

## **PROPOSED ORDER**

### **NEW YORK CITY LOFT BOARD**

*In the Matter of the Applications of*

██████████

**Loft Board Order No.:** \_\_\_\_\_

**Docket Nos.:** TR-1437 and PO-0186

**RE:** 240 Grand 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 Christine Stecura dated May 20, 2024 ("Report").

#### **I. BACKGROUND**

On February 9, 2022, ██████████ ("Cohen") filed applications seeking Article 7-C coverage for 240 Grand Street, New York, New York ("Building") as an interim multiple dwelling ("IMD") pursuant to Multiple Dwelling Law ("MDL") § 281(6),<sup>1</sup> and protected occupancy of the fifth-floor unit. The Loft Board docketed the applications as TR-1437<sup>2</sup> and PO-0186, respectively (together, "Applications"). See Applications.

On March 14, 2022, ██████████ ("Owner"), the owner of the Building filed one answer for both applications. See Owner's Answer to TR-1427 and PO-0130.

The Loft Board transferred the applications to the Office of Administrative Trials and Hearings ("OATH") for adjudication.

During the four-day trial, ██████████ testified to his occupation of the fourth and fifth floor units. ██████████ also called as witnesses his ex-girlfriend, ██████████ his friends ██████████ and ██████████ d, and his nephew, ██████████, who testified to his occupancy at the Building. Owner called ██████████ ("") and ██████████ architectural designers and agents of Owner, as witnesses. Both parties introduced documentary evidence.

On March 4, 2024, ██████████ and Owner submitted post-trial memorandums of law.

Judge Stecura found that ██████████ established that both the third and fourth floors were residentially occupied for twelve (12) consecutive months between January 1, 2015, and December 31, 2016 ("Window Period"). Regarding the fifth-floor unit, however, Judge Stecura found that ██████████ failed to prove that he residentially occupied the unit for twelve (12) consecutive months during the Window Period. See Report at 20-21.

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<sup>1</sup> While the coverage application was initially filed under both MDL §§ 281(5) and (6), ██████████ pursued his coverage claim under § 281(6) only. See Applications; see also Applicant's Post-Trial Memorandum of Law at 5.

<sup>2</sup> In pursuit of his coverage application ██████████ is only seeking coverage for each of the largest units on the third, fourth and fifth floors of the Building. See Tr. 6-7. The smaller units on the third and fourth floors do not reach the minimum qualifications for square foot area required for coverage. *Id.*

## II. ANALYSIS

### 1. *Relevant Law*

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 during the Window Period. See MDL § 281(6). Other coverage requirements under MDL § 281(6) 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 square feet in area; and lacks a residential certificate of occupancy issued pursuant to MDL § 301. *Id.*

Under MDL § 281(6), three or more families must be “living independently,” which is defined by 29 RCNY § 1-12 as having attributes such as:

- (i) a separate entrance providing direct access to the Residential Unit from a street or common area...;
- (ii) one (1) or more rooms such as a kitchen area, a bathroom, a sleeping area and a living room area arranged to be occupied exclusively by the members of a Family and their guests...; or
- (iii) such other indicators of independent living which demonstrate the Residential Unit's use as a residence of a Family Living Independently.

The First Department has held that for a building unit to qualify for Article 7-C coverage, “it must possess sufficient indicia of independent living to demonstrate its use as a family residence ... It is then not enough to show residential use alone. The showing of residential use must be accompanied by a showing that the formerly commercial premises, the domestic use of which is claimed, physically reflect that use, i.e., that the premises have been converted, at least in part, into a dwelling.” *Anthony v. NYC Loft Bd.*, 122 A.D.2d 725, 727 (1<sup>st</sup> Dep’t 1986) (tenant failed to prove the space was used residentially as it was sparingly occupied during the window period and lacked basic amenities required of prolonged residential occupancy); see also *Matter of Pels*, Loft Bd. Order No. 4161 (June 20, 2013) (tenant proved her residential conversion of the unit through the creation of a bathroom, full kitchen and office, and an updating of the unit’s electrical system).

