

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

**THE PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, Attorney General of the State
of New York,**

Plaintiff,

- against -

RAPHAEL TOLEDANO, ET AL.,

Defendants.

Index No. 450919/2019
IAS Part 36
Hon. Verna L. Saunders

SUPPLEMENTAL CONSENT ORDER AND JUDGMENT

Upon the Complaint of Plaintiff the People of the State of New York, by its attorney LETITIA JAMES, Attorney General of the State of New York ("OAG"), alleging defendants Raphael Toledano, Brookhill Properties, Adele Realty LLC, and Regal Property Group LLC (together, the "Toledano Defendants") engaged in illegal, fraudulent and deceptive conduct in violation of the New York General Business Law ("GBL") Article 22-A (§§ 349 and 350), the New York Executive Law § 63(12) and state and local housing and tenant protection laws in connection with their practices in managing and investing in rent-regulated apartment buildings in New York City; and upon the Consent & Stipulation, dated June 19, 2019, in which the parties consented to entry of the Consent Order and Judgment ("Consent Order") which was signed by the Hon. Verna L. Saunders on July 12, 2019 and filed with the New York County Clerk's Office on August 5, 2019; and upon Plaintiff's Motion to Enforce the Consent Order and the

accompanying affidavits and exhibits in support of that motion as filed December 24, 2020 (collectively the “Enforcement Motion”); and upon the Supplemental Consent & Stipulation, dated December 27, 2021 which is incorporated by reference herein and in which the parties consent to entry of this Supplemental Consent Order and Judgment (“Supplemental Consent Order”) and waive notice of entry thereof;

IT NOW APPEARS that RAPHAEL TOLEDANO on behalf of the Toledano Defendants is willing to enter into this Supplemental Consent Order in order to resolve the allegations contained in the Complaint, as well as the further allegations contained in the Enforcement Motion, and to avoid prolonged and costly litigation;

NOW, on application of LETITIA JAMES, Attorney General of the State of New York (“OAG”), attorney for Plaintiff herein (Mark Ladov and Brent Meltzer, Of Counsel), and upon consent of Defendants and their counsel, Benjamin Brafman and Jacob Kaplan of Brafman & Associates, P.C.;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows.

I. DEFINITIONS

As used throughout this Supplemental Consent Order, the terms set forth below shall mean as follows:

- A. **Action** means *People of the State of New York v. Raphael Toledano et al.*, New York County Supreme Court, Index No. 450919/2019, filed on June 19, 2019.
- B. **Complaint** means the Complaint filed by Plaintiff to commence the Action, including any amendments, corrections or supplements thereto.
- C. **Default** means any violation of the Consent Order or Supplemental Consent Order by the Toledano Defendants.

- D. **Defendants or Toledano Defendants** means Defendants Raphael Toledano, Brookhill Properties, Adele Realty LLC, and Regal Property Group LLC, and the special-purpose limited liability real-estate entities that own or have an interest in the Subject Properties over which Raphael Toledano exercises control, as described in the Complaint, as well as any subsequent entities created by any of the existing Defendants for the purpose of acquiring, owning, selling or managing real property, including but not limited to 449-451 Court Street Realty Corp. and 449-451 Court Street Corporation.
- E. **Effective Date** means the date the Parties sign the Supplemental Consent & Stipulation.
- F. **Including** means including but not limited to.
- G. **OAG** means Office of the Attorney General of the State of New York.
- H. **Parties** means the OAG and Defendants.
- I. **Plaintiff** means the People of the State of New York, by Letitia James, Attorney General of the State of New York.
- J. **Property Management** means any activities relating to the operation, control and oversight of real property, including but not limited to all activities relating to tenant leases, repairs and construction.
- K. **Property Management Company or PMC** shall mean Judith Drive Management, a subsidiary of Z+G Property Group, as the company that was appointed by the Independent Monitor to manage property owned by the Toledano Defendants pursuant to the terms of the Consent Order.
- L. **Real Estate Transaction or Transaction** shall mean the acquisition, transfer, assignment or sale of real property or any interest in real property (including any contractual agreement

to acquire, transfer, assign or sell real property at a future date), as well as the use of real property as security for any loan or transaction.

- M. **Rent-Regulated** means subject to rent control or rent stabilization laws and regulations.
- N. **Subject Properties** are the properties subject to the Consent Order and Supplemental Consent Order, which are residential buildings owned now or in the future by the Toledano Defendants or buildings that are the subject of any proposed or completed Real Estate Transaction now or in the future involving the Toledano Defendants.

II. JURISDICTION AND VENUE

- 1. This Court shall retain jurisdiction to enforce any proceeding seeking to enforce the terms of this Supplemental Consent Order, whether an action for specific performance, contempt, or any other relief. The Court shall also retain jurisdiction of this action for the purpose of carrying out or modifying the terms of this Supplemental Consent Order or granting such further relief as the Court deems proper.
- 2. This Supplemental Consent Order shall extend to the Toledano Defendants, their principals, directors, officers, shareholders, employees, assignees, and agents acting in concert or in participation with them.

III. COMPLIANCE WITH THE LAW

- 3. Defendants shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including any acts or omissions that abridge the legal rights of any Tenant of Record or Permitted Occupant. A non-exhaustive list of these laws is as follows: New York Executive Law § 63(12); New York General Business Law § 349; New York General Obligations Law § 7-101, *et seq.*; New York Real Property Law §§ 235-b, 441, 441-c; New York Rent Stabilization Code, 9 NYCRR §§ 2520.1 *et seq.*; New

York Rent and Eviction Regulations, 9 NYCRR §§ 2200-2211; New York Multiple Dwelling Law; New York City Administrative Code §§ 27-2005, 27-2004(a)(48); New York City Rent Stabilization Law, § 26-501 *et seq.*; New York City Rent Control Law, § 26-401 *et seq.*; New York City Housing Maintenance Code § 27-2001 *et seq.*; New York City Construction Codes § 28-101.1 *et seq.*; New York City Building Code, § 27-101, *et seq.*; New York City Childhood Lead Poisoning Prevention Act § 27-2056.1 *et seq.* and Implementing Regulations; and New York City Human Rights Law § 8-107(5).

IV. INJUNCTION ON FURTHER REAL ESTATE BUSINESS ACTIVITIES

4. As of the Effective Date, the Toledano Defendants have identified the residential buildings located at 305 Martense Street, Brooklyn, NY (the “Martense Street property”) and 449-451 Court Street, Brooklyn, NY (the “Court Street property”) as the only residential buildings owned by the Toledano Defendants (other than properties for Toledano’s personal or household use), and have attested that there are no additional properties that are owned by the Toledano Defendants or the subject of any pending or proposed Real Estate Transaction involving the Toledano Defendants.
5. The Toledano Defendants shall dispose of the Martense Street property within six (6) months from the Effective Date. Disposition of the Martense Street property is subject to OAG approval that the disposition will address all physical needs of the Martense Street property and adequately protects the health, safety and legal rights of tenants at the property. During the time that the Toledano Defendants continue to own the Martense Street property, the PMC shall continue to manage the property as laid out in the previous Consent Order and the following sections of the previous Consent Decree shall explicitly

continue to be in full force and effect on the Toledano Defendants' actions relating to the Martense Street property:

- a. Sections IV, paragraph 7(b) and (c);
- b. Section V; and
- c. Section VII, other than paragraphs 35, 42 and 44.

In addition, Toledano shall ensure that the PMC has sufficient funds to complete any repairs that affect the health and safety of the tenants at the property, including the provisions of essential services.

6. The Toledano Defendants may also close on the sale of the Court Street property, in order to fully liquidate the portfolio of commercial real estate owned by the Toledano Defendants.
7. Both of these transactions are subject to the terms and restrictions set forth in the Supplemental Consent and Stipulation, whose terms and conditions are incorporated into this Consent Decree such that a violation of the Supplemental Consent and Stipulation shall be a violation of this Consent Decree.
8. Except as provided in paragraphs 5, 6 and 7 of Section IV of this Supplemental Consent Order, the Toledano Defendants shall not take any further action to engage in any Real Estate Transaction or Property Management in New York State. For the avoidance of doubt, this injunction on Real Estate Transactions and Property Management by the Toledano Defendants shall include a prohibition on the Toledano Defendants' investment in or ownership of real estate (other than for Toledano's personal or household use); any other activities related to participation in the real estate industry; and any activities that would require a professional real estate broker's license.

9. The Toledano Defendants shall not engage in (or cause others to engage in) any other fraudulent or unlawful conduct, including but not limited to the conduct described in the Complaint.
10. The Toledano Defendants shall not cause others to engage in any real estate investment, ownership or transactional activities for the benefit of the Toledano Defendants.
11. Upon the closing of the Toledano Defendants' sales of the Court Street property and the disposition of the Martense Street property, the Toledano Defendants will dissolve any business entities under their control as necessary to comply with the terms of this Supplemental Consent Order.
12. After five (5) years from the date that Toledano disposes of the Martense Street property, Toledano may apply to the supreme court, upon at least sixty days notice to the OAG, for an order dissolving the injunction or modifying the same upon such terms and conditions as the court deems necessary or desirable. Such application for dissolution or modification of the injunction shall contain a recitation of the facts and circumstances which caused the granting of the injunction; Toledano's occupation and employment and his financial remuneration therefrom since the time the injunction was granted; his net worth at the time of the application and the source thereof, together with any other facts bearing upon the reasonableness of Toledano's application and his character, as may enable the court to issue an order that will properly dispose of such application in the interests of justice. A copy of such application, together with copies of any other papers in support thereof, shall be served upon the OAG at least sixty days prior to the return date thereof.

13. Upon the filing of Toledano's application, Toledano shall provide to the OAG all documents it deems necessary for the OAG to assess Toledano's application. The OAG shall be provided sufficient time to conduct an investigation into whether the injunction should be dissolved, modified or continued in whole or in part. The OAG shall be empowered to issue subpoenas and take testimony in connection with its investigation.
14. After the OAG has conducted its investigation, the OAG may file an answer to such application setting forth such facts as are pertinent to the determination by the court of the matter before it and whether said injunction should be dissolved, modified or continued in whole or in part and what conditions, if any, shall be attached to any dissolution or modification of said injunction.
15. After a hearing upon such application and after any further investigation, proof or testimony which the court may desire has been offered, or at any adjourned dates thereof, the court may make a final order dissolving the permanent injunction or modifying the same upon such terms and conditions as in its opinion are just and desirable, or in its discretion, may deny the application. Such order shall contain a direction that Toledano pay to the OAG the costs and expenses of the investigation in connection with the proceeding. The court shall grant no temporary or other relief from the ban in force pending a final determination of such application. No application shall be entertained: (a) where Toledano has been convicted of a felony or a crime that would be a felony if committed in the state of New York since the issuance of the ban, or (b) where Toledano has been found to have violated the Consent Order.

16. Nothing contained herein shall be construed to deny to or interfere with the power of the OAG to bring any other action or proceeding, civil or criminal, against Toledano at any time.

V. MONETARY PROVISIONS

17. Toledano shall within thirty (30) days of the Effective Date make any outstanding payments owed to the Monitor or Property Management Company for services rendered pursuant to the Consent Order.
18. A judgment is hereby entered pursuant to New York Executive Law § 63(12) jointly and severally against the Toledano Defendants, in favor of the OAG on behalf of the People of the State of New York, in the total amount of Seven Million Dollars (\$7,000,000.00). This amount represents the judgment of Ten Million Dollars (\$10,000,000.00) as entered by this Court in the prior Consent Order less the Three Million Dollars (\$3,000,000.00) (the "Settlement Amount") which the Parties agree will be satisfied as set forth in the accompanying Supplemental Consent and Stipulation.
19. This Judgment shall be suspended so long as the Toledano Defendants comply with the terms of this Supplemental Consent Order and the Supplemental Consent and Stipulation.
20. If the Toledano Defendants fail to comply fully with the terms of this Supplemental Consent Order or the Supplement Consent and Stipulation, then, upon application by the OAG, the Court shall direct that this judgment shall be reopened and suspension of the judgment lifted for the purpose of requiring payment of monetary relief totaling Seven Million Dollars (\$7,000,000.00).
21. The OAG may apply any monetary relief obtained from the Toledano Defendants (including monetary relief obtained to date and any additional monetary relief obtained in

the future pursuant to this Supplemental Consent Order) to restitution for individuals injured or harmed by Defendants' conduct as alleged in the Complaint and Enforcement Motion; penalties; disbursement to the Affordable Housing – AG Settlement Fund with HPD ; or the costs of this investigation as she determines in her sole discretion.

22. In any subsequent civil litigation by the OAG, including in a proceeding to enforce the OAG's rights to any payment or money judgment pursuant to this Supplemental Consent Order, such as a nondischargeability complaint in any bankruptcy case, the facts alleged in the Complaint and Enforcement Motion shall be taken as true, without further proof thereof. These facts are sufficient to establish all the elements necessary to sustain an action by the OAG pursuant to section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Supplemental Consent Order shall have collateral estoppel effect for such purposes.

VI. ENFORCEMENT

23. Any violation of this Supplemental Consent Order or the Supplemental Consent and Stipulation by the Toledano Defendants shall constitute a Default.
24. Prior to seeking judicial relief for a violation of this Supplemental Consent Order or Supplemental Consent and Stipulation, the OAG shall provide the Toledano Defendants with notice of the violation and an opportunity to cure. In the event the breach is not fully cured within 30 days, the OAG may exercise any rights reserved under this Supplemental Consent Order, including lifting the suspension of any money judgment, moving to enforce the Supplemental Consent Order or holding the Toledano Defendants in contempt of this Supplemental Consent Order. The OAG may, in its sole discretion,

seek immediate relief for a violation of this Supplemental Consent Order that is non-curable, or where necessary to protect the health, safety or rights of Tenants.

25. The Court, upon an application by the OAG stating that the Toledano Defendants are in Default under this Supplemental Consent Order, shall grant the relief requested by the OAG including but not limited to:
- a. Holding the Toledano Defendants in contempt for any violations of the permanent injunction on their engagement in Real Estate Transactions, Property Management, or any other business activity involving real property;
 - b. Reopening the suspended judgment for the purpose of requiring payment of monetary relief totaling Seven Million Dollars (\$7,000,000);
 - c. Appointing a Receiver to manage any real estate holdings acquired in violation of this Supplemental Consent Order's injunction on real estate activities, and granting the Receiver authority to manage or sell those properties in order to protect the health, safety and rights of Tenants and/or to satisfy any monetary relief owed under this Supplemental Consent Order;
 - d. Appointing a receiver to manage and sell the Martense Street property to a purchaser who will address all physical needs of the Martense Street property and adequately protects the health, safety and legal rights of tenants at the property.
 - e. Ordering the Toledano Defendants to disgorge any funds they acquired as a result of their violations of this Supplemental Consent Order.
26. The Toledano Defendants shall pay those costs paid by the OAG to third parties (e.g., translators, court fees, court reporters, etc.) related to any action to enforce this Supplemental Consent Order.

27. The OAG has agreed to the terms of the Supplemental Consent Order based on, among other things, the representations made to the OAG by Defendants and their counsel. To the extent that any representations made by Defendants in the Supplemental Stipulation and Consent are later found to be inaccurate or misleading, the OAG may make an application to the Court to void the Supplemental Consent Order or to seek the relief set forth in paragraph 25 for a Default by Defendants, and the Court shall grant such application.
28. The OAG has agreed to the terms of the Supplemental Consent Order based on Defendants' representations that they will endeavor in good faith to dispose the Martense Street property and Court Street property on the terms agreed upon by the Parties and set forth in the Supplemental Consent and Stipulation. If Defendants fail to close those transactions due to their misconduct, failure to act in good faith or any other reason that is within Defendants' control, then the OAG may make an application to the Court to void the Supplemental Consent Order or to seek the relief set forth in paragraph 25 for a Default by Defendants, and the Court shall grant such application.

VII. RECORD-KEEPING AND REPORTING

29. The Toledano Defendants shall provide copies of their income tax statements to the OAG on an annual basis for a period of five (5) years to document their ongoing compliance with the terms of this Supplemental Consent Order. The first tax return shall be provided by May 31, 2023 and the last tax return provided on May 31, 2027.

VIII. MISCELLANEOUS PROVISIONS

30. Nothing in this Supplemental Consent Order shall be construed as relieving Defendants of their obligation to comply with all state, city and federal laws and regulation, nor shall

- any of the terms of this Supplemental Consent Order be deemed to grant Defendants permission to engage in any acts or practices prohibited by such laws and regulations. Acceptance of this Supplemental Consent Order by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and Defendants shall make no representation to the contrary.
31. Any failure of the OAG to exercise any right under any provision of this Supplemental Consent Order shall not constitute a waiver of any rights of the OAG to enforce such provision prospectively.
32. Defendants shall not take any action or make any statement denying, directly or indirectly, the propriety of the Supplemental Consent Order by expressing the view that the Supplemental Consent Order or its substance is without factual basis. Nothing in this paragraph affects or impairs or is intended to control Defendants' (i) testimonial obligations or (ii) their respective rights to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party. This Supplemental Consent Order is not intended for use, and may not be used, by any third party in any other action or proceeding and is not intended, and should not be construed, as an admission of any liability by any Respondent.
33. Nothing contained in this Supplemental Consent Order shall be construed as to deprive any individual or entity of any private right of action under the law.
34. This Supplemental Consent Order (along with the Supplemental Consent & Stipulation that is incorporated by reference into this Supplemental Consent Order) sets forth all of the promises, covenants, agreements, conditions and understandings between the Parties concerning enforcement of the Consent Order. There are no representations,

arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Supplemental Consent Order that are not fully expressed herein. To the extent this Supplemental Consent order and the previous Consent order conflict, the Supplemental Consent Order shall control.

35. Defendants expressly agree and acknowledge that in the event of a Default beyond any applicable cure period, this Supplemental Consent Order shall in no way bar or otherwise preclude the OAG from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Supplemental Consent Order against Defendants, or from using in any way statements, documents, or other materials produced or provided by Defendants prior to or after the date of this Supplemental Consent Order.
36. Nothing in this Supplemental Consent Order shall be construed as precluding the OAG from investigating or prosecuting Defendants for criminal conduct of any kind unrelated to the Action addressed by this Supplemental Consent Order.
37. Nothing in this Supplemental Consent Order shall be construed as precluding the OAG from investigating, taking action against, or prosecuting Defendants for any violations of civil law unrelated to the Action addressed by this Supplemental Consent Order.
38. Defendants shall not state or imply or cause to be stated or implied that the OAG has approved, sanctioned, or authorized any practice, act, or conduct of Defendants.
39. Defendants waive any further notice of submission of this Supplemental Consent Order to and filing thereof with this Court and agree to accept service of a conformed copy by email to Jacob Kaplan at jkaplan@braflaw.com.

- 40. This Supplemental Consent Order shall be administered, construed, and enforced according to the laws of the State of New York.
- 41. Any notices, statements or other written documents required by this Supplemental Consent Order shall be provided by electronic mail to the intended recipient at the addresses set forth below, unless a different address is specified in writing by the party changing such address.

For Plaintiff, the New York State Attorney General:

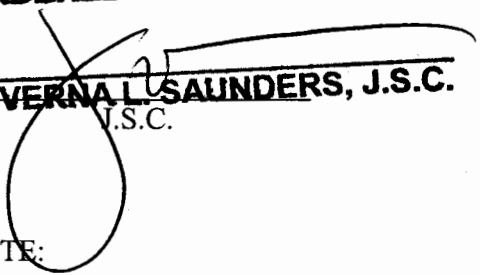
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- 42. The Clerk is hereby directed to enter this Supplemental Consent Order and Judgment forthwith.

SO ORDERED


~~HON. VERNAL SAUNDERS, J.S.C.~~
 J.S.C.

DATE: