

PROPOSED ORDER

NEW YORK CITY LOFT BOARD

<i>In the Matter of the Application of</i> [REDACTED] TOTENGCO	Loft Board Order No. _____ Docket No. TR-1248 RE: 430 Lafayette Street Rear New York, New York IMD No: None
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ORDER

The Loft Board accepts the report and recommendation of Administrative Law Judge Faye Lewis dated June 5, 2023 ("Report").

I. BACKGROUND

This coverage application has an extensive history. Only the relevant facts will be included here. For a full history, [REDACTED], Loft Bd. Order No. 4480 (Feb. 18, 2016) and [REDACTED], Loft Bd. Order No. 4630 (Mar. 16, 2017).

On March 11, 2014, [REDACTED], tenant in the unit 4L in 430 Lafayette Street Rear, New York, New York ("Building")¹ filed an application seeking Article 7-C coverage pursuant to Multiple Dwelling Law ("MDL") § 281(5).

On August 20, 2014, [REDACTED] filed an amended coverage application to include three additional units and the following people as applicants (collectively, "Tenants"):

Applicant	Unit
[REDACTED]	[REDACTED]
[REDACTED]	3 rd Floor

On September 18, 2014, [REDACTED] ("Owner"), the owner of the Building filed an answer opposing the coverage claims.

The Loft Board transferred the case to the New York City Office of Administrative Trials and Hearings for adjudication.

In an agreement dated January 21, 2015 ("Agreement"), Tenants and Owner purported to settle the coverage claims. In February 2016, the Loft Board rejected the Agreement as against public policy. [REDACTED], Loft Bd. Order No. 4480 (Feb. 18, 2016).

Tenants sought reconsideration of Order No. 4480. The Loft Board denied reconsideration in [REDACTED], Loft Bd. Order No. 4630 (Mar. 16, 2017). The Loft Board orders were then challenged in court. Ultimately, the New York State Court of Appeals found that it was "not irrational for the Board to remand for further proceedings, thereby declining to give effect to a provision of the settlement agreement in which tenants purported to withdraw their application for Loft Law coverage." [REDACTED] v. *New York City Loft Bd.*, 37 N.Y.3d 1216 (2022).

¹ 430 Lafayette Street, New York, New York consists of two structures. The front structure faces Lafayette Street and contains residential units. The front structure has a residential certificate of occupancy.

Thereafter, the matter was remanded to OATH for adjudication. On February 15, 2023, OATH issued a combined notice scheduling a conference on March 20, 2023. Tenants failed to appear.

On March 24, 2023, OATH issued a "Final Notice of Trial" which scheduled the trial on April 24, 2023. The March 24th notice included a bolded sentence which said "[t]his trial has been marked final". Additionally, the notice advised that pursuant to Title 29 of the Rules of New York City § 1-06(k)(4)², the case could be dismissed for failure to prosecute if there was no appearance by Tenants. On April 24, 2023, only Owner's attorney appeared.

In correspondence dated May 9, 2023, OATH notified Tenants that the coverage application had been marked off the calendar. To restore the case to the calendar, Tenants had to submit a request within thirty (30) days of the trial date explaining the circumstances which prevented them from appearing at trial. The thirty (30) day deadline lapsed without a request to restore the case to the calendar.

In the Report, Administrative Law Judge Faye Lewis recommended that the application be dismissed with prejudice. We agree.

II. ANALYSIS

Section § 1-06(k)(4) of 29 RCNY stated:

If an applicant does not appear for a conference or hearing which has been marked final against him/her, the application may be dismissed for failure to prosecute unless the Loft Board hearing examiner, Loft Board staff member, or Administrative Law Judge approves a written request for the reinstatement which must be made within 30 calendar days from the conference or hearing date. The written request for reinstatement must provide a showing of extraordinary circumstances which prevented the applicant's attendance at the hearing or conference.

OATH scheduled the trial date on April 24, 2023. A final notice of trial was served on all parties on March 24, 2023, four weeks before the scheduled trial date. Only the Owner's attorney appeared on the trial date. More than thirty (30) calendar days have passed from the date of the trial and Tenants have not filed a request for reinstatement pursuant to 29 RCNY § 1-06(k)(4).

III. CONCLUSION

We accept Judge Lewis's recommendation to dismiss with prejudice Tenants' coverage claim pursuant to 29 RCNY § 1-06(k)(4). [REDACTED], Loft Bd. Order No. 4257 (Mar. 20, 2014) (dismissing an application with prejudice pursuant to 29 RCNY § 1-06(k)(4) upon the failure to appear at a hearing marked final).

The applicants' claim is dismissed with prejudice for failure to prosecute pursuant to 29 RCNY § 1-06(k)(4).

²Effective March 31, 2023, the Loft Board amended its rules in Title 29 of the Rules of the City of New York. The new rule is found in § 1-29(e). For purposes of this order, we will use the citations in effect on the filing date of the application.

DATED: June 26, 2025

Guillermo Patino
Chairperson

Board Members Concurring:
Board Members Dissenting:

DATE LOFT BOARD ORDER MAILED: