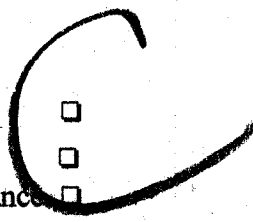


NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 24

Case Disposed
Settle Order
Schedule Appearance



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

-----X
THE CITY OF NEW YORK

Index No. 0250130/2016

-against-

Hon. DORIS M. GONZALEZ,

2276-80 WEBSTER AVENUE

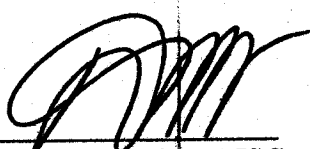
Justice.

-----X
The following papers numbered 1 to _____ Read on this motion,
Noticed on and duly submitted as No. _____ on the Motion Calendar of _____

	<u>PAPERS NUMBERED</u>	
Notice of Motion, Order to show Cause- Exhibits and Affidavits Annexed		
Answering Affidavits and Exhibits		
Replying Affidavit and Exhibit		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

SEE MEMORANDUM DECISION

Dated: September 9, 2016



Hon. Doris M. Gonzalez, AJSC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
THE CITY OF NEW YORK

Index No. 250130/2016

Plaintiff(s),

DECISION AND ORDER

-against-

2276-80 WEBSTER AVENUE REALTY
CORP.; THE LAND AND BUILDING
KNOWN AS 2276 WEBSTER AVENUE,
TAX BLOCK 3030, TAX LOT 156,
COUNTY OF BRONX, CITY and
STATE of NEW YORK; "JOHN DOE"
and "JANE DOE", fictitiously named
parties, true names unknown, the intended
being the owners, lessees, operators or
occupants of commercial establishment
d/b/a "XXX BARBER SHOP" within
the building located at 2276 WEBSTER
AVENUE, Bronx, New York; and any
person claiming any right, title or interest
in the real property which is the subject
of this action

Defendant(s)

-----X

GONZALEZ, D:

Upon, the Order to Show Cause dated February 19, 2016, by the City of New York
against the defendants for an order: pursuant to Sections 7-707, 7-709, 7-710 and 7-711 of the
New York City Administrative Code, enjoining the Defendants, their agents, employees and/or
representatives, and all persons acting individually or in concert with them, during the pendency
of this action:

- A. From the use and/or occupancy of commercial establishment d/b/a "XXX

BARBER SHOP” within the building located at 2276 WEBSTER AVENUE, Tax Block 3030, Tax LOT 156, Bronx, New York, (hereinafter the “subject premises”) for any purpose whatever and directing that said premises shall be closed and that the New York City Police Department shall take all steps necessary to effectuate this closing order; and

- B. From removing or in any other manner interfering with the furniture, fixtures and movable property used in conducting, maintaining, or permitting the nuisance complained of herein and
- C. From conducting, maintaining, operating or permitting the subject premises to be used or occupied for the criminal sale or possession of cocaine and/or marijuana, or for any other activity in violation of Articles 220 and/or 221 of the New York Penal Law; and
- D. From conducting or maintaining a criminal nuisance within the subject premises by allowing the criminal sale or possession of cocaine and/or marijuana, all of which creates a criminal nuisance pursuant to Section 240.45(2) of the New York Penal Law;

A temporary restraining order was issued pending the hearing and determination of the Order to Show Cause for:

- 1. Refrain from removing or in any other manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the nuisance complained of herein; and
- 2. Refrain from conducting, maintaining, operating, or permitting the subject premises to be used or occupied for the criminal sale or possession of cocaine

and/or marijuana, or for any other activity in violation of Articles 220 and/or 221 of the New York Penal Law; and

3. Refrain from conducting or maintaining a criminal nuisance within the subject premises by allowing the criminal sale or possession of cocaine and/or marijuana, all of which creates a criminal nuisance pursuant to Section 240.45(2) of the New York Penal Law.

BACKGROUND FACTS

The subject of this action is the real property located at 2276 WEBSTER AVENUE, Tax Block 3030, Tax LOT 156, Bronx, New York. The commercial establishment d/b/a "XXX BARBER SHOP" is the specific location where alleged multiple drug sales occurred.

Defendant, 2276-80 WEBSTER AVENUE REALTY CORP., is the last record owner of the real property which is the subject of this action according to a mortgage recorded in Bronx County, Office of the City Register. The commercial establishment d/b/a "XXX BARBER SHOP" is within Defendant, the land and building known as 2276 Webster Avenue, Tax Block 3030,

That on February 12th, 13th and 15th of 2016, a confidential informant allegedly purchased under a control buy, operations from an individual at the premises in question. Sergeant Baez checked the confidential informant before each and every buy. He then observed the confidential informant enter the premises in question and upon searching the confidential informant after he/she came out of the premises in question, the confidential informant was found to have either marijuana and/or a controlled substance, in his/her possession.

The owner and several of the workers testified that each is unaware of any drug sales occurring at the premises in question. Each testified that in addition to the main entrance of the

barbershop there is another entrance to the location in question through the bodega attached to the premises known as 2276-80 Webster Avenue. This was confirmed by the diagram created and marked as Plaintiff's evidence #7.

No testimony was presented by the confidential informant as to what actually occurred inside the store, and the defendant was not afforded the opportunity to cross-examine the confidential informant as to the alleged illegal activity inside the store.

Therefore, based on the record before the court, the failure of the City to present the confidential informant to testify to corroborate the allegations contained in the Order to Show Cause; and there being insufficient evidence in admissible form to support this Court's finding of a public nuisance as defined by 7-703 of the Administrative Code existed at the subject premises; and

Accordingly, after review of the Court file and due deliberation; it is hereby

ORDERED, that the Order to Show Cause is denied in its entirety.

This constitutes the decision and order of the court.

September 9TH 2016
Bronx, New York



HON. DORIS M. GONZALEZ, AJSC

FAX:
917-454-1185

At Individual Assignment Part 1 of the Supreme Court of the State of New York, held in and for the County of Bronx, City and State of New York, at the Courthouse located at 851 Grand Concourse, Bronx, New York on the 19th day of February, 2016.

PRESENT: HONORABLE HON. DORIS GONZALEZ,
Justice

-----X
THE CITY OF NEW YORK,
Plaintiff,

- against -

2276-80 WEBSTER AVENUE REALTY CORP.; THE LAND AND BUILDING KNOWN AS 2276 WEBSTER AVENUE, TAX BLOCK 3030, TAX LOT 156, COUNTY OF BRONX, CITY and STATE of NEW YORK; "JOHN DOE" and "JANE DOE", fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of commercial establishment d/b/a "XXX BARBER SHOP" within the building located at 2276 WEBSTER AVENUE, Bronx, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,
Defendants.

ORDER TO SHOW CAUSE

Index No. 250130/14
Filed on: February 19, 2016

-----X

Upon the annexed Affirmation of Todd Goldberg, Esq., dated February 16, 2016; the affidavit of Sergeant Herminio Baez, dated February 16, 2016; together with the exhibits, Summons and Verified Complaint, and verified by Michelle Goldberg-Cahn, Esq., on February 19, 2016;

LET the defendants or their attorneys Show Cause before this Court at I.A.S. Part 1 of the Court, Room 405-A, to be held at the Courthouse, 851 Grand Concourse, County of Bronx, City and State of New York, on the 23rd day of FEBRUARY, 2016, at 9:30 o'clock in the FORE noon of that day or as soon thereafter as counsel can be heard why an Order should not be made pursuant to Sections 7-707, 7-709, 7-710 and 7-711 of the New York

City Administrative Code, enjoining the Defendants, their agents, employees and/or representatives, and all persons acting individually or in concert with them, during the pendency of this action:

- A. From the use and/or occupancy of commercial establishment d/b/a "XXX BARBER SHOP" within the building located at 2276 WEBSTER AVENUE, Tax Block 3030, Tax LOT 156, Bronx, New York, (hereinafter the "subject premises") for any purpose whatever and directing that said premises shall be closed and that the New York City Police Department shall take all steps necessary to effectuate this closing order; and
- B. From removing or in any other manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the nuisance complained of herein; and
- C. From conducting, maintaining, operating or permitting the subject premises to be used or occupied for the criminal sale or possession of cocaine and/or marijuana, or for any other activity in violation of Articles 220 and/or 221 of the New York Penal Law; and
- D. From conducting or maintaining a criminal nuisance within the subject premises by allowing the criminal sale or possession of cocaine and/or marijuana, all of which creates a criminal nuisance pursuant to Section 240.45 (2) of the New York Penal Law.

NOW IT IS HEREBY ORDERED THAT, pending the hearing of this motion, the Defendants, their agents, employees and/or representatives, and any and all persons acting individually or in concert with them are enjoined, pursuant to Sections 7-709, 7-710 and 7-711 of the New York City Administrative Code:


~~1. From the use and/or occupancy of commercial establishment d/b/a "XXX BARBER SHOP" within the building located at 2276 WEBSTER AVENUE, Tax Block 3030;~~

~~Tax LOT 156, Bronx, New York, for any purpose whatever and directing that said premises shall be closed, and that the New York City Police Department shall take all steps necessary to effectuate this closing order; and~~

2. From removing or in any other manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the nuisance complained of herein; and


J.S.C.

3. From conducting, maintaining, operating or permitting the subject premises to be used or occupied for the criminal sale or possession of cocaine and/or marijuana, or for any other activity in violation of Articles 220 and/or 221 of the New York Penal Law; and


J.S.C.

4. From conducting or maintaining a criminal nuisance within the subject premises by allowing the criminal sale or possession of cocaine and/or marijuana, all of which creates a criminal nuisance pursuant to Section 240.45 (2) of the New York Penal Law.

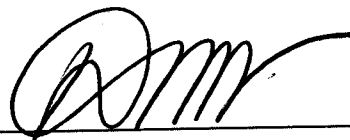

J.S.C.

ORDERED that service of a copy of this Order to Show Cause, together with the papers

~~upon which it is based, be made upon the Defendants personally; or by leaving a copy thereof with a person of suitable age and discretion at the subject premises, or if service by either of these methods cannot be effectuated, by posting a copy thereof at the subject premises, on or before the 19th day of FEBRUARY, 2016, and that this be deemed good and sufficient service on the Defendants, provided however, that if service is not made personally, a copy of the papers will be mailed to such Defendant at his or her last known address by overnight mail on or before the 19th day of FEBRUARY, 2016.~~



ENTER :



J.S.C.

