

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS

Superior Court
Civil Action No. _____

Wah Lee, personal representative of
the estate of Binland Lee,
King's County, New York,
Surrogate Court, File No.
2013-2071

Plaintiff

COMPLAINT

v.

Anna Belokurova,
The Gateway Real Estate Group, Inc.,
Craig Peper, Paul Richards
and William Strong

Defendants

The Parties

1. Wah Lee is an adult and the father of the late Binland Lee, who died in Boston, Massachusetts on April 28, 2013.
2. He brings this action as the Personal Representative of the Estate of Binland Lee, King's County, New York, Surrogate Court, File No. 2013-2071 on his behalf and on behalf of Binland's mother, Xu Mei Kwong, pursuant to M.G.L. chapter 229, section 2 and M.G.L., chapter 143, section 51 for Binland Lee's wrongful death and conscious pain and suffering.
3. At all times pertinent hereto the defendant Anna Belokurova ("Ms. Belokurova") was an individual residing in Newton, MA and the owner of an apartment building located at 87 Linden Street, Boston, MA ("87 Linden Street") that she purchased in 2003.
4. Ms. Belokurova is an experienced owner and manager of rental housing and investment real estate. Since 1998 she has owned, at one time or another, at least seven separate parcels of rental housing, including a multi-unit luxury building at 1232 Beacon

Street, Brookline, MA.

5. At all times pertinent hereto the defendant The Gateway Real Estate Group, Inc. (“Gateway”) was a corporation organized by law with a principal place of business in Boston, MA and a real estate broker licensed by the Commonwealth of Massachusetts.

6. Gateway has been in the business of acting as a broker and agent facilitating the rental of apartments in Boston’s Allston and Brighton neighborhoods, in particular to college students, graduate students and young professionals, since 2003.

7. At all times pertinent hereto Craig Peper (“Mr. Peper”) was a real estate broker licensed by the Commonwealth of Massachusetts, the President and one of two Directors of Gateway and an employee and agent of Gateway, for whose actions Gateway is responsible.

8. At all times pertinent hereto Paul Richards (“Mr. Richards”) was a real estate broker licensed by the Commonwealth of Massachusetts, and the Treasurer and Secretary and one of two Directors of Gateway and an employee and agent of Gateway, for whose actions Gateway is responsible.

9. At all times pertinent hereto William Strong (“Mr. Strong”) was a real estate agent licensed by the Commonwealth of Massachusetts, and an employee and agent of Gateway, for whose actions Gateway is responsible.

The Building at 87 Linden Street

10. At all times pertinent hereto, 87 Linden Street contained two apartments. Apartment 1 was located on the street and basement levels. Entrance to Apartment 1 was gained through the front door on Linden Street. As of April 28, 2103, Apartment 1 had five bedrooms, two in the basement and three on the street level.

11. Entrance to Apartment 2, located on the second and third floors, was in the back of 87 Linden Street, through a door on the street level and then up a set of stairs to the second floor. As of April 28, 2013, Apartment 2 had seven bedrooms, three on the second floor and four on the top floor.

12. Between 1992 and April 28, 2013, Apartment 2 was altered without applying for or securing permission from the City of Boston. Among other alterations, three bedrooms were added to Apartment 2, two on the lower level and one on the top floor. As of April 28, 2013, Apartment 2 had three bedrooms on its lower floor and four bedrooms on its upper floor

13. As of April 28, 2013, in violation of applicable law requiring two means of egress, Apartment 2 had only one means of egress.

14. Whether or not Ms. Belokurova, who bought 87 Linden Street in 2003, made any such alterations, as the owner of 87 Linden Street she was at all times pertinent hereto liable for any injuries or death caused as a result of any such illegal alterations or violations of law.

2012 Rental Of Apartment 2 To Binland Lee And Roommates

15. In early 2012 Ms. Belokurova listed Apartment 2 with Gateway for rent to the public.

16. In the Spring of 2012, Binland Lee and some of her friends, who were searching for an apartment to rent beginning September 1, 2012 contacted Mr. Strong of Gateway.

17. On information and belief, at all times pertinent hereto, Ms. Belokurova, personally and through Gateway her agent, Gateway and one or more of Mr. Peper, Mr. Richards and Mr. Strong represented to Binland Lee and one or more of her fellow

potential tenants that Apartment 2 could be occupied in accordance with the law as a seven bedroom apartment, and that it contained lawful means of egress and otherwise complied with applicable laws.

18. Relying on these and other representations, Binland Lee and six other persons agreed to lease, and leased, Apartment 2 for the twelve-month period beginning September 1, 2012, and took occupancy of Apartment 2 on or about September 1, 2012. The rent was \$4,200 per month or \$600 per tenant. A copy of the lease is attached as Exhibit A.

19. From that date until April 28, 2013, Binland Lee occupied one of four bedrooms located on the top floor of Apartment 2.

April 28, 2013 Fire At 87 Linden Street

20. On April 28, 2013 a fire struck 87 Linden Street. The origin of the fire was in a common area at the bottom of the street level of 87 Linden Street known as the "pit".

21. Smoke and flames of the fire spread from the bottom of the pit up an interior common area to the second floor of 87 Linden Street, and then into the lower level of Apartment 2.

22. From there smoke and flames travelled up the interior stairway of Apartment 2 from its lower level to the top floor, and into the narrow top floor hallway that served as the only interior access to the four top floor bedrooms.

23. By the time smoke reached the top floor hallway the fire's predictable path blocked any escape through that hallway and down the interior stairway. Given the configuration of the apartment, such a spread of smoke and fire, one that forced people to seek escape through attic bedroom windows, and the tragic consequences to persons

sleeping on the top floor on April 28, 2013, were entirely foreseeable.

The First And Only Warning Of Fire To Top Floor Occupants

24. The first warning persons sleeping on the top floor on April 28, 2013 received of the approaching smoke and flames was when a smoke detector, believed to be the smoke detector located on the ceiling of the top floor common hallway, was activated.

25. By the time persons sleeping on the top floor received that warning, thick smoke and heat made escape down that hallway to the interior stairs impossible.

26. By that time, persons sleeping on the top floor were trapped. Their *only interior pathway* to egress was down the top floor hallway, and straight into the approaching fire.

The Only Means Of Escape Is Out The Third Floor Windows

27. With the only available interior pathway to the apartment's one means of egress blocked by the time that alarm sounded, persons sleeping in the top floor that morning had no choice but to jump out of bedroom windows or perish.

28. As top floor tenant Nick Moore described to investigators, he was awakened by the fire alarm, immediately opened his bedroom door to the hallway and was met by "a wall of smoke and ... extreme heat in the hallway."

29. Mr. Moore quickly closed his bedroom door and escaped the fire by climbing out his bedroom window.

30. The sound of a smoke detector woke top floor tenant Thierry Desiree and each of the three guests staying that night in his bedroom.

31. Mr. Desiree immediately ran and opened the bedroom door to the common hallway and was confronted by thick smoke. Escape down the hallway was not possible. He quickly closed the door, called 911 and then escaped with his guests out the window.

32. Six persons were sleeping on the top floor that morning. Five escaped the fire by exiting through bedroom windows.

33. Binland Lee was unable to escape from her top floor bedroom, and after the fire was knocked down was found with burns over 99% of her body, a few feet from her bedroom window.

34. Prior to dying Binland Lee experienced extreme conscious pain and suffering. The official cause of her death was smoke inhalation and it is self evident that the last minutes of Binland Lee's life were filled with unspeakable agony.

87 Linden Street's Non-Compliant Improperly Functioning Fire Alarm System

35. On April 28, 2013 the fire alarm system at 87 Linden Street did not comply with law and did not function properly.

36. Smoke detectors were required (1) in the common areas of the building, (2) in the immediate vicinity of all bedrooms in Apartment 3, (3) in all bedrooms in Apartment 2, (4) in the lower and upper levels of Apartment 2, and (5) in two other locations within Apartment 2.

37. All such smoke detectors were required to be interconnected so that when smoke or fire activated one detector the alarms in all interconnected detectors serving Apartment 2 simultaneously sounded.

38. No permit was issued by the city of Boston to install whatever fire alarm system was in place at 87 Linden Street on April 28, 2013.

39. The smoke detectors in 87 Linden Street were not installed as required by law and whether or not located and interconnected as required by law, failed to properly operate on April 28, 2013.

40. Had a system installed according to law been in place and functioning properly on April 28, 2013, notification of the fire that started at the lowest points of the street level of the building would have reached third floor occupants far more quickly and more forcefully than the notification they finally received, thereby allowing them time to escape to the lower level of Apartment 2 down the top floor hallway and down the interior staircase to the lower level of Apartment 2.

Apartment 2 Has Only One Means Of Egress And
No Egress Directly From Third Floor

41. On April 28, 2013 there was only one means of egress from Apartment 2, the same stairs by which one entered the apartment, and no means of egress from the building's third floor to safety.

42. What had earlier been a second means of egress, out a family room and onto an exterior deck outside the lower level of Apartment 2, had been converted to a locked bedroom.

43. Had that second means of egress been in place - and it was not - and had a properly outfitted, properly operating fire alarm system been in operation the occupants of the top floor bedrooms would have had time to escape to safety.

44. The predictable path the fire took blocked any escape through that hallway and down the interior stairway. Given the configuration of the apartment, such a spread of smoke and fire, one that forced people to seek escape through attic bedroom windows, and the tragic consequences to persons sleeping on the top floor on April 28, 2013, were entirely foreseeable to Ms. Belokurova, to Gateway and to Mr. Strong.

45. An experienced rental property owner and manager such as Ms. Belokurova knew or should have known that, particularly in the absence of a properly equipped, properly

functioning fire alarm system and a legal second means of egress, a separate means of egress directly from the top floor was necessary to protect the lives and safety of persons sleeping on the top floor.

46. Building a fire escape from the attic level to the deck outside the lower level of Apartment 2 would have cost no more than \$5,000.

47. Ms. Belokurova's failure to maintain a properly functioning fire alarm system, standing alone and in combination with her failure to provide a second means of egress and her failure to provide any safe egress for top floor occupants, were substantial contributing causes of Binland Lee's conscious pain and suffering and death.

**COUNT ONE
NEGLIGENCE-GROSS NEGLIGENCE/WILLFUL, WANTON OR
RECKLESS CONDUCT**

48. Paragraphs 1 through 47 above are realleged as if set forth in full.

49. Ms. Belokurova had a duty to use reasonable care in maintaining 87 Linden Street in a safe condition so as to guard against the reasonably foreseeable risk of death or injury in a fire.

50. Ms. Belokurova was negligent in failing to use reasonable care to maintain 87 Linden Street in a safe condition so as to guard against the reasonably foreseeable risk of death or injury in a fire.

51. In addition, the conduct of Ms. Belokurova in failing to maintain 87 Linden Street in a reasonably safe condition constituted gross negligence or willful, wanton or reckless conduct on her part.

52. The negligence, gross negligence or willful, wanton or reckless conduct of Ms. Belokurova were a direct and proximate cause of the death of Binland Lee on April 28,

2013 and the conscious pain and suffering she experienced prior to her death.

53. As a direct and proximate cause of such negligence, gross negligence or willful, wanton or reckless conduct, Xu Mei Kwong and Wah Lee, the mother and father of Binland Lee, have suffered and will in the future suffer damages as the result of the death of their daughter, including but not limited to lost income, services, protection, care, assistance, society, companionship, guidance, counsel and advice of Binland Lee.

54. In addition Binland Lee's estate has suffered the cost of funeral and burial expenses.

**COUNT TWO
BREACH OF THE IMPLIED WARRANTY OF HABITABILITY**

55. Paragraphs 1 through 55 above are realleged as if set forth in full.

56. At all times pertinent hereto Massachusetts law imposed an implied warranty of habitability upon every apartment leased in Massachusetts, including, at all times pertinent hereto, Apartment 2.

57. The warranty itself arises from the residential leasing contract between landlord and tenant, and, in order to protect the health, safety and well-being of the occupants of housing and of the general public, the warranty imposes a legal duty on landlords, including Ms. Belokurova, in the form of an implied agreement to ensure that dwellings, including Apartment 2, complied with the State building and sanitary codes throughout the term of the lease.

58. At all times pertinent hereto, Ms. Belokurova failed maintain Apartment 2 in compliance with those codes. In particular, Apartment 2 did not have two means of egress and did not have properly equipped, properly functioning fire alarm system with properly functioning interconnected smoke detectors.

59. The failure of Ms. Belokurova to maintain Apartment 2 in compliance with those codes was a direct and proximate cause of the death of Binland Lee on April 28, 2013 and of the conscious pain and suffering she experienced prior to her death.

60. As a direct and proximate cause of such failure, Xu Mei Kwong and Wah Lee, the mother and father of Binland Lee, have suffered and will in the future suffer damages as the result of the death of their daughter, including but not limited to lost income, services, protection, care, assistance, society, companionship, guidance, counsel and advice of Binland Lee and funeral expenses.

**COUNT THREE
NEGLIGENCE-GROSS NEGLIGENCE/WILLFUL, WANTON
OR RECKLESS CONDUCT**

61. Paragraphs 1 through 60 above are realleged as if set forth in full.

62. In business since 2003, Gateway is a very experienced, aggressive Allston/Brighton brokerage, specializing in rentals to students and young professionals. Gateway claims to be an “industry leader” with the most “product” (listings).

63. Renting large apartments to students is a Gateway staple.

64. Gateway advertises itself an “affiliate” of offcampuscribs.com (advertised on its website as the “No. 1 Off Campus Housing Source”).

65. Mr. Strong, a rental agent with over ten years experience when he rented Apartment 2 to Binland Lee and her fellow tenants, was aware that Apartment 2 contained only one means of egress, and that this condition constituted a code violation.

66. At the time he showed Apartment 2 to Ms. Lee and her fellow tenants, locks had been installed on all bedroom doors, including what was to become the bedroom of Ms. Lee’s fellow tenant, Patrick Farley, the person whose bedroom on April 28, 2013 was the

former family room that, before it became a bedroom, provided a second means of egress from the lower level of Apartment 2 onto the second floor exterior deck.

67. As Mr. Farley has recently stated to the Boston Globe, when touring the apartment for the first time, what was to become his “bedroom” was being used by the then tenant as a bedroom and had a locked door. That room was “pushed” to Mr. Farley and his fellow tenants by Mr. Strong as a bedroom.¹

68. Mr. Strong also understood the prohibition on locking the door that opened onto a means of egress. Mr. Strong drafted the lease that Ms. Belokurova and Binland Lee and her fellow tenants signed, and included what appears to be Gateway’s boilerplate addendum, containing Paragraph 41 that prohibited installation of locks on bedroom doors, because to do so was a “violation of city housing code.”

69. Despite that fact Mr. Strong intentionally and knowingly rented Apartment 2 to Binland Lee and her fellow tenants with locks on all bedroom doors, not simply on what was to become Mr. Farley’s bedroom.

70. Gateway was also on notice of the need to provide egress from a building in case of a fire other than by jumping out of a window, particularly from an attic bedroom.

71. On January 23, 2012, just a short time before Gateway showed Apartment 2 at 87 Linden Street to Binland Lee and her fellow tenants, a fire struck across the street at 84 Linden Street.

72. Tenant Joshua Goldenberg, with no other way out, was forced to jump from his attic bedroom.

¹. See Boston Globe Spotlight Team series.
<http://www.bostonglobe.com/metro/2014/05/03/allston-fire-overcrowded-house-takes-promising-student-life/THC5c82P53NQdsSAETKurK/story.html>

73. Gateway was the broker that rented 84 Linden Street to Mr. Goldenberg and his fellow tenants.

74. Gateway and one or more of Mr. Peper, Mr. Richards and Mr. Strong, for each of whose actions Gateway is responsible, had a duty to use reasonable care in determining whether 87 Linden Street was maintained in a safe condition so as to guard against the reasonably foreseeable risk of death or injury in a fire.

75. Gateway and one or more of Mr. Peper, Mr. Richards and Mr. Strong were negligent in failing to use reasonable care to determine whether 87 Linden Street was maintained in a safe condition so as to guard against the reasonably foreseeable risk of death or injury in a fire.

76. In addition, the conduct of Gateway and one or more of Mr. Peper, Mr. Richards and Mr. Strong in failing to use reasonable care to determine whether 87 Linden Street was maintained in a safe condition so as to guard against the reasonably foreseeable risk of death or injury in a fire constituted gross negligence or willful, wanton or reckless conduct on each of their parts.

77. The negligence, gross negligence or willful, wanton or reckless conduct of Gateway and one or more of Mr. Peper, Mr. Richards and Mr. Strong were a direct and proximate cause of the death of Binland Lee on April 28, 2013 and the conscious pain and suffering she experienced prior to her death.

78. As a direct and proximate cause of such negligence, gross negligence or willful, wanton or reckless conduct, Xu Mei Kwong and Wah Lee, the mother and father of Binland Lee, have suffered and will in the future suffer damages as the result of the death of their daughter, including but not limited to lost income, services, protection, care,

assistance, society, companionship, guidance, counsel and advice of Binland Lee.

79. In addition Binland Lee's estate has suffered the cost of funeral and burial expenses.

**COUNT FOUR
NEGLIGENCE-GROSS NEGLIGENCE/WILLFUL, WANTON
OR RECKLESS CONDUCT**

80. Paragraphs 1 through 79 above are realleged as if set forth in full.

81. Gateway and one or both of Mr. Peper and Mr. Richards had a duty to implement and carry out practices and procedures on behalf of Gateway to assure that Gateway, its agents and employees, used reasonable care to determine whether apartments for rent, including Apartment 2 were maintained in a safe condition so as to guard against the reasonably foreseeable risk of death or injury in a fire.

82. Gateway and one or both of Mr. Peper and Mr. Richards negligently failed to implement and carry out such practices and procedures.

83. In addition, the conduct of Gateway and one or both of Mr. Peper or Mr. Richards in failing to implement and carry out practices and procedures on behalf of Gateway to assure that Gateway, its agents and employees, used reasonable care to determine whether apartments for rent, including Apartment 2, were maintained in a safe condition so as to guard against the reasonably foreseeable risk of death or injury in a fire constituted gross negligence or willful, wanton or reckless conduct on each of their parts.

84. The negligence, gross negligence or willful, wanton or reckless conduct of Gateway and one or both of Mr. Peper or Mr. Richards were a direct and proximate cause of the death of Binland Lee on April 28, 2013 and the conscious pain and suffering she experienced prior to her death.

85. As a direct and proximate cause of such negligence, gross negligence or willful, wanton or reckless conduct, Xu Mei Kwong and Wah Lee, the mother and father of Binland Lee, have suffered and will in the future suffer damages as the result of the death of their daughter, including but not limited to lost income, services, protection, care, assistance, society, companionship, guidance, counsel and advice of Binland Lee.

86. In addition Binland Lee's estate has suffered the cost of funeral and burial expenses.

**COUNT FIVE
BREACH OF FIDUCIARY DUTY**

87. Paragraphs 1 through 86 above are realleged as if set forth in full.

88. At all times pertinent hereto, Gateway and one or more of Mr. Peper, Mr. Richards and Mr. Strong were agents, representing the interests of both Ms. Belokurova as landlord, and Binland Lee and her fellow tenants, as tenants.

89. As a dual agent, each owed a fiduciary duty to both Ms. Belokurova as landlord, and Binland Lee and her fellow tenants.

90. As a matter of law a dual agent could not represent the interests of either Ms. Belokurova or those of Binland Lee and her fellow tenants to the detriment of the other.

91. In representing to Binland Lee and one or more of her fellow potential tenants that Apartment 2 could be occupied in accordance with law as a seven bedroom apartment, and that it contained lawful means of egress, Gateway and one or more of Mr. Peper, Mr. Richards and Mr. Strong furthered Ms. Belokurova's efforts to maximize the rent she could receive for Apartment 2 of \$4,200 per month or \$600 per tenant.

92. In doing so, Gateway and one or more of Mr. Peper, Mr. Richards and Mr. Strong represented the interests of Ms. Belokurova to the detriment of, and in breach of their

fiduciary duties to, of Binland Lee and her fellow tenants.

93. This breach of fiduciary duty was a direct and proximate cause of the death of Binland Lee on April 28, 2013 and the conscious pain and suffering she experienced prior to her death.

94. As a direct and proximate cause of such breach of fiduciary duty, Xu Mei Kwong and Wah Lee, the mother and father of Binland Lee, have suffered and will in the future suffer damages as the result of the death of their daughter, including but not limited to lost income, services, protection, care, assistance, society, companionship, guidance, counsel and advice of Binland Lee.

95. In addition Binland Lee's estate has suffered the cost of funeral and burial expenses.

Wherefore plaintiff hereby demands judgment against each of the defendants, jointly and severally, in the full amount of all compensatory and punitive damages on all counts as described above, with attorney's fees, interest and costs, and such further relief as is from time to time sought in this action.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL COUNTS SO TRIABLE

August 19, 2014

Plaintiff

By his attorneys,


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