, pursuant to N.Y. Exec. Law § 63(12) and the inherent equitable powers of this Court;
- D. Directing Defendants to disgorge the illegal profits and unjust enrichment resulting from the purported sale of any interest in the Building in an amount to be determined by the Court after an accounting, pursuant to N.Y. Exec. Law § 63(12), N.Y. Gen. Bus. Law § 353, and the inherent equitable powers of this Court;

- E. Directing each Defendant to pay a civil penalty of \$5,000 for each violation of N.Y. Gen. Bus Law § 349, pursuant to N.Y. Gen. Bus. Law § 350-d;
- F. Directing each Defendant to pay a civil penalty of \$2,000, pursuant to C.P.L.R. § 8303(a)(6);
- G. Directing each Defendant to pay the State of New York all monies converted in violation of Section 103 of Article 7 of the General Obligations Law and interest thereon so that the true owners of such monies and interest can be ascertained and compensated;
- H. Directing the Relief Defendants to disgorge all proceeds and profits obtained from their unjust enrichment;
- I. Directing the Defendants to disgorge all proceeds and profits obtained from their breach of the Rent Stabilization Code;
- J. Awarding Plaintiff costs against each Defendant pursuant to C.P.L.R. § 8303(a)(6) and N.Y. Gen. Bus. Law § 7-109; and

K. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
November 2, 2022

Respectfully submitted,

LETITIA JAMES  
Attorney General of the State of New York  
Attorney for Plaintiff  
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By: \_\_\_\_\_



NICHOLAS J. MINELLA  
Assistant Attorney General  
Real Estate Finance Bureau

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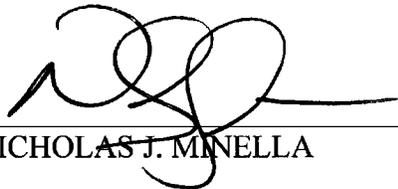
JACQUELINE DISCHELL  
Bureau Chief  
Real Estate Finance Bureau

**VERIFICATION**

NICHOLAS J. MINELLA, an Attorney admitted to the Bar of this State, pursuant to N.Y. CPLR § 2106, hereby affirms and certifies that:

1. I am an attorney in the Office of Letitia James, Attorney General of the State of New York, who appears on behalf of the People of the State of New York as Plaintiff in this action. I am duly authorized to make this verification and am acquainted with the facts in this matter.
2. I have read the foregoing Verified Complaint and know the contents thereof, which are to my knowledge true, except as to matters stated to be alleged on information and belief, and as to those matters, I believe them to be true. The grounds for my belief as to all matters stated upon information and belief are investigatory materials contained in the files of the Real Estate Finance Bureau in the New York State Office of the Attorney General.
3. The reason this verification is not made by the Plaintiff is that the Plaintiff is a body politic, and the Attorney General is its duly authorized representative.

Dated: New York, New York  
November 2, 2022



NICHOLAS J. MINELLA