HON. DORIS GONZALEZ

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

----- X
THE CITY OF NEW YORK,
Plaintiff,

- against -

2276-80 WEBSTER AVENUE REALTY CORP.; THE
LAND AND BUILDING KNOWN AS 2276 WEBSTER
AVENUE, TAX BLOCK 3030, TAX LOT 156, COUNTY
of BRONX, CITY and STATE of NEW YORK; "JOHN
DOE" and "JANE DOE", fictitiously named parties, true
names unknown, the intended being the owners, lessees,
operators or occupants of commercial establishment d/b/a
"XXX BARBER SHOP" within the building located at 2276
WEBSTER AVENUE, Bronx, New York; and any person
claiming any right, title or interest in the real property which
is the subject of this action,

Defendants.

----- X

AFFIRMATION

Index No.

Filed on:

Todd Goldberg, an attorney admitted to practice before the courts of this State, affirms
the truth of the following under the penalties of perjury pursuant to § 2106 of the Civil Practice
Law and Rules:

INTRODUCTORY STATEMENT

1. I am an attorney in the office of the Legal Bureau of the Police Department and of
counsel to Lawrence Byrne, acting by designation of Zachary W. Carter, Corporation Counsel
for the City of New York, attorney for Plaintiff herein. I make this affirmation based upon my
review of records maintained by, and information obtained from, various departments of the city
government and from statements made to me by certain officers or agents of the City of New
York.

2. This affirmation is submitted in support of the plaintiff's order to show cause for a
temporary restraining order and preliminary injunction pursuant to Sections 7-707, 7-710 and

7-711 of the New York City Administrative Code ("Administrative Code") and Section 6301 of the New York Civil Practice Law and Rules, enjoining and restraining defendants and all persons during the pendency of this action from maintaining, creating, conducting or permitting a public nuisance inside commercial establishment d/b/a "XXX BARBER SHOP" within the building located at 2276 WEBSTER AVENUE, Bronx, New York, Tax Block 3030, Tax LOT 156, (hereinafter the "subject premises"), by prohibiting the defendants from allowing said premises to be used for the purpose of selling and/or possessing cocaine and/or marijuana or any other illegal activity. To enforce such temporary restraining order and preliminary injunction, plaintiff's application includes a request for the issuance of a closing order pursuant to Sections 7-707, 7-709 and 7-711 of the Administrative Code.

BACKGROUND FACTS

3. Plaintiff, the City of New York, is a municipal corporation incorporated under the laws of the State of New York.

4. The subject of this action is the real property located at 2276 WEBSTER AVENUE, Tax Block 3030, Tax LOT 156, Bronx, New York. Commercial establishment d/b/a "XXX BARBER SHOP" is the specific location where the activities complained of herein are occurring.

5. Defendant, 2276-80 WEBSTER AVENUE REALTY CORP., is the last recorded owner of the real property which is the subject of this action according to a mortgage recorded in Bronx County, Office of the City Register. See copy of the deed, annexed hereto as Exhibit "1".

6. Commercial establishment d/b/a "XXX BARBER SHOP" within Defendant, THE LAND AND BUILDING KNOWN AS 2276 WEBSTER AVENUE, TAX BLOCK 3030, TAX

LOT 156, BRONX, NEW YORK, is the subject premises where the activities complained of in this complaint have taken place and are taking place.

7. Defendants, "JOHN DOE" and "JANE DOE", are fictitiously named parties, true names unknown, the parties intended being any person or entity who is an owner, lessor, lessee, agent, operator and/or occupant of the subject premises, and any other person or entity claiming any right, title or interest in the real property which is the subject of this action.

ILLEGAL ACTIVITY OCCURRING AT THE SUBJECT PREMISES
IN VIOLATION OF ARTICLES 220 and/or 221 OF
THE NEW YORK STATE PENAL LAW

8. Since February 12, 2016, inclusive, the subject premises has been the site of an investigation that included at least three (3) controlled "buy" operations.

9. On February 12, 2016, a Confidential Informant ("CI") purchased alleged marijuana from an individual operating within the subject premises in exchange for a sum of United States Currency ("USC"). See affidavit of Sergeant Herminio Baez annexed hereto as Exhibit "2", ¶¶ 3-7, and copies of the corresponding Property Clerk's Invoice annexed hereto within Exhibit "3".

10. On February 13, 2016, a CI purchased alleged marijuana from an individual operating within the subject premises in exchange for a sum of USC. See affidavit of Sergeant Herminio Baez annexed hereto as Exhibit "2", ¶¶ 8-12, and copies of the corresponding Property Clerk's Invoice annexed hereto within Exhibit "3".

11. On February 15, 2016, a CI purchased alleged cocaine from an individual operating within the subject premises in exchange for a sum of USC. See affidavit of Sergeant Herminio Baez annexed hereto as Exhibit "2", ¶¶ 13-17, and copies of the corresponding Property Clerk's Invoice annexed hereto within Exhibit "3".

