

**UNITED STATES DISTRICT  
SOUTHERN DISTRICT COURT OF NEW YORK**

**CASE NUMBER:** 15 CV 1275

**JOHANNY DE LA CRUZ, VIANEY GOMEZ,  
LUIS NIEVES, DONNA MORALES, MARTHA DIAZ,  
FRANKLIN MEJIA, EDISON VIZCAINO,**

**Plaintiff demands trial by jury**

**Plaintiffs,**

*-against-*

**CIVIL COMPLAINT, INCLUDING  
DECLARATORY & INJUNCTIVE  
RELIEF UNDER 42 USC §1983**

**RICK D. CHANDLER, P.E. as COMMISSIONER  
of the NYC DEPARTMENT OF BUILDINGS,  
NYC DEPARTMENT OF BUILDINGS, THE CITY OF  
NEW YORK, BAD ASS, INC., TOTARAM ENTERPRISES, LP,  
and K-TOWN INC., RAY TOTARAM, HETRI TOTARAM,  
ANNIE PERSUAD, KATHLEEN BRADSHAW,  
JAIMIE RAMIREZ and DOES 1-4,**

**Defendants.**

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Plaintiffs Johanny De la Cruz, Vianey Gomez, Luis Nieves, Gerpis Ovando, Franklin Mejia, Edison Vizcaino, Jesus Pena, Ramond Melendez, Martha Diaz, and Donna Morales, by and through their counsel Susan Chana Lask, Esq. complain as follows:

**INTRODUCTION**

1. Plaintiffs are Bronx homeowners bilked out of millions of dollars from home builders named Bad Ass, Inc., Totaram Enterprises, LP and K-Town, Inc. (“Bad Ass”). Bad Ass built and hired contractors using New York City Department of Buildings (“DOB”) building permits to construct substandard homes with cheap building materials that are not up to New York City building codes. Then Bad Ass abandons the homeowners and moves on to the next building project by paying fees to the DOB for permits to build.
2. The homeowners are left with homes without a valid certificate of occupancy and the DOB threatening to evict them unless they pay tens of thousands of dollars more to correct what the DOB’s licensee, Bad Ass, failed to do under the DOB permit. In addition to threats of losing their homes, Plaintiffs suffer with roof leaks, black mold, improper insulation causing over \$400 a month in heating bills, boiler issues, and they cannot refinance or even sell their homes because they do not have certificates of occupancy.

- The DOB does not hold Bad Ass accountable because it profits over \$100 Million a year from the construction permits granted to illegal builders such as Bad Ass, which is over half of the its \$200 Million revenue, as the following chart reveals:

**Comptroller’s Report for Fiscal 2013 Part II-F—General Fund—Schedule G3  
Revenues vs. Budget by Agency<sup>1</sup>**

Revenue Source <u>Within Agency</u>	Budget		Actual Revenue	
	<u>Adopted</u>	<u>Modified</u>	<u>2013</u>	<u>2012</u>
00251 Construction Permits	87,800,000	109,000,000	<b>117,489,276</b>	<b>105,171,704</b>
Total Department of Buildings	157,085,000	206,085,510	232,505,008	198,208,131

- It shocks the conscience that for seven years the DOB has ignored the plight of these homeowners and refuses to issue certificates of occupancy. That amounts to a taking of their property in violation of their civil rights to own property without state interference. The purpose of this complaint is to insure the DOB enforces the law to compel its licensee Bad Ass to immediately obtain permanent certificates of occupancy for the homeowners and hold Bad Ass liable for duping homeowners out of nearly Seven Million Dollars for homes that should be razed.

**JURISDICTION**

- Federal jurisdiction exists pursuant to Article III §2 which extends jurisdiction to cases arising under the Constitution of the United States.
- Jurisdiction is conferred on this Court by 28 U.S.C. §1343(3) and (4), which provide for original jurisdiction in this court of all suits brought pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1331 conferring original jurisdiction to redress federal constitutional violations under color of state law, and 42 U.S.C. §1983 civil rights violations. Pursuant to 28 U.S.C. §1367(a), this Court also has jurisdiction over the pendent state law claims because they are so related to the other claims as to form pendent jurisdiction of this Court as part of the same case and controversy.
- Declaratory relief is available pursuant to 28 U.S.C. §§2201 and 2202.
- Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §1391(b) and 18 U.S.C. §1965(a) and (b) because all or substantially all of the events giving rise to the present action occurred within the Southern District of New York.

