



Transcript of the May 19, 2022

Meeting of the

New York City Loft Board

This transcript has been prepared pursuant to legislation S.50001/A.40001 signed by Governor Hochul, which suspended Article 7 of the Public Officers Law to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in-public, in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.

The meeting began at: 2:10pm

1 **Chairperson Hylton:** Good afternoon. My name is Renaldo Hylton, the Chairperson Designee of the New
2 York City Loft Board. Welcome to our May 19th, 2022, public meeting. This meeting is being held via
3 teleconference in accordance with legislation signed by Governor Hochul, due to the coronavirus
4 emergency.

5 Section 282 of the New York State Multiple Dwelling Law establishes the New York City Loft Board. The
6 Board is charged with overseeing the legalization of Interim Multiple Dwelling buildings from
7 commercial and manufacturing spaces to safe, rent-regulated residences that comply with the minimum
8 standards of safety and fire protection stated in Article 7-B of the New York State Multiple Dwelling
9 Law. To achieve this goal, the Board adjudicates and mediates disputes between owners and tenants,
10 tracks the progress of each building undergoing legalization, and prosecutes parties who violate the Loft
11 Law and the Loft Board's rules.

12 We first turn to a vote on the minutes from the April 28th, 2022. Public Meeting. Are there any
13 corrections or comments on these minutes?

14 **Mr. Barowitz:** Mr. Chairman, I don't know whether this was the case with everybody, but the minutes
15 came in at point two, and I could barely read it, it was so tiny. So, if you could maybe put it in 14 or 16
16 point for next time. I found one spelling error in it, but since I enlarged it, it was on page 32, and then
17 when I went back to try to find it on the point two, I couldn't find it. But it was one small spelling error.
18 And Jane says I shouldn't even mention it, but the word it -- apostrophe s was put in when it should have
19 been i,t,s.

20 **Chairperson Hylton:** I got you. We'll try to find it. Maybe do a word search, Stephan, while the meeting
21 is going on, and we'll make that correction if possible. Any other comments? Thank you, Mr. Barowitz.
22 And Mr. Barowitz, we'll definitely make the font a little bigger next time. Any other comments? Yes. Mr.
23 Roche. Take yourself off mute.

24 **Mr. Roche:** Yes, in regard to the minutes, I recall -- maybe somebody can help refresh my memory, in
25 the last meeting, there was discussion about the difference between abstaining and recusing. I
26 understand we've had some face-changes, but I'm looking at the minutes and I'm now seeing a category
27 for recusal of members that I don't necessarily recall seeing traditionally. And I'd just like a little bit of

1 clarity on that. We may have to adjust these minutes, because I had gone on record, initially, as saying I
2 recuse myself. There was discussion in the meeting that recusal and abstention were the same thing,
3 but that wouldn't be what the minutes reflect to me.

4 **Chairperson Hylton:** Okay. Ms. Cruz, can you tell me if there's any real difference between recusal and
5 abstention?

6 **Mr. Barowitz:** There is a difference.

7 **Chairperson Hylton:** There is. Mr. Barowitz, could you...

8 **Ms. Cruz:** I don't know the difference.

9 **Chairperson Hylton:** Mr. Barowitz, in this context, Ms. Cruz is saying there's probably no difference. But
10 tell me what the difference is as you understand it to be?

11 **Mr. Barowitz:** Well, in one instance, abstaining seems to indicate that the position of the abstainer is
12 neither here nor there. The recusal, on the other hand, says, well, there's something about this thing
13 which asks me to stay out of it. But at the very end, there's no real big difference. So, I don't think we
14 ought to make a big deal about it. Martha, I don't know if you have anything more to say about it.

15 **Chairperson Hylton:** Yeah, I agree. It's a matter of the message it sends. Recusal usually- when a
16 person has some conflict in making a vote for the case. But in this case, the end result is, basically, that
17 the person does not vote on the matter.

18 **Mr. Barowitz:** It's also possible to not vote on an issue.

19 **Chairperson Hylton:** To not vote and not in the category of abstention or recusal? Well, all right. Okay.
20 We'll talk. That's not here or there right now. Go ahead, Mr. Roche.

21 **Mr. Roche:** I don't want to belabor this, but for the record, if we're going to have a category that states
22 members recused, then I have to respectfully ask that these meeting minutes are adjusted to reflect
23 that I recused myself in the situation of 27 Arion Place, so that we will have accurate minutes on record.

24 **Chairperson Hylton:** Okay, so we have traditionally gone with abstention, correct?

1 **Mr. DeLaney:** It should be both, with all due respect.

2 **Chairperson Hylton:** Okay. Recuse slash abstain, or another category?

3 **Mr. DeLaney:** Well, you can have three potential categories. One is someone abstains. For example,
4 sometimes people abstain from voting for the minutes because they weren't at the meeting. So, they
5 feel it's appropriate to neither vote yes or no, but to abstain. Recusal can be so far as... when the Board
6 has handled a couple of cases involving my building, I recused myself. When we did the LE case in my
7 building, the then owner representative, not Mr. Hylton, but the previous owner representative, asked
8 that I leave the room while they discussed the case, which is appropriate, because even if I recused
9 myself, I could still sit there and make faces or expressions that might influence the discussion of the
10 other members. And then the third option is, there are nine members present, but one of them is out of
11 the room because they're in the restroom. And we take a vote, and it's eight voting whichever way and
12 one person absent. So, you have absent, recused, or abstain.

13 **Chairperson Hylton:** But actually, absent is... I don't think that was the question. Really absent,
14 obviously, yes, that's different. But I get it. I think we're right. I think you and Mr. Barowitz just said the
15 same thing.

16 **Mr. Barowitz:** As I said, it's also possible to remove themselves and not vote at all. It's also possible to
17 simply vote here.

18 **Chairperson Hylton:** Present, you mean.

19 **Mr. Barowitz:** Present

20 **Chairperson Hylton:** I got you. All right. Mr. Roche, we can always amend the minutes to reflect it to say
21 your recused.

22 **Mr. Roche:** I would appreciate that.

23 **Chairperson Hylton:** All right. Any other comments on the minutes?

24

1 **Mr. Clarke:** Yes, Chairperson Hylton, I believe I found the it's that Mr. Barowitz is talking about. It's on
2 page 11 at the bottom.

3 **Chairperson Hylton:** Is it correct?

4 **Mr. Clarke:** Mr. Barowitz was correct. We should remove the apostrophe. Each agency has its own
5 interests. So, we'll make that change.

6 **Chairperson Hylton:** Thank you. Thank you, Mr. Barowitz. All right. Any other comments on the
7 minutes? Absent any comments, do I have a vote to accept the minutes with those changes: the its, and
8 also reflecting Mr. Roche's recusal?

9 **Mr. Roche:** I'll make the motion.

10 **Chairperson Hylton:** Mr. Roche. Mr. Roche has moved. Do we have a second?

11 **Mr. Hylton:** Second

12 **Chairperson Hylton:** Mr. Hylton

13 **Chairperson Hylton:** Thank you. Ms. Rivera, please poll the Board members.

14 **Ms. Rivera:** Mr. Barowitz?

15 **Mr. Barowitz:** Yes

16 **Ms. Rivera:** Mr. Roche?

17 **Mr. Roche:** Yes

18 **Ms. Rivera:** Mr. Hylton?

19 **Mr. Hylton:** Yes

20 **Ms. Rivera:** Mr. DeLaney?

21 **Mr. DeLaney:** Yes

1 **Ms. Rivera:** Ms. Rajan?

2 **Ms. Rajan:** Yes

3 **Ms. Rivera:** Chairperson Hylton?

4 **Chairperson Hylton:** Yes

5 **Ms. Rivera:** Six in favor; two absent

6 **Chairperson Hylton:** Thank you, Ms. Rivera. The next on the agenda is the Executive Director's report
7 from Ms. Cruz. Ms. Cruz, you're on mute.

8 **Ms. Cruz:** Good afternoon again. Update on enforcement. As you may remember, in April, the staff
9 reported that we issued ten violations against owners pursuant to section 2-01.1 of the Loft Board's
10 rules. We issued four violations for failure to file an alteration application to do the legalization work...

11 **Chairperson Hylton:** I'm sorry. Ms. Cruz, you just conked-out a little bit. Did everyone experience the
12 same thing?

13 **Mr. Clarke:** Yes, there was an interruption.

14 **Chairperson Hylton:** Yeah. Just start over. I'm sorry.

15 **Ms. Cruz:** Okay. Update on enforcement. As you may remember, in April, the staff reported that we
16 issued ten violations against owners pursuant to section 2-01.1 of the Loft Board's rules. We issued four
17 violations for failure to file an Alteration Application to do the legalization work. We issued two
18 violations for failing to renew permits for legalization work. We issued four violations for failing to renew
19 Temporary Certificates of Occupancy. Today is the last day to file a response to those violations. We
20 have received three answers; the answers are being reviewed. We extended the time to file an answer
21 for two violations. As of right now, we have not received any answers from five building owners. As we
22 mentioned in April, if there's no cure, we will issue administrative determinations, and the fine is \$1,000
23 per day up to \$17,500. We are working on notices to other building owners that are not taking all
24 reasonable and necessary action to legalize, and we're also working on housing maintenance violations.

1 With regard to statistics, as I promised, I've gathered the information about the status of pending cases.
2 Excluding the enforcement dockets, there are 321 pending cases. Some of the major categories are
3 coverage: 88; 5 protected occupant status applications; 32 tenant-initiated rent-dispute applications;
4 13 diminution-of-services applications; and the next biggest number is 21 extension applications.

