

Docket + File  
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WINSTON  
& STRAWN  
LLP

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Of Counsel  
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November 15, 2010

**BY HAND**

The Honorable Richard M. Berman  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: United States v. L&M 93rd Street LLC, et al.  
10 Civ. 7495 (RMB)

Dear Judge Berman:

During the course of the telephone conference on Wednesday you set forth six concerns that you had concerning the proposed consent decree in this matter and invited the parties to attempt to address them and report back to you at the hearing tomorrow concerning any progress that we might have been able to make (page 23 of the transcript of the conference, a copy of which is attached.) Your expressed concerns were: first, whether the City of New York has a primary role to play in ensuring that new construction is compliant with the FHA; second, whether more than a single statutory penalty is appropriate as to a single building and whether the penalty, in this instance, which approaches the statutory maximum is appropriate; third, whether unclaimed money in the Aggrieved Person's Fund should revert to the Developer; fourth, whether there needs to be some assurance that the money deposited into the Accessibility Project Fund is appropriately expended and whether a reverter to the Developer should be included; fifth, whether the education program should be directed only to the "decision makers"; and sixth, whether the three year term of the consent decree is too long. (The transcript at pages 23 through 25.)

Following the conference further discussions with the attorneys in the U.S. Attorney's Office ("USAO") have not been productive. As described in the USAO's letter to you dated October 29, 2010, the settlement from the Government's perspective is the result of input from several Department of

NY:1314507.1

- BEIJING
- CHARLOTTE
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- GENEVA
- HONG KONG
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- NEWARK
- PARIS
- SAN FRANCISCO
- SHANGHAI
- WASHINGTON, D.C.

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The Honorable Richard M. Berman  
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Justice officials in Washington and perhaps for that reason the USAO attorneys, following the telephone conference, reasserted that from the Government's perspective none of the terms of the Consent Decree may be modified in any way, including any of the six terms that you addressed during the telephone conference. Moreover, in response to your observation that the parties are free to enter into a private settlement agreement, without the need for any input by the Court, the USAO attorneys asserted that it's not the policy of the USAO or the Justice Department to utilize private settlements and that is not an option. They did suggest a bifurcated settlement in which only the terms that the Court finds to be objectionable would be transferred to a private side agreement. Our response was that such an arrangement would be an obvious "end run" around the Court's concerns and would likely not be satisfactory to the Court, but in any event it is not satisfactory to our client. The result therefore is that whereas our client has no particular appetite for a complex and potentially expensive lawsuit, the Federal Government has left it with no realistic option. It is therefore prepared to proceed with the lawsuit with the objective of seeking a final resolution that is more clearly reflective of the public interest as suggested by the Court, and which is not as burdensome and punitive as the existing Consent Decree. It is relegated to litigation whether or not that is its desire, but in the process it will seek a prudent resolution of the critical issues that will be contested, including those that the Court clearly described.

In its endorsed order dated November 1, 2010, the court invited our client, the Developer, in its response to provide copies of any building completion approvals by, e.g., any building inspectors, such as certificates of occupancy, and we have previously submitted the most recent temporary certificate of occupancy. In further response to that invitation we are including with this letter the Department of Buildings Inspection History for the building. It shows that the building has been inspected on several occasions since the first temporary C of O was issued. We are also enclosing two inspection reports that we have been able to obtain from the Building Department, dated June 23, 2006 and August 14, 2006. Further, several times during the course of the telephone conference you inquired concerning what role the City plays in ensuring that new buildings are designed and built in compliance with the City's LL #58, as well as in compliance with the FHA, and you suggested that it does not appear to have been Congress' intent to make US Attorneys after the fact building inspectors, following the completion of new buildings and after the issuance of certificates of occupancy. (Transcript pages 10 and 13-15). In response to that inquiry we enclose a copy of a letter dated July 14, 2008 from Michael Cardozo, Corporation Counsel of the City of New York, to Michael A. Garcia, the then U.S. Attorney, addressing precisely that issue. As set forth by Mr. Cardozo, it is the City's view that compliance with Local Law 58 constitutes compliance with the FHA as specifically provided in the FHA statute. When the City inspects for compliance with the NYC building code, including LL 58, it believes that it is also effectively, if indirectly, inspecting for compliance with the FHA. Mr. Cardozo's office on Friday specifically authorized me to deliver this letter to you setting forth the City's position.

While the USAO asserts that this LL 58 issue is a "red herring" because it has alleged that the building in question also violates LL 58, the Developer has denied that and it is undisputed that the USAO has not conducted any LL 58 inspection and has produced no list of

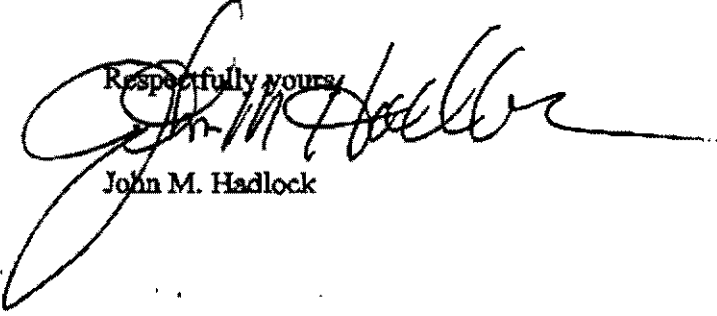
**WINSTON & STRAWN LLP**

The Honorable Richard M. Berman  
November 15, 2010  
Page 3

alleged I.L. 58 violations to the Developer. Therefore, we believe the issues raised by the Corporation Counsel Cardozo are critical to the Developer's dispute with the USAO and will be a critical issue to be resolved in this litigation.

We apologize that we are submitting this letter after the noon deadline that you requested. We were not able to meet with our client until this morning.

Respectfully yours,



John M. Hadlock

JMH/cm  
Enclosures



THE CITY OF NEW YORK  
LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, N.Y. 10007-2801

MICHAEL A. CARDOZO  
*Corporation Counsel*

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Fax: (212) 227-5641  
mcardozo@law.nyc.gov

July 14, 2008

Michael A. Garcia  
United States Attorney  
Southern District of New York  
36 Chambers Street  
New York, NY 10007

Re: Fair Housing Act investigation

Dear Mike:

The Real Estate Board of New York ("REBNY") has apprised the City of the investigation your office has undertaken concerning the compliance of a number of developers with the design and construction requirements of the Fair Housing Act. It has also advised us of the meeting your Office had with REBNY representatives last week. Following up on my conversations with Lev Dawson, I am writing to urge that your office consider that, in the opinion of the City of New York, compliance with New York City's Local Law 58 of 1987 satisfies the Fair Housing Act requirements.

The City of New York takes pride in its leadership in regulating design and construction to promote accessibility, represented by the adoption of Local Law 58. This was recognized in Congress when then Representative Charles Schumer alluded to Local Law 58 during debate on the proposed Fair Housing Act Amendments, stating: "After working with the disability rights groups, the National Association of Home Builders, and the realtors in my district who are currently operating under a similar, but more stringent New York law, I am convinced that the bill's minimal requirements for accessibility are the way to go."

The Fair Housing Act, as you know, requires at §3604(f)(3)(C) that multifamily dwellings have nine elements of accessible design, and provides at §3604(f)(5) that "If a ... local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph." Our Local Law 58 indeed addresses all the features of accessibility required by §3604(f)(3)(C). While it does not impose precisely the same requirements as the various standards that have been recognized as "safe harbors" for purposes of the Fair Housing Act, this is not required in order to

satisfy the intent of §3604(f)(5). To the contrary, HUD's regulatory materials acknowledge that the Act allows for a variety of technical standards to be recognized as meeting its requirements:

Congress did not intend to limit the ways to comply with the requirements of the Act to the ANSI A117.1 standard. Congress specified the ANSI A117.1 standard in the Act in order to assure designers of new multifamily housing that if they follow the ANSI standard, they will have met the Act's adaptive design requirements. Congress also noted that its reference to ANSI was not intended to require "that designers follow this standard exclusively, for there may be other local or state standards with which compliance is required or there may be other creative methods of meeting these standards." H.R. Rep. No. 711, 100th Cong., 2d Sess., p.27. (1988).

Interpreting the Fair Housing Act to impose requirements developments beyond those contained in the Local Law could force an owner to incur significant costs, even where an investigation does not proceed to trial. The City is particularly concerned with the potential destabilizing impact on affordable housing developments that have slim operating margins and can ill afford the legal costs they would entail in the course of an investigation.

As I told Lev, I would very much appreciate the opportunity to meet with you to discuss this matter further.

Sincerely yours,



Michael A. Cardozo

MAC/ay

- cc: Sara Shudofsky
- Sarah E. Light
- Brian M. Feldman

Inspection History for Job 103940149

Page 1 of 1



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NYC Department of Buildings  
Inspection History for Job 103940149

Page: 1 of 2

Premises: 2491 BROADWAY MANHATTAN  
BIN: 1087655 Block: 1240 Lot: 62

Job No: 103940149

Job Type: NB - NEW BUILDING

APP SEQ	INSP DATE	WORK ORDER	DISPOSITION	DISP DATE	INSPECTOR ID
001	06/23/2006	<del>1-06-02363</del>	A - OUTST. OBJECTIONS	06/23/2006	2199
001	07/24/2006	<del>1-06-02991</del>	B - SIGNOFF TEMP C/O	07/24/2006	0469
002	08/14/2006	<del>1-06-03155</del>	B - SIGNOFF TEMP C/O	08/14/2006	2199
003	08/28/2006	<del>1-06-03472</del>	B - SIGNOFF TEMP C/O	08/28/2006	1797
003	09/26/2006	<del>1-06-03886</del>	3 - SITE NOT READY	09/26/2006	2199
003	10/06/2006	<del>1-06-03927</del>	B - SIGNOFF TEMP C/O	10/06/2006	2199
004	11/29/2006	<del>1-06-04735</del>	B - SIGNOFF TEMP C/O	11/29/2006	2199
005	12/20/2006	<del>1-06-04976</del>	A - OUTST. OBJECTIONS	12/20/2006	2199
006	01/08/2007	<del>1-06-05390</del>	B - SIGNOFF TEMP C/O	01/08/2007	2188
006	01/10/2007	<del>1-07-00158</del>	B - SIGNOFF TEMP C/O	01/10/2007	1797
006	01/11/2007	<del>1-07-00160</del>	B - SIGNOFF TEMP C/O	01/11/2007	2196
011	05/27/2008	<del>1-06-02288</del>	A - OUTST. OBJECTIONS	05/26/2008	2224
011	06/04/2008	<del>1-06-02714</del>	B - SIGNOFF TEMP C/O	06/04/2008	1718
017	11/18/2009	<del>1-09-05102</del>	B - SIGNOFF TEMP C/O	11/18/2009	2224
019	06/02/2010	<u>1-10-01896</u>	A - OUTST. OBJECTIONS	06/02/2010	2224

Next

- Copy ATTACHED

If you have any questions please review these [Frequently Asked Questions](#), the [Glossary](#), or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.

Inspection History for Job 103940149

Page 1 of 1



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NYC Department of Buildings  
Inspection History for Job 103940149

Page: 2 of 2

Premises: 2481 BROADWAY MANHATTAN  
BIN: 1087558 Block: 1240 Lot: 62

Job No: 103940149

Job Type: NB - NEW BUILDING

APP SEQ	INSP DATE	WORK ORDER	DISPOSITION	DISP DATE	INSPECTOR ID
019	08/10/2010	<u>1-10-02162</u>	B - SIGNOFF TEMP C/O	08/10/2010	2351 - Copy Attached
020	08/30/2010	<u>1-10-03160</u>	1 - NO ACCESS/PERSON	08/30/2010	1773
020	09/09/2010	<u>1-10-03307</u>	B - SIGNOFF TEMP C/O	09/09/2010	2199 - Copy Attached
021	09/27/2010	<u>1-10-03499</u>	B - SIGNOFF TEMP C/O	09/30/2010	2224 - Copy Attached

[Previous](#)

If you have any questions please review these [Frequently Asked Questions](#), the [Glossary](#), or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.

10S15H1108U0P:15H:8.5V:06:08:0T15.8727CK2H17Ea14L11Ls0Ca0R100 10us0p12h0s0b4059T  
 CERTIFICATE OF OCCUPANCY INSPECTION WORK ORDER FORM 08/08/06 PAGE 1  
 JOB: 103940149 WORKORDER #: 1-06-03155

**BUILDINGS** DEPARTMENT  
 BOROUGH : MANHATTAN CB: 107  
 LOCATION : 250 WEST 93 STREET  
 APPLICANT NAME : West, David 646-208-4190

APPROVED PLANS  
 DATE 8/6/05

INSPECTOR NAME : MULZAC DEAN      INSPECTION NOT CONDUCTED      INSPECTION RESULT  
 BADGE NUMBER : 2199      1. NO ACCESS/PERSON AT SITE      A. OUTSTANDING OBJECTION  
 INSPECTION DATE: 08/14/2006      2. NO APPROVED PLANS AT SITE      B. CONST SIGN-OFF TEMP C/O  
 INSPECTION TIME: 08:00      3. SITE NOT READY      C. CONST SIGN-OFF FINAL C/O  
 4. UNABLE TO MEET APPOINTMENT

DEAN MULZAC 2199 8/14/06 (INSPECTOR) (BADGE #) (DATE)  
 [Signature] 1797 8/14/06 (SUPERVISOR) (BADGE #) (DATE)

THESE INSPECTION RESULTS ARE SUBJECT TO SUPERVISORY REVIEW AND ARE NOT OFFICIAL UNTIL REFLECTED IN BIS. YOU MAY VIEW OFFICIAL INSPECTION RESULTS ON-LINE AT NYC.GOV/BUILDINGS BY ACCESSING THE BUILDING INFORMATION SYSTEM (BIS).

CARBON MONOXIDE DETECTORS INSTALLED

FLOORS INSPECTED : CEL ROF PEN 001 001-012  
 EMPLOYEES WORKER 13 BTARU K, 14<sup>TA</sup> TO 20<sup>TA</sup> FOR BTARU F Room  
 OUTDOOR/INDOOR RECREATION

OCCUPANCY/USE

FLOOR/S	MAX PER	LIVE HABIT LOAD ROOMS	BLDG CODE OCCUPANCY	DWELLING RM UNITS	ZONING USE	DESCRIPTION	TEMP C/O
CEL	8	06	D-2		2	MECHANICAL EQUIPMENT ROOMS	—
			B-2		2	Superintendent's Shop	—
			B-2		2	Employees Locker Rooms	Y
			B-2		10	Commercial Storage	—
			B-2		2	Building Storage Rooms	—
001	1		B-2		10	Package Room	—
	4		E		10	Commercial Lobby	—
	1		B-2		2	Mail Room	—
	318		C		10	Retail Sales	—
	4	100	J-2		2	Residential Lobby	—



CERTIFICATE OF OCCUPANCY INSPECTION WORK ORDER FORM  
JOB: 103940149

08/08/06 PAGE 2  
WORKORDER #: 1-06-03155

FLOOR	NO. OF UNITS	BLDG CODE	DWELLING RM UNITS	ZONING USE	DESCRIPTION	TEMP C/O
002	204	100	C		10	
					Retail Sales	
003	2		D-2		2	
					Mechanical Equipment Rooms	
	40	3	J-2	1	2	
					Apartment	
	20		F-2		2	
					Outdoor Recreation Space	
	65		F-3		2	
					Indoor Recreation Space	
	4		D-2		2	
					Boiler Room	
	5		E		2	
					ACCESSORY RENTAL OFFICE.	
	10		B-2		2	
					Laundry Room	
	1	100	E		2	
					ACCESSORY SUPERINTENDENT'S OFFICE.	
004-013	40	19	J-2	10	2	
					Apartments (each floor)	
014	40	12	J-2	6	2	
					Apartments + Three Terraces	
015-020	40	12	J-2	6	2	
					Apartments (each floor)	
PEN	100		D-2		2	
					Elevator Machine Room, Water Tank	
RDF	100		D-2		2	
					Mechanical Equipment Rooms	

NOTE: RESIDENTIAL AMENITY SPACES ARE TO BE USED BY TENANTS ONLY THERE WILL NOT BE A SERVICE/ENTRANCE COVER CHARGE

RESTRICTIVE DECLARATIONS

DECL PAGE # : 00000

CERTIFICATE OF OCCUPANCY INSPECTION WORK ORDER FORM

08/28/06 PAGE 3

JOB: 103940149

WORKORDER #: 1-06-03155

J-2 OCCUPANCY CHECKLIST

REF ITEM	COM	N	NOT	N	N	REF	OBJ	FLOOR	ROOM	DIR	ARTICLE/ ELEMENT	COMMENTS
	A	ACC	I	C	#	RSN						



\*\*\*\*\* NO CHECKLIST ITEMS FOUND \*\*\*\*\*

REF #	OBJ RSN	FLOOR	ROOM	DIRECTION	ARTICLE/ ELEMENT	COMMENTS	OBJ RMV
01.							
02.							
03.							
04.							
05.							
06.							
07.							
08.							
09.							
10.							

CHECKLIST RESULTS

COM = COMPLIANCE      N/I = NOT INSPECTED  
 N/A = NOT APPLICABLE    NC = NON-COMPLIANCE  
 NOT/ACC = NOT ACCESSIBLE

OBJECTION REASONS (INSPECTOR)

NC = NOT COMPLETE  
 IM = IMPROPERLY COMPLETED  
 PD = PLAN DEVIATION-NOT ACCORDING TO PLAN  
 LR = LOCAL REQUIREMENTS NOT MET

\*\* END OF FORM \*\*

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 CERTIFICATE OF OCCUPANCY INSPECTION WORK ORDER FORM 06/08/06 PAGE 1  
 JOB: 103940149 WORKORDER #: 1-06-02363

**BUILDINGS** BOROUGH : MANHATTAN CB: 107  
 LOCATION : 250 WEST 93 STREET  
 APPLICANT NAME : West, David 212-244-4427

APPROVED PLANS  
 DATED 07/06/06

INSPECTOR NAME : MULZAC DEAN INSPECTION NOT CONDUCTED INSPECTION RESULT  
 BADGE NUMBER : 2199 1. NO ACCESS/PERSON AT SITE 1. OUTSTANDING OBJECTION  
 INSPECTION DATE: 06/23/2006 2. NO APPROVED PLANS AT SITE 2. CONST SIGN-OFF TEMP C/O  
 INSPECTION TIME: 08:00 3. SITE NOT READY 3. CONST SIGN-OFF FINAL C/O  
 4. UNABLE TO MEET APPOINTMENT

DEAN MULZAC 2199 06/23/06 [Signature] 1771 06/23/06  
 (INSPECTOR) (BADGE #) (DATE) (SUPERVISOR) (BADGE #) (DATE)

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(12<sup>TH</sup> FLOOR B, C, D, H, J, K ONLY)

