

ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUFFALO REGIONAL OFFICE

In the Matter of

Assurance No. 20-055

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

Nicholas George and Sharon George,

Respondents.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Section 63(12) of the Executive Law, Article 7 of the Real Property Law, Article 7 of the General Obligations Law and Article 22-A of the General Business Law. This Assurance of Discontinuance (“Assurance” or “AOD”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondents Nicholas George (“Mr. George”) and Sharon George (“Mrs. George”), whether acting through their respective employees, representatives, agents, affiliates, corporate entities, or otherwise (“Respondents,” and together with the OAG, the “Parties”).

OAG’s FINDINGS

1. Respondents are husband and wife who reside in Lewison, New York.
2. Respondents operate a residential landlord business. Mr. George is in charge of the majority of the business, while Mrs. George assists with accounting and financial matters.

3. Respondents own, either individually or jointly, twenty-nine (29) residential properties in the State of New York, with the bulk of the properties located in the City of Niagara Falls. A list of the properties is attached as Appendix A.

4. Respondents have operated their landlord business under the names “Niagara Property Management” and “Rehab Associates,” but have never used a legal entity to conduct business within New York.

5. Respondents have operated their landlord business for several decades.

6. Respondents currently split their time between New York and Arizona.

Respondents own approximately twenty rental properties in Arizona.

7. Respondents do not have any employees and do not have a property manager. Respondents manage all aspects of the business themselves.

8. Respondents do not employ a full-time maintenance man or superintendent for any of the rental buildings they own.

9. In recent years, Mr. George used two tenants to perform certain maintenance work, including work they were not qualified to perform. Mr. George stated that one of his maintenance men was an alcoholic who could not obtain other employment.

10. Mr. George has no expertise in building maintenance or repairs and does not have the ability to personally perform repairs on his properties, other than repairs of minor issues.

11. Many of the buildings and apartments owned by Respondents have received numerous violations from the City of Niagara Falls Department of Code Enforcement (“Code Enforcement”), Department of Health (“DOH”), Fire Marshal, among other government agencies. These violations include serious infractions such as apartments having no working smoke or

carbon monoxide detectors, issues with plumbing, heating and electrical, as well as infestations of mice, squirrels, racoons, skunks, bedbugs, cockroaches and other vermin.

12. Certain of Respondents' apartments were repeatedly cited for lacking functioning smoke and carbon monoxide detectors.

13. A number of properties owned by Respondents have been condemned for occupancy.

14. At various points in time, tenants renting apartments from Respondents have been without heat, electricity and running water.

15. Mr. George has, on at least one occasion, rented an actively condemned apartments to a new tenant.

16. Mr. George testified that he has purposefully had units in his buildings condemned if tenants are causing him a lot of problems in order to get the tenants out as quickly as possible.

17. In violation of New York State General Obligations Law, Mr. George deposits tenant security deposits into his checking account and does not keep them in a segregated account, including for multifamily units.

18. Mr. George has conceded that he has not run his business very well in recent years. He attributes his inability to do so to serious health issues he experienced a few years ago.

19. Mr. George conceded that certain of his properties were, at various times, not suitable for habitation. This includes apartments that were actively occupied by tenants. In a housing court habitability hearing in 2018 one of Mr. George's tenants listed the following complaints about her apartment: "faulty wiring, no smoke or carbon monoxide detectors, broken windows, leaking roof, broken stove, basement floods and the building is infested with mice."

Mr. George conceded that the then-occupied apartment was “in disrepair and uninhabitable in its current state.”

20. Mr. George has sent tenants a notice threatening them with, among other things, garnishment of wages, garnishment of bank accounts, liens and seizure of personal property, revocation of business licenses, investigation by the Attorney General for “fraudulent or illegal business practices” and a penalty “equal to three times the amount of the unsatisfied judgment.” This notice also stated that “The Judgment is Valid for a Period of 20 Years,” and “This Will Be Your Only Notice.” This notice was sent to tenants against whom Mr. George had not obtained a judgment and threatens actions that Mr. George is not legally capable of taking. These threats to tenants were false and deceptive. Mr. George stated that he gave the notice to tenants he did not like.

21. The OAG subpoenaed documents from Mr. George for 2016 to present. The OAG also took the testimony of Mr. George pursuant to Executive Law § 63(12).

22. The OAG finds that Respondents’ actions are in violation of Section 63(12) of the Executive Law, Article 7 of the Real Property Law, Article 7 of the General Obligations Law and Article 22-A of the General Business Law.

23. Respondents do not contest the OAG’s factual findings recited in paragraphs 1-21 above, and Respondents do not contest that their actions violated the statutory provisions cited in paragraph 22 above.

24. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations Section 63(12) of the Executive Law, Article 7 of the Real Property Law, Article 7 of the General

Obligations Law and Article 22-A of the General Business Law based on the conduct described above from January 1, 2016 to present.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

25. General Injunction: Respondents shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to Section 63(12) of the Executive Law, Article 7 of the Real Property Law, Article 7 of the General Obligations Law and Article 22-A of the General Business Law, and expressly agree and acknowledge that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 24, *supra*, in addition to any other appropriate investigation, action, or proceeding.

26. Programmatic Relief:

- a. All residential rental properties within the State of New York owned by Respondents, including, without limitation, each property listed on Appendix A hereto (the “Subject Properties” and each a “Subject Property”) shall be sold, transferred or otherwise divested by Respondents (the “Property Sale”).
- b. Each Property Sale must be an arms-length transaction to a bona fide purchaser that is not affiliated with or controlled by either of Respondents.
- c. Respondents shall make a good faith effort to sell the Subject Properties to entities that have an interest in and demonstrated capacity to maintain the long-term physical and financial viability, regulatory compliance, and responsible ownership of such properties, while maintaining their status as residential housing.

- d. The proceeds of each Property Sale, after payment of transaction costs, all governmental taxes or surcharges, and the payment and discharge of any security interests or liens on the Subject Property, shall be held in escrow (the “Escrow Funds”) by William D. Berard III, Esq., or, in his absence, an escrow agent approved by the OAG, and may be used by the purchaser of the Subject Property to make such repairs as are necessary to restore the Subject Property to a safe and habitable condition that complies with all local, state and federal regulations governing residential housing. The purchaser of a Subject Property shall apply to the OAG for permission to use the Escrow Funds, which permission the OAG shall, in its sole discretion, grant for any repairs the OAG deems warranted or deny for any repairs the OAG deems unwarranted. Thereafter, once all necessary repairs have been made and all other costs associated with the sale of the Subject Property have been paid, and upon the written consent of the OAG, the escrow agent shall remit the remaining balance of Escrow Funds to Respondents.
- e. Each Property Sale must be approved in writing by the OAG. The OAG may reject a Property Sale for any reason in its sole discretion.
- f. Respondents shall complete the Property Sale (“Sale Completion”) no later than November 1, 2021 (the “Sale Deadline”). The Sale Deadline may be extended solely upon the written consent of the OAG.
- g. Respondents shall not evict or dispossess any tenants from the Subject Properties solely as a result of this AOD or as part of the Property Sale process. If a Subject Property is condemned, Respondents shall take steps to remediate the issues

causing the condemnation and shall, if any tenants were dispossessed, restore the tenants to occupancy within fifteen days.

- h. Until the Sale Completion, Respondents shall ensure that each of the Subject Properties that is occupied by tenants complies with the warranty of habitability requirements of Real Property Law § 235-B.
- i. Contemporaneously with execution of this AOD, Respondents shall execute a Consent to Appointment of a Receiver, which shall be held in escrow by the OAG. In the event that Respondents have not completed the Property Sale by the Sale Deadline, the OAG shall have the option to elect to have a receiver appointed to complete the Property Sale. Respondents shall receive the proceeds from any sales completed by the receiver less the receiver's fees, costs and expenses, any funds needed to repair the property to a habitable condition, and any amounts necessary to satisfy amounts owed the OAG pursuant to this AOD. Respondents shall have no right to object to or challenge any of the receiver's actions.

Respondents hereby agree to indemnify and hold harmless any receiver appointed pursuant to his AOD. The OAG may recommend candidates to the court to act as receiver.

27. Specific Injunction:

- a. Following the Sale Completion, Respondents shall be permanently barred and enjoined, within the State of New York, from acting, directly or indirectly, and through any corporate entity or instrumentality, as:
 - i. lessors of any residential property;

- ii. owners, managers or employees of any business that leases residential property; and
- iii. owners, managers or employees of any business that provides property management services to a business that leases residential property.

28. Oversight/Monitoring:

- a. *Certification of Compliance:* Respondents shall provide the OAG with a certification affirming their compliance with the requirements set forth in this Assurance, paragraph 26 (Programmatic Relief), to be submitted to the OAG by November 1, 2021. This certification shall be in writing and be signed by Mr. and Mrs. George.
- b. *Periodic Certification of Compliance:* Respondents shall, within fifteen days of closing, inform the OAG in writing whenever a Property Sale is completed, and shall provide the OAG with a copy of form RP-5217 for each transaction.
- c. *Entity Reporting:* Each Respondent shall, for five years following the effective date of this Assurance, inform the OAG in writing whenever they create, or receive a beneficial interest in, a business, company, corporation, partnership or any other legal entity which operates or does business within the State of New York. Such notice shall be provided within 15 days. This subparagraph shall not apply to Respondents' receipt of ownership or a beneficial interest in a publicly traded stock or security.
- d. Respondents expressly agree and acknowledge that a default in the performance of any obligation under this paragraph is a violation of the Assurance, and that the

OAG thereafter may commence the civil action or proceeding contemplated in paragraph 24, *supra*, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described herein, pursuant to Executive Law § 63(15).

29. Monetary Relief

- a. *Suspended Monetary Relief Amount*: Respondents agree that based upon their conduct, the State of New York is entitled to penalties in the amount of \$50,000 owed by Respondents jointly and severally. However, the Parties agree that this amount shall be suspended if Respondents comply with all provision of this Assurance and complete the Property Sale by the Sale Deadline. Should Respondents breach this AOD or fail to complete the Property Sale by the Sale Deadline, the Suspended Monetary Relief Amount shall immediately become due and payable.
- b. Payment shall be made by certified check, or bank draft, which shall be made payable to the “State of New York,” and shall reference Assurance No. 20-055; payments shall be addressed to the attention of AAG Christopher L. Boyd, State of New York, Office of the Attorney General, Buffalo Regional Office, 350 Main Street, Suite 300A, Buffalo, New York 14202.
- c. *Judgment by Confession*: To secure the payment of the Suspended Monetary Relief Amount, Respondents will execute and deliver, at the time of the execution and delivery of this Assurance, the accompanying Affidavit for Judgment by

Confession (attached hereto as Exhibit A), confessing judgment for the Suspended Monetary Relief Amount of \$50,000, plus collection fees, interest and costs. If Respondents comply with all provisions of this Assurance and complete the Property Sale by the Sale Deadline, then the State of New York will not file the Affidavit for Judgment by Confession attached hereto as Exhibit A.

MISCELLANEOUS

Subsequent Proceedings.

30. Respondents expressly agree and acknowledge that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by the Respondents prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue.
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

31. If a court of competent jurisdiction determines that Respondents have violated the Assurance, Respondents shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

32. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondents. Respondents shall include in any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

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

34. Any failure by the OAG to insist upon the strict performance by Respondents of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondents.

Communications:

35. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 20-055, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondents, to: Nicholas and Sharon George.

If to the OAG, to: Christopher L. Boyd, or in his absence, to the person holding the title of Assistant Attorney General in Charge, Buffalo Regional Office.

Representations and Warranties:

36. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondents and the OAG's own factual investigation as set forth in Findings, paragraphs 1-21 above. The Respondents represent and warrant that they have made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondents are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

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

38. The Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved.

39. The Respondents represent and warrant that the list of properties attached hereto as Appendix A is a complete and accurate list of all residential properties owed by Respondents that are, have been, or were intended to be leased as residential rental properties.

General Principles:

40. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondents' obligations under this Assurance are enduring. Nothing in this Agreement

shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

41. Respondents agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

42. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondents violate the Assurance after its effective date.

43. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

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

45. Respondents acknowledge that they have entered into this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

46. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

47. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.


48. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one

agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

49. The effective date of this Assurance shall be August 5, 2020.

LETITIA JAMES
Attorney General of the State of New York
350 Main Street, Suite 300 A
Buffalo, NY 14202

By:



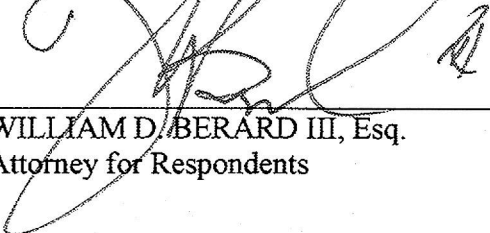
Christopher L. Boyd, Esq.
Assistant Attorney General



NICHOLAS J. GEORGE



SHARON GEORGE



WILLIAM D. BERARD III, Esq.
Attorney for Respondents

Appendix A

Rental Properties in New York Owned by Nicholas George and/or Sharon George

1. 4 D Street, Niagara Falls, New York
2. 478 18th Street, Niagara Falls, New York
3. 525 9th Street, Niagara Falls, New York
4. 596 Morgan Drive, Lewiston, New York
5. 510 6th Street, Niagara Falls, New York
6. 1941 Whitney Avenue, Niagara Falls, New York
7. 1134 Pierce Avenue, Niagara Falls, New York
8. 1138 Pierce Avenue, Niagara Falls, New York
9. 1716 18th Street, Niagara Falls, New York
10. 814 Division Avenue, Niagara Falls, New York
11. 724 Division Avenue, Niagara Falls, New York
12. 1643 8th Street, Niagara Falls, New York
13. 1028 South Avenue, Niagara Falls, New York
14. 1361 North Avenue, Niagara Falls, New York
15. 725 Monteaale Street, Niagara Falls, New York
16. 2921 McKoon Avenue, Niagara Falls, New York
17. 720 Monteaale Street, Niagara Falls, New York
18. 623 Chestnut Avenue, Niagara Falls, New York
19. 615 Chestnut Avenue, Niagara Falls, New York
20. 2820 McKoon Avenue, Niagara Falls, New York
21. 2955 McKoon Avenue, Niagara Falls, New York
22. 2975 McKoon Avenue, Niagara Falls, New York
23. 2903 Lewiston Road, Niagara Falls, New York
24. 3817 Deveaux Street, Niagara Falls, New York
25. 4021 Bell Street, Niagara Falls, New York
26. 4006 Deveaux Street, Niagara Falls, New York
27. 4218 Bell Street, Niagara Falls, New York
28. 3921 Bell Street, Niagara Falls, New York
29. 4026 Bell Street, Niagara Falls, New York