

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK
CIVIL RIGHTS BUREAU

In the matter concerning:

COLONIAL MANAGEMENT GROUP, LLC

**ASSURANCE OF
DISCONTINUANCE (“AOD”)**

AOD No. 14-089

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Executive Law § 63(12) into the policies, procedures, and practices of Colonial Management Group, LLC (“Colonial”) with respect to its management of approximately 42 residential buildings in New York City. Tenants complained to the OAG that Colonial failed to make necessary repairs, charged or allowed the imposition of illegal fees, and prevented tenants in the buildings from participating in lawful tenant associational activities. The buildings are owned by 37 separate entities, which are held by Tri Boro Holdings Member, LLC (“Tri Boro”). This Assurance of Discontinuance (“AOD”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and the 37 entities / Tri Boro.

DEFINITIONS

1. As used throughout this AOD, the terms set forth below shall mean as follows:
 - a) “Employee” means any owner, shareholder, partner, officer, employee, agent, associate, independent contractor, or representative of the Property Owners.
 - b) “Effective Date” means one business day after the consummation of the Transaction described in Paragraph 9 and no later than April 9, 2014.¹
 - c) “Holdover Proceeding” means any summary eviction proceeding brought to evict a resident on the basis of allegations that the resident lacks tenancy rights because he or she does not occupy the apartment as his or her primary residence, is a squatter or licensee, or illegally sublet the apartment.
 - d) “Including” means including but not limited to.
 - e) “Nonpayment Proceeding” means any summary eviction proceeding brought to evict a Resident on the basis of the nonpayment of rent.

¹ The Property Owners may request from the OAG a one-week extension of time in which to complete the Transaction. The OAG’s approval of such extension shall not be unreasonably withheld.

- f) “Predicate Holdover Notice” means a Legal Notice that must be served upon a Resident prior to the commencement of a Holdover Proceeding.
- g) “Property Owners” means the 37 LLCs listed on Schedule B attached hereto, which will be owned through a 95% indirect interest by Tri Boro Holdings Member, LLC.
- h) “Rent-Regulated” means subject to rent control or rent stabilization.
- i) “Subject Properties” means the properties listed in Schedule A.
- j) “Tenant of Record” or “Tenant” means any person(s) currently named on a lease for a Subject Property as a lessee(s), or any person(s) who is a party to a rental agreement and is currently obligated to pay rent for the use or occupancy of an apartment in a Subject Property.
- k) “Violations” means violations of the New York City Housing Maintenance Code and the New York State Multiple Dwelling Law and violations issued by the New York City Department of Buildings.
- l) Terms of construction:
 - i. “All” means “any and all” and “any” means “any and all.”
 - ii. “Day” refers to a calendar day, not a business day.
 - iii. The singular of any word includes the plural; the plural of any word includes the singular.

FINDINGS OF THE OAG

2. The OAG conducted an investigation and reviewed complaints that Colonial (a) failed to make necessary repairs, (b) charged or allowed the imposition of illegal fees, and (c) prevented tenants in the Subject Properties from participating in the lawful activities of groups formed by tenants to protect their rights.
3. Two of the Subject Properties (1253 Franklin Avenue and 265 East 194th Street) have been placed in the Alternative Enforcement Program created by Local Law No. 29 of 2007 and amended by Local Law No. 7 of 2011, which provides the Department of Housing Preservation and Buildings the ability to identify the 200 most distressed multiple dwellings in New York City and ensure that violations and conditions that caused the violations are corrected.
4. New York State Executive Law § 63(12) prohibits repeated or persistent fraudulent or illegal acts in the transaction of business.
5. The 37 LLCs listed on Schedule B (attached hereto), as a result of the transaction described in paragraph 9, will be owned via a 95% indirect interest by Tri Boro Holdings Member LLC.

6. The Subject Properties are the subject of the foreclosure action *WBCMT 2007-C33 NY Living, LLC v. 1145 Clay Avenue Owner, LLC et al.*, 13 Civ. 2222 (WHP), pending in the U.S. District Court for the Southern District of New York (the “Foreclosure Action”).
7. The Property Owners learned of the OAG’s investigation of Colonial at the end of March, 2014. Prior to that time, the Property Owners had determined to remove Colonial as property manager of the Subject Properties and replace it with a new property manager.
8. Upon learning of the OAG’s investigation of Colonial, the Property Owners proactively agreed to remediate the identified problems at the Subject Properties.
9. The Property Owners intend to recapitalize the Subject Properties, refinance the loan that is the subject of the Foreclosure Action, and replace Colonial with a new management company (the “Transaction”), which will be tasked with improving conditions at the Subject Properties and respecting the rights, privileges, and benefits of the tenants.

PROSPECTIVE RELIEF

WHEREAS, the Property Owners intend to correct the outstanding violations of the Housing Maintenance Code and Multiple Dwelling Law and any related underlying conditions;

WHEREAS, the Property Owners have cooperated with the OAG's investigation of Colonial by voluntarily producing relevant information, and agree to continue to work cooperatively with the OAG;

WHEREAS, the Property Owners intend to provide relief to Tenants for the problems they experienced under Colonial;

WHEREAS, the Property Owners intend to retain a new property manager that will respect tenants’ rights under the Rent Stabilization Code, the Housing Maintenance Code, New York Real Property Law § 230, and federal regulations governing the conditions of HUD housing;

WHEREAS, the acceptance of this AOD does not constitute an admission of wrongdoing on the part of the Property Owners, or an admission of any violation of any laws, regulations, or administrative pronouncements applicable to the Property Owners, or an admission of the OAG's Findings set forth in Paragraphs 1 through 9 above;

WHEREAS, the Parties believe that the obligations imposed by this AOD are prudent and appropriate; and

WHEREAS, in consideration of the covenants and understandings set forth herein and intending to be legally bound thereby, the parties hereby agree as follows:

PART ONE

COMPLIANCE WITH N.Y. REAL PROPERTY LAW § 230

10. The Property Owners shall comply with the obligations, terms, and conditions of N.Y. Real Property Law § 230.
11. Within 14 days of the Effective Date, the Property Owners shall provide a Notice of Residents' Rights ("Notice") under Section 230 to the OAG for its approval. The Notice shall inform Tenants that they have the right to form, join or participate in tenant groups formed to protect their rights as tenants; that the landlord shall not harass or penalize them or withhold any right, benefit or privilege of their tenancy; and that they have the right to meet in common areas of the Subject Properties without paying a fee, at reasonable hours, and without obstructing access to the premises or facilities.
12. Within 14 days of the OAG's approval, the Property Owners shall provide the Notice to all management employees and hand-deliver the Notice to all current Tenants of Record. The Notice also shall be provided to all future Tenants of Record. The Notice shall be provided in English and Spanish.
13. The Notice shall include a form that permits Tenants to transmit any complaints about violations of their rights under Section 230, and include instructions for transmitting the complaint. Within 14 days of receipt, copies of complaints submitted by Tenants shall be transmitted to the OAG.
14. For buildings enrolled in the Project-Based Section 8 Program administered by the U.S. Department of Housing and Urban Development, Tenants shall be permitted access to community rooms and community spaces in accordance with HUD rules.

PART TWO

COMPLIANCE WITH N.Y. REAL PROPERTY LAW § 235-B, THE HOUSING MAINTENANCE CODE, RENT STABILIZATION LAWS, AND 24 C.F.R. § 5.703

15. The Property Owners will identify and retain a Management Company that has demonstrated experience in successfully managing properties owned by the City of New York (the "New Property Manager"). The selection of the New Property Manager shall be subject to the approval of the OAG, which shall not be unreasonably withheld.
16. The Property Owners shall conduct a survey of all Tenants of Record. Within 30 days of the Effective Date, the Property Owners shall provide a copy of the proposed survey and a copy of any related forms to be distributed to Tenants to identify and describe the repairs needed in their units and buildings (the "Repairs Survey"). Within 30 days of

the OAG's approval of the Repairs Survey, the Property Owners shall distribute the form(s) to all Tenants of Record with a self-addressed, stamped envelope. The form shall be prepared and distributed in English and Spanish. By the 10th day of each month, copies of the returned and completed Repairs Survey received by the Property Owners in the previous month shall be transmitted to the OAG.

17. The Property Owners shall direct the New Property Manager to prepare and submit to the OAG as soon as is practicable (but in no event later than 90 days after the date upon which the New Property Manager is engaged), a remediation plan (the "Plan") to address necessary repairs, as specified below.
18. The Plan shall identify two categories of repairs:
 - a) repairs reasonably necessary to restore habitability of residential units; and
 - b) repairs reasonably necessary to bring the Subject Properties into regulatory compliance.

The Plan will prioritize repairs in category (a), followed by repairs in category (b).

19. The Plan shall include the following: (1) a date for commencement of the repair work ("Commencement Date"), beginning no later than 30 days after the New Property Manager submits the Plan to OAG; and (2) a schedule for making the repairs identified in Paragraph 18.
20. If any Tenant residing in the Subject Properties is temporarily relocated as a result of repair work, the New Property Manager shall identify and make available other suitable and habitable apartments to such Tenant during the period of time in which such work is conducted and shall return such Tenant to its current apartment at the conclusion of such work with the same statutory protections.
21. The New Property Manager shall perform monthly surveys to evaluate the progress of work required under the Plan. Copies of the monthly surveys shall be transmitted to the OAG.
22. The Property Owners agree not to request any rent increases under the rent stabilization laws for correcting code violations existing on the Effective Date; provided, however that nothing contained herein shall restrict the Property Owners rights to request all other increases available under rent stabilization laws which are unrelated to the costs of correcting code violations.
23. During the term of this AOD, the Property Owners agree to provide the OAG with copies of any requests for Major Capital Improvement ("MCI") increases within 7 days of the submission of such requests.
24. The Property Owners shall create a procedure for tracking Tenants' repair requests to

assure their timely completion. A description of this procedure shall be provided to the OAG within 60 days of the Effective Date. Tenants will be informed of the estimated schedule date for repairs to their units contemplated by the Plan and will be given timely notice of any changes to the estimated schedule.

PART THREE

RESTITUTION CREDITS BASED ON PROBLEMS WITH COLONIAL

25. The Property Owners agree to comply with all applicable laws governing the calculation of rents and fees, including but not limited to RSL §§ 26-511 and 26-512 and 9 N.Y.C.R.R. §§ 2522 and 2521.
26. The Property Owners agree to provide monetary relief to Tenants of Record to compensate them for problems endured during Colonial's management of the Subject Properties, including those current units subjected to any illegal fees and overcharges. This restitution credit shall be made available in the form of a one-time, per-residential-unit rent credit of \$600, to be applied first to past-due rent and then to the current month's rent. Such credit shall be made to all residential units of the Subject Properties.
27. Within 14 days of the Effective Date, the Property Owners shall provide to the OAG for its approval a "Restitution Plan." This Restitution Plan shall set forth (i) the number of occupied units as of the time of the Effective Date of this AOD, (ii) a process and timeline for issuance of the residential unit rent credit, (iii) a proposed notice to Tenants concerning the issuance of a residential unit rent credit pursuant to the terms of this AOD, (iv) a notice regarding the right to opt-out from participation in the residential unit rent credit program, and (v) a release of claims limited to the scope of this AOD to be issued to all Tenants who receive the residential unit rent credit. All documents shall be provided to Tenants in English and Spanish.
28. Within 14 days of the OAG's approval of the Restitution Plan, including the notice, opt-out form, and release, the Property Owners shall commence with the issuance of a residential unit rent credit. All Tenants shall receive a residential unit rent credit, unless a Tenant affirmatively elects to opt out from participation in the residential unit rent credit program within 30 days of receipt of the opt-out form. Tenants shall be provided a statement reflecting the residential unit rent credit.
29. All residential unit rent credits shall be issued within 60 days of the Effective Date.
30. Within 90 days of the Effective Date, the Property Owners shall provide the OAG with a written report summarizing the name, address, and unit number of each Tenant who was provided a residential unit rent credit. For any unit that did not receive a residential unit rent credit, Property Owners shall provide a copy of the opt-out form completed by a Tenant in such unit, or provide a detailed explanation for the proposed declination of any residential unit rent credit required by the terms of this Assurance. Proposed

declinations shall be subject to the review and approval of the OAG.