12. On all three (3) occasions, the illegal drugs purchased were subjected to a field test and returned positive results for both marijuana and cocaine. *See* copies of the field test reports annexed hereto as Exhibit "4".

15. Based on the purchase of marijuana and cocaine, the subject premises has been used for the alleged sale of drugs and presents a threat to the health, safety, and welfare of those who live and work in the community. Thus, it cannot be denied that the subject premises constitutes a serious public nuisance.

16. Upon information and belief the defendants in this action are aware or should have been aware of the illegal activity that has occurred within the subject premises which constitutes a public nuisance.

17. Upon information and belief the subject premises remains open and the illegal activity continues.

APPLICABLE LAW

18. In 1977, the New York City Council enacted the Nuisance Abatement Law with the express purpose of addressing the serious problem created by:

the operation of certain commercial establishments . . . in flagrant violation of the . . . multiple dwelling laws, penal laws regulating . . . controlled substances and dangerous drugs. . . all of which interfere[s] with the interest of the public in the quality of life and total community environment, the tone of commerce in the city, property values and the public health, safety and welfare . . . Administrative Code, Section 7-701.

19. Pursuant to Section 7-703 of the Administrative Code, a public nuisance includes:

(g) Any building, erection or place including one- or two-family dwellings, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred three or more violations of any of the provisions of article two hundred twenty, two hundred twenty-one or two hundred twenty-five of the penal law [offenses relating to controlled substances, marihuana or gambling];

and

(l) Any building, erection or place including one- or two- family dwellings, wherein there exists or is occurring a criminal nuisance as defined in Section 240.45 of the penal

law.

20. Section 240.45 of the Penal Law states that:

A person is guilty of Criminal Nuisance in the second degree when:

2. He knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

21. Pursuant to Section 7-706 of the Administrative Code, the Corporation Counsel is explicitly authorized to bring and maintain an action in the Supreme Court to permanently enjoin the above public nuisances, as well as to permanently enjoin the person or persons conducting, maintaining or permitting such public nuisances from further conducting, maintaining or permitting such public nuisances. In addition, the Corporation Counsel is expressly authorized to seek civil penalties of up to \$1,000.00 for each day such public nuisances have been intentionally conducted, maintained or permitted.

A PUBLIC NUISANCE EXISTS AT THE SUBJECT PREMISES

22. A public nuisance, as defined by Section 7-703 of the Administrative Code, exists at the subject premises. As stated above, the Nuisance Abatement Law Section 7-703 (g) declares a premises to be a public nuisance where three (3) or more violations of either Article 220, 221, or 225 of the Penal Law have occurred inside a premises within the year preceding commencement of an action. Additionally, Nuisance Abatement Law Section 7-703 (l) declares a premises to be a public nuisance where it is operated in such a manner as to endanger the safety or health of a considerable number of persons or it is conducted or maintained for persons to gather for purposes of engaging in unlawful conduct, regardless of the number of incidents.

23. The evidence set forth in support of this Order to Show Cause clearly demonstrates that the subject premises is a public nuisance under Section 7-703 (g). The supporting exhibits show that on February 12, 13, and 15, 2016, illegal drugs were sold inside

the subject premises. *See* Exhibits "2", "3", and "4".

24. Despite the grave consequences of this illegal conduct, upon information and belief, the operators within this establishment have brazenly operated the premises with illegal activities and the criminal activity has not ceased at the subject premises. It is clear that a closing order is the only effective remedy to immediately abate this serious public nuisance and protect the safety and welfare of the surrounding community.

**PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION
AND A TEMPORARY RESTRAINING ORDER**

25. The affidavit of Sergeant Herminio Baez and supporting exhibits demonstrates that Defendants are trafficking in and/or permitting the sale and/or possession of cocaine and marijuana at the subject premises in violation of Articles 220 and 221 of the New York State Penal Law and are creating a criminal nuisance pursuant to Section 240.45 of the New York State Penal Law. Plaintiff is therefore entitled to a judgment permanently enjoining Defendants from continuing their illegal use and occupancy of the subject premises. Pending an action for a permanent injunction the Court may grant a preliminary injunction to enjoin the public nuisance. The Court may also issue a temporary restraining order upon the motion for a preliminary injunction.

26. The Nuisance Abatement Law itself specifically provides for preliminary injunctive relief ancillary to an action for a permanent injunction. Section 7-707(a) of the Administrative Code provides that:

Pending an action for a permanent injunction as provided for in section 7-706 of this subchapter, the court may grant a preliminary injunction enjoining a public nuisance within the scope of this article and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance . . .

27. *Ex parte* temporary relief is authorized pursuant to section 7-710(a) of the Code.

This section also specifies that such temporary relief shall remain in effect pending further order of the court:

If on a motion for a preliminary injunction pursuant to section 7-707 of this subchapter, the corporation counsel shall show by clear and convincing evidence that a public nuisance within the scope of this article is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires a temporary restraining order, such temporary restraining order may be granted without notice restraining the defendants and all persons from removing or in any manner interfering with the furniture, fixtures, and movable property used in conducting, maintaining or permitting the public nuisance and from further conducting, maintaining or permitting the public nuisance, pending order of the court granting or refusing the preliminary injunction and until further order of the court. . . . [emphasis added]

28. Since Plaintiff is seeking injunctive relief *pendente lite* under the Administrative Code Nuisance Abatement Law, a showing of immediate and irreparable injury is not a prerequisite to the injunctive relief sought herein. *City of New York v. Castro*, 143 Misc.2d 766, 542 N.Y.S.2d 101, *aff'd*, 515 N.Y.S.2d 508 (1st Dept. 520); *City of New York v. Bilynn Realty Corp.*, 118 A.D.2d 511, 499 N.Y.S.2d 1011 (1st Dept. 1986); *Town of Islip v. Clark*, 90 A.D.2d 500, 454 N.Y.S.2d 893 (2d Dept. 1982); *City of Utica v. Ortner*, 256 App. Div. 1039, 10 N.Y.S.2d 729 (4th Dept. 1939); *City of New York v. Narod Realty Corp.*, 122 Misc.2d 885, 471 N.Y.S.2d 757 (Sup. Ct. New York Cty. 1983); *Rochester v. Gutberlett*, 211 N.Y. 309 (1914); *People ex rel. Bennett v. Laman*, 277 N.Y. 368 14, N.E.2d 439 (1938); *City of New York v. Goldman*, N.Y.L.J. 04/03/85, p. 11 (Sup. Ct. N.Y. Cty.), *aff'd*, 115 A.D.2d 423, 496 N.Y.S.2d 954 (App. Div. 1st Dept., 1985), *rearg. denied*, 01/16/86, (App. Div. 1st Dept.). Rather, since injunctive relief is specifically authorized by statute, the Plaintiff need only show that the statutory conditions have been satisfied. Therefore, a *prima facie* showing that the Defendants are indeed violating the relevant law is sufficient to entitle the municipality to a preliminary

injunction *pendente lite*.

29. In the case herein, there can be no doubt that the Defendants are permitting the subject premises to be used for the illegal sale or possession of illegal drugs. Indeed, by the affidavit of Sergeant Herminio Baez and supporting documentation, the Plaintiff has established by clear and convincing evidence that the Defendants are maintaining a public nuisance as defined by Sections 7-703(g) and 7-703(l) of the Administrative Code, and is thus entitled to a preliminary injunction and a temporary restraining order pursuant to Sections 7-707 and 7-710 of the Administrative Code.

30. Upon information and belief, the neighboring community has severely suffered and continues to suffer, as a result of the illegal sale of controlled substances within the subject premises. Therefore, the Court should grant a temporary restraining order pending its determination on the motion for a preliminary injunction.

31. On a motion for injunctive relief pursuant to the Nuisance Abatement Law, the City of New York need only prove that the requisite activity occurred within the subject premises during the applicable time period, if any. *City of New York v. Bilynn Realty Corp., et al.*, 499 N.Y.S.2d 1011 (1st Dep't, 1986); *City of New York v. Castro, et al.*, 515 N.Y.S.2d 508 (1st Dep't, 520).

32. Moreover, the personal fault or knowledge of the owner and/or lessee are not material considerations in deciding an application for injunctive relief under the Nuisance Abatement Law. *Castro, supra*; *City of New York v. Capri Cinema, Inc., et al.*, 641 N.Y.S.2d 969 (Sup. Ct., N.Y. County, 525).

33. In fact, injunctive relief under the Nuisance Abatement Law is not even rendered moot if the landowner regained legal possession of the premises from the offending tenant prior

to the commencement of the nuisance abatement action. *City of New York v. Mor, et al.*, 690 N.Y.S.2d 33 (1st Dep't, 529); *City of New York v. Partnership 91, L.P., et al.*, 716 N.Y.S.2d 615 (1st Dep't, 2000).

34. Even if the Nuisance Abatement Law provisions for preliminary injunctions and temporary restraining orders did not exist, this Court could nonetheless grant a preliminary injunction and a temporary restraining order pursuant to C.P.L.R. § 6301. In determining whether a preliminary injunction is warranted under C.P.L.R. § 6301, the courts have traditionally employed a three-pronged test, requiring that the moving party demonstrate: (1) a likelihood of ultimate success on the merits; (2) irreparable injury absent the granting of a preliminary injunction; and (3) that the balancing of equities favors its position. *See, Gambar Ent., Inc. v. Kelly Serv.*, 69 A.D.2d 297, 306, 418 N.Y.S.2d 818, 824 (4th Dept., 1979); *Paine & Chriscott v. Blair House Assoc.*, 70 A.D.2d 31, 32, 417 N.Y.S.2d 68, 69 (1st Dept., 1979). The plaintiff respectfully submits that the evidence satisfies this traditional three-pronged test.

35. First, the plaintiff's likelihood of success on the merits is strongly supported by the evidence submitted in support of this motion. As set forth in the affidavit of Sergeant Herminio Baez and supporting exhibits, there have been numerous violations of Articles 220 and/or 221 of the New York State Penal Law as defendants have sold and/or permitted the sale and/or possession of cocaine and/or marijuana to occur within the subject premises.

36. Second, the defendants' persistent and intentional illegal use of the subject premises constitutes irreparable harm to the City of New York, its residents and visitors. Indeed, in the legislative declaration incorporated into the Nuisance Abatement Law, the City Council recognized that any violation of the law deemed to be a public nuisance is, by definition, harmful to the public.

37. Third, the equities are balanced in favor of the plaintiff. The subject premises is currently being operated, occupied, and used illegally and thus, upon information and belief no legitimate interest of defendants will be harmed by an injunction. In contrast, the City of New York, and the public at large which it is required to protect, will benefit greatly if this location is prohibited from possessing and selling illegal drugs.

38. Accordingly, the plaintiff has established a *prima facie* case that the defendants have maintained a public nuisance and, therefore, plaintiff is entitled to a preliminary injunction and a temporary restraining order pursuant to § 7-707 and § 7-710 of the Administrative Code and C.P.L.R. § 6301.

IN SUPPORT OF A CLOSING ORDER

39. Plaintiff also seeks an order directing that the subject premises be closed against all use pending the determination of this action and during the pendency of the instant motion for a preliminary injunction. As set forth above, an active and ongoing public nuisance has operated at the subject premises, thereby threatening the health, safety and welfare of the community.

40. This closing order is sought under the provisions of the Nuisance Abatement Law, which specifies in Section 7-709(a) that:

If, on a motion for a preliminary injunction pursuant to section 7-707 of this subchapter, the corporation counsel shall show by clear and convincing evidence that a public nuisance within the scope of this subchapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires a temporary closing order, a temporary order closing such part of the building, erection or place wherein the public nuisance is being conducted, maintained or permitted may be granted without notice, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Upon granting a temporary closing order, the court shall direct the holding of a hearing for the preliminary injunction at the earliest possible time but in no event later than three business days from the granting of such order; a decision on the motion for a preliminary injunction shall be rendered by the court within three business days after the conclusion of the hearing.

41. It is respectfully submitted that the above criteria have been met. Not only has the Plaintiff shown by clear and convincing evidence that there exists at the subject premises a public nuisance within the scope of the Nuisance Abatement Law, but it is also clear that the public health, safety and welfare require immediate abatement of the public nuisance by an order closing the premises against all use pending the determination of this action.

42. The sale of illegal drugs on three (3) different days earlier this month makes it patently clear that the subject premises is being used in an ongoing illegal manner. Given this attitude toward the rule of law, the Plaintiff submits that an injunction alone may not be honored by those responsible for conducting, maintaining or permitting the illegal activity and that an order closing the subject premises against all use during the pendency of this action is the best assurance that this persistent public nuisance will be abated.

43. The relief sought upon this application is expressly authorized by Sections 7-707, 7-709 and 7-711 of the New York City Administrative Code. Courts have granted *ex parte* temporary closing orders in a number of similar cases involving the Nuisance Abatement Law.

44. Accordingly, the Plaintiff requests that this Court grant, in addition to a preliminary injunction and temporary restraining order, a closing order, to be enforced by the Plaintiff pursuant to Sections 7-707, 7-709 and 7-711 of the Administrative Code, directing that the subject premises, which is currently being used for drug trafficking and is being operated in such a manner as to endanger the safety of individuals, be closed against all use pending the determination of this action.

**PLAINTIFF IS EXEMPT FROM THE NOTICE REQUIREMENTS OF
SECTION 202.7 OF THE UNIFORM CIVIL RULES**

45. There will be significant prejudice to the Plaintiff by granting notice of this motion to the defendants under section 202.7 of the Uniform Civil Rules.

46. Ex parte temporary relief in this application is statutorily authorized pursuant to Section 7-710 (a) of the New York City Administrative Code, which exempts notice as a requirement. Section 7-710 (a) specifies that:

If on a motion for a preliminary injunction pursuant to Section 7-707 of this subchapter, the corporation shall show by clear and convincing evidence, that a public nuisance within the scope of this article is being conducted, maintained, or permitted and that the public health, safety or welfare immediately requires a temporary restraining order, **such temporary restraining order may be granted without notice** restraining the defendants and all persons from removing or in any manner interfering with the furniture, fixtures, and movable property used in conducting, maintaining or permitting the public nuisance, pending order of the Court granting or refusing the preliminary injunction and until further order of the Court...

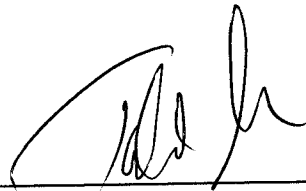
47. The requirement of notice contradicts the express mandate and objective of Section 7-710 (a), which authorizes the granting of an order without notice for the express purpose of preserving evidence consisting of furniture, fixtures or movable property which may have been used to conduct and/or facilitate the public nuisance. The granting of notice will provide defendants with the opportunity to destroy and/or remove such evidence.

48. The subject premises has been used in an unlawful manner. Given this disregard for the rule of law, Plaintiff submits that the granting of temporary restraining and closing orders without notice is consistent with the aforementioned statutory authority, and is the best assurance that this public nuisance will be immediately abated.

49. No prior application for this relief has been made to this or any other court or justice. No other provisional remedy has been secured or sought in the same action against the same defendant.

WHEREFORE, it is respectfully requested that Plaintiff's application be granted in all respects.

DATED: New York, New York
February 4, 2016



Todd Goldberg, Esq.

LIST OF EXHIBITS

- Exhibit 1: Copy of mortgage records**
- Exhibit 2: Affidavit of Sgt. Herminio Baez**
- Exhibit 3: Property Clerk's Invoices**
- Exhibit 4: Field Test Reports**

FAX:
917-454-1185

At Individual Assignment Part 1 of the Supreme Court of the State of New York, held in and for the County of Bronx, City and State of New York, at the Courthouse located at 851 Grand Concourse, Bronx, New York on the 19th day of February, 2016.

PRESENT: HONORABLE HON. DORIS GONZALEZ
Justice

-----X
THE CITY OF NEW YORK,
Plaintiff,

- against -

2276-80 WEBSTER AVENUE REALTY CORP.; THE LAND AND BUILDING KNOWN AS 2276 WEBSTER AVENUE, TAX BLOCK 3030, TAX LOT 156, COUNTY of BRONX, CITY and STATE of NEW YORK; "JOHN DOE" and "JANE DOE", fictitiously named parties, true names unknown, the intended being the owners, lessees, operators or occupants of commercial establishment d/b/a "XXX BARBER SHOP" within the building located at 2276 WEBSTER AVENUE, Bronx, New York; and any person claiming any right, title or interest in the real property which is the subject of this action,

Defendants.

-----X

ORDER TO SHOW CAUSE

Index No. 250130/14

Filed on: February 19, 2016

Upon the annexed Affirmation of Todd Goldberg, Esq., dated February 16, 2016; the affidavit of Sergeant Herminio Baez, dated February 16, 2016; together with the exhibits, Summons and Verified Complaint, and verified by Michelle Goldberg-Cahn, Esq., on February 19, 2016;

LET the defendants or their attorneys Show Cause before this Court at I.A.S. Part 1 of the Court, Room 405A, to be held at the Courthouse, 851 Grand Concourse, County of Bronx, City and State of New York, on the 23rd day of FEBRUARY, 2016, at 9:30 o'clock in the FORE noon of that day or as soon thereafter as counsel can be heard why an Order should not be made pursuant to Sections 7-707, 7-709, 7-710 and 7-711 of the New York

City Administrative Code, enjoining the Defendants, their agents, employees and/or representatives, and all persons acting individually or in concert with them, during the pendency of this action:

A. From the use and/or occupancy of commercial establishment d/b/a "XXX BARBER SHOP" within the building located at 2276 WEBSTER AVENUE, Tax Block 3030, Tax LOT 156, Bronx, New York, (hereinafter the "subject premises") for any purpose whatever and directing that said premises shall be closed and that the New York City Police Department shall take all steps necessary to effectuate this closing order; and

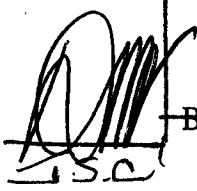
B. From removing or in any other manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the nuisance complained of herein; and

C. From conducting, maintaining, operating or permitting the subject premises to be used or occupied for the criminal sale or possession of cocaine and/or marijuana, or for any other activity in violation of Articles 220 and/or 221 of the New York Penal Law; and

D. From conducting or maintaining a criminal nuisance within the subject premises by allowing the criminal sale or possession of cocaine and/or marijuana, all of which creates a criminal nuisance pursuant to Section 240.45 (2) of the New York Penal Law.

NOW IT IS HEREBY ORDERED THAT, pending the hearing of this motion, the Defendants, their agents, employees and/or representatives, and any and all persons acting individually or in concert with them are enjoined, pursuant to Sections 7-709, 7-710 and 7-711 of the New York City Administrative Code:

~~1. From the use and/or occupancy of commercial establishment d/b/a "XXX BARBER SHOP" within the building located at 2276 WEBSTER AVENUE, Tax Block 3030;~~

A handwritten signature in black ink, appearing to be 'D.M.', is written over the crossed-out text. Below the signature, the initials 'J.S.C.' are written in a smaller, less legible hand.

~~Tax LOT 156, Bronx, New York, for any purpose whatever and directing that said premises shall be closed, and that the New York City Police Department shall take all steps necessary to effectuate this closing order; and~~


2. From removing or in any other manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the nuisance complained of herein; and


J.S.C.

3. From conducting, maintaining, operating or permitting the subject premises to be used or occupied for the criminal sale or possession of cocaine and/or marijuana, or for any other activity in violation of Articles 220 and/or 221 of the New York Penal Law; and


J.S.C.

4. From conducting or maintaining a criminal nuisance within the subject premises by allowing the criminal sale or possession of cocaine and/or marijuana, all of which creates a criminal nuisance pursuant to Section 240.45 (2) of the New York Penal Law.

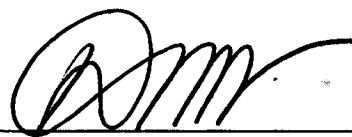

J.S.C.

