

ATTORNEY GENERAL OF THE STATE OF NEW YORK
HOUSING PROTECTION UNIT

In the Matter of

Assurance No. 22-080

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

402-404 Onderdonk BH LLC and Bluesky NY Management LLC

Respondents.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to N.Y. Executive Law 63(12) and RPAPL 768 into the attempted unlawful eviction of tenants at 402 and 404 Onderdonk Avenue, as well as the tenants’ rent stabilization status. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondents, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries. (collectively, the “Parties”).

OAG’s FINDINGS

1. 402-404 Onderdonk BH LLC purchased 402 Onderdonk Avenue, Ridgewood, New York (“402”) and 404 Onderdonk Avenue, Ridgewood, New York (“404”) (collectively “Buildings”) on June 9, 2022.

2. BlueSky NY Management LLC is the property manager of the Buildings and is affiliated with the BlueSky Group and Klosed Properties.

3. 402 is a five (5) unit building although there is a sixth unit doorway that is boarded up. There are currently two (2) units occupied in the building. Respondents represent that 402 is not covered by rent stabilization based on the unit count and Respondents are unaware of any challenge to said non-stabilized status.

4. 404 Avenue is currently a five (5) unit building that had six (6) units until about 2012 when the former landlord combined two units so that, as per its newest certificate of occupancy dated May 2, 2016, the number of units was reduced to five (5). There are currently four (4) units occupied in the building. Respondents hereby concede, that the units in 404 are covered by the rent stabilization laws subject to the following:

- a. Respondents reserve their right to seek an Order from DHCR for exemption from the Rent Stabilization Law and Code based upon Substantial Rehabilitation; and
- b. Respondents will conduct an assessment, within the time limits contained in this Assurance, to determine whether Respondents in good faith believe any units were deregulated by virtue of the High Rent/Vacancy Deregulation provisions of the Rent Stabilization Law and Code.

5. Respondents represent that prior to taking ownership of the Buildings, and shortly after taking ownership of the Buildings, Respondents were advised by both the prior owner and their prior counsel that both 402 and 404 were not covered by rent stabilization.

6. As of May 2022, Respondents represent that the leases for Units 1R, 2L, and 2R in 402 (“402 Tenants”) and 2L in 404 (“404 Tenant”) had expired. Based on their belief that the Units in 402 were unregulated and the advice of prior counsel in respect to 404 that 404 was not covered

by stabilization, on or about June 29, 2022, Respondents sent termination notices to the 402 Tenants and 404 Tenant. In addition to the fact that the termination notices all stated that the tenants' tenancies were not covered by the rent stabilization laws, the termination notices also stated that the Respondents would commence summary holdover proceedings after the expiration of the date provided in the termination notices to regain possession of the premises in issue.

7. Respondents represent that subsequent to the expiration of the leases to Units 2L and 2R, and subsequent to the issuance of the termination notices to said tenancies, the tenants to units 2L and 2R residing in the 402 Building moved out from their respective units.

8. On or about October 6, 2022, Respondents sent four (4) letters, emails, and text messages to the 402 Tenants and 404 Tenant at the Buildings stating that the tenant's lease had expired and that management had tried to contact them to no avail. The letters went on to state that if the tenant did not contact management by October 13th, 2022, Respondents would assume that the tenant had vacated and would change the apartment door locks. A copy of a letter is attached as Exhibit A.

9. On October 12, 2022, the OAG sent Respondents an email notifying them that the threat to change tenants' locks violates RPAPL 768's prohibition on unlawful eviction. The OAG demanded that Respondents rescind the notices and Respondents promptly complied.

10. Subsequently, the OAG spoke with Respondents about the notices and the stabilized status of 404 Onderdonk Avenue. Respondents have fully cooperated with the OAG's investigation and have admitted that a reduction in the number of units at 404 Onderdonk Avenue does not exempt any apartment from rent stabilization coverage. In addition, Respondents represent that they sent letters on or about October 14, 2022, informing the tenants of the four (4)

units in the Buildings that Blue Sky Management has no intention of changing any locks at the property”

11. Respondents represent that only four (4) units in the Buildings received any communication from them threatening to change the tenant’s apartment door lock as described in paragraph eight (8) of this Assurance and that no other tenants at the Buildings or any other building owned or managed by Respondents received this communication, in form or substance.

12. Respondents represent that no tenant at 404 Onderdonk Avenue vacated their apartment based on a termination notice sent to them stating that they are not covered by the rent stabilization laws.

13. OAG finds that Respondents’ communications that they are going to change the tenants’ apartment door locks and failure to treat tenants at 404 Onderdonk Avenue as rent stabilized are in violation of N.Y. Executive Law 63(12), RPAPL 768 and the Rent Stabilization Laws and Code.

14. Respondents admit to the OAG’s Findings, paragraphs 1 – 13 above and does not contest that the OAG is of the belief that Respondents’ communications that they are going to change the tenants’ apartment door locks and failure to treat tenants at 404 Onderdonk Avenue as rent stabilized are in violation of N.Y. Executive Law 63(12), RPAPL 768 and the Rent Stabilization Laws and Code.

15. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law 63(12), RPAPL 768 and the Rent Stabilization Laws and Code based on the conduct described above during June 9, 2022 - present.

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

RELIEF

16. General Injunction: Respondents shall not engage, or attempt to engage, in conduct in violation of RPAPL 768, and expressly agree and acknowledge that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 20, *supra*, in addition to any other appropriate investigation, action, or proceeding.

17. Programmatic Relief:

- a. On or before December 31, 2022, Respondents shall issue rent stabilized leases (renewal or initial as legally appropriate) at the proper legal regulated rent for each tenant at 404 Onderdonk Avenue, Ridgewood, NY.¹ In the event Respondent makes a good faith determination on or before December 31, 2022 that a unit became High Rent/Vacancy Deregulated under the applicable provisions of the Rent Stabilization Law and Code, Respondent shall not be required to issue a rent stabilized renewal lease and instead will send a letter to the tenant with a detailed explanation for why they believe the unit is deregulated with a copy sent to the OAG.
- b. At the same time Respondents are issuing renewal leases to the applicable tenants at 404 Onderdonk Avenue, Respondents shall also issue a letter to each tenant sent by certified mail and regular mail informing them that Respondents are rescinding

¹ Any subsequent adjustment of such legal regulated rents via court or DHCR order shall not be considered a default under this Assurance

any termination notices sent and that the applicable tenants will be issued rent stabilized leases as legally appropriate.

- c. Respondents have provided the OAG two sample letter it intends to send to the tenants on or before December 31, 2022, and same has been accepted by the OAG. The first letter addresses the termination notices that were sent to tenants who are now considered stabilized and Respondent agrees to rescind those notices. The second letter will be sent by Respondents to those tenants who Respondents determine are not regulated due to high rent decontrol explaining what the basis for same and notifying the tenant that they have a right to challenge and may wish to speak with an attorney.
- d. On or before December 31, 2022, Respondents shall register all units at 404 Onderdonk Avenue, Ridgewood, NY not otherwise determined in good faith to have been High Rent/Vacancy Deregulated pursuant to the applicable provisions of the Rent Stabilization Law and Code at the legal regulated rent and shall correct any previous improper registrations.² Respondent's issuance of rent stabilized leases, issuance of letters advising tenants of their rent stabilized status, and the registration and correction of any previous improper registrations, for 404 Onderdonk Avenue, Ridgewood, NY, are without prejudice to Respondent seeking an Order from DHCR for exemption from the Rent Stabilization Law and Code based upon the Substantial Rehabilitation of the 404 Onderdonk Avenue, Ridgewood, NY.

² For any unit determined in good faith by Respondents to have been High Rent/Vacancy Deregulated, Respondents will serve and file any required "exit" registration with DHCR.

- e. Respondents will conduct a mandatory training at its offices for every employee that will cover illegal lock outs and unlawful eviction laws to be provided by a not for profit organization. The training shall occur within 60 days from the Effective Date

18. Oversight/Monitoring:

- a. *Certification of Compliance:* The Respondents shall provide the OAG with a certification affirming its compliance with the requirements set forth in this Assurance, paragraph 17 (Programmatic Relief), to be submitted to the OAG within 90 days from the Effective Date. This certification shall be in writing and be signed by the Respondents.
- b. Respondents expressly agree and acknowledge that a default in the performance of any obligation under this paragraph is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 20, *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 described in paragraph 13, pursuant to Executive Law § 63(15).

19. Monetary Relief

- a. *Monetary Relief Amount:* Respondents shall pay \$1000.00 to any tenant who was in possession of the apartment who received communications threatening to change their locks described in paragraph 8 of this Assurance. Respondents represent that

the following tenants residing in the following units received said letter and each person will be entitled to the aforementioned \$1,000.00.

402 Onderdonk

1R: [REDACTED]

2L: [REDACTED]

2R : [REDACTED]

404 Onderdonk:

2L: [REDACTED]

Payment shall be made by attorney check, corporate or certified check, or bank draft which shall be made payable to the name of each tenant who received the communication and shall be sent within 10 days of the Effective Date. The payments shall be accompanied by a letter that has been approved by the OAG that explains why the tenant is receiving the payment and apologizes for threatening to change the tenant's apartment door locks.

b. Respondents have identified four households that received communications threatening to change the apartment door locks and will send payment to each named tenant in the household and to any other tenant who comes forward with proof that they received the communications from paragraph 8 of this Assurance, whether that tenant comes from the four households identified by Respondents or not.

MISCELLANEOUS

Subsequent Proceedings.

20. Respondents expressly agree and acknowledge that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of

the Assurance, or if the Assurance is voided pursuant to paragraph 26, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue.
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

21. If a court of competent jurisdiction determines that the Respondents have violated the Assurance, the Respondents 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.

Effects of Assurance:

22. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondents. Respondents shall include any such successor, assignment, or transfer agreement a provision that binds the successor, assignee, or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

23. Nothing contained herein shall be construed as to deprive any person of any private right under the law or deprive the Respondents to raise any defense in respect to any claim brought by any such person(s).

24. Any failure by the OAG to insist upon the strict performance by Respondents 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 Respondent.

Communications:

25. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 22-080, 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: Klosed Properties, c/o Steven Kashanian, 9 Park Place, Third Floor, Great Neck, NY 11021, or in his/her absence, to the person holding the title of Managing Principal and carbon copied to Kucker Marino Winiarsky & Bittens, c/o James Marino, Esq. and Nativ Winiarsky, Esq, 747 Third Avenue, 12th Floor, New York, New York 10017, JMarino@kuckermarino.com and NWiniarsky@kuckermarino.com;

If to the OAG, to: Brent Meltzer, Unit Chief, NYS OAG, 28 Liberty Street, 16th Floor, New York, NY, brent.meltzer@ag.ny.gov, or in his absence, to the person holding the title of Unit Chief, Housing Protection Unit.

Representations and Warranties:

26. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondents and the OAG's own factual investigation as set forth in Findings, paragraphs 1 - 12 above. The Respondents represent and warrant that it has not made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondents are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

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

28. The Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondents further represent and warrant that 402-404 Onderdonk BH LLC and Bluesky NY Management LLC, by Steven Kashanian, as the signatory to this AOD, is a duly authorized member acting on behalf of the aforesaid LLC's.

General Principles:

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

30. Respondents agree 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.

31. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondents violates the Assurance after its effective date.

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

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

34. Respondents acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

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


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

37. 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, copies of signatures shall be treated the same as originals. Documents executed, scanned, and transmitted electronically and

electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

38. The effective date of this Assurance shall be November 29, 2022.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: 

Brent Meltzer, Esq.
Unit Chief, Housing Protection Unit

Sworn to before me this
29th day of November, 2022


NOTARY PUBLIC

LEVY TALIA
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01LE6352616
Qualified in Nassau County
Commission Expires 12/24/2024