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<sup>1</sup> The City of New York Comprehensive Annual Financial Report of the comptroller for the Fiscal Year Ended June 30, 2013, p. 217 (<http://comptroller.nyc.gov/wp-content/uploads/documents/CAFR2013.pdf>)

## **PARTIES**

9. Plaintiffs Johanny De la Cruz, Vianey Gomez, Luis Nieves, Donna Morales, Franklin Mejia and Edison Vizcano are all residents of the State of New York and domiciled in the Bronx.
10. Defendant City of New York ("City") is a municipal corporation, incorporated pursuant to the laws of the State of New York and is a State Actor pursuant to 42 U.S.C. §1983
11. Defendant the Department of Buildings ("DOB") is an agency of the Defendant City responsible for ensuring compliance the regulations and codes pertaining to building construction safety, certificates of occupancy, zoning and alteration, and renovation of building structures. Building inspectors enforce the regulations and codes by issuing summonses and commencing criminal proceedings for violations. In addition, the DOB may issue vacate orders when a property presents a danger to the health and welfare of the inhabitants or others.
12. Defendant Rick D. Chandler, PE is the Commissioner of the Defendant DOB ("Commissioner") and is being sued in his official capacity. He is responsible for overseeing the DOB's policies, procedures and is responsible for "speeding the building permit process and cutting down on homeowner fines."<sup>2</sup>
13. Defendants Bad Ass, Inc., Totaram Enterprises, LP and K-Town, Inc. are, upon information and belief are domestic corporate entities and a registered foreign limited partnership operating and doing business in the Bronx and the City of New York.
14. Defendants Ray Totaram and Hetri Totaram are individuals residing in the State of New York and domiciled at 1501 St. Lawrence Ave. Bronx, NY 10460. These defendants are principals of and operate the Bad Ass Defendants named above.
15. Defendant Kowsilla Persaud is an individual residing in the State of New York and domiciled at 3305 Radio Drive, Bronx, NY 10465. Upon information and belief, this Defendant uses the alias' of Annie Persaud, Annie Kash, Orazia La Pietra and Orazio La Pietra and is a principal of and operates or has operated Defendant K-Town at all times relevant herein.

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<sup>2</sup> <http://www.nydailynews.com/news/politics/de-blasio-appoints-rick-chandler-department-buildings-commissioner-article-1.1871683>

16. Defendants Kathleen Bradshaw, Jaimie Ramierez and Does 1-2 are attorneys licensed in the State of New York and operating in this district who are holding about Fifty Thousand Dollars in escrow money in New York State accounts for over seven years for the purpose of obtaining permanent certificate of occupancies for the Plaintiffs.
17. Does 3-4 are those persons or entities that signed, applied for and filed DOB building permits with respect to the Plaintiffs' homes.
18. The identities of all Defendant Does are presently unknown but will be revealed as discovery progresses.
19. Defendants Bad Ass, Inc., Totaram Enterprises, LP and K-Town, Inc., Ray Totaram and Hetri Totaram and Kowsilla Persaud will be collectively referred to in this complaint hereinafter as "Bad Ass".

## **FACTS**

### **DeLaCruz : 643 Theiriot Avenue**

20. On November 9, 2006, Johanny DeLaCruz ("DeLaCruz"), as the purchaser, entered into a contract with Totaram Enterprises, Inc. ("Totaram"), as the seller, to pay \$640,000 for premises at 643 Theiriot Avenue, Bronx New York (the "Contract").
21. Paragraph 16(b) of the Contract states that before closing that Totaram Enterprises, LP shall fulfill "the delivery by Seller to Purchaser of a valid and new temporary or permanent certificate of occupancy or other required certificate of compliance, or evidence that none was required, covering the building(s) and other improvements located on the property authorizing their use as a THREE family dwelling at the date of closing."
22. A Rider to the Contract states that "seller shall deliver to purchaser at the time of closing a new temporary or permanent certificate of occupancy for a legal THREE family dwelling..."
23. On December 21, 2006, the closing occurred with a temporary certificate of occupancy.
24. Upon information and belief, Defendant Bradshaw or Does 1-2 held thousands of dollars in escrow for the seller to obtain a permanent Certificate of Occupancy.
25. A permanent certificate of occupancy was never issued to 643 Theiriot Avenue.

### **645 Theiriot Avenue-Vianey Gomez**

26. On October 30, 2006, Vianey Gomez ("Gomez"), as the purchaser, entered into a contract with Totaram Enterprises, Inc. ("Totaram"), as the seller, to pay \$670,000 for premises at 645 Theiriot Avenue, Bronx New York (the "Contract").

27. Paragraph 16(b) of the Contract states that before closing that Totaram Enterprises, LP shall fulfill “the delivery by Seller to Purchaser of a valid and new temporary or permanent certificate of occupancy or other required certificate of compliance, or evidence that none was required, covering the building(s) and other improvements located on the property authorizing their use as a THREE family dwelling at the date of closing.”
28. A Rider to the Contract states that “seller shall deliver to purchaser at the time of closing a new temporary or permanent certificate of occupancy for a legal THREE family dwelling...” On December 12, 2006, the closing occurred with a temporary certificate of occupancy.
29. Upon information and belief, Defendant Bradshaw held in escrow \$15,000 until “the Permanent Certificate of Occupancy is produced.”
30. A permanent certificate of occupancy was never issued to 645 Theiriot Avenue.
31. A number of Certificate of Occupancy violations existed upon 645 Theiriot Avenue after the December 12, 2006 closing. A DOB Notice of Violation and Hearing, violation number 35022587N, notes that certificate of occupancy 200769436 expired February 26, 2007 and that the premises does not have a valid certificate of occupancy (the “Notice”).
32. The Notice mandates that the remedy is to "Obtain a valid C/O or discontinue illegal occupancy.

**110 Stevens Avenue-Donna Morales and Luis Nieves**

33. In 2005, Donna Morales and Luis Nieves (collectively, “Nieves”) executed a contract with K Town Inc. to pay some \$500,000 for 110 Stephens Avenue.
34. On June 20, 2005, Nieves closed with an escrow agreement signed by Jaimie Ramirez, as escrowee, to hold \$2,500 until K Town, Inc. obtained a permanent certificate of occupancy.
35. A final certificate of occupancy was never issued for 110 Stevens Avenue because, upon information and belief, the sidewalk is built improperly. K Town, Inc. built the sidewalk improperly and never returned to correct it.
36. The Department of Buildings issued the following violations against 110 Stevens Avenue:  
-April 7, 2006 Violation Number 34515677X states “New building occupied without a valid C/O” and the remedy is to "Obtain a Valid C/O".

-August 27, 2009 violation number 34802029J states there is a class I violation which means there is a "immediately hazardous" condition.

-May 13, 2013 Violation Number 3 5022578L states "C/O #200874982T001 expired 8/15/05" and the remedy is to " or discontinue illegal occupancy".

37. Nieves incurred fees of some \$5,500 to attorneys to assist in obtaining a permanent Certificate of Occupancy, and paid some \$800.00 in fines for not having a Certificate of Occupancy.

**220B Stevens Avenue – Martha Diaz**

38. On May 30, 2006, Martha Diaz executed a contract with K Town, Inc. to pay \$613,004.00 for 220B Stephens Avenue.
39. A permanent certificate of occupancy was never issued for this property.

**218 Stephens Avenue and 228 Stephens Avenue**

40. In 2007, Edison Vizzaino and Franklin Mejia each purchased 218 Stephens and 228 Stephens, respectively, for over \$500,000 each .
41. For seven years they were never issued a permanent certificate of occupancy.
42. Plaintiffs Vizzaino and Mejia each paid \$7,000 to an expediter to obtain permanent certificate of occupancies for them.
43. It is believed the expediter is a person with a relationship with the DOB or a former DOB official who inexplicably obtains certificates of occupancy if paid thousands of dollars.

**PLAINTIFFS HOMES ARE VALUELESS AS POORLY  
CONSTRUCTED WITHOUT CERTIFICATES OF OCCUPANCY**

44. All of the Plaintiffs named above suffer from purchasing uninhabitable homes for over seven years that are not up to code because the DOB's licensees built substandard homes without proper insulation, the plumbing backs up, the roofs leak, black mold appears in places throughout the homes, the walls are cracked and wet from water seepage, the boilers do not operate properly and are not built according to code, they all pay over a \$400 a month in heating because of improper insulation and the homes are not built according to the blue prints submitted to the DOB.
45. Plaintiffs cannot sell their homes or refinance without a permanent certificate of occupancy.
46. The DOB licenses developer-builders with permits to construct premises in conformance with city laws in exchange for fees paid by the builders to complete that construction as

habitable premises for homeowners as the intended beneficiaries to that license agreement.

47. Upon information and belief, Bad Ass and its agents were licensed by the DOB to build these homes according to DOB standards that incorporate the building codes and other laws so a habitable home is built and a permanent certificate of occupancy can be issued.
48. The developer-builder Bad Ass has agreed to construct all premises according to plans filed with the Buildings Department and pursuant to its license with the DOB.
49. The permit process' ultimate goal is to provide a Certificate of Occupancy ("CO") to the owner.
50. In the case of new home construction, the builder is the owner at the time of issuing the license and is responsible for doing what is required to have the City issue the CO.
51. At all times relevant herein, Bad Ass was the owner of the homes when it obtained its licenses with DOB. That license was never transferred.

**THE DOB IS UNDER A LEGAL OBLIGATION TO REGULATE ISSUING CERTIFICATES OF OCCUPANCY AND TO COMPEL BUILDERS/SELLERS TO OBTAIN THEM**

52. New York City Charter §645(b)(3) gives the DOB authority to issue certificates of occupancy.
53. Pursuant to Building Code §28-101.4 .1, all work performed under a permit issued prior to July 1, 2008, the effective date of this code, is subject to chapter 1, title 27 of the New York City Administrative Code ("NYCAC"). The NYCAC laws cited below were in effect and are applicable when Defendants Bad Ass filed for and obtained their licenses and permits for new home construction and certificates of occupancy for Plaintiffs.
54. Article 1, General Provisions of The Building Code states at 27-106 that "Enforcement. The code shall be enforced by the *commissioner of buildings*, ...(emphasis added).
55. Article 10 of the NYCAC governs the issuance of permits. NYCAC 27-147 provides:

When permits required. No building construction...shall be commenced, ...unless and until a written permit shall have been *issued by the commissioner* (emphasis added).

56. NYCAC 27-150 provides:

Application for permit. All applications for permits shall be submitted on *forms furnished by the department*, and shall be accompanied by the required fee. The application shall contain a general description of the proposed work..., or *as the commissioner may require* (emphasis added).

57. NYCAC 27-151 provides:

Applicant. Applications for permits shall be made by or on behalf of the owner or lessee of the buildings: and if made by a person other than the owner, the application shall be accompanied by a signed statement of the applicant declaring that he or she is authorized by the owner to make the application. The full names of the owner, lessee, and applicant, and of the principal officers thereof, if a corporation, shall be set forth in the application. Article 11 of the Administrative Code governs applications for new building permits.

58. NYCAC 27-156 provides:

General requirements. All applications for new building permits shall be subject to the requirements of articles nine and ten of this subchapter. In addition, each application shall set forth the name and business address of the person who is to perform the proposed work, and shall be accompanied by satisfactory evidence of compliance with the provisions of the worker's compensation law.

59. Article 19 of the New York City Administrative Code governs the issuance of permits.

60. NYCAC 27-191 provides:

Approval of permit application. ...applications complying with the provisions of this code and other applicable laws and regulations shall be *approved by the commissioner* and the permit issued promptly and not later than forty calendar days after the submission thereof, and applications failing to comply with the requirements of this code and other applicable laws and regulations shall be rejected and written notice of rejection, stating the grounds of rejection shall be given the applicant promptly....(emphasis added).

61. NYCAC 27-193 provides:

Signature to permit. Every permit *issued by the commissioner* shall have his or her signature affixed thereto; but the *commissioner may authorize any subordinate to affix such signature* (emphasis added).

62. NYCAC 27-197 provides:

Revocation of permit. The *commissioner may*, on notice to the applicant, revoke any permit for failure to comply with the provisions of this code or other applicable laws and regulations; ...(emphasis added).

63. Article 20 of the New York City Administrative Code governs the conditions for issuance of a permit.

64. NYCAC 27-200 provides:

Compliance with the code etc. Permits shall be deemed to incorporate the proviso that the applicant, his or her agent, employees, and contractors shall carry out the permitted work or use in accordance with the provisions of this code and other applicable laws



and regulations, whether specified or not, except insofar as variations therefrom have been legally permitted or authorized.

65. Article 21 of the New York City Administrative Code governs department inspections.

66. NYCAC 27-205 provides:

Right of entry and inspection. *The commissioner* or his or her authorized representatives, in the discharge of their duties, shall have the authority to enter upon and examine and inspect at all reasonable times any building,...for the purpose of determining compliance with the provisions of this code and other applicable laws and regulations .

67. Defendants DOB and its Commissioner are involved at every stage of the construction process, including issuance, supervision of the work and compliance with the building code of applicants for permits and certificates of occupancy.

68. Defendants DOB and its Commissioner are responsible for the issuance of the CO to certify that the premises conform with the codes and is safe for human habitation.

69. The Commissioner retains the right to revoke a permit for failure to comply with the code (NYCAC 27-197).

70. The Commissioner has the authority to deny permits to individuals, corporations and subsequent corporations made up of the same individuals who had previously received permits if they did not deliver COs as agreed to under prior permits.

71. The DOB has the authority to discipline an applicant who fails to deliver premises in conformity with the codes and resultantly cannot be issued a permanent CO. Discipline can be the revocation or denial of future permits until the builder does what is necessary to bring his previous permitted work to code so that a CO can be issued.

**DEFENDANTS DOB AND BAD ASS CONTRACTED TO BUILD  
HABITABLE HOMES WITH PLAINTIFFS AS THE INTENDED  
THIRD PARTY BENEFICIARIES AND THEIR OBLIGATIONS ARE  
CONTINUING TO DATE**

72. From 2004 to date, Defendants Bad Ass contracted with Defendants DOB by paying fees in consideration for permits to construct new homes in the Bronx subject to the above cited laws in effect at the time.

73. The Plaintiffs are the Third Party Intended Beneficiaries of the contract between the DOB and the developer-builder, which in this case, upon information and belief, are the Defendants Bad Ass, Inc., Totaram Enterprises, LP and K-Town Inc.

74. To the date of the filing of this Complaint, Defendants never obtained nor provided permanent Certificates of Occupancy for any of the homes built for the Plaintiffs.

75. To the date of this filing, all of the homes are in violation of the law, cannot be sold without a CO and the Plaintiffs are unable to refinance without a CO. Their properties are valueless without a CO.

