

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
HOUSING PROTECTION UNIT

x

In the Matter of

Assurance No. 22-008

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

Clipper Equity LLC.,

Respondent.

x

**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG”) has commenced an investigation pursuant to Executive Law § 63(12) and Real Property Law § 227-f concerning the conduct of Clipper Equity LLC (“Respondent”) with respect to its solicitation of tenant involvement in past or pending landlord-tenant actions or summary proceedings from applicants for leasing of multi-family residential apartments in the building portfolio in which the Respondent and its principals have a management and/or ownership interest. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation as it relates to the Respondent, whether acting through their respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries and relief agreed to by the OAG and the Respondent (collectively, the “Parties”).

**OAG’S FINDINGS**

1) Clipper Equity LLC (“Respondent”) is the sole real estate property manager for a multi-family residential portfolio of over 70 residential properties in New York City.

2) Respondent is responsible for handling all tenant leasing applications in its portfolio as an “in-house” screener and does not designate outside brokers or leasing agents to act on its behalf.

3) Of the approximately seventy multi-family residential buildings under Respondent’s control in New York City, sixty-three are located in Brooklyn, New York and seven in Manhattan, with a combined total number of several thousand apartments in the portfolio.

4) Respondent became aware of changes to various residential real property laws in New York State, that were enacted under the Housing Stability and Tenant Protection Act (“HSTPA”) on or about June 14, 2019.

5) Specifically, Respondent became aware of the enactment of Real Property Law (“RPL”) §227-f which made illegal the use of past or pending landlord and tenant court records as a basis to deny housing to an applicant for residential rental housing. Under the law, “there shall be a rebuttable presumption that a person is in violation of this section if it is established that the person requested information from a tenant screening bureau relating to a potential tenant or otherwise inspected court records relating to a potential tenant and the person subsequently refuses to rent or offer a lease to the potential tenant.”

6) The OAG finds that during the period commencing July 15, 2019 through October 9, 2019, Respondent received tenant screening reports from its tenant screening vendor, Real Page On-Site LLC (“RP On-Site”), that included data on whether landlord and tenant court records existed for all applicants and resulted in the production of housing court records for approximately twenty-five of those potential tenants, even though that data had not been requested by Respondent for those applicants. Despite efforts by Respondent, during the same

period to have “RP On-Site” discontinue the provision of these landlord and tenant records in “RP On-Site’s” score calculation or leasing recommendations, “RP On-Site” continued to provide these records through October 9, 2019. Respondent represents that though these records were available, they did not use or rely upon them for making leasing decisions. On or about October 9, 2019, RP On-Site discontinued the inclusion of landlord and tenant court records in tenant screening reports.

7) Respondent received tenant background screening reports that included landlord and tenant actions or summary proceedings data from “RP On-Site” from July 15, 2019-October 9, 2019. Seven out of approximately twenty-five potential tenants whose screening reports contained landlord and tenant court records had their applications for housing denied. Respondent represents that it received the L&T data, despite its efforts through correspondence with RP On Site to discontinue the receipt of this information. Respondent further represents that the seven housing applications were all denied due to legally permitted criteria such as insufficient credit or income to rent ratio.

8) Respondent represents that sometime soon after October 9, 2019, for the majority of the properties it manages, it ceased using “RP On-Site” for tenant screening because of its belief that RP On Site was not complying with the law and began using the tenant screening bureau and property management platform, “Yardi Rent Cafe”. Respondent makes the affirmative representation that, after October 9, 2019 it has not:

- a) Requested any landlord and tenant court files of a potential tenant from any source;
- b) Received and/or examined any landlord and tenant court files of a potential tenant during the residential application process;
- c) Used criteria in tenant background check scoring that considers a history of landlord and tenant actions or summary proceedings.

9) The OAG finds that Respondent received housing court records in tenant screening reports from “RP On-Site” during the period from July 15, 2019-October 9, 2019. Respondent represents that it received those records despite its documented good faith efforts to have those records “not included” in “RP On-Site’s” leasing recommendations. During this same period, the OAG finds that seven tenants with landlord and tenant court records had their applications for residential housing with the Respondent denied. Respondent represents that landlord and tenant court records were not considered by Respondent for the purposes of making any leasing decisions with respect to those seven applicants and that the seven housing applications were all denied due to insufficient credit or income to rent ratio.