5 Now, with regard to the breakdown of the of the cases by status, we have 208 cases in the hearings
6 process. We have 203 cases over at OATH. We have 5 cases that are pending pre- OATH -- either they're
7 in the answer period, or the application filing is deficient in some way, and we have reached out to the
8 applicants. So that's 208 out of the 321 applications.

9 We have 24 cases that are post-hearing, post-settlement. That means they have returned... the parties
10 have settled, or the cases have been returned from OATH. Out of these 24 cases, 7 of them are Master
11 Calendar. Of these 7 cases, 3 of them are coverage, 3 of them are protected-occupant-status
12 applications, and 1 of them is non-compliance with the legalization timetable. Again, these 24 post-
13 hearing, post-settlement cases, 17 of those 24 cases are Summary Cases. That means cases have been
14 settled.

15 We have 23 cases that are involved in staff conference. Most of these 23 cases are coverage
16 applications that were filed by tenants of one building. And the owner has registered that building, or
17 filed the registration application for the building, and the staff, right now, is going through the filing, and
18 we're working with both the owner's attorney and the tenants' attorney to get proof of residential
19 occupancy during the Window Period to continue processing the registration application. And we have
20 12 cases on the May agenda. So that leaves us with 54 cases. These 54 cases are cases that are not
21 transferred to OATH, usually. They are 13 recon-- reconsideration applications-- or administrative
22 appeals. We have 19 removal cases, and we have 21 extension applications. That is the breakdown of
23 the case status.

24 With regard to the legalization statistics, I will need more time for this information. Given the staffing
25 issues and the high volume of the court litigation happening right now, it is not clear when these stats
26 will be available. However, I do recognize that these numbers are important, and it's a priority for us to
27 provide them to you.

1 With regard to litigation since the April meeting, the staff has received one court decision and two
2 Article 78 petitions. The one decision that we received dismissed an Article 78 petition filed by the
3 tenants of 72 Warren Street. The tenants sought a stay of the certification issued for an amended
4 Narrative Statement. The tenants have refiled the Article 78, and that's one of the new cases that we
5 received this month. The second Article 78 is a mandamus filed by the owner of 163 Sixth Street. The
6 owner seeks an Order directing the Loft Board to issue certification of the Narrative Statement process.
7 The staff had a virtual meeting with the attorneys this week. The discussions will continue to try to
8 resolve the matter.

9 Lastly, the staff had scheduled an informational meeting with architects who specialize in Loft Law
10 conversions. We invited architects who represent both sides. We're looking for feedback about the
11 process and to identify areas where improvements can be made. We're also working on changes to the
12 Narrative Statement form, and the form will be provided to them during this meeting for their feedback.
13 And this meeting is scheduled for June 21st, of 2022. And that's it for my report. Any questions? Mr.
14 DeLaney?

15 **Mr. DeLaney:** Yes. Can you give us the address again for the mandamus case?

16 **Ms. Cruz:** 163 North Sixth Street, in Brooklyn.

17 **Mr. DeLaney:** Okay. And thank you for all the statistics that you have been able to provide us with. It
18 was very helpful. Going back to your discussion of enforcement, I realize today is the deadline by which
19 you... by which answers were required. One of the other enforcement issues that I've asked about in the
20 past is the language in the Loft Law that contemplates the Board or group of tenants bringing an action
21 for specific performance, which is something that has not happened to my knowledge, ever. And as the
22 Loft Law is about to enter its fortieth year, I'm curious if the staff has had any time to have any
23 discussion about that.

24 **Ms. Cruz:** No. We have not had any discussion about that.

25 **Mr. DeLaney:** Because I know you recall I raised it with you not so very long ago.

1 **Ms. Cruz:** Yeah, I have not discussed it, considering the amount of litigation that's happening right now.
2 We have not discussed it.

3 **Mr. DeLaney:** Okay. Thank you. That's it.

4 **Chairperson Hylton:** Okay, any other comments or questions for Ms. Cruz on her report? Thank you,
5 Ms. Cruz. So, we now turn to a vote on the cases. There are two cases on the Appeals and
6 Reconsideration Calendar. And the first case is

Case #1: 105 Broadway, LLC 105 Broadway, Brooklyn AD-0113

7 Mr. Clarke will be presenting this case.

8 **Mr. Clarke:** Thank you Chairperson Hylton and Board Members. On March 11th, 2020, owner filed a
9 registration application pursuant to MDL 281(5) for the second-floor unit in the building and filed an
10 MDL 286(12) Sales Record Form and a Sale of Rights Agreement dated February 17th, 2018. On June 16,
11 2020, the Loft Board's former Executive Director rejected the 2018 sale because owner registered the
12 second-floor unit pursuant to the 2019 amendments to MDL 281(5), and as the 2018 sale predated the
13 effective date of the 2019 amendments, which was June 25th, 2019, the 2018 sale had no legal effect.
14 On December 18th, 2020, owner filed an appeal.

15 The issue before the Board is whether the 2018 sale took place before the effective date of MDL 281(5).
16 The statutory authority for sales of Article 7-C rights is found in MDL 286(12), which states: "No waiver
17 of rights pursuant to this article by a residential occupant qualified for protection pursuant to this article
18 made prior to the effective date of the act which added this article shall be accorded any force or effect;
19 however, subsequent to the effective date, an owner and a residential occupant may agree to the
20 purchase by the owner of such person's rights in the unit."

21 There have been several amendments to MDL 281, but the Loft Board has interpreted the effective date
22 of MDL 281 subsections to be the date the relevant subsection was added to the Loft Law. Therefore,
23 although MDL 281(5) has been amended several times since 2010, the effective date that added 281(5)
24 is June 21st, 2010. As the 2018 sale occurred after the June 25th, 2010, effective date of MDL 281(5), the

1 Proposed Order before you grants the appeal and finds that the date of the 2018 sale does not bar
2 acceptance of the sales filing. Furthermore, the Proposed Order requests proof of payment to the
3 tenant within thirty days of the mailing date of the Order to continue processing the sales filing for the
4 second-floor unit and reserves the right for the Loft Board to request additional information.

5 **Chairperson Hylton:** Thank you, Mr. Clarke. Is there a motion to accept this case? Mr. Barowitz. Is
6 there a second?

7 **Mr. Hylton:** Second

8 **Chairperson Hylton:** Mr. Hilton, thank you. Do we have any comments on this? Absent any comments,
9 Ms. Rivera, could you please poll the Board members.

10 **Ms. Rivera:** Mr. Barowitz?

11 **Chairperson Hylton:** Mr. Barowitz?

12 **Mr. Barowitz:** Yes

13 **Ms. Rivera:** Mr. Roche?

14 **Mr. Roche:** Yes

15 **Ms. Rivera:** Mr. Hylton?

16 **Mr. Hylton:** Yes

17 **Ms. Rivera:** Mr. DeLaney?

18 **Mr. DeLaney:** Yes

19 **Ms. Rivera:** Ms. Rajan?

20 **Ms. Rajan:** Yes

21 **Ms. Rivera:** Chairperson Hylton?

1 **Chairperson Hylton:** Yes

2 **Ms. Rivera:** Six in favor ; two absent

3 **Chairperson Hylton:** Thank you, Ms. Rivera. The motion passed. The second case on the Appeals and
4 Reconsideration Calendar is

Case #2: Triad Capital, LLC 13 East 17 Street, Manhattan R-0382

5 Ms. Lee will present this case.

6 **Ms. Lee:** Thank you, Chairperson Hylton. This case involves a reconsideration application that was filed
7 by the owner of the building located at 13 East 17th Street in Manhattan. The owner challenges Loft
8 Board Order number 4938, which is a removal Order that was issued on January 16th, 2020. In the
9 underlying removal Order, the Loft Board found, among other things, that the IMD units on Floors 3, 5,
10 7, 8, and 9 remained subject to rent regulation under the Loft Law.

11 With respect to the units on Floors 5, 8, and 9, the Loft Board had issued a harassment Order against the
12 prior owner of the building in 2006. Then, in 2007, the current owner purchased the building and
13 submitted sales filings for those units. In the underlying removal Order, the Loft Board found that the
14 alleged sales of rights from 2007 did not deregulate those units because the alleged sales occurred while
15 the 2006 harassment Order was in effect. The Loft Board's rules explicitly provide that owners cannot be
16 entitled to the deregulation of an IMD unit upon a sale of rights or improvements which occurs on or
17 after the date of a harassment Order and before the harassment Order is terminated.

18 The owner argues that it is not bound by the 2006 harassment Order because the Loft Board did not file
19 the harassment Order with the Office of the City Register, as was required by the language of the Loft
20 Board's rules which were in effect at the time. This proposed Order disagrees. The effectiveness of a
21 harassment Order is not contingent on filing the harassment Order with the Office of the City Register.
22 Filing harassment Orders with the Office of the City Register was a way to provide notice to subsequent
23 owners. However, it was not the only way. For example, new owners could have exercised due diligence

1 by reviewing the Loft Board's records to determine the existence of harassment Orders. The owner's
2 attempt here to shift the responsibility for its due diligence onto the Loft Board is misguided.
3 The owner also argues that residential occupants can waive the Loft Board's rules prohibiting the
4 deregulation of an IMD unit upon a sale of rights which occurs while a harassment Order is in effect. This
5 Proposed Order disagrees. Neither the Loft Law nor the Loft Board's rules grant authority to residential
6 occupants to waive the preclusive effect of a harassment Order. Once a harassment Order is issued, the
7 Loft Board's rules only allow for the termination of the harassment Order by an application to the Loft
8 Board and not by a tenant's waiver.

