

PROPOSED ORDER

NEW YORK CITY LOFT BOARD

In the Matter of the Applications of

[REDACTED]

Loft Board Order No.: _____

Docket No.: TR-1426 and PO-0166

RE: 132-138 Mulberry Street
New York, New York

IMD No.: None

ORDER

The New York City Loft Board ("Loft Board") accepts the Report and Recommendation of Administrative Law Judge Astrid B. Gloade, dated March 14, 2025 ("Report").

I. BACKGROUND

On June 11, 2021, [REDACTED], occupant of unit 5A2, [REDACTED] ([REDACTED]), occupant of unit 5A3, and [REDACTED], occupant of unit 5A1 (together, "Applicants") filed joint applications seeking Article 7-C coverage pursuant to Multiple Dwelling Law ("MDL") § 281(5) or (6) and protected occupancy status for their units in 138 Mulberry Street, New York, New York. The Loft Board docketed the Applications as TR-1426 and PO-0166, respectively.

On July 9, 2021, [REDACTED] the owner of the 5th floor in 138 Mulberry Street filed an answer opposing the Applications.

On December 13, 2021, Applicants amended the applications ("Amended Applications") to add Marcello Assante ("Tenant"), occupant of unit 3D ("Unit") in 132 Mulberry Street, as an applicant. The Applications removed [REDACTED] and [REDACTED] as applicants.

On January 14, 2022, [REDACTED] filed answers to the Amended Applications.

On February 3, 2022, [REDACTED] filed an amended answer arguing that 132 Mulberry Street and 138 Mulberry Street are separate and independent buildings and not a Horizontal Multiple Dwelling ("HMD").

On March 3, 2022, [REDACTED] the condominium-owner of the Unit filed an answer opposing the protected occupancy application.

On June 15, 2022, [REDACTED], the over-tenant of the 5th floor, filed an answer.

On July 6, 2022, [REDACTED] filed an amended answer to the Amended Applications in order to correct the docket and index numbers.

On May 26, 2023, during the trial, [REDACTED] withdrew her coverage and protected occupancy claims, leaving only Tenant as an applicant for coverage and protected occupancy status for the Unit. See Withdrawal letter, ALJ's Exh. 7.

On March 14, 2025, Judge Gloade issued the Report recommending that the Loft Board grant Tenant's coverage and protected occupancy claims. During trial, Tenant presented documentary evidence and the testimonies of [REDACTED]; [REDACTED], Tenant's

former roommate [REDACTED]), the principal of [REDACTED] and [REDACTED] and [REDACTED] did not present any witnesses.

II. ANALYSIS

A. The Building is a Horizontal Multiple Dwelling ("HMD")

Before considering whether the record supports a finding of Article 7-C coverage and protected occupancy status, we will first determine whether the Building is an HMD for purposes of Article 7-C coverage. [REDACTED] opposition to the coverage applications focused primarily on claims that 132 Mulberry Street and 138 Mulberry Street (together, "Building") are not an [REDACTED]. [REDACTED] contended that the Building consists of commercial condominium units with each unit having a separate and distinct tax lot. See [REDACTED] Amended Answer to Amended Coverage Application ¶¶ 3-8.

In the Report, Judge Gloade found that the Building is an HMD. See Report at 8. We agree.

Pursuant to Section 2-08(a)(1)(iii) of Title 29 of the Rules of the City of New York ("29RCNY"), the Loft Board may consider the following factors in determining whether more than one structure is a single building for purposes of Article 7 -C coverage:

- (A) whether the structure is under common ownership;
- (B) whether contiguous portions of the structure within the same zoning lot are separated by individual load-bearing walls, without openings for the full length of their contiguity, as distinguished from non-load bearing partitions;
- (C) whether the structure has been operated as a single entity, having one or more of the following:
 - (a) a common boiler;
 - (b) a common sprinkler system;
 - (c) internal passageways;
 - (d) other indicia of operation as a single entity;
- (D) whether the owner or predecessor has at any time represented in applications or other official papers that the structure was a single building;
- (E) whether a single certificate has been issued for the structure; and
- (F) Pattern of usage of the Building during the applicable qualifying window periods.

The record includes evidence for at least three of these factors. Regarding factor (A), the record includes a deed dated July 29, 1982, recorded with the New York City Office of the City Register. The deed lists the address for the Building as 132-138 Mulberry Street and shows that the Building is under common ownership and occupies one tax block and tax lot. See Deed dated July 29, 1982, Exh. 3.

Regarding factor (B) above, [REDACTED] testified that although two firewalls divide the Building into three sections, it is still a single building. See Tr. 203-205, 218, 225.

Regarding factor (D) above, the record shows that the Building is listed as 132-138 Mulberry Street on the New York City Department of Buildings' ("DOB") website with a single Building Identification Number ("BIN")¹. See Tr. 199-200; see also DOB property profile overview for 132-138 Mulberry Street, Exh. 2. The BIN for the Building is 1066508. *Id.*

Another instance that the Building was listed as one building on official documents was in 1987, when the Building came under condominium ownership. The Building was listed as 132-138 Mulberry Street. Individual lot numbers were assigned to each unit in the Building, but the same Building's address was used for all of the units. See Tr. 200, 202; see also Exh. 78. On December 13, 2002, an amended condominium declaration was issued for the Building. See Tr. 189; see also Exh. 78. Again, the Building is listed as one building located at 132-138 Mulberry Street. *Id.* Although [REDACTED] acknowledged that the

¹ The BIN is a unique number assigned to every building in New York City.

Building has two elevators and two entrances, we agree that these conditions do not overcome the long-standing history of the structures operating as one building.

Accordingly, we find that 132-138 Mulberry Street is an HMD.

B. Article 7-C Coverage Pursuant to MDL § 281(6)

For Article 7-C coverage under MDL § 281(6), the statute requires residential occupancy by three or more families living independently for a period of twelve (12) consecutive months between January 1, 2015, and December 31, 2016 ("Window Period"). Other coverage requirements include that the unit is not located in a cellar; has at least one entrance that does not require passage through another residential unit; is at least four hundred (400) square feet in area; and, lastly, lacks a residential certificate of occupancy issued pursuant to MDL § 301.

i. The Unit Meets the Criteria for Article 7-C Coverage.

Here, most of the eligibility criteria for coverage under MDL § 281(6) are not disputed. The Building lacks a residential certificate of occupancy, the Unit is not in the cellar, it has an entrance that does not require passage through another unit, and measures approximately 2400 square feet. See Tr. 454. In its answer, ██████ challenge to coverage centers around its conclusory allegations that the Building lacked three families living independently. ██████ also claimed that Tenant resided elsewhere during the Window Period and the Unit was used for commercial purposes specifically, "picture production". See Hong's Answer to protected occupancy application ¶ 2. ██████ position is belied by the evidence in the record.

The Loft Board has long held that the existence of a commercial lease is not dispositive in coverage determinations. See *Matter of Bartay*, Loft Bd. Order No. 0395 (Aug. 15, 1986); *Matter of Mantler*, Loft Bd. Order No. 1104 (Dec. 6, 1990); *Matter of 280 Nevins St. Tenants' Assoc.*, Loft Bd. Order No. 1441 (Apr. 28, 1998) (Loft Board in finding a unit eligible for Article 7-C coverage held the denomination of the lease as commercial is irrelevant); *Matter of Kappler*, Loft Bd. Order No. 5338 (Mar. 20, 2025) (a commercial lease is irrelevant in a coverage determination). A commercial lease does not change the residential nature of the Unit.

Tenant testified that on August 30, 2013, he and ██████ entered into an agreement to lease the Unit. See Tr. 52, 346. The initial lease agreement began on September 1, 2013, and ended on August 31, 2015. See Tr. 347; see also Lease Agreement, Exh. 16. Tenant added that he resided in the Unit since 2013 exclusively except from October 2016 to October 2017 when he moved out temporarily. See Tr. 344-345. ██████ testified that he was Tenant's roommate and lived in the Unit between August 2013 to late 2015, when he moved to Long Island for a job. See Tr. 23, 31, 42, 52, 54. ██████ added that while living in the Unit, the Con Edison bill was in his name. See Tr. 22-24, 31. He described the Unit as having three bedrooms, two bathrooms, and a living room. See Tr. 429-431, 443-48, 555-56.

Both Tenant and ██████ presented documentary evidence to corroborate their testimonies. See ██████ 2013 cashier check, Exh. 9; Cashier's Check dated August 30, 2013, Exh.17; 2013 Confirmation of Rent Payment, Exh.19; November 2013 Email from Hong, Exh. 20; Confirmation of Rent Payments on May 1, 2015, September 1, 2015, October 9, 2015, Exh. 24; photographs of the Unit, Exh. 34A-E.

We find that the documentary evidence and undisputed testimonies of Tenant and ██████ prove residential use of the Unit during the Window Period. The remaining question for coverage is whether there were at least two other residential units in the Building during the Window Period pursuant to MDL § 281(6).

ii. *Units 5A1, 5A2, and 5A3 were Residentially Occupied During the Window Period.*

a. *Unit 5A1*

The testimonial and documentary evidence in the record shows that unit 5A1 was residentially occupied by [REDACTED] during the Window Period. During trial, [REDACTED] testified that [REDACTED] entered into an agreement with [REDACTED] to lease unit 5A1 from November 1, 2015, to October 31, 2016. See Tr. 1151-1152; see also [REDACTED] sublease for unit 5A1, Exh. 41. [REDACTED] added that during [REDACTED] tenancy, he visited the unit and observed indicia of residential use such as a bed, television, sofa, chairs, a stove, a refrigerator, and kitchenware. See Tr. 1158, 1304; see also photographs of Unit 5A1, Exh. 46. [REDACTED] testimony was corroborated by [REDACTED] who testified that she encountered [REDACTED] a few times in the hallway early in the morning or in the evening, when she walked her dog or returned home. See Tr. 1081-83.

Judge Gloade credited [REDACTED] persuasive testimony that he built the residential fixtures in unit 5A1 and rented to [REDACTED] for residential purposes. See Report at 17. We accept Judge Gloade's credibility findings and find that unit 5A1 was residentially occupied for twelve consecutive months during the Window Period.

b. *Unit 5A2*

The record shows that [REDACTED] residentially occupied unit 5A2 from June 2014 through May 2015, and subsequently with his wife, [REDACTED], through May 31, 2016. See Tr. 1199-1200; see also [REDACTED] May 2014 lease for unit 5A2, Exh. 43; and [REDACTED] s July 2015 lease for unit 5A2, Exh. 82. [REDACTED] testified that he visited the unit numerous times for repair purposes when [REDACTED] resided in the unit. See Tr. 1200. Also, [REDACTED] stated that during his visits, he observed that the unit was furnished with a bar, a bed, television, and a full kitchen. See Tr. 1200, 1321-1322.

The other witnesses, [REDACTED] and [REDACTED] corroborated [REDACTED] testimony about the residential use in unit 5A2. See Tr. 82-84, 472-473. [REDACTED] described the unit as having a bedroom, bathroom, kitchen with household furnishings, and living and dining areas. *Id.* Judge Gloade found the testimonies credible. See Report at 19-20. We accept Judge Gloade's credibility findings and find that unit 5A2 was residentially occupied during the Window Period.

c. *Unit 5A3*

The record shows that shortly after [REDACTED] renovated unit 5A3, [REDACTED] entered into an agreement with [REDACTED] to sublease the unit from June 2011 until May 31, 2015. See Tr. 1286-1288; see also Lease between [REDACTED] and [REDACTED], Exh. 37 and 38. [REDACTED] testified that [REDACTED] continued to live in the unit until December 2015 when Zaman moved into the unit after Christmas 2015. See Tr. 697. [REDACTED] testified that during [REDACTED] tenancy, she entered the unit to read the meter and observed that the unit was furnished with vintage furniture, a bed, mannequins, and clothing on a rack. See Tr. 713, 1079-80. [REDACTED] presented photographs of the unit when [REDACTED] occupied the unit. See Tr. 1217-18. The photographs depicted a bed, dresser, chairs, a table, a kitchen area with a stove, sink, and washer/dryer unit and a bathroom with a claw foot bathtub and a toilet. See photographs of Unit 5A3, Exh. 47.

Judge Gloade found the testimonies credible. See Report at 21. We accept Judge Gloade's credibility findings and find that unit 5A3 was residentially occupied during the Window Period.

C. *Tenant is the Protected Occupant of the Unit*

Having found that the Building is an HMD, that there were at least three families living independently for twelve (12) consecutive months during the Window Period and that the Unit meets the criteria for coverage, we accept Judge Gloade's recommendation to grant protected occupancy status to Tenant. The record includes evidence that Tenant is the prime lessee of the Unit and the Unit is his

primary residence. See RCNY § 2-09(b)²; State Farm Insurance Renter's Application, Exh. 29, Lease Agreement, Exh. 30, and State Farm Insurance Policy Balance Due Notice, Exh. 31.

III. CONCLUSION

The applications for Article 7-C coverage under MDL § 281(6) and protected occupancy status are granted. [REDACTED] is directed to register the Unit as an IMD within thirty (30) days from the mailing date of the Order. Failure to comply may result in enforcement proceedings and the imposition of monthly late fees pursuant to 29 RCNY § 2-11.1(b)(7).

DATED: July 16, 2026

Guillermo Patino
Chairperson

Board Members Concurring:
Board Members Dissenting:

DATE LOFT BOARD ORDER MAILED:

² Effective March 31, 2023, the Loft Board amended its rules in § 2-09. Rules governing protected occupancy are now found in 29 RCNY § 2-08(s)(4). For the purposes of this application, the Loft Board will reference the rules in effect at the time of the application filing.