PART FOUR

RECORD-KEEPING AND REPORTING

31. For a two-year period commencing on the Effective Date, the Property Owners shall provide a quarterly report to the OAG that reflects the following information, broken down by building and month:
- a. The number of predicate holdover notices served, delineated by cause of action;
 - b. The number of holdover proceedings filed, broken down by cause of action;
 - c. The number of nonpayment proceedings filed;
 - d. The total number of rent-regulated apartments that became deregulated, the reason for the deregulation, and the apartment number; and
 - e. The total number of MCI requests and the basis for those requests, broken down by building.

PART FIVE

COMPLIANCE WITH STATE AND LOCAL HOUSING CODE

32. Within 120 days of the Effective Date, the Property Owners shall submit an Operating Pro-Forma and Capital Reserve Statement.
33. The Operating Pro-Forma will identify operating expenses required to maintain properties.
34. The Capital Reserve Statement will identify the dollar amount currently on hand to address outstanding deferred maintenance across the portfolio.
35. The OAG may take steps to monitor compliance with the terms of this AOD by conducting unannounced site visits at any of the Subject Properties to determine whether the Property Owners are conducting its business in accordance with this AOD and with the law. OAG may consult with an independent property manager of its choosing in the performance of such inspections, and Property Owners will pay reasonable fees to such independent manager, not to exceed a total of \$25,000.

PART SIX

SCOPE OF THE AOD, JURISDICTION, AND ENFORCEMENT PROVISIONS

36. In the event the Property Owners or Tri Boro Holdings Member, LLC lose control of any of the Subject Properties through foreclosure by a lender (including deed in lieu of

foreclosure, or the foreclosure by a holder of a direct or indirect pledge of the ownership interest of the Property Owners or assignment in lieu of such foreclosure, or the exercise of similar remedy), this AOD shall not be enforceable with respect to any such property and no such lender or lender affiliate exercising remedies shall have any liability or obligations hereunder.

37. The obligations under this AOD with respect to the seven properties listed in Schedule C (the "Optioned Properties") shall terminate if either (a) Oceans Views Group LLC (or its assignee or designee) acquires the Optioned Properties pursuant to a purchase agreement currently in escrow with Commonwealth Land Title Insurance Company and which is to be dated on or about the date that the Transaction is consummated or (b) a lender otherwise requires the sale of the Optioned Properties as a condition of the recapitalization transaction referenced above. Upon the sale of any Subject Property, the Property Owners shall have no further obligation under this AOD with respect to the Subject Property so sold.
38. Nothing in this AOD is intended to release Colonial or any of its officers or employees from investigation or enforcement action by the OAG, or from a private civil action by the Property Owners.
39. This AOD shall expire one year after the Effective Date, other than the obligations of Part 4, which shall continue for two years from the Effective Date. The OAG may, in its sole discretion, extend the AOD term beyond the initial one-year term for two additional six-month terms upon a good-faith determination that the Property Owners have not materially complied with this AOD, which non-compliance the OAG shall discuss and attempt to resolve with the Property Owners in good faith before making such determination.
40. The OAG has agreed to the terms of this AOD based on, among other things, the representations that the Property Owners and its counsel made to the OAG and the OAG's own factual investigation as set forth in Findings outlined in Paragraphs 1-9 above. To the extent that any material representations are later found to be intentionally inaccurate or misleading, this AOD is voidable by the OAG in its sole discretion.
41. No representation, inducement, promise, understanding, condition, or warranty not set forth in this AOD has been made to or relied upon by the Property Owners in agreeing to this AOD.
42. This AOD binds the Property Owners and the officers, directors, agents, employees and assignees, in their corporate capacities only, of Tri Boro Member Holdings LLC.
43. The Property Owners represent and warrant, through the signature below, that the terms and conditions of this AOD are duly approved, and execution of this AOD is duly authorized. The Property Owners agree not to take any action or make any statement denying, directly or indirectly, the propriety of this AOD or expressing the view that this AOD is without factual basis. Nothing in this Paragraph affects the Property Owners' (i) testimonial obligations; or (ii) right to take legal or factual positions in

defense of litigation or other legal proceedings to which OAG is not an adverse party. This AOD is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by the Property Owners.

44. This AOD may not be amended except by an instrument in writing signed on behalf of all the parties to this AOD.
45. This AOD shall be binding on and inure to the benefit of the parties to this AOD and their respective successors and assigns (except as provided herein), provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this AOD without the prior written consent of the OAG.
46. In the event that any one or more of the provisions contained in this AOD shall for any reason be held 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 AOD.
47. To the extent not already provided under this AOD, the Property Owners agree to, upon request by the OAG, provide all reasonable documentation and information necessary for the OAG to verify compliance with this AOD.
48. All notices, reports, requests, and other communications to any party pursuant to this AOD shall be in writing and shall be directed as follows:

If to the OAG:

Jessica Attie
Assistant Attorney General
Office of the Attorney General
Civil Rights Bureau
120 Broadway
New York, New York 10271
(212) 416-8250
(212) 416-8074 (fax)

If to the Property Owners:

Jim Walden
Gibson Dunn & Crutcher
200 Park Avenue
New York, New York 10166
(212) 351-2300
(212) 351-5300 (fax)

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

50. Acceptance of this AOD by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and the Property Owners shall make no representation to the contrary.
51. Pursuant to New York State Executive Law § 63(15), evidence of a violation of this AOD shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by the OAG.
52. If a court of competent jurisdiction determines that the Property Owners have breached this AOD, the Property Owners shall pay to the OAG the cost, if any, of such determination and of enforcing this AOD, including without limitation legal fees, expenses, and court costs.
53. The OAG finds the relief and agreements contained in this AOD appropriate and in the public interest. The OAG is willing to accept this AOD pursuant to New York State Executive Law § 63(15), in lieu of commencing a statutory proceeding. This AOD shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
54. Upon execution by the parties to this AOD and for the duration of this AOD, the OAG agrees to refrain from, pursuant to New York State Executive Law § 63(15), any investigation into any and all claims or potential claims that the Property Owners violated the Housing Maintenance Code, Multiple Dwelling Law, Rent Stabilization Law, Real Property Law §§ 230 and 235-b, and 24 C.F.R. § 5.703 with respect to the Subject Properties prior to the Effective Date. The OAG shall initiate no action against the Property Owners, including its owners, officers, and directors, based on any acts or omissions in relation to the Subject Properties.
55. Nothing contained herein shall be construed so as to deprive any person of any private right under the law.
56. This AOD contemplates the successful consummation of the Transaction. This AOD, after full execution by the signatories below, is effective immediately after the closing of the Transaction. If the Transaction is not consummated, this AOD will have no force or effect.
57. The Property Owners represent that their signatory below, Jim Walden of Gibson, Dunn & Crutcher, has actual authority to bind them in the signing of this AOD.

IN WITNESS WHEREOF, this AOD is executed by the parties hereto on April 4, 2014.

ERIC T. SCHNEIDERMAN

Attorney General of the State of New York
120 Broadway
New York, NY 10271

By:



Kristen Clarke
Civil Rights Bureau Chief

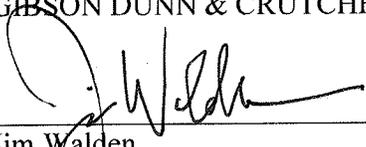
4/4/14



Jessica Attie
Assistant Attorney General

GIBSON DUNN & CRUTCHER LLP

By:



Jim Walden
Counsel for the Property Owners

SCHEDULE A

1. 1145 Clay Avenue
2. 1967 Marmion Avenue
3. 710 East 138th Street
4. 2310 Valentine Avenue
5. 51 Buchanan Place
6. 2391 Davidson Avenue
7. 8 Vermilyea Avenue
8. 530 Isham Street
9. 3063 Hull Avenue
10. 452 East 187th Street
11. 2401 Davidson Avenue
12. 17 Vermilyea Avenue
13. 536 West 158th Street
14. 540 West 158th Street
15. 1883 Amsterdam Avenue
16. 1885 Amsterdam Avenue
17. 1887 Amsterdam Avenue
18. 1514 West 8th Street
19. 499 Ocean Avenue
20. 1270 Ocean Avenue
21. 2101 Beverly Road
22. 409 East 21st Street
23. 101 Woodruff Avenue
24. 286-290 East 91st Street
25. 183-185 East 92nd Street
26. 820 Jackson Avenue
27. 972 Leggett Avenue
28. 949 Anderson Avenue
29. 957 Anderson Avenue
30. 87 West 162nd Street
31. 1253 Franklin Avenue
32. 1250 Franklin Avenue
33. 1229 Franklin Avenue
34. 265-269 East 194th Street
35. 1511-21 Sheridan Avenue
36. 2314 Valentine Avenue
37. 1450 Taylor Street
38. 1471 Taylor Street
39. 50 East 172nd Street
40. 709-715 Fairmont Place
41. 2376 Ryer Avenue
42. 2463 Valentine Avenue

SCHEDULE B

1. 536-540 West 158th Street Property, LLC
2. 286-290 East 91st Street Owner, LLC
3. 265-269 East 194th Street Property, LLC
4. 1883-1887 Amsterdam Avenue Property, LLC
5. 183-185 East 92nd Street Owner, LLC
6. 1511-21 Sheridan Avenue Property, LLC
7. 1514 West 8th Street Property, LLC
8. 820 Jackson Avenue Owner, LLC
9. 2314 Valentine Avenue Property, LLC
10. 101 Woodruff Avenue Property, LLC
11. 972 Leggett Avenue Owner, LLC
12. 1450 Taylor Street Property, LLC
13. 1270 Ocean Avenue Property, LLC
14. 949 Anderson Avenue Owner, LLC
15. 1471 Taylor Street Property, LLC
16. 709-715 Fairmont Place Property
17. 2376 Ryer Avenue Property, LLC
18. 50 East 172nd Street Property, LLC
19. 1967 Marmion Avenue Property, LLC
20. 1145 Clay Avenue Property, LLC
21. 8 Vermilyea Avenue Property, LLC
22. 2391 Davidson Avenue Property, LLC
23. 530 Isham Street Property, LLC
24. 2401 Davidson Avenue Property, LLC
25. 2310 Valentine Avenue Property, LLC
26. 17 Vermilyea Avenue Property, LLC
27. 710 East 138th Street Property, LLC
28. 51 Buchanan Place Property, LLC
29. 2463 Valentine Avenue Property, LLC
30. 452 East 187th Street Property, LLC
31. 499 Ocean Avenue Property, LLC
32. 2101 Beverly Road Property, LLC
33. 409 East 21st Street Property, LLC
34. 1253 Franklin Avenue Property, LLC
35. 1250 Franklin Avenue Property, LLC
36. 1229 Franklin Avenue Property, LLC
37. 3063 Hull Avenue Property, LLC

Schedule C

1. 499 Ocean Avenue, Brooklyn, NY;
2. 2101 Beverly Road, Brooklyn, NY;
3. 409 East 21st Street, Brooklyn, NY;
4. 1253 Franklin Avenue, Bronx, NY;
5. 1250 Franklin Avenue Bronx, NY;
6. 1229 Franklin Avenue Bronx, NY
7. 3063 Hull Avenue Bronx, NY