

ATTORNEY GENERAL OF THE STATE OF NEW YORK
REAL ESTATE FINANCE BUREAU

In the Matter of

Assurance No. 20-071

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

SW Security Services, LLC,

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to General Business Law § 352 *et seq.* and New York Executive Law § 63(12) into the conduct of 132-40 Sanford LLC and Pinnacle Managing Co., LLC concerning the distribution of electronic key fobs at the residential building located at 132-40 Sanford Avenue, Queens in March 2018. In the course of the investigation, SW SECURITY SERVICES, LLC (“Respondent”) provided documents and testimony to the OAG. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG and the relief agreed to by the OAG and Respondent (OAG and Respondent are collectively referred to herein as the “Parties” and individually as a “Party”).

OAG’S FINDINGS

I. The Respondent

1. Respondent SW SECURITY SERVICES, LLC is a New York limited liability company with its office at One Penn Plaza, Suite 4000, New York, New York 10119.

Respondent is a subsidiary of SECUREWATCH24 LLC.

II. Legal Standard

2. New York Executive Law § 63(12) prohibits repeated or persistent fraud or illegality in the carrying on, conducting or transaction of business.

3. “Illegality” as used in Executive Law § 63(12) includes violations of state laws and regulations, civil and criminal.

4. Generally, all buildings in New York City with six or more residential units built before January 1, 1974 are covered by Rent Stabilization. 9 N.Y.C.R.R. § 2520.11.

5. Rent Stabilization Code § 2525.5 prohibits an owner of a rent-stabilized apartment or his or her agent from engaging in any course of conduct that interferes with, disturbs, or is intended to disturb the privacy, comfort, peace, repose, or quiet enjoyment of a tenant in his or her use or occupancy of the housing accommodation, or that is intended to cause the tenant to vacate the apartment or waive any right afforded by the Rent Stabilization Code. 9 N.Y.C.R.R. § 2525.5.

6. Throughout the duration of their tenancies, rent-stabilized tenants are entitled to receive the same services provided to them at the inception of their tenancies, including ancillary services that are provided to the entire building, such as a laundry room and security. 9 N.Y.C.R.R. § 2520.6(r). Changing a door-locking device constitutes a change to a required service when it impacts access to the building or security. 9 N.Y.C.R.R. § 2523.4(e). When an owner desires to modify or substitute a required service, 9 N.Y.C.R.R. § 2522.4(e) provides a procedure for owners to seek permission from the New York State Division of Housing and Community Renewal (“DHCR”) to do so. The regulation provides that “[n]o such modification or substitution of required services shall take place prior to the approval of the owner’s application of the DHCR”

7. DHCR adjudicates owners' applications pursuant to 9 N.Y.C.R.R. § 2522.4(e) by administrative order. Through such orders, DHCR has articulated guidelines for owners and their agents to follow when modifying or substituting services provided for rent-stabilized tenants. One such order, found under DHCR Docket No. XK110024OD, concerned the proposed change to a lock and key mechanism at a rent-stabilized building at 94-25 57th Avenue, in Elmhurst, Queens.* The owner of that building sought to replace the existing lock and key mechanism with an electronic key card system. Tenants objected, raising, inter alia, privacy concerns. The DHCR Rent Administrator ruled that the owner was permitted to substitute the lock and key mechanism as proposed, with no reduction to tenants' legal regulated rents, provided that the owner met 13 conditions. Among those conditions, DHCR mandated the following three, which are relevant to this matter:

- a. While individuals requesting key cards must provide "adequate proof of identity," "the owner may not record any data (e.g. driver's licenses number)."
- b. The owner must provide unlimited electronic key cards at no cost to all tenants and lawful occupants of each unit.
- c. "The tenants will be given electronic keycards based on information on file with the landlord. Landlord may periodically request tenants to verify that keycard information is current; however, this shall occur no more than one time per year."

III. Factual Findings

8. On March 30, 2017, 132-40 Sanford LLC acquired title to the multi-family residential building located at 132-40 Sanford Avenue, in Flushing Queens ("the Building").

*A copy of this decision is attached to this Assurance as an Appendix. See also DHCR Docket No. XE430031OD (Sept. 4, 2009) (imposing similar guidelines under 9 NYCRR § 2522.4(e), including that the owner may not record any data from the tenant's proof of identity).

132-40 Sanford LLC, which is also located at One Penn Plaza, Suite 4000, New York, New York 10119 and is managed by Joel Wiener, was formed for the purpose of acquiring the Building and converting it to condominium.

9. At the time of acquisition, all residential units in the Building were subject to Rent Stabilization. Later, 132-40 Sanford LLC submitted an offering plan to the OAG pursuant to General Business Law § 352-eeee in order to convert the rental building to condominium ownership.

10. Soon after acquiring the Building, 132-40 Sanford LLC and its management company, Pinnacle Managing Co., LLC (“Pinnacle”), also located at One Penn Plaza, Suite 4000, New York, New York 10119 and managed by Joel Wiener, hired Respondent to perform a security survey of the Building. Respondent recommended a plethora of technological security enhancements to the Building, including the addition of an electronic access control system to the front door.

11. The electronic access control system features electronic panels and readers that are installed adjacent to the manual front door lock and are connected by cables to a computerized monitoring center. Once installed, an electronic device bearing an individualized facility code (“key fob”) is necessary to unlock the door. The monitoring center records data such as, inter alia, the date and time of each access, the facility code assigned to each fob that gained access, and incidents of denied access.

12. In 2017, 132-40 Sanford LLC and Pinnacle accepted Respondent’s recommendation to add an electronic access control system to the Building entrance and hired Respondent to implement the system, including installing the necessary parts and creating the electronic monitoring station.

13. In addition, rather than distribute the initial set of key fobs to tenants themselves, 132-40 Sanford LLC and Pinnacle hired Respondent to hand out the key fobs to tenants in the lobby. The Director of Investigations of Respondent performed this task. The Director of Investigations is a retired New York Police Department officer and oversees all private investigations conducted by Respondent, including private investigations into tenants. The Director of Investigations was interviewed by the OAG pursuant to a subpoena and cooperated with the investigation.

14. As an agent of the owner of the Building, Respondent was required to comply with the Rent Stabilization Code and DHCR guidance in the course of interacting with the rent-stabilized tenants of the Building.

15. At the direction of 132-40 Sanford LLC and Pinnacle, the Director of Investigations selected the afternoons of three days in March 2018 to distribute key fobs to tenants in the lobby of the Building. In advance of those days, Pinnacle incorrectly advertised to tenants that they must bring a “New York State valid ID” to the lobby of the Building in order to receive key fobs.

16. The Director of Investigations violated DHCR guidance while distributing key fobs to over 60 tenants in the lobby of the Building in March 2018. Although the Director of Investigations correctly accepted any photographic proof of identity from tenants seeking key fobs, and not strictly “New York State valid ID[s],” as Pinnacle had instructed, he nevertheless impermissibly recorded data from the photo identifications provided by tenants, such as driver’s license numbers, the state or jurisdiction issuing the identification, and any address listed on the identification.

17. The Director of Investigations also recorded his perceptions about the behavior of

tenants requesting key fobs, including whether tenants left the Building after receiving key fobs, who was with the tenant when she requested a key fob and, if the individual requesting a key fob was not on the list of tenants provided by Respondent, what the individual disclosed about her relationship with the tenant of record.

18. At the direction of Pinnacle, the Director of Investigations also impermissibly limited the number of key fobs each tenant was entitled to receive to two, regardless of the number of household members requiring a front door key.

19. Soon after distributing key fobs in March 2018, the Director of Investigations e-mailed Joel Wiener directly and informed him that he had “encountered circumstances which [he] believed should be investigated further.” The Director of Investigations listed 13 apartment numbers and explained why, in his opinion, there should be private investigation into the tenants of those 13 apartments. Ten of the 13 tenants were individuals with Chinese surnames.

20. The Director of Investigations explained that these 13 units should be investigated because, inter alia, tenants presented out-of-state IDs and IDs with addresses other than the Building when collecting their key fobs. In addition, he recommended investigations when tenants presented IDs that listed the Building as the tenant’s address in cases where those tenants left the Building after receiving the key fobs. In response to this e-mail, Joel Wiener responded, “We need investigations on each.”

21. Respondent thereafter initiated private investigations into the occupancy of the 13 apartments identified by the Director of Investigations. Using information collected from the key fob distribution, including addresses on the IDs provided by tenants, Respondent’s private investigators ran background checks on the tenants of record of the 13 apartments, visited those apartments to speak with the occupants, and traveled to alternate addresses in an effort to identify

whether the tenant was living at the Building.

22. On at least two occasions, Respondent's private investigators interviewed children under the age of 16 in order to collect information regarding the rent-stabilized tenants subject to the investigations.

23. Between March 2018 and June 2019, a total of seven of the 13 apartments subject to private investigations became vacant.

24. Respondent admits the OAG's Findings, paragraphs (1)-(23) above.

25. Respondent represents that it was not aware at the time that its conduct violated the Rent Stabilization laws and guidance.

26. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding at any time for violations Executive Law § 63(12) based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

27. General Injunction: Respondent shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to the Rent Stabilization Code and Executive Law § 63(12), and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in Paragraph 26 above, in addition to any other appropriate investigation, action, or proceeding.

28. Programmatic Changes: Effective immediately, whenever acting as the agent of any owner of rent-stabilized housing accommodations, Respondent will ensure compliance with the Rent Stabilization Code and applicable DHCR guidance. In particular:

a. When modifying a front door lock and key system, Respondent will comply with the DHCR guidelines articulated in the order under DHCR Docket No. XK110024OD (Appendix 1 to this Assurance) including, inter alia, ceasing to record data from photo identification produced by tenants during key fob distribution and issuing an unlimited number of key fobs to all tenants and lawful occupants of each unit.

b. In the course of conducting private investigations into rent-stabilized tenants, Respondent will not interview children under the age of 18.

29. Rent-Stabilization Training: Within 90 days of the date of this Assurance, all employees of Respondent who interact with rent-stabilized tenants in the course of their employment shall receive a training into the rights and protections afforded to rent-regulated tenants in New York City by any individual or agency capable of conducting such a training and approved by the OAG. Within 95 days after the date of this Assurance, Respondent shall provide to the date(s) and time(s) of the training(s) and the names of said employees.

30. Human Rights Law Training: Within 90 days of the date of this Assurance, all employees of Respondent with supervisory and/or management responsibilities shall attend a “Know Your Obligations” virtual workshop provided by the New York City Commission on Human Rights. Within 95 days after the date of this Assurance, Respondent shall provide to the OAG a certification or receipt from the New York City Commission on Human Rights, confirming the date(s) and time(s) of the workshop(s) attended by said employees and the names of said employees.

MISCELLANEOUS

Subsequent Proceedings.

31. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 44, and agree and acknowledge that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue; and
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

32. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

33. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall include any such successor, assignment, or transfer agreement a provision that binds the successor, assignee or

transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

34. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

35. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications:

36. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 20-071, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to:

Jacob Kaplan, Esq.
Brafman and Associates, PC
767 Third Avenue, #26
New York, New York 10017
jkaplan@braflaw.com

If to the OAG, to:

Rachel Hannaford, Esq.
Senior Enforcement Counsel

Housing Protection Unit
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Rachel.Hannaford@ag.ny.gov

or in her absence, to the person holding the title of Bureau Chief, Real Estate Finance Bureau.

Representations and Warranties:

37. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and its counsel and the OAG's own factual investigation as set forth in Findings, paragraphs (1)-(24) above. The Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

38. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

39. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that John J. Colgan, as the signatory to this Assurance, is a duly authorized officer and has the authority to execute this Assurance on Respondent's behalf.

General Principles:

40. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Agreement

shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

41. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

42. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

43. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

44. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

45. Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

46. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

47. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

48. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one

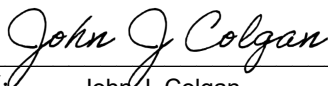
agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

49. The effective date of this Assurance shall be the date the Assurance is signed by OAG.

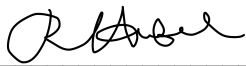
Dated: December 31, 2020

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SW SECURITY SERVICES, LLC


BY: John J. Colgan

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: 
Rachel Hannaford, Esq.
Senior Enforcement Counsel
Housing Protection Unit

APPENDIX



New York State Division of Housing and Community Renewal

Gertz Plaza 92-31 Union Hall St.
Jamaica, NY 11433
Web Site www.nysdhcr.gov

Docket Number:

XK110024OD

Order Granting Permission to Change or Decrease Dwelling Space, Essential Services, ETC., in Occupied Apartment(s)

Mailing Address Of Tenant:	Mailing Address Of Owner/Owner's Rep:
Various Tenants 94-25 57th Avenue ELMHURST, NEW YORK 11373	MYDAC Realty Corp. c/o Realty Program Consultants, LLC 182-30 Wexford Terrace, Suite LB7 JAMAICA ESTATES, NEW YORK 11432
Subject Building (Number and Street)	(If Different From Tenant's Mailing Address)
94-25 57th Avenue	(Apt. No.) Various (Municipality) Elmhurst, New York 11373

Applicable Regulations:

- Section 2102.5 of the State Rent and Eviction Regulations
- Section 2502.4 of the Tenant Protection Regulations
- Section 2202.21 of the NYC Rent and Eviction Regulations
- Section 2522.4 of the Rent Stabilization Code

Determination:

After consideration of all the evidence in the record, the Rent Administrator finds:

That the owner's request for authorization to modify services by replacing the traditional metal key system with a modern FOB entry card system [at no expense to the tenants] should be granted.

FACTS:

On November 20, 2009, the owner/owner's representative filed an application before this Agency requesting authorization to modify services at the subject premises by replacing the existing lock and key mechanism with an electronic card system. The tenants were apprised of the owner's request on December 11, 2009, and were afforded the opportunity to file a response; several tenants responded filing no objections to the owner's request. However, on behalf of some 90+ tenants, a response was received from the Urban Justice Center with various concerns, to wit: number and cost of keys, cost of replacement keys, private information and photo identification, and enhancement of building security.

Pursuant to the Rent Regulatory Regulations, an owner may file an application to modify or substitute required services, at no change in the legal regulated rent, on grounds that such modification or substitution is not inconsistent with the Rent Stabilization Law and Code or the New York City Rent and Eviction Regulations.

The Rent Administrator has considered the records and deems it appropriate to issue an Order granting the owner's request as follows:

- (1). Entry to the building may be accessed by electronic key cards. The metal key lock will remain in place for use by building management in the event of an emergency; and for use by religious observers if the facts warrant.

- (2). All tenants and lawful occupants are to receive free electronic keycards. In this regard, there is no limit to the number of keycards which may be issued for an apartment. Occupants of the apartment include children who are to be issued keycards if their parent/guardian requests it. Tenants may also receive up to four (4) additional keycards, at no charge, for employees and/or guests. Guests include family members and friends who can be expected to visit on a regular basis or visit as needed to care for a tenant or the apartment if the tenant is away. Employees, who may be contractors, professional caregivers, etc. may have an expiration date electronically placed on the keycard, which may be extended upon request by the tenant.
- (3). Each person receiving a keycard is required to sit for a photo to be electronically associated with such keycard in the security system database, however, minors are not required to have their photos taken. Photographs must be arranged to be taken on site or at a mutually agreed upon location.
- (4). Individuals obtaining keycards must provide appropriate proof of identity, but the owner may not record any data (e.g. driver's license number).
- (5). The tenants will be given electronic keycards based on information on file with the landlord. Landlord may periodically request tenants to verify that keycard information is current; however, this shall occur no more than one time per year.
- (6). The owner may not request or retain, in any form, the social security number of more than one tenant or legal occupant for each apartment unless the security deposit is kept in a joint type of an account.
- (7). The tenant's name, address and photo will not appear on the keycard.
- (8). The only information stored in the system database is the keycard holder's name, address, and picture. No other personal information of residents is to be stored.
- (9). The system may only record each time a keycard is used to open the front door; it will not record departures.
- (10). If tenants are locked out, tenants will be able to contact the building superintendent or the assistant superintendent who will be equipped with a spare "keyfob" for assistance. Per owner's statement dated 2/12/2010, tenants may contact the superintendents at (718) 592-8801 or (718) 271-0089; these numbers are also posted on the main entrance door on top of the door belts.
- (11). Religious observers who cannot operate electronic devices on the Sabbath will be allowed to request regular keys at the management office.
- (12). In the event of a power outage, in addition to the battery generator back-up system, sufficient staff is to be provided at all building entrances, at all times, until power is restored.
- (13). The cost to replace a lost or stolen electronic key card or for additional keycards not provided as per #2 (above) will be a maximum of \$25.00 each.

As this conversion is deemed an adequate substitution of services, no rent reduction is warranted. If the owner fails to meet the requirements provided above, the tenants may file an application for rent reduction based upon decreased services, if the facts so warrant.

If you believe this order is based on an error in law and/or fact, you may file a Petition for Administrative Review (PAR), form RAR-2, no later than 35 days after the issuance date of the order. PARs filed after the time limit specified above will be considered late and will be dismissed. Call (718) 739-6400 or visit your local Rent Office and request form RAR-2. This form is also available on our website at www.nysdhcr.gov.

March 12, 2010
Issue Date

Delia Albano

Rent Administrator

Additional Parties:

Sadia Rahman
c/o Urban Justice Center
123 William Street - 16th Floor
New York, New York 10038

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