

People v Xi Hui Wu

2025 NY Slip Op 34324(U)

November 8, 2025

Supreme Court, New York County

Docket Number: Index No. 452904/2022

Judge: Anar R. Patel

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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PEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

Plaintiff,

- v -

XI HUI WU, A/K/A STEVE WU, XIAO RONG
YANG, TCJ CONSTRUCTION INC., and 345
OVINGTON LLC,

Defendants.

-and-

SHIMON AVRAHAMI, YECHIEL SHIMON SPREI,
A/K/A SAM SPREI, and JOHN DOE #1 – #10,

Relief Defendants.

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 77, 78, 82–84, 131, 137, 141, 186–302, 304, 306–315 were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

The Attorney General of the State of New York (“NYAG” or “Plaintiff”) brings this action on behalf of the State of New York against Xi Hui Wu a/k/a Steve Wu (“Wu”), Xiong Rong Yang (“Yang”), TCJ Construction Inc., and 345 Ovington LLC (“Sponsor”) (collectively “Defendants”), for violations of Article 23-A of New York’s General Business Law (the “Martin Act”), Executive Law §63(12), General Obligations Law §7-103, and Banking Law §§590(2)(a) and 599-c (*see* Second Amended Complaint (“Complaint”), NYSCEF Doc. No. 190). NYAG separately names Shimon Avrahami, Yechiel Shimon Sprei, and John Doe #1 – #10 as Relief Defendants (*id.*).

NYAG discontinued the action, without prejudice, against 345 Ovington LLC (*see* Stipulation, NYSCEF Doc. No. 131) and Shimon Avrahami (*see* Stipulation, NYSCEF Doc. No. 141). TCJ Construction Inc. has not appeared in this action (*see* Order, NYSCEF Doc. No. 137).

NYAG now moves, pursuant to CPLR § 3212(e) and (g), for partial summary judgment on the third, fourth, fifth, and sixth causes of action in the Complaint, judgment in the amount of

\$4,227,888.00, plus interest and costs, and a permanent injunction precluding Wu from selling securities in New York (*see* Notice of Motion, NYSCEF Doc. No. 186).

Relevant Factual and Procedural Background

This action arises from an alleged multi-year scheme perpetrated by Wu and his former spouse, Yang, through their company, Sponsor, in connection with the sale of real estate securities in a residential apartment building located at 345 Ovington Avenue, Brooklyn, New York (the “Building”) (NYSCEF Doc. No. 190). The Court refers to the Decision and Order on Mot. Seq. 002 for a recitation of the underlying facts in this action (Margaret A. Chan, J.S.C.) (NYSCEF Doc. No. 137).¹

Plaintiff alleges five distinct categories of claims underlying the fourteen (14) causes of action (*see* NYSCEF Doc. No. 190). The first category, constituting Plaintiff’s first and second causes of action, relates to the alleged illegal sale of units in the Building and the collection of fees without a valid offering plan on file with the NYAG. The second category, constituting Plaintiff’s third, fourth, and ninth causes of action, pertains to Defendants’ alleged mismanagement and misappropriation of purchasers’ deposits and down payments. The third category, constituting Plaintiff’s fifth, sixth, seventh, eighth, tenth, and thirteenth causes of action, covers alleged fraudulent and illegal conduct concerning Defendants’ representations in the ultimately rejected offering plan filed with the NYAG. The fourth category, constituting Plaintiff’s eleventh and twelfth causes of action, pertains to Wu engaging in the mortgage business without a license. The fifth category, constituting Plaintiff’s fourteenth cause of action, relates to Defendants’ violation of the Rent Stabilization Law (“RSL”).

By Order entered February 27, 2024, the Court (Margaret A. Chan, J.S.C.) dismissed the ninth and twelfth causes of action as time-barred, and otherwise denied Defendants’ Wu and Yang’s motions to dismiss as to the remaining causes of action (*see* NYSCEF Doc. No. 137). In addition, upon the filing of an involuntary Bankruptcy proceeding against Sponsor (*see* NYSCEF Doc. No. 310), the Trustee in Bankruptcy filed a motion to sell the Building (*see* Motion, NYSCEF Doc. No. 308). The Bankruptcy Court granted relief, allowing the property to be sold for \$10,475,000 (*see* Order, NYSCEF Doc. No. 309).