ORDERED that service of a copy of this Order to Show Cause, together with the papers

~~upon which it is based, be made upon the Defendants personally; or by leaving a copy thereof with a person of suitable age and discretion at the subject premises, or if service by either of these methods cannot be effectuated, by posting a copy thereof at the subject premises, on or before the 19th day of FEBRUARY, 2016, and that this be deemed good and sufficient service on the Defendants, provided however, that if service is not made personally, a copy of the papers will be mailed to such Defendant at his or her last known address by overnight mail on or before the 19th day of FEBRUARY, 2016.~~



ENTER :



J.S.C.

HON. DORIS GONZALEZ

TRANSMISSION VERIFICATION REPORT

TIME : 02/19/2016 15:21
NAME : JUSTICE D. GONZALEZ
FAX : 17186183511
TEL : 17186181594
SER.# : M1J980757

DATE, TIME	02/19 15:20
FAX NO./NAME	19174541185
DURATION	00:00:46
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY

----- X
THE CITY OF NEW YORK,

Plaintiff,

- against -

2276 WEBSTER AVENUE REEALTY CORP., et al.,

Defendants.

----- X
STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

AFFIDAVIT OF SERVICE

Index No. 250130/16

Juan Zuleta employed by the New York City Police Department, Legal Bureau, being duly sworn, deposes and says:

That deponent is not a party in this matter and is over 18 years of age.

That on February 19, 2016 deponent arrived the subject premises located at 2276 WEBSTER AVENUE, Bronx, New York, and served the within **ORDER TO SHOW CAUSE, AFFIRMATION, EXHIBITS, RJL, AND SUMMONS AND VERIFIED COMPLAINT**, upon defendants **THE LAND AND BUILDING KNOWN AS 2276 WEBSTER AVENUE, TAX BLOCK 3030, TAX LOT 156, COUNTY OF BRONX, CITY and STATE OF NEW YORK; 2276 WEBSTER AVENUE REALTY CORP., and JOHN DOE and JANE DOE**, lessors, lessees, operators, employees, agents, and/or occupants of the subject premises litigated in this matter, by personally delivering 4 true copies thereof to Alberto A Mendez who identified himself/herself as OWNER of the subject premises. DOB: 09/07/1975

Further, on the same date above, deponent also enclosed a copy of same in a United States Postal Service Express Mail Next Day Service postpaid wrapper properly addressed to each defendant above at each defendant's last known address and deposited said wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, as well as posting a closing order and temporary restraining order signs on the front of the subject premises.

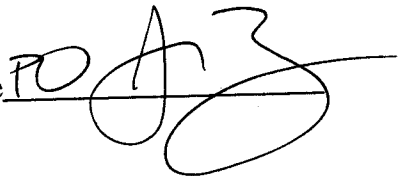
Deponent describes the individual served as follows:

Sex: Male Female

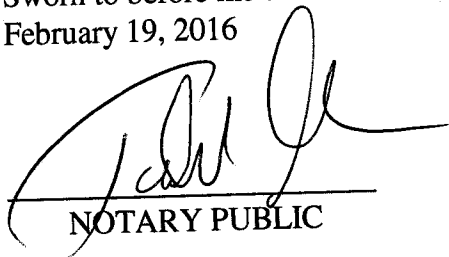
- | | | | | |
|--|---|--|--|---------------------------------------|
| <input checked="" type="checkbox"/> White Skin | <input type="checkbox"/> Under 5' | <input type="checkbox"/> Under 100 lbs. | <input checked="" type="checkbox"/> Black Hair | <input type="checkbox"/> 14 - 20 Yrs. |
| <input type="checkbox"/> Black Skin | <input type="checkbox"/> 5'0"-5'3" | <input type="checkbox"/> 100 - 130 lbs. | <input type="checkbox"/> Brown Hair | <input type="checkbox"/> 21 - 35 Yrs. |
| <input type="checkbox"/> Yellow Skin | <input type="checkbox"/> 5'4"-5'8" | <input checked="" type="checkbox"/> 131 - 160 lbs. | <input type="checkbox"/> Blond Hair | <input type="checkbox"/> 48 - 50 Yrs. |
| <input type="checkbox"/> Brown Skin | <input checked="" type="checkbox"/> 5'9"-6'0" | <input checked="" type="checkbox"/> 161 - 190 lbs. | <input type="checkbox"/> Gray Hair | <input type="checkbox"/> 51 - 65 Yrs. |
| <input type="checkbox"/> Red Skin | <input type="checkbox"/> Over 6' | <input type="checkbox"/> over 190 lbs. | <input type="checkbox"/> Balding | |
| | | | <input type="checkbox"/> White Hair | |

36-47

Further, on the same date above, deponent served the **SUMMONS AND VERIFIED COMPLAINT**, upon **THE LAND AND BUILDING KNOWN AS 2276 WEBSTER AVENUE, TAX BLOCK 3030, TAX LOT 156, COUNTY OF BRONX, CITY and STATE of NEW YORK**, by affixing a true copy thereof to the front gate of the subject premises, and mailing a copy of same by certified mail return receipt requested to **2276 WEBSTER AVENUE REALTY CORP.** at defendant's last known address by depositing said mailing in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sign Name 

Sworn to before me this
February 19, 2016


NOTARY PUBLIC

TODD GOLDBERG
Notary Public, State of New York
No. 02GO5072290
Qualified in Richmond County
Commission Expires January 27, 2018