

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: **CAROL E. HUFF**  
Justice

PART 32

Index Number : 400631/2011  
SCHNEIDERMAN, ERIC T.  
vs  
R & D WILLIS AVENUE  
Sequence Number : 004  
OTHER

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_  
Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this ~~\_\_\_\_\_~~

~~\_\_\_\_\_~~ motion is decided in accordance  
with accompanying memorandum decision

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

**FILED**

APR 14 2014

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: APR 11 2014

  
\_\_\_\_\_, J.S.C.  
**CAROL E. HUFF**

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION  
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER  
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 32

-----X

PEOPLE OF THE STATE OF NEW YORK, by : Index No. 400631/11  
ERIC T. SCHNEIDERMAN, Attorney General of the :  
State of New York, :

Petitioner, :

- against - :

R & D WILLIS AVENUE, LLC; :  
RICHARD T. MOHRING, JR.; and :  
DEBORAH MOHRING, :

Respondents. : APR 14 2014

**FILED**

-----X

COUNTY CLERK'S OFFICE  
NEW YORK

CAROL E. HUFF, J.:

In this special proceeding petitioner sought restitution, injunctive relief, civil penalties and costs for unlawful business practices in connection with respondents' offer and sale of certain residential condominium units. The proceeding resulted in an Amended Judgment against respondents, dated April 19, 2012, which found that respondents sold thirty-seven units with the false statement that they would repair a retaining wall and obtain certificates of occupancy for the units. The Amended Judgment required defendants to escrow \$215,000 as restitution with the condominium's attorney. The Amended Judgment was satisfied only after the court issued warrants authorizing the arrest of respondents Richard T. Mohring, Jr., and Deborah Mohring. Petitioner now renews its petition and seeks permanent injunctive relief, civil penalties and costs. The Amended Judgment denied those reliefs at that time, without prejudice to renewal once the restitution issues had been resolved.

Petitioner now moves to renew its petition and seeks: pursuant to the Martin Act (General Business Law § 353[1]) and Executive Law § 63(12), permanent injunctive relief barring respondents from the public offer or sale of any securities within or from New York State; pursuant to General Business Law §§ 349 and 35-D, civil penalties totaling \$500 for each of twenty-three unit sales occurring before the Legislature raised the maximum penalty, and \$5,000 for the later fourteen sales, for each respondent; and pursuant to CPLR 8303(a)(6), pertaining to proceedings brought pursuant to the Martin Act or Executive Law § 63(12), costs totaling \$2,000 for each respondent.

Respondents' contention that the Amended Judgment was superseded by a subsequent judgment for civil contempt is without merit. The Amended Judgment clearly contemplates and permits the renewal of the petition in order to seek these reliefs. Otherwise, respondents argue that the amounts sought – in the case of the civil penalty, the maximum amounts times thirty-seven units times three respondents – is excessive.

A court has “broad discretion . . . to determine an appropriate [civil] penalty so long as its choice is explained and ‘it is not disproportionate to the offense,’” People v Applied Card Systems, Inc., 41 AD3d 4, 10 (3d Dept 2007), quoting Tatta v State of New York, 20 AD3d 825, 826 (3d Dept 2005), lv. denied 5 NY3d 716 (2005).

The court finds that respondent's deceptive and evasive conduct, coupled with the harm caused to the unit owners in not being able to obtain certificates of occupancy for a period of years, justify awarding the full civil penalties and costs, but also finds, however, that awarding the amounts for each of the three closely related respondents is excessive. Moreover, the injunctive relief shall be limited to condominium offerings.

Accordingly, it is

ORDERED that the motion seeking leave to renew the petition is granted; and it is further

ORDERED that respondents are hereby permanently enjoined from engaging in fraudulent, deceptive or illegal acts in connection with any business or activity in or from New York; and it is further

ORDERED that, pursuant to the Martin Act (General Business Law § 353[1]) and Executive Law § 63(12), respondents are hereby permanently enjoined from engaging in any business or activity in connection with the public offering of condominiums in or from New York; and it is further

ORDERED that, pursuant to General Business Law §§ 349 and 35-D, respondents are hereby penalized \$81,500 (representing \$500 times twenty-three units, and \$5,000 times fourteen units); and it is further

ORDERED that, pursuant to CPLR 8303(a)(6), petitioner is awarded costs of \$2,000.

Dated: **APR 11 2014**

**FILED**

APR 14 2014

COUNTY CLERK'S OFFICE  
NEW YORK

  
**CAROL E. HUFF**  
J.S.C.