Plaintiff now seeks summary judgment on its third, fourth, fifth, and sixth causes of action, alleging failure to deposit purchase funds into escrow accounts; failure to safeguard escrow deposits; and fraud and misrepresentation in connection with the sale or offering of real estate securities. Plaintiff also seeks judgment in the amount of \$4,227,888, plus interest and costs, and a permanent injunction precluding Wu from selling securities in New York.

Legal Discussion

It is well established that the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*see Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324–325 [1986]; *Zuckerman v City of*

¹ This case was re-assigned from Justice Chan to this Court (Patel, J.) as of August 1, 2025. NYSCEF Doc. No. 318 (Notification from Court).

New York, 49 NY2d 557, 562 [1980]). Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

However, if the proponent makes such a showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact (*see Zuckerman v City of New York*, 49 NY2d at 562). In deciding a motion for summary judgment, the Court must view the evidence in the light most favorable to the nonmoving party (*see Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 [2007]). Mere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient to defeat summary judgment (*see Zuckerman v City of New York*).

Third and Fourth Causes of Action

The third and fourth causes of action allege misuse of escrow funds in violation of Executive Law §63(12) and the Martin Act.

Executive Law §63(12) authorizes NYAG to enjoin and seek restitution and disgorgement for repeated fraudulent or illegal business activity (*see People ex rel. Schneiderman v Greenberg*, 27 NY3d 490, 496–497 [2016]). The statute provides, in part:

Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in the appropriate case, cancelling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper.

(Executive Law §63[12]). The term “fraud” or “fraudulent” includes “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions” (*id.*). The term “persistent fraud” or “illegality” includes “continuance or carrying on of any fraudulent conduct” (*id.*). The term “repeated” includes “repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person” (*id.*).

The purpose of the Martin Act is “to create a statutory mechanism in which the Attorney-General would have broad regulatory and remedial powers to prevent fraudulent securities practices by investigating and intervening at the first indication of possible securities fraud on the public and, thereafter, if appropriate, to commence civil and criminal prosecution . . .” (*CPC Intl. v McKesson Corp.*, 70 NY2d 268, 277 [1987]). The Martin Act “should be liberally construed to give effect to its remedial purpose of protecting the public from fraudulent exploitation in the offer and sale of securities” (*see People ex rel. Schneiderman v Barclays Capital, Inc.*, 47 Misc3d 862, 868 [Sup Ct, NY County, 2015]).

The Martin Act authorizes the NYAG to investigate and enjoin fraudulent practices in the marketing of stocks, bonds, and other securities, including real estate securities, within or from New York State (*see* General Business Law §§352, 353). In particular, General Business Law §352-c lists prohibited acts including, “[a]ny fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale” (General Business Law §352-c[1][a]); “[a]ny promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances” (General Business Law §352-c[1][b]); and “[a]ny representation or statement which is false, where the person who made such representation or statement (i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation or statement made” (General Business Law §352-c[1][c]).

General Business Law §352-e(2-b) directs that “all deposits, down-payments or advances made by purchasers of residential units shall be held in a special escrow account pending delivery of the completed apartment or unit and a deed or lease whichever is applicable.” Section 352-h states, in part:

“Whenever hereafter any person, partnership, corporation, company, trust or association, offers or sells securities described in subdivision one of section three hundred fifty-two-e of this article to the public in or from the state of New York, then all moneys received in connection therewith, including deposits or advances therefor, shall continue to be money of the person making such purchase, deposit or advance, and shall be held in trust by the person, partnership, corporation, company, trust or association offering or selling such securities and shall not be commingled with the personal moneys or become an asset of the person, partnership, corporation, company, trust or association receiving the same”

The Martin Act also authorizes NYAG to adopt rules and regulations to carry out the provisions of §352-e, “including regulations for the method, contents and filing procedures with respect to the statements required by [General Business Law §352-e(1)] and the making of amendments thereto” (General Business Law §352-e[6][a]), and makes all filings available for inspection by a purchaser (*see* General Business Law §352-e[9]). 13 NYCRR §§20.3, the regulation pertaining to condominium offering plans, directs, in part, that a “sponsor shall comply with the escrow and trust fund requirements of General Business Law §§352-e(2-b) and 352-h and these regulations, and all funds paid by purchasers shall be handled in accordance with these statutes and regulations ...” (13 NYCRR §20.3[o][2]).

The third cause of action alleges that Wu and Yang, through Sponsor, violated the Martin Act by collecting down payments from potential purchasers to whom it offered and sold real estate securities for units 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E in a purported condominium; failing to deposit the proceeds collected thereunder in secure escrow accounts; commingling the down payments with Defendants’ own funds and using the down payments to pay for personal expenses; and creating sham escrow accounts (*see* NYSCEF Doc. No. 190). The fourth cause of action alleges that Wu and Yang, through Sponsor, violated Executive Law §63(12) and the Martin Act by repeatedly collecting down payments for the sales of real estate securities for units 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E,

4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E in a purported condominium; repeatedly commingling such down payments with Defendants' own funds; and repeatedly failing to notify the purchasers of the name and location of the banks holding such down payments (*id.*).

NYAG essentially alleges that Wu and Yang, through Sponsor, engaged in a scheme to market, sell, and attempt to sell units in the Building to members of the public—despite the lack of a valid offering plan on file with NYAG's office (*id.*). NYAG also claims that Defendants improperly collected monthly maintenance fees from these purported purchasers based on their alleged, but ultimately nonexistent, ownership of security interests in the Building (*id.*). Moreover, NYAG contends that Defendants illegally collected monthly condominium fees from said unit holders (*id.*).

In seeking summary judgment, NYAG argues that sworn admissions and other documentary evidence conclusively establish that Wu violated Executive Law §63 and the Martin Act by engaging in repeated fraudulent or illegal acts, including collecting down payments from potential purchasers and failing to deposit and maintain the down payments in escrow accounts. Executive Law §63(12) authorizes NYAG to enjoin and seek restitution and disgorgement for repeated fraudulent or illegal business activity (*see People ex rel Schneiderman v Greenberg*). Furthermore, the Martin Act mandates that payments made by investors or purchasers to the sponsor of a real estate development or seller of securities be maintained in a separate escrow account, and not be commingled with the funds of the sponsor or seller, until the transaction is consummated (*see Board of Managers of the Crest Condominium v City View Gardens Phase II, LLC*, 35 Misc3d 1223[A] *7 [Sup Ct, Kings County (2012)]). “If the transaction is not ‘consummated’, in the case of real estate, by delivery of the completed unit, the funds must be returned to the investor or purchaser” (*id.*). NYAG can enforce this requirement under General Business Law §352-e[2][b] by promulgating rules and regulations “including ... determining when escrow funds must be released” (*id.*). “By the terms of the statute, the determination as to the sufficiency of the escrow fund and releases therefrom, is vested exclusively in the Attorney General” (*id.*). Additionally, 13 NYCRR 20.3(o)(2) expressly provides that all “deposits, down payments, or advances made by purchasers ... must be placed within five business days ... in an attorney’s segregated special escrow account.”

In support of its allegations, NYAG offers copies of the signed purchase documents for units 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E, setting forth, the purchase price for the unit, the down payment, and the balance, and stating that receipt of the deposit is acknowledged by the signing of the purchase documents (*see Purchase Documents*, NYSCEF Doc. Nos. 100–104, 110–116, 203–224).

NYAG also offers a copy of the transcript of Wu’s examination before trial (“EBT”) held on October 14, 2019 (*see Tr.*, NYSCEF Doc. No. 225). Wu testified that he received \$180,000 from the purchaser of unit 2-A and used the money to pay the mortgage (*id.*, pp. 20–23). Wu further testified that he received partial payment for the mortgage (*id.*, pp. 25–28). Wu also testified that the purchasers for unit 2-B gave him a \$150,000 deposit and that he used \$80,000 to pay the mortgage (*id.*, pp. 31–33). Wu testified that a purchaser gave him “186,000 as a deposit for the purchase of [unit] 2-D in the Ovington Condominium” and that he “deposited it in the bank to pay the mortgage” (*id.*, p. 54). Wu further testified that he received \$110,000 as downpayment for the purchase of unit 4-C, and that he used \$60,000 to pay construction and \$50,000 to pay the

mortgage (*id.*, pp. 75–79). Similarly, Wu testified that he received \$275,000 downpayment for the purchase of unit 4-D, that “the majority of the money was paid for construction” and the last \$45,000 “paid for the mortgage on June 22, 2015” (*id.*, pp. 80–84). He also testified that he received \$190,000 as a deposit for the purchase of unit 5-A, that most of the money was spent on the mortgage, and that some of the money was spent on construction (*id.*, pp. 86–87). He further testified that he received \$140,000 as a deposit for the purchase of unit 5-C, and that he used the money to pay for construction and the mortgage (*id.*, pp. 88–89). In addition, he testified that he received a \$200,000 deposit for the purchase of unit 5-D, and that he used the money to pay for construction, the mortgage, and daily expenses (*id.*, pp. 90–92). He also testified that he received \$195,000 as a deposit for the purchase of unit 4-B, that the money was not placed into an escrow account since the property was under construction and he needed the money for construction (*id.*, pp. 98–100). Wu further testified that he deposited \$90,000 of his own money, \$5,000 for each of the 18 units in the Building, into an escrow account in early 2019, when “everybody blew up” and starting filing actions (*id.*, pp. 101–103).

NYAG has established that between December 2018 and February 2020, approximately nineteen of the purported purchasers commenced actions against Wu, Sponsor, and TCJ Construction, Inc., in the Supreme Court, Kings County, alleging breach of contract and common law fraud arising from the purported sale of units in the Building (*see* Complaints, NYSCEF Doc. Nos. 227–245). The plaintiffs alleged that they entered into purchase agreements for the condominium units in the Building, but that Wu failed to provide an approved condominium offering plan, failed to disclose that the Building’s mortgage lender had initiated foreclosure proceedings, and expressed an inability to return their down payments or any of the money they paid him (*see id.*). The Court consolidated the eighteen separate actions into a single action captioned *Yu Hong Chen v 345 Ovington LLC* (Index No. 509606/2019, Sup Court, Kings County [2019]) (the “Consolidated Action”). One other action, captioned *Taofa Xu v 345 Ovington, LLC* (Index No. 525647/2018, Sup Court, Kings County [2018]), continued separately. The Court granted summary judgment, on default, against Wu in both actions, and awarded the plaintiffs damages totaling \$4,526,914.09, plus interests, costs, and disbursements (*see* Orders, NYSCEF Doc. Nos. 264–281).

Defendants do not dispute any of NYAG’s claims or submissions. Instead, Defendants argue that NYAG’s involvement in the sale of the Building waives all claims, and that the third and fourth causes of action must fail because the deposits were used for legitimate purposes with the consent of the purchasers.

The Court finds that NYAG has sufficiently established entitlement to judgment as a matter of law on the third and fourth causes of action in the Complaint. NYAG offers sufficient evidence to establish that Wu and Yang, through Sponsor, violated General Business Law §§352-e(2-b) and 352-h, and 13 NYCRR 20.3(o)(2)-(7) by collecting down payments from potential purchasers to whom it offered and sold real estate securities for units 1B, 1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E in a purported condominium; failing to deposit the proceeds collected thereunder in secure escrow accounts; commingling the down payments with their own funds and using said payments for personal expenses; and creating sham escrow accounts. Plaintiffs have also established that Wu and Yang, through Sponsor, violated General Business Law §§352-e(2-b) and 352-h, 13 NYCRR 20.3(o)(2)-(7), and Executive Law §63(12) by repeatedly collecting down payments for the sale of real estate securities for units 1B,

1C, 1D, 1E, 2A, 2B, 2C, 2D, 3A, 3B, 3C, 3D, 3E, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, and 5E in a purported condominium; commingling such down payments with Defendants' own funds; and failing to notify the purchasers of the name and location of the banks holding such down payments.

The Court further finds that Defendants have failed to raise any triable issues of material fact. Defendants' assertion that NYAG's involvement in the sale of the Building waives all claims is unavailing. "[E]stoppel may not be applied to preclude a State or municipal agency from discharging a statutory responsibility" (*Matter of City of New York v City Civ. Serv. Commn.*, 60 NY2d 436, 449 [1983]), except in an "unusual factual situation" not present here (*Matter of Hamptons Hosp. & Med. Ctr. v Moore*, 52 NY2d 88, 93 n. 1 [1981]). Executive Law §63(12), and the Martin Act authorize NYAG to investigate and enjoin fraudulent practices in the marketing of real estate securities within the state that violate said statutes, including the failure to place down payments in segregated escrow accounts.