10) The OAG also finds that the Respondent requested the “marital status” of its applicants for housing in various on-line rental applications, including but not limited to, a leasing application form available through “Yardi Rent-Café”. (Exhibit A.) Respondent represents that this question was included in the rental application by “Yardi Rent Café” inadvertently, without Respondent’s knowledge or request. The OAG finds that the inclusion of the marital status question violated the New York City Human Rights Law (“NYCHRL”), New York City Administrative Code §8-107 *et seq.*, and the New York State Human Rights Law (“NYSHRL”), Executive Law § 290 *et seq.*

11) Respondent neither admits nor denies the OAG’s Findings in paragraphs 1-10. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG accepts this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12) based on the facts described above.

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

## RELIEF

12) General Injunction: To the extent that, and so long as the statues mentioned below remain in effect and have not been repealed or found by a court of competent jurisdiction to be void and unenforceable, Respondents shall not engage, or attempt to engage in conduct in violation of applicable laws, including but not limited to Executive Law § 63(12), RPL§227-f, NYCHRL, NYC Admin Code §8-107 et seq. and NYSHRL, Exec Law § 290 et seq. and expressly agree and acknowledge that any such conduct, as described herein, is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 11, supra, in addition to any other appropriate investigation, action, or proceeding.

13) Other Injunctive Relief: To the extent that and so long as the statues mentioned above remain in effect and have not been repealed or found by a court of competent jurisdiction to be void and unenforceable,

- a) Respondent shall not request landlord and tenant court records or “rental histories” as part of the tenant application screening process for residential rental housing in any building or building portfolio that it manages and/or owns.
- b) Respondent shall take all necessary steps to ensure that either outside vendors or in-house reviewers do not use landlord and tenant court records in the criteria and/or algorithm used to produce a leasing “score,” rating, or recommendation about the application of a potential tenant for residential housing. Respondent shall continue not to seek landlord and tenant court records from current or from future providers of tenant background check information and will also not seek these records themselves from applicants or other sources. Respondent agrees that if landlord and tenant court records are

inadvertently provided to them despite their requests to tenant screening bureaus or applicants for no records to be included, they will take immediate action to instruct the provider of these records to ensure that no further landlord and tenant court information is provided either on that application or on any future applications. Once a new background report and application has been produced that does not contain the prohibited landlord and tenant court records, a new leasing agent, whose determination will not have been tainted by knowledge of the records, will be assigned to review the application.

Respondent agrees to refrain from requesting the marital status of applicants for residential housing on all of its leasing platforms or portals whether in-person or in online interactions with potential residential tenants and whether in the written application or in an oral interview with the tenant applicant.

- c) The OAG may, amongst its other remedies, file a proceeding in State Supreme Court seeking entry of a judgment for a permanent injunction should it determine that Respondent has violated the permanent injunctions agreed to in this Assurance against the prohibited conduct. Respondent retains the right to defend that the alleged default conduct took place after signing this Assurance and did not constitute a violation of the enjoined activities contemplated by the Assurance.

14) Programmatic Relief:

- a) Respondent agrees, within 45 calendar days of the signing of this Assurance, to send written confirmation to every tenant screening bureau or outside leasing agent it currently uses to confirm that landlord and tenant records should not be sought or made available to Respondent to review in any format and shall not be included in the criteria/algorithm for any tenant scoring or leasing recommendation. Respondent

shall simultaneously send an email copy of this correspondence to Jane Landry-Reyes, Assistant Attorney General, Housing Protection Unit at [Jane.Landry-Reyes@ag.ny.gov](mailto:Jane.Landry-Reyes@ag.ny.gov);

b) Respondent has removed any request for “Marital Status” information from all its residential tenant application and leasing platforms available to the public and has provided the OAG with a copy of the amended application from its portal Rent Café. Respondent will provide within 30 calendar days an Affidavit from someone with personal knowledge acting on Respondent’s behalf, certifying that all amendments have been made in the manner described and identifying the publicly available platforms and portals where a prospective tenant would find the amended application. The Affidavit shall be sent via email to Jane Landry-Reyes, Assistant Attorney General, Housing Protection Unit at [Jane.Landry-Reyes@ag.ny.gov](mailto:Jane.Landry-Reyes@ag.ny.gov).

c) Respondent agrees to update any and all management and/or leasing manuals, guidance, memoranda and instructions to its leasing agents, whether employees or third-party agents to reflect the changes to its leasing practice herein.

d) Respondent expressly agrees and acknowledges that a material default in the performance of any obligation under this paragraph regarding programmatic relief is a violation of the Assurance and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 12, *supra*, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations pursuant to Executive Law § 63(15).

e) The remedies contained in paragraph 15(d) of this Assurance shall be in

addition to any other remedies the OAG shall have, whether under this Assurance or elsewhere, and shall not preclude the OAG from seeking alternative remedies either separately or combined with the remedy in paragraph 14(e).

15) Default Due to Misrepresentation: Respondent's material misrepresentation of any facts to the OAG which served as a basis for the Terms of this Assurance, including the OAG's agreement not to seek monetary penalties against Respondent, shall constitute a default under this Assurance.

### **MISCELLANEOUS**

16) Subsequent Proceedings: Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, and can enforce the specific performance of the relief in this Assurance as the parties would enforce a contract in the case of a breach, based on the conduct described above during the period beginning July 15, 2019. Respondent agrees and acknowledges that in such event: any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance; the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;

- So long as Respondents own or manage any real property containing residential apartments within the State of New York, and provided the statutes at issue in this Assurance are still in full force and effect, any civil action or proceeding must be adjudicated by the Courts of the State of New York, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue; and
- So long as Respondents own or manage any real property containing residential apartments within the State of New York, and provided the statutes mention in this Assurance are still in full force and effect, evidence of a violation of this



Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15) and OAG shall seek specific performance of the acts contemplated by this Assurance.

- If a court of competent jurisdiction determines that the Respondent(s) has/have violated the Assurance, the Respondent(s) shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Respondent retains the right to defend that the alleged default conduct took place after signing this Assurance and did not constitute a violation of the enjoined activities contemplated by the Assurance.

17. Effects of Assurance: All terms and conditions of this Assurance shall continue in full force and effect on any affiliated successor, assignee, or transferee of the Respondent. Respondent shall include in any such affiliated successor, assignment, or transfer agreement a provision that binds the affiliated successor, assignee, or transferee to the terms of the Assurance. No party may assign, delegate or otherwise transfer any of its rights or obligations under this Assurance without providing written notice of such assignment or delegation to the OAG. Notwithstanding anything to the contrary herein, this paragraph shall not apply to an unaffiliated purchaser for value. However, any entity associated with Respondent and/or its principals, shall not, for these purposes, be considered an unaffiliated purchaser.

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

b) Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon

the strict performance of any and all of the provisions of this Assurance to be performed by the Respondents.

18. Communications: All notices, reports, requests, and other communications pursuant to this Assurance must reference **Assurance No. 22-008**, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to:

Randi Gilbert, Esq.  
Phil Rosen, Esq.  
Horing, Welikson Rosen & Digrugilliers PC  
Attorneys at Law  
11 Hillside Avenue  
Williston Park, NY 11596  
[rgilbert@hwrpc.com](mailto:rgilbert@hwrpc.com)  
[prosen@hwrpc.com](mailto:prosen@hwrpc.com)

If to the OAG, to:

Jane Landry-Reyes, AAG  
Housing Protection Unit  
Office of the New York State Attorney General  
28 Liberty Street  
New York, NY 10005  
[Jane.Landry-Reyes@ag.ny.gov](mailto:Jane.Landry-Reyes@ag.ny.gov)

or if she is no longer employed in such capacity or is absent when any notice is required or decided to be given, to the person holding the title of, or acting as, Unit Chief, Housing Protection Unit.

19. Representations and Warranties:

a) The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and their counsel and the OAG's own factual investigation as set forth in Findings, Paragraphs (1)-(11) above. The Respondent represents and warrants that neither they nor their counsel have made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG.

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

c) The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondent further attests, represents and warrants that Jacob Bistricher, as the signatory to this Assurance, is a duly authorized officer acting on behalf of and with the ability to bind Clipper Equity LLC to the terms of this agreement.

20. General Principles:

a) Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

*b)* Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

*c)* Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

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

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

*f)* Respondent acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

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

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

*i)* This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, facsimile signatures, pdf signatures and copies of signatures shall be treated the same as

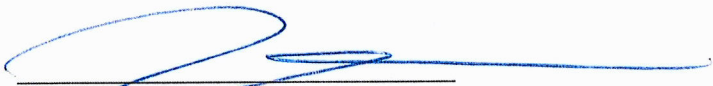


4611 11<sup>th</sup> Ave. Brooklyn NY

\_\_\_\_\_ ; that they are the principal of Clipper Equity LLC the corporation described in and which executed the above instrument; and that they signed their name thereto by like authority.

Sworn to before me this  
7<sup>th</sup> day of March, 2022

Jeffrey A. Kunin  
Notary Public, State of New York  
No. 30-4955985  
Qualified in Nassau County  
Commission Expires Sept. 11, 20 25



NOTARY PUBLIC