FLOORS INSPECTED: C, L, 3<sup>RD</sup> FLOOR 12, PIA, ROOF

4<sup>TH</sup> FLOOR 1<sup>ST</sup> FLOOR ALL APTS, EXCLUDING THE 'A' APTS. OCCUPANCY/USE

FLOOR/S	MAX PER	LIVE HABIT LOAD ROOMS	BLDB CODE OCCUPANCY	DWELLING RM UNITS	ZONING USE	DESCRIPTION	TEMP C/O
CEL	8	08	D-2		2	MECHANICAL EQUIPMENT ROOMS	Y
			B-2		2	Superintendent's Shop	Y
	14		B-2		2	Employees Locker Rooms	Y
	85		B-2		10	Commercial Storage	Y
			B-2		2	Building Storage Rooms	Y
001	1		B-2		10	Package Room	Y
	4		E		10	Commercial Lobby	Y
	1		B-2		2	Mail Room	Y
	318		C		10	Retail Sales	Y
	4	100	J-2		2	Residential Lobby	Y

CERTIFICATE OF OCCUPANCY INSPECTION WORK ORDER FORM 06/08/06 PAGE 2  
 JOB: 103940149 WORKORDER #: 1-06-02363

BUILDINGS			BLDG CODE	DWELLING	ZONING	DESCRIPTION	TEMP
FLOOR	NO.	LIVE UNITS	OCCUPANCY	RM UNITS	USE		C/O
002	204	100	C		10		2
						Retail Sales	
003	2		D-2		2		2
						Mechanical Equipment Rooms	
	40	3	J-2	1	2		2
						Apartment	
	20		F-2		2		2
						Outdoor Recreation Space	
	65		F-3		2		2
						Indoor Recreation Space	
	4		D-2		2		2
						Boiler Room	
	5		E		2		2
						ACCESSORY RENTAL OFFICE.	
	10		B-2		2		2
						Laundry Room	
	1	100	E		2		2
						ACCESSORY SUPERINTENDENT'S OFFICE.	
004-013	40	19	J-2	10	2		2
						Apartments (each floor)	
014	40	12	J-2	6	2		2
						Apartments + Three Terraces	
015-020	40	12	J-2	6	2		2
						Apartments (each floor)	
PEN	100		D-2		2		2
						Elevator Machine Room, Water Tank	
ROF	100		D-2		2		2
						Mechanical Equipment Room	

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RESTRICTIVE DECLARATIONS

DECL PAGE # : 00000

CARBON MONOXIDE DETECTORS ARE INSTALLED.

CERTIFICATE OF OCCUPANCY INSPECTION WORK ORDER FORM

06/28/06 PAGE 3

JOB: 103940149

WORKORDER #: 1-06-02363

J-2 OCCUPANCY CHECKLIST

REF ITEM	OBJ #	FLOOR	ROOM	DIRECTION	ARTICLE/ ELEMENT	COMMENTS
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\*\*\*\*\* NO REQUIRED CHKLIST CATEGORY(S) FOR \*\*\*\*\*  
 \*\*\*\* OCCUPANCY/USE JOB-TYPE COMBINATION - J2NB \*\*\*\*

REF #	OBJ RSN	FLOOR	ROOM	DIRECTION	ARTICLE/ ELEMENT	COMMENTS	OBJ RMV
01.	LR				SUBMIT FIRE PROTECTION PLAN (APPROVED)		
02.	LR				<del>SUBMIT LETTERS STATING CURRENT MONITORING AND SMOKE DETECTOR ARE COMPLIANT</del>		
03.	NC				COMPLETE THE INSTALLATION OF BATHROOM FIXTURES AT 3RD FLOOR RENTAL OFFICE AND LOCKER ROOM IN THE BASEMENT.		
04.							
05.							
06.							
07.							
08.							
09.							
10.							

*[Signature]*  
 (INSPECTOR)

CHECKLIST RESULTS  
 COM = COMPLIANCE N/I = NOT INSPECTED  
 N/A = NOT APPLICABLE NC = NON-COMPLIANCE  
 NOT/ACC = NOT ACCESSIBLE

OBJECTION REASONS  
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\*\* END OF FORM \*\*