**HOMEOWNER CONTRACTS TO PURCHASE NEW HOMES WITH THE CITY'S LICENSEE BAD ASS MANDATE THE LICENSEE TO OBTAIN PERMANENT CERTIFICATE OF OCCUPANCIES.**

76. From on or about 2004 through 2007, Plaintiffs entered into contracts to purchase new home construction from Defendants Bad Ass in a Bronx development.

77. At all times relevant hereto when the homes were built and sold to Plaintiffs, the DOB's "Builder Certification for Temporary Certificate of Occupancy" ("Builder Certification") mandates that Bad Ass as the builder/seller shall deposit \$6,500 in escrow while it operates under the temporary CO and that Bad Ass shall cure all defects so the Plaintiffs' premises are issued a permanent CO (**Exhibit "A"**).

78. From on or about 2004 through 2007, Plaintiffs closed title on their homes with a Temporary Certificate of Occupancy issued by Defendant City and the DOB to Defendants Bad Ass.

79. At no time did Bad Ass hold in escrow \$6,500 for Plaintiffs' escrows nor did it obtain permanent COs as promised in the Builder Certification.

80. Upon information and belief, the applicant of record for the building permits and the temporary CO at the time of the sale of the premises to Plaintiffs was its builder Defendants Bad Ass and its representative as the authorized owner of the premises.

81. By operation of law, when the homes were sold then that authorization expired, requiring new applications to be filed at the time of closing to transfer any responsibility upon Plaintiffs to cure Defendants CO violations.

82. Upon information and belief, new applications were never filed to transfer responsibility to the Plaintiffs because the contracts between Plaintiffs and Defendants Bad Ass state the responsibility is the Defendant Bad Ass'.

**THE CITY AND DOB DEEM THE HOMES "HAZARDOUS" and DEMAND THE HOMEOWNERS VACATE THEIR PREMISES and PAY THOUSANDS IN FINES INSTEAD OF PURSUING THEIR LICENSEE BAD ASS FOR VIOLATING THE LAW**

83. To date, Plaintiffs received violations from Defendant City stating their homes are "occupied without a valid C/O", are a "class I violation" which means "immediately hazardous" and to "discontinue illegal occupancy".

84. Upon information and belief, DOB Notices also advise Plaintiffs that "Continued occupancy of a home with an expired TCO violates the law and may result in the issuance of Environmental Control Board violations and possible monetary penalties" and that the failure to have a Certificate of Occupancy has the potential risk of "not being able to sell or refinance your home or obtain a mortgage."
85. Defendants DOB, the City and Commissioner accuse only the Plaintiffs of violating laws when the laws hold that it is the DOB's licensee Bad Ass that is responsible.
86. NYCAC 26-125 provides:

Violations of building law; punishments; penalty. a. Except as otherwise provided in subsection b and f of this section, section 26-126 or 26-148 of this title, **every person who shall violate any provisions of any laws**, rules or regulations enforceable by the department or who shall knowingly take part or assist in any such violation shall be guilty of any offense and upon conviction thereof shall be punishable by a fine of not more than five thousand dollars. Such person shall also be subject to the payment of a penalty of not more than five thousand dollars in a civil action brought in the name of the city *in any court of record in the city* (emphasis added)....

and

NYCAC 26-126.1 provides:

Environmental Control Board; civil penalties. a. In addition to or as an alternative to any of the remedies and penalties provided in subchapters one, two and three of chapter one of this title or chapter one of title twenty-seven any person who shall violate or fail to comply with any provisions of subchapters one, two and three of chapter one of this title or chapter one of title twenty-seven or the rules and regulations promulgated hereunder shall,...be liable for a civil penalty in a proceeding before the Environmental Control Board....

87. To date, Defendant City, DOB and Commissioner hold Plaintiffs liable for Bad Ass' violations and completely ignore going after Bad Ass as the real culprit.
88. This satisfies the continuing violation doctrine that delays the statute of limitations for any causes of action as the accusations against Plaintiffs and failure to act against the proper parties by Defendants DOB, City and the Commissioner occur right now, including their refusal to issue permanent Certificates of Occupancy.

**DEFENDANTS' CUSTOM AND POLICY TO FALSELY ACCUSE  
HOMEOWNERS FOR THE UNLAWFUL CONDUCT OF  
THE CITY'S LICENSEE**

89. Defendants City, DOB and the Commissioner have a custom and policy of obtaining the final Certificate of Occupancy without a written authorization from the purchaser as the

new owner, which is not in compliance with the NYCAC.

90. Defendants City, DOB and the Commissioner have a custom and policy of refusing to utilize the power it is given under NYCAC 26-125(a) and 26-248(a) to punish builders who fail to obtain renewals of temporary Certificates of Occupancy.
91. Defendants City, DOB and the Commissioner have a custom and policy of abandoning its obligations under the NYCAC to insure a permanent CO is issued to the premises that it is responsible to oversee until a permanent CO is issued.
92. Defendants City, DOB and the Commissioner have a custom and policy of unlawfully shifting its legal obligation of enforcing the building code against the developer-builder to the purchaser-homeowner when that party is not responsible for the defaults of the DOB's permit holder.
93. Defendants City, DOB and the Commissioner have a custom and policy of abusing the laws and using legal loopholes to justify its unlawful conduct.
94. For instance, because NYCAC 27-214 permits the issuance of Certificates of Occupancy when there is only "substantial compliance" with the approved plans and the code then the DOB will shift the responsibility to the homeowner who is not in privity and cannot defend against the "substantial compliance" statute that is the builder's responsibility as the licensee.
95. Defendants City, DOB and the Commissioner shift blame avoid litigation for abuse of discretion or for arbitrary and capricious findings denying a permanent CO from the builder, who is actually in privity with the Defendant DOB, and is actually the DOB's source of profit.
96. As part of its custom and policy of not enforcing its licensees to obtain permanent COs, the DOB shifts the blame on the innocent homeowner who is desperate to keep their home under threats of eviction and tens of thousands in fines.
97. As part of its custom and policy of not enforcing its licensees to obtain permanent COs, Defendant DOB firmly holds that if an Article 78 is not commenced within the 4 month statute of limitations of the Temporary CO expiring then any relief against the DOB is time barred.
98. That restrictive policy is conceded in the DOB's counsel, David G. Rossi, Esq., recent affirmation, dated September 25, 2014, filed in Bronx County, Index #24816/13 wherein he confirms:

"4. As an initial matter, the issuance of temporary certificates of occupancy by City

Department of Buildings is an administrative determination; any challenge thereto falls squarely within the purview of a CPLR Article 78 special proceeding, which in any event is now time-barred pursuant to the statute of limitations under CPLR 217(1).”

**COUNT ONE: FIFTH AMENDMENT TAKING**

99. All of the foregoing paragraphs are repeated here as if fully set forth.
100. Plaintiffs are the owners of the premises and have a vested interest in their property being free and clear of any governmental interference.
101. Plaintiffs have a vested right to living in habitable premises free of CO violations and notices demanding they vacate their premises.
102. Defendant City employs a regulatory process that interferes with Plaintiffs rights to enjoy their property.
103. Defendants City, DOB and Commissioner acting under color of state law deprived plaintiffs of their right to enjoy their property without unlawful deprivation in violation of their rights as guaranteed them by reason of the Fifth Amendment to the United States Constitution, 42 USC § 1983.
104. Plaintiffs have no other relief as Defendants City and DOB concede its regulatory policy restricts the homeowners in seeking relief because they are time barred by their limited relief under Article 78, as stated in paragraph 95 above.
105. Defendants City, DOB and Commissioner’s failure to correct these issues has caused the homes to suffer a substantial loss in their value as sufficient facts are pleaded in this complaint alleging that municipal action rendered the homes valueless for their purpose as habitable as Defendants deem the homes hazardous and should be evicted.

**COUNT TWO: SUBSTANTIVE DUE PROCESS**

106. Defendants deprived plaintiffs of their property rights without Due Process as guaranteed them by reason of the Fourteenth Amendment to the United States Constitution, 42 USC § 1983.
107. There is no state remedy as Defendant City concedes there is no post-deprivation remedy to the expired COs because a four month statute of limitations under CPLR Article 78 expired some 7 years ago.

108. Notwithstanding whether a state remedy exists, that does not need to be proven because the refusal by Defendants City, DOB and Commissioner for seven years to hold the real culprits, Bad Ass, liable and instead accuse the innocent Plaintiff homeowners for the misconduct of their licensee is arbitrary, conscience-shocking, or oppressive rather than merely incorrect or ill-advised, which constitutes a gross abuse of governmental authority.
109. The City's refusal to enforce its laws, its permit requirements and the Builder Certification promises against the Defendants Bad Ass to procure permanent COs is arbitrary and irrational, which destroys Plaintiffs' vested interests in their property.

### **COUNT THREE: MONELL VIOLATIONS**

110. All of the foregoing paragraphs are repeated here as if fully set forth.
111. Defendants City and Commissioner's actions, omissions or decisions as policy level officials of Defendant DOB were responsible for establishing the DOB policies, customs and practices that caused Plaintiffs to suffer for over seven years without premises legally in compliance with city codes.
112. Defendant City has an established municipal policy that caused the withholding of Plaintiffs' COs for seven years and to date by an informal custom of refusing to hold its licensee's liable that is so widespread as to have the force of law.
113. Policy-making officials of the City and DOB failed to properly train or supervise their respective subordinates in following up with their licensee builders, inspecting homes to insure their licensees provide what they were licensed to build and to hold their licensee's liable for violating their duties under their licenses to such an extent that it amounts to deliberate indifference to the rights of homeowners to have and enjoy their property built in the City by the City's licensees.
114. The facts of this case alone that many homeowner Plaintiffs are aggrieved by the DOB's constant refusal to follow the law as alleged herein and mandated by the City Charter proves it has created a system, custom and policy to issue building permits and temporary Certificates of Occupancy then assert that it has no responsibility to enforce the laws against its licensee.
115. That policy caused the continued CO violations, the refusal of providing permanent COs and the deprivation of Plaintiffs' property rights.
116. As a result, plaintiff suffered damages as described above.

**COUNT FOUR: BREACH OF CONTRACT-THIRD PARTY BENEFICIARY**

117. All of the foregoing paragraphs are repeated here as if fully set forth.
118. The permit process is a contract between the Defendants DOB, City and Commissioner and the applicant builder, Defendants Bad Ass, in the case of new construction at the stage of permit and temporary CO requests.
119. At all times relevant hereto, Defendants Bad Ass entered into a licensing agreement for permission to construct new homes in consideration of fees they paid to the Defendants DOB, City and Commissioner.
120. Included in that licensing agreement is the granting of Certificate of Occupancies from the City to Defendants upon completion of Defendants duties in their license to build with the city.
121. At all times during this licensing agreement, it was implied and understood between Defendants City and Builders that the purpose of the agreement was to provide suitable housing for homeowners and all of the building code laws as herein above stated are incorporated into that agreement.
122. Plaintiffs became the third-party beneficiaries of that licensing agreement when they entered into Contracts of Sale with Defendant Bad Ass and were the intended third party beneficiaries when the Bad Ass contracted with Defendants City, DOB and Commissioner to build them suitable housing.
123. Defendants City and Builder breached their contractual duties to the intended third-party beneficiary Plaintiffs by refusing to complete their contractual obligations and provide permanent COs and suitable housing to the Plaintiffs.
124. Plaintiffs have been damaged by receiving premises without COs, they had to expend substantial sums in fines, legal fees and other costs to delay their evictions and the value of their homes is substantially below what they should be and actually valueless as they are all deemed unlawful by Defendant City's notices for them to vacate.

**COUNT FIVE: HOME WARRANTY**

125. All of the foregoing paragraphs are repeated here as if fully set forth.
126. Defendants Bad Ass entered into contracts to sell new homes pursuant to the New Construction Warranty that included the home shall be free of material structural defects for six years. GBL §777-a(1-2).

127. Plaintiffs have provided to Defendants Bad Ass notice of breach of the applicable warranty within 30 days after expiration of the applicable warranty period. GBL §777-a(4).
128. Defendants have failed to repair the defects.
129. Defendants' breach of the Housing Merchant Warranty has caused Plaintiffs to suffer in their home ownership a perpetually wet basement, exposure to black mold and fungal growth, increased energy expenses due to the improper insulation, degradation of energy efficiency for heating and has placed them in violation with City Codes.
130. These conditions caused by defendant's breach of the Housing Merchant Warranty have affected Plaintiffs' health, interfered with their intended use of their home, and compromised their home's resale value.
131. Plaintiffs have spent tens of thousands for inspections, tests, and services to identify and respond to the associated conditions caused by Defendant's breach of the Housing Merchant Warranty as provided by Article 36-B of the General Business Law.

**COUNT SIX: FRAUD by BAD ASS, BRADSHAW AND RAMIREZ**

132. All of the foregoing paragraphs are repeated here as if fully set forth.
133. Defendants Bad Ass sold new homes at an average of \$500,000 to Plaintiffs that they represented were habitable.
134. The representations made by *Bad ASS* were made wrongfully, unlawfully, and falsely for the purpose and with the intent to cheat Plaintiffs and to induce them to pay for homes Bad Ass knew they were building below city codes and could not obtain a permanent certificate of occupancy.
135. Defendants Bradshaw and Ramirez were attorneys who furthered the fraud by convincing Plaintiffs that their homes would receive permanent certificates of occupancies if they released tens of thousands of dollars to defendants Bradshaw and Ramirez to hold in escrow for the purpose of Bad Ass to obtain permanent COs.
136. Defendants Bradshaw and Ramirez also fraudulently told Plaintiffs they were working with Bad Ass to correct the damage to their homes as a result of the substandard construction.
137. Defendants Bad Ass, Bradshaw and Ramirez did not get the COs nor correct the construction defects for over seven years
138. The representations were untrue and known to be so by when they were made.



139. By reason of Defendants' frauds Plaintiffs suffered all of the damages as aforesaid herein.

**COUNT SEVEN: BREACH OF FIDUCIARY DUTY**

140. All of the foregoing paragraphs are repeated here as if fully set forth.

141. Defendants Bradshaw, Ramirez and DOES 2-4 entered into escrow agreements with Plaintiffs to hold monies until permanent Cos were obtained by Defendants Bad Ass.

142. Defendants as Escrow Agents owed a fiduciary duty of the highest order to Plaintiffs.

143. Upon information and belief, Defendants unlawfully released those escrows in violation of their duties.

144. By reason of Defendants' breach, Plaintiffs have suffered damages as aforesaid.

**COUNT EIGHT: DISGORGE ESCROWS**

145. All of the foregoing paragraphs are repeated here as if fully set forth.

146. Defendants Bradshaw, Ramirez and Does 2-4 violated their duties as escrow holders and must release all said escrows to Plaintiffs and pay whatever they released in violation of their duties as well, all with interest since the date of each escrow agreement.

**COUNT EIGHT: DECLARATORY RELIEF**

147. All of the foregoing paragraphs are repeated here as if fully set forth.

148. There is an actual, justiciable controversy between the parties as to why the Defendants City, DOB and commissioner do not hold liable its own licensee for obtaining COs for the premises when there was never a transfer of that obligation in writing to Plaintiffs.

149. Plaintiffs are entitled to a declaratory judgment from this Court that their constitutional rights are violated for seven years to this date as detailed in the *Wherefore* clause below.

150. As a result of Defendants' actions and their deliberate indifference to Plaintiffs' constitutional rights, they suffered the consequences of seven years and continuing to date of being subjected to constitutional violations by state actors interfering with their rights to enjoy their property without state interference.

151. Plaintiffs demand a preliminary and permanent injunction against Defendants City, DOB and Commissioner to cease their notices and fines accusing Plaintiffs of CO violations and to proceed against the real violators, Defendants Bad Ass.

**WHEREFORE**, Plaintiffs pray for following relief, jointly and severally, against Defendants:

- a. a declaratory judgment that the aforesaid conduct of Defendants be adjudged and declared to have been in violation of Plaintiffs' constitutional rights;

- b. Granting an injunction against Defendants from continuing their unconstitutional conduct of accusing Plaintiffs of CO violations;
- c. Awarding Plaintiffs compensatory damages against Defendants Bad Ass, Bradshaw, Ramirez, the City and the DOB in an amount no less than EIGHT MILLION DOLLARS;
- d. Awarding Plaintiffs punitive damages against Defendants DOB, Bad Ass, Bradshaw, and Ramirez to punish and deter them from future misconduct;
- e. Awarding Plaintiffs interest on all causes of action;
- f. awarding attorney's fees, costs and disbursements accrued in pursuit of this action under 42 U.S.C. §1988; and
- g. Such other, further and different relief as the Court may deem just and proper.

Dated: February 23, 2015  
New York, NY

**LAW OFFICES OF SUSAN CHANA LASK**

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By: Susan Chana Lask, Esq. (#2286102)  
Attorney for Plaintiffs  
244 Fifth Avenue, Suite 2369  
New York, NY 10001  
(917) 300-1958



**Builder Certification For Temporary Certificate of Occupancy**

To: New York City Department of Buildings at  
(please indicate the borough the property is located )

Date: \_\_\_\_\_

**MANHATTAN**  
280 Broadway  
NY, N.Y. 10007

**BRONX**  
1932 Arthur Ave.  
Bronx, N.Y. 10457

**BROOKLYN**  
210 Joralemon St., 8<sup>th</sup> Fl  
Brooklyn, NY 11201

**QUEENS**  
Borough Hall  
120-55 Queens Blvd.  
Kew Gdns, N.Y. 11424

**STATEN ISLAND**  
Borough Hall  
10 Richmond Terrace  
Staten Island, NY 10301

**Re: Temporary Certificate of Occupancy For:**

\_\_\_\_\_  
**(Hereinafter referred to as the "Premises")**

This is to certify that at the time of Closing of the Premises, the undersigned ("Builder/Seller") shall deposit an Escrow in the amount of Six Thousand Five Hundred Dollars **(\$6,500)** ("Escrow Amount") per unit to secure completion of the work required to obtain a Final Certificate of Occupancy for the Premises. Builder/Seller hereby warrants and represents:

- (i) that the Escrow Amount is sufficient to complete the work required for a final certificate of occupancy for the Premises and a proportionate share, based upon the total number of units in the development, of any off-site improvements (drainage, curb, sidewalk, paving, catch/seeepage basins, etc.) to be completed;
- (ii) that Builder/Seller is responsible to cure all Building Department objections to qualify for a final certificate of occupancy for the Premises; and,
- (iii) that at the time of Closing, Builder/Seller will inform the buyer of the Premises of (1) all outstanding Building Department objections required to be cured to obtain a final certificate of occupancy, and (2) the name and address of the holder of the Escrow Amount.

Builder/Seller certifies that the above information is true and correct and acknowledges that the Department of Buildings is relying on these representations by issuing a temporary certificate of occupancy for the Premises. Builder/Seller hereby agrees to hold harmless and indemnify the Department of Buildings from any and all costs, claims and liability of any kind that may arise from any source which in any way refers to, relies upon or is in any way connected with the aforementioned statement.

Builder/Seller Name: \_\_\_\_\_

Signed by: \_\_\_\_\_

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Notary Public