

**City Council Committee on Finance**

**The City's Efforts to Combat Real Property**

**Deed Fraud**

**Testimony of Jacques Jiha, Ph.D.**

**New York City Commissioner of Finance**

***February 1, 2016***

Good afternoon, Chair Ferreras-Copeland and members of the City Council Committee on Finance. I am Jacques Jiha, Commissioner of the New York City Department of Finance. I am joined today by Sheriff Joseph Fucito and Annette Hill, Assistant Commissioner of Land Records and the City Register — the two people leading our efforts to curb deed fraud. I want to publicly thank them and their staff for their efforts on behalf of the citizens of this great city.

Deed fraud is a very serious crime and has become more prevalent across the country in recent years, especially in places like New York City that have had a booming real estate market. The increased incidents of recording fraudulent deeds are of great concern to us because when such a criminal act takes place, it results in the theft of what is the largest and most important asset we own — our home.

Deed fraud occurs when someone files a transfer of your property without your consent or permission, or when you mistakenly sign over your property to someone else because you were misled or tricked in a transaction. Counterfeit deeds are often used to commit other fraudulent activity, such as securing mortgages, setting up phony short sales, or renting properties that are in foreclosure. Deed fraud is a crime that targets our most vulnerable citizens — the elderly, minorities, and immigrants — those who may be less savvy about real property transactions. Please rest assured that we are committed to combating it with every resource at our disposal.

### **What is the City doing to protect property owners?**

The most important step we can take is to make it more difficult to record fraudulent deeds in the first place. Once a fraudulent deed is recorded, the rightful owner has to spend time and money to prove ownership. Our challenge, is that by law, the City Register is required to perform the ministerial act of recording a deed as long as it is in recordable form, meaning: It is certified by a public notary; it has a seller's signature and — in certain circumstances — a buyer's signature, and includes all other required legal documents. There is not much room for us to negotiate the law. This is a challenge for municipalities throughout the country — their registrars, like our City Register, are legally obligated to record deeds that meet these basic standards.

We have, however, taken affirmative steps to curtail this fraudulent activity, including training our staff to better review documents that might be suspected of fraud. We have also put in place a number of safeguards — the most important of which is the insertion of the Sheriff's Office in the review process. We now automatically inform property owners by mail when a deed is filed against their property and encourage them to register for our opt-in notification program to receive emails or text alerts when documents are recorded against their property. The quicker fraudulent activity is detected, the quicker the problem can be resolved.

Beyond the notification program, we now request limited liability companies (LLCs) — which have been used by some criminals in deed-fraud scams to shield their identities — to disclose the names of their members when recording a deed. We have also installed cameras in all our offices where deeds are recorded.

After an internal review of our recording process, our staff at the City Register's Office quickly learned that of the many types of deeds, Quitclaim is most often used when committing deed fraud, because it does not guarantee that the grantor owns the title to the property. Our staff now pays closer attention to these documents.

When there is a discrepancy with the recording, it is automatically referred to the Sheriff's Office for a second review, where his staff then contacts the respective parties — both buyer and seller. If the deed is legitimate, the Sheriff will work with the filer to fix the defects and the filing will move forward. If, however, the deed is fraudulent, the Sheriff opens an investigation.

Examples of other types of recordings that would trigger an additional review are those with a sale price far below market value, multiple transfers between LLCs during a short period of time, or transfers by people or entities known to have committed or have been suspected of deed fraud in the past.

These changes have had significant effects. Since July 2014, when we increased our focus on this issue, 1,133 cases have been referred to the Sheriff's Office. We have closed out 474 cases, completed 134 criminal investigations with district attorney offices, and we have 525 investigations in various stages of development. We have made 17 arrests related to 28 properties with a market value of \$19 million.

Even with these breakthroughs, we are continuously assessing and evaluating our operations to enhance ways to detect and prevent fraud. These include hiring more deputy sheriffs and investigators to handle the growing number of cases and looking at how technology can be used to improve detection.

In addition to these administrative actions, we are also working with the press and community organizations such as Center for New York City Neighborhoods to raise awareness about deed fraud.

In these efforts, we are encouraging New Yorkers to be proactive. In our communications, we advise property owners to call or walk into the Sheriff's Office right away if there is activity on their property records that is not legitimate. We have included a phone number and web contact information for the Sheriff's Office on our website at [nyc.gov/finance](http://nyc.gov/finance). Victims of deed fraud or those who suspect fraud may also reach out to the district attorney in their borough. The five district attorneys have been key partners in these investigations and prosecutions.

Administrative changes alone cannot prevent or detect all deed-fraud scams. As a result, we have introduced legislation in Albany to erect barriers that extend beyond the Department of Finance's recording function. Our legislative proposal is based on nationwide best practices and is supported by the National Notary Association. The proposed legislation would require applicants for notary public who specialize in estates, deeds and powers of attorney to submit fingerprints during the application process. Public notaries and the Commissioner of Deeds would be required to complete a record of every notary public's recordings involving certain types of residential property documents. These documents would be submitted to the City Register's Office, the Richmond County Clerk or to the title insurance company, financial institution or law firms for which the notary is an employee or an agent. Doing this would provide a record of transactions that could be referenced during a deed-fraud investigation.

For legal proceedings related to deed fraud, our proposed legislation would require the prosecuting attorney to file a notice of pendency against the property in its county within 10 calendar days of a criminal complaint. The pendency notice would prevent the property in dispute from further changing hands or having a mortgage taken against it during an active



court case. Moreover, we proposed making fraudulent real property recordings a more serious offense.

This legislation will go a long way in reducing the incidents of deed fraud, and we need the Council's support to push this legislative package in Albany.

**What can people do to protect their properties?**

- Review your property records annually for activity. This information is available on our website at [nyc.gov/finance](http://nyc.gov/finance) through the Automated City Register Information System, commonly referred to as ACRIS, where you can view property records.
- Register your property with the City Register's Office. We have a program called the Notice of Recorded Document. Once you register, you will be notified by text or email when there is any activity on your property. It's free and you can register online.
- Check with the Department of Finance if you stop receiving property-tax and water bills or if any of your utility bills suddenly increase.
- If you own a property in New York City that is not occupied, we recommend that you check it often to make sure it is not illegally occupied.
- If you are going away for a long period of time, ask someone you trust to check on your house regularly while you're gone. Have your mail collected so that it does not pile up — a signal the house is unoccupied.
- Be extremely careful of people or organizations that offer you cash to help you with loan modifications or foreclosure prevention.
- Never turn over your deed or transfer ownership of your home to a mortgage assistance company.
- Do not sign any property-related documents that you do not understand. We encourage people to first consult with a trusted attorney before signing any papers. Do not hire a lawyer referred to you by someone who might have a vested interest in your property, such as a realtor. From our investigations, perpetrators of deed fraud operate as an organized gang: they have their own attorneys, mortgage bankers, notaries, title companies and real estate brokers.

- Use a title company that you have vetted for real estate transactions, and make sure your title insurance has deed-fraud protection.

**What can you do if you are a victim of deed fraud?**

- First, act quickly. Don't wait or let feelings of embarrassment delay getting help. The more time that passes, the more difficult it may be to regain the legal title because of how quickly the property can be transferred, perhaps multiple times.
- File a complaint with the New York City Sheriff's Office. It's important that they open a criminal investigation.
- Hire an attorney to help you regain legal title to your property.
- Check to see if your title-insurance policy covers deed fraud; this could help cover the cost associated with hiring an attorney. If you can't afford one, contact the New York State Attorney General Office. They work with partners to provide free assistance to homeowners throughout the state. Their website is [AGScamHelp.com](http://AGScamHelp.com).

I hope that my testimony today has given you new insight into the seriousness and pervasiveness of deed fraud as well as a concrete outline of the measures we have taken to reduce such fraudulent activity. We look forward to working with you on our legislative agenda to secure the tools needed to combat this serious crime.

Thank you for your time. I will now take your questions.

# Open Deed Fraud Cases

AS OF JANUARY 28, 2016

# NYC

Department of Finance



Bureau of  
Criminal Investigation

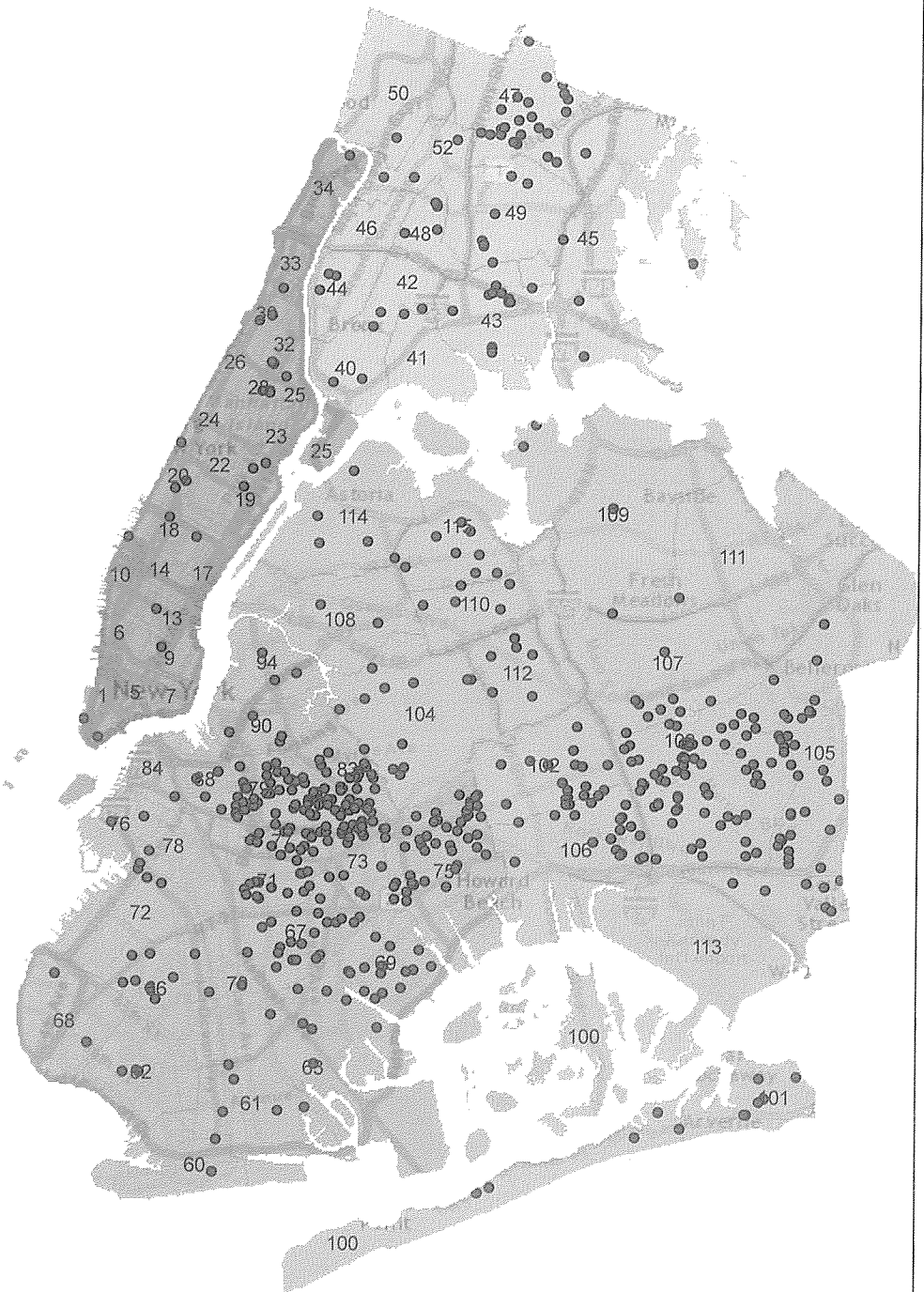
## Legend

- Deed\_Fraud\_Addresses

## New York City

### Boroughs

- Brnx
- Brooklyn
- Manhattan
- Queens
- Staten Island



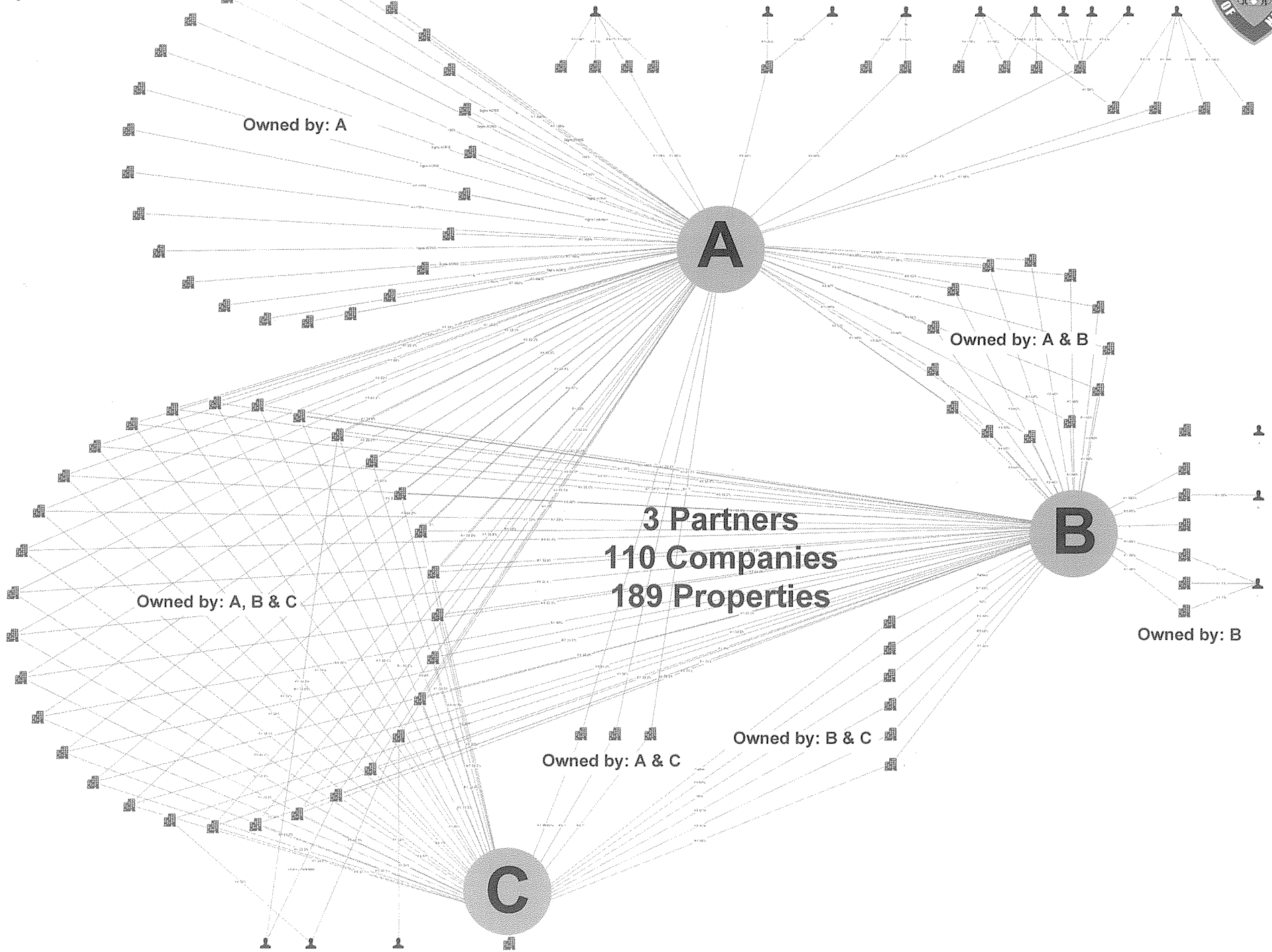
## Open Cases Summary per Borough

Bronx - 73  
Queens - 244  
Brooklyn - 326  
Manhattan - 26  
Staten Island - 2

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# Deed Fraud Investigation





**Testimony by the New York Legal Assistance Group**

**Oversight: The City's Efforts to Combat Real Property Deed Fraud**

**Before the New York City Council Committees on Finance and Consumer Affairs**

**February 1, 2016**

Chairs Ferreras-Copeland and Espinal, Council Members, and staff, good afternoon and thank you for the opportunity to speak about the City's efforts to combat real property deed fraud. My name is Rose Marie Cantanno, and I am the Supervising Attorney for the Foreclosure Prevention Project at the New York Legal Assistance Group (NYLAG), a nonprofit law office dedicated to providing free legal services in civil law matters to low-income New Yorkers. NYLAG serves immigrants, seniors, veterans, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, people with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBTQ community, Holocaust survivors, as well as others in need of free legal services.

I would be lying if I said I was not surprised at the sheer number of potential deed theft cases that NYLAG encounters each week. Even during the real estate boom when I practiced solely real estate law, there was never the prolific number of scams on homeowners that exist today. The number of fraudulent service providers who are taking advantage of desperate homeowners has seemingly multiplied twentyfold since I began doing this work five years ago. Homeowners who are already in the stressful situation of potential foreclosure do not deserve to be preyed upon by these scam artists.

In the last year or so, we have seen many potential clients coming to us because they were served foreclosure papers, even though they had previously sold their homes and should no longer have a mortgage loan in their names. Many homeowners have mortgage loans which far exceed the values of their homes, and so a short sale needs to be negotiated with the lender. This allows the homeowner to transfer title to a buyer at market value and be released from any additional liability on the loan. These are individuals who, as difficult as it was, came to the conclusion that they could not afford their homes. They decided to be responsible and went to a real estate broker, or someone they thought to be a licensed real estate broker, in order to find a buyer and get a short sale approved. Unfortunately, they are often instead walking into a plot which will result in their turning over their home, while still continuing to be responsible for the mortgage debt. There was a time when deed thefts were much easier to identify. False deeds would appear in the county clerk's offices with forged signatures. However, today's scammers have become much more diverse and sophisticated.

One example of such a scheme involved an elderly couple in the Bronx, Sarah and Benjamin. Sarah came to us, bewildered, after receiving a Foreclosure Summons and Complaint. Two years prior, when Benjamin was diagnosed with dementia, they decided to sell their family home because they knew that the payments and upkeep were going to be too much for them. They contacted one of the many "brokers" who were sending them correspondence at the house and decided to allow him to sell their home. He advised them not to worry about anything, and that he would arrange for an attorney to represent them so there was no need for them to hire their own counsel. He would take care of getting documents signed and would transport them to and from the closing. He could help them get movers, deal with the utility companies and, most importantly, deal with their lender regarding paying off the mortgage.

He so completely earned their trust that they signed everything he put in front of them, even if it was blank. Soon after, he called Sarah and Benjamin to inform them that “the deal was ready to close,” even though they did not remember signing a contract, nor did they understand the terms of the sale. They were simply told everything was fine and that the house would be sold and they would have some time to move out. They quickly arranged to rent an apartment and were ushered off to the “closing,” where they met their attorney for the first time. The attorney pointed to a few signature lines, but did not explain the documentation to them. There were several people bustling around and it looked similar to closings they had attended in the past. In fact, most of what happened that day was a normal closing. While they did transfer the title to the property, the purchase price was never used to pay off their current mortgage loan. They did not expect there to be any leftover proceeds for them, but they fully expected that their indebtedness would be extinguished. Unfortunately, rather than allowing them to pay off their mortgage, the transaction put Sarah and Benjamin deeper into debt as their mortgage interest continued to grow.

Some people will say that there is no major harm here because couples like Sarah and Benjamin had no equity in the home, and the chances of the lender collecting a deficiency judgement against two senior citizens living solely on Social Security is close to nil. That could not be further from the truth. Even if one is not distressed by the fact that these new “owners” almost always collect rental income from the houses they gain by questionable methods, one cannot dispute the human aspect of these cases. Sarah and Benjamin are in their late eighties and came to us because Sarah could not sleep at night worrying about the foreclosure suit. Benjamin’s health has deteriorated, and she really needs to be able to focus on him and not the fallout from this scheme. Luckily, she found legitimate assistance, and we were able to negotiate

with the lender and release her from liability. Unfortunately, the legal services organizations that do this critical work do not have the capacity to meet the need, and many victims of fraud are not able to rectify the situation.

A second trend we have observed revolves around properties whose values have recently increased and now the clients have substantial equity. In some cases, the clients believe they are refinancing their homes, yet when they arrive for the closing, a deed mysteriously appears in the package. Often, it is a blank form that is filled in after the clients leave, fully believing they still own their home, but instead they have signed away the deed to the house. In other cases, the so-called real estate broker misrepresents the value of the home to the homeowner and then directs the homeowner to a buyer (often a company owned at least in part by the broker) who is paying well below market value. The client trusts the broker's advice on the value of the home because he or she is a real estate professional, and some brokers take advantage of that trust.

The number and complexity of these types of schemes is alarming. As more and more homeowners are deeper in the foreclosure process, there is ample opportunity for these unsavory individuals to convince desperate homeowners that they are their saviors. I appreciate the opportunity to speak to the Council about this issue, and I look forward to engaging in further discussions about putting an end to these fraudulent practices.

Respectfully submitted,

Rose Marie Cantanno, Esq.

New York Legal Assistance Group





**Testimony Before the City Council Committee on Finance:  
The City's Efforts to Combat Real Property Deed Fraud**

**February 1, 2016**

Good afternoon. My name is Caroline Nagy, and I am the Policy Manager at the Center for NYC Neighborhoods. I would like to thank Chair Ferreras and the members of the Finance Committee for holding today's hearing on the important topic of deed fraud.

**About the Center for NYC Neighborhoods**

The Center promotes and protects affordable homeownership in New York so that middle- and working-class families are able to build strong, thriving communities. Established by public and private partners, the Center meets the diverse needs of homeowners throughout New York State by offering free, high quality housing services. Since our founding in 2008, our network has assisted over 40,000 homeowners. We have provided approximately \$33 million in direct grants to community--based partners, and we have been able to leverage this funding to oversee another \$30 million in indirect funding support. Major funding sources for this work include the New York City Department of Housing Preservation and Development, the New York City Council, and the Office of the Attorney General, along with other public and private funders.

**Deed Theft: A Growing Threat for Vulnerable New York City Homeowners**

At the Center, we are always monitoring and responding to emerging threats to homeowners. Unfortunately, we are currently seeing an alarming increase in deed theft scams targeting homeowners at risk of foreclosure. Like many scammers, they present themselves as offering home-saving solutions to families desperate for a way out of foreclosure, but end up taking their homes out from under them.

Deed theft scams are a form of foreclosure rescue scam that involve the fraudulent transfer of ownership of a home to a third party. Sometimes homeowners are tricked into signing over their deed, believing they are signing some other type of legal document. For example, according to the FBI, defendants in the recent Launch Development LLC case misled homeowners into signing blank documents that they were told were mortgage modifications, when in fact, the documents were used to transfer the title to their homes.<sup>1</sup> In other cases, the homeowner may be aware that they are signing over title to their home, but are promised the transfer will be temporary as they seek a refinancing, modification, or second mortgage. After signing over title to the home, the homeowner will typically

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<sup>1</sup> Press release: Three Men Charged in Manhattan Federal Court in Multi-Million-Dollar Scheme to Deceive Homeowners into Selling Their Homes. May 21, 2015.  
<https://www.fbi.gov/newyork/press-releases/2015/three-men-charged-in-manhattan-federal-court-in-multi-million-dollar-scheme-to-deceive-homeowners-into-selling-their-homes>

make “lease” payments to the scammer until the scammer moves to evict them in housing court and takes possession of the home, usually to sell at a profit.

### **Deed Theft Scams and the Foreclosure Crisis**

The rise of deed theft in New York City is fueled by the explosive combination of rapidly increasing home values with tens of thousands of New Yorkers struggling to avoid foreclosure. Today, tens of thousands of New York City families are in foreclosure, while many more struggle to make monthly mortgage payments. The negative impacts of the foreclosure crisis are felt citywide, but are seen particularly in communities of color, which were disproportionately targeted and harmed by the predatory lending that caused the financial crisis.<sup>2</sup> Nationally, half of the collective wealth of African--American families was lost during the Great Recession as a result of the dominant role of home equity in their total net worth and the prevalence of predatory high--risk loans in communities of color. Likewise, the Latino community lost an astounding 67% of its total wealth during the housing collapse.<sup>3</sup>

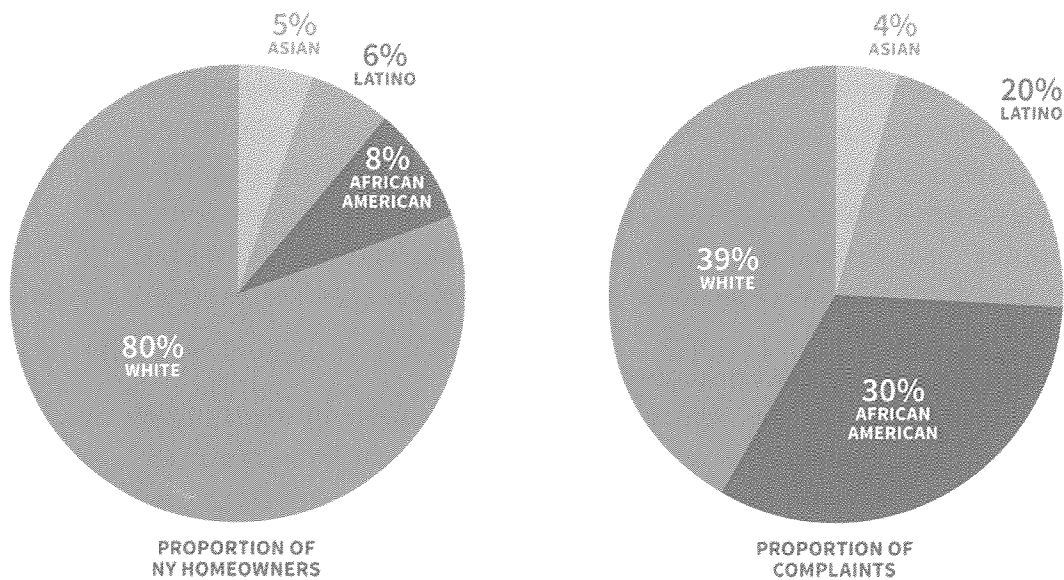
The foreclosure crisis has created a second wave of foreclosure rescue fraud. This cottage industry of groups offering foreclosure rescue services under false pretenses feeds on the desperation and confusion of homeowners, who have often been unable to reach a resolution with their banks on their own, and who do not know where to go for help. In fact, many foreclosure rescue scams today involve the same bad actors who once marketed these risky mortgage products to vulnerable communities. Once the market for originating predatory mortgages dried up, many former mortgage brokers simply stayed in the same neighborhoods and re-established themselves as supposed “foreclosure experts.”

Similar to the fallout from the foreclosure crisis, foreclosure rescue scams, including deed theft, disproportionately harm homeowners of color. As you can see in the below chart, minority homeowners are much more likely to have been scammed compared to white homeowners in New York.

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<sup>2</sup> Center for Responsible Lending, *Lost Ground*, 2011: Disparities in Mortgage Lending and Foreclosures, at 3. Available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/LostGround-2011.pdf>. See also National Community Reinvestment Coalition, *The Broken Credit System: Discrimination and Unequal Access to Affordable Loans by Race and Age*, 2003. Available at: [http://www.omm.com/omm\\_distribution/newsletters/client\\_alert\\_financial\\_services/pdf/ncrcdiscrimstudy.pdf](http://www.omm.com/omm_distribution/newsletters/client_alert_financial_services/pdf/ncrcdiscrimstudy.pdf); Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*, 2006. Available at: <http://www.responsiblelending.org/mortgagelending/research-analysis/unfair-lending-the-effect-of-race-and-dethnicity-on-the-price-of-subprime-mortgages.html>.

<sup>3</sup> Institute on Assets and Social Policy, Brandeis University, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, 2013, at 4. Available at <http://iasp.brandeis.edu/pdfs/Author/shapiro-thomas-m/racialwealthgapbrief.pdf>.



**Racial Disparity of Scam Victims, by Scams Reported to the National Loan Modification Scam Database**

#### **Recommendations:**

At the Center for NYC Neighborhoods, combatting deed theft is a major priority. We have partnered with the New York State Attorney General’s Office to get the word out about scams and make sure homeowners know where to find free, trustworthy help with their mortgages.

The good news is that there are high-quality housing counseling and foreclosure prevention legal services available free-of-charge to all New Yorkers through Attorney General Eric Schneiderman’s Homeowner Protection Program, for which the Center serves as the New York City Anchor Partner. Homeowners can access these services through 311 or by calling the Attorney General’s Homeowner Protection Program Hotline at 855-HOME-456. In New York City, the Attorney General funds 31 community-based organizations that provide free housing counseling and legal services throughout the five boroughs.

While we’re proud of the strong network of resources available for homeowners, it will take the work of all of us to eradicate deed theft and other forms of foreclosure rescue scams. We respectfully submit the following recommendations:

### **1. Increase enforcement actions against scammers:**

We applaud recent prosecutions of deed theft scammers, including the Launch Development case, which have successfully brought criminals to justice while promoting public awareness of scams.<sup>4</sup> It is essential to continue these actions at all levels of enforcement, from County District Attorney Offices, to the New York State Attorney General's Office, to the Department of Justice at the federal level.

We would also like to see greater enforcement of existing law restricting the activities of "distressed property consultants," who provide services to homeowners seeking to avoid foreclosure. Distressed property consultants are heavily regulated at the Federal, City, and State level, and must adhere to strict disclosure requirements and a prohibition on upfront payments, among other requirements.<sup>5</sup> For example, New York City Consumer Affairs law requires that all distressed property consultant advertisements in New York City contain a prominent disclosure statement, yet almost none of them do.

### **2. Partner with us in getting the word out about scams:**

No homeowner should have to navigate the foreclosure process alone. The best way for homeowners to avoid scams is to get connected to help they can trust. Unfortunately, too many homeowners in need do not know where to turn for trustworthy help with their mortgage, and fall prey to scammers, who advertise openly, appear legitimate, and target vulnerable homeowners.

Under the leadership of the Office of the Attorney General, we created AGScamHelp.com to educate homeowners about scams and steer them to legitimate, trustworthy sources of help. Through a multipronged consumer education outreach campaign, we have placed ads on buses, on billboards, in newspapers, and online; presented at community events; and mailed educational materials to over 400 organizations across the state, as well as monthly notices to homeowners at risk of foreclosure. We are pleased with the results of our initial consumer outreach campaign, but there is more to be done and we'd like to continue partnering with council members and community-based organizations on homeowner outreach, including: events, messages to constituents, door-to-door outreach, and more.

### **3. Enhance property tracking and ACRIS mechanisms for preventing fraud:**

We applaud the Department of Finance and the New York City Sheriff for taking measures to combat fraudulent deed recordings. These measures are a great first step, and we recommend building on them by exploring further measures, such as increasing the identification and verification requirements for filing deeds, contracts of sale, or liens, as well as additional requirements for filers hiding behind the

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<sup>4</sup> Recent deed theft prosecutions include the indictment of an NYPD officer accused of stealing a brownstone in Bedford-Stuyvesant by Brooklyn District Attorney Ken Thompson, following an investigation by New York City Sheriff Joseph Fucito, and the federal prosecution of several individuals associated with Homeowner Assistance Services of New York (also known as "Launch Development LLC") by US Attorney Preet Bharara. See <http://www.brooklynnda.org/2015/10/19/new-york-city-police-officer-indicted-for-stealing-townhouse-allegedly-transferred-title-to-bedford-stuyvesant-property-to-herself/> and <https://www.fbi.gov/newyork/press-releases/2015/three-men-charged-in-manhattan-federal-court-in-multi-million-dollar-scheme-to-deceive-homeowners-into-selling-their-homes>.

<sup>5</sup> See 7 N.Y. RPP, § 265-b, 3-a. and 28 12 C.F.R. § 1015.5. For more information on relevant law, see the Center for NYC Neighborhoods' 2014 report, Who Can You Trust? Available at: [www.cnycn.org/scams](http://www.cnycn.org/scams).

protections of Limited Liability Corporations (LLCs), specifically the complete disclosure of all beneficial owners.

**4. Provide resources to represent victims of deed theft and other forms of foreclosure rescue scams:**

While the Attorney General's Homeowner Protection Program funds legal representation of homeowners in their foreclosure cases, there is only limited funding currently dedicated to supporting civil litigation on behalf of homeowners who have been victimized by scammers and are seeking to restore their title or get their money back. These efforts require significant resources on the part of legal services providers, as they often require a lengthy judicial process. This is especially true for victims of deed theft. Additional funding could create a litigation fund that would support cases citywide.

**5. Investigate Homeowner Anti-Harassment legislation:**

Homeowners in foreclosure often experience repeated visits at their home from foreclosure rescue scammers, who obtain their address through public court records. We are interested in exploring the creation of a "do not solicit" registry for homeowners that would levy fines against violators as part of a broader strategy to combat homeowner displacement.

**6. Support efforts to strengthen LLC transparency:**

As documented in the recent front-page New York Times article on deed theft, deed theft scammers sometimes take advantage of the anonymity provided by the LLC corporate structure to avoid detection.<sup>6</sup> When a deed has wrongly been transferred to an anonymous LLC, homeowners and their advocates have no way of determining who is behind the deed transfer. This creates major challenges for seeking redress and allow repeat offenders to avoid detection. Even if a homeowner successfully sues the LLC in court, it is quite likely they will be unable to collect on their judgment, as the scammers will move on to hide behind another LLC--and take their assets with them.

We support the de Blasio administration's efforts to ensure that the members of LLCs are disclosed when conducting real estate transactions, and look forward to working with City Council and the Administration to bring substantial reforms at the state level.

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Thank you for the opportunity to testify today, and for your commitment to fighting deed theft. We look forward to working with you to advance the recommendations made here.

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<sup>6</sup> Stephanie Saul, Real Estate Shell Companies Scheme to Defraud Owners Out of Their Homes, New York Times, Nov. 7, 2015. <http://www.nytimes.com/2015/11/08/nyregion/real-estate-shell-companies-scheme-to-defraud-owners-out-of-their-homes.html>



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**Testimony by The Legal Aid Society**

**Before The New York City Council Committee on Finance**

**The City's Efforts to Combat Real Property Deed Fraud**

**February 1, 2016**

Founded in 1876, The Legal Aid Society is the oldest and largest provider of free direct legal services to low-income families and individuals in the United States. Operating from 26 locations in New York City with a full-time staff of over 1,900, the Society handles more than 300,000 individual cases and legal matters each year. The Society's law reform representation for clients also benefits some two million low-income families and individuals in New York City through impact litigation addressing a broad range of housing and benefit issues.

The Legal Aid Society has been at the forefront of advocating for the rights of homeowners at the City, State, and local levels since 2000 through our Foreclosure Prevention and Home Equity Preservation Project. Our mission is to preserve affordable homeownership, prevent foreclosures, and where foreclosure cannot be prevented, to address the resulting loss of home and tenant displacement. Since the Project's inception we have assisted homeowners by challenging abusive lending and real estate practices in state and federal court, defended homeowners in foreclosure actions, and, since 2008,

advocated for loss mitigation at court-mandated settlement conferences. We provide Citywide community outreach and education, particularly focused on Queens and the Bronx, where we have assisted hundreds of homeowners at weekly court-based clinics. As members of statewide New Yorkers for Responsible Lending and the citywide Coalition for Affordable Homes, we advocate for legislative and policy changes on issues directly affecting our clients.

We appreciate the opportunity to testify today on the important issue of real property deed fraud and thank the Committee on Finance for convening this important hearing.

Real property deed fraud and related foreclosure rescue scams are, unfortunately, not new, but the foreclosure crisis has spawned their growth and transformation into increasingly new forms. The mortgage servicing industry's recalcitrance and unwillingness to provide timely relief to homeowners has fueled a pernicious new industry of foreclosure rescue scammers who exploit the hopes of vulnerable homeowners with false promises to reduce or eliminate their mortgage debt. In New York City, where real estate values are especially high, speculation is particularly rampant.

The foreclosure crisis has had a devastating impact on low-income neighborhoods and on communities of color. These groups were also the primary targets of predatory subprime and high-cost loans. Scammers take advantage of vulnerable homeowners desperate to save their homes or get out from under significant mortgage debt, and aggressively use telephone, mail, and in-person solicitation. Solicitations are often in both

English and Spanish and also include advertisements on television and radio, in newspapers, on street flyers, and billboards. Scammers also disproportionately target and impact another vulnerable population -- older New York homeowners. Solicitations by scammers frequently takes the form of harassment.

Foreclosure rescue scams are designed to defraud vulnerable homeowners by stripping them of their deeds and the equity in their homes. In the past, the most common form of foreclosure rescue scam involved offers to prevent foreclosure through refinance on more favorable terms, while homeowners were tricked into signing over their deed to a "straw-buyer," the scammer pocketed the proceeds of the new mortgage, allowed the home to go into foreclosure, and disappeared. These scams still exist today but foreclosure rescue scams have evolved and now take on many new forms. Often the scams start with claims to modify the mortgage loan with false promises to either significantly lower monthly payments or in some cases eliminate the mortgage altogether while taking thousands of dollars from struggling homeowners without providing the promised services. Sometimes the same scammer convinces the homeowner that the only option is a short sale and tricks the homeowner into signing stacks of papers, often including a deed transferring their property to the scammer. In other instances, the homeowner recognizes they cannot save the home, wants to pursue a short sale, and a scammer convinces them to sign a contract of sale that is then recorded, so that the homeowner has no choice but to continue to work with the scammer, and has no other option if the foreclosing lender rejects the scam purchaser and/or scam purchase price. One of the most devastating forms of short sale scams



involves convincing homeowners that they have completed a short sale and only to later discover that the scammer never paid off their mortgage debt. With increasing frequency, scammers are using the City Register to record contracts of sale and UCC-1 liens to encumber the property, making it impossible for the homeowner to resolve the situation without reliance on the scammer. In other short sale scams, brokers harass and bully homeowners and convince them they must vacate their homes in order to proceed with the sale, while the broker's only intention is to take advantage of New York City's prime rental market and rent the property until the foreclosure is completed. We recently successfully litigated a case where an unknown corporation literally stole our clients' title through forgery. Other deed thefts involve using fictional heirs to transfer title to scammers.

One prominent example that combined these various tactics is that of Homeowner Assistance Services of New York ("HASNY") and Launch Development LLC, whose principals were recently indicted in the Southern District of New York. HASNY aggressively targeted vulnerable homeowners by telephone and mail solicitation and offered homeowners facing foreclosure assistance with loan modifications and short sales. In the process, homeowners unknowingly signed contracts of sale well below market rate along with deed transfer documents selling their property to Launch Development LLC. Launch Development filed bogus UCC-1 liens with the City Register for hundreds of properties in New York City and in some instances also recorded a contract of sale. In many instances, homeowners were stripped of their deed as well as valuable equity in their property. Strong law enforcement response such as this, combined with publicity of the law

enforcement actions, is essential to deter and to ultimately minimize the impact of these scams.

Much remains to be done to address foreclosure rescue scams and to ensure that the same communities devastated by the foreclosure crisis are not further victimized by foreclosure rescue fraud. As these scams continue to evolve, it is critical that law enforcement, advocates, and the legislature keep abreast of the trends and find ways to prevent them from recurring. We therefore commend Commissioner Jiha, the Department of Finance, and the Sheriff's office for their efforts to address this serious issue. The Recorded Documentation Notification Program is a vital first step to alerting homeowners of potential fraud regarding their property. The Department of Finance should promote and advertise this critical program so that vulnerable homeowners most at risk of deed fraud are made aware of this important alert mechanism. We also commend the Sheriff's office for their efforts to investigate deed fraud. Increased prosecutions by law enforcement is essential to stopping scammers and preventing future scams. Unless scammers see that there are repercussions for their actions, they will continue to come up with ever new scams. For this reason, high level publicity of successful investigations and prosecutions is critical.

Strong anti-solicitation efforts, including legislation and expanded use of cease and desist zones coupled with enforcement, is key to preventing scammers from reaching vulnerable homeowners in the first place. Moreover, additional and expanded outreach and education is critically needed. Large-scale publicity on television, radio, and newspaper

advertisements by trusted community leaders and institutions is essential to counter the advertisements and solicitations of the scammers. In addition, by connecting homeowners in need of help to legitimate services -- free, high-quality legal services and housing counseling at non-profit organizations -- we can cut scammers out of the equation while maximizing the likelihood that a homeowner will be able to find a home-saving solution. Similarly, as civil legal remedies are often the only mechanism for homeowners to restore title and ultimately retain homeownership, civil legal services remains an important tool in these efforts, and we encourage the City to provide continued funding for such services.

Respectfully submitted by

Jenny Braun-Friedman  
Staff Attorney  
of the Foreclosure Prevention Unit



**L E G A L  
S E R V I C E S**

**INCORPORATED**

**TESTIMONY**

**ON**

**THE CITY'S EFFORTS TO COMBAT  
REAL PROPERTY DEED FRAUD**

**PRESENTED BEFORE:**

**CITY OF NEW YORK, COMMITTEE ON FINANCE**

**PRESENTED BY:**

**BELINDA LUU  
MFY LEGAL SERVICES, INC.**

**FEBRUARY 1, 2016**

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My name is Belinda Luu and I am a Staff Attorney in the Foreclosure Prevention Project at MFY Legal Services, Inc. (“MFY”). MFY envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised, or have disabilities. Our organization provides high-quality civil legal services to more than 10,000 poor and low-income clients every year in the areas of housing, employment, consumer, seniors, and disability rights. As an organization dedicated to preserving New York communities, MFY commends the Council for examining the City’s efforts to combat real estate fraud.

In New York City, communities of color are disproportionately targeted by various real estate scams. As a result, communities of color are not only in danger of losing their homes, but also losing their best opportunity to accumulate household wealth. In the United States, and in particular New York City, homeownership plays an important role in mitigating the overall wealth disparity between white families and families of color.<sup>1</sup> For minority homeowners, the home is usually their sole wealth-accumulating asset; investment in financial markets or other assets is uncommon.<sup>2</sup> For African Americans, homeownership constitutes 92% of their net worth and for Latinos, 67%, in contrast to whites, for whom homeownership represents only 58% of their net worth.<sup>3</sup>

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<sup>1</sup> Sara D. Wolff, “The Cumulative Cost of Predatory Practices: The State of Lending in America & its Impact on U.S. Households,” *Center for Responsible Lending*, June 2015, available at: <http://www.responsiblelending.org/state-of-lending/reports/13-Cumulative-Impact.pdf>.

<sup>2</sup> Rebecca Tippet, et. al., “Beyond Broke: Why Closing the Racial Wealth gap is a priority for National Economic Security,” *Center for Global Policy Solutions*, May 2014, available at: [http://globalpolicysolutions.org/wp-content/uploads/2014/04/Beyond\\_Broke\\_FINAL.pdf](http://globalpolicysolutions.org/wp-content/uploads/2014/04/Beyond_Broke_FINAL.pdf).

<sup>3</sup> Peter Drier, et. al, “Underwater America: How the So-Called Housing Recovery is Bypassing Many American Communities,” Haas Institute for a Fair and Inclusive Society, May 2014, available at [http://diversity.berkeley.edu/sites/default/files/HaasInstitute\\_UnderwaterAmerica\\_PUBLISH\\_0.pdf](http://diversity.berkeley.edu/sites/default/files/HaasInstitute_UnderwaterAmerica_PUBLISH_0.pdf).

As a result of this disparity, real estate scams are particularly harmful to minority homeowners because such scams threaten to steal the only asset that can build a better future for their children: their home.

### **Property Scams in Communities of Color: More Than Just Deed Fraud**

#### *(1) Contract Buyer Scams – Obtaining the Court’s Approval to Steal Property*

Unfortunately, efforts to steal property from vulnerable New York City homeowners are not limited to deed theft. Scammers continue to invent new ways of victimizing the most vulnerable members of our communities, particularly those who are poor, elderly, disabled, people of color, or of limited English-speaking proficiency. The recent experience of our client, Louise Charles, sheds light on a new type of pernicious scam: the contract buyer scam.

Ms. Charles is a 79-year-old resident in Council District 35 in Brooklyn. Born and raised in Haiti, Ms. Charles immigrated to the United States in 1978 searching for a better life. After working and saving for nearly 20 years, Ms. Charles fully realized the American dream in 1995 when she purchased her Crown Heights home. Now retired, Ms. Charles’s home serves as a sanctuary for her children and her increasing number of grandchildren. Furthermore, with a fixed income of social security and no retirement savings, Ms. Charles’s home is the only asset she has to pass along to her children.

Sadly, as a senior citizen in her predominately black Crown Heights neighborhood, Ms. Charles is an attractive homeowner to scammers seeking to benefit from skyrocketing home values. She is the victim of a new type of scam: the “contract buying” scam. In separate attempts to take her home, two different limited liability companies have attempted to enforce purported contracts of sale against Ms. Charles in Kings County Supreme Court. In fact, Ms. Charles, who speaks very limited English, was tricked into signing a document she did not understand under the

pretense of receiving public assistance. Ms. Charles was never aware that she was agreeing to sell her home for a small fraction of the market value.

A contract of sale is the promise to sell the property at a later date. When the fraudulent sale does not go through, the “buyer” seeks to enforce the contract in court and pursue the ultimate goal of transferring the deed to itself from unknowing and unwilling alleged “sellers” like Ms. Charles. In the face of these scams, Ms. Charles risks losing her longtime home to sophisticated thieves taking advantage of her unfamiliarity with the English language

MFY believes that this contract buying scheme is merely a creative response to the public’s increased attention to deed theft scams. By attempting to enforce a fraudulent contract of sale in court, the “buyers” obtain a court judgment enforcing the contract and transferring the deed. Unbeknownst to an unsuspecting judge and an overworked court system, mysterious limited liability companies, with unknown principals, obtain the imprimatur of the court system to force homeowners like Ms. Charles to hand over their homes. While Ms. Charles was fortunate enough to find MFY, which has agreed to represent her, we fear that similarly situated homeowners remain at risk of losing their homes to these new scams.

## *(2) Loan Modification Scams – Continuing to Wreak Havoc*

Although City Council and the Attorney General have been fighting foreclosure rescue and loan modification scams for years, financially vulnerable homeowners, especially in communities of color, continue to be targeted by foreclosure rescue and loan modification scams. Often these scams falsely guarantee fast loan modifications or other mortgage relief assistance at an extremely high cost. As of December 1, 2015, the Loan Modification Scam Network at the Lawyers

Committee for Civil Rights Under the Law found that homeowners victimized by foreclosure rescue scams suffered total reported losses of over \$104 million across the United States.<sup>4</sup>

Notably, half of the total reported losses were reported by African American and Latino homeowners, and minority homeowners also lose more on average per scam: Hispanic or Latino homeowners report losing \$4,235 on average, compared to an average reported loss of \$3,254 for African-Americans and a \$3,008 loss for whites.<sup>5</sup> Many of these scams purposefully use affinity marketing to achieve their nefarious goals. For example, New York City's mono-lingual Spanish-speaking communities have been particularly targeted with scam advertisements flooding local Spanish radio and television stations as well as newspapers. Fliers for these scammers are plastered all over Spanish-speaking neighborhoods from Corona to East New York.

In MFY's pending litigation, *Brardo v. American Hope Group*, we represent four Latino homeowners in Queens who fell victim to an alleged foreclosure rescue scam operation. Our clients allege that they were charged illegal, upfront fees, falsely promised more affordable monthly mortgage payments, and promised legal representation that some of them never received. Troublingly, lawyers are often a part of these schemes. For advocates, pursuing litigation against foreclosure rescue scammers can prove to be time-consuming and difficult, and few organizations have the resources to take them on. Also, the perpetrators of these scams are often hard to identify and may cease operating, only to create new limited liability companies. As the wheels of justice slowly turn, scammers move fast to stay one step ahead. The cases also tend to be very fact-specific, not lending themselves to class actions, and individual lawsuits in this area thus do not result in systemic impact or change.

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<sup>4</sup> <http://www.preventloanscams.org/newsroom/news-clips/lawyers-committee-for-civil-rights-under-law-launches-digital-guide-for-combatting-consumer-financial-scams>

<sup>5</sup> *Id.*



## **Preliminary Recommendations To Combat Real Property Fraud**

Convening this hearing and identifying the communities plagued by various real property scams is an important first step in ensuring that minority homeowners are able to share equally in accumulation of multi-generational wealth that homeownership has long provided white families. However, we cannot assume that the scams thrust on white homeowners will be the same as those found in communities of color. Nor should the proposed solutions to these frauds be the same.

### *(1) Require the Public Listing of the People Behind the Limited Liability Companies*

Hiding behind sham limited liability companies, the perpetrators of these scams shroud their actions under a veil of secrecy. The ostensible buyers in deed theft and contract buying scams are often limited liability companies created for the sole purpose of holding the stolen property. When homeowners or advocates attempt to track down the buyers, they are often led to just a mailbox, not to a physical office of an active business with actual employees. The real actors behind the scam remain in the shadows. The cost of investigating these cases to identify the beneficial owners is prodigious, usually beyond homeowners' means. Non-profit legal services providers with limited resources fare no better. Concealed by these sham companies, scammers can act with relative impunity.

The current regime places the burden on the victim to ascertain the name and address of potential scammers after their deeds have been stolen. A better framework would be to force buyers to disclose this information *ex ante*, thereby discouraging the fraudulent sales in the first place, and facilitating legal action if the scammers follow through with the theft. Recent reforms by the Department of Finance point to a potential solution. Effective May 2015, the Department of Finance now requires limited liability companies to disclose the names of all of their members

when the company purchases real property.<sup>6</sup> However, because these names are only revealed to the Department of Finance, this reform needs to go further. First, it is necessary that the names of the members be *publicly disclosed* so that homeowners can identify the potential principals behind the deed theft scams.

Second, further reforms must require the disclosure of *beneficial owners* rather than just “members.” Scammers can evade the current disclosure requirements by layering the limited liability companies so that the members of the company that steal the deed are themselves sham limited liability companies. By requiring the names and addresses of beneficial owners, the Department of Finance could cut through this web of deceit. The U.S. Treasury Department has launched just such a program for property sales of more than \$3 million in Manhattan.<sup>7</sup> A similar program must be launched for all properties in New York City, not just the homes of the wealthy.

(2) *Widely Publicize the Department of Finance’s Recorded Document Alert System*

Another step the Council can undertake to limit deed fraud scams is to better advertise New York City Department of Finance’s Recorded Document Alert System. This alert system was created specifically to stop deed fraud as soon as it happens.<sup>8</sup> However, in MFY’s experience, most homeowners do not know about this simple tool or how to register for it. Further, and particularly problematic for limited-English speaking communities, descriptions of the alert system on the Department’s website are only in English.

Greater promotion of the Recorded Document Alert System is necessary. At the very least, City Council should require that an explanation of the Recorded Document Alert System be

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<sup>6</sup> Stephanie Saul, *New Disclosure Rules for Shell Companies in New York Luxury Real Estate Sales*, N.Y. Times, July 20, 2015, at A23.

<sup>7</sup> Louise Story, *U.S. Will Track Secret Buyers of Luxury Real Estate*, N.Y. Times, January 13, 2016, at A1.

<sup>8</sup> [www1.nyc.gov/site/finance/taxes/property-recording-documents.page](http://www1.nyc.gov/site/finance/taxes/property-recording-documents.page)

included with every homeowner's annual property value statement, which is mailed every January. We recommend that the description and a statement urging homeowners to enroll be written in simple-to-understand English and be printed on a brightly colored piece of paper. Further, it is essential that the description also be in languages other than English. At the very least, the notice should be provided in the top languages spoken by New York City's limited-English proficient population, including Spanish, Chinese, Russian, Haitian Creole, and Korean. The description should also provide phone numbers for various local legal services organizations that can assist if a homeowner receives an alert that a deed, mortgage or other document was recorded without his or her knowledge.

Further, advertisement of this system, and the organizations that are there to help, should not be limited to a once-a-year mailing. It is important that information regarding this alert system, in multiple languages, also be advertised in the community: at libraries, on non-English radio stations, on NY1, and in local politicians' offices. This tool was designed to combat the very fraud that is the subject of this hearing, but it can only achieve its goal if homeowners know of its existence.

### *(3) Maintain A Continued Presence in Communities of Color*

If history is any guide, real property scams in communities of color are different and more concentrated than in white communities. As a result, solutions should be tailored with this reality in mind and targeted to those communities. First, homeowner education is essential. While housing counseling agencies and legal services organizations provide some of this education, current resources are insufficient to stay one step ahead of the scammers. To ensure that minority homeowners are able to maintain their singular source of wealth: their homes, the City must continue to dedicate funding to housing counseling and legal services organizations who can assist homeowners in fighting off the scammers that have long been allowed to disproportionately prey upon communities of color.

Second, in disseminating that education, we must learn from the scammers. They have surpassed us in being the first contact for distressed homeowners. They are the ones using the foreign language media to advertise their so-called “help.” They are the ones on Hot97 and 1010 Wins pushing their wares. They are the ones whose signs appear on lamppost and telephone poles. The vast majority of homeowners are not reaching out and calling 311 for help. Instead, they are responding to those who reach out to them, who tend to be the scammers.

Furthermore, many of New York City’s limited English homeowners have no choice but to succumb to the scammers who advertise in their language. Three years after conducting an interview with the Korean-language press, one of our attorneys still receives calls from Korean-speaking homeowners referencing that article. Whenever an MFY attorney appears on Univision to discuss MFY’s lawsuit against American Hope Group, a flood of calls from Spanish-speaking homeowners fill our hotline. We must educate and inform homeowners through the specific methods of communication that reach these communities. This type of outreach requires funding not just to help individual homeowners, but for a sustained campaign to inform and educate entire communities. If we do not dedicate funds to advertise in the communities, the scammers will win, causing hundreds of homeowners to unnecessarily lose their homes.

Again, MFY thanks the Council for recognizing the disastrous effect of real property frauds. MFY is committed to working with the City Council to better protect homeowners and preserve long-term homeownership in New York City, particularly in communities of color that rely upon their homes as a source of generational wealth and help limit the ever-increasing economic inequalities of this City. Thank you for holding today’s hearing and for considering this important issue.

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December 18, 2015

BY EMAIL AND REGULAR MAIL

Paula Z. Segal, Esq.

Executive Director

Legal Director, 596 Acres' NYC Community Land Access Project

540 President St #2E

Brooklyn NY 11215

**Re:** Housing Urban Development, LLC v. Kirton  
Index # 502449/2014

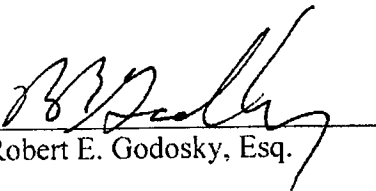
Dear Ms. Segal,

As you know, Judge Partnow appointed me as Guardian ad Litem for the heirs of Germaine Kirton. I am writing this in that capacity and to advise you that the continued presence of Maple Street Community Gardeners is not in any way adverse to my wards' interests. I am aware that they have been gardening and maintaining the property as is.

Very truly yours,

GODOSKY & GENTILE, P.C.

By:

  
Robert E. Godosky, Esq.



**TESTIMONY OF LEGAL SERVICES NYC CONCERNING THE CITY'S  
EFFORTS TO COMBAT REAL PROPERTY DEED FRAUD**

City Counsel Hearing  
Committee on Finance

February 1, 2016

We present this testimony on behalf of Legal Services NYC (LS-NYC), which is the nation's largest provider of free legal services to the poor. For nearly 40 years, Legal Services NYC has provided critical legal help to low-income residents of New York City. The neighborhood offices of Legal Services NYC operate in diverse communities throughout the city, representing over 25,000 clients each year in each of the five boroughs.

Over the last ten years, Legal Services NYC has vastly expanded services in areas of need critical to the communities that we serve, including unemployment, language access, disability, education, immigration, bankruptcy, consumer issues, and foreclosure prevention. LS-NYC is also the oldest and largest provider of foreclosure prevention legal services in New York with four dedicated foreclosure prevention units consisting of approximately 40 attorneys and paralegals that have, since 2009, assisted more than 10,000 families at risk of losing their homes to foreclosure in neighborhoods across

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Raun J. Rasmussen, Executive Director  
Michael D. Young, Board Chair

Brooklyn, Queens, Staten Island, and the Bronx. We therefore have an informed perspective on the challenges homeowners face, and have seen first-hand the recent havoc caused by increasing instances of deed fraud in diverse homeowner communities throughout the City.

South Brooklyn Legal Services, one of our neighborhood offices, has many years of experience litigating deed theft actions and is now litigating several recent deed theft cases in Kings County Supreme Court on behalf of homeowner victims. Across the city, we have also spoken with many more homeowners in the communities we serve about the ways they are being targeted by scammers who want to acquire their properties. Our testimony will draw upon what we are seeing as legal services providers on the ground, and what we have learned from litigating these cases. Specifically, we will focus on how scammers are able to appropriate legal processes to defraud homeowners, what legislators and law enforcement can be doing to address the problem, and why free legal services are so critical for homeowners in these situations.

### **What We Are Seeing In Our Practice**

Throughout the city, we have seen scores of homeowners who have been subjected to deed theft scams. Most of these clients are seniors. Most are people of color. All are low-income. Many are immigrants. Several are disabled or suffering serious health problems. Most importantly, none of them intended to sign away their only asset and source of wealth to a scammer. Yet when they found themselves in trouble with their mortgages, unable to modify their loans or otherwise save their properties, they were easy targets for these fraudsters. They started getting cold calls at home, visits from sales agents offering help, and—with no other viable options—all too

many of our clients fell victim to unscrupulous actors who literally stole their houses out from underneath them.

South Brooklyn Legal Services represents several homeowners who were tricked into signing away the deeds to their houses by a group of scam artists calling themselves Homeowner Assistance Services of New York. Our other offices have also advised additional homeowners who have been harmed or solicited by this nefarious group. Notably, this group has targeted a diverse array of neighborhoods—ranging from gentrifying areas of Brooklyn where property values have skyrocketed, to modest neighborhoods in southeast Queens that have been among the slowest to recover from the foreclosure crisis. Regardless of neighborhood, Homeowner Assistance Services almost exclusively target communities of color. We've attached a map of Brooklyn foreclosures in 2014 as a way of illustrating where distressed homeowners are located, since those are the people who get targeted by these scams.

Agents from Homeowner Assistance Services would sometimes use affinity marketing, sending sales agents of similar racial and ethnic backgrounds to gain our clients' trust. They would build relationships with our clients over the course of many months, gathering confidential financial information. They would get our clients to let them communicate directly with their lenders, and would tell clients in foreclosure not to show up to their own court dates. They would often seek out our clients after filing a phony lien against the property. Such aggressive solicitation has paid off time and again for these scammers, as they work their way through communities of color throughout New York City. If this kind of marketing were prohibited or at least regulated, our clients might never have answered the cold calls that led to these frauds.



After months of gaining trust and access, Homeowner Assistance Services would then tell our clients that their credit was shot, they couldn't refinance, and the only way for them to save their house would be to do a short sale "on paper only." They would bring our clients to their offices – often in a Town Car – and put them in a room with an individual claiming to be acting as their attorney. That attorney would hand them a stack of papers to sign, promising that it was all part of the process of saving the home. Trusting the attorney, and the agents at Homeowner Assistance Services, these vulnerable homeowners would unwittingly sign over the deeds to their homes. Who would they sign the deeds over to? An LLC they had never heard of before, whose principals just happened to be affiliated with Homeowner Assistance Services. Frequently it was an LLC called Launch Development, but we've also seen entities such as Martin Development & Management and CNM Analytics, Inc., which appear to also share the same principals. In the course of investigating these actors, we've actually identified many more LLCs – often named after the address of a given property – that appear to be affiliated with these principals.

What's happened to our clients in the wake of these deceptive transactions has been nothing short of traumatic. In one Queens case, where a homeowner had been renovating one unit of a two-family home, unfamiliar workers showed up the day after the "closing" and began ripping out the work the homeowner had authorized. Within days, a stranger simply moved into the unit, claiming he had rented it, and the homeowner was powerless to stop him. In other cases, after these fraudulent closings, homeowners started getting surprise visits at their home from strangers claiming to be the "new owners" of their property. People demanding to come inside and get a look at the house they "just bought." Phone calls demanding that our clients vacate the

premises. Knocking on doors and windows at all hours. Sitting in parked cars on the street, just watching our clients' houses. Breaking the locks on our clients' doors. Sneaking around in our clients' back yards. And finally, serving our clients with eviction papers and forcing them into Housing Court proceedings, as if they were unlawful tenants in their own homes.

### **Tactics Employed By Deed Theft Scammers**

It was these experiences that brought people to South Brooklyn Legal Services, Queens Legal Services, and other legal services offices around the city. As we've investigated these transactions and others, we have learned how scammers are able to use legitimate legal processes to perpetuate frauds upon our most vulnerable homeowners. It's especially outrageous because these developers are taking aim at communities of color, where access to legitimate real estate services and legal advice is harder to come by, and people are finding themselves in desperate situations.

One of the most devious tactics Launch Development has used is the "phony lien" strategy. They've filed hundreds of what we believe are bogus liens under the Uniform Commercial Code against distressed properties around the city. Since anyone can file a lien, without proof of a *bona fide* creditor-debtor relationship, this is a canny strategy to cloud title to a given property. They file these liens and then sit on them, sometimes for a year or more, until they have the opportunity to acquire the property from the homeowner in a short sale. Generally speaking, what we've seen is that once they get the deed into their name, that phony lien miraculously disappears in ACRIS with a UCC lien termination. Our clients never knew they had liens on their property until we showed them the recorded documents, and they were mystified as to how there could be a lien without any underlying debt.

We've found over two hundred liens in favor of Launch Development in ACRIS, and who knows how many more have been filed using other LLC names we haven't discovered yet. We know from our foreclosure prevention work that having a lien against your property is problematic if you want to modify a delinquent mortgage or sell your home – so it appears that this strategy is aimed at coercing homeowners into dealing with these scammers before doing anything else with their property. If there were verification requirements for lien filers, hundreds of distressed homeowners would likely be free of these bogus liens, and free to do with their property as they wish.

Related to the phony lien strategy is the sham LLC strategy. When homeowners came to us seeking help in getting their deeds back, they brought us business cards and documents with the Homeowner Assistance Services logo. This company sounded like a legitimate business: it had a website (up until recently), a Facebook page, and nice-looking folders that they'd give to homeowners after meeting with them. They even have a bricks-and-mortar office out in Hollis, Queens, with a huge shiny logo out front. When we looked at the deeds after these short sale closings, we found that the LLC entities who were acquiring these properties shared personnel, addresses, and phone numbers with Homeowner Assistance Services. In searching for the individuals behind these LLCs, typically there's no name listed in the Department of State database. In other words, a company pretending to aid distressed property owners was masquerading as a front for real estate LLCs that were simply buying up cheap properties around the city.

The lack of transparency in LLCs has been a subject in the news quite a bit, particularly with respect to luxury apartments in Manhattan. On the other end of the housing spectrum, it's just as much of a problem. These properties are being transferred

from real people, who actually live in these communities, to faceless shell companies with no connection to the neighborhoods they're plundering. The LLCs then earn tremendous profits when they flip the house, and we have no idea where that money ends up. We know where it doesn't end up, though: in our clients' pockets, despite their decades of investment in their family homes.

When people lose their homes to these ghost companies, the communities lose something too: they lose the stability of a long-term homeowner and neighbor. A legitimate buyer shouldn't need to hide behind an LLC. There is no defensible reason to shield the identities of these developers, and yet that is precisely what they are able to do with our current laws regarding LLCs. The U.S. Treasury Department recently began a pilot program aimed at uncovering the identities of LLCs that buy luxury condos in Manhattan. If we knew the identities of the LLCs who are stealing our clients' homes, it would be far easier to hold them accountable.

### **What Lawmakers And Law Enforcement Can Do About These Issues**

In addition to taking a close look at lien filings and LLCs, we hope that the elected officials and law enforcement will engage in community outreach around the issue of deed fraud. As legal services providers, we see homeowners walking around with tremendous shame and stigma about defaulting on their mortgages. Many of the frauds we see are the direct result of people trying to fix their problems privately, without having to reveal their struggles to others. These homeowners simply do not know what a legitimate real estate transaction should look like. In many cases, the delinquent loan itself was the product of a predatory transaction – so it's not surprising that homeowners who fell prey to bad loans or refinances are now being victimized by a new scam.

As part of a Senior Initiative funded by the Council, Legal Services NYC, in partnership with the Public Advocate and a number of other community organizations, is planning a series of outreach events in the coming months to educate people about deed fraud. We've attached a copy of the flyer to our testimony as an example of how we're trying to communicate about these issues to homeowners. We're optimistic about these efforts but we need to add more voices. There are people who will not attend our events because they don't want their neighbors to know they are in trouble with their loans. There are people who won't hear about these events, or who may not be able to attend. That is where you as Councilmembers come in. You are physically in your districts, and able to reach constituents who we may miss in our efforts. Homeowners need to know what a legitimate transaction should look like, what the red flags are for scams, and that legitimate legal and housing counseling services are available free of charge. They need to know how and why to monitor their properties in ACRIS, and where to go for advice. Public service announcements, mailings, community meetings, whatever means you have to reach your constituent homeowners in distress would make a huge difference in combatting fraud.

We also need to see more consistent and aggressive law enforcement against these rapacious developers. Defrauding people out of their homes is a crime. It's actually a lot of different crimes. Each one can and should be prosecuted. We spend millions of dollars in this city every year prosecuting petty thefts, while these fraudsters steal actual houses with impunity. The FBI and Department of Justice have been investigating Launch Development and its agents for months, and have arrested six people in connection with these scams. They face years in prison if they are convicted. We know that Attorney General Schneiderman has been looking into these frauds and

others, and has launched his own outreach program aimed at rooting out these scams. These efforts are incredibly important, and would be complemented by vigorous enforcement by our city's District Attorneys.

Not every case is the perfect crime, and not every investigation can be spearheaded by the FBI. But consistency is central to deterrence. Every forged signature, every phony lien, every broken lock is a violation of the criminal code. There is no reason to look the other way until a fraud is big enough or sinister enough. When you get away with forging one document, why not forge another? People who take advantage of vulnerable homeowners know that the odds are that they will never be arrested for the crimes they are committing. In part this is true because false filings and forgeries don't look like the crimes we typically worry about as citizens. But we should be worried about them, because street violence and drug addiction are not the only forces that destabilize our neighborhoods. Evictions of vulnerable seniors, rapidly rising property values, and the elimination of affordable housing units are equally destructive to the fabric of our city. If prosecutors aggressively targeted developers who file phony liens and forged documents, we might see fewer frauds.

We understand that law enforcement resources are always at a premium, and that these kinds of crimes can be harder to uncover. But as efforts shift away from strategies like stop-and-frisk, perhaps more creative minds in law enforcement can focus on newer kinds of crimes that victimize our most vulnerable residents. Our clients don't realize that they are victims of crimes, and don't know where to turn. The doors of police precincts and district attorneys' offices should be open to these homeowners, and staff trained to recognize the signs of property fraud. We also hope that law

enforcement will refer these cases to us as legal services providers, to ensure that homeowners' interests are protected to the greatest extent possible.

### **Why Free Legal Services Are Essential To Protect Vulnerable Homeowners**

As the Council is well-aware, improving access to civil legal services is essential to improving the lives of low-income New Yorkers. All the outreach, deterrence, and enforcement in the world cannot prevent every fraud. And even when law enforcement does get involved, somebody still needs to step in and try to save the house. It's not a prosecutor's job to represent a victimized homeowner, and these are cases that need to be affirmatively litigated.

Unfortunately for our clients, these cases are tremendously complicated and extremely resource-intensive. Our attorneys have appeared in Housing Court to stop the evictions, appeared in Supreme Court to file lawsuits, sought injunctions, and are now being forced to defend appeals from these developers. Even when we've gotten court orders to stay the evictions and allow us to move forward with our lawsuits, judges are forcing our clients to post huge injunction bonds in order to actually secure even that temporary relief. Poor homeowners don't have thousands of dollars to buy an injunction – just like they don't have thousands of dollars to hire a private lawyer. These are issues that legal services attorneys are uniquely situated to address.

We are doing our best to use the law to fight for our clients, but these scams are unusual and they require time to investigate. Just to give the Council an idea of what these lawsuits look like, we've attached a copy of one complaint filed by South Brooklyn Legal Services against Launch Development. It is a substantial undertaking to begin this kind of litigation, and for every case we accept, we are forced to consider the clients we might have to turn away because of limitations on our time and resources. With

more funding and support for our work, we could take on more of these cases and do more outreach, to protect our most vulnerable communities from fraud.

These frauds almost exclusively target communities of color, immigrant communities, and vulnerable seniors and disabled New Yorkers. They flourish in the shadows because these neighborhoods haven't yet become glitzy and gentrified. We worry about these homeowners because they have no safety net if they lose their homes. They have no country houses upstate, no families with spare bedrooms, no savings accounts to draw upon if they need to cover rent and a security deposit on a new apartment. When these homeowners lose their houses, they don't buy new ones. These houses are generally the sole source of wealth in a family, and they represent much more than just a roof over peoples' heads. The cascade of damage that results from the loss of these properties is enormous.

These are the people we serve as legal services workers. We would love to serve more, if could reach them and if we had the resources to represent all of them. Most New Yorkers are worried about affordable housing, however you define "affordable." These deed fraud schemes directly impact the sustainability of affordable housing around the city. You don't have to be anti-development to combat deed theft. You just have to be anti-theft. We hope to work together with the City Council, law enforcement, and other city agencies to stop these scammers from taking advantage of vulnerable homeowners, and appreciate the opportunity to be heard today. Thank you.

