

For Immediate Release

COURT DISMISSES DEVELOPER'S THIRD LAWSUIT TO ERECT A 19-STORY DORMITORY AT THE SITE OF A LANDMARKED BUILDING

CITY LAWYERS PREVAIL FOR THE THIRD TIME IN LAWSUIT OVER THE FORMER P.S. 64

Contact: Kate O'Brien Ahlers, Connie Pankratz (212) 788-0400, media@law.nyc.gov

New York, December 11, 2008 – On December 5, 2008, Manhattan Supreme Court Justice Paul G. Feinman granted the City's motion to dismiss a lawsuit brought by a developer who wanted to build a 19-story dormitory at the site of the former P.S. 64 – a building designated as a City landmark. This decision marks the end of years of litigation over this property.

The lawsuit, filed by Greg Singer via his company, 9th & 10th Street, LLC, alleged that officials of the Department of Buildings, Board of Standards and Appeals and the Landmark Preservation Commission all conspired to prevent the building's owner from obtaining a permit to build the dormitory. The building had been bought in an auction by the plaintiff from the City with a restriction that it be used as a community facility. The plaintiff wanted to develop the building, located at 605 East 9th Street between Avenues B and C, as a dormitory that would have allowed it to erect a building twice the size that is normally allowed for residential use at that location.

This was the third victory the City has recently had in a flurry of litigation commenced by the building owner against the City. On March 25, 2008, the Court of Appeals upheld the Department of Buildings' denial of a building permit for the dormitory because 9th & 10th Street LLC was not formally affiliated with a school. This affirmed the City's concern that the developer would abuse the mandate that the building be used to provide community services by building a for-profit residence.

On November 12, 2008, Manhattan Supreme Court Justice Shirley Werner Kornreich upheld the 2006 designation of the building as a landmark. After having stripped the façade of some of its decorative ornament, the developer argued the building was ineligible for landmark designation. Judge Kornreich determined that the deliberate removal of these architectural details does not undermine the school's architectural significant or its historic and cultural associations.

In last week's ruling, Justice Feinman found that the decisions in the prior two cases barred plaintiff's due process claim and that the landmarking of the property did not constitute an unconstitutional taking. The court also dismissed plaintiff's various tort claims against the City and its officials.

Virginia Waters, senior counsel at the New York City Law Department who handled all of the 9th & 10th Street litigation said, "The dismissal of all three cases vindicates the actions of the City agencies involved. These decisions should be a lesson to building owners that they can not try and evade the mandates of the law by not complying with valid City requirements or by stripping the building of architectural detail"

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department has an active caseload of 90,000 matters and transactions in 17 legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's 690 attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. For more information, please visit nyc.gov/law.

#