PROPOSED ORDER

NEW YORK CITY LOFT BOARD

In the Matter of the Reconsideration Application of

[redacted]

Loft Board Order No.:_______

Docket No.: R-0395

RE: 255-265 McKibbin Street
Brooklyn, New York

IMD No.: 30058

Challenged Order No. 5347

Docket Nos. PO-0138/PO-0260
TA-0274/TA-0325

ORDER

On June 30, 2025, [redacted] and [redacted]") (together, "Tenants"), the occupants of unit 314 ("Unit") at 255-265 McKibbin Street, Brooklyn, New York ("Building") filed a reconsideration application ("Application") seeking a review of Loft Board Order No. 5347 dated May 15, 2025 ("Order"), which granted in part and denied in part the application for protected occupancy status and remanded the rent dispute application.

For the reasons explained below, the Application is denied.

FACTUAL BACKGROUND

The Building is an Interim Multiple Dwelling ("IMD"). It was registered on July 21, 2011 pursuant to Multiple Dwelling Law ("MDL") § 281(5). [redacted] ("Owner"), the owner of the Building listed the Unit as an IMD unit and [redacted]") as the window period occupant.

On October 12, 2012, Owner purportedly purchased the Article 7-C rights of [redacted] pursuant to MDL § 286(12).

On July 6, 2018, Owner purportedly purchased the Article 7-C rights of [redacted] the then-occupant.

On December 19, 2018, Owner executed a third sale of rights agreement for the Unit, purportedly purchasing the Article 7-C rights of [redacted] and [redacted]"), the then-occupants of the Unit.

On May 22, 2019, Tenants signed a three-month lease agreement and a sale of rights agreement, purportedly selling their Article 7-C rights pursuant to MDL § 286(12).

On May 12, 2020, Tenants negotiated a [redacted] rent reduction and accepted a [redacted] check as consideration for a sale of their Article 7-C rights pursuant to MDL § 286(12).

On February 22, 2021, Tenants filed an application seeking protected occupancy status and a rent dispute application.

On May 15, 2025, the Loft Board issued the Order which granted in part and denied in part the protected occupancy claim, finding that the Unit was deregulated on May 12, 2020, when Tenants signed the second sales agreement. The Loft Board found that Tenant's May 22, 2019 transaction, as well as the prior transactions with [redacted] and [redacted] were not effective sales of rights pursuant to MDL § 286(12). The Order remanded the rent dispute claim for further proceedings to determine the maximum permissible rent between June 2019, when Tenants moved into the Unit, and May 2020, when they sold their Loft Law rights.

On June 30, 2025, Tenants filed the Application seeking reconsideration of the Order. Owner submitted a memorandum of law in opposition.

STANDARD FOR RECONSIDERATION

Under § 1-32(a) of Title 29 of the Rules of the City of New York ("29 RCNY"), the four grounds under which an application for reconsideration may be granted are:

1. An allegation of denial of due process or material fraud in the prior proceedings;
2. An error of law;
3. An erroneous determination based on the grounds that was not argued by the parties at the time of the prior proceeding and that the parties could not have reasonably anticipated would be the basis for a determination; or,
4. Discovery of probative, relevant evidence which could not have been discovered at the time of the hearing despite the exercise of due diligence.

Here, Tenants seek reconsideration of the Order based on two alleged errors of law. First, Tenants alleged that the May 2020 transaction does not represent a knowing and intentional waiver. This issue was raised during the protected occupancy hearing and fully litigated. Judge Gloade found that Tenants' testimonies alleging a lack of knowledge of their Article 7-C rights lacked credibility. *See* Report at 36-37, 42. The arguments seek to relitigate the same argument rejected in the underlying proceeding.

Second, Tenants, for the first time, alleged that the rent reduction negotiated as consideration for the sale of rights was invalid as against public policy. For the reasons explained below, we disagree.

ANALYSIS

A. The Application for Reconsideration of the Order is Untimely.

The Loft Board's rules governing applications for reconsideration of Loft Board's orders are found in 29 RCNY § 1-32(b). A complete reconsideration application must be received by the Loft Board within thirty (30) days of the mailing date of the order sought to be reconsidered. *Id.*

The Loft Board issued the Order during its May 15, 2025 meeting, and the Loft Board mailed the Order to the affected parties on May 28, 2025. The deadline for filing a reconsideration of the Order was June 27, 2025, thirty (30) days after the mailing of the Order. Tenants filed the Application on June 30, 2025, after the filing deadline.

