

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS

CHRISTIAN GRAY,

Index No. 6086/20

Tenant-Petitioner,

-against-

REPLY  
AFFIDAVIT

AMERICAN PACKAGE COMPANY, INC.,

Owner-Respondent,

-and-

THE DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT,

Respondent.

STATE OF NEW YORK )

) ss.:

COUNTY OF PUTNAM )

Edward Olmsted, being duly sworn, deposes and says that the following is true:

1. I am an industrial hygienist; I assessed the unit occupied by petitioner Christian Gray at 226 Franklin St., Brooklyn, NY for mold beginning in the summer of 2020.
2. My curriculum vitae is annexed to this affidavit and incorporated by reference herein. I have been qualified as an expert witness in the field of industrial hygiene with sub-specialty in mold evaluation and eradication on numerous occasions by courts and administrative agencies in New York City and New York State.
3. I submit this reply affidavit in further support of Gray's motion to restore the above captioned HP case to the calendar.
4. Briefly, the background of my involvement here is that a pipe burst above Mr. Gray's unit during Columbus Day weekend 2019. The landlord was abroad and instructed that no cleanup should be effected until his return to New York weeks later. At the time I was

retained in the summer of 2020, the Gray unit smelled bad and in some areas mold was visible to the naked eye. I wrote a report and performed laboratory tests. I also designed a scope of work to eradicate the mold in the Gray unit. Gray started this HP proceeding. It took a year to negotiate a settlement agreement containing a scope of work with the landlord and its professionals. This was eventually accomplished in the summer of 2021. Among other things, the remediation at this location was difficult and extensive because part of the unit contains recording studios and there are multiple layers of sound attenuation materials on the walls.

5. The landlord hired ServPro to remediate and remediation began. Under the settlement agreement I was permitted to be present when the remediation work was taking place. However, it is not typical for me to attend a remediation daily and should not have been necessary where, as here, there was a settlement agreement that included a detailed scope of work. Attending a remediation daily would have prevented me from attending to the needs of my other clients and would have been cost prohibitive for a single tenant.
6. As provided by the agreement, when the remediation was finished, I returned to Mr. Gray's unit, surveyed the work that had been done and conducted laboratory tests. I prepared a report of my findings, which I understand is an exhibit to the motion in chief to restore the case to the calendar. I swear that the contents of that report are true and accurate and reaffirm the contents of that report as if it were fully set forth in this affidavit.
7. I reviewed the opposition to the present motion prepared by counsel to respondent landlord and its professionals and prepared a responsive memo for petitioner's

counsel. It is annexed to this affidavit and incorporated by reference herein. I swear that its contents is true, just as if that contents were incorporated in this affidavit.

- 8. The affirmation in opposition provided by David Skaller, Esq., and affidavits of John (Jack) Glass and Candice Kowalewski are full of incorrect and misleading information, including misstatements of fact about the case Bard v. Mautner Glick, misstatements of fact about what I did while retesting the Gray loft, and most troublingly, claim that the full scope of work agreed to for the Gray loft was performed when there were in fact numerous items agreed to but not performed.
- 9. To summarize my findings: the full scope of work agreed to by the landlord was not performed in the Gray unit; the Gray unit is still contaminated by mold and therefore still contains violations of the Housing Maintenance Code; and the Gray unit is still unfit for human habitation almost 3 years after the water flood.
- 10. The last time I visited the Gray unit, I went there with Jack Glass, one of the owner's mold remediators. This took place in or about July 2021. At that time, Jack Glass told me that he recognized additional work was needed and that he had to speak to the landlord about getting it done. Since that time I was waiting for him to tell me about the landlord's next plan for remediation, but I have never heard from him. Now he has submitted an affidavit to this Court indicating that the full scope of work was done, when it was not, and indicating that no further work is needed, which is completely false.

*Edward Olmsted*  
Edward Olmsted

Sworn to before me this  
21<sup>st</sup> day of August 2022,  
*Marilyn Caliendo*  
Notary Public

MARILYN CALIENDO  
NOTARY PUBLIC STATE OF NEW YORK  
NO. 4759349  
CERTIFIED IN FULL  
TERM EXPIRES 4/30/23

EDWARD A. OLMSTED  
1992 Route 9, Garrison, New York 10524  
Telephone: (845) 424-4077

### Curriculum Vitae

#### EDUCATION

*Master of Science* - Environmental Health and Safety, City University of New York,  
Hunter College; June, 1982

*Bachelor of Science* - Biology – Concentration in Cell and Molecular Biology  
Cell and Molecular Biology Department State University of New York at Buffalo  
December, 1979

#### EMPLOYMENT

*Olmsted Environmental Services, Inc., Garrison, New York*  
*President*

January 1989 to present

Provide consulting services specializing in bioaerosol (i.e. mold) and indoor air quality surveys. Additionally, consult, and do training on comprehensive occupational safety and health issues including industrial safety, asbestos abatement, industrial ventilation, and hazardous waste. Clients include manufacturing companies, labor unions, property owners, hospitals, Insurance Companies, and governmental agencies. Provide expert witness services for legal proceedings.

*New York Committee for Occupational Safety and Health, New York, NY*  
*Industrial Hygienist*

August 1991 to July 1994

Performed industrial hygiene and safety inspection services for a variety of labor unions in the New York metropolitan area. Provided training in safety and health in topics including emergency response, indoor air quality, confined space entry, asbestos inspection, and abatement.

*Columbia University, New York, New York*  
*Associate Director Department of Environmental Health and Safety*

August 1986 to July 1991

Managed the Industrial Hygiene and the Safety programs. Supervised the implementation of the asbestos, chemical waste, employee training, and laboratory safety programs. Participated in committee meetings with union delegates concerning health and safety issues. Supervised a staff of four.

*Hunter College, CUNY, New York, New York*  
*Adjunct Lecturer - School of Environmental Health*  
*Sciences*

September 1987 to December 1989

Taught graduate courses in "Industrial Ventilation for Contaminant Control" ,  
"Industrial Safety" and "Industrial Hygiene".

*Columbia University, New York, New York*

*Industrial Hygienist*

July 1983 to August 1986

Managed the Industrial Hygiene program for Columbia University's four major campuses. Implemented: a comprehensive industrial hygiene program; an asbestos management and abatement program for all Columbia owned buildings; training programs for employees; a hazardous waste program. Supervised a staff of three.

*Columbia University, New York, New York*

*Industrial Hygienist / Radiation Safety Technician*

September 1980 to July 1983

Performed surveys and analytical measurements relating to both industrial hygiene and radiation safety. Managed the radioactive waste disposal program. Developed and presented training programs. Developed and implemented a computerized inventory for radioactive materials used at the University.

*Rockefeller University, New York, New York*

*Radiation Safety Technician*

March 1980 to September 1980

Surveyed Laboratories to assure the safe storage and handling of radioactive materials. Was responsible for the proper packaging and disposal of radioactive waste and the calibration and maintenance of equipment. Supervised an assistant technician.

## **CERTIFICATIONS AND AWARDS**

Certified Industrial Hygienist (CIH) (Comprehensive Practice) by the  
American Board of Industrial Hygiene - expiration 2027

Certified Safety Professional (CSP) (Comprehensive Practice) by the  
American Society of Safety Engineers – expiration 2026

Licensed Asbestos Inspector in the State of New York - expiration 2023

Licensed Asbestos Supervisor in the State of New York - expiration 2023

EPA Accredited Lead Risk Assessor – expiration 2025

Licensed Mold Assessor New York State Department of Labor - expiration 2023

CUNY at Hunter College Alumni Achievement Award Urban Public Health Program;2001

New York City Council Citation for Exemplary Service, 2013

## **PROFESSIONAL MEMBERSHIPS**

American Industrial Hygiene Association - Past Chairperson New  
York Metropolitan Chapter

American Conference of Governmental Industrial Hygienists

American Society of Safety Professionals

Health Physics Society

New York State Public Health Association

American Public Health Association

**PUBLICATIONS**

Stuart Mirowitz, and Edward Olmsted. "Prequalifying Asbestos Contractors" Asbestos Issues '88. August 1988

Stuart Mirowitz, and Edward Olmsted. "Murphy's Law on Asbestos Abatement Projects" Asbestos Issues '88. October 1988

Edward Olmsted. Book Review "Occupational Safety and Health Law" by Bokart and Thompson, 1988 BNA. Bowkers Legal Publishing Preview, March 1989

S Klitzman, M Goldberg, E Olmsted, S O'Brien "Health Hazards to Construction Workers During the Demolition of Two Tenement Buildings"; Center to Protect Workers' Rights; Washington DC; April 1992

Edward Olmsted and Eckardt Johanning. "Industrial Hygiene Survey: Sewage Treatment Composting Facility," Proceedings from the International Conference held at Saratoga Springs, NY, October 6-7 1994, Eastern New York Occupational Health Program, p93-98, 1995

D. Eisenhardt, E Olmsted, C Proctor "Dust, Ammonia and Endotoxin Exposure of USDA Workers in Poultry Confinement Facilities," USDHHS/PHS; presented at AIHA conference 1995

Johanning E, Landsbergis P, Gareis M, Yang CS, Olmsted E.; Clinical experience and results of a Sentinel Health Investigation related to indoor fungal exposure. Environ Health Perspect 1999; 107 Suppl 3:489-494.

Evrard, E., Olmsted, Edward, Proctor Christine; "Airport and Flight Control Operations" in *Air Transport*, Byrd, LaMont, Editor, *Encyclopedia of Occupational Health and Safety*, Jeanne Mager Stellman, Editor-in-Chief. International Labor Organization, Geneva. © 2011.

Eckardt Johanning, Pierre Auger, Philip R. Morey, Chin S. Yang, Ed Olmsted; "Review of health hazards and prevention measures for response and recovery workers and volunteers after natural disasters, flooding, and water damage: mold and dampness" Environmental Health and Preventive Medicine; Nov 2013

**OLMSTED ENVIRONMENTAL SERVICES, INC.****1992 Route 9, Garrison NY 10524**phone 845 424 4077 • fax 845 424 3482 • email [Olmsted.mac@mac.com](mailto:Olmsted.mac@mac.com)

Date: August 18, 2022

To: Margerat Sandercock  
Goodfarb & Sandercock, LLP  
110 E. 59<sup>th</sup> Street, 22<sup>nd</sup> Floor  
New York, NY 10022

From: Ed Olmsted CIH CSP

Subject: Review of Affirmation prepared by David Skaller  
Christian Gray vs American Packing  
97 Green Street Brooklyn NY

I have provided below a response to the affirmation prepared by David Skaller in the above-referenced matter. I have provided my impressions below:

The affirmation is replete with misleading and incorrect statements from Counsel Skaller, Candice Kowalewski and Jack Glass to the degree that it brings into question the veracity of the entire document.

The following provide some of the more important incorrect and misleading made in the affirmation:

1. In referring to the Bard case opinion Counsel Skaller states "Olmsted conducted a post-remediation inspection by cutting the ceiling to inspect above." He repeatedly alleges that I improperly cut holes, which is not true (*Bard v Mautner-Glick et al.*, Index No. 2266/2016 (Civ. Ct., NY County 2022) (Hon. Jack Stoller). The Bard decision states very clearly that holes were cut into the ceiling by Fiore Deros at some time prior to my inspection. (page 19 of decision as attached in affirmation. The Bard decision further states "the petitioner's friend expanded the eight probe holes". (pag2 26) This was done before my second inspection. It is very clear from reading the Bard decision and in reviewing my testimony in that case, that I did not cut any holes at any time at 28 King Street in the Bard case.
2. The affirmation states that at my post remediation inspection at 97 Green "Olmsted Cut holes in ceilings and walls and floors during a post mold abatement inspection." The affidavit from Jack Glass states I performed additional demolition. Neither Jack Glass nor Mr. Skaller was present during my inspection and neither has any knowledge of my survey methods. In fact I did not cut any holes in walls, ceilings or floors as the mold was readily accessible. In fact, the two layers of wood floor left on the floor in studio 1 can be

lifted by hand from place as it is not anchored to the concrete slab beneath. There was no cutting of holes needed. The upper side of the wood tested damp and the underside of this wood was heavily coated with mold growth and was wet when probed with a moisture meter. The moisture was a clear indication that there was still a problem and should have been detected by ALS and the contractor during the abatement. Either the mold contractor or Candice Kowalewski could have easily discovered this by lifting the wood and visually inspecting it. IT SHOULD BE NOTED THAT THE SCOPE OF WORK CLEARLY INDICATED THAT THE STUDIO 1 FLOOR WAS TO BE REMOVED TO THE CONCRETE SLAB AND THUS THE SCOPE OF WORK WAS NEVER FOLLOWED. Furthermore, the New York State Department of Labor mold regulations and NYC guidelines warn the mold assessor to test for moisture as part of the post abatement inspection to verify the water has been eliminated. Clearly ALC did not do this.

3. The blue insulation panels that were left in place in the ceiling and walls in studio 1 can be easily moved aside by hand as they are fitted in place between the wood framing. There was no requirement to cut holes or demolish the insulation. Moving the insulation by sliding it aside revealed heavy visible mold on the sheetrock ceiling above the insulation and visible mold on the sheetrock wall shared with the living room. THE SCOPE OF WORK CALLED FOR THE REMOVAL OF THIS SHEETROCK CEILING AND SHEETROCK WALLS IN STUDIO 1.

The affirmation and affidavits assert that the agreed scope of work was completed. This is not true and in fact the scope of work was not completed and mold materials were left in place.

The scope of work was worked out for the course of a year involving Jack Glass, Candice Kowalewski, Ed Olmsted with approval from Christian Gray. Despite Jack Glass's and Candice Kowalewski's assertions, the contractor and ALC did not complete the scope of work as agreed. The following summarizes the scope of work deficiencies:

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1. Item 1 under the scope of work indicates gut demolishing the walls in rooms 1, 2 and 3. Gut demolition involves the removal of the walls to the wood studs and leaving the framing. Only one layer of sheetrock on the wall was removed, and most sheetrock was left in place. Ceiling tiles were removed, but sheetrock above was left in place. Visible mold was found behind the insulation on the sheetrock ceiling that should have been removed in studio 1.
2. Item 1 under the scope of work calls for removing the wood flooring to the concrete slab. As indicated above, this was not done in room 1.
3. Item 1 under the scope of work calls for removing the ceilings to the deck above in rooms 1, 2 and 3. And cleaning of the deck. This was not done in rooms 1 and 2.
4. Item 1 calls for cleaning of the wood framing. This could not be done because the wallboard was never removed from the framing.
5. Item 2 calls for the removal of the raised floor in the bathroom under the tub and hot water heater. This is needed because water was trapped under the floor. This was never done./

6. Item 3 called for the removal of the sheetrock in the bathroom where shared with the kitchen. Sheetrock left in place in the bathroom had visible mold
7. Item 5 calls for the removal of the sheetrock on the shared walls with the neighboring tenant to the wall cavity and does not damage the neighbors' walls. This was not done.
8. Item 6 calls for removing the lower 4 feet of the wall shared with the common hallway in room 2. This was not completed. There is visible mold left behind on this wall.
9. Item 8 calls for cutting four two by 2 ft probes along the wall length into the living room wall shared with the neighbor into the wall cavity. Inspect for mold growth. This was not done.
10. Item 9 calls for cutting probes into the living room ceiling to the wood deck and inspecting for mold. This was not done.
11. The scope of work has a section titled Inspections. This section calls for an inspection at the beginning of the work (initial) and another when the cleanup is complete. ALC remained on site daily for their reasons as this was not part of the scope. I inspected at the onset and the end of the work.

The agreed-upon scope of work, which is attached to the affirmation, required many meetings and discussions to work out. ALC, representing the building, decided on their own without consulting us to disregard the scope and perform a much smaller job. Furthermore, they make unsupportable statements that the mold growth left behind on flooring and sheetrock does not present a hazard. This contradicts the most accepted professional guidelines on mold assessment and risk. Hidden mold growth is significant because mold particulate (spores, mycelial fragments, etc.) can potentially migrate into occupied areas and result in fungal particulate exposures to occupants.<sup>1</sup> The U.S. Environmental Protection Agency has stated, "Mold may be hidden in places such as the back side of drywall, wallpaper, or paneling, the top side of ceiling tiles, the underside of carpets and pads, etc. Other possible locations of hidden mold include areas inside walls around pipes (with leaking or condensing pipes), the surface of walls behind furniture (where condensation forms), inside ductwork, and in roof materials above ceiling tiles (due to roof leaks or insufficient insulation)."<sup>2</sup> Pessi et al. report the presence of microbial growth inside insulation on external walls and wall cavities resulted in a degradation of indoor air quality by releasing microbial contamination into the house.<sup>3</sup> The EPA further states, "Dead mold may still cause allergic reactions in some people, so it is not enough to simply kill the mold; it must also be removed."<sup>4</sup> According to one of the most professionally accepted criteria for assessing mold, the American Industrial Hygiene Association (AIHA) manual titled "Recognition, Evaluation, and Control of Indoor Mold Growth" states that the professional consensus is

*"that hidden growth should be effectively cleaned or removed.... They define hidden mold growth as concealed visible colonizing growth of filamentous fungi on building materials or contents that*

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<sup>1</sup> American Industrial Hygiene Association Recognition, Evaluation, and Control of Indoor Mold Growth 2<sup>nd</sup> Edition; P 74 © 2019

<sup>2</sup> USEPA; A Brief Guide to Mold, Moisture and Your Home; [www.epa.gov/mold/hiddenmold](http://www.epa.gov/mold/hiddenmold)

<sup>3</sup> Pessi A.M., Suonketo J, Pentti M, Kurkilahti M, Peltola K, Rantio-Lehyimaki A; Microbial Growth Inside Insulated Walls as an Indoor Biocontaminant Source; APPLIED AND ENVIRONMENTAL MICROBIOLOGY, Feb. 2002, p. 963-967 Vol. 68, No. 2 099-2240/02/\$04.000 DOI: 10.11 28/AEM.68.2.963-967.2002; Copyright © 2002, American Society for Microbiology. Vol. 68.

<sup>4</sup> USEPA; A Brief Guide to Mold, Moisture and Your Home; [www.epa.gov/mold/hiddenmold](http://www.epa.gov/mold/hiddenmold)

*is within the building enclosure but concealed from view during a normal walk-through inspection.*<sup>5</sup>

Last July Ed Olmsted and Jack Glass met on site in good faith to work out the completion of this work. Mr. Glass advised me at that time of his opinion that further work was needed. We were waiting for a written plan from Jack Glass to address the removal of the remaining moldy materials. This was never provided.

Furthermore, the mold assessors, Glass and Kowaleski, were required to file a Mold Remediation Work Plan Notification, a Mold Remediation Work Plan, a Post Remediation Assessment Form and Mold Post Remediation certification. See, generally, Local Law 61 of 2018. None of this was done.

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<sup>5</sup> American Industrial Hygiene Association Recognition, Evaluation, and Control of Indoor Mold Growth 2<sup>nd</sup> Edition; P 207 © 2019