Jenny Eisenberg  
Staff Attorney  
South Brooklyn Legal Services  
105 Court Street, 4<sup>th</sup> Fl.  
Brooklyn, NY 11201

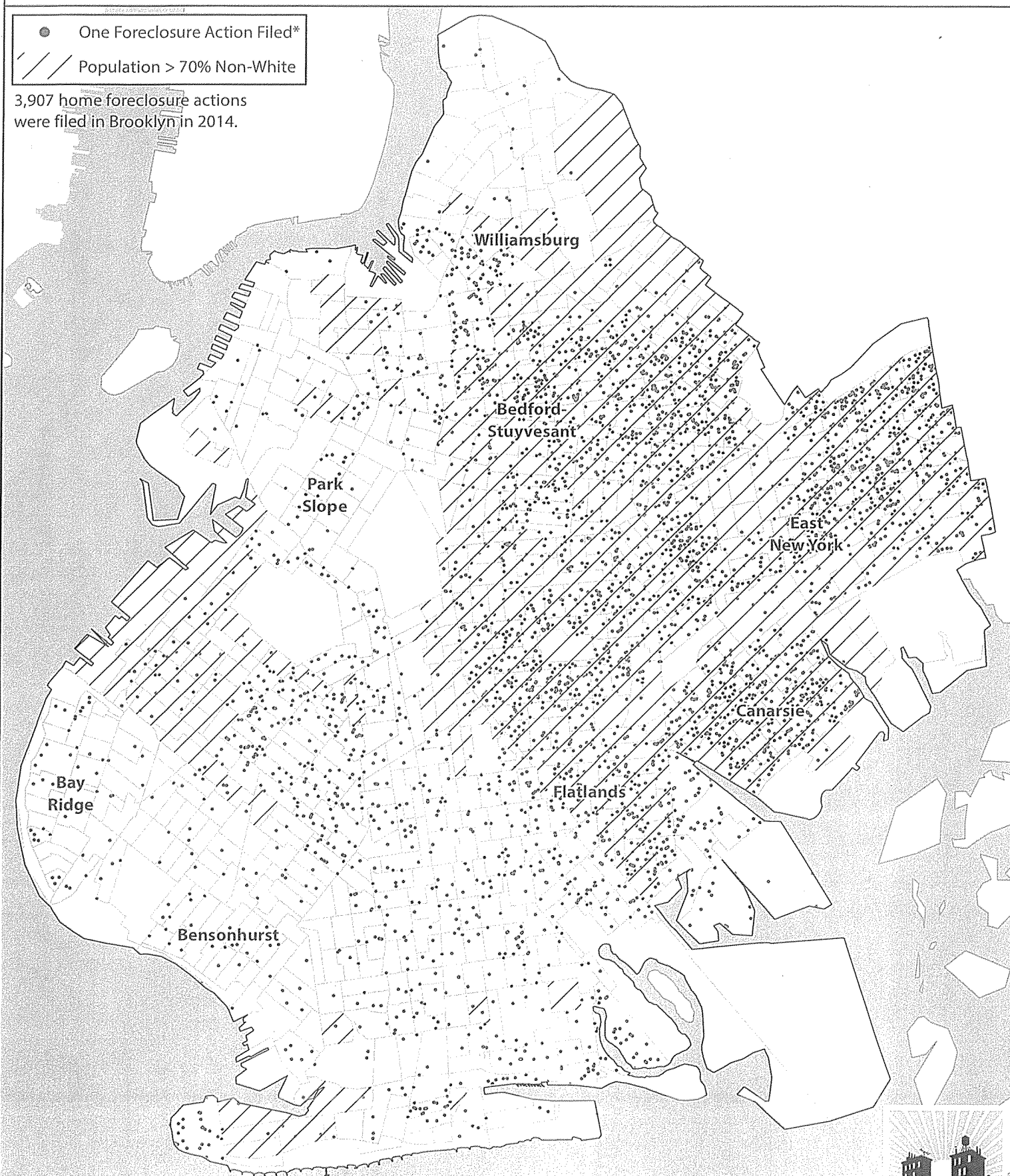
Stacey Woods  
Senior Staff Attorney  
Queens Legal Services  
89-00 Sutphin Blvd., 5<sup>th</sup> Fl.  
Jamaica, NY 11435



# Home Foreclosure Actions Brooklyn - 2014

- One Foreclosure Action Filed\*
- /// Population > 70% Non-White

3,907 home foreclosure actions were filed in Brooklyn in 2014.

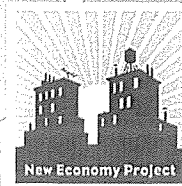


Sources: First American CoreLogic (2014); U.S. Census (2010)

\*based on *lis pendens* of mortgage default filings of 1-4 family homes and condominium units.

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[neweconomynyc.org](http://neweconomynyc.org)



# DON'T GET SCAMMED!

HOMEOWNERS IN GENTRIFYING NEIGHBORHOODS ARE LOSING THEIR HOMES TO SCAMS  
AND PAYING FOR FAKE MORTGAGE RESCUE SERVICES.  
HERE'S HOW TO AVOID THEFT OF TITLE OR CASH AND MORTGAGE FRAUD

## BEFORE YOU SIGN, ASK YOURSELF:

- ❖ Do you have to sign over your house?
- ❖ Have you been told not to contact your lender?
- ❖ Did someone hire an attorney for you?
- ❖ Did someone tell you not to go to court?
- ❖ Did someone offer to pay your mortgage?
- ❖ Did someone promise to fix your mortgage for a fee?
- ❖ Did a one-stop-shop arrange financing, an attorney, or home inspection?
- ❖ Did someone promise to pay you money?
- ❖ Were you threatened?

If you answered yes to any of these questions, contact Legal Services or Legal Aid for a free consultation immediately!

# Beware

- Overly-Friendly and Aggressive Investors, Consultants, Attorneys, Rescue Companies, LLCs
- Phone Calls, Visitors, and Mailings You Didn't Ask For
- Friend-of-a-Friend Referrals
- TV, Radio, Newspaper, Internet Ads
- Mortgage Rescue Websites
- Posters & Ads in the Neighborhood
- Notices that Mimic Official Documents

South Brooklyn Legal Services  
105 Court Street, 4<sup>th</sup> Floor, Brooklyn, NY 11201  
Phone: 718-237-5500 Fax: 718-875-8546  
Meghan Faux, Acting Project Director

Bedford-Stuyvesant Community Legal Services  
1360 Fulton St., 3<sup>rd</sup> Floor, Brooklyn, NY 11216  
Phone: 718-636-1155 Fax: 718-398-6414  
Meghan Faux, Acting Project Director

Brooklyn  
Legal  
Services

Legal  
Services NYC

*This material is not intended as legal advice and should not be used as a substitute for legal advice.  
You should not rely on it as a source of legal advice.*

## Quick Tips & Helpful Hints

- Communicate directly with your lender
- Avoid side agreements, verbal agreements, and agreements for undisclosed payments
- Buying or Selling?
  - Get independent advice about home value and condition.
  - Hire your own, independent attorney.
  - Hire your own, independent real estate agent.
  - Don't accept a referral from ANYONE involved in the transaction.
- Understand and read all documents
- Ask Questions!
- Consult with HUD-Approved Housing Counselors and Legal Services Attorneys  
FREE OF CHARGE

## WHERE TO FIND HELP

- **Brooklyn Legal Services**
  - Telephone: (718) 246-3279
- **New York State Attorney General**
  - Telephone: HOPP Hotline - 855-HOME-456 (855-466-3456)
  - Website: <http://www.agscamhelp.com>
- **Call 311 for a Referral to a Housing Counselor or Legal Services Attorney**
- **Elected Officials, Local Law Enforcement**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
JOSEPH CLARKE & JACQUELINE KNIGHTS,

Plaintiffs,

Index No.: 4831/2015

v.

MARTIN DEVELOPMENT & MANAGEMENT, LLC;  
LAUNCH DEVELOPMENT, LLC; HOMEOWNER  
ASSISTANCE SERVICES OF NEW YORK;  
AMIR MEIRI; HERZEL MEIRI; MARIO ALVARENGA;  
and ELLIOT BAKST, ESQ.,

SUMMONS

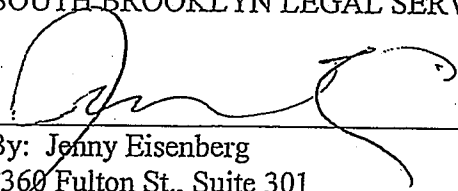
Defendants.  
-----X

TO THE ABOVE-NAMED PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorneys an answer to the complaint which is herewith served upon you in this action, within twenty (20) days after service of this summons upon you in this action, or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment or default will be taken against you for the relief demanded in the complaint.

DATED: Brooklyn, NY  
April 16, 2015

SOUTH BROOKLYN LEGAL SERVICES



By: Jenny Eisenberg  
1360 Fulton St., Suite 301  
Brooklyn, NY 11216  
(718) 233-6415  
*Attorneys for Plaintiffs*  
*Joseph Clarke & Jacqueline Knights*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
JOSEPH CLARKE & JACQUELINE KNIGHTS,

Plaintiffs,

Index No.:

v.

MARTIN DEVELOPMENT & MANAGEMENT, LLC;  
LAUNCH DEVELOPMENT, LLC; HOMEOWNER  
ASSISTANCE SERVICES OF NEW YORK;  
AMIR MEIRI; HERZEL MEIRI; MARIO ALVARENGA;  
and ELLIOT BAKST, ESQ.,

VERIFIED COMPLAINT

JURY TRIAL DEMANDED

Defendants.  
-----X

JOSEPH CLARKE and JACQUELINE KNIGHTS, by and through their attorneys, South  
Brooklyn Legal Services, as and for their complaint, alleges as follows:

INTRODUCTION

1. Plaintiff Joseph Clarke is a Brooklyn senior citizen and homeowner. He is of African descent and Guyanese heritage. Plaintiff Jacqueline Knights is married to Joseph Clarke, and is also a Brooklyn senior citizen of African descent and Guyanese heritage. They live together at the subject property, located at 963 E. 95th Street, Brooklyn, NY, 11236. In the fall of 2014, Mr. Clarke and Ms. Knights were deceived into believing that the defendants were going to help them refinance their delinquent mortgage and save their family home. They had fallen behind on their monthly mortgage payments, and their lender was sending threatening letters and making ominous telephone calls, warning that the couple had defaulted on their debt and a foreclosure lawsuit was imminent. No foreclosure case had yet been filed, and they had no attorney or advocate to advise them as to their options for saving their home. When representatives of Homeowner Assistance Services of New York (hereinafter "HAS") solicited Mr. Clarke,

promising to help him and his wife refinance their loan and stay in their home, they found a vulnerable target.

2. Upon information and belief, HAS is closely related to Martin Development & Management, LLC, (hereinafter "Martin Development") and Launch Development, LLC (hereinafter "Launch"). Throughout 2013 and into 2014, representatives from HAS repeatedly called the plaintiffs on their home telephone line. The plaintiffs consistently ignored calls from the HAS number, since they did not know the people who were calling or why they were being targeted. In late 2013, however, they inadvertently answered one of these calls and Mr. Clarke ended up speaking with a HAS representative. This individual told Mr. Clarke that HAS could help him refinance his delinquent loan while staying in the house and avoiding foreclosure. After months of obtaining and supposedly reviewing financial documents from Mr. Clarke, however, defendant Alvarenga finally informed Mr. Clarke that his "credit was shot," and there could be no refinancing of the loan.

3. Defendant Alvarenga told Mr. Clarke that his "best option" would be a short sale with a buyback agreement, which would enable Mr. Clarke and his wife to remain living in their home. Instead – and unbeknownst to the plaintiffs – HAS and Martin Development simply arranged a short sale of the property to themselves for \$210,000, with no buyback agreement to keep the plaintiffs in their home. Martin Development and its representatives are now trying to evict Mr. Clarke, Ms. Knights and their upstairs tenant from the property so that they can resell the building at a profit.

4. Representatives of HAS and Martin Development led Mr. Clarke to believe that the transfer of his deed to Martin Development was merely a formality, and not an actual sale of the house. When Mr. Clarke expressed that he had no intention of giving up his home, and sought



assurances that this would not happen, Mr. Alvarenga promised him that they would be “buying back” the property and would not have to move out in the interim. At the closing on the short sale in November 2014, they told him that the documents he was signing were just part of the process required to help him and his wife save their home. Mr. Clarke never intended to sell his house or move out, and that was not the plan as the defendants explained it to him. Mr. Clarke’s sole objective was to save his residence and obtain affordable financing.

5. Yet soon after the short sale took place, it became clear to Mr. Clarke and Ms. Knights that there was to be no “buying back” of their property. Instead, defendants Mario Alvarenga, Amir Meiri, Herzel Meiri and their associates began a campaign of harassment and intimidation against the couple, pressuring them to move out of their home. Over the course of numerous visits to the property, they told Mr. Clarke and Ms. Knights that Martin Development now owned the building, and that the plaintiffs needed to either move out or begin paying an exorbitant rent.

6. At one point in November, the defendants came to the house and entered the apartment belonging to plaintiffs’ tenant, asking her numerous intrusive questions. Also in November, the plaintiffs saw defendant Alvarenga walking around in the back yard, when they had not given him permission to enter their property. In early December, the defendants returned to the property and harassed the plaintiffs’ son and upstairs tenant, demanding that all parties sign a lease agreement with Martin Development. In January 2015, various defendants visited the house repeatedly, idling outside in luxury vehicles while watching the property. Throughout this period, the plaintiffs and their tenant received constant harassing telephone calls and late night visits from the defendants and their agents. Finally, in mid-February, Ms. Knights found four representatives of the defendants inside her front vestibule, installing new locks on her door.

When she called the police, three of the men fled. The officers directed Ms. Knights to contact counsel, and did not permit further tampering with the locks by the defendants' agents. On or about February 12, Martin Development served the plaintiffs and their tenant with eviction papers, and there are now two pending holdover petitions in Housing Court, under index numbers 55443/15 and 55441/15, both of which are currently adjourned to April 20, 2015.

7. Under New York law, the transaction between the plaintiffs and Martin Development was a reconveyance arrangement, not a sale of their house. Based on representations made by HAS and its agents, Mr. Clarke believed that he was entering into an agreement with the defendants to help him remain in his home until such time as he could buy it back. HAS, Martin Development, and their representatives led Mr. Clarke to believe that his transfer of the deed to Martin Development was simply a formality; part of the process of saving his home.

8. Mr. Clarke was never told that he was actually signing away title to his family home, and never warned that he would subsequently face eviction. By misrepresenting the true nature of this transaction, and of their interest in this property, the defendants violated the Home Equity Theft Prevention Act, the New York Deceptive Practices Act, the Real Estate Settlement Procedures Act, Article 8 of the Real Property Actions and Proceedings Law, and the common-law doctrines of fraud, conspiracy, tortious interference with a contract, and attorney malpractice. In addition to these violations, Mr. Clarke and Ms. Knights also bring this action to quiet title to their home pursuant to Article 15 of the Real Property Actions and Proceedings Law, and to declare the transaction an equitable mortgage pursuant to Section 320 of the Real Property Law.



## PARTIES

9. Plaintiffs Joseph Clarke and Jacqueline Knights live at 963 East 95<sup>th</sup> Street, Brooklyn, NY 11236 (the "subject property"). Mr. Clarke retired from United Parcel Service in 2014 after 25 years of employment as a driver. He is 64 years old. His wife, Ms. Knights, is a 62-year-old homemaker.

10. Defendant Martin Development & Management, LLC is a limited liability company organized under the laws of the state of New York. Its primary location, according to the Department of State, is 23 Martin Court, Great Neck, NY, 11024. Upon information and belief, this address is also defendant Herzel Meiri's home address. Also upon information and belief, Martin Development has a secondary business address at 189-10 Hillside Ave., Hollis, NY 11423. Martin Development & Management, LLC is the name on the deed to the plaintiffs' home. Martin Development is also the petitioner in the related Housing Court holdover proceedings against the plaintiffs and their tenant.

11. Defendant Launch Development, LLC is a limited liability company organized under the laws of the state of New York. Its primary location, according to the Department of State, is 69 Horatio St., Apt. 2F, New York, NY 10014. Upon information and belief, it has a secondary business address at 189-10 Hillside Ave., Hollis, NY 11423. In March 2013, Launch Development, LLC filed and recorded a UCC-1 lien against Mr. Clarke and the subject property. In November 2014, Launch filed and recorded a UCC-3 termination of that lien.

12. Defendant Homeowner Assistance Services of New York is a corporation organized under the laws of the state of New York. The only location given by the Department of State is a service of process address at United States Corporation Agents, Inc., 7014 13<sup>th</sup> Ave., Suite 202, Brooklyn, NY 11228. Upon information and belief, its actual business address is 189-10

Hillside Ave., Hollis, NY 11423. The building located at that address has a large sign across its façade stating “HOMEOWNER ASSISTANCE SERVICES OF NEW YORK.” Homeowner Assistance Services was the company that initiated contact with the plaintiffs, requested and reviewed their financial documents, and ultimately engineered the short sale and fictitious buyback agreement.

13. Defendant Amir Meiri is an owner of Launch Development, LLC and a member of Martin Development & Management, LLC. He is also a licensed LLC broker, New York State license number 10491204033, with an address listed through the Department of State as “Beautiful Brooklyn Real Estate,” 189-10 Hillside Ave., Hollis, NY. Upon information and belief, his principal places of business are: Launch Development, LLC, 69 Horatio St., Apt. 2F, New York, NY 10014; Martin Development & Management, LLC, 23 Martin Court, Great Neck, NY, 11024; or alternatively, 189-10 Hillside Ave., Hollis, NY 11423. Also upon information and belief, Amir Meiri has been one of the individuals visiting the plaintiffs’ house and identifying himself as the “real owner.”

14. Defendant Herzel Meiri is an owner of Launch Development, LLC a member of Martin Development & Management, LLC, and a licensed LLC broker. His principal places of business are: Launch Development, LLC, 69 Horatio St., Apt. 2F, New York, NY 10014; Martin Development & Management, LLC, 23 Martin Court, Great Neck, NY, 11024; or alternatively, 189-10 Hillside Ave., Hollis, NY 11423. Upon information and belief, the business address for Martin Development & Management, LLC is also defendant Herzel Meiri’s home address.

15. Defendant Mario Alvarenga is “vice-president of operations” at Homeowner Assistance Services of New York. He is also “business development manager” at Launch Development, LLC. His principal place of business for both titles is 189-10 Hillside Ave., Hollis, NY 11423.

Mr. Alvarenga was the primary contact at HAS for Mr. Clarke: he promised Mr. Clarke to help refinance his loan; he assured Mr. Clarke that they could remain in the house; he sought financial information from Mr. Clarke; and he facilitated the short sale that led to the eviction case in Housing Court. Defendant Alvarenga has business cards identifying him as an agent for HAS and a manager at Launch, each with the same address and phone number, but different corporate logos. Upon information and belief, defendant Alvarenga is also associated with defendant Martin Development.

16. Defendant Elliot Bakst, Esq. is an attorney currently suspended from practice by the New York State Bar. His principal place of business is 180 East 18th Street, Brooklyn, NY, 11226-4767. Mr. Bakst was the attorney provided by HAS and Martin Development at the closing to supposedly represent Mr. Clarke's interests, although he had never met Mr. Clarke nor conducted any confidential consultation with either plaintiff prior to the closing.

#### **STATEMENT OF FACTS**

17. When Mr. Clarke and Ms. Knights were first solicited by HAS in late 2013, they were struggling to make payments on their loan, and had slipped into default.

18. The mortgage loan on the house was an expensive, non-traditional loan originated by Opteum Financial Services in 2006 and sold on the secondary mortgage market. Mr. Clarke was the sole borrower.

19. The loan terms included an adjustable interest rate that could rise to a maximum of 12.4% and a five year "interest-only" payment period. After five years, the loan would re-set, and Mr. Clarke would be responsible for principal and interest payments far in excess of the interest-only payment amount.

20. The plaintiffs struggled with the loan for several years, and also had difficulty finding a tenant able to maintain monthly rent payments.

21. In early 2013, the plaintiffs were in foreclosure, but they finally secured a modification of their loan. Unfortunately, that modification coincided with Mr. Clarke suffering a serious work-related injury in February 2013. Just as the plaintiffs were signing their modification agreement, they were facing the prospect of spending months at a reduced household income while Mr. Clarke recuperated. Yet given that they were in foreclosure and had waited years for their modification, the plaintiffs saw little choice but to accept the agreement as their best chance to save the house.

22. Having no experience with the real estate market and few resources at their disposal, they did not know what alternatives might enable them to avoid losing their home. The plaintiffs did not realize that they could seek a new modification through their bank, or potentially reinstate the loan using funds from the New York State Mortgage Assistance Program (hereinafter "MAP program"). Had they attempted any of these potential resolutions, they might have been able to remain living at home rather than falling prey to the scheme perpetrated by the defendants.

23. When their loan was in default, the plaintiffs had fielded endless calls from brokers, pressuring them to do a short sale of the property in exchange for relocation assistance. Mr. Clarke and Ms. Knights consistently fended off these inquiries because above all, they wished to remain living at home. They received repeated calls from a number that ultimately turned out to be the HAS office, although they chose not to answer these calls for several months.

24. One day in late 2013, the plaintiffs' grandson happened to answer the phone and Ms. Knights took the call. The person on the other line told Ms. Knights that she was interested in helping Mr. Clarke fix his mortgage. Mr. Clarke eventually spoke with this individual, who

claimed she could help the plaintiffs keep their house if Mr. Clarke would work with her company, Homeowner Assistance Services. Mr. Clarke was initially skeptical, but felt comfortable dealing with this individual, as he could tell she was of Guyanese descent, as were he and his wife.

25. Mr. Clarke explained to the HAS representative on the phone that they were having trouble paying the mortgage, because he had stopped earning a paycheck since suffering a work-related injury in early 2013. Not knowing what his options might be, Mr. Clarke asked the HAS representative if they could assist him in refinancing the now-modified loan. The representative told him to come to the HAS offices for a meeting, and to bring paystubs, bank statements, utility bills, and tax returns. This meeting took place sometime in late 2013.

26. Mr. Clarke went alone to the HAS office at 189-10 Hillside Avenue. When he arrived, a woman met him in the reception area and escorted him to an office where he met Mario Alvarenga. This was the first time Mr. Clarke met or spoke with defendant Alvarenga. At this point, Mr. Clarke did not have an attorney and was not in foreclosure, but the loan was in default.

27. At the time of this initial meeting, Mr. Clarke did not realize that his property had already been subjected to a UCC-1 lien by defendant Launch Development, apparently with defendant Alvarenga's direct involvement.

28. In March 2013, unbeknownst to Mr. Clarke or Ms. Knights, representatives of Launch Development drafted and recorded a UCC-1 "fixture filing" against the plaintiffs' property, claiming that Mr. Clarke was a debtor to defendant Launch. Publicly available lien documents recorded with the Office of the City Register do not specify the nature of Mr. Clarke's purported debt to defendant Launch. The documents do, however, list a contact address of 189-10 Hillside Avenue – the same address as the offices of Homeowner Assistance Services – and a contact

email of "marionyc@hotmail.com." The plaintiffs had never met anyone associated with defendant Launch prior to that first meeting at the HAS offices, and had never formed any sort of creditor-debtor relationship with defendant Launch. Nor did they have any idea that defendant Launch and defendant Alvarenga had filed a lien against their home.

29. During this initial meeting, defendant Alvarenga never mentioned the fact that his contact information and business address were associated with a UCC-1 lien against Mr. Clarke. Of course, this would have been pertinent information to discuss, given that Mr. Clarke had come to the HAS offices for the express purpose of obtaining help with refinancing his mortgage – a project easily thwarted by the existence of other liens on the property. Instead, defendant Alvarenga conducted this initial meeting with Mr. Clarke as if it were the first time he had heard of this property or the plaintiffs. He assured Mr. Clarke that HAS would work on refinancing their delinquent loan, and that Mr. Clarke should not worry about losing his home. He encouraged Mr. Clarke to be optimistic, and that HAS would start working on fixing the loan.

30. In the months that followed, defendant Alvarenga periodically would ask Mr. Clarke to send financial documents. Mr. Clarke would send the documents, and then defendant Alvarenga would frequently claim to have never received the fax transmission. Mr. Clarke hand delivered several financial documents throughout 2014 to the HAS offices, in an attempt to facilitate what he thought were the defendants' efforts to help him save his home.

31. Sometime in the fall of 2014, defendant Alvarenga called Mr. Clarke and told him that a refinancing of the loan would not be possible, because his "credit was shot." According to defendant Alvarenga, the plaintiffs' lender was unwilling to offer any mortgage assistance because of Mr. Clarke's poor credit. Mr. Clarke was not sure whether he had ever provided a credit report or his social security number to any of the defendants, nor was he aware of having

authorized a credit check. Nor could he recall ever giving any of the defendants authorization to communicate with his lender. Nonetheless, Mr. Clarke accepted defendant Alvarenga's statements as true. Defendant Alvarenga then explained that Mr. Clarke's "best option" would be a short sale of the property.

32. Given that the plaintiffs had steadfastly resisted selling their home in a short sale, Mr. Clarke explained that he did not wish to do this, because it would mean losing the property. Defendant Alvarenga promised him that it would not be a true short sale, but rather that Mr. Clarke would be entitled to "buy back" the property without ever having to vacate the premises or surrender possession. Without sharing further details, defendant Alvarenga guaranteed Mr. Clarke that he and his wife would not have to leave their home. Comforted by these assurances, Mr. Clarke ended this conversation believing that the defendants were still committed to helping save his home.

33. Shortly after this telephone call, defendant Alvarenga called Mr. Clarke again, asking him to come to the HAS office for a meeting. He did not tell Mr. Clarke what to expect at the meeting, other than that they would be discussing how to save the house. Mr. Clarke was not told to bring an attorney or any financial documents to this meeting, nor was he informed that there would be a closing on his property that day. The meeting was scheduled for November 7, 2014.

34. When Mr. Clarke arrived at the HAS office, defendant Alvarenga greeted him in the reception area and escorted him into a conference room without further discussion. Mr. Clarke still did not know the purpose of this meeting, and defendant Alvarenga did not provide any explanation prior to depositing Mr. Clarke in the conference room at the HAS offices.

Defendant Alvarenga provided no opportunity for Mr. Clarke to ask any questions, nor did he indicate with whom Mr. Clarke would be meeting in the conference room.

35. When Mr. Clarke arrived in the HAS office conference room, he saw two men already inside. Neither man introduced himself. All three sat down at a conference table and one of the men began passing documents to Mr. Clarke to sign, indicating where on each document he should place a signature. Neither man provided any explanation about the nature of this meeting, who they worked for, or why Mr. Clarke was being asked to sign so many documents.

36. After signing several pieces of paper, Mr. Clarke asked the man who was physically passing him the documents what his name was. The man introduced himself as Elliot Bakst, and told Mr. Clarke that he was there to serve as Mr. Clarke's attorney. Mr. Clarke was surprised and confused, as he had no idea why he would need an attorney in this meeting and had neither met nor heard of defendant Bakst prior to that day.

37. Defendant Bakst did not conduct any confidential consultation with Mr. Clarke, nor did he explain why Mr. Clarke would need an attorney in this meeting. He did not ask Mr. Clarke if he wished to discuss anything privately about the meeting or the documents he was signing. He did not ask whether Mr. Clarke understood what he was signing, or the potential consequences thereof. Defendant Bakst did not explain what documents Mr. Clarke was signing and did not provide Mr. Clarke with copies of any documents. Instead, he told Mr. Clarke that he "wouldn't need copies of these documents anyway."

38. Defendant Bakst never mentioned that the documents he was signing authorized a short sale of his house for \$210,000 to defendant Martin Development. Indeed, Mr. Clarke had never heard of Martin Development until that day, when he signed closing documents listing Martin Development as the "buyer" of his home. Even then, he did not realize that defendant Martin



Development had no intention of allowing him and his wife to remain in their home following this transaction. Having interacted with defendant Alvarenga for months leading up to this meeting, Mr. Clarke had come to trust that Alvarenga and HAS were committed to helping him save the house, and it did not occur to him that this meeting might actually bring a different result from the one they had promised. Because he trusted HAS, it did not occur to Mr. Clarke to question who Martin Development was, and why HAS had listed this LLC as the buyer of his home.

39. Mr. Clarke never saw any documents referring to a buyback agreement. He never saw any documents mentioning the possibility of eviction. He never received any information surrounding his family's right to remain in their home. Nobody ever warned Mr. Clarke that the documents he was signing were conveying actual title and ownership to Martin Development. Relying on the representations made by defendant Alvarenga, Mr. Clarke was at the HAS offices as part of an effort to save his home, not to simply divest himself of it in a short sale to a developer. As defendant Alvarenga had explained it, a short sale would be his "best option" for saving the home because Mr. Clarke would be entitled to "buy back" the property, and would not have to move out. Neither defendant Alvarenga nor defendant Bakst ever warned Mr. Clarke that he would be facing an eviction case in Housing Court following the short sale.

40. After the meeting, Mr. Clarke left the conference room and was given a document entitled "Short Sale/Modification Checklist" by an individual in the HAS office. Nobody in the office explained why he was being given this form, or what to do with the list of documents printed on it. Mr. Clarke did not receive any other documents following the closing on his home, and in fact did not realize that he had just completed an actual closing on the property. He still was not sure exactly what had taken place during the meeting, or what its significance was to the

process of saving his house from foreclosure. Trusting defendant Alvarenga, he assumed that whatever he had signed was necessary to the ultimate goal of saving his home from foreclosure.

41. Defendant Alvarenga did not meet with Mr. Clarke after the meeting in the conference room. No other person at the HAS office offered to speak with him about what had just transpired, or explain next steps to Mr. Clarke. When he left the HAS office on November 7, 2014, Mr. Clarke believed that he had merely completed the first step of the HAS process for saving his house. He had no reason to believe that he and his wife were about to be subjected to months of harassment and intimidation by the defendants, aimed at forcibly ousting them from their own home.

42. At the time of the closing, the plaintiffs were in a difficult position with respect to their mortgage. They had exited the second of two foreclosure proceedings in 2013 with a loan modification, but almost immediately missed several payments because Mr. Clarke had been forced to stop working due to a serious back injury. When they tried to make payments after falling behind, the bank at first accepted their checks, but soon changed course without explanation and rejected the plaintiffs' payments. As a result, the plaintiffs had spent much of 2013 in financial and emotional stress.

43. Once the foreclosure proceeding concluded in early 2013, Mr. Clarke and Ms. Knights did not have legal counsel to advise them as to their options. They were completely unprepared to deal with another default, particularly given that their loan had just been modified after years of court proceedings. When the bank stopped accepting their payments, Mr. Clarke and Ms. Knights were afraid that they had run out of options to save their family home. They had no savings to simply pay a lump sum and reinstate the loan, and no idea what else could be done to address their situation.

44. By early 2014, Mr. Clarke determined that it was time for him to retire from his position at UPS, so that he could begin to collect his pension. This improved the plaintiffs' financial situation, although their upstairs tenant was still causing trouble by failing to pay rent on time. But the bank was still unwilling to accept payments, and throughout 2014 sent threatening letters to the plaintiffs' home, warning them that they were delinquent on their loan and foreclosure would be imminent. None of these letters offered the plaintiffs any concrete options to actually address the default; they received numerous form letters suggesting that they apply for a loan modification, but without an attorney or counselor to advise them, the plaintiffs were confused as to where this might lead.

45. It was in this context that Mr. Clarke decided to work with the defendants – after two foreclosure cases, a failed loan modification, years of threatening communications from the bank, a non-paying tenant, and a career-ending injury. They had income with which to pay their mortgage, but no way to get their lender to start accepting payments. With nobody to assist them and nowhere to turn, the plaintiffs were looking for someone to trust and offer some hope in this stressful situation.

46. Mr. Clarke believed that the entire purpose of his dealings with the defendants was to save his home. Every representation made by defendant Alvarenga and defendant HAS to Mr. Clarke concerned the plan to save the property. At no point leading up to the closing did defendant Alvarenga ever indicate that Mr. Clarke could lose the house, or that Mr. Clarke was in any way facilitating the loss of his house. After the closing on November 7, defendant Alvarenga never gave him any instructions as to what his next steps should be toward saving the home. Nor did he reveal that the plaintiffs would soon be served with eviction papers. Mr.

Clarke had no idea what he had actually agreed to in the closing; he simply believed that whatever had taken place was part of the process of saving his home from imminent foreclosure.

47. Publicly available documents reflect a purported deed transfer on November 7, 2014, conveying an interest in the subject property from Joseph Clarke to Martin Development & Management, LLC for the price of \$210,000. Such documents also show that on January 9, 2015, Wells Fargo as trustee for Option One Mortgage Loan Trust 2007-4, Asset-Backed Certificates Series 2007-4, deemed its mortgage satisfied.

48. With respect to the UCC-1 lien placed on the property by defendant Launch Development in March 2013, it appears that on November 12, 2014, Launch terminated such lien by executing and recording a UCC-3 termination with the City Register – just five days after the closing between Mr. Clarke and defendant Martin Development.

49. On the evening of November 7, after Mr. Clarke had unwittingly completed the closing on his home, two men visited the plaintiffs' home unannounced and uninvited. Neither Mr. Clarke nor Ms. Knights recognized them. They introduced themselves as the "new owners" of the property. Upon information and belief, one of the men was defendant Amir Meiri. The plaintiffs did not understand why they were at their home, and why they were claiming to own the property. When Mr. Clarke asked why they were present, they replied that they wanted to see the house they "just bought."

50. They told the plaintiffs that they owned the house because they had just purchased it. Elaborating, they said that they had done "a little short sale" of the property, but that the plaintiffs could "buy it back with only \$20,000 down," if they would just sign some paperwork and provide their Social Security numbers. If the plaintiffs complied with these requirements they could buy back the property in 90 days.

51. The plaintiffs refused to sign any papers, at which point the men then demanded to know when they would be vacating the property. They warned the plaintiffs that they would have to move out of the house within 10 days, or start paying rent of \$5600 a month. The men stated that they were "not concerned about the tenants – we just want you to pay us our money." At that point, Ms. Knights ordered them out of the house, and they left.

52. As defendant Alvarenga had never warned Mr. Clarke that he would have to pay rent and a down payment or face eviction, Mr. Clarke and Ms. Knights were taken by surprise by this late-night visit. Mr. Clarke had no inclination that the transaction in the HAS offices had somehow compromised ownership of his home, and did not understand the requirements articulated by the two men. Ms. Knights had no idea what these men were talking about, as she had not even been privy to the transaction that day in the HAS office.

53. A day or two later, the same two men returned to the plaintiffs' home, again unannounced and uninvited. When Mr. Clarke answered the door, they insisted on seeing the inside of the house, again noting that they were the new owners. Ms. Knights informed the men that she and her husband were not moving out, as they had lived in their home for 16 years. One of the men told the plaintiffs that he "didn't care" about the house, that he didn't "want this s\*\*t," and that he already owned over 200 houses and didn't need this particular property.

54. Following this exchange, the men insisted on speaking with the plaintiffs' upstairs tenant, Ms. Albert. They climbed the stairs to her apartment and went inside. They asked her some questions about her lease with the plaintiffs and her rent payments, but Ms. Albert refused to cooperate with them and they left the house. Ms. Albert held a valid lease with the plaintiffs at the time, which the parties had signed on November 1, 2014.

55. Several days after this harassing visit by the defendants, the plaintiffs were at home on a Saturday afternoon when they noticed an intruder in the back yard. It turned out to be defendant Alvarenga, who was walking around on the property behind the plaintiffs' home without their permission to be there. He had not rung the bell or otherwise sought entry; rather, it appeared that he had merely passed through the plaintiff's gate of his own accord. Before the plaintiffs could confront defendant Alvarenga, he left the property.

56. On December 1, 2014, an individual named Reshma Gopaul left a voicemail for Ms. Albert, the plaintiffs' tenant, explaining that she was calling from Launch Development regarding "rentals." When Ms. Albert called back, she was connected to a phone line with defendant HAS, rather than Launch. Upon reaching Ms. Gopaul, Ms. Albert was told that "we are the new owners of this address," and that they were "still working on paperwork to get you a new lease." Ms. Albert told Ms. Gopaul that they already had a lease with the plaintiffs.

57. On December 7, 2014, representatives of the defendants came to the property again, this time while the plaintiffs were not at home. Their adult son was present, and refused entry to the individuals at the door. The men stated that they were there to deliver a lease for the plaintiffs to sign, and the son indicated that he knew nothing about any lease agreement. Following this visit, the plaintiffs and their tenant received numerous phone calls from numbers associated with the defendants, but no caller ever left a message.

58. Just before Christmas, the plaintiffs and their tenant received paperwork from defendant Martin Development, warning them to vacate the premises by January 31, 2015 or face court proceedings. The notice claimed that "there is no valid lease presently in effect for your occupancy of the premises." As the plaintiffs had no reason to believe that they were obligated to simply move out of their own home, they remained living at the property.

59. In January 2015, agents of the defendants made at least two other uninvited visits to the plaintiffs' property. On one occasion, a man and a woman arrived and spoke with a neighbor, complaining to the neighbor that the plaintiffs were "taking bread out of their mouths." On another occasion, a man came alone to the property but Ms. Knights refused to speak with him. A neighbor informed the plaintiffs that she had witnessed individuals sitting in parked luxury cars – on one occasion, a Rolls Royce, and on another occasion, a Lamborghini – simply watching the plaintiffs' property for unknown reasons.

60. Many times between December 2014 and January 2015, the plaintiffs' doorbell would ring at 10 or 11 pm, when they were already in bed and not expecting visitors. Typically their adult son would go to the window to see who was there, and men would demand through the window to speak with Mr. Clarke. Mr. Clarke never went to speak with the men when they would come late at night, as he and his wife found these visits harassing and intimidating.

61. Throughout this period, the plaintiffs were fearful that at any moment, they might face unwanted and threatening visitors at their door. They did not understand how or why the defendants, who had previously promised to help them save their house, had completely changed course and were now trying to force them to leave the property altogether. Mr. Clarke had never been warned that this might happen after the closing in November 2014. As far as he understood his relationship with defendant Alvarenga and HAS, he had trusted them to shepherd him through the process of saving his family home, not lose it to strangers in a mysterious transaction.

62. On February 12, 2015, Ms. Knights was at home when she received a call from Ms. Albert, alerting her that there were men outside apparently trying to gain entry to the building. When Ms. Knights went to the front door, she saw four men already inside her vestibule,

changing the locks on the plaintiffs' interior door. Upon information and belief, these men were acting at the behest of the defendants, although they initially refused to identify themselves. Ms. Knights demanded to know what they were doing inside her home. One of the men claimed to have been ringing the bell with no answer, although Ms. Knights had been at home the whole time and no doorbell had been rung. Ms. Knights was extremely upset and scared, and told the four men that she was calling the police. Upon hearing this, three of the four men fled the premises. Two ran away on foot, while a third drove away in a white van. A fourth man remained on the premises, but exited the plaintiffs' home where he waited outside for police.

63. When police officers arrived on the scene, this man intercepted them before they reached Ms. Knights, and began speaking to them about what had supposedly taken place. By the time Ms. Knights had an opportunity to speak with the officers, they told her that the man had claimed the house belonged to defendant Martin Development, and not to her and Mr. Clarke. Ms. Knights explained that there was a dispute surrounding ownership of the property, and the police asked to see the deed to the house. Neither the unnamed man nor Ms. Knights had immediate access to the deed. The man began showing some paperwork to the police officers, but Ms. Knights could not see what the papers said. The officers then advised Ms. Knights to contact an attorney, and directed the man to leave the premises. Before leaving, the man handed Ms. Knights some papers, which turned out to be a holdover petition.

64. The petition directed the plaintiffs to appear in Housing Court the following week, February 19, to answer defendant Martin Development's claim that they had no right to continue living in their own home. This was completely different from Mr. Clarke's understanding of the arrangement he had entered into with the defendants. He had never been told that he and his wife would face intimidation, illegal entry onto their property, threats, and ultimately an eviction



proceeding. Nor had he been given any sort of instructions for what to do in the wake of the closing in November 2014. The plaintiffs had no idea that HAS and Martin Development planned to do anything other than help them remain in their home, as they had consistently promised for months.

65. The plaintiffs and their tenant attended their first Housing Court appearance on February 19 and the matters were adjourned. The tenant did not yet have an attorney. The Housing Court judge instructed their tenant to cease paying rent to the plaintiffs, purportedly due to the dispute over ownership of the property.

66. On March 24, the plaintiffs and their tenant all appeared in Housing Court with counsel. The plaintiffs filed and served an answer to the holdover petition, and undersigned counsel informed the presiding judge that a related Supreme Court action was imminent. The matter was adjourned until April 20 over the objection of counsel for Martin Development.

67. According to publicly accessible records available through the New York City Department of Finance, at the time of the short sale the plaintiffs' home was worth approximately \$628,000. Upon information and belief, their debt to Wells Fargo at the time of the transaction was approximately \$795,000, which included deferred principal of approximately \$155,000, and arrears of approximately \$52,000. Defendant Martin Development acquired this property for a mere \$210,000 – a sum representing almost a half million dollars below market value.

68. The plaintiffs were underwater, but they were not without options for preserving their home. If they had obtained legal services or housing counseling assistance from a reputable agency, they might have been able to negotiate another modification with their mortgage lender, or reinstate their loan with state funds through the MAP program. A short sale was not the only

way for the plaintiffs to escape foreclosure, and it threatened to force the plaintiffs out of their home prematurely, before a foreclosure action had even been commenced. The short sale certainly was not a way for them to “save their home,” as the defendants fraudulently claimed.

69. Less than one month after the short sale, defendant Bakst was suspended from the practice of law by the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts for “professional misconduct immediately threatening the public interest.” Specifically, defendant Bakst was found to have misappropriated and commingled client funds, lied to the Grievance Committee, and committed other ethical violations.

70. The plaintiffs are shocked and traumatized by the events of the last year. They seek relief from the illegal, deceptive, and abusive acts of HAS, Martin Development, Launch Development, and their associates in defrauding Mr. Clarke into conveying title to his family home, and placing him and his wife in danger of homelessness.

71. Upon information and belief, the plaintiffs are not the only victims of these defendants’ schemes, and defendants are engaged in a pattern and practice of obtaining title to homes through deception and fraud. Undersigned counsel represents another plaintiff in a pending matter entitled Milton Shaw v. Launch Development, LLC, et. al., Kings County Index No. 13867/2014, before the Honorable Wavny Toussaint, involving many of the same defendants. In that case, Judge Toussaint has granted preliminary injunctive relief, restraining the Housing Court eviction cases from proceeding, and enjoining any activity or harassment by the defendants with respect to Mr. Shaw and his property. The following are other matters involving many of the same individuals named herein as defendants, all currently active in Kings County Supreme Court: Murray v. Launch Development, Index No. 4277/2015; Benifield v. Launch Development, 15240/204; Palmer v. Launch Development, Index No. 8043-2014; Ferguson v.

Launch Development, Index No. 9105-2014; Painson v. Meiri, Index No. 12283-2014; Marcano v. Alvarenga, Index No. 10106-2014; Lindsay v. Alvarenga, Index No. 14181-2014; and Jolivin v. Alvarenga, Index No. 15952-2014. While all of these matters are still pending, it is important for this Court to be aware that the defendants' actions with respect to the plaintiffs do not appear to be aberrations or isolated incidents. Rather, they are part of these defendants' pattern and practice of targeting vulnerable homeowners across Brooklyn and defrauding them out of their property. It cannot be a coincidence that numerous individual plaintiffs, all represented by different law firms, have sought similar relief against the same group of defendants for the same type of conduct.

#### **FIRST CAUSE OF ACTION**

**Against Homeowner Assistance Services of New York, Martin Development & Management, LLC, Launch Development, LLC, Mario Alvarenga, and Elliot Bakst, Esq.**

#### **NEW YORK REAL PROPERTY LAW § 265-a ("THE HOME EQUITY THEFT PREVENTION ACT")**

72. Plaintiffs repeat and reallege paragraphs 1 through 71 as though fully set forth herein.

73. The entire fraudulent scheme perpetrated by the defendants against Mr. Clarke and Ms. Knights violated numerous provisions of the Home Equity Theft Prevention Act, codified at New York Real Property Law § 265-a (hereinafter "HETPA"). HETPA was passed by the New York State Legislature in 2006, and was aimed at protecting distressed homeowners from "fraud, deception, and unfair dealing by home equity purchasers." N.Y.R.P.L. § 265-a(1)(a). It contains a host of specific mandates and safeguards that govern the sale of properties that are either in mortgage delinquency or active foreclosures. The transaction in this case failed to conform to any of the statutory requirements set forth in HETPA.

74. This transaction falls within the scope of the statute's protection because it is a "covered contract" as defined by § 265-a(2)(c)(ii): "any contract, agreement, or arrangement, or any term

thereof, between an equity purchaser and equity seller which is incident to the sale of a residence in foreclosure or default where such contract, agreement or arrangement includes a reconveyance arrangement.” This transaction was initiated by HAS and Martin Development during a time when the plaintiffs’ loan was in default. HAS and Martin Development solicited the plaintiffs in order to arrange a short sale of this distressed property to themselves. The defendants consistently maintained that Mr. Clarke would be able to “buy back” the property as part of the overall transaction. Accordingly, it was an “agreement . . . incident to the sale of a residence in default where such . . . agreement . . . include[d] a reconveyance arrangement.” Id.

75. An “equity purchaser” is “any person [or his or her representative] who acquires title to any residence in foreclosure, or, where applicable, default.” N.Y.R.P.L. § 265-a(2)(e). Martin Development, Mario Alvarenga, Amir Meiri and Herzal Meiri are all equity purchasers, as they collectively acquired title to the plaintiffs’ residence, which was in default.

76. An “equity seller” is a “natural person who is a property owner or homeowner at the time of the equity sale.” N.Y.R.P.L. § 265-a(2)(f). Mr. Clarke is a natural person and he owned his home at the time of this transaction, making him an equity seller.

77. A “reconveyance arrangement” involves “the transfer of title to residential real property by an equity seller in default or foreclosure . . . that allows the equity purchaser to obtain legal or equitable title to all or part of the property, and the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the equity seller by the equity purchaser.” N.Y.R.P.L. § 265-a(2)(i).

78. The transaction between Mr. Clarke and Martin Development (and its representatives) was a “reconveyance arrangement” as defined by subdivision (2)(i). HAS, Martin Development, and Mario Alvarenga all promised Mr. Clarke that they were helping him to fix his mortgage and

keep his family's home. Mr. Clarke's clear understanding was that whatever transpired at the closing in November 2014 was a condition precedent to saving his home. Martin Development obtained title to the plaintiffs' home, but only because Mr. Clarke believed that he would be able to retain actual ownership and keep living in the house. Mr. Clarke had no intent to convey absolute title to his property; indeed, he did not even understand that he was conveying equitable title or what that actually signified. The entire premise of the transaction was home retention for Mr. Clarke, which is fundamentally the concept behind a reconveyance agreement.

79. The transaction between Mr. Clarke and the defendants violated every applicable provision of HETPA.

80. First, HETPA requires that every covered contract be in writing, signed by both the equity purchaser and the equity seller, and contain all of the terms of the agreement, including "the time, if any, at which physical possession of the residence is to be transferred to the equity purchaser," and "the terms of any reconveyance arrangement." N.Y.R.P.L. § 265-a(3)-(4).

81. The "agreement" between Mr. Clarke and Martin Development was never reduced to writing. If it was, Mr. Clarke has never received a copy, and he does not know any of its terms. No such document was produced at the closing or at any point thereafter. Neither HAS, Martin Development, nor their agents ever explained the terms of the transaction to Mr. Clarke or Ms. Knights, other than the promise that they would help the plaintiffs save their home. Nobody warned Mr. Clarke of "the time . . . at which physical possession of the residence [would] be transferred to the equity purchaser." Id. Nor were any of the specific terms of the reconveyance arrangement ever explained to Mr. Clarke. He was never told that he would be agreeing to a short sale of his property, conveying title to Martin Development, and subsequently forced to move out unless he and his wife could somehow generate a down payment of \$20,000 and

provide their Social Security numbers within 90 days of the short sale. Mr. Clarke was led to believe that he was working to fix his mortgage with the help of HAS, and that he and his wife would be able to remain living at home.

82. Second, HETPA requires that covered contracts include a written notice of the right to cancel. N.Y.R.P.L. § 265-a(4). The written notice includes an actual cancellation form, which is required to include all pertinent information regarding the covered contract, and must be attached to the contract itself. N.Y.R.P.L. § 265-a(6). This permits an equity seller to cancel the contract within five business days after execution, assuming the seller abides by the procedures set forth in HETPA. N.Y.R.P.L. § 265-a(5).

83. Since Mr. Clarke never saw or received any written contract, he certainly did not receive any written notice of cancellation, or any draft cancellation form. Even if it could somehow suffice under the statute, Mr. Clarke did not receive a verbal notice of cancellation rights either.

84. Third, HETPA prohibits any and all misrepresentation on the part of an equity purchaser. N.Y.R.P.L. § 265-a(7)(b) (“An equity purchaser shall make no false or misleading statement” concerning any aspect of the transaction).

85. Specifically, subdivision (7)(b) prohibits misrepresentation of the following: “the value of the residence in foreclosure, or, where applicable, default; the amount of proceeds the equity seller will receive after a foreclosure sale; the timing of the judicial foreclosure process; any contract term; the equity seller’s rights or obligations incident to or arising out of the sale transaction; the nature of any document which the equity purchaser induces the equity seller to sign; or any other false or misleading statement concerning the sale of the residence in foreclosure, or, where applicable, default, or concerning the reconveyance arrangement.”

86. Martin Development, HAS, and Mario Alvarénga misled Mr. Clarke about every aspect of this transaction. They promised that Mr. Clarke and Ms. Knights could stay in their home and fix their mortgage. They led Mr. Clarke to believe that the only way to escape imminent foreclosure was to work with them, and trust their decision-making as to the steps necessary to save the house. This was one of many misrepresentations made by the defendants to Mr. Clarke.

87. The plaintiffs had no idea what their options might be after defaulting on their modified loan. They did not know that their home was worth \$628,000 at the time of the short sale, nor did they understand that being underwater on their loan did not strip them of the ability to retain their home. Mr. Clarke did not realize that just because his credit was supposedly “shot,” that did not prevent him from seeking loss mitigation assistance either from his lender or an outside agency. The plaintiffs were unaware of the existence of state funds specifically aimed at assisting struggling homeowners to reinstate their mortgages, and did not realize that this might have been a viable home-saving option for them. Nor did they realize that they might have even qualified for a reverse mortgage on the property, given that Mr. Clarke was over 62. The defendants held out their “plan” as the plaintiffs’ only option, when in fact this plan divested them of ownership and title to their house. Mr. Clarke would never have entered into a relationship with HAS and the other defendants had they not consistently – and fraudulently -- promised that they would enable him to keep his home.

88. Defendant Alvarenga lured Mr. Clarke to the short sale closing by pretending it was merely a “meeting” to begin the process of saving his house. This meeting came after months of communication regarding the defendants’ supposedly ongoing efforts to obtain refinancing of Mr. Clarke’s loan. At the point that defendant Alvarenga summoned Mr. Clarke for the November 7 closing, he had carefully created the impression that HAS was dedicated to

protecting the plaintiffs' interests. Having purportedly exhausted all other options, defendant Alvarenga promised Mr. Clarke that a short sale "on paper" – but not in reality – would be the best method of saving the plaintiffs' home. Depicting such a transaction as part of a longer process of saving the home, defendant Alvarenga framed the meeting as unremarkable. He portrayed it as a ministerial task of processing paperwork, rather than the momentous act of selling the plaintiffs' valuable property to a previously unknown development company. The defendants made conscious choices that preyed upon Mr. Clarke's trust in them, which they had falsely cultivated. In creating an atmosphere of trust and shared interests, the defendants knowingly sought to eliminate any skepticism Mr. Clarke might have harbored about their plans. Indeed, even when Mr. Clarke actually expressed doubt about participating in a short sale, defendant Alvarenga tamped down those concerns by dishonestly claiming that it would not be a "true" short sale, and that the plaintiffs would remain in their home.

89. None of the defendants ever told Mr. Clarke that the November 7 meeting was in fact a closing on his property. They even provided him with a lawyer who pretended to represent Mr. Clarke's interests, in order to further conceal the true nature of the transaction. By interposing a person with apparent authority to act on Mr. Clarke's behalf, the defendants guaranteed that Mr. Clarke himself would not question the proceedings. When Mr. Bakst handed Mr. Clarke documents to sign, Mr. Clarke trusted him and signed the documents. This was precisely what the defendants sought to achieve, by providing a lawyer for Mr. Clarke at the closing.

90. HAS, Martin Development, and Mario Alvarenga all promised Mr. Clarke that he and his wife would be able to stay in their house until they could "buy back" the property. They never specified how such a buyback would take place, what funds the plaintiffs would need to achieve this, and what would happen in the event that such a buyback did not transpire. They never said



that this buyback arrangement was a necessary condition for the plaintiffs remaining in their home. This set of promises was both false and misleading. The defendants never disclosed what the plaintiffs would need to do to actually re-acquire their property, and actively concealed that they would be taking title to the property in the meantime. They also actively concealed that they would aggressively seek immediate physical possession of the property in addition to title.

91. These misrepresentations were crucial to securing Mr. Clarke's acquiescence in the closing on November 7. Defendant Alvarenga knew full well that Mr. Clarke did not wish to sell his family home, and that his sole objective was to preserve his property. He also knew, after months of access to the plaintiffs' finances, that they did not have \$20,000 for a down payment, or enough surplus income to afford \$5600 in monthly rent. Accordingly, he chose not to reveal these aspects of the reconveyance agreement prior to the closing, since they would have undermined Mr. Clarke's willingness to cooperate. Instead, in order to get Mr. Clarke's signature on the closing documents, defendant Alvarenga and his associates concocted a false narrative of a "pretend" short sale, which would not actually transfer ownership or have any material consequences for the plaintiffs. Once Mr. Clarke provided the necessary signatures, the defendants began their campaign of harassment and threats to force the plaintiffs to move out. When the plaintiffs did not leave, they commenced an eviction proceeding against them and their tenant. The defendants' actions following the closing reveal their true intentions – they never planned to allow Mr. Clarke and Ms. Knights to remain in their home.

92. In addition to misrepresenting the true nature of the transaction, the defendants never explained to Mr. Clarke any of the documents they instructed him to sign. At the closing, Mr. Bakst handed numerous documents to Mr. Clarke for his signature, and did not explain a single one to him. Nobody told Mr. Clarke that he was in fact conveying title to Martin Development,

and he did not understand that he and his wife would lose control over their property as a result of him signing these documents.

93. Fourth, the HETPA fraud provision forbids an equity purchaser from directly or indirectly representing the following: “(i) the equity purchaser is acting as an advisor or a consultant, or in any other manner represents that the equity purchaser is acting on behalf of the equity seller; (ii) the equity purchaser has certification or licensure that the equity purchaser does not have, or that the equity purchaser is not a member of a licensed profession if he or she is actually such a member; (iii) the equity purchaser is assisting the equity seller to save the house unless the equity purchaser has a good faith basis for the representation; or (iv) the equity purchaser is assisting the equity seller in preventing a completed foreclosure unless the equity purchaser has a good faith basis for the representation.” N.Y.R.P.L. § 265-a(7)(c).

94. Mr. Clarke was led to believe that HAS and its employees were his advocates, helping him and his wife avoid an imminent foreclosure process and either refinance or otherwise rehabilitate the mortgage on their home. From their protracted phone solicitations, to their months-long “review” of the plaintiffs’ finances, to the furnishing of Mr. Bakst as Mr. Clarke’s supposed attorney, the HAS defendants portrayed themselves as the plaintiffs’ benefactors and advocates. That HAS apparently obtained third-party authorization to communicate on Mr. Clarke’s behalf with their lender reveals just how far this misleading conduct extended. In fact, HAS acted as an agent for Martin Development, the equity purchaser and now the petitioner against the plaintiffs in Housing Court. The two were closely related, sharing employees, office space, and telephone numbers.

95. HAS, Martin Development, and Mario Alvarenga all repeatedly promised that they were helping the plaintiffs to save their home. See N.Y.R.P.L. § 265-a(7)(c)(iii) (prohibiting such

representations unless purchaser has “good faith basis”). They had no good faith basis for this promise. As an initial matter, there was no realistic possibility of refinancing the plaintiffs’ delinquent loan, contrary to the defendants’ representations. That Mr. Clarke sought this particular remedy reflects his lack of understanding regarding the basic qualifications for refinancing a mortgage. The loan was underwater and the plaintiffs were already behind in their payments: it would have been virtually impossible for them to secure a refinance of their debt under these circumstances. Yet defendant Alvarenga never disavowed Mr. Clarke from his belief that this was the path out of default, and instead led him to believe that the reason he could not secure a refinance was solely due to Mr. Clarke’s credit being “shot.” In fact, while refinancing was never a realistic option for the plaintiffs, reinstatement with a MAP loan was entirely possible. The plaintiffs might also have been able to negotiate a further loan modification with their lender. No defendant ever discussed any of these potential options with Mr. Clarke. Instead, the defendants persisted in misleading him with the notion that he and his wife could somehow refinance the mortgage or save their house through a short sale, neither of which were viable home-saving resolutions. This was because their true intention was to obtain title to the house and flip it to another buyer for a handsome profit.

96. Fifth, under HETPA § 265-a(7)(d), equity purchasers are prohibited from taking “unconscionable advantage” of an equity seller. These defendants knew that the plaintiffs had just exited foreclosure, were struggling to rehabilitate their debt, and were underwater on the mortgage. They also knew that the plaintiffs’ sole objective was to remain in their home. Yet they first pretended that refinancing was an option, and then manufactured the concept of a short sale “on paper only,” holding it out to Mr. Clarke as the only way to save his home. They collectively acted to conceal the true nature of their plans, while pretending to help Mr. Clarke.

As a result, Martin Development obtained title to a property valued at \$628,000 for a mere \$210,000, and the plaintiffs are facing eviction.

97. Sixth, HETPA provides for criminal penalties if an equity purchaser violates subdivision (7) with “intent to defraud.” N.Y.R.P.L. § 265-a(10).

98. In light of the defendants’ calculated actions in this case, including their targeting of the plaintiffs during a time of financial distress, pressuring to sign closing papers quickly, aggressive pursuit of his eviction, and clear intention to flip his property for significant profit, their collective intent to defraud him out of his home is readily apparent.

99. Seventh, HETPA contains specific provisions that govern “reconveyance arrangements.” See N.Y.R.P.L. § 265-a(11). If an equity purchaser promises a repurchase option in the course of a transaction with an equity seller, that transaction is presumptively deemed a mortgage, and not an absolute conveyance. Id. at (11)(a).

100. HETPA also employs a number of safeguards to ensure that a reconveyance arrangement is not used as a vehicle to strip title or equity from unsophisticated homeowners. A reconveyance arrangement is not valid unless the equity purchaser “verifies by appropriate documentation that the equity seller has or is likely to have a reasonable ability to pay for the subsequent conveyance of an interest back to the equity seller.” N.Y.R.P.L. § 265-a(11)(b)(i). This subdivision also includes a “rebuttable presumption [of non-verification] if the equity purchaser has not obtained documents other than a statement by the equity seller of assets, liabilities and income.” Id. It cross-references a section of the New York Banking Law entitled “No lending without due regard to repayment ability,” which sets forth specific steps for verifying a borrower’s ability to afford a loan. See N.Y.B.L. § 6-1(2)(k). A reconveyance arrangement must be formalized at an in-person closing, “conducted by an attorney who is not

employed by or an affiliate of the equity purchaser.” N.Y.R.P.L. § 265-a(11)(b)(ii). HETPA also codifies a writing requirement, specifying that “[a]ll deeds or conveyances subject to a reconveyance arrangement shall state explicitly on the face of the document that the conveyance is subject to a reconveyance arrangement, and shall state the terms of the reconveyance arrangement.” N.Y.R.P.L. § 265-a(11)(f).

101. The reconveyance promise made by the defendants to Mr. Clarke was never put into writing and its terms were never specified. The closing was conducted by Elliot Bakst, an attorney with no allegiance to the plaintiffs and a clear relationship to Martin Development and HAS. Indeed, it is impossible to explain his presence at the closing if he did not have any relationship to the other defendants, since the plaintiffs had never heard of Mr. Bakst and the bank certainly would not have hired a lawyer for Mr. Clarke. Procedurally, therefore, the reconveyance arrangement violated every applicable HETPA requirement.

102. Furthermore, this verbal reconveyance promise was made by the defendants without any assessment of the plaintiffs’ repayment ability, in violation of § 265-a(11)(b)(i). The defendants knew that the plaintiffs were living on a fixed income, yet chose not to verify their ability to repay as required by the statute. To the extent that defendant Alvarenga had taken financial documents from Mr. Clarke over a period of months prior to the closing, it is unclear what, if anything, he did with such items since the possibility of refinancing was so remote. It is also unclear whether such documents even provided an accurate portrait of the plaintiffs’ finances at the time of the closing, such that they could have sufficed as verification under the statute. After the closing, the “Short Sale/Modification Checklist” given to Mr. Clarke listed some of the items required for verification. But nobody ever explained what Mr. Clarke was supposed to do with this checklist, if anything. To the extent that supplying any items on the

"Checklist" might have satisfied the verification requirement, it was irrelevant because Mr. Clarke had already consummated the short sale at the time he received this list.

103. Since the transaction in question violated virtually every applicable provision of HETPA, the defendants are liable to the plaintiffs for damages, reasonable attorneys' fees, and the equitable relief of rescission of the fraudulent deed transfer to Martin Development.

### SECOND CAUSE OF ACTION

Against Homeowner Assistance Services of New York, Martin Development & Management, LLC, Launch Development, LLC, Mario Alvarenga, and Elliot Bakst, Esq.

### NEW YORK REAL PROPERTY LAW § 320 (EQUITABLE MORTGAGE)

104. Plaintiffs repeat and reallege paragraphs 1 through 103 as though fully set forth herein.

105. New York Real Property Law § 320 states that a deed transfer that appears absolute on its face can be deemed an equitable mortgage if the parties intended it to serve as security for a debt. There does not need to be conclusive evidence of the security interest, such as a written contract indicating it as such. The critical question is whether there is evidence that it was intended as something other than an absolute conveyance of the property in question. Courts may examine any source of information tending to shed light on the intent of the parties.

106. The deed transfer from Mr. Clarke to Martin Development, although a conveyance of property on its terms, must be considered a mortgage as a matter of law pursuant to R.P.L. § 320. The stated intent of the parties was to aid Mr. Clarke in saving his home, and the defendants' acts and statements evince their intent to mortgage the plaintiffs' home. Every representation made by the defendants to the plaintiffs indicated that this was the plan. Mr. Clarke did not intend to sell his home. The only reason that he decided to work with HAS and Martin Development was because of their promise to help him save his home.

107. The "Short Sale/Modification Checklist" given to Mr. Clarke after the closing demonstrates that defendants intended to transfer the mortgage to Mr. Clarke's home from Wells Fargo to Martin Development – and not to transfer title. If all parties had understood this transaction to be an actual short sale, there would have been no reason to give Mr. Clarke a list of financial documents to compile after the closing. Indeed, the financial information required by the Checklist, including paystubs, bank statements, and tax returns, are all documents that are typically provided to a lender by a potential borrower who is seeking a loan.

108. The terms used by the defendants – "fix" the mortgage, "first step of the process," a short sale "only on paper" – further support the fact that the defendants intended to mortgage the property rather than take title. Defendants never suggested to Mr. Clarke that the deed transfer completed at the closing would be an end in itself. Rather, it was held out as the first part of a multi-phase transaction that would end when the plaintiffs were able to "buy back" their property.

109. The plaintiffs have remained in possession of their home since the transaction. They respectfully request that this Court declare the deed transfer to Martin Development to be an equitable mortgage, and not a sale of their property. As such, they are entitled to all of the rights and remedies due a mortgagor under state and federal law.

### **THIRD CAUSE OF ACTION**

**Against Martin Development & Management, LLC, Amir Meiri, and Herzl Meiri**

### **NEW YORK REAL PROPERTY ACTIONS AND PROCEEDINGS LAW ARTICLE 15 (QUIET TITLE)**

110. Plaintiffs repeat and reallege paragraphs 1 through 109 as though fully set forth herein.

111. Plaintiffs bring this claim pursuant to Article 15 of the New York State Real Property Actions and Proceedings Law to compel the determination of any claims adverse to those of Mr. Clarke and Ms. Knights in the premises known as 963 East 95<sup>th</sup> Street, Brooklyn, NY, Block 8145, Lot 14.

112. The plaintiffs have been and remain in actual possession of the subject property, insofar as they continue to live there.

113. Martin Development and its owners and/or representatives, Amir Meiri and Herzel Meiri, claim that they are the true owners of the property pursuant to a purported deed provided to Martin Development on November 7, 2014. Martin Development and the Meiris are currently trying to evict the plaintiffs and their tenant from their home. The defendants have asserted that they are the true owners of the property in person and over the telephone with the plaintiffs and their tenants, as well as in court papers submitted in the pending holdover proceedings in Housing Court. By virtue of these pending proceedings, the plaintiffs' tenant has been instructed by the presiding judge in Housing Court not to pay rent to the plaintiffs due to the dispute over ownership of this property. Moreover, defendants have caused the purported deed to be filed as a public record with the Office of the City Register.

114. Defendants' purported interest in the property, and the documents upon which it rests, are void because they were obtained through a fraudulent scheme that tricked Mr. Clarke into conveying ownership of his home without knowledge. The purported deed transfer at best constituted an equitable mortgage, and nothing more.

115. The plaintiffs respectfully request that this Court declare that Joseph Clarke is the lawful sole owner of the property, and is entitled to lawful, peaceable, and uninterrupted possession thereof as against all defendants herein, and as against anyone claiming under them;



issue an injunction prohibiting all defendants, and any person claiming under them, from claiming an estate or interest in, or lien or encumbrance on, the property; issue a judgment declaring as void the fraudulent deed dated November 7, 2014; and issue damages stemming from the plaintiffs' lost opportunities and other damage in connection with the loss of their exclusive right to use the property in the manner of their choosing.

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

**Against Homeowner Assistance Services of New York, Martin Development & Management, LLC, Launch Development, LLC, Mario Alvarenga, and Elliot Bakst, Esq.,**

#### **NEW YORK STATE GENERAL BUSINESS LAW § 349 ("THE DECEPTIVE PRACTICES ACT")**

116. Plaintiffs repeat and reallege paragraphs 1 through 115 as though fully set forth herein.

117. Defendants conducted and engaged in "business" and "furnished a service" as those terms are used in New York State General Business Law § 349 (the "Deceptive Practices Act").

118. All of the defendants were associated with HAS, with Martin Development, or with both entities, each of which is a business licensed under the state of New York. Elliot Bakst is an attorney currently suspended from practice in New York.

119. From the very beginning, this was a scheme designed to obtain a valuable Brooklyn property at a discounted price, by preying upon distressed homeowners and stripping them of title and actual possession of their property. All of the defendants engaged in a series of deceptive acts and practices in the course of their dealings with the plaintiffs. Their communications were materially misleading, predatory, and contrary to public policy as well as general standards of business. Those acts and practices include:

- a. Misrepresenting to Mr. Clarke that they would help him to remain in his home, when in fact the defendants were acting in concert to permanently divest him and his wife of their property;
- b. Actively concealing the fact that defendant Launch Development had encumbered the plaintiffs' property since March 2013 with a bogus UCC-1 lien, listing defendant Alvarenga as a contact person on the lien documents recorded on ACRIS;
- c. Pretending that the transfer of title to the subject property merely represented the "first step" in a plan to help Mr. Clarke fix his mortgage and "buy back" the home, when in fact the transfer of title was an end in itself;
- d. Failing to warn Mr. Clarke that once the deed was transferred, the defendants would commence a course of conduct aimed at intimidating him and his wife into moving out;
- e. Failing to warn Mr. Clarke that if he and his wife chose to remain in their house, defendants would seek judicial assistance in evicting them;
- f. Misrepresenting and obscuring the true nature of the documents Mr. Clarke was signing and their significance and consequences for his property rights;
- g. Holding themselves out as Mr. Clarke's advocates, when in fact they were using his delinquent loan as a conduit for obtaining cheap property from Wells Fargo; and
- h. Misleading Mr. Clarke into believing that the attorney provided to him at the closing was an advocate for his interests alone, when in fact Mr. Bakst was working at the behest of HAS and Martin Development.

120. The plaintiffs suffered serious injury as the proximate result of defendants' deceptive practices.

121. Defendants' practices have had and will likely continue to have a broad impact on consumers in the State of New York. As detailed above, defendants have allegedly perpetrated similar schemes on other homeowners. Their acts and practices are a threat to homeowners and the communities in which they reside.

122. The defendants' conduct falls squarely within the scope of NY G.B.L. § 349. Moreover, the defendants demonstrated a knowing, willful, and malicious disregard for the plaintiffs' rights and welfare. Their scheme operated to strip the plaintiffs of their primary residence, an objective Martin Development and its agents are now actively pursuing through a holdover proceeding in Housing Court. As such, this Court should impose the civil penalties contemplated by G.B.L. § 349(h), permitting treble damages for a knowing or willful violation, as well as reasonable attorneys' fees.

#### **FIFTH CAUSE OF ACTION**

**Against Homeowner Assistance Services of New York, Martin Development & Management, LLC, Launch Development, LLC, Mario Alvarenga, and Elliot Bakst, Esq.**

#### **REAL ESTATE SETTLEMENT PROCEDURES ACT**

123. Plaintiffs repeat and reallege paragraphs 1 through 122 as though fully set forth herein.

124. The November 2014 equitable mortgage transaction between the defendants and Mr. Clarke is a loan secured by a first lien on a one to four family residential property, the proceeds of which were used to enrich the defendants and pay off the plaintiffs' mortgage loan with Wells Fargo.

125. Upon information and belief, defendants HAS and Martin Development, and their associates named in the complaint, are creditors who make or invest in mortgage loans aggregating more than \$1,000,000 per year.

126. The equitable mortgage executed in November 2014 is a "federally related mortgage loan" as that term is defined in 12 U.S.C. § 2602(1), and is therefore subject to the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 et. seq.

127. The defendants violated RESPA in the course of their dealings with Mr. Clarke by giving, accepting, and arranging kickbacks, unearned fees, and split charges for unrendered or undisclosed services in violation of 12 U.S.C. § 2607(a) and (b).

128. The real estate abstract prepared by defendants reflected over \$11,000 in settlement costs to the plaintiffs. These costs consisted of fees such as a \$5700 charge for a "tax judgment," without any indication of what taxes were outstanding or whether that sum was actually used to satisfy a judgment. There was a charge of over \$2000 for water and sewer costs, although it is unclear whether any funds were actually used to satisfy an outstanding balance. The abstract also listed charges for a UCC-3 termination, apparently to lift the UCC-1 lien fraudulently filed by Launch Development against the property.

129. Defendants are liable to the plaintiffs under RESPA for damages, which can be trebled pursuant to 12 U.S.C. § 2607(d)(2), as well as reasonable costs and attorneys' fees pursuant to subdivision (d)(5).

#### SIXTH CAUSE OF ACTION

Against Homeowner Assistance Services of New York, Martin Development & Management, LLC, Launch Development, LLC, Mario Alvarenga, and Elliot Bakst, Esq.

#### **FRAUD**

130. Plaintiff repeats and realleges paragraphs 1 through 129 as though fully set forth herein.

131. Defendants fraudulently and knowingly caused Mr. Clarke to enter the November 2014 equitable mortgage/deed transfer by making intentional misrepresentations and/or failing to provide material information, including the following:

- a. Misrepresenting to Mr. Clarke the nature and effect of the subject transaction and the documents executed, including their repeated promises to save his home;

- b. Concealing the fact that Launch Development and Mario Alvarenga had previously encumbered the plaintiffs' property with a fraudulent and baseless UCC-1 lien;
- c. Failing to inform Mr. Clarke of the true nature of their plan for his family home, which was to obtain the property cheaply, evict him, his wife, and their tenant, and flip the house for a profit;
- d. Misleading Mr. Clarke into believing he was attending a meeting about how to save his home and failing to inform Mr. Clarke that he would be attending a closing on his property;
- e. Failing to inform Mr. Clarke that he had allowed them to negotiate a short sale of his house, and failing to warn him of the consequences thereof; and
- f. Inducing Mr. Clarke to agree to the short sale by falsely claiming that it was the "first step" in the process of saving his family home.

132. The plaintiffs had no intent to sell their home. Mr. Clarke only signed over the deed in reliance on defendants' promises that they would save his home, and because they had convinced him that it was part of the process of doing so. If Mr. Clarke had known that the deed transfer would result in his losing control of his property and being evicted with his wife from their property, he never would have signed the paperwork given to him by Mr. Bakst at the closing.

133. By acting as if he were Mr. Clarke's advocate, Mr. Bakst facilitated the other defendants' misrepresentations, falsely leading Mr. Clarke to believe that acquiescing in the closing was in his family's best interest.

134. The solicitous, misleading conduct on behalf of the defendants created an atmosphere in which Mr. Clarke believed they were working together to rescue him from imminent foreclosure and saving the home. From the HAS representative targeting Mr. Clarke over the phone as a fellow Guyanese immigrant, to defendant Alvarenga's repeated assurances that he and HAS were working on a refinance for the plaintiffs, to Alvarenga's encouragement to

be optimistic throughout this process, the defendants consistently depicted themselves as benefactors, when in fact they were predators. Under these circumstances, where the plaintiffs faced another foreclosure action and potential homelessness, and given the defendants' relentless efforts to convince Mr. Clarke that they were saving his home, it was reasonable and understandable that he trusted these defendants when they promised to help him.

135. The plaintiffs have already suffered serious injury as the proximate result of Mr. Clarke's reliance on defendants' intentional misrepresentations and failures to disclose, and they stand to suffer even more if the defendants prevail in their holdover petitions and they are evicted from their home. The plaintiffs' injuries include, but are not limited to: the loss of economic and other opportunities; having their deed stolen from him unwittingly; facing the possibility of eviction by the same people who promised to help them; and the mental and physical anguish caused by the harassing, predatory, and intimidating conduct of the defendants.

136. Defendants undertook this scheme knowingly, intentionally, and with the conscious objective to obtain permanent possession of the plaintiffs' property. The entire equitable mortgage and reconveyance transaction was initiated on false pretenses, and conducted with fraudulent intent. As a result, the deed transfer was null and void, and should be rescinded.

137. Additionally, defendants are liable to plaintiffs for actual damages, punitive damages, costs, and disbursements.

#### **SEVENTH CAUSE OF ACTION**

**Against Homeowner Assistance Services of New York, Martin Development & Management, LLC, Launch Development, LLC, Mario Alvarenga, and Elliot Bakst, Esq.**

#### **CIVIL CONSPIRACY TO COMMIT FRAUD**

138. Plaintiffs repeat and reallege paragraphs 1 through 137 as though fully set forth herein.

139. Defendants entered into an agreement to induce Mr. Clarke to enter the November 2014 equitable mortgage/deed transfer transaction.

140. Defendants intentionally, knowingly, and willfully participated in this scheme by committing overt acts and making misrepresentations and/or failing to provide material information, in furtherance of the agreement, including those representations set forth in paragraphs 131 (a) – (f) above.

141. Plaintiffs suffered serious injury as the proximate result of Mr. Clarke's reliance on defendants' misrepresentations and omissions.

142. Said conspiracy renders void and unenforceable the November 2014 equitable mortgage/deed transfer ab initio.

143. In addition, defendants are liable to the plaintiff for actual damages, punitive damages, and costs and disbursements.

**EIGHTH CAUSE OF ACTION**  
**Against Elliot Bakst, Esq.**

**LEGAL MALPRACTICE**

144. Plaintiffs repeat and reallege paragraphs 1 through 143 as though fully set forth herein.

145. Defendant Elliot Bakst represented Mr. Clarke in the November 2014 equitable mortgage/deed transfer.

146. Mr. Bakst failed to satisfy any of his professional obligations to Mr. Clarke. He made no effort to have meaningful communication with Mr. Clarke, to advise him in any way, or to assist him in understanding the transaction to which he was agreeing. He failed to warn Mr. Clarke of the defendants' true objective to permanently obtain the property, and instead facilitated their misrepresentations. His presence at the closing was held out as evidence that the

defendants were protecting Mr. Clarke's interests, when in fact it was nothing more than a sham to lend an appearance of legitimacy to a fraudulent scheme.

147. Mr. Bakst's negligence was a proximate cause of the plaintiffs' damages. Had Mr. Clarke received adequate legal counsel during the closing, he would have known that the defendants had no intention of helping him to stay in his home, and that the closing would result in him signing over his deed to Martin Development, losing control of his property, and putting his family at risk of eviction.

148. Mr. Clarke also would have known that he was entering into an illegal transaction because it failed to conform to the requirements of HETPA and RESPA.

149. Furthermore, Mr. Clarke would have known that the most likely avenue for him and his wife to save their home would have been to seek reinstatement assistance through the state MAP program, or attempt to negotiate either an additional modification or a reverse mortgage with their lender. Minimally, Mr. Clarke would have realized, with adequate legal counsel, that the verbal arrangement he'd made with defendant Alvarenga carried zero chance of home retention for him and his wife, and in fact guaranteed that they would imminently lose the property.

150. In addition, Mr. Clarke would have known that he could have remained in possession of the property for a longer period of time if he and his wife were to attempt any of their alternative options for saving their home, even if the loan were to proceed to a new foreclosure case, rather than selling the property to Martin Development.

151. As a result, Mr. Bakst is liable to the plaintiffs for actual damages.



**NINTH CAUSE OF ACTION**

Against Martin Development & Management, LLC, Amir Meiri, and Herzel Meiri

**NEW YORK REAL PROPERTY ACTIONS AND PROCEEDINGS LAW ARTICLE 8  
(FORCIBLE ENTRY)**

152. Plaintiffs repeat and reallege paragraphs 1 through 151 as though fully set forth herein.

153. Defendants Martin Development, Amir Meiri, Herzel Meiri, and their agents have made a substantial attempt to forcibly eject the plaintiffs from their own home by illegally tampering with the locks.

154. In mid-February, agents of the defendants visited the property with tools and a new lock, and proceeded to tamper with the locks on the front door. When Ms. Knights became aware of their presence in the building, she immediately called the police. When the police arrived, they determined that the plaintiffs were the current occupants of the premises. They directed the defendants' agent to leave the premises, and Ms. Knights to contact counsel. Had the police not arrived, the plaintiffs might well have been locked into their home without

155. In addition to this incident, the defendants and their agents have repeatedly visited the premises, many times late at night, attempted to gain entry under false pretenses, and put the plaintiffs in fear of personal violence.

156. Claiming to be the rightful owners of the property, these defendants have been repeatedly harassing the plaintiffs in person and over the phone, telling them that they must move out of the building or begin paying exorbitant rent to the defendants.

157. The plaintiffs are entitled to treble damages for the defendants' repeated violations of R.P.A.P.L. § 853.

**TENTH CAUSE OF ACTION**

**Against Homeowner Assistance Services of New York, Martin Development & Management, LLC, Launch Development, LLC, Mario Alvarenga, Amir Meiri, and Herzel Meiri**

**TORTIOUS INTERFERENCE WITH A CONTRACT**

158. Plaintiffs repeat and reallege paragraphs 1 through 157 as though fully set forth herein.

159. Mr. Clarke and Ms. Knights held a valid residential lease with their tenant, Johnella Albert. It was signed and effective as of November 1, 2014. The lease permitted Ms. Albert to rent the upstairs apartment at the subject property from Mr. Clarke and Ms. Knights for a sum of \$1200 per month. Ms. Albert lived in the apartment with her partner and their young child.

160. The defendants were aware that the plaintiffs rented out their upstairs apartment. Defendant Alvarenga had engaged in discussions about the plaintiffs' finances over an extended period of time, which included a discussion of the upstairs apartment and its capacity for generating rental income. Within days of the fraudulent short sale, the defendants had visited Ms. Albert's apartment and peppered her with questions regarding her lease agreement with the plaintiffs. Following this uninvited visit, agents of the defendant proceeded to call Ms. Albert numerous times, and had at least one conversation with Ms. Albert. In that conversation, which took place on or about December 1, 2014, an individual affiliated with HAS and Martin Development informed Ms. Albert that they were "working on getting [her] a new lease" due to the fact that Martin Development was the purported new owner of the property.

161. The defendants intentionally induced Ms. Albert to breach the terms of her existing contract with the plaintiffs by attempting to replace that lease with one between Ms. Albert and Martin Development. The defendants further sought to induce Ms. Albert's breach

by pursuing a holdover action in Housing Court in which they purported to be owners of the property, resulting in a Housing Court judge suggesting that Ms. Albert cease paying rent to the plaintiffs for an undetermined period of time.

162. As a direct result of the defendants' actions with respect to Ms. Albert, the plaintiffs have lost rental income that they were entitled to collect under the terms of their still-valid lease agreement with their tenant. The plaintiffs rely on this rental income, and in the past have used it to pay for repairs, home maintenance, and other expenses. Ms. Albert and her family remain living in the apartment, and the plaintiffs have no desire to evict her. Yet due to the defendants' actions, the plaintiffs are providing valuable, uncompensated consideration under the lease agreement, while Ms. Albert is no longer paying rent. In the meantime, the plaintiffs are deprived of the opportunity to mitigate damages by setting aside this income.

163. The defendants are liable to the plaintiffs for actual damages resulting from the ongoing interference with the plaintiffs' lease agreement with Ms. Albert.

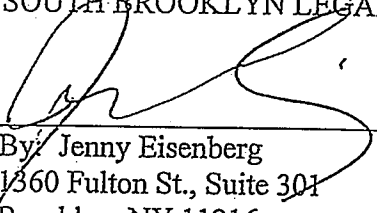
**WHEREFORE**, plaintiffs Joseph Clarke and Jacqueline Knights respectfully request that this Court:

- a. Declare the November 2014 transaction between Mr. Clarke and defendants an equitable mortgage pursuant to Real Property Law § 320;
- b. Rescind the November 2014 equitable mortgage/reconveyance transaction, void the deed to the plaintiffs' home that is currently in the name of defendant Martin Development, and terminate any security interest of the defendants in the subject property;
- c. Quiet title to the subject property by voiding the fraudulent deed from Mr. Clarke to Martin Development;
- d. Award actual damages to the plaintiffs in an amount to be determined at trial;

- e. Award statutory damages to the plaintiffs in an amount to be determined at trial;
- f. Award punitive damages to the plaintiffs in an amount to be determined at trial;
- g. Award reasonable costs and attorneys' fees;
- h. Impose civil penalties pursuant to General Business Law § 349(h);
- i. Enjoin defendants from pursuing the pending holdover petition in Housing Court until the instant matter is resolved;
- j. Stay any and all eviction proceedings and consolidate such actions with the instant action;
- k. Enjoin defendants from encumbering or conveying the property;
- l. Enjoin defendants from engaging in further deceptive business practices that affect consumers in the state of New York;
- m. Enjoin defendants from engaging in further tortious interference with plaintiffs' contractual relationship with their tenant;
- n. Issue a preliminary injunction permitting the plaintiffs to continue to lease and collect rent for their upstairs apartment, pending entry of a final judgment; and
- o. Award such other and further relief as this Court may deem just and proper.

DATED: Brooklyn, NY  
April 16, 2015

SOUTH-BROOKLYN LEGAL SERVICES



By: Jenny Eisenberg

1360 Fulton St., Suite 301

Brooklyn, NY 11216

(718) 233-6415

*Attorneys for Plaintiffs*

*Joseph Clarke & Jacqueline Knights*

VERIFICATION

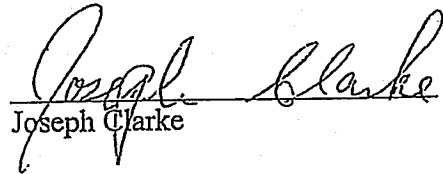
STATE OF NEW YORK :

SS.


COUNTY OF KINGS :

Joseph Clarke, being duly sworn, deposes and says:

I am the plaintiff in this action. I have read the foregoing complaint and know the contents. The complaint is true to my knowledge, except as to matters alleged on information and belief, and those matters, I believe to be true.

  
Joseph Clarke

Sworn to me this  
2<sup>nd</sup> day of April, 2015

  
\_\_\_\_\_  
Notary Public



VERIFICATION

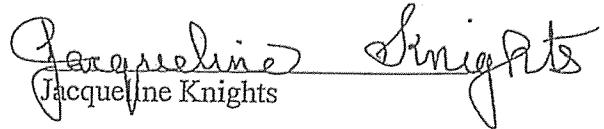
STATE OF NEW YORK :

SS.

COUNTY OF KINGS :

Jacqueline Knights, being duly sworn, deposes and says:

I am the plaintiff in this action. I have read the foregoing complaint and know the contents. The complaint is true to my knowledge, except as to matters alleged on information and belief, and those matters, I believe to be true.

  
Jacqueline Knights

Sworn to me this  
2nd day of April, 2015

  
\_\_\_\_\_  
Notary Public



Index No.

Year

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

JOSEPH CLARKE & JACQUELINE KNIGHTS,

Plaintiffs,

v.

MARTIN DEVELOPMENT & MANAGEMENT, LLC; LAUNCH DEVELOPMENT, LLC; HOMEOWNER  
ASSISTANCE SERVICES OF NEW YORK; AMIR MEIRI; HERZEL MEIRI; MARIO ALVARENGA; and  
ELLIOT BAKST, EST.

Defendants.

SUMMONS & COMPLAINT

Signature (Rule 130-1.1(a))

JENNY DISENBERG, ESQ.

SOUTH BROOKLYN LEGAL SERVICES, INC.

*Jenny Disenberg, Esq.  
Attorney for Plaintiffs*

*Office and Post Office Address; Telephone*  
105 COURT STREET, 4TH FLOOR  
BROOKLYN, NY 11201  
Telephone (718) 237-5500  
Facsimile (718) 855-0733

To

Service of a copy of the within is hereby admitted.

Dated:

.....  
Attorney(s) for

At an IAS Term, Part 43 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 4<sup>th</sup> day of November, 2015.

P R E S E N T:

HON. MARK I. PARTNOW,

Justice.

-----X  
HOUSING URBAN DEVELOPMENT, LLC,

Plaintiff,

- against -

OSCAR KIRTON, GERMAINE KIRTON and their Respective Successors, Assigns, Distributes, Heirs-at-Law, Next of Kin and Legal Representatives,

THE PEOPLE OF THE STATE OF NEW YORK,  
NEW YORK CITY BUREAU OF HIGHWAY OPERATIONS,  
ENVIRONMENTAL CONTROL BOARD,  
BANK OF NEW YORK MELLON as Collateral Agent and Custodian,  
and

JOHN DOE #1 through JOHN DOE #12, the last twelve names being being fictitious and unknown to the plaintiff, the persons or parties intended being the tenants, occupants, persons, entities, or corporations, if any, having or claiming an interest in or lien upon the premises, described in the complaint,

Defendants.

-----X  
The following e-filed papers read herein:

Notice of Motion/Cross Motion and Supporting

Affirmations (Affidavits) and Memoranda of Law Annexed \_\_\_\_\_

Affirmations (Affidavits) in Opposition \_\_\_\_\_

Memorandum of Law \_\_\_\_\_

Reply Affirmations (Affidavits) \_\_\_\_\_

Parties' Letters to the Court, dated July 31, 2015 \_\_\_\_\_

**DECISION AND ORDER ON  
PENDING MOTIONS**

**APPOINTMENT OF GUARDIAN  
AD LITEM**

**PRELIMINARY INJUNCTION**

Index No. 502449/14

Mot. Seq. No. 2-5

237 Maple Street  
Brooklyn, New York 11225  
Block 5030, Lot 72

NYSCEF No.

53-57, 58-72, 73-91, 96-102

112-113, 114-119,

120

121-122, 123-127

Unnumbered

In this RPAPL article 15 action to quite title, the following motions have been consolidated for disposition:

In Seq. No. 2, plaintiff Housing Urban Development, LLC (hereafter, plaintiff) moves for an order, pursuant to CPLR 3215, for a default judgment against all defendants.

2015 NOV -9 AM 8:56  
KINGS COUNTY CLERK



In Seq. No. 3, defendant 237 Maple Street Community Garden, sued herein as John Doe #1 (hereafter, the Garden), moves for an order, pursuant to CPLR 3211 (a), dismissing the complaint in its entirety.

In Seq. No. 4, the Garden cross-moves for an order, pursuant to CPLR 5015 (a), vacating its alleged default in answering the complaint and, upon such vacatur, dismissing the complaint in its entirety.

In Seq. No. 5, plaintiff moves by order to show cause, dated June 24, 2015, for a preliminary and permanent injunction and for other relief.

### ***Background***

The property at issue is a vacant, 60-foot by 100-foot lot at 237 Maple Street, Brooklyn, New York 11225, Block 5030, Lot 72 (hereafter, the property).<sup>1</sup> In Jan. 2003, plaintiff's predecessor-in-title, Brooklyn LLC, allegedly acquired title to the property for five thousand dollars from "Alexander Kirton and Alan Kirton as sole survivors for the estate of Oscar and Germaine Kirton deceased intestate." The deed at issue is notarized in Massachusetts and lists no address for Alexander and Alan Kirton. The accompanying Real Property Transfer Report is purportedly signed by Alexander Kirton, but not by Alan Kirton. No address or telephone number for Alexander and Alan Kirton or their attorney appears on the Real Property Transfer Report.

In Apr. 2011, Brooklyn LLC conveyed the property to plaintiff for no consideration. The same individual (one Kamran Makhani) signed the Real Property Transfer Report for

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<sup>1</sup> Originally, there was a residence on the property, but it was destroyed by fire and whatever was left of it was demolished by the New York City Department of Housing and Preservation Development in 1997.

both the buyer and the seller, thus indicating that Brooklyn LLC and plaintiff are owned or controlled by the same individuals.<sup>2</sup>

Since about 2003 and until 2012, the property remained an eyesore and a nuisance. In 2012-2013, the newly arrived neighbors cleaned up the property and turned it into the Garden for everyone to enjoy.

After plaintiff's self-help attempt in destroying the Garden failed, plaintiff commenced the instant action to quiet title in March 2014.<sup>3</sup> The named plaintiffs are "Oscar Kirton, Germaine Kirton and Their Respective Successors, Assigns, Distribute[e]s, Heirs-at-Law, Next of Kin and Legal Representatives," together with the John Does and several possible lien holders. It is undisputed that Oscar Kirton and Germaine Kirton who originally owned the property as tenants by the entirety died before the inception of this action, and that no personal representative has been appointed for either of their estates. It appears that the last surviving spouse, Germaine Kirton, may have had distributees, as indicated by the fact that (1) her death certificate lists one Godfrey Wilson as her nephew with the same address as the property, and (2) the ACRIS records reflect that the mortgage on the property was satisfied in Jan. 1994, about four years after Germaine's death in July 1990.

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<sup>2</sup> The record discloses three individuals by the last name of Makhani: Michael, Joseph, and Kamran. The Makhani appear to operate out of an office at 148-45 Hillside Avenue, Suite 200, Jamaica, NY 11435. The Real Property Transfer Report conveying the property to plaintiff lists a general directory assistance telephone number 718-555-1212 as the purported telephone number for the buyer and the buyer's attorney.

<sup>3</sup> The complaint is verified by plaintiff's secretary, Dennis Fullerton, rather than by any of the Makhani.

In Nov. 2014, plaintiff commenced a holdover proceeding LT-09924-14/KI in the Kings County Housing Court against John/Jane Doe (*i.e.*, the Garden). The Garden filed an opposition in the holdover proceeding, which appears to be currently inactive.

On June 24, 2015, this Court issued a temporary restraining order (TRO) staying the Garden, pending the hearing on plaintiff's motion for a preliminary and permanent injunction precluding the Garden from continuing to occupy the property. On the Garden's motion to the Appellate Division for leave to appeal and for other relief, the Appellate Division, by decision and order, dated July 28, 2015, directed that the "enforcement of the [TRO] . . . is stayed either pending hearing and determination of the appeal or determination by the Supreme Court of the [underlying] motion . . . , whichever occurs first" (*see Housing Urban Dev., LLC v Kirton*, 2015 NY Slip Op 80198[U] [2d Dept 2015]).

On Oct. 12, 2015, plaintiff filed with the New York City Department of Buildings an application for the construction of a five-story, seventeen-family building on the property.

***Plaintiff's Motion for a Default Judgment (Seq. No. 2)***

Plaintiff moves for a default judgment against (1) Oscar and Germaine Kirton, (2) Alexander and Alan Kirton as successors, assigns, distributees, heirs at law, next of kin and legal representatives of Oscar and Germaine Kirton, (3) the Garden as one of the John Does, being the occupant of the property, and (4) the People of the State of New York, New York City Bureau of Highway Operations, Environmental Control Board, and Bank of New York, Mellon as collateral agent and trustee (collectively, the remaining defendants).

### ***Oscar and Germaine Kirton***

It is undisputed that both Oscar and Germaine Kirton died decades before the inception of this action. Thus, the action as against Oscar and Germaine Kirton was a nullity from its inception under the well-established principle that the dead cannot be sued (*see Marte v Graber*, 58 AD3d 1, 3 [1<sup>st</sup> Dept 2008]). Accordingly, the branch of plaintiff's motion for entry of a default judgment against Oscar and Germaine Kirton is denied. The action is dismissed against Oscar and Germaine Kirton for lack of subject matter jurisdiction (*see Rivera v Bruchim*, 103 AD3d 700 [2d Dept 2013]).

### ***Alexander and Alan Kirton***

The branch of plaintiff's motion for entry of a default judgment against Alexander and Alan Kirton is denied for two reasons. First, nothing in the record indicates that Alexander and Alan Kirton are the "sole heirs" of Germaine Kirton's estate, given that no representative of her estate has been appointed. Second, the Court has no personal jurisdiction over Alexander and Alan Kirton. The process server's affidavits indicate that service on these individuals was unsuccessfully attempted at (1) the property itself which is a vacant lot, and (2) a house at 368 Clifton Place in Brooklyn where Oscar and Germaine Kirton previously lived before they moved onto the property (then improved by a residence) in 1968.<sup>4</sup> In addition, plaintiff attempted to serve these individuals with the TRO at 380 Clifton Place in

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<sup>4</sup> See Affidavits of Due Diligence, dated Apr. 23, 2014, stating, "4/10/2014 8:27 pm 368 Clifton Place, Brooklyn, NY 11216 Street # does not exist. I could not locate using operator assistance or through our various databases" (capitalized font omitted).

Brooklyn; however, service was unsuccessful, as more fully set forth in the margin.<sup>5</sup> Thus, plaintiff has failed to establish that Alexander and Alan Kirton were served in this action (*see Laurenzano v Laurenzano*, 222 AD2d 560 [2d Dept 1995]).

### ***The Garden***

CPLR 1024 allows a party who is ignorant of the name or identity of one who may properly be made a party to proceed by designating so much of his identity as is known. A summons served in a “John Doe” form is jurisdictionally sufficient if the actual defendant is adequately described and would have known from the description in the complaint that it was the intended defendant (*see Thas v Dayrich Trading, Inc.*, 78 AD3d 1163, 1165 [2d Dept 2010]). Contrary to the Garden’s contention, the description of John Doe #1 through John Doe #12 as, among other things, the occupants of the property is sufficient to have put the Garden on notice that it is one of the John Does named in the complaint.

Where a plaintiff is capable of ascertaining the identity of a John Doe defendant, the plaintiff must do so and may not hide behind the John Doe designation (*see Bumpus v New York City Tr. Auth.*, 66 AD3d 26, 31 [2d Dept 2009]). Here, plaintiff communicated with the Garden’s counsel approximately four months before the inception of the action but nevertheless failed to serve her with process.<sup>6</sup> In fact, the record contains no affidavit of

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<sup>5</sup> See Affidavits of Attempted Service, dated July 31, 2015, stating, “the building [*i.e.*, 380 Clifton Place] has no directory of tenants or names on the outside bell or mailboxes, need the apartment number to re-attempt service.”

<sup>6</sup> See the email exchange between plaintiff’s Michael Makhani and the Garden’s counsel, dated Nov. 26, 2013 (NYSCEF No. 86). The email exchange identified the name, address, and telephone number of the Garden’s counsel.

service (or attempted service) on the Garden or on any of the John Does. That one of the members of the Garden discovered some “papers shoved in the soil of a bed about ten feet away from the entrance [to the Garden]” approximately nine months after the inception of the action (Cameron Page Aff., Jan. 2, 2015, ¶ 15), is not a waiver of service of process. Accordingly, the Court concludes that it lacks personal jurisdiction over the Garden.

### ***The Remaining Defendants***

As the Garden’s counsel points out and as the Court’s own independent review of the record confirms it, the sale of the property from “Alexander Kirton and Alan Kirton as sole survivors for the estate of Oscar and Germaine Kirton deceased intestate” to plaintiff’s predecessor-in-title for a mere \$5,000 is of dubious validity. Until and unless the title to the property in plaintiff’s predecessor-in-title is established by final order of the court, the branch of plaintiff’s motion for a default judgment against the remaining defendants is denied as premature.

### ***The Garden’s Motion to Dismiss the Complaint (Seq. No. 3)***

Reflective of the foregoing, the Garden’s motion to dismiss is granted to the extent that the complaint is dismissed against (1) Oscar and Germaine Kirton, (2) Alexander and Alan Kirton, and (3) the Garden, but is denied as to the remaining defendants.

### ***The Garden’s Cross Motion to Vacate Its Alleged Default and to Dismiss (Seq. No. 4)***

Since the Garden was never served with process, it could not have been in default, and thus the branch of its cross motion for a vacatur of its alleged default is denied as academic. The remainder of its cross motion which is to dismiss the complaint is denied as duplicative of the relief sought in its concurrent motion to dismiss in Seq. No. 2.

***Plaintiff's Motion for a Stay and Other Relief (Seq. No. 5)***

As stated, the action was improperly commenced against Oscar and Germaine Kirton. Instead, the personal representative of Germaine Kirton's estate should have been named as the defendant at the outset (*see* Vincent C. Alexander Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C1015:3). Accordingly, the Court's TRO, dated June 24, 2015, is hereby vacated. Furthermore, plaintiff's motion for a preliminary and permanent injunction and for other relief is denied as premature.

***Appointment of Guardian Ad Litem; Preliminary Injunction***

CPLR 1202 allows the court to appoint a guardian ad litem at any stage in the action upon its own initiative. Subject to the requirements set forth below, the Court, on its own initiative, hereby appoints Robert Edward Godosky of Godosky & Gentile, P.C., 61 Broadway, Suite 2010, New York, NY 10006, 212-742-9700, as the guardian ad litem to represent the interests of the missing and unknown heirs of the estate of Germaine Kirton. Mr. Godosky's appointment as the guardian ad litem will become effective upon his filing with the Kings County Clerk of his written consent to the appointment and of his oath as the fiduciary (CPLR 1202). Mr. Godosky, in his capacity as the guardian ad litem, shall comply with Judiciary Law § 35-a and Rule 36 of the Rules of the Chief Judge. Any secondary appointments by Mr. Godosky, including his retention of a private investigator if necessary, shall be subject to prior court approval. Mr. Godosky shall make an application for fees and disbursements following the conclusion of this action.

Subject to his appointment becoming effective, Mr. Godosky is hereby directed to make diligent and exhaustive efforts to ascertain from all available sources the existence of (1) any heirs of Germaine Kirton's estate, and (2) Alexander Kirton and Alan Kirton who purportedly signed the deed to the property as the sole heirs of Germaine Kirton's estate. On completing his investigation, Mr. Godosky shall file with the Court and serve on the parties herein, the Garden's counsel, and the Attorney General of the State of New York, a written report detailing his efforts on locating (1) any heirs of Germaine Kirton's estate, and (2) Alexander and Alan Kirton. Plaintiff is hereby enjoined pendente lite from (1) ejecting the Garden from the property, (2) interfering with the Garden's activities on the property in any way, (3) developing the property, (4) filing a new application or pursuing its pending application with the Department of Buildings for the development of the property, and (5) conveying or encumbering the property, except, in each instance, upon prior order of the Court on notice to Mr. Godosky and the Garden's counsel.

#### ***Corrections to the Record***

Plaintiff, either on its own or by counsel, has made three material misstatements of fact in its filings in this action. The Court deems it necessary to correct these misstatements on the record. First, the affidavit of Joseph Makhani, dated June 23, 2015, states (in ¶ 11) that "on or about March 5, 2014, I commenced the action titled Housing Urban Development LLC v Kirton et al., Index No. 15329/2014 (the 'Prior Action'). The complaint in the Prior Action is annexed hereto as Exhibit 'C.'" This is incorrect. The instant action was commenced on Mar. 5, 2014. There was no prior action between the parties. Index No. 15329/2014 is for a motor-vehicle accident case captioned *Campos v Cuccia*.



Second, the same affidavit states (in ¶ 9) that the Garden filed a notice of pendency against the property. This is also incorrect. A lis pendens search included in the record reflects that the Garden has not filed a notice of pendency against the property.

Lastly, the affirmation of plaintiff's counsel, dated Oct. 8, 2015, states (in ¶ 13) that "[b]y order dated December 30, 2014, Plaintiff quieted title to the property by default. A copy of the order is annexed here[ ] to as Exhibit 'C.'" However, there was no order dated Dec. 30, 2014; plaintiff has not quieted title to the property to date; and the order to which plaintiff's counsel refers was for an extension of time within which plaintiff was to comply with the CPLR 306-b service and filing requirements.

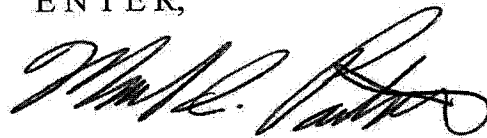
\* \* \*

Counsel to the Garden is directed to serve a copy of this decision and order with notice of entry on (1) plaintiff's counsel, (2) each of the remaining defendants, (3) the proposed guardian ad litem, Robert Edward Godosky of Godosky & Gentile, P.C., 61 Broadway, Suite 2010, New York, NY 10006, and (4) the Attorney General of the State of New York, 120 Broadway, New York, NY 10271-0332, and shall file an affidavit of same with the Kings County Clerk.

Counsel to the Garden shall advise, and provide a copy of this decision and order to, the Clerk of the Appellate Division, Second Department (Appeal No. 2015-05449).

This constitutes the decision and order of the Court.

ENTER,



J. S. C.

FILED  
KINGS COUNTY CLERK  
2015 NOV -9 AM 8:56

#5  
9/8/15  
PT 43

MS  
#5

TRO  
P

22, 23, 24 (25)

(S)

At IAS Part 43 of the Supreme Court of the State of New York, County of Kings held at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 24<sup>th</sup> day of JUNE, 2015.

11P-43

PRESENT: HON. MARK I. PARTNOW J.S.C.  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
HOUSING URBAN DEVELOPMENT, LLC,

Index No.: 502449/2014

Plaintiff,

ORDER TO SHOW CAUSE FOR  
INJUNCTIVE RELIEF

-against-

OSCAR KIRTON, GERMAINE KIRTON, and their respective successors, assigns, distributes, heir-in-law, next of kin and legal representatives, The people of the State of New York, New York City Bureau of Highway Operations, Environmental Control Board, Bank of New York Mellon as Collateral Agent and Custodian, and

John Doe #1 through John Doe #12, the last twelve names being fictitious and unknown to the plaintiff, the persons or parties intended being the tenants, occupants, persons, entities, or corporations, if any, having or claimant an interest in or lien upon the premises, described in the complaint,

Defendants.

-----X

UPON the reading of the annexed Affidavit of Joseph Makhani, sworn to June 23, 2015, with the exhibits annexed hereto, the annexed Emergency Affirmation of Michael A. Leon, Esq., dated June 23, 2105, with the exhibits annexed thereto and upon all pleadings and proceedings heretofore had herein, and sufficient cause having been shown,

LET defendants, **SHOW CAUSE** before the Hon. Mark Partnow ~~or a Justice of the Court~~  
at the Courthouse located at 360 Adams Street, Brooklyn, or on the 8 day of

MSCF  
96-102

Room 441

Sept., 2015, at 9:30 a.m., or soon thereafter as counsel can be heard, why an order should not be made herein: (i) enjoining and permanently restraining the defendants from entering the property owned by plaintiff located at 237 Maple Street, Brooklyn, New York, Block 5030, Lot 72 (the "Property"); (ii) directing defendants to indemnify plaintiff against any injury occurred on the Property during and arising out of defendants' unauthorized use, occupancy and trespass upon the Property; (iii) requiring defendants to pay rent in arrears for two (2) years in the amount of \$120,000.00 for their unauthorized use of the Property; (iv) directing defendants to cancel the *Lis Pendens* against the Property with the imposition of costs and attorneys' fees; or (v) alternatively require defendants to pay \$10,000 per month and obtain insurance with no less than \$1,000,000.00 in liability insurance per incident if defendants continue to use Plaintiff's Property; and (vi) together with such other and further relief as the Court may deem just and proper.

NOW, upon Motion of Robinson Brog Leinwand Greene Genovese & Gluck, P.C., attorneys for the Plaintiff, it is further hereby

*Stay*  
*MS*  
*JSC*  
**ORDERED** that pending the *hearing* ~~return date~~ of this application, the defendants or any person or entity acting on their behalf, are hereby restrained and enjoined from entering or occupying Plaintiff's Property; and it is further

**ORDERED** that defendants are directed to cancel the *Lis Pendens* filed against the Property, and it is further

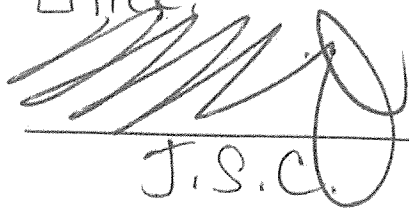
**ORDERED** that pending the *hearing* ~~return date~~ of this application, alternatively defendants or any person or entity acting on their behalf, must immediately pay rent in the amount of \$10,000.00 per month, and obtain liability insurance no less than \$1,000,000.00 per incident for defendants' use of the Property if defendants continue to occupy the Property, and it is further

Stay  
JSC  
HON. MARK I PARTNOW  
SUPREME COURT JUSTICE

<sup>hearing</sup>  
~~ORDERED~~ that pending the ~~return date~~ of this motion, defendants or any other person or entity acting on their behalf, be and are hereby directed to maintain and preserve all electronic files, other data generated by and/or stored on the parties computer system(s) and storage media (i.e., hard disks, floppy disks, backup tapes), or other electronic data, including but not limited to cell phone text messages, relating to correspondence and communications between and amongst the parties for the time period of 2008 to the present insofar as they relate to the subject Property and/or any other related documents that concerns or relates to the subject matter of this litigation, including without limitation, all email and other electronic communications, word processing documents, spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, offline storage or information stored on removable media, information contained on laptops or other portable devices and network access information; and it is further

<sup>Let Personal</sup>  
~~ORDERED~~ that service of a copy of this Order, ~~pursuant to CPLR Article 3, and the~~ papers upon which it is granted, upon defendants' attorney Attention: Paula Segal, Esq. Mohan & Segal, <sup>and any other parties entitled to notice</sup> 540 President Street, 2E, Brooklyn, New York 11215, by ~~overnight mail or pursuant to~~ CPLR §§ 306, 308 or 312 a, on or before the <sup>3<sup>rd</sup></sup> day of <sup>July</sup>, 2015, be deemed good and sufficient service; and it is further

~~ORDERED~~ that opposing papers, if any shall be served by overnight mail upon Robinson-Drog Leinwand Greene Genovese & Gluck, P.C., Attention: Michael A. Leon, Esq., attorneys for Plaintiff, 875 Third Avenue, 9<sup>th</sup> Floor, New York, New York 10022 on or before the \_\_\_ day of \_\_\_, 2015, and it is further

Enter!  
  
J.S.C.  
HON. MARK I PARTNOW  
SUPREME COURT JUSTICE

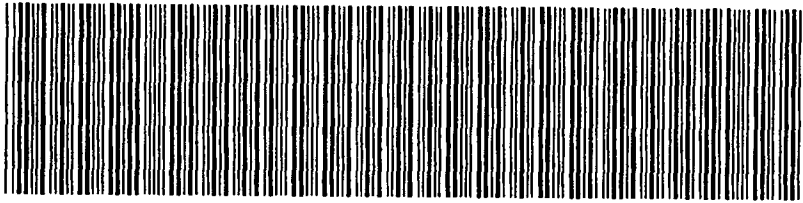
~~ORDERED~~ that reply papers, if any, shall be served by overnight mail to counsel for  
defendants and plaintiff on or before the \_\_\_ day of \_\_\_, 2015.

ENTER:

J.S.C.

**NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER**

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



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**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 4**

**Document ID: 2003012900222001**

**Document Date: 01-15-2003**

**Preparation Date: 01-29-2003**

**Document Type: DEED, OTHER**

**Document Page Count: 2**

**PRESENTER:**

MILLENNIUM ABSTRACT CORP.  
3854 FLATLANDS AVENUE  
MAC-992-K  
BROOKLYN, NY 11234  
718-758-0800  
JIsrael@mabstract.com

**RETURN TO:**

BROOKLYN LLC  
148-45 HILLSIDE AVENUE  
JAMAICA, NY 11435

**PROPERTY DATA**

Borough	Block	Lot	Unit	Address
BROOKLYN	5030	72	Entire Lot	237 MAPLE STREET
<b>Property Type: VACANT LAND</b>				

**CROSS REFERENCE DATA**

**Document ID: 2003012900222001**

**PARTIES**

**GRANTOR:**

ALEXANDER KIRTON  
237 MAPLE AVENUE  
BROOKLYN, NY 11224

**GRANTEE:**

BROOKLYN LLC  
148-45 HILLSIDE AVENUE  
JAMAICA, NY 11435

☒ Additional Parties Listed on Continuation Page

**FEES AND TAXES**

**Mortgage**

**Mortgage Amount:** \$ 0.00

**Taxable Mortgage Amount:** \$ 0.00

**Exemption:**

**TAXES:**

County (Basic): \$ 0.00

City (Additional): \$ 0.00

Spec (Additional): \$ 0.00

TASF: \$ 0.00

MTA: \$ 0.00

NYCTA: \$ 0.00

**TOTAL:** \$ 0.00

**Recording Fee:** \$ 47.00

**Affidavit Fee:** \$ 0.00

**NYC Real Property Transfer Tax Filing Fee:** \$ 25.00

**NYS Real Estate Transfer Tax:**

**EXEMPT**

**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE  
CITY OF NEW YORK**

Recorded/Filed 02-28-2003 11:57

City Register File No.(CFRN):

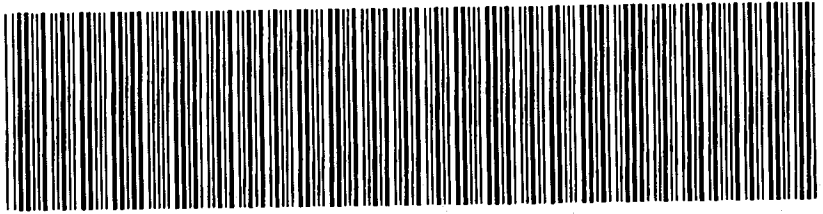
2003000029924



*John J. Lawrence*  
City Register Official Signature

NYC HPD Affidavit in Lieu of Registration Statement

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2003012900222001001CA9D0

RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION)

PAGE 2 OF 4

Document ID: 2003012900222001

Document Date: 01-15-2003

Preparation Date: 01-29-2003

Document Type: DEED, OTHER

**PARTIES**

**GRANTOR:**

ALAN KIRTON  
237 MAPLE AVENUE  
BROOKLYN, NY 11224

THIS INDENTURE, made the 15<sup>th</sup> day of Jan, 2003

**BETWEEN**

ALEXANDER KIRTON AND ALAN KIRTON AS SOLE SURVIVORS FOR THE ESTATE OF OSCAR AND GERMAINE KIRTON DECEASED, INTESTATE, 237 MAPLE AVENUE, BROOKLYN, NY 11224

party of the first part, and

BROOKLYN LLC., 148-45 HILLSIDE AVENUE, JAMAICA, NY 11435

party of the second part,

**WITNESSETH**, that the party of the first part, in consideration of one dollars paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

**ALL** that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the

**ALL** that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

**BEGINNING** at a point on the Northerly side of Maple Street, distant 145 feet Easterly from the corner formed by the intersection of the easterly side of Rogers Avenue with the Northerly side of Maple Street;

running thence Easterly along the northerly side of Maple Street 60 feet;

thence Northerly parallel with Rogers Avenue, 100 feet;

thence Westerly parallel with Maple Street, 60 feet;

thence Southerly parallel with Rogers Avenue, 100 feet to the northerly side of Maple Street; to the point or place of **BEGINNING**.

Said premises known as 237 Maple Street Brooklyn, New York

VACANT LAND KNOWN AS 237 MAPLE STREET, BKLYN, NY B-5030, L-72

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" when ever the sense of this indenture so requires.

**IN WITNESS WHEREOF**, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:



  
ALEXANDER KIRTON

  
ALAN KIRTON



**TO BE USED ONLY WHEN THE ACKNOWLEDGMENT IS MADE IN NEW YORK STATE**

State of New York, County of

ss:

State of New York, County of

ss:

On the 15<sup>th</sup> day of Jan. in the year  
before me, the undersigned, personally appeared

On the      day of      in the year  
before me, the undersigned, personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
(signature and office of individual taking acknowledgment)

\_\_\_\_\_  
(signature and office of individual taking acknowledgment)

**TO BE USED ONLY WHEN THE ACKNOWLEDGMENT IS MADE OUTSIDE NEW YORK STATE**

State (or District of Columbia, Territory, or Foreign Country) of

ss:

On the 15<sup>th</sup> day of JAN in the year 2003  
appeared

before me, the undersigned, personally

ALEXANDER KIRTON AND ALAN KIRTON

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the

Worcester  
(insert the City or other political subdivision)

in Massachusetts  
(and insert the State or Country or other place the acknowledgment was taken)

\_\_\_\_\_  
(signature and office of individual taking acknowledgment)

**BARGAIN AND SALE DEED  
WITH COVENANT AGAINST GRANTOR'S ACTS**

Title No. MAC-992-K

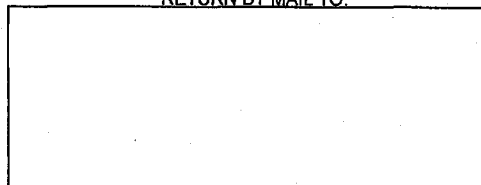
SECTION  
BLOCK: 5030  
LOT: 72  
COUNTY OR TOWN: KINGS  
STREET ADDRESS: 237 MAPLE ST



TO

Recorded at Request of  
COMMONWEALTH LAND TITLE INSURANCE COMPANY

RETURN BY MAIL TO:



RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

**AFFIDAVIT OF COMPLIANCE  
WITH SMOKE DETECTOR REQUIREMENT  
FOR ONE- AND TWO-FAMILY DWELLINGS**

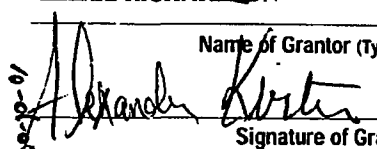
State of New York       )  
                                  ) SS.:  
County of                )

The undersigned, being duly sworn, depose and say under penalty of perjury that they are the grantor and grantee of the real property or of the cooperative shares in a cooperative corporation owning real property located at  
237 MAPLE STREET

Street Address		Unit/Apt.	
BKLYN	New York, 5030	72	(the "Premises");
Borough	Block	Lot	

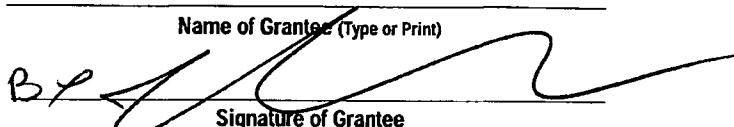
That the Premises is a one or two family dwelling, or a cooperative apartment or condominium unit in a one- or two-family dwelling, and that installed in the Premises is an approved and operational smoke detecting device in compliance with the provisions of Article 6 of Subchapter 17 of Chapter 1 of Title 27 of the Administrative Code of the City of New York concerning smoke detecting devices;

That they make affidavit in compliance with New York City Administrative Code Section 11-2105 (g). (The signatures of at least one grantor and one grantee are required, and must be notarized).

~~HAZEL RICHARDSON~~  
Name of Grantor (Type or Print)  
  
Signature of Grantor

Sworn to before me  
this 15<sup>th</sup> date of JAN. 2003



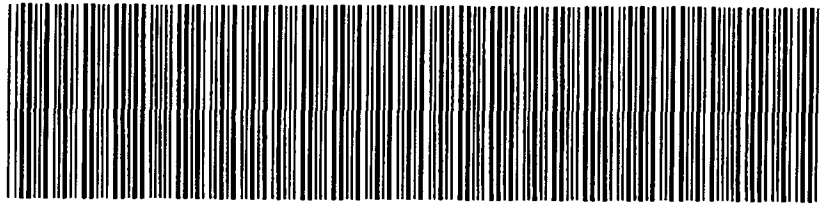
BROOKLYN LLC.  
Name of Grantee (Type or Print)  
  
Signature of Grantee

Sworn to before me  
this 15<sup>th</sup> date of JAN 2003

These statements are made with the knowledge that a willfully false representation is unlawful and is punishable as a crime of perjury under Article 210 of the Penal Law.

**NEW YORK CITY REAL PROPERTY TRANSFER TAX RETURNS FILED ON OR AFTER FEBRUARY 6th, 1990, WITH RESPECT TO THE CONVEYANCE OF A ONE- OR TWO-FAMILY DWELLING, OR A COOPERATIVE APARTMENT OR A CONDOMINIUM UNIT IN A ONE- OR TWO-FAMILY DWELLING, WILL NOT BE ACCEPTED FOR FILING UNLESS ACCOMPANIED BY THIS AFFIDAVIT.**

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



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**SUPPORTING DOCUMENT COVER PAGE**

**PAGE 1 OF 1**

**Document ID:** 2003012900222001

**Document Date:** 01-15-2003

**Preparation Date:** 01-29-2003

**Document Type:** DEED, OTHER

**SUPPORTING DOCUMENTS SUBMITTED:**

RP - 5217 REAL PROPERTY TRANSFER REPORT

**Page Count**

1

**REMARKS:**

Alexander Kirton and Alan Kirton AS SOLE SURVIVORS FOR THE ESTATE OF OSCAR AND GERMAINE  
KIRTON DECEASED, INTESTATE

Jan-07-03 15:21

From-MILLENNIUM ABSTRACT CORP

7187581627

T-718 P.01/01 F-541

FOR CITY USE ONLY

C1. County Code          C2. Date Deed Recorded          /          /           
 Month Day Year  
 C3. Book          OR          C4. Page           
 C5. CRFN         



## REAL PROPERTY TRANSFER REPORT

STATE OF NEW YORK  
STATE BOARD OF REAL PROPERTY SERVICES

RP - 5217NYC

(Rev 11/2002)

## PROPERTY INFORMATION

1. Property Location 237 Maple Street KINGS 11225  
 STREET NUMBER STREET NAME BOROUGH ZIP CODE  
 2. Buyer Name Brooklyn LLC.  
 LAST NAME / COMPANY FIRST NAME  
 LAST NAME / COMPANY FIRST NAME  
 3. Tax Billing Address Brooklyn LLC.  
 LAST NAME / COMPANY FIRST NAME  
148-45 Hillside Ave Jamaica NY 11435  
 STREET NUMBER AND STREET NAME CITY OR TOWN STATE ZIP CODE  
 4. Indicate the number of Assessment Roll parcels transferred on the deed          # of Parcels OR ☐ Part of a Parcel  
 4A. Planning Board Approval - N/A for NYC  
 4B. Agricultural District Notice - N/A for NYC  
 Check the boxes below as they apply:  
 5. Deed Property Size 60 x 100 OR          ACRES  
 FRONT FEET DEPTH  
 6. Ownership Type is Condominium ☐  
 7. New Construction on Vacant Land ☐  
 8. Seller Name Kirton Alexander  
 LAST NAME / COMPANY FIRST NAME  
Kirton Alan  
 LAST NAME / COMPANY FIRST NAME

9. Check the box below which most accurately describes the use of the property at the time of sale:

A ☐ One Family Residential C ☒ Residential Vacant Land E ☐ Commercial G ☐ Entertainment / Amusement I ☐ Industrial  
 B ☐ 2 or 3 Family Residential D ☐ Non-Residential Vacant Land F ☐ Apartment H ☐ Community Service J ☐ Public Service

## SALE INFORMATION

10. Sale Contract Date

01/15/03  
Month Day Year

11. Date of Sale / Transfer

01/15/03  
Month Day Year

12. Full Sale Price

5000

(Full Sale Price is the total amount paid for the property including personal property. This payment may be in the form of cash, other property or goods, or the assumption of mortgage or other obligations.) Please round to the nearest whole dollar amount.

13. Indicate the value of personal property included in the sale

0

14. Check one or more of these conditions as applicable to transfer:

A ☐ Sale Between Relatives or Former Relatives  
 B ☐ Sale Between Related Companies or Partners in Business  
 C ☐ One of the Buyers is also a Seller  
 D ☐ Buyer or Seller is Government Agency or Lending Institution  
 E ☐ Deed Type not Warranty or Bargain and Sale (Specify Below)  
 F ☐ Sale of Fractional or Less than Fee Interest (Specify Below)  
 G ☐ Significant Change in Property Between Taxable Status and Sale Dates  
 H ☐ Sale of Business is Included in Sale Price  
 I ☒ Other Unusual Factors Affecting Sale Price (Specify Below)  
 J ☐ None

condition of the property

## ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill

15. Building Class V016. Total Assessed Value (of all parcels in transfer) 11,910

17. Borough, Block and Lot / Roll Identifier(s) (If more than three, attach sheet with additional Identifier(s))

3-5030-72

## CERTIFICATION

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and I understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

Brooklyn LLC BUYER

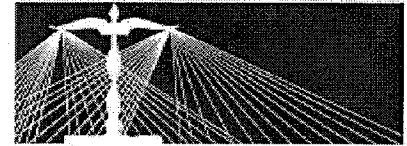
BUYER'S ATTORNEY

1/15/2003  
BUYER SIGNATURE DATE148-45 Hillside Ave  
STREET NUMBER STREET NAME (AFTER SALE)Jamaica NY 11435  
CITY OR TOWN STATE ZIP CODE

LAST NAME FIRST NAME

AREA CODE TELEPHONE NUMBER  
1/15/03  
 SELLER SELLER SIGNATURE DATE

JAMES H.R. WINDELS, ESQ., BOARD CHAIR  
MARTIN S. NEEDELMAN, ESQ., EXECUTIVE DIRECTOR AND CHIEF COUNSEL  
PAUL J. ACINAPURA, ESQ., GENERAL COUNSEL



Brooklyn Legal Services Corporation A

*building communities, ensuring opportunity, achieving justice*

*Director, Consumer and Economic Advocacy Unit  
Brooklyn Legal Services, Corp. A  
260 Broadway, Suite 2  
Brooklyn, NY 11211  
Phone and Fax 718-487-0856  
Email [dbryan1@bka.org](mailto:dbryan1@bka.org)*

Monday, February 1, 2016

Re: Deed Theft Hearing of February 1, 2016

I am David J. Bryan, Director of the Consumer and Economic Advocacy (hereafter referred to as "CEA") program for Brooklyn Legal Services Corporation A. Established in 1968, Brooklyn Legal Services Corporation A has provided high-quality civil legal services to low income individuals, families, community groups, and nonprofit organizations in Brooklyn. Due to the nature of services that the CEA program provides, our community impact is broad in scope and extends throughout New York City. CEA advocates in foreclosure prevention, consumer bankruptcy and other issues regarding consumer debt. I have the privilege of leading a dynamic and dedicated team. Along with attorneys Andrew Malozemoff, Ndukwe Agwu, Tamara Del Carmen, paralegal Joyce Vargas and volunteer law graduate James Bernard we fight daily to preserve our client's homes. On behalf of our organization and the clients that we serve, I want to take this opportunity to thank the Council for its support through the Center for New York City Neighborhoods (CNYCN) "Senior Initiative" which enables our unit to deliver foreclosure prevention and bankruptcy services to this vulnerable population. Our organizations long history of advocacy coupled with the present epidemic of foreclosures and makes us acutely appreciative of the Council's interest in this issue today.

I would like to provide the Council with a sense of what prosecuting a deed theft case is like for a small nonprofit legal services provider. Brooklyn Legal Services Corporation A has prosecuted several of these cases over the years and I usually find that my first reaction is disbelief. My first deed theft case came into the office as a landlord and tenant matter where the client was facing a holdover case in a two family house. After a detailed intake where I was on the verge of concluding there was nothing I could do other than buy a bit of time for the family to vacate, the client muttered "*you know, we used to own this house . . .*". This was the beginning of a journey that resulted in Perry Mason (or if you want to be a bit less dated Matt Damon in *The Rainmaker*) moments where crooks admitted to their deception on the witness stand and we were able to uncover other similar cases. Cases such as the aforementioned involve people who are engaged to act as "straw borrowers", people who applied for credit after a fraudulently induced transfer of a deed. Other cases include those where we represented a blind woman who had the same property stolen by a false deed not once but twice! After much litigation we were able to obtain compensation for our client equal to what she would have obtained if she had sold the property left her by her father.

We are grateful to the Council for the support they will provide us through the Senior Initiative and we are on the lookout for appropriate cases. Given the rapidly escalating value of New York City real estate, the

JAMES H.R. WINDELS, ESQ., BOARD CHAIR  
MARTIN S. NEEDELMAN, ESQ., EXECUTIVE DIRECTOR AND CHIEF COUNSEL  
PAUL J. ACINAPURA, ESQ., GENERAL COUNSEL



Brooklyn Legal Services Corporation A

*building communities, ensuring opportunity, achieving justice*

*Director, Consumer and Economic Advocacy Unit  
Brooklyn Legal Services, Corp. A  
260 Broadway, Suite 2  
Brooklyn, NY 11211  
Phone and Fax 718-487-0856  
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inducement to steal equity from our clients is only increasing. However, we can only ask that the Council require that their law enforcement officers make deed theft a priority. While we are grateful for the support the Council has provided on deed theft through the Senior Initiative this year these cases take multiple years to resolve. Your continued support will assure that civil legal services can supplement the efforts to law enforcement to provide an effective deterrent.

In the Summer of 2014 my wife and I were having dinner in an exclusive restaurant in Miami Florida. The restaurant was located in the harbor and had the best of seafood, décor and ambiance. As I was reaching across to toast my wife for this lovely evening I saw a paunchy 50ish fellow at a neighboring table. Although he didn't recognize me due to a large weight loss I had experienced, he was a scammer that I litigated against from 2008 to 2012. He was with a 20ish young woman and was obviously enjoying life. This was a man who had profoundly harmed our community in a particularly callous way. I did all I could against him but all I got was a money judgment that was unable to be collected. I really wished that he got enough punishment and paid enough money so that he wouldn't be at that table.

Obviously, this is only a brief overview of a selected portion of the problem. Brooklyn Legal Services Corporation A looks forward to addressing the issue with the Council in the coming days and we stand ready to provide any assistance possible.

Sincerely,

*David J. Bryan*  
David J. Bryan, Esq.

46 Misc.3d 1205(A)  
Unreported Disposition  
(The decision is referenced in  
the New York Supplement.)  
Supreme Court, Kings County, New York.

**WELLS FARGO BANK, N.A.**, as Certificate  
Trustee (not in its Individual Capacity but Solely  
as Certificate Trustee), In Trust For Registered  
Holders of VNT Trust Series 2010-2, Plaintiff,

v.

Sybil **WEEKES**, et al., Defendants.

No. 14953/11.

Dec. 24, 2014.

#### Attorneys and Law Firms

Tiffany L. Henry, Esq., Berkman, Henoch, Peterson, Peddy  
& Fenchel, PC, Garden City, attorney for Plaintiffs.

David Bryan, Esq., Brooklyn Legal Services, Brooklyn,  
attorney for Defendants.

#### Opinion

CAROLYN E. DEMAREST, J.

\*1 Plaintiff moves to strike the answer of defendants Sybil and Jason **Weekes**, for summary judgment pursuant to CPLR 3212, to substitute two necessary additional parties, and to appoint a referee to ascertain and compute the amount due to the plaintiff on the note and mortgage at issue in this foreclosure action.

#### BACKGROUND

Defendant Sybil **Weekes** ("Sybil") and her son, defendant Jason **Weekes** ("Jason", collectively, the "**Weekes** Defendants"), contend that, in 2002, they entered into a joint tenancy with non-party Vilma Durieux ("Durieux") in a multiple occupancy home located at 121 East 55th Street, Brooklyn, N.Y. 11203 ("Property"). On May 5, 2006, defendant Sybil executed a note ("Note") to Tribeca Lending Corporation ("Tribeca") upon a loan of \$330,000 in connection with a new deed on the Property removing Durieux. On May 5, 2006, the **Weekes** Defendants also

signed a mortgage in which Mortgage Electronic Registration Systems, Inc. ("MERS") was identified as a nominee for Tribeca and was listed as the mortgagee of record ("Mortgage"). The appraisal value of the Property has not been revealed, but a pre-existing mortgage of \$221,250 appears to have been satisfied at that time. The initial interest rate on the Note was 12.990%, but was adjustable up to a maximum rate of 18.990%. Plaintiff alleges that Sybil did not make a single payment on the Note and has been in default for over eight and a half years.

The Note and Mortgage have been assigned multiple times. By assignment dated November 24, 2010 ("Assignment 1"), MERS, as nominee for Tribeca, assigned the Note and Mortgage to Deutsche Bank National Trust Company, as Trustee for Tribeca Lending Series 1 ("Deutsche"). By assignment also dated November 24, 2010 ("Assignment 2"), Deutsche assigned the Note and Mortgage to Huntington National Bank, as Certificate Trustee of Franklin Mortgage Asset Trust 2009-A ("Huntington"). By assignment dated October 22, 2010 ("Assignment 3"), Huntington assigned the Note and Mortgage to the plaintiff. It is noted that all three assignments are signed by the same individual, "M. Arndt", who is solely identified as an "Authorized Signator" and it is not clear by which entity this individual is employed.

By letter dated March 24, 2011, from Sheldon May & Associates, on behalf of servicer Acqura Loan Services, LLC ("Acqura"), plaintiff provided defendants with a 90 day pre-foreclosure notice pursuant to CPLR 1304. By letter dated April 5, 2011, also from Sheldon May & Associates, on behalf of Acqura, plaintiff provided a notice of default pursuant to the Mortgage. On June 30, 2011, more than five years after the defendant had defaulted on the Note, plaintiff commenced this foreclosure action. Between May 1, 2012 and May 14, 2013, the parties appeared at numerous settlement conferences pursuant to CPLR 3408. On May 14, 2013, the action was referred to this court. On July 25, 2013, the defendants filed an answer with seven affirmative defenses and one counterclaim.<sup>1</sup>

\*2 Plaintiff alleges that it has physical possession of the Note and had physical possession of the Note prior to the commencement of the action. The plaintiff's motion is supported by an affidavit signed by Brady Hannan ("Hannan"), an "agent" of the plaintiff's servicer, Home Servicing, LLC ("Home Servicing"), based in Baton Rouge, Louisiana. The affidavit states,

I have reviewed the statements set forth herein as against the records kept by Plaintiff and have duly executed this affidavit based upon that review and upon my personal knowledge of the stated facts and circumstances and books and records maintained by Plaintiff in my possession. As part of my job responsibilities for Plaintiff, I am familiar with the type of records maintained by Plaintiff in connection with the subject loan. The information in this affidavit is taken from Plaintiff's business records.

...

Plaintiff has physical possession of the Note and had taken physical delivery prior to the commencement of the action.

The affidavit does not include any other details of the physical delivery of the Note. There is no explanation in the affidavit, or any of the papers, as to why Assignment 3 to plaintiff is dated more than a month before Assignments 1 and 2. Plaintiff has not produced a power of attorney indicating that Home Servicing may properly act on behalf of the plaintiff to set forth the facts constituting the claim or an explanation as to when the servicer of the Note and Mortgage changed. Defendant challenges plaintiff's standing to foreclose the Mortgage.

### **DISCUSSION**

In support of its summary judgment motion, plaintiff has submitted the complaint, the Note, Mortgage, and Assignments, as proof that it is the successor to the original mortgagee, and an affidavit by the plaintiff's servicer indicating that the defendant has defaulted on the Note and that the plaintiff had possession of the Note and Mortgage when the action was commenced. However, the chain of assignments is broken. Assignment 3 is clearly dated before Assignments 1 and 2 and no explanation is given for the broken chain. In the answer, the defendants raised the affirmative defense of lack of standing, noting conflicting and "correcting" assignments, and asserting that the plaintiff did not own the Note. Accordingly, plaintiff has not established that Huntington owned the Note and Mortgage on October 22, 2014, thus making the assignment to plaintiff invalid. While physical possession of the Note and Mortgage may suffice to establish standing (*Deutsche Bank Nat'l Trust Co. v. Whalen*, 107 A.D.3d 931, 969 N.Y.S.2d 82 [2d Dept 2013]), the conflict between the assignments requires an explanation

as it suggests a competing claim may be extant. Moreover, an affidavit from a plaintiff's servicing agent, that contains conclusory statements regarding the plaintiff's possession of the Note and does not give any factual details of the physical delivery, is insufficient to establish that the plaintiff had physical possession of the Note prior to the commencement of the action (*see U.S. Bank v. Faruque*, 120 A.D.3d 575, 577, 991 N.Y.S.2d 630 [2d Dept 2014]; *U.S. Bank v. Collymore*, 68 A.D.3d at 754, 890 N.Y.S.2d 578; *Homecomings Fin. v. Guldi*, 108 A.D.3d 506, 508, 969 N.Y.S.2d 470 [2d Dept 2013]; *HSBC v. Hernandez*, 92 A.D.3d at 844, 939 N.Y.S.2d 120; compare *Aurora Loan Servs., LLC v. Taylor*, 114 A.D.3d 627, 628–629, 980 N.Y.S.2d 475 [2d Dept. 2014] (holding that plaintiff established standing where the plaintiff's affidavit specifically stated the date of physical possession of the note four days prior to the commencement of the action)). In the affidavit submitted by plaintiff, Hannan recites a conclusory statement regarding possession of the Note, but does not state the specific date upon which the plaintiff obtained physical possession of the Note. As plaintiff relies on physical possession of the Note to demonstrate its standing at the time of the commencement of this action, defendant has raised an issue of fact as to whether plaintiff obtained physical possession of the Note on or before June 30, 2011 (*see U.S. Bank v. Faruque*, 120 A.D.3d at 577, 991 N.Y.S.2d 630; *U.S. Bank v. Collymore*, 68 A.D.3d at 754, 890 N.Y.S.2d 578; *Homecomings*, 108 A.D.3d at 508, 969 N.Y.S.2d 470; *HSBC v. Hernandez*, 92 A.D.3d at 844, 939 N.Y.S.2d 120). Further, plaintiff has not provided a copy of a power of attorney authorizing "an agent" of Home Servicing to act on behalf of the plaintiff (*see Wells Fargo Bank, N.A. v. Edeman*, 2014 N.Y. Slip Op 32013[U] [Sup Ct, New York County 2014], citing *Lexow & Jenkins v. Hertz Commercial Leasing Corp.*, 122 A.D.2d 25, 504 N.Y.S.2d 192 [2d Dept 1986]). Plaintiff's motion for summary judgment, order of reference, and to strike the first and fifth affirmative defenses is therefore denied.

\*3 Defendants further argue that the terms of the 12.990% interest loan were unconscionable, the loan was designed "to be securitized into a pool of high yield residential mortgages and then defaulted upon", and that the defendants were the victims of deceptive conduct. Sybil is alleged to be an elderly woman (no age is given), Jason earned very low wages (no amount is specified), and they are African American. The Property is located in East Flatbush, Brooklyn, which is a "majority minority" neighborhood.<sup>2</sup> The answer alleges that Tribeca targeted the defendants based upon the neighborhood's racial and ethnic makeup by "reverse



redlining”<sup>3</sup> in violation of the Equal Credit Opportunity Act (“ECOA”). The defendants argue that the required monthly payments of \$3,647.88 were never affordable to the defendants. Defendants have sought discovery in this action from plaintiff, including the original loan application submitted by the defendants for the loan. Sybil’s affidavit states,

I feel that the loan that was extended to me was unfair from the beginning, it was not able to be paid and that the plaintiff knew this, I have come to believe that they must have had some really bad motives for putting me into a loan that was this harmful. I have come to strongly suspect that the reasons for putting me into this loan may well be based upon the fact that they felt they could swindle me as a poor black woman and cause me to have a loan that was built to fail.<sup>4</sup>

In the seventh affirmative defense and counterclaim, defendants allege that Tribeca discriminated against the **Weekes** on the basis of their race, color and ethnic group in violation of the ECOA and that the plaintiff is liable for Tribeca’s acts pursuant to “15 U.S.C. sec. 1691a(3) Reg B 12 C.F.R. sec. 202.2(l)”. As the affirmative defense and counterclaim alleging violations of the ECOA would require the **Weekes** to establish that they were qualified for the loans in question, and their defense and counterclaim are based upon the contention that they did *not* qualify for the loan, the seventh affirmative defense and “third” counterclaim must be dismissed (*see Equicredit Corp. of N.Y. v. Turcios*, 300 A.D.2d 344, 346, 752 N.Y.S.2d 684 [2d Dept 2002] ).

The third affirmative defense is unconscionability. Defendants argue that there was an enormous disparity in bargaining power between the parties and that the plaintiff’s predecessor “sought to profit from this disparity in bargaining power and sophistication and did so by deliberately targeting [Sybil] and [Jason] with misinformation. Said procedural and substantive unconscionability renders void and unenforceable the mortgage.” Defendants have not provided any further explanation as to the nature of the misinformation they were purportedly provided. “In general, an unconscionable contract has been defined as one which is so grossly unreasonable as to be unenforceable because of an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party” (*US Bank N.A. v. Davis-Clarke*, 2014 Slip Op 33142[U] [Sup Ct, Queens County 2014], citing *King v. Fox*, 7 N.Y.3d 181, 191 [2006] ). “This definition has been broken down into two elements: procedural and substantive

unconscionability” (*US Bank N.A.*, 2014 Slip Op 33142[U]).” Substantive elements of unconscionability appear in the content of the contract per se; procedural elements must be identified by resort to evidence of the contract formation process’ and meaningfulness of the choice. Examples of unreasonably favorable contractual provisions are virtually limitless but include inflated prices, unfair termination clauses, unfair limitations on consequential damages and improper disclaimers of warranty.’ With respect to procedural unconscionability, examples include, but are not limited to, high pressure commercial tactics, inequality of bargaining power, deceptive practices and language in the contract, and an imbalance in the understanding and acumen of the parties.’ [I]n general, it can be said that procedural and substantive unconscionability operate on a sliding scale; the more questionable the meaningfulness of choice, the less imbalance in a contract’s terms should be tolerated and vice versa’ “ (*Emigrant Mtge. Co., Inc. v. Fitzpatrick*, 95 A.D.3d 1169, 1170, 945 N.Y.S.2d 697 [2d Dept 2012], quoting *Matter of Friedman*, 64 A.D.2d 70, 85, 407 N.Y.S.2d 999 [2d Dept 1978]; *Simar Holding Corp. v. GSC*, 87 A.D.3d 688, 690, 928 N.Y.S.2d 592 [2d Dept 2011]; *State of New York v. Wolowitz*, 96 A.D.2d 47, 68, 468 N.Y.S.2d 131 [2d Dept 1983]; internal citations omitted).

\*4 With respect to the “procedural elements” of unconscionability, defendants have argued, and it is uncontested, that Sybil was elderly, had little income at the time of entering the loan, lived in a “minority majority” neighborhood, has vision problems, and Tribeca specifically targeted her. With respect to the “substantive elements” of unconscionability, defendants have demonstrated that Sybil was given a loan from Tribeca that required her to make monthly payments of \$3801.20 which included a 12.990% interest rate, adjustable up to a maximum rate of 18.990%. The court notes that this rate was significantly higher than standard interest rates at the time<sup>5</sup> and, if this loan had been closed after September 1, 2008, Banking Law 6-m(4)<sup>6</sup> would have been applicable. Defendants have sought discovery from the plaintiffs with respect to the loan application documents submitted by defendants to Tribeca. “The determination of unconscionability is a matter of law for the court to decide’ ” (*Emigrant Mtge.*, 95 A.D.3d at 1170, 945 N.Y.S.2d 697, quoting *Simar*, 87 A.D.3d at 690, 928 N.Y.S.2d 592). As discovery is on-going, and the defendants have raised issues of fact as to the unconscionability of the Note and Mortgage, the motion to dismiss the third affirmative defense is denied (*see Emigrant Mtge.*, 95 A.D.3d at 1170, 945 N.Y.S.2d 697).

Similarly, the defendants' second affirmative defense is for deceptive trade practices pursuant to General Business Law § 349. "Section 349(a) of the General Business Law declares as unlawful [d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state' " (*Emigrant Mtge. Co., Inc. v. Fitzpatrick*, 95 A.D.3d 1169, 1171, 945 N.Y.S.2d 697 [2d Dept 2012], quoting General Business Law § 349 [a] ). "To assert a viable claim under General Business Law § 349(a), a plaintiff must plead that (1) the challenged conduct was consumer-oriented, (2) the conduct or statement was materially misleading, and (3) [he or she sustained] damages" (*Emigrant Mtge. Co.*, 95 A.D.3d at 1172, 945 N.Y.S.2d 697). Here, plaintiff established that Sybil and Jason were presented with written documents describing the terms of the loan. However, as discovery is ongoing with respect to the loan application documents sought by defendants, and defendants have alleged that they were specifically targeted to take a loan which they could not afford, the motion for summary judgment is premature with respect to the second affirmative defense. Accordingly, plaintiff's motion to dismiss the second affirmative defense is denied.

The fourth affirmative defense is for "unfair dealing." With respect to this affirmative defense, the answer states,

Plaintiff intentionally failed to act in good faith or to deal fairly with this Defendant by failing to follow the applicable standards of residential single family mortgage lending and servicing as described in these Affirmative Defenses thereby denying this Defendant access to the residential mortgage servicing protocols applicable to the subject note and mortgage.

\*5 Pursuant to CPLR 3013, this affirmative defense is insufficiently particular to give the court and parties notice of the transactions that are intended to be proved or the material elements of the affirmative defense. The "standards of residential single family mortgage lending" are not identified and may not be applicable to this multiple unit home. Further, the defense appears duplicative of the third affirmative defense. Accordingly, the fourth affirmative defense is dismissed (*see* CPLR 3013).

The sixth affirmative defense is for "unclean hands." In the answer, defendants allege that,

[T]he plaintiff knew that the **Weekes** had not been able to make their required monthly payments for years prior to their alleged acquisition. Because the **Weekes** were substantially in arrears, the plaintiff would have known that the mortgage was not free of an uncured default.... Insasmuch as Plaintiff purchased a nonperforming asset it cannot complain of the fact that it has received exactly what it purchased.

The sixth affirmative defense must be dismissed as "the doctrine of unclean hands is not a recognized defense to a foreclosure action" (*JP Morgan Chase Bank v. Janet Hamilton*, 2013 N.Y. Misc. LEXIS 6564 [Sup Ct, New York County 2013]; *Vanderbilt Mtge. & Fin. Inc. v. Davis*, 2013 N.Y. Slip Op 32117[U] [Sup Ct, Suffolk County 2013], citing *Jo Ann Homes at Bellmore, Inc. v. Dworetz*, 25 N.Y.2d 112 [1969] ).

In opposition to the motion, defendants also argue that the plaintiff failed to negotiate in good faith pursuant to CPLR § 3408. Defendants contend that they proposed that plaintiff accept a payoff amount of \$250,000 in order for the defendants to obtain a reverse mortgage, and that the plaintiff declined the proposal. At the time of the offer, the amount owed on the loan purportedly was in excess of \$570,000. As defense counsel concedes, plaintiff appeared at multiple settlement conferences and considered defendants' offer, which is substantiated by a letter from plaintiff's counsel to defendants' counsel, dated February 20, 2014, requesting an approval letter showing Sybil's approval for the reverse mortgage, the name and address of the lender, and the maximum amount of funds that Sybil would receive from the reverse mortgage. Defendants did not supply such letter. Defendants fail to indicate how the plaintiff violated CPLR 3408.

The plaintiff's motion to amend the caption is granted. The caption shall now read:

X

**WELLS FARGO BANK, N.A., AS CERTIFICATE**

**TRUSTEE (NOT IN ITS INDIVIDUAL CAPACITY**

**BUT SOLELY AS CERTIFICATE TRUSTEE), IN**

**TRUST FOR REGISTERED HOLDERS OF VNT**

**TRUST SERIES 2010-2,**

Plaintiff,

against—

SYBIL WEEKES, JASON WEEKES, CAPITAL  
ONE BANK (USA), MARIE L. PRINCIVIL,  
MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC., ESTELLE FULLER, CAROL

BOBB,

Defendants.

X

As there have been no appearances or answers filed by  
defendants Capital One Bank (USA) N.A., Marie L. Princivil,  
Mortgage Electronic Registration Systems, Inc., Estelle  
Fuller, and Carol Bobb, they are held to be in default.

### CONCLUSION

\*6 The plaintiff's motion for summary judgment is granted  
only as to the dismissal of affirmative defenses four, six,  
seven and the defendants' counterclaim, the amending of the  
caption, and the finding of default. The motion is otherwise  
denied.

A conference is scheduled for January 6, 2015. The parties  
will update the court on the status of discovery at that time  
and a hearing date may be scheduled at that time.

This constitutes the decision and order of the court.

### All Citations

46 Misc.3d 1205(A), 7 N.Y.S.3d 245 (Table), 2014 WL  
7404602, 2014 N.Y. Slip Op. 51895(U)

### Footnotes

- 1 Plaintiff agreed to accept defendants' late answer. The counterclaim is identified in the answer as the "third" counterclaim. However, it is the only counterclaim.
- 2 The area is made up of predominantly African American and Caribbean American residents.
- 3 "Redlining is the practice of denying the extension of credit to specific geographic areas due to the income, race, or ethnicity of its residents. The term was derived from the actual practice of drawing a red line around certain areas in which credit would be denied. Reverse redlining is the practice of extending credit on unfair terms to those same communities" (*United Companies Lending Corp. v. Sargeant*, 20 F Supp 2d 192, 203 n. 5 [D Mass 1998]; *M & T Mtge. Corp. v. Foy*, 20 Misc.3d 274, 276 n. 4, 858 N.Y.S.2d 567 [Sup Ct, Kings County 2008] ).
- 4 Jason's affidavit includes the identical language other than the changing of pronouns.
- 5 See, e.g., *M & T Mtge. Corp. v. Foy*, 20 Misc.3d 274, 278, 858 N.Y.S.2d 567 [Sup Ct, Kings County 2008] (noting that, "[t]he monthly history of the constant maturity Treasury yields reveals that since the year 2000 to [May 1, 2008] there have been only two months where the 30-year treasuries exceeded six percent").
- 6 "No lender or mortgage broker shall make or arrange a subprime home loan unless the lender or mortgage broker reasonably and in good faith believes at the time of the loan closing that one or more of the borrowers, when considered individually or collectively, has the ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums" (Banking Law 6-m[4] ). "In any action by a lender or assignee to enforce a loan against a borrower in default more than sixty days or in foreclosure, a borrower may assert as a defense, any violation of this section" (Banking Law 6-m[13] ).

End of Document

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: Part 36**

Index No. : 24240/09  
Motion Calendar No.  
Motion Sequence No.,

BAC HOME LOANS SERVICING, LP f/k/a  
COUNTRYWIDE HOME LOANS SERVICING LP,

Plaintiff(s),

-against-

BEVERLY RAMSAY a/k/a BEVERLEY RAMSAY, et al.,

Defendant(s).

**DECISION / ORDER**

Present:

**Hon. Judge Bernard J. Graham**  
Supreme Court Justice

**Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion :**  
for summary judgment and the appointment of a referee to compute and cross-motion for  
permission to file an amended answer::

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1,2</u>
Order to Show cause and Affidavits Annexed.....	<u>                    </u>
Answering Affidavits....(Defendant's Cross Motion and Opp.)...	<u>3,4;5</u>
Replying Affidavits.....(Plaintiff).....	<u>6</u>
Exhibits.....	<u>                    </u>
Other: <u>Plaintiff's Memorandum of Law</u>	<u>7</u>

**Upon the foregoing cited papers, the Decision/Order on this application is as follows:**

**Decision:**

Plaintiff, BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing LP, ("BAC") has moved pursuant to CPLR sec. 3212, for an order awarding summary judgment in favor of the plaintiff and against the defendant/borrower Beverly Ramsay a/k/a Beverley Ramsay ("Ms. Ramsay"), striking defendant's answer and seeking the appointment of a referee to compute the sums due and owing the plaintiff pursuant to the terms of the mortgage. Defendant has cross-moved seeking leave of court to file an amended answer and opposes plaintiff's motion upon the grounds that summary judgment is not appropriate because plaintiff has not conclusively established that it has proper standing in this matter; that plaintiff has failed

to engage in good faith settlement conferences pursuant to CPLR sec. 3408; and that the underlying mortgage is a product of deceptive and predatory loan practices such that the equitable remedy of foreclosure may not be granted.

For the reasons set forth below, the Court finds that summary judgment is not appropriate at this time. Certain questions of fact have been raised involving the circumstances of the loan origination, specifically the relationship between Madison Home Equities, Inc. ("Madison Equities") and BAC and whether that relationship supports an allegation of predatory loan practices against the plaintiff. In addition, the defendant has offered admissible evidence that the decision to deny the modification of the mortgage may have been based on incorrect calculations by the lender and resulted in a denial of a loan modification for which the defendant may have qualified. In addition to the denial of summary judgment to the plaintiff, the defendant's cross-motion to amend the pleadings is granted only to the extent of allowing the submission of an amended answer to interpose the defense claimed of unlawful discrimination in the provision of credit in both the origination of the loan as well as in the loss mitigation pursuant to CPLR sec. 3408 including possible violation of General Business Law sec. 349.

**Background:**

The defendant, Ms. Ramsay, is the owner of the property located at 967 Autumn Avenue, Brooklyn, New York. Ms. Ramsay, who is African American, purchased the home in 2001. Ms. Ramsay obtained a mortgage loan in the amount of \$466,900 from Madison Equities. The mortgage has an interest rate of 6.5%. Ms. Ramsay states that the monthly payments were approximately \$3,500., and that she fell behind in the payments after experiencing a reduction of income (see Ramsay Aff. Annexed to Defendant's Opp. to Summary Judgment Motion, par. 6-10).

The subject note and mortgage were dated October 25, 2007 and recorded in the office of the City Register of the City of New York, Kings County on November 1, 2007. The mortgage was made to Mortgage Electronic Registration Systems, Inc. ("MERS"), which was acting as nominee for Madison Equities, the mortgagee. The note and mortgage were assigned to BAC Home Loans on September 9, 2009 by MERS, acting solely as nominee for Madison Equities. On July 1, 2011, BAC Home Loans merged with Bank of America, N.A.

The record indicates that the borrower failed to make the monthly payment which was due and owing for February 1, 2009 and has not made any subsequent monthly payments due thereafter. Prior to the commencement of this action, plaintiff mailed a notice of default, dated June 8, 2009, to the defendant via first class mail. As a result of the failure to pay the amounts due under the note and mortgage, plaintiff commenced this foreclosure action on or about September 24, 2009, by filing of a summons, verified complaint and Notice of Pendency in the

office of the County Clerk of Kings County. Service was effectuated upon Ms. Ramsay, by service upon a person of suitable age and discretion (defendant's son) on October 16, 2009 at the property location.

A notice of appearance and answer was filed on behalf of the defendant, on or about November 6, 2009 and the answer contained a general denial and six affirmative defenses.

Thereafter, this matter appeared in the settlement conference part and when the matter could not be resolved, the plaintiff was given permission by the referee to proceed with the foreclosure proceedings. The matter was transferred to the undersigned for further proceedings on or about May, 2013.

**Issues Presented:**

Plaintiff seeks a judgment of foreclosure based upon its position that it has established a prima facie entitlement to a judgment as a matter of law by submitting the mortgage, note and evidence of default (see *Countrywide Home Loans, Inc. v Delphonse*, 64 AD3d 624 [2d Dept. 2005]).

The defendant, by her attorneys, contends that plaintiff should be denied foreclosure due to alleged predatory and discriminatory lending practices of the original mortgagee (Madison Equities). Defendant has raised six affirmative defenses challenging plaintiff's legal right to foreclose and has filed a cross-motion seeking to amend the defendant's answer to interpose defenses of illegal business practices (General Business Law sec., 349); as well as unlawful discrimination in extending credit as well as a failure to engage in good faith settlement negotiations pursuant to CPLR sec. 3408. Defendant also alleges a violation by the plaintiff of the Equal Credit Opportunity Act, failure to serve a RPAPL sec. 1304 notice and has raised the equitable defense of unclean hands.

The Court must also consider whether a motion to amend the pleadings (the instant cross-motion) is permissible pursuant to CPLR sec. 3025.

Finally, as part of the relief sought by the defendant, defendant claims that summary judgment to the plaintiff should be denied because further discovery is needed by the defendant to establish or prove certain allegations which are raised in these proceedings.

**Discussion:**

In support of its motion for summary judgment, the plaintiff has submitted copies of the mortgage and promissory note signed by the defendant as well as the affidavit of James Francis Bluemle, an assistant vice-president of the Bank of America and an affidavit of Michelle Sexton, an assistant vice-president of BAC Home Loans. The Court is satisfied that plaintiff has proven that plaintiff has possession of the original note and furnished evidence of a valid assignment.

Based on the admissible evidence, the Court finds that the plaintiff has established a prima facie case for foreclosure. The plaintiff has submitted evidence of the mortgage and assignment, evidence of the unpaid note with the mortgagor's signature and evidence of a default thereby establishing plaintiff's initial right to foreclose (see *HSBC Bank USA v Hernandez*, 92 AD3d 843 [2d Dept. 2012], *U.S. Bank, N.A. v Collymore*, 68 AD3d 752 [2d Dept. 2009]; *Countrywide Home Loans, Inc. v Gress*, 68 AD3d 709 [2d Dept. 2009]). Here, the defendant/borrower does not deny in its answer that the documents related to the note and mortgage were executed and that the loan proceeds were received by the defendant.

In opposition to the motion for summary judgment and the appointment of a referee, the defendant, by her attorneys, raised several affirmative defenses in the answer to the complaint. The affirmative defenses are addressed as follows: Defendant's First Affirmative Defense alleges a failure to state a cause of action and is rejected by the Court. The factual allegations of the complaint when considered together with the admissible evidence herein, manifests a cause of action cognizable at law (see *Foley v. D'Agostino*, 21 AD2d 60 [1<sup>st</sup> Dept. 1964]).

The defendant's Second Affirmative Defense also fails in that it alleges that plaintiff's damages are not supported by documentary evidence and should be stricken as a matter of law. In any dispute, such as the instant case, in which the argument involves the amount due on a loan, the matter is for the appointed referee in the foreclosure to determine (see *Crest/Good Mfg. Co., Inc. v Baumann*, 160 AD2d 831 [2d Dept. 1990]).

The defendant's Third Affirmative Defense alleges that plaintiff's claims are barred by the doctrines of waiver, estoppel, laches, unclean hands and fraud. As to the allegations of waiver, estoppel and laches, the Court dismisses those affirmative defenses as the defendant has not set forth any basis to support those defenses. Defenses which merely plead conclusions of law without supporting facts are insufficient and should be stricken (see *Petracca v Petracca*, 305 AD2d 566 [2d Dept. 2008]; *Cohen Fashion Optical, Inc. v V & M Optical, Inc.*, 51 AD3d 619 [2d Dept. 2008]).

As to the defenses of unclean hands and fraud, the defendant exclusively relies on the conduct of Madison Equities evidenced by the civil complaint brought against Madison Equities related to violation of HUD regulations. The argument against BAC is that BAC, as the assignee from Madison Equities, may bear responsibility for such acts (see *Hammelburger v Foursome Inn Corp.*, 54 NY2d 580- "*an assignee stands in the same position as the original mortgagee*"). Nonetheless, when alleging fraud, it is incumbent on the party alleging fraud to allege specific facts in support of the fraud allegation in detail (see CPLR sec. 3016(b); *Prudential Insurance Co. of America v. Kelly*, 174 AD2d 717 [2d Dept. 1991]). This Court has some reservation that a clear case of common law fraud may be proved against the plaintiff, BAC, yet the Court shall

permit further discovery (as set forth below) to allow defendant an opportunity to explore the BAC/Madison Equities relationship.

The defendant's Fourth Affirmative Defense is a general denial which would be insufficient to raise a triable issue of fact and should be dismissed (see *Bankers Trust of Rockland County v Kessler*, 49 AD2d 918[2d Dept. 1975]).

The defendant's Fifth Affirmative Defense alleging that the plaintiff's damages are a result of the culpable conduct of the plaintiff is not a valid defense as the obligations between the parties are set forth in the mortgage and note and, hence, the defense has no merit in this instance. Similarly, the Sixth Affirmative Defense, which states that the defendant is entitled to the sympathy of the Court and that the plaintiff should pursue this matter in the spirit of fairness and fair dealing, is not a recognizable defense in this case. To the extent that the defendant seeks sympathy due to financial hardship, such a defense is not a cognizable defense to a foreclosure proceeding (see *Jamaica Savings Bank v Cohan*, 36 AD2d 743 [2d Dept. 1971]). Furthermore, the obligation to deal fairly and equitably is included in the obligation to negotiate in good faith set forth in RPAPL sec. 3408 and this argument is set forth specifically in the defendant's cross motion which seeks to include a violation of the obligation for good faith negotiation as a defense in the defendant's amended answer.

**Defendant's Cross-Motion to Amend its Answer:**

Leave to amend a pleading is freely granted within the court's discretion (CPLR 3025 [b]) in the absence of prejudice or surprise (see *Edenwald Contr. Co. v City of New York*, 60 NY2d 957 [1983]). It is also understood that leave to amend will be denied where the proposed claim is palpably insufficient (see *Tishman Const. Corp. of N.Y. v City of New York*, 280 AD2d 374 [1<sup>st</sup> Dept. 2001]).

In considering the motion to amend a pleading, a court must consider "the merit of the proposed defense and whether the plaintiff will be prejudiced by the delay in raising it" (*Lanpont v Savvas Cab Corp.*, 244 AD2d 208 [1<sup>st</sup> Dept. 1997] citing *Norwood v. City of New York*, 203 AD2d 147, 148, *lv dismissed* 84 NY2d 849). The Court is aware that the defendant seeks to amend her answer almost three years after the initial answer, yet this delay can be satisfactorily explained by the fact that defendant had changed attorneys and genuine efforts were made to resolve the foreclosure through the settlement conference process. Neither is there any real showing of prejudice to the plaintiff to allow the amended answer to be considered.

The relief sought in the defendant's cross-motion is to amend the pleading to include an affirmative defense of (1) a violation of GBL sec. 349; (2) unlawful discrimination in the providing of credit related to the loan origination and in the loss mitigation process governed by CPLR sec. 3408; a failure to serve a ninety day notice as required by RPAPL sec. 1304; (3) additional standing defenses; and (4) a claim for "equitable defenses such as unclean hands".



Defendant alleges unlawful business practices on the part of defendant and the loan originator, Madison Equities. GBL sec. 349 provides that “deceptive 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” (GBL sec. 349(a)). The plaintiff argues that GBL sec. 349 is not applicable to the instant case in that the dispute is a private contract dispute. However, the nature of the defendant’s GBL claim is that wide-spread consumer fraud was engaged in by the mortgage originator (Madison Equities) and such conduct affected the defendant, therefore, GBL sec. 349 is applicable (see *Gaidon v Guardian Life Ins. Co. of Am.*, 94 NY2d 330[1999]; *Oswego Laborers’ Local 214 Pension Fund v Maritime Midland Bank*, 85 NY2d 20).

As evidence of the predatory nature of the loan process which Ms. Ramsay had participated in, the defendant’s attorneys offer proof that Madison Homes Equities and its principal Nadine Malone, where the subject of an investigation by the Department of Housing and Urban Development (HUD) and entered into a consent decree which banned Nadine Malone and Madison from participating in HUD/FHA loan approvals (see *Aff. of Ndukwe Agwu*, par. 10-12, in support of Cross-Motion). Mr. Agwu paints wrongful conduct allegations against BAC rather broadly in this cross-motion before the Court. For example, without much corroboration, Mr. Agwu refers to Madison Equities as a “Ghetto Bank” which lends in predominantly minority neighborhoods, then earns an immediate profit and then sells the loans (*Agwu Aff. Par. 29*); and refers to Ms. Ramsay as unfamiliar with real estate finance and was “therefore exploited unconscionably in the transaction” (*Agwu Aff. Par. 32*). Mr. Agwu seeks to draw a connection between the increase in sale price of the subject property and the series of larger mortgages taken out by Ms. Ramsay as being indicative of predatory lending<sup>1</sup>. These arguments are not accompanied by any hard facts and neglect the fact that the borrower herself consciously applied for several mortgages from several different lenders prior to her dealings with Madison Equities. It is disingenuous to blame the plaintiff here for the earlier borrowing which Ms. Ramsay engaged in and attempt to assign wrongdoing to the plaintiff for each mortgage taken out by Ms. Ramsay.

Notwithstanding the inflammatory assertions made by defendant’s counsel, the Court does share concerns raised by defendant as to the exact nature of the relationship between Madison Equities, as the loan originator, and BAC, as the assignee, in the context of loans made for sizable amounts of money to people with modest incomes in areas of Brooklyn which have been hard hit by foreclosures. Evidence exists that Madison was the subject of a civil complaint alleging violation of HUD lending requirements and violations of the FHA mortgage insurance program, leading to a consent decree in which Madison Equities, while not acknowledging

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<sup>1</sup>Mr. Agwu points out that the subject property was purchased by “Adrian Jones” for \$91,292 eighteen months prior to the purchase by Ms. Ramsay. Ms. Ramsay purchased the home for \$267,452 in 2001. The defendant refinanced the home with a mortgage from Madison for \$466,900 in 2007. The steep increase in price and mortgage amount is claimed to be evidence of predatory lending which plaintiff allegedly took part in.

wrongdoing, was barred from participating in the FHA mortgage insurance program among other restrictions (see Consent Decree and Judgment annexed to the Defendant's Cross-Motion as Ex. "A").

The Court also finds it troubling that the defendant, a single woman, who claims to have an income of \$92,000 per year, would be approved for a sizable mortgage (\$466,250) which required monthly payments of approximately \$3,500 per month (see Ramsay Affidavit annexed to the Defendant's Cross-Motion).

Defendant opposes an award of summary judgment and seeks an opportunity for discovery and a preliminary conference to facilitate the discovery process. Based on the allegations raised by the defendant's counsel, the opportunity to conduct further discovery is a reasonable request and is more than "a mere hope that further discovery will uncover evidence" (see *Lee v T.F. DeMilo Corp.*, 29 AD3d 867, 868 [2d Dept. 2006]). The denial of summary judgment in this case would necessarily be without prejudice to renewal after discovery has been completed (see *Cardone v Poidamani*, 73 AD3d 828 [2d Dept. 2010]).

As to the alleged failure to engage in good faith efforts to reach a possible loan modification, the record indicates that attempts were made between the parties to renegotiate the terms of the mortgage, yet, no resolution was reached. It is defendant's contention that the renegotiated mortgage proposed to defendant was not affordable. Plaintiff contends that it fulfilled its responsibility under CPLR sec. 3408 to act in good faith to seek a settlement and avoid the necessity of foreclosure.

As to this point, defendant has submitted an affidavit of Charles Bryan, a housing counselor for Cypress Hill Local Development Corporation, a HUD certified housing counselor. Mr. Bryan states that Cypress Hill has been handling Ms. Ramsay's file since February of 2013 and has made five modification applications, including updates of applications (see Charles Bryan Aff. Annexed to Opposition to Summary Judgment Motion, Ex. "C"). An application was first submitted on behalf of Ms. Ramsay to the Bank of America "Hope Loan Port" on May 1, 2013. After two months of correspondence pertaining to missing documents that defendant had supposedly responded to, a denial letter was issued based upon the fact that the amount needed to make the loan affordable under FHA-HAMP guidelines exceeded the program's maximum of thirty percent. Thereafter, a new packet was submitted on behalf of the defendant and there was an appearance at a settlement conference to show that Ms. Ramsay was financially capable of supporting an FHA-HAMP modification. This subsequent application for a modification was likewise rejected and it is defendant's contention that the numbers used in issuing the denial were incorrect. Mr. Bryan spells out the earnest attempts made by the borrower to negotiate the modification and, in his opinion, the plaintiff denied the modification in error.

The defendant's cross motion also includes allegations that the plaintiff failed to serve a predicate notice pursuant to RPAPL sec. 1304. Upon reviewing the applicability of section 1304 the Court concurs with plaintiff's counsel that a section 1304 notice was not required at the time

this mortgage was made in 2007 and that portion of the cross-motion seeking to raise the failure to serve such notice is denied.

That portion of the cross-motion which seeks to add additional standing defenses is denied. The Court has reviewed the evidence submitted in support of the plaintiff's motion and is satisfied that Plaintiff took a proper assignment of the mortgage and that plaintiff is in possession of the promissory note (see *James Bluemle Aff.* Annexed as Ex. "1" to Motion for Summary Judgment; *Aurora Loan Servs., LLC v Taylor*, 114 AD3d 627 [2d Dept. 2014]). Consequently, the plaintiff has established proper standing to maintain the foreclosure action.

### Conclusion:

This Court has found that a prima facie case for foreclosure has been made by the plaintiff and the Court finds that plaintiff has standing in this matter. Further, it is the Court's finding that the majority of defenses raised in opposition to the plaintiff's motion for summary judgment are without merit. Notwithstanding this determination, there are questions of fact for which summary judgment is not appropriate.

Specifically, the issue of the loan origination by Madison Equities and whether it was done in violation of the Equal Credit Opportunity Act and the Fair Housing Act are viable issues. Furthermore, the Court has been presented with some evidence that Madison Equities and its principal, Nadine Malone, have been the subject of credible allegations of discriminatory lending practices (brought by the U.S. Government) during the relatively same period of time in which this loan was originated by Madison Equities, raising a real concern about the propriety of this mortgage origination. It is the Court's finding that admissible evidence has been submitted to permit the defendant's cross-motion, alleging a GBL sec. 349 violation, to proceed. Similarly, the Court considers the allegations of fraud and unclean hands to be somewhat related to the unlawful business practices alleged and, while the quantum of proof to establish those claims is different, it is premature to dismiss those allegations without an opportunity for further discovery.

That portion of the defendant's cross-motion seeking to raise the defense of failure to comply with the good faith negotiation requirements of CPLR sec. 3408 should also be permitted. The Court finds the recitation by Charles Bryan, the housing counselor, to be specific and plausible that an error may have been made by the lender/plaintiff in analyzing the financial information submitted by Ms. Ramsay.

This is a case that calls upon this Court to exercise its equitable powers before a determination is reached. As this action is to foreclose a mortgage, which is equitable in nature, the equitable powers of the court are triggered (*Norstar Bank v Morabito*, 201 AD2d 545 [2d

Dept. 1994], citing *Notey v Darien Constr. Corp.*, 41 NY2d 1055). In this case a proper use of equitable power of this Court is to permit further discovery to the defendant to pursue certain allegations raised, and to deny an award of summary judgment.

Accordingly, it is hereby Ordered:

- (1) the plaintiff's motion for summary judgment is denied;
- (2) the defendant's First, Second, Fourth and Fifth Affirmative Defenses are dismissed;
- (3) the defendant's Third Affirmative Defense which raises defenses of waiver, estoppel, and laches is dismissed only as to those defenses. The fraud allegation and allegation of unclean hands contained in the Third Affirmative Defense shall remain; and
- (4) the Defendant's Cross-Motion is granted to the extent of permitting defendant to amend the pleadings to include the defenses of an alleged violation of the GBL sec. 349 and an alleged failure to negotiate in good faith for a modification of the loan pursuant to CPLR sec. 3408. That portion of the Cross-Motion seeking additional discovery is granted.

The parties are directed to appear for a conference in Part 36 of the Court on November 21, 2014 at 9:30 am.

This shall constitute the decision and order of this Court.

Dated: September 29, 2014

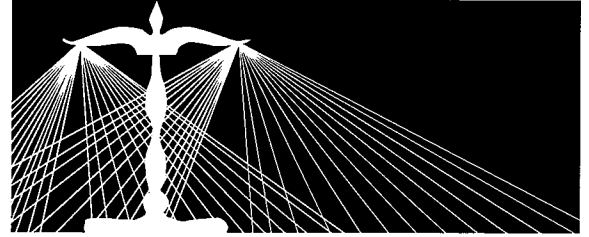
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Hon. Bernard J. Graham, JSC

## MESSAGE FROM OUR CO-EXECUTIVE DIRECTORS



Brooklyn Legal Services Corporation A

Dear Friends:

"I cannot express what it means to me to be able to go back home." These are the words of our client Tranqualina Alvillar, who after three years of enduring landlord harassment, a long legal battle and emotional distress, was able to return home as a result of Brooklyn A's legal representation and advocacy. Her story is a testament to our effectiveness and commitment to our clients.

Brooklyn A was established in 1968 with the mission to provide legal services to low-income individuals and community groups, and work to advance social and economic justice as a way to combat poverty. Forty-seven years later, we have assisted thousands of individuals and families. This past year alone, we served nearly 2,000 and impacted the lives of more than 400,000. In addition to providing direct legal services, we also participated in many community activities to help raise awareness and educate communities about their rights and our ability to help make those rights a reality. We represented 59 not-for-profits and New York City Housing Authority (NYCHA) tenant associations on corporate and transactional projects; strengthening community-controlled and community-led organizations and initiatives so that their voices are heard and their efforts are successful.

The successes from the past year are encouraging. However, there is much more still to be done. The need for affordable housing increases. Tenants living in the epicenter of rezoning areas, like East New York and the Broadway Triangle, face harassment, eviction, unsafe housing conditions, and other displacement pressures. In addition, the foreclosure crisis continues unabated, destroying wealth for many families, stripping equity from neighborhoods, and undermining the stability and vibrancy in our communities. For people facing these issues, legal services are critical for them to keep their homes. Furthermore community-based organizations need legal support in building their capacity to meet the needs of those in our neighborhoods.

Our clients are members of the Brooklyn A family. We work tirelessly to ensure that our clients get the support they need and achieve their desired outcome. The diligence of our attorneys and staff has helped Brooklyn A earn the respect, trust, and support of our clients and community partners in the neighborhoods we serve, as well as all of our supporters.

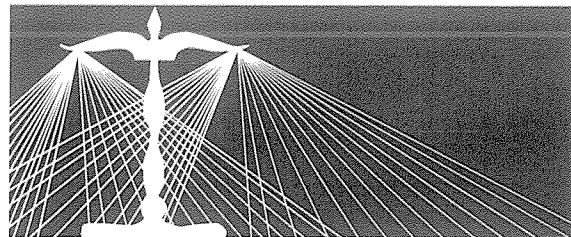
We are thankful to our clients, partners, and supporters for their support. Without you we would not be here today. We are looking forward to serving even more clients in the year to come and continuing to defend and protect those in need.

Sincerely,

Martin S. Needelman, Esq.  
Co-Executive Director & Chief Counsel

Paul J. Acinapura, Esq.  
Co-Executive Director & General Counsel

## 2014 YEAR IN REVIEW



Brooklyn Legal Services Corporation A

# A Year of Impact

### CONSUMER & ECONOMIC ADVOCACY PROGRAM (CEA)

- Represented 143 homeowners facing foreclosure.

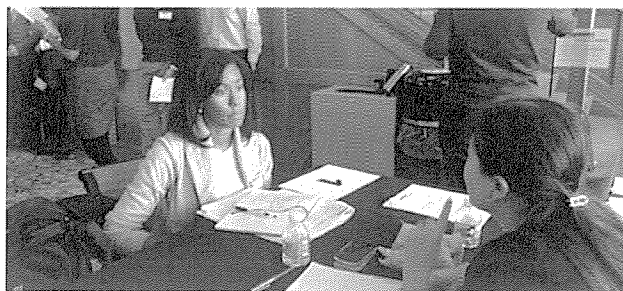
**Protecting Our Clients' Equity:** Our advocates helped a client, who owed more than \$918,000 in her foreclosure case, receive a unique loan modification which reduced the principal to \$663,000. For each year every mortgage payment is paid on time, \$85,000 will be deducted from the total. After 3 years, she will owe less than 50% of her original principal.

### COMMUNITY & ECONOMIC DEVELOPMENT PROGRAM (CED)

- Represented 59 not-for-profits and NYC Housing Authority (NYCHA) tenant associations on corporate and transactional projects which impacted the lives of over 104,000 individuals and families.

### Providing Support to Community-Based Organizations:

**Empowering U2 SucSeed, Inc.** provides technology training, financial skills workshops, and career counseling to unemployed and low-income women. The Corporation's goal is to empower, motivate, and raise the earnings potential of women with low or no income by providing services and programming that will include: computer and technology skill-building; collecting, analyzing, and disseminating information on technology trends and changes; financial planning workshops; public speaking practice; professional attire and conduct guidance; entrepreneurship and leadership training; career counseling; and job/internship placement assistance. In 2014, Brooklyn A assisted them in applying for and obtaining federal tax exempt status, registering with the Charities



*Approximately 130 entrepreneurs attended the event, which included free legal consultations and three workshops on legal and financing issues for entrepreneurs.  
Photo: SF Gallery Portrait Photography*

Bureau of the NYS Office of the Attorney General, applying for and obtaining NYS sales and use tax exemption and other local and state tax exemptions, submitting its annual filing with the IRS (form 990EZ), and negotiating its first services contract with a local church group that hosted a workshop series provided by our client. We continue to provide them ongoing guidance about best practices for non-profit governance, legal matters associated with fundraising and organizational planning.

**Supporting Non-Profits and Small Businesses:** Brooklyn A partnered with Brooklyn Law School Center for Urban Business Entrepreneurship, law firms and non-profit legal service providers across the city to organize and conduct the second Small Business Legal Academy, a one-day expo that provides free legal advice to new and existing non-profits, startups, and small businesses. The success of this event over the past two years confirms our hope that offering no-cost, high-quality legal services to a large volume of startups and micro-entrepreneurs in a day-long clinic format would have a positive effect on their ability to create jobs and improve their communities.

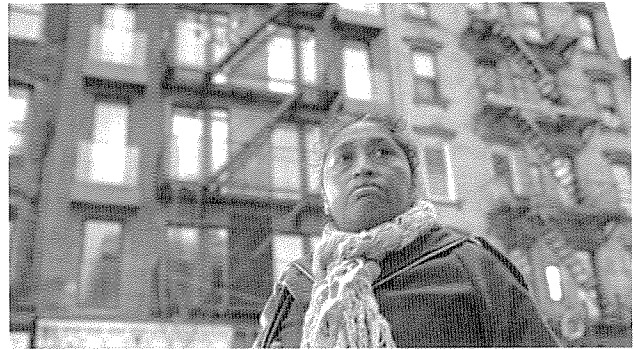
# 2014 YEAR IN REVIEW

## A Year of Impact *continued*

### PRESERVING AFFORDABLE HOUSING PROGRAM

- Represented 412 individual cases in housing court; serving 859 people.
- Represented 77 tenant associations, community groups and coalitions, impacting the lives of over 328,000 residents.
- Provided legal services to 15 tenant controlled low-income housing development fund corporation (HDFC) co-ops; serving 521 people and maintaining the affordability of 209 units of housing.

**Preventing Homelessness:** Our advocates were successful in preventing the displacement of our client, a senior citizen, who had lived in her rent stabilized apartment for nearly 30 years. The landlord brought a holdover proceeding seeking possession of the apartment for chronic nonpayment of rent because the landlord had brought four nonpayment proceedings and served two additional rent demands over a three year time period. Our client, with limited income, satisfied and paid in full the arrears due and each case was discontinued. Our office drafted and submitted a pre-answer motion arguing that the holdover proceeding was defective as a matter of law because the prior court cases did not rise to the standard of being chronic nonpayment of rent. We argued that the rent demands should not be considered and that two of the four nonpayment proceedings were not justified based on the repairs demanded in the settlement of those previous cases. Our motion was aggressively opposed by the landlord because our client paid the lowest rent in the building and gaining possession of the apartment would allow for a substantial increase in rent that would have removed the apartment from rent stabilization. The court, after oral arguments, granted our motion and dismissed the court case against our client. This was a victory that preserved a rent regulated apartment as part of the housing stock and a thirty year tenancy.



*Tranquilina Alvillar lost her rent-stabilized Brooklyn apartment after the landlord began renovations, and an inspector found her home uninhabitable. Photo: Edwin J. Torres.*

**Preserving Affordable Housing:** In a highly-publicized victory, Brooklyn A successfully won the case that reversed the eviction of Tranquilina Alvillar, more than two years after her displacement. Ms. Alvillar, 50, a street vendor who sells used clothing and plastic trinkets, lived in the rent-stabilized one-bedroom on the second floor at 193 Bedford, between North Sixth and North Seventh Streets, for a quarter-century, since coming to this country from Mexico. In 2011, the landlord began renovating the building, removing walls and tearing up floors. There were also problems with the heat. Ms. Alvillar stuck it out, continuing to pay her \$700 monthly rent, until August, when a city building inspector ordered her to leave, declaring the home uninhabitable and an “imminent danger to life.” Ms. Alvillar was forced to abandon the apartment and relocate to Coney Island with a relative. Her apartment was then gutted, refurbished, and leased to a new tenant at more than four times the rent. Since then, Tranquilina and Brooklyn A worked hard to fight the wrongful eviction in Brooklyn Housing Court. This year, our efforts paid off. In June 2014, Judge Jean T. Schneider, ordered that the market-rate tenant who was living in Ms. Alvillar’s apartment be evicted and that Ms. Alvillar could move back in. The landlord appealed the decision, keeping the case tied up in court for months, but an appellate court upheld the original decision. Tranquilina returned home just a few days before Christmas.



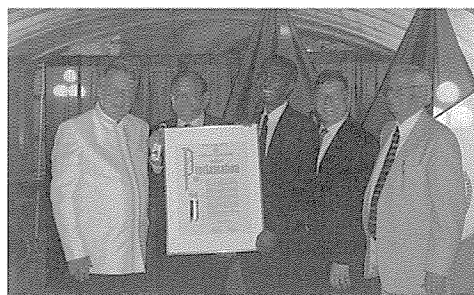
## 2014 YEAR IN REVIEW

# A Year of Recognition

**Leander (Lee) McRae**, Program Director of Brooklyn A's Preserving Affordable Housing Program - Individual Representation Unit, received the New York City Bar Association's Annual Legal Services Award. The award gives recognition to attorneys and non-attorneys who provide outstanding civil legal assistance to New York's neediest populations. The award was presented by the Honorable Jenny Rivera, Associate Judge of the New York Court of Appeals.



**Shekar Krishnan**, Program Director of Brooklyn A's Preserving Affordable Housing Program - Group Representation Unit was honored by New York City Council at the India Independence Day Celebration. Shekar was among other notable members and friends of the Indian-American/South Asian community who were honored for their leadership and contributions to the moral and economic well-being of New York City. The event was sponsored by Speaker Melisa Mark-Viverito, Public Advocate Letitia James, Council Member Daniel Dromm, Council Member Paul Vallone, and other council members.



## Young Professionals for Justice

This year, Brooklyn A kicked off Young Professionals for Justice (YPJ), our group of Brooklyn A alumni and friends representing the next generation of social justice leadership in New York City. YPJ members are dedicated to supporting our work by raising awareness of the need for accessible legal services for low-income individuals and communities in Brooklyn and NYC wide.

YPJ kicked off with an exciting happy hour at Battery Harris in July and enjoyed a garden cleanup at The People's Garden in East New York in October. We are excited to see the growth of YPJ in the years to come. Special thanks to the YPJ Advisory Board Tiffany Femiano, Lynn Horowitz, Mina Wood, Julia Kohen, Daeyna Grant, and David Shapiro, for their leadership this year.





# 2014 YEAR IN REVIEW

## A Year of Celebration and Honor

2014 ANNUAL PARTNERSHIP AWARDS BENEFIT

JUDGE HAROLD TYLER AWARD

**Judah Gribetz**

Of Counsel

Bingham McCutchen LLP

SARGENT SHRIVER AWARD

**Paloma Hernandez**

President & CEO

Urban Health Plan, Inc.

DENIS BERGER AWARD

**Sonya D. Johnson**

Senior Counsel

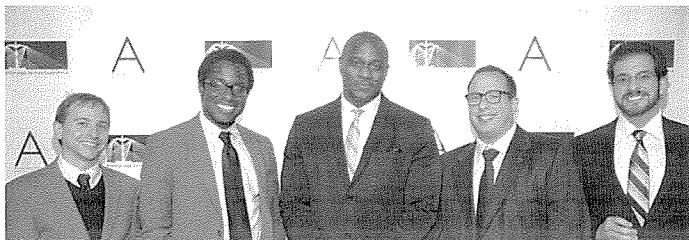
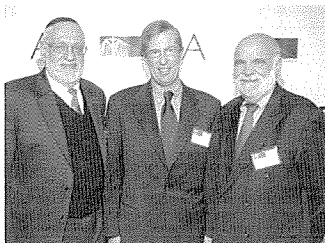
nationalgrid

GUEST SPEAKER

**James R. Silkenat**

Partner

Sullivan & Worchester LLP



### Pro Bono Recognition



**Hildere Alexis**  
Kelley Drye  
& Warren LLP

**Andrea L. Cal-**  
**varuso**  
Kelley Drye  
& Warren LLP

**Sarah Elliott**  
Simpson Thacher  
& Bartlett LLP

**Sean R. Flanagan**  
Kelley Drye &  
Warren LLP

**Harlene Katzman**  
Simpson Thacher  
& Bartlett LLP

**Robin Krause**  
Patterson Belknap  
Webb  
& Tyler LLP

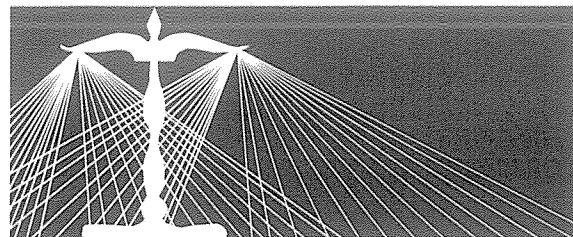
**Paul Rodriguez**  
Simpson Thacher  
& Bartlett LLP

**Tricia B. Sherno**  
Debevoise &  
Plimpton LLP

**Tiffanye**  
**Threadcraft**  
Simpson Thacher  
& Bartlett LLP

**JoAnna C.**  
**Tsoumpas**  
Debevoise &  
Plimpton LLP

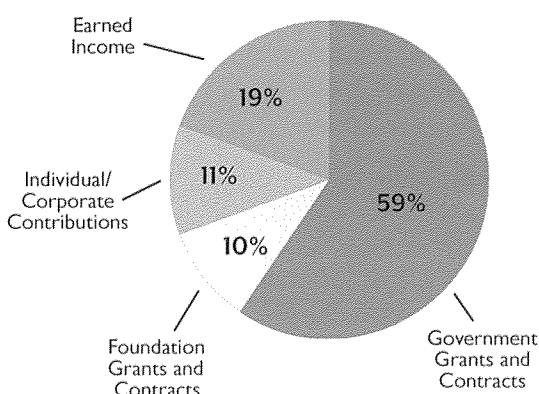
# 2014 FINANCIALS



Brooklyn Legal Services Corporation A

## Revenue by Source

All figures based on the 2014 Audited Financial Data:



Government Grants and Contracts	\$ 1,447,157	59%
Foundation Grants and Contracts*	245,525	10%
Individual/Corporate Contributions	278,638	11%
Earned Income**	472,950	19%
<b>TOTAL</b>	<b>\$ 2,444,270***</b>	<b>100%</b>

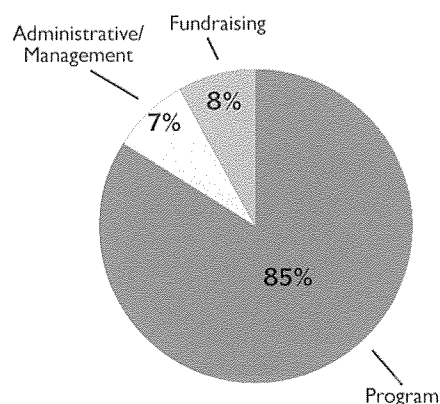
\*Includes New York State Interest on Lawyer Account Fund and law school fellowships.

\*\* Includes Rental Income and Community & Economic Development Fees.

\*\*\* Excludes donated pro-bono services valued at \$540,000.

## Expense by Functional Allocation

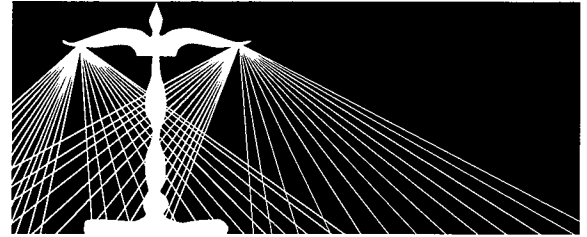
All figures based on the 2014 Audited Financial Data:



Program	\$ 1,976,580	85%
Administrative/Management	168,231	7%
Fundraising	196,824	8%
<b>TOTAL</b>	<b>\$2,341,635***</b>	<b>100%</b>

\*\*\* Excludes donated pro-bono services valued at \$540,000.

# 2014 GRATITUDE



**Brooklyn Legal Services Corporation A**

*Brooklyn A is deeply grateful to those individuals, foundations, law firms and government funders that have sustained us over this past year. You provide the critical financial support we need to accomplish our work and achieve impact and lasting change in our communities.*

## \$100,000 +

New York City Department of Housing Preservation & Development  
New York City Human Resources Administration  
New York State Division of Criminal Justice Services  
New York State Office of the Attorney General  
New York State Office of Court Administration  
U.S. Department of Housing and Urban Development

## \$50,000 - \$99,999

New York State Interest on Lawyer Account Fund

## \$25,000 - \$49,999

Bingham McCutchen LLP  
New York City Department of Homeless Services  
The Scherman Foundation  
Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates  
Skadden Foundation Fellowship

## \$15,000 - \$24,999

Davis Polk and Wardwell LLP  
Debevoise & Plimpton LLP  
DIME Savings Bank of Williamsburg  
New York City Department for the Aging  
New York University School of Law Fellowship

## \$10,000 - \$14,999

Capital One Bank  
Kelley Drye & Warren LLP  
M&T Bank  
M&T Charitable Foundation  
Santander Bank Foundation  
Benjamin P. Wellington  
James H.R. Windels

## \$5,000 - \$9,999

Astoria Bank  
Con Edison  
Equal Justice America  
Jyotin Hamid  
Hyde and Watson Foundation  
Kramer, Dillof, Livingston & Moore  
Patterson Belknap Webb & Tyler LLP  
Robert and Elizabeth Sheehan  
Tiger Baron Foundation

## \$2,500 - \$4,999

Bank Leumi  
Brownsville Community Development Corporation, Inc.  
Curtis, Mallet-Prevost, Colt & Mosle LLP  
National Grid  
Pitta & Giblin LLP  
Pitta Bishop Del Giorno & Giblin LLC  
Plato Malozemoff Foundation  
Saul Shapiro  
Thomas McC and Catherine Curran Souther  
Urban Health Plan, Inc.

## \$1,000 - \$2,499

16 Maujer Street HDFO  
Anonymous  
Ruth Plofsky Barish and Irving Barish Fund  
Robert Begleiter  
Anthony and Barbara Carbone  
Robert Crotty  
Cypress Hills Local Development Corporation, Inc.  
EisnerAmper LLP  
Esquire Bank  
ExxonMobil Foundation  
Judah and Jessica Gribetz  
Valarie Hing  
Sonya Johnson  
Joseph Lipofsky  
Alexis P. and Wiera Malozemoff  
Morris Kirschner Perpetual Charitable Trust  
Kenneth A. and Bettina B. Plevan

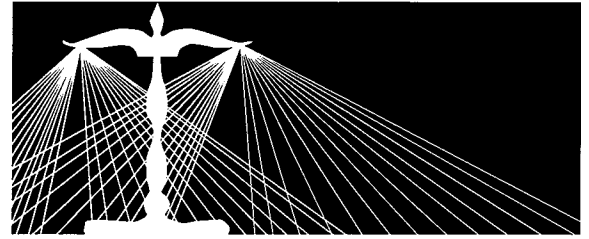
Ridgewood Savings Bank  
Cye Ross  
Jeffrey Smith  
St. Nicks Alliance  
The WJL Film, Inc.  
Michael Young and Debra Raskin  
Stephen P. and Prudence M. Younger

## \$100 - \$999

244 Troutman Street Tenants Association  
Gary and Robin Adler  
African American Planning Commission, Inc.  
Henry and Hester Ahearn  
AmazonSmile Foundation  
Bamontes Restaurant Corp.  
Adrianne Baughns-Wallace  
Michael Benzi  
Alice Berger  
Lisa Bing  
Arleen and Marc Sandy Block  
Center for NYC Neighborhoods  
Steve Cohn  
Combined Federal Campaign  
Gary Connor  
Maria Contreras-Collier  
Linda Cooper  
Michael and Nan Cooper  
Alison Cordero  
Etienne Correa  
Cypress Hills Child Care Corporation  
David and Patricia Ann Dobosz  
Robert Dombroff  
Joyce Doyle  
Essie M. Duggan  
David Etkind  
Hilary Exter  
Edward Ezrick, M.D.  
John D. and Emalie P. Feerick  
Steven Flax  
Arlen Sue Fox  
Mary Gail Earns  
Arthur Gang  
Brian Glick  
Harold Green  
Jonathan Greenspun  
Allan Gropper  
Michael Haber  
Louis Hancock  
Lynn P. Harrison III and Tonya P. Harrison  
Mary Jemison Head

William H. Josephson  
Harold and Renee Kelvin  
Kenjam Consultants LLC  
Ingrid Bromberg Kennedy  
Julia Kohen  
Luis Lainer and Lee Lainer  
Henry Day Lanier and Catherine Bragg Lanier  
David Lopez  
Frances Lucerna  
Betsy MacLean  
Father Peter A. Mahoney  
Laurie Margolies  
Phyllis Mascia  
Maureen McCarthy  
Rhonda J. McLean  
Anita Miller and David Bryan  
Martin Needelman  
Peter C. Neger and Melinda Beck Neger  
Michelle Neugebauer  
NYS Employees Federated Appeal  
Sara C. Norris  
Melissa Peshkin  
Randolf Petsche  
Anne Pilsbury  
Roy H. Pingel  
Primary Care Development Corporation  
Deborah Rand  
Leonides Reyes  
Paul Rodriguez  
Dara N. Rose  
H. Richard Schumacher  
Douglas Schwarz and Beth Marcus  
Frederick A. O. Schwarz, Jr.  
Narcisa Secchiano  
Franklin Siegel  
Porfirio Sotomayor  
Wayne S. Stanton  
Stephanie R. Steinberg and Daniel Schachter  
Timothy J. Stephens  
Brian Sullivan  
Rose Vanderpool-Fletcher  
Gregory Wallace  
Peter Woll  
Mina Wood

# 2014 COMMUNITY PARTNERS AND CLIENTS



**Brooklyn Legal Services Corporation A**

## **CONSUMER AND ECONOMIC ADVOCACY PROGRAM**

Bridge Street Development Corporation  
Coalition for Debtor Education  
Cypress Hills Local Development Corporation, Inc.  
Kings County Foreclosure Defense Bar  
Pratt Area Community Council  
Neighborhood Housing Services  
New Yorkers for Responsible Lending (NYRL)  
Right to Counsel NYC Coalition

## **PRESERVING AFFORDABLE HOUSING PROGRAM**

Allied Communities Against Buy Outs (ACABO) Coalition  
Broadway Triangle Community Coalition  
Bushwick Housing Independence Project (BHIP)  
Churches United for Fair Housing  
Cypress Hills Local Development Corporation, Inc.  
El Puente  
Mobilization Against Displacement (MAD)  
Neighbors Allied for Good Growth (NAG)  
North Brooklyn Development Corporation  
Nuestros Niños Day Care Center  
Organization United for Trash Reduction and Garbage Equity (OUTRAGE)  
Save Our Southside (SOS)  
Shareholders for the Betterment of Lindsay Park  
Sisters Friends Galleria Supporting Low Income Women and their Children  
Small World Day Care Center

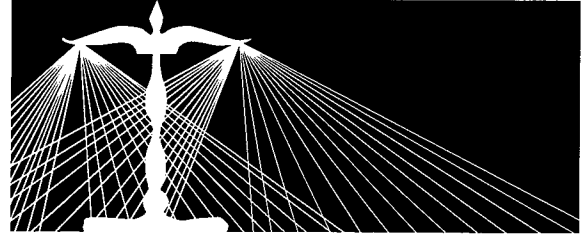
Southside Community Schools Coalition (SCSC)  
Southside United Housing Development Fund Corporation (Los Sures)  
St. Nicks Alliance  
Swinging Sixties Senior Center  
United Neighbors Organization (UNO)

## **COMMUNITY AND ECONOMIC DEVELOPMENT PROGRAM - CLIENTS**

African American Planning Commission, Inc.  
Alliance for Healthy Communities NCB LLC  
Arts East New York, Inc.  
Atlas DIY, Inc.  
Bedford Stuyvesant Family Health Center  
Berry Street Tenants Association  
Brevoort Resident Association  
Borough Development Group  
Boulevard Houses Tenant Association  
Brooklyn Clergy Action Network 2 Save Our Communities  
Brooklyn-West District Council of Presidents, Inc.  
Brownsville Community Development Corporation (Brownsville Multi-Service Family Health Center)  
Bushwick Houses Resident Association  
Churches United For Fair Housing  
Community Driven Solutions  
Community Services Housing Development Corporation  
Cypress Hills Local Development Corporation, Inc.  
Cypress Hills Tenant Association  
Empowering U2 SucSeed, Inc.  
Gates to Success  
The Gifted and Purposed Alliance, Inc.  
Gowanus Resident Council, Inc.  
Harvest Revival Christian Fellowship

Howard Houses Tenant Council, Inc.  
Interactive Drama for Education and Awareness in the Schools, Inc. (I.D.E.A.S.)  
In the Spirit of Love Foundation  
Jamaica Drum Jam, Inc.  
John F. Hylan Houses Tenants Association  
Lafayette Gardens Residents Association, Inc.  
Living Through Movement, Inc.  
Make STEAM, Inc.  
National Congress of Neighborhood Women  
Northeast Brooklyn Housing Development Corporation  
Northside Town Hall Community Cultural Center  
NYC Yoga Project, Inc.  
Penn-Wortman Tenant Association  
Peoples First Baptist Church  
Project New Ground  
Progressive People Movement, Inc.  
Sister Friends Galleria, Supporting Low Income Women and Their Children, Inc.  
Southside United Housing Development Fund Corporation (Los Sures)  
St. Stephen Outreach Community Development Corporation  
St. Stephen Outreach, Inc.  
Sumner Houses Senior Citizen Council  
The Tenants Association of Marcy Houses  
Trey Whitfield School  
United Soccer League of Brooklyn, Inc.  
Urban Health Plan, Inc.  
Urban Health Foundation, Inc.  
Walt Whitman Houses Tenants' Association, Inc.  
Wayside Out-Reach Development Inc. (WORD)  
Wider Horizons Internship Network  
Williamsburg Neighborhood Based Alliance, Inc.

# 2014 VOLUNTEERS, INTERNS, EXTERNS & PRO-BONO PARTNERS



Brooklyn Legal Services Corporation A

## LAW SCHOOL INTERNS

**Isabel Abreu**  
University of Pennsylvania Law School

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CUNY School of Law

**Alyssa Baldassini**  
Brooklyn Law School

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UC Davis School of Law

**Sarah Baldwin**  
Fordham University School of Law

**Jennifer A. Beamish**  
Northwestern University School of Law

**Dean Bubar**  
UC Davis School of Law

**Sarah Chi**  
UC Davis School of Law

**Erin Choi**  
UC Davis School of Law

**Adam DeBow**  
UC Davis School of Law

**Chelsea Evans**  
UC Davis School of Law

**Juliana Fehrenbacher**  
UC Davis School of Law

**Camellia Imani**  
UC Davis School of Law

**Carmel Imani**  
UC Davis School of Law

**Moshe Indig**  
NYU School of Law

**Steven Koch**  
Cornell Law School

**Erica Leavy**  
St. John's University School of Law

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UC Davis School of Law

**Jason Luu**  
UC Davis School of Law

**Nicole Mormilo**  
Brooklyn Law School

**Abigail Mulvihill**  
UC Davis School of Law

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UC Davis School of Law

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UC Davis School of Law

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NYU School of Law

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Boston University School of Law

**Adrienne Warrell**  
NYU School of Law

**John Willumsen-Friedman**  
Brooklyn Law School

**Lauren Woods**  
UC Davis School of Law

**Antonia Wong**  
UC Davis School of Law

## INTERNS AND VOLUNTEERS

**Marcos Antonio Gonzales**  
El Puente Academy for Peace and Justice

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Cornell University

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Kingsborough Community College

**Daniel Maples**  
New York City College of Technology  
(CUNY)

**Brandon G Mui**  
Cornell University

**Alexander M. Schoifet**  
Cornell University

**Dmitry Slavnikov**  
Cornell University

**George Sole**

**Kailah Torres**  
Brooklyn Preparatory High School

**Lillybeth Ventura**  
The High School for Enterprise,  
Business, and Technology

**Gary Wan**  
Cornell University

**Catherine Wang**  
Cornell University

## EXTERNS

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Paul Rodriguez  
Tiffanye Threadcraft

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Tricia B. Sherno  
JoAnna C. Tsoumpas

**Kelley Drye & Warren LLP**  
Hildere Alexis  
Andrea L. Calvaruso  
Sean R. Flanagan

**Ogletree Deakins**

**Patterson Belknap Webb & Tyler LLP**  
Robin Krause

**Pepper Hamilton LLP**

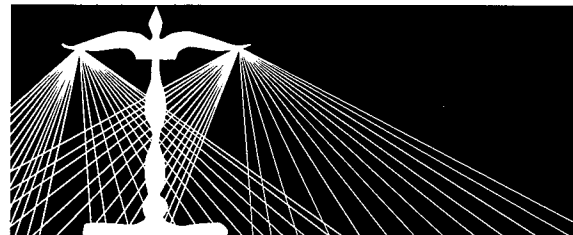
**Simpson Thacher & Bartlett LLP**  
Harlene Katzman

**Quinn Emanuel Urquhart & Sullivan**

**Weil, Gotshal & Manges LLP**

**Wilson, Sonsini, Goodrich & Rosati**

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**David Lopez**

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**Frances Lucerna**

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El Puente

**Kenneth J. Mahon**

Senior Executive Vice President and Chief Operating Officer

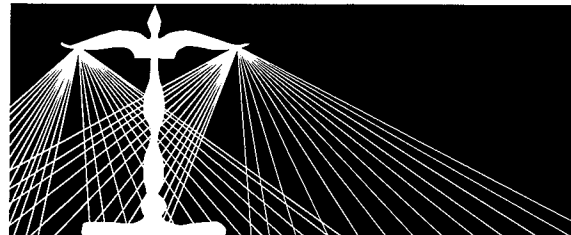
Dime Community Bancshares Inc.

**Saul B. Shapiro**

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## STAFF



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Co-Executive Director, Chief Counsel

**Paul J. Acinapura, Esq.**  
Co-Executive Director, General Counsel

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**Ndukwe Agwu, Esq.**  
Senior Staff Attorney

**Andrew Malozemoff, Esq.**  
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**Joyce Vargas**  
Paralegal

**Tamara del Carmen, Esq.**  
Senior Staff Attorney  
Low-Income Taxpayer Clinic

### COMMUNITY AND ECONOMIC DEVELOPMENT

**Jessica Rose, Esq.**  
Program Director

**Gustavo A. Silva Cano, Esq.**  
Staff Attorney  
Simpson Thacher & Bartlett Extern

### PRESERVING AFFORDABLE HOUSING

#### GROUP REPRESENTATION UNIT

**Shekar Krishan, Esq.**  
Program Director

**Gregory E. Louis, Esq.**  
Staff Attorney

**Adam Meyers, Esq.**  
Staff Attorney  
Skadden Fellow

**Caroline Iosso**  
Fair Housing Advocate

**Samuel Hamilton Chiera, J.D.**  
Brooklyn Law School Fellow

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Program Director

**Janna Levin, Esq.**  
Staff Attorney

**Austen D. Refuerzo, Esq.**  
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New York University School of Law Fellow

**Vincent Duran**  
Legal Services Coordinator, AmeriCorps\* VISTA

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Director of Finance & Administration

**Rosemarie Peralta**  
Intake and Receptionist

**Maria Posner**  
Office Manager

**Shimon Sieskel**  
Receptionist

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**Gloria Ramón, M.P.P.**  
Director of Development & Communications

**Devin Corrigan**  
Development & Communications Coordinator  
AmeriCorps\* VISTA

**Yin Sok**  
Development & Communications Coordinator  
AmeriCorps\* VISTA

MARISA FALERO  
P.O. Box 90632  
Brooklyn, NY 11209  
(718) 755-9615  
brooklyncounsel@gmail.com

### SYNOPSIS OF TESTIMONY BY MARISA FALERO IN MEETING ON DEED FRAUD

I've been a sole practitioner since August 2007 and I've had/worked on 8 cases alleging deed fraud.

This is significant because I stumbled on these cases. How many other lawyers are in my position?

#### Civil Litigation Problem – Whether Deed was Authorized is a Factual Issue

- (i) Makes throwing out the deed on a pre-discovery motion difficult;
- (ii) Many civil judges do not recognize it as a criminal matter;
- (iii) Not typical fraud – 5 elements that civil courts recognize
- (iv) No money to finance litigation
- (v) Disabled/incapacitated owners unable to bring litigation

#### Most cases Arise from Alleged Exploitation or Undue Influence Exerted on Incapacitated/Disabled

- (i) The majority of exploiters are Licensed Mom & Pop Real Estate Brokers or their Finders
  - a. Lack of regulation, reporting, monitoring
- (ii) There are symptoms that Unscrupulous Real Estate People/their Finders Recognize:
  - a. Unpaid tax or other liens;
  - b. A foreclosure;
  - c. Property is in disrepair or abandoned;
  - d. Criminal activity at the property;
  - e. Elderly/disabled owners or occupied by family of deceased owner;

#### In Virtually Every Case, the City Has Been Consulted but goes nowhere– APS/JASA

- (i) APS doesn't maintain clients who own their homes - Reasons:
  - a. Lack of Medicaid reimbursement
  - b. Lack of Knowledge of Social Services to Deal With Asset Cases
  - c. Lack of Branch of Social Services Equipped to Deal with Asset Cases
- (ii) No Guardianship: If the city isn't involved, it can't file a petition - so nothing happens if there is no family and no other party is able to retain counsel to petition:
- (iii) Ineffective Guardians/Failure to Quickly Audit Ineffective Guardians:
  - a. Community Guardians do not take Asset Cases;
  - b. Ineffective Guardians
  - c. Examiners appointed Move too Slow when there is Noncompliance

#### Examples:

- (i) *Deed fraud:*
  - 1. Marion W. – guardian case, Bay Ridge



- a. APS report inconclusive
  - b. Lifetime Cerebral Palsy Sufferer, Blind
  - c. No family here that was not 30 years younger than her
  - d. Father left big trust in 1968, Mother died in 1995
  - e. Neighboring Real Estate Professionals Got in before Mother's death
  - f. 1999 deed (recorded 2 years later) transferred house to them
2. Susan K – guardianship, Graves End resident
  - a. Mother got guardianship
  - b. Known mentally ill woman living in community after husband's death
  - c. House unattended after psychiatric hospitalizations
  - d. Neighboring Real Estate Professionals got her to sign a deed
    - i. Had prior indictment for deed matters
3. Queen Esther D – guardianship, Harlem
  - a. Ineffective guardianship created limbo
  - b. Mortgage foreclosure
  - c. Unpaid tax and other liens
  - d. Property in disrepair
  - e. Owner elderly disabled
4. 334 Convent Ave – Estate of Lena Bell/Charles W
  - a. Officer N. Washington filed repeated APS complaints re: exploitation by John Zi of elderly tenant, whom Zi used in numerous false deed cases
  - b. Charles W, heir, a disabled adult without a guardian, signed deed to Zi

(ii.) *Cases that could have or would have become deed fraud cases:*

5. Helen S – a guardian case - Maspeth
  - a. Hoarder was removed by APS after 2 heavy duty cleanings
  - b. No family
  - c. Guardian let her property rot, was occupied by squatters
  - d. Deed fraud would have been next based on letters/interest
6. Julio M – non-guardian case – Coney Island
  - a. 78 year old, illiterate, blind and no family
  - b. Tax foreclosure
  - c. Low fixed income, food stamps
  - d. Thought he was leasing groundfloor store
    - i. Signed an option to purchase – they are trying to enforce now
    - ii. Never paid rent and operated store for 2 yrs
  - e. Squatter moved into rental unit and beat him up – Bellevue released him to unsafe discharge because he couldn't get squatter out;
  - f. Multiple APS referrals
  - g. Multiple calls to Precinct

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 2/1/2016

(PLEASE PRINT)

Name: Gloria Sandiford  
Address: 645 Jefferson Ave. Bklyn  
I represent: Bedford Stuyvesant Real Estate Board  
Address: 368A ~~Euclid~~ Decatur St. Bklyn NY 11233

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Appearance Card

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☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: PAULA SEGAL, 596 ACRES  
Address: 540 President St.  
I represent: Maple Street Community Garden  
Address: 237 Maple St. (Tom LaFarge)

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☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Caroline Nagn  
Address: 17 Battery Place #728  
I represent: Center for NYC Neighborhoods  
Address: \_\_\_\_\_

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☐ in favor ☐ in opposition

Date: 2/1/2016

(PLEASE PRINT)

Name: Louise Charles (MFY client)

Address: 1331 Lincoln Place, Brooklyn

I represent: Myself

Address: \_\_\_\_\_

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I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 2/1/2014

(PLEASE PRINT)

Name: Belinda Luu for MFY Legal Services

Address: 299 Broadway, 4<sup>th</sup> Floor, New York

I represent: MFY Legal Services

Address: \_\_\_\_\_

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Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Joseph Fucito

Address: \_\_\_\_\_

I represent: NYC Sheriff

Address: 3010 Shea Ave, L.I.C. NY

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☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Rose Marie Cantano for NYLAG

Address: 7 Harrow Square, NY, NY 10004

I represent: Homeless in the 5 Boroughs

Address: \_\_\_\_\_

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Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Thomas LaTarge

Address: 2100 Beekman Place Apt 6A

I represent: Maple St. Community Garden / 596 Acres. org

Address: 237 Maple St., Brooklyn 11225

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☐ in favor ☐ in opposition

Date: 2/1/2016

(PLEASE PRINT)

Name: JENNY EISENBERG, LEGAL SERVICES OF NEW YORK

Address: 105 COURT ST. 4<sup>th</sup> FL., BROOKLYN NY 11201

I represent: LEGAL SERVICES OF NEW YORK

Address: SAME

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Appearance Card

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☐ in favor ☐ in opposition

Date: 2/1/16

(PLEASE PRINT)  
Name: Stacey Woods, Queens Legal Services

Address: 89-00 Sutphin Blvd, 5th Fl Jamaica, NY 11435

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

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☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)  
Name: MARISA FRODO

Address: PO Box 90632

I represent: Home owners

Address: \_\_\_\_\_

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☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)  
Name: Anne H Hill

Address: 66 John Street, BFL

I represent: Department of Finance

Address: 1 Centre St. SFL

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☐ in favor ☐ in opposition

Date: 2/1/16

(PLEASE PRINT)

Name: Jenny Braun-Friedman

Address: 120 46 Queens Blvd 3rd Fl, Kew Gardens NY 11415

I represent: The Legal Aid Society

Address: \_\_\_\_\_

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☐ in favor ☐ in opposition

Date: 2-1-2016

(PLEASE PRINT)

Name: ANDREW MALOZENOFF

Address: 311 Greenwich St Apt 6B, NEW YORK NY 10013

I represent: Brooklyn Legal Services Corp A

Address: 260 Broadway, 2nd Fl, Brooklyn NY 11211

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