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January 6, 2017

Mayor Tom Barrett &  
Honorable Members of the Common Council  
City Hall, 2<sup>nd</sup> Floor  
Milwaukee Wisconsin

Re: Landlord Games Watchdog Reports

Dear Mayor Barrett and Honorable Council Members:

We write regarding the recent *Milwaukee Journal Sentinel* watchdog reports entitled "Landlord Games," a series of approximately 5 feature articles, 15 update articles, and 2 editorials that have run in the *Journal Sentinel* from April 25<sup>th</sup> through December 19, 2016.

Safe housing is critical to all residents of the City of Milwaukee. Matthew Desmond's recent book *Evicted* eloquently described why safe housing and residential stability is necessary to support healthy children, families, and neighborhoods. Unfortunately, there are too many residential rental buildings that are owned by landlords who do not comply with current building and zoning codes. Rent is taken from tenants and not reinvested in the property to maintain it. The *Milwaukee Journal Sentinel's* exposure of landlords who chronically put profit before people is an important public service.

Unfortunately, the *Milwaukee Journal Sentinel* has also chosen to make itself the subject of the story by repeatedly identifying its reporters as the catalyst to these landlord games articles. Throughout all of the articles and editorials, the *Milwaukee Journal Sentinel* has claimed that City of Milwaukee officials have promised a tougher approach or have taken a tougher approach based upon the *Journal Sentinel's* articles. This oft-repeated assertion is inaccurate.

In March and April of 2015, a year before the first Landlord Games article appeared, the City Attorney's Office provided *Milwaukee Journal Sentinel* reporter Cary Spivak spreadsheets of information documenting various real estate holdings of certain landlords known to the City of Milwaukee to have been chronic offenders of building code violations and who were delinquent in their property taxes. Specifically, the City Attorney's Office met with Mr. Spivak in person on March 10, 2015, to discuss the data this office had collected. Later that day, he received spreadsheets that contained raw



sheriff's sale data that our office obtained months prior, six detailed worksheets with information assembled from public sources by our office and another worksheet summarizing the highest volume Sheriff's sale purchasers. (See attached emails). The City Attorney's Office later sent an updated spreadsheet to Mr. Spivak on April 10, 2015, that contained data on Mohammad Choudry. (Id.)

This public information was cataloged and documented by attorneys in the Milwaukee City Attorney's Office over the course of the next few months. In that time, Mr. Spivak would often call multiple times a week to request specific information as to why certain procedures and processes were undertaken by the Department of Neighborhood Services, City Treasurer's Office, the municipal courts, and the city collection contractors such as Harris & Harris and Kohn Law Firm. Dozens of phone calls were fielded by City Attorney staff over the course of 2015-2016 from Mr. Spivak. Notably, given the e-mails that are attached to this correspondence, it is clear that the investigation into the business practices of these landlords was initiated by the City Attorney's Office and provided to Mr. Spivak so that he could write an article that would highlight the problem of substandard rental housing.

However, it now seems that the City Attorney's transparency simply lent itself to the *Journal Sentinel* claiming the investigation as his own and alleging that the city was inadequate in its response to the problems that this office itself had identified some months earlier. In fact, the reporter himself joked, on two occasions, that he hoped the City would not file a lawsuit before his stories ran.

As a direct result of the City Attorney's Office's own independent investigation, and without any prompting by the *Journal Sentinel*, the City of Milwaukee has filed an extensive and time-consuming civil action entitled *City of Milwaukee v. Mohammad Choudry, et al.*, Milwaukee County Circuit Court Case No. 16-CV-8057, filed on October 24, 2016. On the city's motion, the circuit court granted the injunctive relief sought by the City of Milwaukee in its entirety and ordered the appointment of a receiver to collect rents on each of the 70-some properties that Mr. Choudry owned and/or operated through his real and fictional business entities. In December 2016, at least \$42,000 in rents were collected by the court-appointed receiver and its property management company. Those rents will be used to rehabilitate the properties to code compliance and pay the property taxes. This litigation is ongoing and will likely continue for some time as the City seeks civil penalties for what the City alleges is racketeering behavior on the part of Mr. Choudry.

And more lawsuits are coming.

As Mr. Spivak well knows, Mr. Choudry is one of more than a few landlords whose business practices have been under scrutiny by the City Attorney's Office since early-2015. Mr. Spivak was repeatedly told this office could not comment on potential or contemplated litigation or the legal strategy that would be involved. Mr. Spivak should

also know that gathering and reviewing the voluminous amount of property recording data and court records used to prosecute such cases takes time. Unlike the *Journal Sentinel*, the City Attorney's Office is not simply trying to identify those landlords who engage in bad business practices and expose them to the public, but rather assemble evidence that is admissible in court and will withstand legal scrutiny. It is much easier to simply allege nefarious behavior; we need to prove it. Furthermore, these cases have to be litigated in the context of the other cases the Neighborhood Revitalization and Ordinance Enforcement section regularly litigates, including raze actions and nuisance abatement cases against drug houses and properties that facilitate criminal behavior.

There is also a troubling oversimplification of legal matters throughout the landlord games articles. For example, most recently in the December 4, 2016 article, the *Milwaukee Journal Sentinel* correctly noted that many landlords try to keep their identities secret in a cat-and-mouse game. However, the story inaccurately blends the level of difficulty in simply discovering a person behind various LLCs with the efforts of the City of Milwaukee and its collections contractors to enforce a judgment against an LLC through the managing or sole member by piercing the corporate veil. In fact, Wisconsin law requires the City of Milwaukee and its municipal court to observe and respect the limited liability company structure.

Wisconsin Statute § 183.0701 (Ownership of Limited Liability Company Property) states, in part: "(1) All property originally transferred to or subsequently acquired by or on account of a limited liability company is property of the limited liability company and not of the members individually . . . (3) Property may be acquired, held and conveyed in the name of a limited liability company. *Any interest in real property may be acquired in the name of a limited liability company and title to any interest so acquired shall vest in the limited liability company rather than in the members individually.*" (Emphasis added).

Furthermore, Wis. Stat. § 183.0304 (Liability of Members to Third Parties) states, in part: "(1) The debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall solely be the debts, obligations and liabilities of the limited liability company . . . [A] member or manager of a limited liability company is *not* personally liable for any debt, obligation or liability of the limited liability company, except that a member or manager may become personally liable by his or her acts or conduct other than as a member or manager." (Emphasis added). However, and as was extensively discussed with Mr. Spivak, sub. (2) states: "Notwithstanding (1) (the above provision), nothing in this chapter shall preclude a court from ignoring the limited liability company entity under principles of common law of this state that are similar to those applicable to business corporations and shareholders in this state and under circumstances that are not inconsistent with the purposes of this chapter."

In the State of Wisconsin, the presumption of separation between a corporation and its shareholders is "not one to be lightly disregarded." *Consumers Coop of Walworth County v. Olsen*, 142 Wis. 2d 465, 474, 419 N.W.2d 211, 213 (1988). The burden to show the

equitability of piercing the corporate veil is upon the party seeking to pierce. *Rasmussen v. General Motors Corporation*, 2011 WI 52, ¶ 44, 335 Wis. 2d 1, 26-27, 803 N.W.2d 623, 636. *Consumer Coop* set forth three elements that must be present before piercing a corporate veil: 1) control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; and, 2) such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights; and, 3) the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of. See, *Consumer Coop*, 142 Wis. 2d at 484. These elements are a part of the "instrumentality" or "alter ego" doctrine, which is recognized by Wisconsin as a way to impose liability on the individual behind a corporation. *Id.* Piercing should only occur when "applying the corporate fiction would accomplish some fraudulent purpose, operate a constructive fraud, or defeat some strong equitable claim . . ." *Milwaukee Toy Company v. Industrial Commission*, 203 Wis. 493, 495, 234 N.W. 748 (1931).

Given this legal analysis, the December 4, 2016 landlord games article oversimplified the law in the State of Wisconsin. At no time did the article attempt to distinguish between the prosecution of building and zoning code violations in Milwaukee Municipal Court, which, by statute, is not a court of record and where the equitable remedy of piercing the corporate veil is not available (See, Wis. Stat. § 755.045(1)(b)), and that of the circuit court, where, after docketing the municipal judgment in circuit court, may a cause of action to pierce the corporate veil be brought in the event an LLC defendant was uncollectible and the only assets that the creditor could find were those of the person behind the LLC sought to be pierced. Notably, the private attorneys that were consulted in preparation of the article all reiterated that it would be necessary to pierce the corporate veil through litigation before the owner of a LLC could be held personally responsible for the debts of the LLC. Again, simply knowing who is behind the LLC and being able to pierce the LLC to get at the owner's assets are two completely different things. One requires the extensive research the *Journal Sentinel* reporters did to expose these landlord games to the public. The other requires evidence which this office, and the city's collections contractors, are required to prove in lawsuits.

Another example of oversimplified legal analysis was repeated in the December 4, 2016 article where Mr. Spivak cited an unpublished, per curium Court of Appeals decision in *City of Milwaukee v. Nael Mohammed*, Case No. 97-2382 (WI Ct. App. November 10, 1998) (unpublished), for the proposition that the operator of a residential rental property could be personally cited for building code violations even if the property was owned by an LLC. The reporter was advised, prior to the publication of that article, that that case primarily discussed the legal doctrine of preemption, that is, whether the City of Milwaukee could have lawfully created an ordinance that permitted operators of residential rental buildings owned by another to identify themselves as operators and assume liability for a property they did not own. The unpublished case remarked in footnote 3 that per the



code, the defendant operator voluntarily agreed to accept liability by agreeing to take responsibility and liability for building code violations. [“Significantly, § 200-51.5 of the Milwaukee Code of Ordinances provides, in relevant part: “If there is a person acting as an operator, that person shall sign a statement acknowledging acceptance of liability for a code violation and provide his or her business or personal telephone number.” Milwaukee Code of Ordinances § 200-51.5(4)a-2.”].

This case had nothing to do with piercing the veil of an LLC and, furthermore, does not support the assertion that simply operating a residential rental property allows the operator to be personally responsible for an LLC-owned property’s liabilities. Thus, this specific example is incorrect in fact and in law. Lastly, the article only later informs the reader that state legislation passed last year preempted this ordinance, thereby prohibiting the City of Milwaukee from seeking self-identified operator liability.

Yet another legally and factually incorrect characterization made in these landlord games articles appeared in the article dated May 24, 2016 wherein it was alleged that the City took action against a problem landlord “after nearly missing key date.” First, no due date was missed. Second, the reporter incorrectly suggested in the article that our attorneys had earlier conducted *ex parte* communications with Judge Chavez regarding a particular defendant’s longstanding walk-in forfeiture payments. As the reporter was advised, both before and after these articles ran, the supervisor of the prosecution staff of the city attorney’s office in municipal court, and Judge Chavez, as the presiding judge of the Milwaukee municipal court, met a few times in 2015-2016 to discuss several municipal court’s policies and general personnel issues. They also discussed the municipal court policy permitting walk-in installment payments of post-judgment forfeitures. Because prosecutors are not physically in the courtroom when these walk-in hearings typically occur, there was no procedural way for the city to voice an objection to the request for an installment payment plan. Therefore, a “standing objection” was contemplated so that prosecutors, at sentencing, could make a notation in the record that the city wished to be advised and heard if and when a particular defendant, at a later date, came back to the municipal court asking for an installment payment plan. This standing objection process was intended to serve as notice to defendants that the city would oppose installment payment plans in the future and also inform the court that if the defendant walked into court at a later time that the city prosecutors wished to be advised and permitted to present evidence or question the defendant’s financial ability to pay.

At no time did any member of our staff have *ex parte* communications with Judge Chavez regarding any specific case or defendant. The reporter was repeatedly advised of that fact both before and after these articles ran.


Thank you for your attention to this matter.

Honorable Common Council


January 6, 2017

Page 6

Very truly yours,



GRANT F. LANGLEY  
City Attorney



ADAM B. STEPHENS  
Deputy City Attorney

ABS:lmc  
Attachments

c: (via e-mail) City Clerk

235239

**Decker, Kail J.**

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**From:** Cary Spivak <cspivak@jrn.com>  
**Sent:** Tuesday, March 10, 2015 5:26 PM  
**To:** Decker, Kail J.  
**Subject:** Re: List of sheriff's sales from 1/1/09 to 6/30/13

Wow .... that was quick  
thanks much  
Cary

Cary S. Spivak | Reporter  
.....  
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On Tue, Mar 10, 2015 at 5:03 PM, Decker, Kail J. <[kdecke@milwaukee.gov](mailto:kdecke@milwaukee.gov)> wrote:

Cary,

Attached is the spreadsheet I've been building as time allows over the past year. You will see the raw data I got from the sheriff's dept on the first worksheet. Then, you'll see the stats sheet I gave you, tabs for the top 5 people, and then an extra worksheet with a lot of detail on Will Sherard. Note that I widdled the top 5 tabs down to just Milwaukee city properties to focus in on my concerns and reduce workload. All data was likely verified in January, so while I'm sure I put some data in since then, I have not had a chance to verify all the information for recently recorded deeds or recently paid taxes (if any).

Let me know if you have any questions. Thanks.

Kail

Kail Decker

Assistant City Attorney

City of Milwaukee

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**Decker, Kail J.**

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**From:** Cary Spivak <cary.spivak@jrn.com>  
**Sent:** Friday, April 10, 2015 6:04 PM  
**To:** Decker, Kail J.  
**Subject:** Re: Names of people who are listed as owners of properties sold at sheriff's sale

Success !

Thanks

I'm going to have to see if our computer guy could put it in a spreadsheet... if he can't then I might come over with the flash drive.

Cary

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**From:** Decker, Kail J. <kdecke@milwaukee.gov>  
**Sent:** Friday, April 10, 2015 3:00 PM  
**To:** Cary Spivak  
**Subject:** RE: Names of people who are listed as owners of properties sold at sheriff's sale

Attempt #3

Kail Decker  
Assistant City Attorney  
City of Milwaukee  
414.286.6193 - Office  
414.234.9122 - Mobile

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**From:** Cary Spivak [mailto:cary.spivak@jrn.com]  
**Sent:** Friday, April 10, 2015 9:26 AM  
**To:** Decker, Kail J.  
**Subject:** Re: Names of people who are listed as owners of properties sold at sheriff's sale

Thnx --

Great minds think alike... I heard about the Boone case and put a call into him last night... hopefully I'll connect with him today.

Cary

Cary S. Spivak  
Reporter  
Milwaukee Journal Sentinel  
414-223-5467  
414 550 0070 (cell)  
[cary.spivak@jrn.com](mailto:cary.spivak@jrn.com)

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**From:** Decker, Kail J. <kdecke@milwaukee.gov>  
**Sent:** Friday, April 10, 2015 9:10 AM  
**To:** Cary Spivak  
**Subject:** RE: Names of people who are listed as owners of properties sold at sheriff's sale

Here is my updated spreadsheet. If you look at the Choudry worksheet, you'll see I was able to confirm that he acquired 15 properties (he was the successful bidder on more than that, but several sales were denied by judges or Choudry failed to pay the rest of the balance and the property was re-auctioned). Of those 15 confirmed sales, he only recorded the deed on 3 of them (2 of those just so he could re-sell them). He lost a few to tax foreclosure and it appears as though he has not paid a dime on real estate taxes since acquisition on all but 1 of them.

For 2864 N. 12th St, the former owners, Timothy and Simone Boone, apparently got Legal Aid to assist them in setting the ownership records straight. Choudry did not record that deed; Legal Aid Society recorded it on behalf of the Mr. and Mrs. Boone. They might be good people to talk to about what led them to contact Legal Aid and how that situation went down.

Let me know if you have any follow-up questions based on this info.

Kail

Kail Decker  
Assistant City Attorney  
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**From:** Cary Spivak [<mailto:cary.spivak@jrn.com>]  
**Sent:** Thursday, April 09, 2015 4:41 PM  
**To:** Decker, Kail J.  
**Subject:** Re: Names of people who are listed as owners of properties sold at sheriff's sale

Please do... I'd love to see it.  
btw, I'm making decent progress on the story.  
Cary

Cary S. Spivak  
Reporter  
Milwaukee Journal Sentinel  
414-223-5467  
414 550 0070 (cell)  
[cary.spivak@jrn.com](mailto:cary.spivak@jrn.com)

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**From:** Decker, Kail J. <[kdecke@milwaukee.gov](mailto:kdecke@milwaukee.gov)>  
**Sent:** Thursday, April 9, 2015 4:21 PM  
**To:** Cary Spivak  
**Subject:** RE: Names of people who are listed as owners of properties sold at sheriff's sale

Cary,

I had a chance to analyze purchases by Mohammad Choudry (PAK Rentals & Construction LLC). He is the worst offender I've come across yet by percentage, but is not a high volume person like Sherard or Slocum. If you're interested, I'd be happy to share that info if it has any value to you.

Kail

Kail Decker

Assistant City Attorney  
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**From:** Cary Spivak [mailto:cspivak@jrn.com]

**Sent:** Tuesday, March 10, 2015 5:27 PM

**To:** Decker, Kail J.

**Subject:** Re: Names of people who are listed as owners of properties sold at sheriff's sale

Got this also --  
thanks  
Cary

Cary S. Spivak | Reporter

Milwaukee Journal Sentinel

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On Tue, Mar 10, 2015 at 4:50 PM, Decker, Kail J. <[kdecke@milwaukee.gov](mailto:kdecke@milwaukee.gov)> wrote:  
Cary,

Here is a list of the names of the people affected by buyers not recording sheriff's deeds. The Stelters were the ones who recorded the affidavit of non-ownership under document # 10400814.

Kail

**WILL SHERARD PROPERTIES:**

4267 NORTH 28TH STREET, MILWAUKEE, WI

Still lists old owner's name of James L. and Beverlin H. Ward

2131-33 N. 41ST ST., MILWAUKEE, WI

Odd affidavit filed by Michael H. and Lyn A. Stelter swearing that they are not the owner and Morocco Investments is the owner

3824 N. 10TH ST., MILWAUKEE, WI

Still lists old owner's name of Myron D. Smith

2727 WEST ROOSEVELT DR., MILWAUKEE, WI

Still lists old owner's name of Kenneth E. Barron, Jr.

3506-08 W. HAMPTON, MILWAUKEE, WI

Still lists former owner, Charlotte Warne

2422 W. ROOSEVELT DR., MILWAUKEE, WI

Still lists old owner's name of Learless Campbell

3802 W. ROBERTS ST., MILWAUKEE, WI

Still lists old owner's name of James Jones

**LONNIE SLOCUM PROPERTIES:**

4254 N. 26TH ST., MILWAUKEE, WI

Still lists former owner, Gloria Brown

1338 W. COLUMBIA ST., MILWAUKEE, WI

Still lists former owner, Gary Kuhn

2815-2815A N. 51ST STREET, MILWAUKEE, WI	Mark S. Leurquin last holder of deed
3164 NORTH PALMER STREET, MILWAUKEE, WI	Still lists Jared E. Marquart as owner
2044 W. BECHER ST, MILWAUKEE, WI	Still lists former owner, James Bylewski
2237-2239 NORTH 28TH STREET, MILWAUKEE, WI	Still lists Lee Pao Yang as owner

Kail Decker  
Assistant City Attorney

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