The Loft Board has a long-standing precedent of strict application of the deadline for reconsideration applications. *See Matter of Matalon*, Loft Bd. Order No. 0177 (Jun. 26, 1985); *Matter of Gradman Trust*, Loft Bd. Order No. 0562 (Mar. 26, 1987) (the reconsideration application filed after the filing deadline was denied for untimeliness); *Matter of Bal*, Loft Bd. Order No. 2745 (Jul. 10, 2002) (the reconsideration application filed after the filing deadline was denied for untimeliness); *Matter of 93 Avenue B Holding Corp*., Loft Bd. Order No. 2450 (Dec. 13, 1999) (the reconsideration application filed after the filing deadline was denied for untimeliness); *Matter of Nur Ashki Jerrahi Comm.*, Loft Bd. Order No. 3455 (Sept. 18, 2008) (the rule for filing for reconsideration is clear and unambiguous). There is no reason to hold differently here.

However, we note that even if the Application had been timely, Tenants' arguments fail for the reasons discussed below.

B. The Order Does Not Contain an Error of Law.

Tenants do not present a circumstance under which reconsideration is appropriate.

Firstly, Tenants argued that the May 12, 2020 transaction was invalid because the transaction was not a knowing and intentional sale of rights pursuant to MDL § 286(12). *See* Rider B in support of the Application at pg. 1, 3. This issue was already argued and rejected by the Loft Board. The Loft Board accepted Judge Gloade's findings that credible evidence established that Tenants intentionally relinquished their known Loft Law rights and were compensated for doing so in May 2020. *See* Report at 42.

A reconsideration application may not be used as a forum to reargue the same issues that were addressed in the underlying proceeding. *See Matter of Kiamie Princess Marion Realty*, Loft Bd. Order No. 2668 (Oct. 10, 2001); *Matter of R.E.D.I Management,* Loft Bd. Order No. 2556 (Mar. 23, 1999) (Reconsideration denied for repetition of the same argument that was the basis of the underlying application); *Matter of MKF Realty Corp.* Loft Bd. Order No. 2822 (Sept. 18, 2003) (The Loft Board rejected owner's application to reconsider an issue that was the subject of the underlying coverage application).

Secondly, Tenants argue, for the first time in the Application, that the May 2020 sale of Article 7-C rights is against public policy because the rent reduction negotiated as consideration was an agreement to reduce an alleged rent overcharge. *See* Rider B in support of the Application at pg. 1. In support of their newly raised argument, Tenants relied on *Riverside Syndicate, Inc. v. Munroe*, 10 N.Y.3d 18 (2008) for the proposition that the consideration for the sale is against public policy. *Id.*

Tenants' reliance on *Riverside Syndicate, Inc.* is unavailing. *Riverside Syndicate, Inc.* is an action brought by an owner seeking a declaratory judgment that an agreement not to enforce rights under the Rent Stabilization Code ("RSC") be declared unenforceable as against public policy. The Court held that an agreement by tenants to waive protections under the RSC, in exchange for an agreement by the landlord to let the tenants use the apartment as a second home, is void and cannot be enforced by either party. Here, unlike *Riverside Syndicate, Inc* and its disputed waiver of the RSC*,* Tenants' waiver of Article 7-C rights is not against public policy as both Multiple Dwelling Law § 286(12) and 29 RCNY § 2-10(a)(1) specifically provide for such a waiver. *See Matter of 325 Assocs.*, Loft Bd. Order No. 1540 (Feb. 23, 1994) (Tenant's agreement in a stipulation of settlement to vacate his unit in exchange for the purchase of his fixtures and waiver of his Loft Law rights, was held to be valid).

Unlike the terms of the agreement at issue in *Riverside Syndicate, Inc*, a rent reduction of [redacted], as consideration for Owner's purchase of Article 7-C rights, is not against public policy in and of itself. Whether the rent charged from June 2019 to May 2020 constituted a rent overcharge has not been determined in this record. Tenants' public policy argument was not raised during their challenge of the sale of rights in the underlying proceeding. Reconsideration may not be granted to afford the opportunity to present an argument that was not presented in the underlying proceeding. *See Matter of Joran*, Loft Bd. Order No. 888 (May 11, 1989).

CONCLUSION

For the reasons stated above, the reconsideration application challenging Loft Board Order No. 5347 is denied. The Order remains in full force and effect.

DATED: July 16, 2026

____
Guillermo Patino
Chairperson

Board Members Concurring:
Board Members Dissenting:
Board Members Absent:

DATE LOFT BOARD ORDER MAILED: