

THE REAL DEAL

Text

Brach hit with subpoena at Spencer Street

September 22, 2009 03:30PM

By David Jones

Developer Mendel Brach was served with a subpoena last week to collect on a \$10.9 million judgment after he allegedly failed to complete necessary repairs and obtain a certificate of occupancy at his troubled Spencer Street condominium project in the Bedford-Stuyvesant section of Brooklyn.

Attorney General Andrew Cuomo filed suit in July alleging that Brach, starting in 2003, fraudulently sold condominium units to the general public after obtaining a zoning variance for religious studies. The suit also alleges the 72-unit development is saddled with \$8.9 million in construction defects, including leaks, mold, unsound walls and electrical problems.



Mendel Brach

"Because the condominiums cannot obtain certificates of occupancy, the purchasers cannot legally sell, rent, or refinance their units," said Assistant AG Lewis Polishook, in the suit.

Brach originally developed the development as four, nine-story buildings, located at 191, 195, 197 and 201 Spencer Street in 2001. He submitted plans to the city Department of Buildings in 2002 that stated the buildings would have educational housing facilities, which would allow him to get a zoning variance for the nine-story building, instead of the neighborhood legal limit of five stories.

The suit alleges that Brach sold all of the 72 units and failed to put the funds in escrow, post a bond or provide a letter of credit, so he could obtain a certificate of occupancy. The suit says that Brach was required to issue amendments to the offering plan that noted the failure to disclose the construction defects, failure to obtain a certificate of occupancy and a failure to comply with zoning regulations.

The lawsuit seeks to permanently bar Brach from selling condos or other securities in New York State.

"We all closed in 2004 and we've all been paying our mortgages on what is a valueless property, if the city chooses not to issue a certificate of occupancy," said Sara Monestime, a unit owner at the Spencer Street condos.

In a statement released by Brach's attorney, Andrew Weltchek, the developer says he has worked with the AG and unit owners for several years and has spent more than \$1 million help investigate and repair flaws in the building.

"Recently, I consented to judgments on behalf of the attorney general and the unit owners for the buildings," he said. "I will continue to do everything in my power to help the attorney general and the unit owners bring the buildings up to the highest standards possible."

Attorney **Adam Leitman Bailey** won the \$10.9 million judgment for the homeowners, but Brach has told city officials that he cannot afford the repairs needed at the building, and DOB officials told the unit owners that they would have to finance the repairs themselves.

City Council member Leticia James, who represents the next door district of Clinton Hill and Ft. Greene, says the homeowners have been jerked around by the buildings department and other city and state agencies for years, but is pushing to get a zoning variance that would make the building legal.

"You have an unscrupulous developer that has flouted the law and continued to get permits for other buildings," James said. "No one wanted to admit fault, and no one has yet admitted fault."