In addition, Defendants' contention that down payments were used for legitimate purposes with the consent of the purchasers is futile. Executive Law §63(12) and the Martin Act mandate that down payments must be deposited in segregated escrow accounts, and Defendants fail to point to any statutory language or legislative history to indicate the Legislature's intent to make any exceptions for the purposes they advance (*see State of New York v Wolowitz*, 99 AD2d 47, 61 [2d Dept 1983]).

Thus, NYAG's motion as to the third and fourth causes of action is hereby granted.

Fifth and Sixth Causes of Action

NYAG's fifth and sixth causes of action allege repeated improper use of purchase agreements in violation of the Martin Act and Executive Law §63(12) (*see* NYSCEF Doc. No. 190). The fifth cause of action is brought solely under the Martin Act and focuses on the alleged offering and selling of condominium securities without any legal right. NYAG alleges that Wu and Yang, through Sponsor, offered and purported to sell real estate securities claimed to be associated with condominium units in the Building to New York residents; that Wu falsely and fraudulently executed individualized, mixed handwritten and typewritten sale contracts in multiple languages; and that Wu falsely and fraudulently offered and sold to at least twenty-two (22) New York purchasers worthless securities to supposed condominium units when, in fact, Defendants could not legally transfer anything of value because the Building was not subdivided by the New York City Department of Finance ("NYCDOF") into separate tax blocks and lots, as part of an accepted offering plan on file with the NYAG, and therefore no deeds to the realty could legally be transferred at closing (*id.*).

NYAG's sixth cause of action is brought solely under Executive Law §63(12) against Defendants for allegedly repeatedly and persistently engaging in essentially the same misconduct alleged in the fifth cause of action, as well as collecting the down payments of the securities sales and fraudulently failing to place said deposits into escrow trust accounts in accordance with the Martin Act; depositing the proceeds of the securities sales into Defendants' accounts and using the proceeds for personal expenses; and charging and collecting monthly maintenance fees from the purported purchasers of the supposed condominium real estate securities even though a legal

condominium had not been established due to the failure to record in the NYCDOF Declaration of Condominium (*id.*).

NYAG contends that Defendants engaged in a general scheme of fraudulent misrepresentation and deceptive practices flowing from an ultimately rejected offering plan for condominium units filed with NYAG (*id.*). NYAG argues that, because Sponsor failed to submit a Declaration of Condominium, the Building was never separated into individual tax lots with legal titles that could be transferred. NYAG also argues that Sponsor, through its counsel, represented that it was renting to genuine “interim purchasers” when, in fact, it was renting apartment units to non-interim purchasers. Similarly, NYAG argues that despite purportedly selling units without the legal authority to do so, Wu and Yang failed to disclose the alleged condominium sales in either the offering plan or an amended offering plan. NYAG further alleges that Defendants failed to disclose the legal status of the Building at any point during the purported sales and marketing process, and that Wu admitted to selling units at prices that were not disclosed in the proposed offering plan or the proposed amended offering plan.

NYAG also asserts that Defendants violated the Martin Act and Executive Law §63(12) by failing to use standard form purchase agreements that were part of an offering plan filed with NYAG. Moreover, NYAG asserts that on at least twenty-two occasions, Defendants used individualized contracts different than the standard form purchase agreements contained in the proposed offering plan or proposed amended offering plan filed with NYAG.

NYAG offers the original offering plan (*see* NYSCEF Doc. No. 191), purchase agreements (*see* NYSCEF Doc. Nos. 203–224), and documents from its investigations into Defendants’ business practices, as set forth at length in a prior decision and order of this Court (Margaret A. Chan, J.S.C) (*see* NYSCEF Doc. No. 137).

As noted in the Court’s prior decision, during a New York City-wide investigation into potential violations of §421-a of the New York Real Property Tax Law (“RPTL”), NYAG uncovered evidence that Sponsor had reported to the New York City Department of Housing and Preservation that the Building was to be converted into a condominium, qualified for §421-a tax benefits, and that Sponsor was renting purported units in the Building during the condominium conversion process, despite regulations prohibiting it from doing so. NYAG also determined that although Defendants’ filed offering plan contained disclosures about leasing options available to interim purchasers, Sponsor nevertheless leased many of the Building’s apartments to “non-interim purchasers” in violation of the offering plan’s representations and applicable rules and regulations. Notably, if the residents occupying the Building’s units had been traditional tenants, they would have been entitled the protections and benefits of the RSL.

By letter dated August 25, 2015, NYAG, the New York City Department of Housing Preservation and Development, and the New York State Division of Homes and Community Renewal jointly notified Sponsor that the Building was not in compliance with RPTL §421-a, and indicated that NYAG would deem the offering plan on file abandoned if Sponsor failed to respond (*see* Letter, NYSCEF Doc. No. 77). Defendants did not submit a timely response and therefore, on December 8, 2015, NYAG issued a letter to Sponsor advising it that the offering plan on file had been deemed abandoned (*see* Letter, NYSCEF Doc. No. 78).

Sponsor later contacted NYAG indicating that the residents living in the Building were not “tenants” under a traditional lease, but rather, were “genuine purchasers” who had executed purchase agreements pursuant to the offering plan on file with NYAG and, as such, were exempt from RSL protections. NYAG allowed Sponsor to submit an amended offering plan (*id.*). Sponsor subsequently submitted its proposed “Amended & Re-Stated Condominium Offering Plan” (“the Amended Plan”), listing Wu and Yang as sales agents, Sponsor’s officers to the initial Board of Managers, and the initial property managers (*see* Amended Plan, NYSCEF Doc. No. 195). NYAG eventually rejected the Amended Plan and, by letter dated May 23, 2016, identified numerous deficiencies in the proposal, including continued uncertainty about the status of the purported “interim purchasers” (NYSCEF Doc. No. 199). After Sponsor failed to submit a corrected offering plan, NYAG launched a new investigation into the status of the alleged interim purchasers and their purchase agreement (*see* E-mail, NYSCEF Doc. No. 98). In response to requests for information, Sponsor provided seventeen single-page agreements that purportedly represented contracts for sale for condominium units in the Building (*see* NYSCEF Doc. No. 202). Each agreement indicated that the alleged purchaser had deposited \$5,000 with Wu as a “good faith deposit to purchase the premises located at 345 Ovington Ave.” (*id.*). The agreements further represented that each of these deposits were being held in escrow (*id.*).

Upon further investigation, NYAG uncovered that many of the Building’s residents spoke and read limited English and that between May 21, 2012 and July 26, 2016, Wu and Sponsor executed purchase agreements for approximately eighteen to twenty units in the Building. NYAG further determined that the purchase agreements failed to conform to those disclosed in the offering plan, Wu and Sponsor had engaged in several attempted sales of units (*see* Advertisement, NYSCEF Doc. Nos. 283, 284), and that most residents in the Building claimed to be “condo unit owners,” or were renting directly from individuals whom they believed to be unit owners, even though there had been no legal transfer of title to those units by Sponsor (*see* NYSCEF Doc. No. 190). The investigation also revealed repeated misuses of residents’ funds by Defendants, as well as improper payments and fees solicited from residents (*id.*).

Upon NYAG’s requests for additional information and documentation regarding each alleged purchaser of condominium units in the Building (*see* E-mail, NYSCEF Doc. No. 83), Sponsor offered copies of interim leases or affidavits from purported residents detailing the nature of their respective purchases from Sponsor and represented that certain units were vacant (*see* Letter, NYSCEF Doc. No. 82). NYAG determined that there were various misrepresentations in these documents and that purported “vacant” condominium units were being rented to residents at non-rent stabilized rental rates without rent stabilized leases (*see* NYSCEF Doc. No. 190). The investigation also revealed that Defendants’ attempt to sell the Building to interim purchasers failed because of disagreements over the terms of the sale (*see* Email, NYSCEF Doc. No. 84); that the Building had been pledged as security for a note with an outstanding principal amount of \$5.8 million, which was the subject of a foreclosure action; and that an additional foreclosure action was filed in Kings County, alleging that Defendants pledged the Building against a \$2,750,000 mortgage note.

In addition, NYAG received a complaint from an aggrieved purchaser who represented that Wu had stolen the deposit funds. Furthermore, the above-mentioned Consolidated Action and *Taofa Xu v 345 Ovington, LLC* ensued, resulting in judgments against Wu and Sponsor, the

involuntary Bankruptcy proceeding against Sponsor (*see In re 345 Ovington LLC*, Case No. 22-41782, [EDNY 2022]), and NYAG's further investigations into Wu and Sponsor.

NYAG maintains that the results of its investigation conclusively establish that Wu and Yang, through Sponsor, repeatedly marketed and sold securities in a purported condominium without an accepted offering plan in place; made misrepresentations about the offering plan, the Building, and the nature of the condominium transactions to purported purchasers; failed to deposit down payments or sales proceeds into escrow accounts; improperly offered, originated, and serviced mortgage loans without a license to do so; and rented apartments without charging a rent stabilized rate.

In opposition, however, Defendants contend that NYAG did not allow Wu to correct the amended offering plan before bringing this action. Wu also argues that NYAG cannot establish fraud and that NYAG conducted the investigations in bad faith.

The Court finds that the submissions conclusively establish that Wu violated the Martin Act and Executive Law §63(12) by repeatedly and persistently using non-standard form purchase agreements to market purported condominium units that were not part of an approved offering plan. In addition, the submissions demonstrate that Wu engaged in a scheme to repeatedly and persistently defraud prospective purchasers of real estate securities.

The Court also finds that Defendants fail to raise any triable issues of material fact. Based on the foregoing, the Court determines that NYAG properly exercised its statutory authority to investigate and bring this action. Furthermore, pursuant to an enforcement proceeding under the Martin Act, NYAG need not allege or prove either scienter or intentional fraud (*see State v Rachmani Corp.*, 71 NY2d 718, 725 [1988]). NYAG enjoys a presumption of good faith investigations and must show only that "the materials sought bear 'a reasonable relation to the subject matter under investigation and to the public purpose to be achieved'" (*Matter of Anheuser Busch, Inc. v Abrams*, 71 NY2d 327, 332 [1988]).

Thus, the Court also grants Plaintiff's motion for summary judgment as to the fifth and sixth causes of action.

Monetary Award

NYAG also seeks judgment in the sum of \$4,227,888, plus interest and costs. Disgorgement, the return of wrongfully obtained profits, is an available remedy under the Martin Act and Executive Law (*see People ex rel. Schneiderman v Greenberg*). To obtain disgorgement, NYAG bears the initial burden of establishing a reasonable approximation of profits causally connected to Defendants' violations (*People ex rel. James v Trump*, 237 NYS3d 443 [2025]). If the Court finds that the Attorney General has satisfied its initial burden, the burden shifts to the Defendant to clearly demonstrate that the disgorgement figure was not a reasonable approximation (*id.*).

Here, the Court finds that NYAG failed to establish a reasonable approximation of profits caused by Defendants' violations, and therefore, the Court denies NYAG's motion seeking judgment in the sum of \$4,227,888, plus interest and costs.

Injunction

Finally, NYAG seeks to enjoin Wu from selling securities in New York. Executive Law §63(12) empowers the Attorney General to apply for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts. Courts may issue permanent injunctive relief upon a showing of reasonable likelihood of continuing violation based on the totality of the circumstances (see *People ex rel. Schneiderman v Greenberg*, 27 NY3d at 496–497). Upon review of the submissions and in an exercise of discretion, the Court grants the injunctive relief enjoining Wu from selling securities in New York.

The submissions adequately demonstrate that Wu repeatedly and persistently engaged in the fraudulent selling of units in the Building and the collection of fees without a valid offering plan on file with the NYAG, mismanaged and misappropriated purchasers’ deposits and down payments, and made misrepresentations in the offering plan filed with the NYAG about the Building.

Therefore, the Court grants NYAG’s motion as to the injunctive relief.

Accordingly, it is hereby

ORDERED that Plaintiff’s Motion for Partial Summary Judgment (Motion 004) is GRANTED to the extent that the Plaintiff, People of the State of New York, by Letitia James, Attorney General of the State of New York, is awarded judgment on the third, fourth, fifth, and sixth causes of action, as well as judgment enjoining Defendant Xi Hui Wu. a/k/a Steve Wu from selling securities in the State of New York; and it is further

ORDERED that the balance of the action is severed and continued for trial; and it is further

ORDERED that the parties shall appear for a Pre-Trial Conference on February 24, 2026 at 11:30 a.m. in Courtroom 428 at 60 Centre Street, New York; and it is further

ORDERED that the parties shall comply with Part 45 Practices and Procedures at Section IX regarding Pre-Trial Conference submissions and Procedures.

The foregoing constitutes the Decision and Order of the Court.

11/8/2025

DATE



ANAR R. PATEL, A.J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE