



# TMO NEWS

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## THE REAL DEAL

MARCH 8, 2010

### **Citi Habitats offers to refund fee for illegal rental as state launches investigation**

Case at 343 West 87th Street highlights questions about who's responsible for identifying illegal apartments

By Candace Taylor



Citi Habitats this week offered to refund a broker's fee to clients who were rented an illegal apartment.

But Citi Habitats President Gary Malin told *The Real Deal* he believes his company is being unfairly blamed for the incident, which is being investigated by the New York State Department of State.

"Citi Habitats didn't do anything wrong," Malin said, noting that the listing for the illegally converted apartment was not a Citi Habitats exclusive, but was marketed by the landlord, Philip Jacobson, the owner of Manhattan-based Kain Realty.

As originally reported by NY1, James Wesley, his partner, Seth Rudetsky, and their young daughter were forced to move out of their apartment at 343 West 87th Street in November when Jacobson told them the duplex had been found to violate building codes.

Wesley and Rudetsky filed a complaint this fall with the Department of State against Jacobson and Citi Habitats, and are planning to take the matter to small claims court in hopes of recovering some of the money they paid for brokers' fees and relocating to their new apartment in Harlem.

Wesley and Rudetsky had paid a \$2,100 fee to the Citi Habitats agent who found them the apartment, along with a security deposit and \$2,520 fee to Jacobson, who acted as the broker for the building.

Jacobson has refused to refund their money, Wesley said. This week, Citi Habitats offered the couple \$3,600 and asked them to sign an agreement releasing the company from claims and damages associated with the transaction, Wesley said.

While Malin acknowledged that the company had offered a refund, he wouldn't comment on the terms of the agreement or how Citi Habitats arrived at that sum.

Wesley said they will likely take the offer, but wants Citi Habitats to educate their brokers about illegal apartments.

"I really would like them not to do this anymore," he said. "If that means they need to teach a workshop to all of their agents about what defines an illegal apartment, then that would be great."

Jacobson did not respond to repeated phone calls for comment.

The case raises wider questions for the industry about real estate brokers' responsibilities when it comes to identifying illegal apartments, a hot-button issue in the wake of several recent fire fatalities which are believed to have been caused by illegal apartment subdivisions.

Steven Spinola, the president of the Real Estate Board of New York, said it's not always easy to determine if an apartment meets city requirements.

"It clearly wasn't obvious in this case," he said.

Responsibility should fall on landlords, not brokers, he said.

Brokers "are not obligated to track down the zoning [laws] and determine exactly what the apartment is allowed for, or not allowed for," Spinola said. "In the end, the owner should be held accountable."

Wesley told *The Real Deal* that he and Rudetsky were originally thrilled with the brownstone garden apartment, with one bedroom on the ground floor and two in the cellar, where they moved in January 2009.

A few months later, the cellar flooded. Wesley said Jacobson failed to address their concerns about mold so they called 311. When inspectors from the city Department of Buildings saw the apartment, they became concerned about its legality, Wesley recalled. Sure enough, Jacobson informed his tenants in September that the

apartment had been found to be illegal, and that they had to move out.

According to a spokesperson for the Department of Buildings, the certificate of occupancy for 343 West 87th Street states that the cellar of the building cannot be used as living space, and the landlord had erected walls in the cellar without obtaining a permit.

Jacobson was fined \$200 and the walls have since been removed, the spokesperson said, but the cellar of the basement still cannot be used as an apartment or part of an apartment.

At press time the apartment was advertised as available for rent on Jacobson's Web site with two downstairs "recreation rooms" in addition to the ground floor space.

A spokesperson for the Department of State said the department's investigation of the incident is ongoing, and that Jacobson and Citi Habitats could each be fined up to \$1,000 if found to have violated the New York State Real Property Law, which covers fraudulent or dishonest practices. The department, which issues and can suspend or revoke a real estate licenses, though Jacobson's license expired in 2009, and his application for renewal is still pending, the spokesperson said.

Basements and cellars may be legally occupied if they meet the city's requirements for light, air, sanitation and egress, and have received approval by the Department of Buildings, according to the city's Web site.

But some housing advocates estimate that there are more than 100,000 units of illegally converted housing in New York City.

Most are in the outer boroughs, where owners of one- or two-family homes often convert their basements into rental apartments without getting the correct city permits, according to Howard Hua, a staff attorney at Queens Legal Services. He noted that because these residences aren't up to code, they can easily create fire hazards or other safety concerns.

In November 2009, a fire in an illegal basement residence killed three men in Woodside, Queens after firefighters had to cut through window bars to reach the victims. Illegal apartments are less common in Manhattan, said attorney Maria Beltrani, head of the landlord-tenant practice at Wolf Haldenstein Adler Freeman & Herz.

"You don't see it as often in Manhattan because there aren't as many private homes," Beltrani said.

Malin said Citi Habitats, like Rudetsky and Wesley, didn't know the 87th Street listing -- one of thousands that enter Citi Habitats' database every week through feeds from other brokerages -- was illegal.

"We were duped just like they were," he said.

While Citi Habitats checks the certificates of occupancy for the apartments it represents exclusively, it would be impossible to research other firms' exclusives as well, he said.

"My brokers can't be required to check every listing in the city before showing it to someone," Malin said,

adding that in this case, "a broker/owner represented something as legal when it turned out not to be."

He said Citi Habitats has now blocked its system from receiving listings at 343 West 87th Street.

Wesley said Citi Habitats should have known the apartment was not up to code.

"Isn't it their duty to know the basics of what an illegal apartment is?" he said. "That's like a reading teacher not knowing how to read."

But Spinola said real estate agents shouldn't be held responsible for determining the legality of apartments, especially basement and cellar apartments where it may not be immediately clear if the owner has gotten the proper permits.

"The building code is thousands of pages," Spinola said. "The code is very complicated and brokers are not lawyers. I don't believe it's fair to say that a broker should recognize that an apartment is illegal."

The best way to determine if an apartment is legal, Hua the attorney said, is to check the certificate of occupancy on the Department of Buildings Web site.

Beltrani, who has not worked on this case, said a landlord would likely be held liable for renting an illegal apartment, but it's not clear whether a broker would be.

"If the broker knew about it, or had reason to know about it, [renters] probably could hold the broker responsible as well," she said. "But it would be harder to prove."