There is no definitive list detailing what qualifies as sufficient indicia of residential use, so each unit seeking coverage must be analyzed individually. Some factors to be considered include whether permanent and non-permanent fixtures, such as bathrooms, showers, closets, refrigerators, stoves and beds, have been installed in the unit. See *Anthony*, 122 A.D.2d 725; *Matter of Pels*, Loft Bd. Order No. 4161 (Jun. 20, 2013); *Matter of Boyers and Kelly, et al.*, Loft Bd. Order No. 4302 (Sept. 30, 2014) (coverage denied where only indicia of conversion to residential use was the placement of a mattress on the floor; the unit had no stove, plumbing or gas). In addition to the physical configuration of the unit, an applicant may also establish residential occupancy through documentary evidence which may include, but is not limited to, tax returns, employment records or the use of the unit’s address on other official documents. See *Matter of Tenants of 141-155 S. Fifth St.*, Loft Bd. No. 1739, 29-30 (Feb. 22, 1995).

Failure to establish residential occupancy during the relevant window period requires the denial of Loft Law coverage. See *Matter of Tenants of 325 W 37th St.*, Loft Bd. Order No. 3457 (May 18, 2007) (residential use during window period is a crucial inquiry in coverage determinations.); *Kaplan v. New York City Loft Bd.*, 159 AD 2d 439 (1<sup>st</sup> Dep’t 1990) (Article 7-C coverage denied for failure to establish residential occupancy during window period).

### 2. *Occupancy of Third-Floor Unit*

█████ introduced testimony and documentary evidence that ██████ leased the third-floor unit from August 1, 2015, to July 31, 2016. See Pet. Exh. 16, 3<sup>rd</sup> Floor Lease; see Tr. 157, 276. Although ██████ did not testify, ██████, who occupied a small unit on the third floor, testified to

residential occupancy during his lease period. See Tr. 83, 111, 157-158, 179, 288-289. Both and testified that they saw in his unit every day during the Window Period and that the unit had a kitchen, bathroom, and a bed. See Tr. 83-84, 157-158. Based on the lack of opposing evidence presented by Owner, Judge Stecura found that the third-floor unit was residentially occupied for twelve (12) consecutive months of the Window Period. See Report at 7. We agree.

### 3. Occupancy of Fourth-Floor Unit

testified and introduced documentary evidence that he residentially occupied the fourth-floor unit during 2015. See Tr. 144. and nephew, testified that the unit contained a kitchen with a refrigerator, a bedroom, a bathroom with a shower, sink and toilet, clothing, and personal items, including a piano and television. See Tr. 12-13, 26-27, 49-53, 80-81.

moved into the fourth-floor unit in 2008 and testified that he remained in the unit until he allegedly began moving his belongings to the fifth floor beginning in November or December 2015. See Tr. 144, 280, 283, 319. Although he noted that his friends began using the fourth floor beginning in November 2015, continued to stay in unit when no one else was using it. *Id.* Beginning in January 2016, stated that he began renting the fourth-floor space out to short term tenants. See Tr. 144, 259-261, 285.

Judge Stecura found that even though did not physically occupy the fourth-floor unit for the entirety of November and December 2015 due to travel or friends staying in the unit, it was more likely than not that retained his right to the unit, and his expectation of continued residential occupancy within the unit. See Report at 9-10. Judge Stecura held that occupied the fourth-floor unit for the required twelve (12) months of the Window Period. *Id.* We agree. Temporary absences from a unit do not bar Article 7-C coverage. See *Matter of Pels*, Loft Bd. Order No. 4161 (June 20, 2013) (Article 7-C coverage found where tenant, even though she was temporarily away from her unit for work, regularly visited the unit, left most of her belongings there and paid rent).

### 4. Occupancy of Fifth-Floor Unit

The fifth-floor unit of the Building housed eight (8) Single Room Occupancy ("SRO") units with two bathrooms, a kitchen, a sitting room and a laundry room. See Tr. 150, 153; see also Resp. Exh. C, DOB Violation. On May 28, 2014, the New York City Department of Buildings ("DOB") placed a partial vacate for the fifth floor of the Building. See Resp. Exh. E, DOB Vacate Order.

Beginning on August 14, 2014, after the Vacate Order was issued, leased the fifth floor from Owner. See Resp. Exh. B, Fifth Floor Lease; see also Tr. at 34. had not occupied the fifth-floor unit prior to the DOB vacate order. See Tr. 317. hired architectural firm to complete the necessary repairs for recission of the vacate order. See Tr. 161, 163, 352, 415-416. Moy and architectural plans included the removal of plumbing fixtures and showers from the unit but showed that one sink and one toilet would remain. See Tr. 355, 419, 421-22; see also Resp. Exh. F, Fifth Floor Plans. The plans did not include a kitchen, cooking appliances, or a three-piece bathroom with shower. *Id.*; see also Tr. 297-298, 422-423. A permit was obtained for the work on March 4, 2015. See Resp. Exh. G, Permit for Fifth Floor.

In October 2015, demolition work was completed in the unit, removing bedroom walls, the kitchen and shower. See Tr. 153-154, 262. Beginning in November or December 2015, testified that he began moving his belongings to the fifth floor, but noted that the floor remained a construction site, and he was not comfortable staying there. See Tr. 183, 293. He further testified that when he wanted to take a proper shower, he would do so on a different floor. See Tr. 293. The fifth floor did not contain a kitchen, so was unable to cook in the unit, and either ordered meals, or ate food that did not require a stove. See Tr. 266-267.

introduced conflicting testimony as to when he moved to the fifth floor testified that he began moving from his fourth-floor unit to the fifth floor sometime in December, but that he could not openly reside on the fifth floor at that time. See Tr. 319-320. Some of his witnesses noted that he began

moving his belongings in either November or December 2015, or the beginning of 2016, while others stated he moved to the unit only once the renovations were completed. See Tr. 14, 18, 40, 131. [REDACTED] noted that had he or his belongings been observed by the DOB inspectors, the vacate order would not have been lifted, so he would regularly move his belongings into one room, or out of the Building altogether, when inspectors came to see the space. See Tr. 154-156, 227, 263, 273-274, 313-314. [REDACTED] also stated that he would regularly be away from the unit during the day. *Id.* [REDACTED] believed that [REDACTED] was using the space for storage of his belongings, and that once the vacate order was lifted, [REDACTED] would use the space for his commercial business. See Tr. 364-368, 370, 401-402.

[REDACTED] reached out to [REDACTED] in April 2016, inquiring when the vacate order would be lifted so that he could finally move into the unit. In one email exchange, [REDACTED] asked “[a]re we ready to finalize it so I can move in [to the fifth-floor unit]?” See Resp. Exh. J, [REDACTED] Email to [REDACTED]. On May 25, 2016, [REDACTED] contacted an expediter asking whether the outstanding fines had been resolved, noting “[p]ay the fine and let’s get it over with already? 2 years that place is standing empty.” See Resp. Exh. K, Email regarding Fifth Floor Unit. On June 28, 2016, the vacate order was lifted by DOB, with the inspector noting that “[a]t time of inspection, no SRO observed in 5<sup>th</sup> floor at time of inspection. Job #122077073 was signed off 11/20/15 modifying area to commercial space.” See Resp. Exh. I, DOB Rescindment of Vacate Order.

After the rescindment of the vacate order, it is uncontroverted that [REDACTED] began his own construction in the unit, building a second bathroom, a kitchen, and dividing walls. See Tr. 151-153. [REDACTED] also added a refrigerator and a stove to the unit. See Tr. 152-153, 166-167. It was from this point forward that Judge Stecura found that [REDACTED] was occupying the fifth-floor unit residentially, and that the unit had indicia of residential use. See Report at 17, 19. We agree.

While [REDACTED] introduced extensive documentary evidence of deliveries to his attention at the Building, much of his proof either lacked any indication as to what floor he lived on (i.e., Lyft and Uber receipts for travel to or from the Building) or were from dates outside of the Window Period altogether. See Pet. Exh. 7, 20, 21, 22, 27, 31, 32, 32, 33, 34, 35, 36, 37, 38, 39. Some of the exhibits did show that [REDACTED] received food or furniture deliveries at the fifth-floor unit, but most were not within the Window Period. See Pet. Exh. 27, 31, 32, 33, 34, 35, 36, 37, 38, 39. For those deliveries specifically to the fifth-floor unit during 2016, all came *after* the vacate order had been lifted, and [REDACTED] had completed his residential upgrades to the unit. See Pet. Exh. 28, 29, 30.

Judge Stecura did not find [REDACTED] assertions that he was living in the fifth-floor unit beginning in January 2016 to be credible, or that he resided in the unit for twelve (12) consecutive months during the Window Period. See Report at 19-20. We agree.

### III. CONCLUSION

[REDACTED] coverage application is denied.

Having denied the coverage claim, it is not necessary to address the issue of protected occupancy. See *Matter of Kim and Feldman-Kim*, Loft Bd. Order No. 5111 (Mar. 17, 2022) (where the unit is denied Article 7-C coverage, protected occupancy application must be dismissed). The protected occupant application is dismissed.

DATED: July 16, 2026

\_\_\_\_\_  
Guillermo Patino  
Chairperson

Board Members Concurring:

Board Members Dissenting:

DATE LOFT BOARD ORDER MAILED: