234-14-A
APPLICANT – Law Offices of Marvin B. Mitzner, for Ohmni Properties, owners.
SUBJECT – Application September 29, 2014 – Appeal of the NYC Department of Buildings' determination to not revoke a Certificate of Occupancy issued in 1989 and reinstate the Certificate of Occupancy issued in 1985.
PREMISES AFFECTED –738 East 6th Street, south side of East 6th Street between Avenue C and Avenue D, Block 00375, Lot 0028, Borough of Manhattan.
COMMUNITY BOARD #3M
ACTION OF THE BOARD – Appeal Denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5
THE RESOLUTION –

WHEREAS, this is an appeal of a determination from the Department of Buildings ("DOB"), dated September 25, 2014, denying a request to proceed with an action to revoke the 1989 Certificate of Occupancy issued for the subject premises (the "Final Determination"); and

WHEREAS, the Final Determination reads, in pertinent part:

> Based on review of the application, we are not able to conclude that the 1989 C/O that authorizes 11 apartments was issued in error. While the permit was issued to reduce the number of apartments from 20 to 11, and you indicate that the building currently has 20 units, it is not possible for us to conclude with certainty that those 20 units existed at the time the C/O was issued in 1989 . . . . Any change in the number of units in the building after issuance of the C/O is merely a violation of the C/O and does not prove that the C/O was issued in error . . . .; and

WHEREAS, the owner of the premises (the "Appellant") appeals DOB's Final Determination and seeks revocation of the Certificate of Occupancy for the premises issued in 1989 and either (a) the reinstatement of the 1985 Certificate of Occupancy, which indicates four apartments on each of the five floors of the subject building, or (b) the modification of the 1989 Certificate of Occupancy to reflect a total of 20 apartments in the subject building; and

WHEREAS, a public hearing was held on this application on August 18, 2015, after due notice by publication in *The City Record*, with continued hearings on November 24, 2015, February 9, 2016, April 5, 2016, and June 28, 2016, and then to decision on July 12, 2016; and

WHEREAS, both the Appellant and DOB have been represented by counsel throughout this appeal and the Board has reviewed numerous written submissions from both parties in support of their respective positions; and

WHEREAS, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda performed inspections of the site and surrounding neighborhood; and

WHEREAS, the site is located on the south side of East 6th Street, between Avenue C and Avenue D, in an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 25 feet of frontage along East 6th Street, 1,750 sq. ft. of lot area and is occupied by a five-story residential building; and

WHEREAS, a Certificate of Occupancy was issued for the premises on September 5, 1985, reflecting a five-story plus cellar building with four apartments on each floor for a total of 20 residential dwelling units ("the 1985 CO"); and

WHEREAS, a Certificate of Occupancy issued for the premises on August 7, 1989, reflects a five-story plus cellar building with three apartments on the first floor and two apartments on each of the second through fifth floors for a total of 11 residential dwelling units (the "1989 CO"); and

WHEREAS, the Appellant represents that the building at the premises currently contains 20 apartments, four apartments on each floor, consistent with the 1985 CO; and

BACKGROUND

WHEREAS, on March 24, 1993, the former owner of the subject building filed an application with the New York State Division of Housing and Community Renewal ("DHCR") to determine whether the subject building was exempt from rent regulations due to substantial rehabilitation (the "1993 Application"); and

WHEREAS, buildings that are substantially rehabilitated as family units on or after January 1, 1974 are exempt from rent regulation pursuant to Section 2520.11(e) of the New York City Rent Stabilization Code; and

WHEREAS, DHCR's Operation Bulletin 95-2 clarifies the procedures by which DCHR determines whether a building is exempt from rent regulations due to substantial rehabilitation and lists among its criteria that at least 75 percent of the building-wide and apartment systems be "completely replaced with new systems"; and

WHEREAS, tenants of the subject building testified before the DHCR in connection with the 1993 Application and DHCR completed three inspections of the premises in July 1995, April 1996 and May 1996; and

WHEREAS, in its order dated February 7, 1998, DHCR's Office of Rent Administration concluded that the 1993 Application materially misrepresented that the building contained 11 residential units when, in fact, 20 residential units existed, that the equipment and floors in the bathrooms and kitchens had not been replaced or made as new and, thus, the building remained under DHCR jurisdiction and that the residential units therein remained subject to the New York City Rent Stabilization Law (the "1997 Order"); and

WHEREAS, the former owner timely filed a Petition for Administrative Review of the 1997 Order, alleging that the decision was in error because DHCR should have inspected the premises for rehabilitative work that resulted in the issuance of the 1985 CO rather than the 1989 CO; and

WHEREAS, on appeal, tenants alleged that the owner attempted to deceive DHCR inspectors with regards to the number of residential units in the building by moving furniture, changing doors and utilizing a co-owner of the building as a contractor to falsify building renovations; and

WHEREAS, by order issued March 25, 1999, the Deputy Commissioner of DHCR affirmed the 1997 Order and directed the former owner of the building to register the building and each apartment with DHCR in accordance with the New York City Rent Stabilization Law and Rent Stabilization Code (the "1999 Order"); and

WHEREAS, the then-owner of the building commenced a proceeding in New York State Court pursuant to Article 78 of the New York Civil Practice Law and Rules requesting that the 1999 Order be overturned and the case was remitted to DHCR for reconsideration; and

WHEREAS, by order issued January 20, 2000, DCHR again denied the petition and re-affirmed the 1997 Order based on its finding that the work claimed to have been done at the building from 1984 to 1985 did not rise to the level of "substantial rehabilitation," specifically, that though the work addressed many of the major building-wide systems, evidence submitted by the then-owner of the building established only that the heating, gas supply, electrical, intercom and window systems had been completely replaced; many apartment entrance doors were shaved down to fit into existing door frames, the building's deficient plumbing system was repaired, rather than replaced, and that only repair work was completed on apartment kitchens, bathrooms and individual apartment ceiling, wall and floor systems (the "2000 Order"); and

PROCEDURAL HISTORY

WHEREAS, on April 29, 2013, DOB issued ECB Violation No. 35015523Z (DOB Violation No. 042913ER03RM02) for the premises for occupancy contrary to the 1989 CO when an inspection discovered that the building was arranged and occupied as 20 Class "A" apartments with four apartments per floor, instead of the 11 units indicated on the 1989 CO; and

WHEREAS, on October 18, 2013, DOB Job No. 121816428 was filed and approved to remove additional kitchens and combine apartments at the premises in order to reduce the number of residential units and comply with the 1989 CO; and

WHEREAS, certain tenants were then sent seven-day notices of termination that cited DOB's violation and terminated their tenancies effective December 20, 2013; and

WHEREAS, on January 6, 2014, a rent-stabilized tenant of the subject building filed a harassment complaint with DHCR alleging that he was threatened with eviction from his apartment if he refused to vacate and that the owner had intentionally decreased, withheld or interrupted services at the premises, including security, heat, superintendent/janitorial and garbage removal; and

WHEREAS, by letter dated June 26, 2014, the Appellant requested that DOB proceed with a case before the Board for a revocation of the 1989 CO; and

WHEREAS, by letter dated September 25, 2014, DOB issued its Final Determination, stating that it did not intend to initiate an action to revoke the 1989 CO; and

WHEREAS, on September 29, 2014, the Appellant filed the subject application seeking Board relief; and

THE APPELLANT'S POSITION

WHEREAS, while the Appellant originally represented that the 1989 CO was issued by DOB in error and that the requested relief should be granted because the Appellant had taken good faith measures to reduce the number of units in the building in order to comply with the 1989 CO; and

WHEREAS, the Appellant later amended its argument and submitted that the 1989 CO was issued consistent with plans submitted to DOB showing 11 residential units, but the work indicated on those plans was never completed; and

WHEREAS, the Appellant further clarified its argument to allege procedural irregularities in the issuance of the 1989 CO, specifically the absence of a record of an inspection of the premises by DOB; and

WHEREAS, the Appellant asserts that the prior owner of the building fraudulently obtained the 1989 CO in an attempt to remove the entire building from DHCR regulation with the ultimate goal of combining apartments and performing major renovations to the premises after the 1989 CO was obtained and all of the rent regulated tenants had been evicted, but the scheme was never realized, and the residential units never combined, because the prior owner was never successful in evicting all of the tenants; and

WHEREAS, the Appellant represents that it is unable to comply with the 1989 CO because the premises are subject to DHCR regulation and the rent-regulated tenants of the building cannot be evicted and also because, under applicable zoning regulations, a maximum of 10 residential units are permitted at the site; and

WHEREAS, the Appellant states that on March 31, 1989, the building's then-owner filed DOB Application No. 437/89 in contemplation of renovating the building and reducing the number of units therein—specifically, the then-owner filed drawings showing that it planned to combine the two front and two rear apartments into single units (reducing the number of units per floor from four to two) by creating an opening in the demising walls between the two adjoining

apartments, capping gas lines and removing the sinks and stoves from the kitchen of one of the apartments so that the resulting enlarged residential unit would have only one kitchen (the "1989 DOB Application"); and

WHEREAS, the Appellant further states that the former owner of the premises failed to notify DOB that work completed pursuant to the 1989 DOB Application would result in the removal of rent-regulated units in violation of the Rent Stabilization and Multiple Dwelling Laws, that such failure further establishes the fraudulent intent inherent in the prior owner's receipt of the 1989 CO and, because of the fraudulent application, argues that the 1989 DOB Application should be deemed invalid and the 1989 CO should be revoked; and

WHEREAS, the Appellant cites Byrne v. Board of Standards & Appeals, 5 A.D.3d 261 (1st Dep't 2004) ("Byrne") in support of its proposition that a Certificate of Occupancy is invalid if the subject building does not comply with all relevant laws at the time of its issuance; and

WHEREAS, in addition, the Appellant asserts that alterations consistent with the 1989 DOB Application were never completed; and

WHEREAS, as evidence for this assertion, the Appellant submits the following: (1) the 1997 Order, the 1999 Order and the 2000 Order wherein DHCR denied the application to exempt the subject building from rent regulation based on a finding that substantial rehabilitation work had not been completed at the premises; (2) the absence from DOB's records of DOB signoff on construction work related to the 1989 DOB Application or an inspection report on file for the premises prior to the issuance of the 1989 CO; (3) the presence of 20 Con Edison gas and electric meters at the premises that date from at least 1985; and (4) a list of leaseholds obtained from Lexis Nexis, and submitted into the record, allegedly showing at least 20 different leaseholds at the premises in 1990; and

WHEREAS, the Appellant admits that a recent inspection of the premises reveals door openings, now sealed, that are located in the demising walls between the residential units on the east and west sides of the building and that the prior owner of the building combined leases in order to give the appearance of 11 residential apartments and remove the units from DHCR's jurisdiction, but submits that it is implausible that the then-owner of the building would reduce the number of units from 20 to 11 by removing kitchens, bathrooms and interior walls and capping gas lines, obtain the 1989 CO and then re-install kitchens and bathrooms and uncap gas lines in order to reestablish 20 residential units prior to the first DHCR inspection in July 1995; and

WHEREAS, the Appellant emphasizes that in each of its three inspections of the building, DHCR found 20 residential units with old un-renovated and unimproved appliances and asserts that those observations lend additional credence to Appellant's argument that no work was completed at the premises in connection with the 1989 DOB Application; and

WHEREAS, the Appellant also asserts that the absence of a record of inspection of the premises by DOB prior to issuing the 1989 CO or of an inspection to verify that alterations pursuant to the 1989 DOB Application took place underlines Appellant's assertion that the residential units were never combined as anticipated in the 1989 DOB Application; and

WHEREAS, by letter dated June 10, 2015, an architect retained by the Appellant states that upon examination of 14 of the 20 apartments in the building, he observed intact plumbing supply lines that, "based on the condition of the materials, have not undergone any renovation that would provide evidence of combining the units"; and

WHEREAS, the architect also states, in the same letter, that he observed "old construction materials on interior walls and un-renovated kitchens," that the gas lines in the kitchens "appear unchanged and were never removed for non-use," and that the 20 residential electric meters and 20 gas meters in the utility room "are original meters"; and

WHEREAS, by letter dated March 23, 2016, a licensed master plumber submits that he inspected several of the residential units at the premises in addition to the gas meters in the cellar, states that the gas meters and appliances do not appear to be have been capped off, removed or locked by Con Edison and concludes that "[t]o the best of my knowledge there are 20 dwelling units at this property and has been 20 units since at least 1985 the date of the first certificate of occupancy"; and

WHEREAS, the Board requested Con Edison records for the premises to support Appellant's supposition that 20 gas meters have been in continuous operation at the premises, and that none were capped in or around 1989, but the Appellant represented that it was unable to comply with that request because those accounts were in individual tenants' names and Con Edison would not release those records to other persons without a subpoena; and

DOB'S POSITION

WHEREAS, DOB argues that Certificates of Occupancy are generally presumed to have been issued properly unless there is "significant evidence" to the contrary and that such evidence does not exist in this case; and

WHEREAS, specifically, DOB states that its decision to not initiate a proceeding to revoke the 1989 CO was proper because the evidence presented was insufficient to support a finding that the subject building did not, indeed, have 11 residential units at the time the 1989 CO was issued; and

WHEREAS, DOB notes that the work associated with the 1989 DOB Application was limited in scope and would not have taken significant time to complete and subsequently undo in order to revert the occupancy of the building to 20 residential units; and

WHEREAS, in addition, DOB submits a

Plumber's Affidavit, dated June 6, 1989, stating that the then-owner had authorized a master plumber to complete plumbing work at the premises, that the plumbing work associated with the 1989 DOB Application was signed off on July 14, 1989, and the 1989 CO was issued shortly thereafter, on August 7, 1989; and

WHEREAS, in response, the Appellant clarifies that the plumbing work signoff was completed by a registered architect, rather than a plumber or professional engineer, and thus does not qualify as a valid sign-off indicating completion of plumbing work at the premises; and

WHEREAS, additionally, the Appellant raises issues as to the authenticity of the documents submitted by DOB and represented as a plumbing "sign off"; and

WHEREAS, DOB counters Appellant's argument, stating that the architect was the applicant of record on the 1989 DOB Application and, thus, was a party who could have appropriately presented the sign-off for the work to DOB; and

WHEREAS, in support of its argument, DOB directs the Board's attention to 1968 Building Code of the City of New York Section 27-210, applicable at the time of the issuance of the 1989 CO, which requires a final inspection upon the completion of work and before the issuance of any certificate of occupancy "at which the architect, engineer, or other person who supervised or superintended the construction, installation or alteration work shall be present"; and

WHEREAS, further, DOB asserts that the agency could accept inspection and test reports submitted by architects in 1989 pursuant to New York City Administrative Code Section 26-217, assuming that the work associated with the 1989 DOB Application was not ordinary plumbing work1; and

WHEREAS, DOB has also submitted historical records for the premises from the Department of Housing and Buildings, a former New York city agency responsible for building inspections and the maintenance of occupancy records, called Initial Inspection cards (or "I-cards"); and

WHEREAS, the 1985 I-card for the subject building indicates that the total legal occupancy of the building was 20 apartments and the 1989 I-card indicates that the total occupancy of the building was 11 apartments; and

WHEREAS, the 1985 I-card and the 1989 I-card make reference to and are consistent with the 1985 CO and 1989 CO, respectively; and

WHEREAS, DOB states that DHCR inspections of the premises, the earliest of which was in 1995, are unreliable as proof of the conditions that existed at the premises in 1989; and

WHEREAS, similarly, DOB states that a 1993 telephone directory submitted into the record by the Appellant is too far removed in time from the date of the issuance of the 1989 CO to be relied upon to accurately represent the occupancy of the subject building in 1989; and

WHEREAS, DOB also discounts the relevance of the Lexis Nexis results showing leaseholds in the building because records of leaseholders does not necessarily represent the number of units in a building; and

WHEREAS, additionally, DOB asserts that the 2015 inspection of the premises by the Appellant's architect is conclusory and lacks support, particularly for the facts that he observed "original materials" including the "original gas piping" or that the "existing meters were original meters"; and

WHEREAS, DOB also contests the conclusions of the licensed master plumber submitted by the Appellant, stating that while more recent alterations to the gas meters may be more obvious, work done to those gas meters within several years of 1989 would be more indiscernible in that materials similar to the original materials would have been used to effectuate those alterations; and

WHEREAS, DOB further discounts the conclusions of both the Appellant's architect and licensed master plumber because neither professional claims firsthand knowledge of the building's occupancy in or around 1989; and

WHEREAS, DOB directs the Board's attention to Memoranda from the Housing and Development Administration (the "HDA"), the predecessor to DOB; the first, dated February 24, 1969, rendered a new CO unnecessary where building alterations consisted of the combining of two or more apartments to create larger residential units and decrease the total legal number of families in a building (the "1969 Memorandum"); the second, dated January 20, 1971, states, as an addendum to the 1969 Memorandum, that construction inspectors must obtain sign off from plumbing inspectors when the building alterations are complete (the "1971 Memorandum"); and

WHEREAS, DOB submits that the issuance of the 1989 CO, in light of the 1969 Memorandum that made it unnecessary, and the presence of a plumbing sign off for work at the premises, consistent with the 1971 Memorandum, make it more difficult to believe that the alterations to reduce the number of units in the building from 20 to 11 were not, in fact, completed; and

WHEREAS, in response to the Appellant's changed argument subsequent to the first hearing before the Board, DOB states that if Appellant now states that the 1989 CO was not erroneously issued, then there are no grounds upon which it can be revoked; and

WHEREAS, in response to the Appellant's further clarified position—that there were irregularities underlying the issuance of the 1989 CO—DOB submits that the process for obtaining a Certificate of Occupancy in 1989 was the same as it is in 2015, that is, it involved a licensed professional filing plans and

1 This text was repealed as per Local Law 33-2007, effective July 1, 2008.

applications with DOB; a contractor applying for and obtaining the relevant permits; a contractor performing all work; inspections and the correction of any violations; and the payment of fees; and

WHEREAS, further, DOB submits that Appellant's argument that fraud was committed on the agency and that the 1989 CO should thus be revoke or modified relies on the fact that the current version of DOB's Plan/Work Application Form ("PW1") includes a checkbox in which an applicant can indicate whether the building to be altered or demolished contains rent controlled or rent stabilized units; and

WHEREAS, DOB states that the PW1 was not in use by the agency in 1989 and that the Altered Building Application was used at the time instead; and

WHEREAS, DOB states that the Altered Building Application inquired only about rent controlled units specifically, not rent-regulated units generally, and was silent as to rent stabilized units, thus the former owner's submission of the 1989 DOB Application without notifying DOB that the work would result in the loss of rent-regulated units was not a misrepresentation to the agency tantamount to fraud; and

TENANTS' TESTIMONY

WHEREAS, tenants of the subject building appeared before the Board and testified both individually and through counsel; and

WHEREAS, the tenant of Apartment 2D testified that she shares a lease for "Apartment C/D" with an unrelated person in Apartment 2C and that Apartment 2C is currently unoccupied; the tenant also submitted pictures of her apartment showing a sealed doorframe, though no door, between her apartment and Apartment 2C and submitted documentation demonstrating that her apartment, which is registered at DHCR as "Apartment 2CD", has been permanently exempt from DHCR regulation for high rent vacancy since 2003; and

WHEREAS, this tenant further represented that the Appellant continues to rent individuals units in the building under joint leases and that some of these apartments have functional doors connecting them; and

WHEREAS, the tenant of Apartment 3A testified that she has a door on the northeast wall of her apartment with a deadbolt that opens into the adjoining apartment with which she shares a lease, Apartment 3B (the lease is for "Apartment 3A/B"), which has been vacant since approximately 2014; and

WHEREAS, this tenant submitted into the record DHCR registration for Apartment 3A/B showing that the joint unit was permanently exempt from rent stabilization for high rent vacancy as of 2006; and

WHEREAS, tenant's counsel states that there is litigation pending against the Appellant in New York Supreme Court initiated by tenants of the subject building alleging rent overcharge and that the Appellant's practice of issuing joint leases has allowed the Appellant to increase rents above the deregulation threshold and remove units from DHCR jurisdiction; and

WHEREAS, in response to this testimony, the Appellant represented to the Board that it was willing to issue separate leases for all residential units in the building; and

CONCLUSION

WHEREAS, the Board agrees with DOB that Appellant has submitted insufficient evidence contemporaneous with the issuance of the 1989 CO to prove that the 1989 CO was erroneously issued; and

WHEREAS, the Board fails to comprehend Appellant's argument that the alleged failure to complete construction contemplated in the 1989 DOB Application entitles Appellant to a revocation or modification of the 1989 CO; and

WHEREAS, the Board finds that a failure to allege that a Certificate of Occupancy was issued erroneously or in contravention of a specified applicable law is fatal to the request for the revocation or modification of a Certificate of Occupancy; and

WHEREAS, with regards to Appellant's argument that completing work in accordance with the 1989 DOB Application was, generally speaking, in violation of the Rent Stabilization Law, the Board acknowledges that it has revoked Certificates of Occupancy where plans submitted with an application to DOB have not complied with particular legal requirements but notes that, in this particular case, the Appellant has failed to specify particular sections of the law that the work would have violated, despite multiple inquiries from the Board to provide such citations; and

WHEREAS, the Board finds that Byrne is distinguishable from the present case in that the work completed in that case did not comply with a specific Article of the Multiple Dwelling Law related to critical fire protection, safety and the habitability of the building; and

WHEREAS, the Board fails to find that any of the evidence submitted by the Appellant supports Appellant's assertion that alterations consistent with the 1989 DOB Application were never actually completed; and

WHEREAS, the Board finds that the proceedings before DHCR are distinguishable from the subject matter and, therefore, of limited probative value to the Board in this determination because DHCR did not address the issue of the number of residential units in the building at the time of the 1989 CO but, instead, considered the amount of money spent on building renovations and whether 75 percent of the building-wide and apartment systems were completely replaced such that the subject building could be considered exempt from rent regulation; and

WHEREAS, further, the Board notes that DHCR's earliest inspection of the premises was nearly six years after the issuance of the 1989 CO and, thus, DHCR's observation of 20 residential units at the premises in its 1997 Order (and as re-affirmed in its 1999 Order and 2000 Order) is so far removed in time from the issuance of the 1989 CO on August 7, 1989 as to be irrelevant to the question, currently before the

Board, of how many residential units existed at the subject premises on August 7, 1989; and

WHEREAS, the Board is not disquieted by the absence of an inspection report on file with DOB for the premises prior to the issuance of the 1989 CO and accepts the plumbing signoff submitted by DOB, which lists the architect of record for the subject building, as evidence that alterations consistent with the 1989 DOB Application were completed at the subject building and that the 1989 CO was validly issued; and

WHEREAS, the Board agrees that the work associated with the 1989 DOB Application was minor in nature and could have been completed in minimal time and at minimal expense and notes, specifically, that photographs of the residential units included in the record show door frames and, in some cases doors, installed between the apartments anticipated to have been connected consistent with the 1989 DOB Application, as well as packaged kitchen units that could easily be removed and replaced; and

WHEREAS, with regards to the questions raised by the Appellant about the authenticity of the plumbing signoff submitted by DOB, the Board notes that the Appellant was entitled to file a request with DOB under the Freedom of Information Law, obtain and present evidence either contradicting the signoff or supporting Appellant's argument that it was inauthentic, but the Appellant did not present such information; and

WHEREAS, with regards to Appellant's assertion that the 20 Con Edison gas meters at the premises date from at least 1985 and show no evidence of having ever been removed or capped, the Board find that, in the absence of records from Con Edison, the Board is unable to ascertain whether the gas meters at the premises were ever removed in connection with the 1989 DOB application; and

WHEREAS, additionally, the Board finds the letter from the architect retained by the Appellant, dated June 10, 2015, and the letter from a licensed master plumber retained by the Appellant, dated March 23, 2016, concluding that residential units in the building were never combined, to be conclusory and lacking in evidentiary support; and

WHEREAS, the Board also notes that the list of leaseholds submitted by the Appellant includes multiple instances of the same or similarly named individuals, does not indicate the unit(s) in which such leaseholders reside(d) and is, thus, insufficient to verify the precise number of tenants in the building at the time that the 1989 CO was issued; and

WHEREAS, since the majority of the residential units in the subject building are now vacant, the Board finds that complying with the 1989 CO and reducing the number of units in the building to 11 as therein indicated is not impossible and would not require the eviction of existing tenants; and

WHEREAS, accordingly, the Board finds that there are no practical difficulties in the Appellant's ability to strictly comply with the 1989 CO or that such compliance would result in a hardship; and

WHEREAS, the record reveals that the Appellant's predecessor in title engaged in questionable methods to deregulate units in the building and the Appellant has heretofore not only benefited from those methods, but appropriated them, continuing to lease to unrelated tenants in adjoining apartments on a joint-lease-basis; and

WHEREAS, the Board notes that a determination of how the remaining tenants of the subject building are distributed in the building's 11 residential units and how much those tenants pay for their units is beyond the Board's purview in this application and that this decision is not to be construed as the Board's tacit endorsement of the position that the owner of the premises is entitled to request the eviction of the remaining tenants because the number of units in the building is inconsistent with the 1989 CO; and

WHEREAS, the Board believes that these remaining issues are to be determined by the New York City Department of Housing Preservation and Development, DHCR, which has jurisdiction over the rent regulated units and, if so necessary, the New York State courts.

Therefore it is Resolved, that this appeal seeking the revocation of the 1989 Certificate of Occupancy for the premises and the reinstatement of the 1985 Certificate of Occupancy or, alternatively, the amendment of the 1989 Certificate of Occupancy to reflect 20 residential units in the building, is denied.

Adopted by the Board of Standards and Appeals, July 12, 2016.

A true copy of resolution adopted by the Board of Standards and Appeals, July 12, 2016.
Printed in Bulletin Nos. 28-29, Vol. 101.

Copies Sent
To Applicant
Fire Com'r.
Borough Com'r.