Joseph M. Centorino, Inspector General

TO: Honorable Mayor and Members of the City Commission
FROM: Joseph M. Centorino, Inspector General

DATE: October 1, 2024
PROJECT: Review of Alleged Predatory Practices at Seacoast Condominium
OIG No: 24-22

INTRODUCTION

The OIG conducted this review based on information received by the OIG regarding alleged predatory and abusive tactics by a developer to coerce sales of condominium units by City of Miami Beach residents at the Seacoast Condominium, 5151 Collins Avenue, an historic property in Miami Beach. The review included interviews of condo residents and examination of documents connected to the activity in question. The review also included consideration of similar events in various buildings across the City with an eye toward both protecting City residents from abusive practices as well as the City's substantial commitment and investment in its historic properties. While the OIG has made no specific findings concerning any actions taken by the parties involved in any pending dispute involving these issues, this review has led to an OIG recommendation that the City consider legislation at the local level to address a matter of great public concern.

THE HISTORIC THOROUGHFARE THAT INCLUDES THE SEACOAST 5151 BUILDING

In 2009, the City of Miami Beach Planning Department prepared the Morris Lapidus/Mid-20th Century Designation Report, which told the history of Collins Avenue and the designation of historic districts along the "Beach's longest and most important thoroughfare." According to the report, post-World War II, an "audacious and visionary" individual, Morris Lapidus, teamed up with hotel developer, Ben Novack, to build the Fontainebleau, the biggest, most luxurious hotel in Miami Beach in the Millionaire's Row section of Collins Avenue at 44th Street. "And so began a new generation of major American resort architecture on Collins Avenue as the Fontainebleau became the first major Miami Beach hotel to replace the former early 20th century industrial millionaire oceanfront estates north of 44th Street. Equally luxurious oceanfront apartment buildings of a scale never seen on Miami Beach and competing with each other for outstanding mid-century design and level of amenity would soon follow."

There are fourteen major properties along this one-mile length of oceanfront land. Twelve of the properties contain mid-20th century structures that have been identified as contributing to the unique oceanfront urban resort character of the Morris Lapidus/Mid-20th Century Local Historic District. The Code of the City of Miami Beach defines a "contributing" structure in a local historic

district as "...one which by location, scale, design, setting, materials, workmanship, feeling or association adds to a local historic district's sense of time and place and historical development."

Five of the fourteen major properties were designed by Morris Lapidus, including Seacoast Towers East (5151-5161 Collins Avenue), the subject of this review. The Planning Department Designation Report highlighted the Lapidus buildings, including the Seacoast, in its description of the historic corridor:

> *The extraordinary collection of five Morris Lapidus designed masterpieces, together with seven major contributing mid-century architects, in a single mile of the historic Collins Avenue corridor, embodies the full aesthetic, social, economic and historic impact that this one single mile stretch would have on the evolution of "Post-War Modern" design, and indeed, the future of post war modern leisure and apartment living in South Florida and beyond.*

COMPLAINT BY SEACOAST 5151 RESIDENTS

On April 5, 2024, the residents at the Seacoast Condominium at 5151 Collins Avenue unexpectedly received individual packages, delivered by FedEx, from Mr. Jordan Kornberg, the Managing Director of 5151 Collins Acquisitions, LLC. and Sergio Rok, the Manager of ROK Acquisitions. The packages included a Purchase and Sale Agreement, Escrow Agreement and Occupancy Agreement for each unit owner. The cover letter stated, in part, the following:

Re: Mast Capital's and ROK Acquisitions' Offer to Purchase all Units in 5151 Seacoast Condominium

> *Dear Owner:*
>
> *Mast and ROK, through their affiliate, 5151 Collins Acquisitions, LLC., respectfully present this offer to purchase your condominium unit at Seacoast 5151. Mast and ROK are simultaneously submitting offers to purchase all of the other units in the Condominium. By selling your unit as part of a bulk acquisition, you will receive a substantial premium above what would otherwise be available from typical individual sales and can avoid paying any brokerage commission...*
>
> *Mast and ROK would ultimately like to acquire all the units in the Condominium, and the offer is subject to receiving back signed contracts for units holding over 80% of the voting interests in the Condominium Association, although Mast and ROK may, in their sole discretion, start closing on units with fewer than 80 % of signed contracts in hand...*

Many of the residents in the building were alarmed and fearful of the efforts of this development team to buy out all of the condominium units. Just north of the Seacoast, neighbors living in the Amethyst Condominium at 5313 Collins Avenue, experienced similar efforts by the same developer to acquire all of the units in their building with the intention of demolishing and re-developing the parcel for its commercial benefit. At La Costa Condominium, located at 5333 Collins Avenue, residents had already experienced a bulk buyout by Mast Capital after it acquired 108 units (87%) in the building. La Costa has since been demolished. Residents in the Imperial House, located at 5255 Collins Avenue, and The Mimosa, located at 4747 Collins Avenue, are currently experiencing efforts by developers to buy out their buildings.

On April 6, 2024, Mr. Kenneth Brooks, a resident of Seacoast 5151, emailed Commissioner Alex Fernandez regarding the possible demolition of Seacoast 5151, the Morris Lapidus designed building within the Morris Lapidus historical district. In his initial email to Commissioner Fernandez, Mr. Brooks stated that, "Mast Capital and ROK Acquisitions has now begun as of April 5,2024 to solicit all unit owners with the end purpose of 80% unit purchase to discontinue the condo entity in order to develop the property as they see fit. This needs to be investigated by Miami Beach immediately." Commissioner Fernandez advised Mr. Brooks that the City Commission did not have the authority to investigate but that the OIG might be able to look into the matter and provide some guidance to him and his neighbors.

On April 9, OIG investigator Jani Singer met with Mr. Brooks, Mr. Ralph De Martino, and Ms. Aura Cecilia Rengifo, who provided a sample of the package that the developer had delivered to every resident. During the meeting, the complainants detailed alleged coercive tactics used by the development team to pressure unit owners to sell. The OIG also met with residents of the Amethyst Condominium who similarly detailed the coercive tactics they have experienced. Those alleged tactics include but are not limited to the following:

1. Offering a sale price based on bulk sale of units and deceiving owners regarding the best market price. In many instances the developer will offer market or above market price but will not close in a timely manner if at all.
2. Providing unit owners with low estimates of the value of the property based on deceptive future values.
3. Continuing assertions to unit owners through email and phone calls that they must sell immediately or suffer the consequences.
4. Making repeated phone calls, email communications and visits to unit owners to pressure them to sell.
5. Repeatedly telling residents that their building is facing millions of dollars in repairs for which they will be responsible.
6. Scaring residents by telling them their building will crumble like the Champlain Tower building when, in reality, the buildings have been deemed structurally sound by the City.
7. Recruiting building managers (for money or some other benefit) to withhold pending sales from board meeting agendas and authorize sales with no notice to unit owners.
8. Recruiting residents (for money or some other benefit) to steer unit owners to the developer team.
9. Recruiting board members (for money or some other benefit) to steer unit owners to the developer team.
10. Threatening a forced sale of the condominium units that did not participate in the bulk sale once the condominium was terminated.
11. Using City Codes to report violations leading to increases in assessments, making it impossible for unit owners to remain in their homes.
12. Promising unit owners that full payment would occur within weeks of signing the sales contract and then extending the contract for years.
13. Extending the contracts while assessments and attorney fees increase in an effort to coerce the sale.
14. Requiring sellers to agree to change the bylaws that limit the number of units any one entity can own and then cancelling or extending the contract after the bylaws have been changed.
15. Utilizing brokers who are promised exclusive listing rights in the subsequently developed property if they succeed in securing a bulk sale causing them to continuously contact owners with the benefits of a bulk sale.

16. Utilizing options contracts, favorable to the buyer, that allow the buyer to delay without consequence. Option contracts are inconsistent with the FAR-BAR (a joint effort by the Florida Bar and Florida Association of Realtors to facilitate the sale of real estate in Florida) and do not impose a mutuality of obligation. Some of the favorable terms for the buyer include:

    a. The "unconditional right in Buyer's sole and absolute discretion to cancel the Agreement in the event that Buyer has not entered into fully executed and legally binding purchase agreements to purchase a sufficient number of units to own at least 80% of the applicable interests…"
    b. The acknowledgement that Buyer intends to obtain the vote required to terminate the Condominium and that Seller shall cooperate and vote in favor of Buyer's Proposed Termination.
    c. The agreement by seller not to instigate, support, consent to join in or vote in favor of (1) any other proposal for termination of the Condominium; (2) any amendment to the Declaration, including, without limitation, any amendment in any way affecting the Buyer's purchase of the unit or Buyer's proposed termination; or (3) any contract with the Association for the purchase or lease of any Association or Condominium property, without Buyer's prior written consent.
    d. The agreement by Seller that from and after the effective date, Seller shall (1) immediately provide Buyer with copies of any notice received from the Association during the term of this Agreement, including any notices of unit owner meetings, meetings of Board of Directors, proposed amendments to the Declaration, or other Association actions, and (2) vote on all matters that come up for a vote of the unit owners prior to closing in the manner buyer directs in writing.
    e. The agreement by Seller that he/she shall provide Buyer a limited or general voting proxy in form and substance acceptable to Buyer, appointing Buyer as Seller's proxy to cast Seller's vote on all matters submitted to the unit owners for approval on a vote which Seller agrees not to revoke during the term of this Agreement.
    f. A provision that neither the existence, nature, amounts or fact of the Agreement nor any fact and issue pertaining to the transactions contemplated in the Agreement, shall be disclosed or discussed by Seller with any person other than Seller's counsel except as may be required by a court order, or as may be required in connection with Closing.
    g. A requirement that the Buyer shall deposit into an escrow account only 3% of the purchase price.

THE CONDO BUYOUT PROBLEM

Condo buyouts are on the rise in Miami Beach. The issue has been reported on extensively in local and national media. According to recent data from the Florida Department of Business and Professional Regulation, there have been thirteen condo terminations on Miami Beach since 2019. With the collapse of Champlain Towers in 2021 and the subsequent passage of state law requiring that condominiums obtain a Structural Integrity Reserve Study dictating the reserve funds needed for repairs and maintenance, many residents are faced with increased assessments that they cannot afford. Bringing older buildings into compliance means that condo association fees may increase to an amount that is more than an owner's monthly mortgage, thereby creating a financial challenge for middle and fixed-income residents. Coupled with rising insurance premiums, this has put financial pressure on condo owners to sell.

A number of developers have taken advantage of these financial pressures in Miami Beach and other places to buy out owners and terminate the condominium. Condo terminations normally follow three paths, but all require developers to gain 80% of the residences to control the building's fate. The different avenues to a condo termination are:

1. The developer makes an offer to a condo association board for a bulk amount of the residences and the land. The association then shares the offer with its owners and a vote is held. The developer would need 80% of the vote and 5% or less of residents rejecting termination plans to gain control. (This has been identified as a best practice by real estate attorneys.)
2. The developer buys the residences individually and influences condo policies to gain more condo units. For example, the developer pushes for large assessments to squeeze out residents.
3. The developer will buy residences individually but have the board of directors on its side and connect them to owners willing to sell.

It is noteworthy that, for many older condo communities, the real asset is the value of their share of the land under their building but the offers they are receiving are not based on that land value.

JUDICIAL ACTION ON PREDATORY PRACTICES

An example where alleged predatory practices have been challenged can be seen in a lawsuit which was filed in Miami-Dade Circuit Court in 2023 against the Biscayne 21 Condominium (case number 2023-016774-CA-01), located in the City of Miami, after a development team purchased sufficient units to dissolve the condo association. The plaintiffs alleged that a group of international investors acquired many units in the condominium and then pressured other unit owners to sell their respective units in a "bulk sale" by manipulating, bullying, deceiving and pressuring them to sell. The bulk sale enabled the developer to gain control of the condo association and amend the condominium declarations to allow for termination of the association without unanimous consent of the owners, which had been previously required for termination under the condominium's original governing document, The Biscayne 21 Declaration.

Plaintiffs, representing 10 owners who did not want to sell, sought a temporary injunction which was denied. The Third District Court of Appeal, however, reversed and issued a stay order prohibiting demolition or alteration of the building and stated, in part, that the plain language of the condominium declaration controls: "The parties did not contract to having their voting rights limited by a future statutory amendment which simply allowed for a lower voting threshold." Their pleading noted that, "Judges in this judicial circuit have recognized as a public policy issue this 'snake in the garden' problem, in which predatory investors gain a strong enough interest in a condominium to make resistance seem futile to owners who would prefer not to sell, but for the snake."

Miami-Dade Circuit Judge William Thomas stated, in a separate case, the following: "I think that what needs to happen, the Legislature needs to pass a law that says that when anybody purchases more than 10 units in a building, that all unit owners need to be made aware that the purchase is taking place. Because I think that this all sneaks up on everybody. Now all of a sudden somebody owns 300 units or 338 units in a building and nobody can really stop them from doing whatever they want to do..." *Farnik v. Shelborne Ocean Beach Hotel Condominium Ass'n, Inc,* Hearing Nov. 22, 2021, Tr. At 25-26 (interpreting 1993 version of Condominium Act).

On August 19, 2024, the *Miami Herald* published an article entitled "No rush from Florida Legislature to address 'anxiety' over post-Surfside condo laws." The article stated the following:

> *Florida lawmakers likely won't take action soon to relieve a brewing condominium crisis that could see thousands of owners priced out of their homes. In a letter to state senators, Senate President Kathleen Passidomo, R-Naples, rejected calls to reconvene the Legislature before March to amend new condo safety laws passed in the wake of the Champlain towers collapse that killed 98 people. Condominium associations across Florida are facing a Jan.1 deadline to have an engineer inspect their buildings for safety and figure out how much they need to set aside for repairs. The repairs could cost the associations millions of dollars. Unit owners would be forced to shoulder the burden with hefty special assessments and higher monthly fees…Lawmakers can wait until after the November election to take up the issue…*

A LOCAL LEGISLATIVE SOLUTION

The OIG does not believe that the Commission needs to wait for the Legislature to act. At a minimum, the Commission could pass legislation that addresses the aggressive tactics being used by some developers seeking condo buy-outs and would lead the State in protecting its residents from such tactics.

Florida's Deceptive and Unfair Trade Practices Act defines unfair practices as practices which offend established public policy and are immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers (F.S.A. 501.201…). The Act prohibits "unfair methods of competition, unconscionable acts or practices and unfair or deceptive acts or practices in the conduct of any trade or commerce".

The OIG has discussed with Deputy City Attorney Nick Kallergis the possibility of crafting an Ordinance which would address the predatory practices identified above. Mr. Kallergis opined that the Florida Deceptive Trade Practices Act would not expressly pre-empt a local Ordinance and that there is a local and state interest in protecting residents from these practices. The OIG also spoke with Planning Director, Tom Mooney, who suggested that the City could create incentives, such as additional height or FAR, for non-predatory practices.

The OIG conducted additional research to determine what other local jurisdictions have done to protect their residents, especially those who may be elderly and on fixed incomes. While there does not appear to be protective legislation within Florida, the OIG did find an ordinance that was passed in the City of Chicago. Section 4-6-050 of the Municipal Code of Chicago was amended to state:

(e) Prohibited Acts. It shall be unlawful for any licensee engaged in the business of residential real estate developer to:

(7) use predatory tactics to persuade, convince, cajole, pressure, force, harass, or otherwise coerce any homeowner to sell their property. For purposes of this subsection €(7), the term "predatory tactics" means: (1) repeated and unsolicited attempts, within any 180-day period, to contact a homeowner via email, telephone calls, house visits, written material or similar means, under circumstances when the homeowner has affirmatively

requested the licensee or the licensee's agent to refrain from such activity; or (2) threats, whether express or implied. (Emphasis added.)

The penalties include, in addition to any other penalty provided by law, a fine of not less than $2,000 nor more than $10,000 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

The OIG reached out to the City Attorney's Office in Chicago to determine the impact of the Ordinance. The Ordinance has been used one time to prosecute a developer who ultimately agreed to a $2,000 fine and a $25,000 payment to the homeowner. The developer also agreed to a three-year ban on obtaining any permits in Chicago.

In addition to Section 4-6-050, the Chicago City Council also used their zoning laws to slow the displacement of residents who resided in two areas of the city where apartment buildings with two, three, or four units were being replaced by lavish single family homes. In 2020, the City Council adopted a two-part plan: set a minimum allowable density in these targeted areas and impose a demolition surcharge onto home demolitions in the same areas. The $15,000 demolition surcharges were used to fund City-backed affordable housing initiatives. As a result of these policy changes, building deconversions and demolitions have plummeted and $120,000 has been raised for other affordable housing efforts. Alderman Byron Sigcho-Lopez, also the sponsor of Section 4-6-050 said in a 2022 interview by The Daily Line:

> "We know that whether it's related to sustainability and the emissions impact or the aesthetic impact when people value existing housing in their community...when you lose housing on the scale that we were, it really impacts the affordability of our rental markets and emissions in the City...the loss of affordable housing and the loss of density can erode the social fabric of entire communities. I think both ordinances have helped slow down the speculation and demolitions that were concerning the community."

The OIG has also reached out to officials in Fort Myers and Panama City as well as the Jorge M. Perez Metropolitan Center at Florida International University. Dr. Ned Murray, the Associate Director of the Metropolitan Center checked with his colleagues in Deerfield and Pompano Beach to determine whether such an approach has been attempted in those communities. The OIG found that none of these jurisdictions has addressed this issue.

Dr. Murray advised that the Metropolitan Center has been studying ways in which local and state government can assist cash-strapped condo owners and incentivize the development of a debt market to enable associations to finance the repairs required by the Florida legislature, thereby allowing residents who do not want to sell to remain in their homes. He also suggested that developers who are seeking bulk sales to gain control of a condo board and dissolve the condominium could be required to have their transactions reviewed by a pre-development board. Another idea would be to require the developer to issue a Letter of Intent prior to delivering a real estate contract so that the parties can be assured that they agree on the major transaction terms before they invest time and money pursuing the transaction. Dr. Murray said he would be available to assist the City should it decide to legislate protections for residents.

The City may also consider prohibiting developers from moving forward with their projects in front of City boards unless and until they have secured 95% of the units in any given building, if negotiating with residents individually, or 100% of the units if negotiating through condo boards. In addition, the complainants in the Seacoast 5151 building have recommended that a developer seeking a bulk sale be required to put 10% of the sale price or $50,000 into escrow which would

be non-refundable, and that these contracts be required to close within 60 days. The ongoing and unilateral delays have been detrimental to some residents.

A CAVEAT

The OIG is cognizant of the fact that some condo buyouts may be considered by some residents to be in their best interests, particularly when there is a consensus among the owners that the costs of the renovations needed to meet Code requirements are unaffordable, and they believe they have no other practical options.

State Representative Vicki Lopez was recently interviewed for an article in *Politico* (May 30, 2024) and stated that she is concerned that the Biscayne 21 ruling by the Third District Court of Appeal will cause developers to reconsider buying older condominiums and that this will hurt residents who do need to sell or potentially face a foreclosure. Representative Lopez, in a subsequent interview by Tom Hudson for the Florida Roundup, stated that in the next legislative session they will begin to tackle this very complex situation which has to be considered in conjunction with affordable housing. Reforms, if any, will be based, in part, on the data received from the Structural Integrity Reserve Studies, among other data points. In the interim, the legislature in the 2024 session appropriated $30 million to assist condo owners with repairs under the My Safe Florida program. She also stated that the real estate community is advising lawmakers that buyers want new construction and so the demolition of older buildings will likely continue. The entire interview can be heard by clicking on this link or visiting https://www.wlrn.org/podcast/the-florida-roundup (Hosted by Tom Hudson on September 13, 2024)

CONCLUSION:

This report is meant to shine a light on those instances where a developer is perceived as not working to achieve a fair result for all residents, as well as raise a red flag where the City's interest in preserving an historic structure is threatened.

While the issue of condo buyouts/condo terminations makes its way through the legislative and court systems, the City should consider passing legislation based on the Chicago model to protect vulnerable owners wishing to remain in their homes from unscrupulous practices of developers whose private interests unfairly infringe on them.

Further restrictive legislation may be considered to protect owners from being compelled to vacate their homes, however, based on the caveat noted above, the wishes of informed condo owners who find that the sale of their units is in their best interests should not be unduly restricted.

The City's interest in historic preservation of architecturally significant condo buildings under threat of demolition, which coincides in the Seacoast 5151 case with the owners' personal interests, is worthy of further discussion and protection to avoid the fate of the Deauville disaster.

Respectfully submitted,

Joseph M. Centorino, Inspector General — Date

Jani Kline Singer, Investigator — Date 10/1/2024

cc: Eric Carpenter, City Manager
Ricardo J. Dopico, City Attorney
Nick Kallergis, Deputy City Attorney
Thomas Mooney, Planning Director