

**PEOPLE OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
LABOR BUREAU**

**IN THE MATTER OF THE
INVESTIGATION OF LETITIA JAMES,
ATTORNEY GENERAL OF THE STATE OF
NEW YORK,**

OF

SANFORD APT. CORP.

**ASSURANCE OF
DISCONTINUANCE
PURSUANT TO
EXECUTIVE LAW § 63(15)**

**AOD No. 22-XXXX
22-013**

ASSURANCE OF DISCONTINUANCE

In November 2020, after receiving an intake complaint, the Office of the Attorney General of the State of New York (“OAG”) commenced an investigation of the employment practices, pursuant to New York Executive Law § 63(12) (“Investigation”), at 144-44 Sanford Avenue, Flushing, New York, 11355, a cooperative apartment building owned by Sanford Apt. Corp. (“Sanford”). The OAG examined whether Sanford failed to pay two consecutive building superintendents the required minimum wages in violation of Article 6 (regarding payment of wages) and Article 19 (Minimum Wage Act) of the New York Labor Law and the New York Codes, Rules, and Regulations (“N.Y.C.R.R.”), Title 12, Chapter II, Subchapter B, Part 141 (“Minimum Wage Order for the Building Service Industry”).

This Assurance of Discontinuance (“Assurance”) contains the OAG’s findings in connection with the Investigation and the relief agreed to by the OAG and Sanford (collectively, the “parties”).

RELEVANT STATUTORY FRAMEWORK

1. The New York Labor Law requires that employers pay covered employees who are residential building janitors the minimum wage pursuant to the Minimum Wage Order for the Building Service Industry (“Wage Order”). Labor Law (“LL”) § 652; 12 N.Y.C.R.R. § 141-1.1. Building superintendents (“supers”) are considered resident janitors under the Wage Order. *See Koljenovic v. Marx*, 999 F.Supp.2d 396 (E.D.N.Y. 2014). Employers must pay workers according to the Wage Order on a weekly basis. LL § 191(1)(a).

2. The Wage Order is not based on hours worked, but rather on a weekly wage calculated by multiplying the mandated dollar rate by the number of apartment units in the building in which the super works. 12 N.Y.C.R.R. § 141-1.2. The Wage Order does not allow for overtime for supers in residential buildings. 12 N.Y.C.R.R. § 141-1.4. In addition, the Wage Order permits employers to deduct an apartment allowance if the employer provides a rent-free apartment to the super as part of the employment, and the employer maintains and provides the requisite information. 12 N.Y.C.R.R. §§ 141-1.5, 141-2.1(d), 141-2.4.

3. Employers who employ supers must create and maintain contemporaneous and accurate payroll records for six years, which show each employee’s rates, deductions, allowances, basis of calculating wages, and gross and net wages paid. LL §§ 195(4), 661. Employers are also required to provide employees with statements showing every payment of wages accurately listing the rate paid, number of apartment units, gross wages, allowances, if any, claimed as part of the minimum wage, deductions and net wages. LL § 195(3); 12 N.Y.C.R.R. § 141-2.2.

4. Employers are further required to provide employees with notices regarding the payment of wages, including the rate and basis of pay and claimed allowances or credits, in order to deduct those credits from any required wages. LL § 195(1)(a); 12 N.Y.C.R.R. § 141-2.3.

FINDINGS

Introduction and Background

5. Sanford is a cooperative residential apartment building with 54 apartment units, where most of the tenants are apartment owners whose apartments are worth a specific number of shares in the building corporation. There is a three-member coop Board and Fred Tsai is the current Board president.

6. The apartments are almost all one-bedroom apartments that are currently selling for under \$300,000. The shareholders pay about \$690 per month in maintenance costs.

7. Newgent Management Corp. (“Newgent”) manages Sanford. Sanford employs a super who is in charge of the maintenance of the building. In the past, the super lived in the building rent-free in a basement apartment.

Practices Related to Payment of Wages

8. The Investigation revealed that Worker 1 signed an employment contract on November 29, 2018, where he was listed as “Contractor,” Sanford was listed as “Owner,” and Newgent was listed as “Management.” The contract named Worker 1 as the super at Sanford. Fred Tsai, the president of the Sanford Coop Board, and Abdullah Fersen, owner of Newgent, signed the contract. The contract specified that Worker 1 was an independent contractor. In reality, he was an employee.

9. The contract specified that in consideration for Worker 1’s services, the Owner would provide an apartment for him to live in rent-free in the building. In addition, the contract stated, “[t]he Contractor agrees that he shall not receive any additional compensation. Unless approved by management and Board of directors.” The contract extended through May 31, 2020.

10. Worker 1 worked as a super at Sanford from December 1, 2018 to June 15, 2020. He continued living at the apartment rent-free, but on September 4, 2020, he received a notarized letter from an attorney representing Sanford, ordering him to vacate the apartment since they were not renewing his contract. Worker 1 continued living in the apartment rent-free until August 2021.

11. The Investigation further revealed that Worker 2 worked as a super at Sanford from February 1, 2017 to December 1, 2018, immediately preceding Worker 1. At OAG's request, Sanford cooperated in the Investigation and provided a copy of Worker 2's contract. It is dated January 30, 2017, and is similar to Worker 1's, specifying that the free apartment was the only consideration, and that Worker 2 was not entitled to any other compensation.

12. The Investigation revealed that Sanford did not pay any wages to either Worker 1 or Worker 2 between February 1, 2017 and June 15, 2020. Pursuant to the Wage Order, the OAG calculated that Sanford owes Worker 1 \$39,944.57 in wages plus \$9,613.68 in interest at nine percent. Sanford owes Worker 2 \$38,602.29 in wages plus \$15,660.40 in interest at nine percent. The total wages plus interest that Sanford owes is \$103,820.94. In addition, the employees are entitled to 100 percent of the wages in liquidated damages.

13. While Sanford provided the supers a rent-free apartment during their employment, Sanford did not maintain or provide the requisite records to permit an apartment allowance to be deducted from the minimum wage.

14. Sanford did not provide wage statements to Worker 1 or Worker 2, nor did it maintain payroll records. Neither did Newgent, on Sanford's behalf.

15. Based on the foregoing, the Attorney General has concluded that Sanford engaged in persistent and repeated activity in violation of Executive Law § 63(12), the New York Labor Law and implementing regulations, including the Wage Order.

16. Sanford admits to the OAG's findings set forth in paragraphs 5 through 15 herein.

17. 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 violating Executive Law § 63(12) and 12 N.Y.C.R.R. § 141, based on the conduct described above from approximately February 1, 2017 through June 15, 2020.

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

RELIEF

Compliance with Wage and Hour Law and Other Laws Governing Employment Practices

18. Sanford hereby acknowledges that it understands and will comply with all applicable federal, state and local laws, including but not limited to the Fair Labor Standards Act, New York State Labor Law, and the Wage Order. Sanford will:

- a. pay all employees for all time worked, at a rate that meets or exceeds the minimum wages required by law, including any increases mandated by federal, state or municipal law;
 - i. pay the super (resident janitor) according to the Minimum Wage Order for the Building Service Industry, 12 N.Y.C.R.R. § 141, where the weekly wage is calculated by multiplying the mandated dollar rate by the number of apartment units in the building;

- b. pay all wages on at least a weekly basis, as required by New York Labor Law § 191(1)(a);
- c. comply with all relevant federal, New York State and New York City employee policies, including but not limited to, the federal Family and Medical Leave Act, New York City's Paid Sick Leave Law, and New York State's Paid Family Leave Law;
- d. comply with the FLSA and New York Labor Law by providing full reimbursement to employees in a timely manner for any employee payment of expenses necessary to perform job duties;
- e. post all notices for employees as required by law, including those setting forth employee rights with respect to wage and hour laws and the right to be free from retaliation.

Recordkeeping

19. Sanford agrees to comply with the notice and six-years recordkeeping requirements as set forth under New York Labor Law § 195 and 12 N.Y.C.R.R. §141.

- a. Sanford agrees to maintain for six years: (a) all documents employees must review and/or complete in order to be employed, including but not limited to required notices, employee manuals and acknowledgements of receipt thereof; (b) documents created by Sanford related to employment practices, including but not limited to payroll records, revenue and expense reports, time records, weekly schedules, records of reimbursed employee expenses, records of distributed gratuities, notices provided to employees regarding paid sick leave, records showing accrual and use of paid sick leave, tax documents, including but not limited

to New York State Department of Taxation and Finance NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns, and proof of purchase of workers' compensation and disability insurance for all employees; and (c) information records concerning employee complaints regarding pay practices, including but not limited to a complaint log and any underlying documents relating to the complaint log.

Oversight/Monitoring

20. *Periodic Compliance Reports:* Sanford shall provide the Attorney General with a report detailing its compliance with the requirements set forth in this Assurance, which will first be submitted to the OAG six (6) months after the Effective Date. This report shall be in writing and shall set forth in detail the manner and form of Sanford's compliance with this Assurance. This report shall be signed under oath by the Sanford Coop Board. Thereafter, a report of compliance shall be submitted to the OAG on the one-year anniversary of the Effective Date during the Effective Period. In any case, where the circumstances warrant, the OAG may require Sanford to file an interim report of compliance upon thirty (30) days' notice.

21. Sanford expressly agrees and acknowledges 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 any other appropriate investigation, action, or proceeding.

Retaliation

22. Sanford agrees that it will comply with New York Labor Law § 215 and will not in any manner discriminate or retaliate against any of its employees, including but not limited to current or former employees who cooperated with or are perceived to have cooperated with the OAG's investigation. Sanford agrees not to discharge, refuse to hire, or take any adverse action

against any of these employees except for legitimate, non-discriminatory reasons unrelated to the OAG's investigation or to any past, present or future participation in any activities involving the exercise of their legal rights under the New York State Labor Law and New York Codes, Rules, and Regulations.

Monetary Payment

23. Sanford agrees to pay a total of \$130,000.02 (the "Settlement Funds") in resolution of the OAG's Investigation, which includes \$103,820.94 of wages plus interest, plus \$26,179.06 in liquidated damages (approximately 33.3%) .

24. This amount shall be paid directly to the OAG and will be used for distribution as restitution to the two employees.

- a. \$75,000.00 of the Settlement Funds must be paid on or before the execution of this Assurance;
- b. Sanford agrees to pay six percent interest on the remaining \$55,000.02, which brings the total remaining to \$58,300.02;
- c. Sanford agrees to pay the remaining \$58,300.02 to the Attorney General in six equal installments in the amount of \$9,716.67, to be paid every two months starting on June 1, 2022, with final payment by April 1, 2023;
 - i. if payment falls on a weekend and is encumbered due to the bank's weekend schedule, the payment must be paid on the Monday immediately following the 1st day of that month.

25. The payment may be in the form of a wire transfer and in accordance with wiring instructions that the OAG provides prior to the required date of payment. In the alternative, payment may be made by attorney check, certified check, or bank draft, which shall be made

payable to the “The New York State Department of Law;” payment shall be addressed or delivered to the attention of:

New York State Office of the Attorney General
28 Liberty Street, 15th Floor
New York, New York, 10005
Attn: Berenice Peck, Labor Bureau

26. The payment and all correspondence related to this Assurance must reference “Assurance # 22-~~XXX~~” #22-013 - NMS

27. The OAG has the sole discretion to determine which employees shall be eligible for restitution and damages and to determine the amount of such restitution and damages. The OAG will provide Sanford with an accounting of all amounts issued to payees.

Judgment by Confession

28. To secure the payment described above and the undertakings agreed to herein by Sanford, Sanford will execute and deliver, at the time of the execution and delivery of this Assurance, a corporate Confession of Judgment (attached hereto as Exhibit A) confessing judgment for the remaining Settlement Funds amount of \$58,300.02, plus collection fees of twenty two percent (22%) of any unpaid Settlement Funds, at the time of any subsequent default, plus statutory costs of fifteen dollars and no cents (\$15.00). The OAG will reduce the Settlement Funds amount by the principal amount in payments made by Sanford to OAG to calculate the unpaid Settlement Funds amount at the time of any subsequent default.

- a. if Sanford fails to make payment as required by above or is otherwise in default of any of the obligations and undertakings Sanford has agreed to herein, the OAG shall provide Sanford with written notice, by first class mail, of such failure. If Sanford does not cure such failure within fifteen (15) days of the OAG’s written notice, the OAG may file and enter the applicable corporate Confession of

Judgment as a judgment against Sanford, at any time, and without further notice, for the balance owed pursuant to this Assurance at the time of any subsequent default;

- b. if Sanford has misrepresented its financial circumstances by making a material misrepresentation in its financial disclosure affidavit, or in any other related financial disclosure provided by Sanford, which served as a basis for Sanford's representation of an inability to pay \$130,000.02 or any part thereof, the OAG may, on fifteen (15) days written notice to Sanford by first class mail, file and enter the applicable corporate Confession of Judgment as a judgment against Sanford, at any time and without further notice, for the balance owed pursuant to this Assurance at the time of any subsequent default. The determination as to whether a material misrepresentation has been made by Sanford in their financial disclosure affidavit is within the sole discretion of the OAG;
- c. if the Effective Period is extended beyond one year, Sanford agrees that it will execute a new corporate Confession of Judgment upon request by the OAG;
- d. Sanford represents and warrants that the signatory below has been duly authorized to and has the authority to sign a corporate Confession of Judgment on behalf of Sanford.

MISCELLANEOUS

Subsequent Proceedings:

29. Sanford expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance,

or if the Assurance is voided pursuant to paragraph 35, 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 Sanford 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 Sanford irrevocably and unconditionally waives 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).

30. If a court of competent jurisdiction determines that Sanford has violated the Assurance, Sanford shall pay 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:

31. This Assurance is not intended for use by any third party in any other proceeding.

32. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Sanford. Sanford 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 Sanford 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 Sanford.

Representations and Warranties

35. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Sanford and its counsel and the OAG's own factual investigation as set forth herein. Sanford represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Sanford or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

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

37. Sanford represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

General Principles

38. Nothing in this Agreement shall relieve Sanford of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

39. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Sanford violates the Assurance after the date of execution.

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

41. 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.

42. Sanford acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation and with the advice of counsel.

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

44. 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.

45. The Effective date of this Assurance shall be ~~January~~^{March} 3, 2022. NMS

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

From Sanford to the OAG:

New York State Office of the Attorney General, Berenice Peck, Labor Bureau, 28 Liberty Street, Fl. 15 New York, NY 10005, or Berenice.Peck@ag.ny.gov.

From the OAG to Sanford:

Aaron M. Goldsmith, Esq., The Law Office of Aaron M. Goldsmith, PC, 225 Broadway, Suite 715, New York, NY 10007; (914)588-2679; aarongoldsmithlaw@gmail.com.

Any changes in the person to whom communications should be specifically directed shall be made in writing in advance of the change.

47. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

48. This Assurance will expire one year after the final payment received by the OAG except that the OAG may, in its sole discretion, extend the Effective Period upon a determination that Sanford has not fully complied with this Assurance.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto as follows.

LETITIA JAMES

Attorney General of the State of New York

By: Nina M. Sas

Nina M. Sas

Assistant Attorney General

Labor Bureau

28 Liberty Street

New York, New York 10005

Phone: (212) 416-6393

Dated: ~~January~~ ^{March} 3, 2022

SANFORD APT. CORP.

By: 

Fred Tsai

As President of the Coop Board, Sanford Apt. Corp.,

144-44 Sanford Avenue, Flushing, NY 11366

Dated: January __, 2022

February 5, 2022

STATE OF NEW YORK)
 Nassau) ss.:
COUNTY OF ~~QUEENS~~)

On this 1 day of ~~January~~ ^{March} 2022, Fred Tsai, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned and acknowledged to me that he executed the within instrument by his signature on the instrument.

Sworn to before me this
2 day of ~~January~~ ^{March} 2022

EMMA F. FORD
Notary Public, State of New York
No. 01FO6129734
Qualified in Suffolk County
Certified in Nassau County
Commission Expires 07/05/25



NOTARY PUBLIC

By: 

Fred Tsai
Coop Board President, Sanford Apt. Corp.,
144-44 Sanford Avenue, Flushing, NY 11366

Dated: January ____, 2022