9 The owner further argues that, in the underlying removal Order, the Loft Board failed to consider the
10 purpose of, and the policy behind, the applicable harassment rule, as well as failed to address the
11 owner's efforts in curing the prior owner's acts of harassment which resulted in the 2006 harassment
12 Order. This Proposed Order disagrees. The purpose of, and the policy behind, the harassment rule under
13 29 RCNY § 2-02(d)(1)(i) are irrelevant in the context of a removal Order where a prior harassment Order
14 has already been terminated by the Loft Board. Corrective actions that owners take after a harassment
15 Order is issued are considered upon an owner's application to the Loft Board for the termination of a
16 harassment Order. Here, the 2006 harassment Order was terminated in 2013. There was no need for
17 the underlying removal Order to address the owner's actions in curing the prior owner's acts of
18 harassment.

19 With respect to the unit on Floors 8 and 9, the owner argues that, because the unit was owner-occupied
20 immediately upon a sale of rights by the former residential occupant of the unit, the unit is not subject
21 to rent regulation under the Loft Law. This Proposed Order disagrees. The owner argues that there is
22 Loft Board precedent which provides for deregulation based on owner occupancy. However, the
23 precedent cited by the owner does not support deregulation in this case. Here, the unit on Floors 8 and
24 9 was not owner-occupied at the time of removal and had not been owner-occupied since at least 2018.
25 There are tenants in occupancy. This Proposed Order finds that owner-occupancy of an IMD unit at
26 some point in time does not automatically deregulate the unit upon removal from the Loft Board's
27 jurisdiction.

1 With respect to the unit on Floor 7, the owner argues that the Loft Board committed, among other
2 things, a denial of due process by failing to consider an abandonment application which was filed for the
3 unit on December 30th, 2019. So as to avoid a potential denial of due process and in an abundance of
4 caution, this Proposed Order grants the owner an opportunity to be heard in regard to its abandonment
5 claim prior to the removal of the building from the Loft Board's jurisdiction.

6 Lastly, this Proposed Order corrects the initial legal regulated rents that were set for the units on Floors
7 3 and 5. In the underlying removal Order, incorrect legalization milestone increases were applied.
8 Because all three legalization milestones, which include filing an alteration application with the DOB,
9 obtaining an alteration permit from the DOB, and achieving compliance with Article 7-B of the MDL,
10 were reached after June 21st, 1992, but before the MDL was amended on January 30th, 2013, a six-
11 percent-increase, an eight-percent-increase, and another six-percent-increase should have been added
12 to the rent. This Proposed Order modifies the initial legal regulated rents for the units on Floors 3 and 5
13 so as to include the correct legalization milestone increases.

14 In sum, this Proposed Order grants the owner's reconsideration application solely to the extent of the
15 seventh-floor unit.

16 **Chairperson Hylton:** Is there a motion to accept this case? Thank you, Ms. Lee.

17 **Ms. Rajan:** I move to accept the case.

18 **Chairperson Hylton:** Thank you, Ms. Rajan.

19 **Mr. Hylton:** Second

20 **Chairperson Hylton:** Mr. Hylton, thank you. Do we have any comments on this case? No comments.
21 Ms. Lee, that was nicely put together, and I appreciate it. Ms. Rivera, could you please poll the Board
22 members.

23 **Ms. Rivera:** Mr. Barowitz?

24 **Mr. Barowitz:** Yes

1 **Ms. Rivera:** Mr. Roche?

2 **Mr. Roche:** Yes

3 **Ms. Rivera:** Mr. Hylton?

4 **Mr. Hylton:** Yes

5 **Ms. Rivera:** Mr. DeLaney?

6 **Mr. DeLaney:** Yes

7 **Ms. Rivera:** Ms. Rajan?

8 **Ms. Rajan:** Yes

9 **Ms. Rivera:** Chairperson Hylton?

10 **Chairperson Hylton:** Yes

11 **Ms. Rivera:** Six in favor ; two absent

12 **Chairperson Hylton:** Thank you. Next on the agenda is the Summary Calendar. There are six cases on
13 that Summary Calendar, and we usually vote on these cases as a block. So, these cases are in order.

Case #3: 470 Manhattan Ave, LLC 18-20 Eckford Street, Brooklyn LN-0028

Case #4: Joshua Greenberg 187 Duane Street, Manhattan LB-0197

Case #5: MZBJ Holdings, LLC 250 Moore Street, Brooklyn LS-0277

Case #6: Oliver Stumm 135-137 Grand Street, Manhattan TR-1329

Case #7: Hervin Danilo Lopez 143-153 Roebling Street, Brooklyn TR-1428
PO-0169

1 Is there a motion to accept these cases? Mr. Barowitz. May I have a second?

2 **Ms. Rajan and Mr. Hylton:** Second

3 **Chairperson Hylton:** Ms. Rajan, thank you. Do we have any comments on these cases? No one cares to
4 comment on these cases. Ms. Rivera, could you please poll the Board members.

5 **Ms. Rivera:** Mr. Barowitz?

6 **Mr. Barowitz:** Yes

7 **Ms. Rivera:** Mr. Roche?

8 **Mr. Roche:** Yes

9 **Ms. Rivera:** Mr. Hylton?

10 **Mr. Hylton:** Yes

11 **Ms. Rivera:** Mr. DeLaney?

12 **Mr. DeLaney:** Yes

13 **Ms. Rivera:** Ms. Rajan?

14 **Ms. Rajan:** Yes

15 **Ms. Rivera:** Chairperson Hylton?

16 **Chairperson Hylton:** Yes

17 **Ms. Rivera:** Six in favor; two absent

18 **Chairperson Hylton:** Thank you. There are three cases on the Master Calendar.

Case #8: Lorae Russo 83-91 Meserole Street, Brooklyn PO-0077

19 Ms. Cruz is presenting this case.

1 **Ms. Cruz:** The tenant in this case filed an application for protected occupant status. In the answer to the
2 application, the owner argued that the unit was deregulated based on the prior sale of rights pursuant
3 to MDL 286(12). The owner's answer included a Sales Record Form and the Sales Agreement with the
4 prior occupant. The parties were also involved in an eviction proceeding in civil court. Among the
5 tenant's defenses in the eviction proceeding, tenant alleged that the unit was not deregulated based on
6 the Sale of Rights and that she was entitled to protected occupancy because there were more than six
7 units in the building. The tenant moved for a stay of the eviction proceeding pending the outcome of
8 her protected occupant application at the Loft Board.

9 Owner then filed a motion for summary judgment based on the Sale of Rights with the prior tenant. In
10 this decision, the court denied the tenants request for a stay and granted the owner's motion. The court
11 found that the record lacked evidence in support of the tenant's claim that the prior sale was invalid.
12 Consistent with findings in case law, the court found that the 2014 Sale of Rights between the owner
13 and the tenant removed the unit from rent regulation. Based on the court's decision, the OATH judge
14 recommended dismissal of the protected occupant application, finding that the doctrine of collateral
15 estoppel precluded tenant from relitigating the claims raised and decided in the eviction proceedings.
16 The Proposed Order accepts the recommendation and dismisses the application based on collateral
17 estoppel. As the claims in this case are the same as those litigated in the eviction proceeding, and there
18 was a full and fair opportunity to present the evidence of these claims the doctrine of collateral estoppel
19 applies.

20 **Chairperson Hylton:** Thank you, Ms. Cruz. Is there a motion to accept this case?

21 **Mr. Hylton:** I move to accept the case.

22 **Chairperson Hylton:** Mr. Hylton, and I see Mr. Barowitz. Are you seconding?

23 **Mr. Barowitz:** Second.

24 **Chairperson Hylton:** Thank you very much. Do we have comments on this case? Absent any comments,
25 Ms. Rivera, could you please poll the Board members.

1 **Ms. Rivera:** Mr. Barowitz?

2 **Mr. Barowitz:** Yes

3 **Ms. Rivera:** Mr. Roche?

4 **Mr. Roche:** Yes

5 **Ms. Rivera:** Mr. Hylton?

6 **Mr. Hylton:** Yes

7 **Ms. Rivera:** Mr. DeLaney?

8 **Mr. DeLaney:** Yes

9 **Ms. Rivera:** Ms. Rajan?

10 **Ms. Rajan:** Yes

11 **Ms. Rivera:** Chairperson Hylton?

12 **Chairperson Hylton:** Yes

13 **Ms. Rivera:** Six in favor; two absent

14 **Chairperson Hylton:** Thank you. The second Master case is

Case #9: Opera House Lofts, LLC 11-27 Arion Place, Brooklyn TR-1403, PO-0132

15 Mr. Clarke.

16 **Mr. Clarke:** Thank you Chairperson Hilton. On March 6th, 2020, the tenants at 11-27 Arion Place,
17 Brooklyn, filed an application for Loft Law coverage pursuant to MDL § 281(5) and 281(6). The tenants
18 subsequently amended the coverage application to include additional units and also filed for protected
19 occupancy status. The only question before the Board is whether the building had a residential
20 Certificate of Occupancy on the effective date of the law, which would preclude the building from Loft

1 Law coverage. The Certificate of Occupancy for the building at issue here was issued in 2005, but it
2 included misinformation. It included the address and lot number for the vacant area located
3 immediately adjacent to the building.

4 The lack of a residential Certificate of Occupancy on the effective date of the relevant subsection of MDL
5 § 281 is a prerequisite to coverage under the Loft Law. The tenants argue that the building lacked a
6 residential Certificate of Occupancy prior to June 21st, 2010, and June 25th, 2019, the effective dates of
7 MDL §§ 281(5) and 281(6), respectively; and therefore, the building is not exempt from coverage. The
8 2005 Certificate of Occupancy did not list the address or the lot number for the building. Owner and net
9 lessee argue that the building is exempt from coverage because, despite the typographical errors, the
10 2005 Certificate of Occupancy was for the building.

11 Pursuant to a court order, the DOB amended the 2005 Certificate of Occupancy to include the building's
12 address and lot number, while maintaining an effective date of February 22nd, 2005. The 2005
13 Certificate of Occupancy issued pursuant to MDL § 301 establishes legal residential use prior to the
14 effective dates of MDL §§ 281(5) and 281(6) for the units for which the tenants are seeking coverage.
15 The Proposed Order finds that the building is exempt from Loft Law coverage and denies the coverage
16 and protected occupancy applications.

17 **Chairperson Hylton:** Thank you, Mr. Clarke. Do I have a motion then to accept this case? Mr. Barowitz.
18 And do we have a second?

19 **Mr. Hylton:** Second

20 **Chairperson Hylton:** Okay, Mr. Hylton, thank you. At this time, any comments on this case? Mr.
21 Delaney?

22 **Mr. DeLaney:** I voted no on this case last month, and I intend to vote no on this case this month, and I
23 encourage other Board members to join me in that. As I stated last month, I understand the argument
24 for the landlord, but I find the argument by the tenants equally compelling. And as stated in in the post-
25 hearing --- memorandum of law not the post-hearing because there was never a hearing -- basically as
26 stated in detail below, "The building is not exempt because the building lacked a final residential

1 Certificate of Occupancy on the base dates applicable to MDL 281(5) and (6). Rather, the building was
2 covered by a commercial Certificate of Occupancy until September 21st, 2020, when the New York City
3 Department of Buildings issued a new Certificate of Occupancy, certifying the building for residential
4 use. Moreover, to the extent that the DOB issued a residential Certificate of Occupancy for the vacant
5 lot adjacent to the building, said Certificate of Occupancy plainly states it is applicable only to the vacant
6 lot, and neither this tribunal nor the New York City Loft Board possess the jurisdiction to modify or
7 correct the Certificate of Occupancy.” And we can go back and forth as to whether it's a typographical
8 error or an incorrect Certificate of Occupancy. I find the latter to be more precise, so I plan to vote no.

9 **Chairperson Hylton:** Thank you, Mr. DeLaney. Are there any other comments on this case?

10 **Mr. Hylton:** I'll make a comment in regard to this case and the facts thereof. This case really just hinges
11 on whether we are going to negate the legal standards that have been set down by the court and are we
12 in a position to do so. This case is about an incorrect Certificate of Occupancy -- an error made on DOB's
13 part. And that error being corrected, as being directed by the court, thus, not allowing this property
14 falling under Loft Board standards for that time period. It is really nothing beyond that, and if we
15 continue to -- if we make decisions that look to go against the legal standard and the law, then we are
16 going to be in a position where we make decisions that are easily overturned by a higher court. And I
17 would just want everyone to keep that in mind.

18 **Chairperson Hylton:** Thank you, Mr. Hylton. Are there any other comments? So, I'll just quickly make a
19 comment. This Board would love to grant coverage where it can. For Loft Law coverage, where it can.
20 And it's always been the position of this Board, and I think that's the intent of the Law, right? We want
21 to be able to grant coverage where we can. The Loft Board, in my opinion, is bound, simply, as Mr.
22 Hylton said, by the law, and the law clearly states that you cannot have a residential Certificate of
23 Occupancy at the time you're applying for lawful law coverage. Now, if there is no C of O, obviously, this
24 would be a serious application. Apparently, there are issues with this building, (and if) there's any case
25 that can be made for revocation of the C of O, (that) is not in the Loft Board's purview. It is outside the
26 Loft Board's purview. That has to be made to the Department of Buildings, and then subsequently to
27 the Court of Standards and Appeals or a court of competent jurisdiction.

1 There is actually no statute of limitation limiting stopping anyone from coming back with an application
2 for coverage to the Loft Board. If that standard is met, the right way to do it is to request the
3 Department of Buildings revocation of the C of O. And when that's done, if that happens, if that's
4 considered favorably, Department of Buildings may take that to Board of Standards and Appeals. That's
5 just my comment. Does anyone else have any comment? Absent any other comments, Ms. Rivera,
6 please poll the Board members.

7 **Ms. Rivera:** Mr. Barowitz?

8 **Mr. Barowitz:** Yes

9 **Ms. Rivera:** Mr. Roche?

10 **Mr. Roche:** Unfortunately, I must continue to recuse myself from this case.

11 **Chairperson Hylton:** I'm sorry. What's the reason for the recusal, Mr. Roche?

12 **Mr. Roche:** Unfortunately, I have to continue to recuse myself from this case.

13 **Chairperson Hylton:** OK. Continue.

14 **Ms. Rivera:** Mr. Hylton?

15 **Mr. Hylton:** Yes

16 **Ms. Rivera:** Mr. DeLaney?

17 **Mr. DeLaney:** No

18 **Ms. Rivera:** Ms. Rajan?

19 **Ms. Rajan:** Yes

20 **Ms. Rivera:** Chairperson Hylton?

21 **Chairperson Hylton:** Yes

1 **Ms. Rivera:** Four in favor; one recuse; one against

2

3 **Chairperson Hylton:** Okay. So, this case is also not passed. And therefore, this is.. Yeah, this case has not
4 passed. The last case is a removal case.

Case #10: Dezer Properties II LLC 18-22 West 20 Street, Manhattan LE-0534

5 There's usually no presentation for removal cases. Does anyone have any comment on this case?

6 There's no comment on this case, so Ms. Rivera, could you please poll the Board members. A motion.

7 I'm sorry. Is there a motion to accept this case? Mr. Barowitz, yes. A second.

8 **Ms. Rajan:** I can second.

9 **Chairperson Hylton:** Ms. Rajan, thank you. Ms. Rivera?

10 **Ms. Rivera:** Mr. Barowitz?

11 **Mr. Barowitz:** Yes

12 **Ms. Rivera:** Mr. Roche?

13 **Mr. Roche:** Yes

14 **Ms. Rivera:** Mr. Hylton?

15 **Mr. Hylton:** Yes

16 **Ms. Rivera:** Mr. DeLaney?

17 **Mr. DeLaney:** Yes

18 **Ms. Rivera:** Ms. Rajan?

19 **Ms. Rajan:** Yes

20 **Ms. Rivera:** Chairperson Hylton?

1 **Chairperson Hylton:** Yes

2 **Ms. Rivera:** Six in favor; two absent

3 **Chairperson Hylton:** Thank you. Mr. Barowitz, yes?

4 **Mr. Barowitz:** I'd like to briefly go over the Soho-Noho- Chinatown Alliance that was a Zoom meeting on
5 Tuesday.

6 The alliance is suing the city of New York including the Department of Buildings. They kept on referring
7 to a 1968 law governing, covering I don't know what apartments, or whatever. They have never
8 mentioned the Loft Law, despite my wife's repeated efforts to ask them to address that as well. They
9 also claimed that they never heard from members of the Chinatown community, when that is also not
10 correct. A number of people that have called asking questions have really no idea what the legalization
11 of the lofts may be in Soho and Noho, and I have just basically thrown up my arms trying to figure out if
12 there's any way that we can make any understanding of what the law was and is and how, for example,
13 the Loft Law is in certain conflict with the original meeting of Soho and Noho. I don't want to get into it
14 any further. But anyway.

15 **Chairperson Hylton:** Okay, thank you, Mr. Barowitz. Any further comments about anything today or...?
16 Yes, Mr. DeLaney?

17 **Mr. DeLaney:** Yes, Mr. Chair, I had posed the question in the what I'm now calling the QJLB -- the quasi-
18 judicial legal briefing -- that you were going to get me an answer to. Can you email me an answer when
19 you do get?

20 **Chairperson Hylton:** You want an email, or you would like me to speak it now? Or...?

21 **Mr. DeLaney:** Either way, whatever you're comfortable with. I didn't know that you were necessarily
22 able to get an answer.

23 **Chairperson Hylton:** Yes I was. If you want to make a question in public, I'll be happy to answer it.

1 **Mr. DeLaney:** Okay, my question was, that it's my understanding that in front of the Board of Standards
2 and Appeals, the only way to initiate a proceeding to revoke a residential Certificate of Occupancy is a
3 motion made by, or petition filed by, the Department of Buildings. And my question was, is that also the
4 case in court? And I presume it's supreme court rather than the civil court that will entertain such a
5 motion.

6 **Chairperson Hylton:** Right, so, it is a position of the Department of Buildings that if any kind of motion
7 or petition to revoke a Certificate of Occupancy should be made -- a request for such should be made to
8 the Department, and the Department is the one to bring such matter to the Board of Standards Appeals.
9 Obviously, there can be no stopping anyone from filing in a court, but Department of Buildings would
10 likely intervene and exert its position that it must be the one to bring any revocation of its own C of O
11 that was issued.

12 **Mr. DeLaney:** Thank you.

13 **Chairperson Hylton:** Thank you, Mr. DeLaney. Absent any other comments, this will conclude our May
14 19th, 2022, Loft Board meeting. Our next public meeting is scheduled to be held on June 16th, 2022. At
15 this time, we do not know if future meetings will be held in person or virtually. Information will be
16 updated on the Loft Board's website and on email updates through the Loft Board announcements
17 Listserv. Loft Board members, please sign and email your attendance sheets today. Thank you so much.
18 I appreciate everyone and your attention during this meeting. Thank you so much. Have a good day
19 everyone.