AMENDED MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting Held at
22 Reade Street, 1st Floor
Spector Hall

January 21, 2010

The meeting began at 2:15 p.m. The attendees were Chairperson Robert LiMandri; Elliott Barowitz, Public Member; Gina Bolden-Rivera, Public Member; LeAnn Shelton, Public Member; Ronald Spadafora, Fire Department's Representative and Chuck DeLaney, Tenants' Representative.

CHAIRPERSON'S INTRODUCTION

Chairperson LiMandri introduced himself and welcomed those present to the January 21, 2010 public meeting of the New York City Loft Board.

VOTE ON NOVEMBER 19, 2009 MINUTES

Mr. DeLaney stated that since that there are 2 seats on the Board declared as ex officio, when someone sits in for the representative, we should elaborate on their identity.

Ms. Bolden-Rivera referring to Ms. Alexander's report on page 2, asked if the amount collected is for the calendar year or for the fiscal year.

Ms. Alexander responded that it is for this registration period, the 2010 fiscal year.

Ms. Shelton suggested clarifying it in the minutes.

Motion: Ms. Shelton moved to accept the November 19, 2009 minutes. Mr. Barowitz seconded the motion.

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Shelton, Spadafora (6)

Member absent: Mayer (1)

Adopted by the Loft Board on January 21, 2010

REPORT OF THE EXECUTIVE DIRECTOR

Ms. Alexander reported that this fiscal year we have exceeded our current revenue plan for the entire year by collecting $ 825,534; the projected amount was $820,000.

Ms. Alexander stated that staff has drafted a proposed rule to provide owners with an incentive to move more swiftly towards obtaining a certificate of occupancy; and that proposed rule will be discussed later in this meeting. In light of this new rule, she added, staff has added new information onto the Legalization Status spreadsheet given to the Board to track certain indicia of reasonable and necessary steps to obtain a certificate of occupancy. For example, the staff added TCO expiration dates and status of permits in the B category.

Ms. Alexander stated that the staff had made a new category for buildings that were formerly in the B category and had amended their plans resulting in the reopening of the Narrative Statement process. She observed that the new category will allow staff to distinguish those owners who had, at one time, completed the Narrative Statement process and those who have not; and also where they are in their legalization process.

Ms. Alexander reviewed the Twelve Month Summary and Legalization Statistic Summary handed to the Board. She also said that the Legalization Statistic Summary compares the numbers in each of our ABCD buildings' categories.

Ms. Alexander reported that 25 buildings have left our jurisdiction during this past year. There are 306 remaining buildings under the Loft Board's jurisdiction of which 28 are A buildings, 227 are B buildings, 47 are C buildings and 4 are D buildings.

REPORT OF THE DEPUTY GENERAL COUNSEL

Ms. Cruz reported that there are 57 cases in the Hearings Unit including the cases on the January agenda. Of those, 20 are removal cases and 37 are non-removal cases. The breakdown of the non-removal cases is as follows: 5 are presently pending at OATH; 3 are involved in appeal; 12 are post hearing or settlement; 2 applications are involved in informal conferences; 2 are rent adjustment applications; 1 is a reconsideration application; 1 is an extension application; 3 are in the answer period and the remaining 8 applications are on today's agenda.

Ms. Cruz stated that the status of the removal cases is as follows: 11 cases require additional information about the status of certain units from the owners; 4 cases have other cases pending; 2 are pending corrections to the Certificate of Occupancy; 1 building has a Rent Adjustment application pending; 2 cases are on the January agenda.

Ms. Cruz concluded that there are 7 A buildings that have their Certificate of Occupancy with no removal application pending.

Mr. DeLaney asked if the removal cases are those buildings that are legalized and that we are trying to remove from the system.

Ms. Cruz responded yes.

Mr. Delaney asked how we can have 2 removal cases and 8 non-removal cases on the agenda when we only have 9 cases on the January's agenda.

Ms. Cruz answered that 2 cases had been combined.

DISCUSSION ON PROPOSED RULE 29 RCNY § 2-01.1

Chairperson LiMandri explained that the proposed rule will give the Loft Board an additional enforcement tool. It calls for fines to be assessed against owners that fail to take all reasonable and necessary actions towards obtaining a Certificate of Occupancy. Pursuant to § 284 of Article C of the Multiple Dwelling Law and § 2-01 of the Rules of the City of New York, owners whose buildings are registered as Interim Multiple Dwellings are required to take all reasonable and necessary action to obtain a certificate of occupancy.

Motion: Mr. DeLaney moved that the Board approve the proposed rule with the corrections on the fourth line of the first paragraph on page 4. Mr. Barowitz seconded the motion.

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Shelton, Spadafora (6)

Member absent: Mayer (1)

DISCUSSION AND VOTE ON CASES

RECONSIDERATION CALENDAR

Case #1.	Jamie Lawenda	71 Leonard Street	R-0330	LA/LA

PROPOSED ORDER

NEW YORK CITY LOFT BOARD

In the Matter of the Application of	Loft Board Order No.
JAMIE LAWENDA	Docket No. R-0330
	RE: 71 Leonard Street New York, New York IMD No. 10048
	Challenged Order No. 3514 **(Docket No. LE-0221)**

ORDER

The New York City Loft Board ("Loft Board") accepts the Report and Recommendation of Executive Director Lanny R. Alexander, dated January 4, 2010 ("Report").

This application, filed on July 21, 2009, by Jamie Lawenda ("Tenant"), the tenant of unit 3S in 71 Leonard Street, New York, New York ("Building"), seeks reconsideration of Loft Board Order No. 3514[1] ("Order"), which among other things, found the owner of the Building, Leonard Street Properties Group, Ltd. ("Owner") was in compliance with MDL § 284(1) and calculated the initial regulated rent for Unit 3S. Tenant filed this application claiming that the Loft Board had used the wrong base rent in its calculation of his post-legalization rent.

We find that on June 26, 2009 the Loft Board staff erroneously mailed Tenant a proposed order, which had not been accepted by the Loft Board. On October 14, 2009 the Loft Board served Tenant Loft Board Order No. 3514, which had been approved by the Loft Board. The amount of the base rent in Order No. 3514 is the same amount alleged by tenant in his application to be the correct amount.

Accordingly, the application seeking reconsideration of LBO 3514 is denied because it is moot.

DATED: January 21, 2010

Robert D. LiMandri
Chairman

DATE LOFT BOARD ORDER MAILED:

[1] *Matter of Berman,* Loft Bd. Order No. 3514 (June 18, 2009).

NEW YORK CITY LOFT BOARD

In the Matter of the Application of	**REPORT AND RECOMMENDATION**
JAMIE LAWENDA	**Docket No. R-0330** **RE: 71 Leonard Street** **New York, New York** **IMD No. 10048** **Challenged Order No. 3514** **(Docket No. LE-0221)**

Lanny R. Alexander, Executive Director

On July 21, 2009, Jamie Lawenda ("Tenant"), the occupant of unit 3S at 71 Leonard Street, New York, New York ("Building"), filed the instant application seeking reconsideration of Loft Board Order 3514 in *Matter of Berman*, Loft Board Order No. 3514, June 18, 2009. The Loft Board docketed the application as R-0330. On July 27, 2009, Owner filed an Answer to the application.

I. Background

On June 18, 2009, the Loft Board adopted Amended Loft Board Order No. 3514 ("Order"), which, among other things, set the post-legalization rent for unit 3S. By an administrative error, on June 26, 2009 the Loft Board mailed Tenant a previous draft of the Order. This draft had not been presented to the Loft Board for consideration and vote during its June 18, 2009 meeting. Upon realizing the error, on October 14, 2009, the Loft Board mailed Tenant the correct copy of the Order. The amount of the base rent in Order No. 3514 is the same amount alleged by tenant in his application to be the correct amount.

Accordingly, because Tenant bases his application on a proposed order that had not been adopted by the Loft Board, and because Tenant has since received the correct Order, which used the base amount of rent alleged in Tenant's application, the application is moot.

Conclusion

For the foregoing reasons, I recommend that the instant application docketed as R-0331 challenging the June 18, 2009 Loft Board Order No. 3514, be denied as moot.

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Lanny R. Alexander

Executive Director

Dated: New York, New York

January 4, 2010

AMENDED ORDER

NEW YORK CITY LOFT BOARD

In the Matter of the Application of	**Loft Board Order No. 3546**
	Docket No. R-0330
JAMIE LAWENDA	RE: 71 Leonard Street New York, New York IMD No. 10048
	Challenged Order No. 3514 **(Docket No. LE-0221)**

ORDER

The New York City Loft Board ("Loft Board") accepts the Report and Recommendation of Executive Director Lanny R. Alexander, dated January 4, 2010 ("Report").

This application, filed on July 21, 2009, by Jamie Lawenda ("Tenant"), the tenant of unit 3S in 71 Leonard Street, New York, New York ("Building"), seeks reconsideration of Loft Board Order No. 3514[2] ("Order"), which among other things, found the owner of the Building, Leonard Street Properties Group, Ltd. ("Owner") was in compliance with MDL § 284(1) and calculated the initial regulated rent for Unit 3S. Tenant filed this application claiming that the Loft Board had used the wrong base rent in its calculation of his post-legalization rent.

We find that on June 26, 2009 the Loft Board staff erroneously mailed Tenant a proposed order, which had not been accepted by the Loft Board. On October 14, 2009 the Loft Board served Tenant Loft Board Order No. 3514, which had been approved by the Loft Board. The amount of the base rent in Order No. 3514 is the same amount alleged by tenant in his application to be the correct amount.

Accordingly, the application seeking reconsideration of LBO 3514 is denied because it is moot.

DATED: January 21, 2010

Robert D. LiMandri
Chairman

DATE LOFT BOARD ORDER MAILED:

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Shelton, Spadafora (6)

Member absent: Mayer (1)

[2] *Matter of Berman,* Loft Bd. Order No. 3514 (June 18, 2009).

NEW YORK CITY LOFT BOARD

In the Matter of the Application of	**REPORT AND RECOMMENDATION**
JAMIE LAWENDA	**Docket No. R-0330**
	RE: 71 Leonard Street New York, New York
	IMD No. 10048
	Challenged Order No. 3514 (Docket No. LE-0221)

Lanny R. Alexander, Executive Director

On July 21, 2009, Jamie Lawenda ("Tenant"), the occupant of unit 3S at 71 Leonard Street, New York, New York ("Building"), filed the instant application seeking reconsideration of Loft Board Order 3514 in *Matter of Berman*, Loft Board Order No. 3514, June 18, 2009. The Loft Board docketed the application as R-0330. On July 27, 2009, Owner filed an Answer to the application.

I. Background

On June 18, 2009, the Loft Board adopted Amended Loft Board Order No. 3514 ("Order"), which, among other things, set the post-legalization rent for unit 3S. By an administrative error, on June 26, 2009 the Loft Board mailed Tenant a previous draft of the Order. This draft had not been presented to the Loft Board for consideration and vote during its June 18, 2009 meeting. Upon realizing the error, on October 14, 2009, the Loft Board mailed Tenant the correct copy of the Order. The amount of the base rent in Order No. 3514 is the same amount alleged by tenant in his application to be the correct amount.

Accordingly, because Tenant bases his application on a proposed order that had not been adopted by the Loft Board, and because Tenant has since received the correct Order, which used the base amount of rent alleged in Tenant's application, the application is moot.

Conclusion

For the foregoing reasons, I recommend that the instant application docketed as R-0330 challenging the June 18, 2009 Loft Board Order No. 3514, be denied as moot.

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Lanny R. Alexander

Executive Director

Dated: New York, New York

January 4, 2010

Case #2.	71 Leonard Street Properties Group	71 Leonard Street	R-0331	LA/LA

Motion: Mr. DeLaney moved to accept the proposed order. Mr. Barowitz seconded the motion.

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Shelton, Spadafora (6)

Member absent: Mayer (1)

SUMMARY CALENDAR

Case #3	111 West 24th Street Associates	109-111 West 24th Street	LS-0197	MC/MC

Motion: Mr. DeLaney moved to accept the proposed order. Ms. Shelton seconded the motion.

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Shelton, Spadafora (6)

Member absent: Mayer (1)

MASTER CALENDAR

Case #4.	285 Lafayette Street Condominium	285 Lafayette Street	LB-0165	MC/MC

Motion: Mr. Barowitz moved to accept the proposed order. Ms. Shelton seconded the motion.

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Shelton, Spadafora (6)

Member absent: Mayer (1)

Case #5	Michael Fogel	99-99 Commercial Street, Brooklyn	LI-0039 TA-0176	MC/MC

Motion: Mr. DeLaney moved to accept the proposed order. Ms. Bolden-Rivera seconded the motion.

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Shelton, Spadafora (6)

Member absent: Mayer (1)

Proposed Order

NEW YORK CITY LOFT BOARD

In the Matter of the Application of	**Loft Board Order No.**
	Docket No. LR-0002
HARAROUTIUN DERDERIAN	**RE: 29 West 26th Street New York, New York**
	IMD No. 10046

ORDER

The New York City Loft Board ("Loft Board") rejects the recommendation of Administrative Law Judge John B. Spooner dated October 21, 2009 to dismiss the application without prejudice.

BACKGROUND

On April 29, 2009, Haroutiun Derderian ("Owner"), the owner of the building located at 29 West 26th Street, New York, New York ("Building") filed an application seeking a finding of coverage for the sixth floor unit ("Unit") under Article 7-C of the Multiple Dwelling Law. On May 29, 2009, Gerald Marks, Nona Aguilar, Daria Price and Peter Spinelli, the tenants in the second, third, fifth and seventh floor units respectively, filed a joint answer with the Loft Board.

On July 9, 2009 the Loft Board referred the case to the Office of Administrative Trials and Hearings ("OATH") which assigned the case to Administrative Law Judge John Spooner. OATH scheduled a conference date for the application on August 19, 2009. On August 18, 2009, the day before the conference date, the Owner requested an adjournment because there was another pending matter regarding the Unit at the Board of Standards and Appeals. When asked about the specific need for the adjournment during a conference call on the same day, the Owner indicated that he was unsure whether he wanted to proceed with the application. Judge Spooner marked the case off the calendar until September 30, 2009.

In an email dated August 27, 2009, Judge Spooner directed the Owner to indicate whether he wished to go forward with the application prior to September 30, 2009. On October 6, 2009, Judge Spooner sent the Owner another email advising him that unless he received a letter or email from him that he would assume the Owner did not wish to proceed with the application. In a telephone call a few days later, the Owner confirmed that he understood Judge Spooner's request. The Owner failed to provide such statement.

On October 16, 2009, Judge Spooner sent correspondence to the Owner by email and regular mail advising him that he must inform the court immediately whether he wished to proceed with the application. In correspondence dated October 21, 2009 to the Loft Board, Judge Spooner recommended that the application be dismissed without prejudice due to the Owner's "unwillingness to go forward with either a conference or hearing."

ANALYSIS

There are two rules in Title 29 of the Rules of the City of New York that provide the authority for the Loft Board to dismiss an application. The Loft Board may dismiss an application when an applicant

fails to appear for a conference or hearing whether the matter is marked final or not. Both rules are in § 1-06.

Section 1-06(k)(4) of the Loft Board rules states:

> If an applicant does not appear for a conference or hearing, which has been marked final against him/her, the application will be dismissed for failure to prosecute unless the hearing examiner or Administrative Law Judge approves a written request for its reinstatement which must be made within 30 days upon a showing of extraordinary circumstances which prevented the applicant's attendance at the hearing or conference.

Section 1-06(l) of the Loft Board rules states:

> If an applicant fails to appear at a hearing on due notice which has not been marked final against the applicant, his or her application shall be dismissed without prejudice. …

Nothing in these rules provides a basis for dismissal of an application for failure to provide a written statement. OATH scheduled the pre-trial conference for this application on August 19, 2009. On August 18, 2009, the Owner requested an adjournment. Based on the Owner's representation that he had another matter pending about the Unit and the Owner's uncertainty about how to proceed with the application, Judge Spooner marked the case off calendar until September 30, 2009. Judge Spooner never rescheduled the conference date. Instead, he requested that the Owner provide written confirmation that the Owner wished to proceed with the application. When the Owner failed to provide a written withdrawal, Judge Spooner should have rescheduled the conference date. Although the Owner expressed some ambivalence about whether he wanted to proceed with the application, he never withdrew the application and never missed a scheduled court date.

We do not believe that the Owner's failure to provide written assurance that it wished to proceed with the application by itself provides a basis for dismissal of the application under the Loft Board rules. Consequently, we reject Judge Spooner's recommendation to dismiss the application without prejudice. We remand the application to OATH for prompt scheduling of a hearing date.

DATED: January 21, 2010

Robert D. LiMandri
Chairperson

DATE LOFT ORDER MAILED:

AMENDED ORDER

NEW YORK CITY LOFT BOARD

In the Matter of the Application of **HAROUTIUN DERDERIAN**	**Loft Board Order No. 3551** **Docket No. LR-0002** **RE: 29 West 26th Street** **New York, New York** **IMD No. 10046**

ORDER

The New York City Loft Board ("Loft Board") rejects the recommendation of Administrative Law Judge John B. Spooner dated October 21, 2009 to dismiss the application without prejudice.

BACKGROUND

On April 29, 2009, Haroutiun Derderian ("Owner"), the owner of the building located at 29 West 26th Street, New York, New York ("Building") filed an application seeking a finding of coverage for the sixth floor unit ("Unit") under Article 7-C of the Multiple Dwelling Law. On May 29, 2009, Gerald Marks, Nona Aguilar, Daria Price and Peter Spinelli, the tenants in the second, third, fifth and seventh floor units respectively, filed a joint answer with the Loft Board.

On July 9, 2009 the Loft Board referred the case to the Office of Administrative Trials and Hearings ("OATH") which assigned the case to Administrative Law Judge John Spooner. OATH scheduled a conference date for the application on August 19, 2009. On August 18, 2009, the day before the conference date, the Owner requested an adjournment because there was another pending matter regarding the Unit at the Board of Standards and Appeals. When asked about the specific need for the adjournment during a conference call on the same day, the Owner indicated that he was unsure whether he wanted to proceed with the application. Judge Spooner marked the case off the calendar until September 30, 2009.

In an email dated August 27, 2009, Judge Spooner directed the Owner to indicate whether he wished to go forward with the application prior to September 30, 2009. On October 6, 2009, Judge Spooner sent the Owner another email advising him that unless he received a letter or email from him that he would assume the Owner did not wish to proceed with the application. In a telephone call a few days later, the Owner confirmed that he understood Judge Spooner's request. The Owner failed to provide such statement.

On October 16, 2009, Judge Spooner sent correspondence to the Owner by email and regular mail advising him that he must inform the court immediately whether he wished to proceed with the application. In correspondence dated October 21, 2009 to the Loft Board, Judge Spooner recommended that the application be dismissed without prejudice due to the Owner's "unwillingness to go forward with either a conference or hearing."

ANALYSIS

There are two rules in Title 29 of the Rules of the City of New York that provide the authority for the Loft Board to dismiss an application. The Loft Board may dismiss an application when an applicant fails to appear for a conference or hearing whether the matter is marked final or not. Both rules are in § 1-06.

Section 1-06(k)(4) of the Loft Board rules states:

> If an applicant does not appear for a conference or hearing, which has been marked final against him/her, the application will be dismissed for failure to prosecute unless the hearing examiner or Administrative Law Judge approves a written request for its reinstatement which must be made within 30 days upon a showing of extraordinary circumstances which prevented the applicant's attendance at the hearing or conference.
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> Section 1-06(l) of the Loft Board rules states:
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> If an applicant fails to appear at a hearing on due notice which has not been marked final against the applicant, his or her application shall be dismissed without prejudice. …

Nothing in these rules provides a basis for dismissal of an application for failure to provide a written statement. OATH scheduled the pre-trial conference for this application on August 19, 2009. On August 18, 2009, the Owner requested an adjournment. Based on the Owner's representation that he had another matter pending about the Unit and the Owner's uncertainty about how to proceed with the application, Judge Spooner marked the case off calendar until September 30, 2009. Judge Spooner never rescheduled the conference date. Instead, he requested that the Owner provide written confirmation that the Owner wished to proceed with the application. When the Owner failed to provide a written withdrawal, Judge Spooner should have rescheduled the conference date. Although the Owner expressed some ambivalence about whether he wanted to proceed with the application, he never withdrew the application and never missed a scheduled court date.

We do not believe that the Owner's failure to provide written assurance that it wished to proceed with the application by itself provides a basis for dismissal of the application under the Loft Board rules. Consequently, we reject Judge Spooner's recommendation to dismiss the application without prejudice. We remand the application to OATH for prompt scheduling of a hearing date.

DATED: January 21, 2010

Robert D. LiMandri
Chairperson

DATE LOFT ORDER MAILED:

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Shelton, Spadafora (6)

Member absent: Mayer (1)

PROPOSED ORDER

NEW YORK CITY LOFT BOARD

In the Matter of the Application of **333 PAS Co O TENANTS GROUP**	**Loft Board Order No.** **Docket No. TR-0769** **RE: 333 Park Avenue South** **New York, New York** **IMD No. NONE**

ORDER

The New York City Loft Board ("Loft Board") accepts in part and rejects in part the Report and Recommendation ("Report") of Administrative Law Judge Faye Lewis, dated June 30, 2009.

On May 5, 2005, Jim Steward and Heather Faulding, the occupants of unit 3E, Rachel Colbert, the occupant of unit 4B, Richard Lewis, the occupant of unit 4F, Kevin Luke, occupant of unit 5A and Alexandra Murray and Patrick Duffy, occupants of unit 6A, (collectively "Tenants") in 333 Park Avenue South, New York, New York filed an application seeking findings that: 1) 333 Park Avenue South together with the buildings located at 102 East 25th Street and 337 Park Avenue South (collectively "Building") are a horizontal multiple dwelling and 2) units 3E, 4B, 4F, 5A and 6A ("Units") are covered by Article 7-C of the Multiple Dwelling Law ("MDL").

On June 1, 2005, Jeff Nuncey, the occupant of 4C, filed an answer in support of the coverage application. Danielle Fenton and Richard Law, former occupants in the Building, filed answers in support of the application on June 6, 2005 and June 7, 2005, respectively. Joyce and Alan Chasan, occupants of unit 2A, also filed an answer in support of the application. On June 7, 2005, Watton Studio Corp. ("Owner"), the owner of the Building, filed an answer alleging that the Building is not an interim multiple dwelling because the Building is a commercial cooperative and it was not residentially occupied during the relevant period for Loft Law coverage. Bloch Graulich Whelan Inc., a shareholder of the Owner, also filed an answer in opposition to the application.

The Loft Board transferred the application to the Office of Administrative Trials and Hearings ("OATH") which assigned the case to Administrative Law Judge Faye Lewis for adjudication. Judge Lewis conducted hearings over three days. Andrew Zamel, a majority shareholder, testified for the Owner. Danielle Fenton, Valerie Santagto, Carlos Falci, Tito Barberas and Joseph Piscioneri, all former occupants of the Building and Richard Lewis, one of the Tenants testified in support of the application.

In her Report, Judge Lewis found that the Building is a horizontal multiple dwelling and units 3E, 4B, 5A and 6A ("Units") are covered units under § 281(1) of the MDL. *See*, Report at 5. Based on the finding that the Building is covered by Article 7-C, Judge Lewis found that unit 4F is also covered pursuant to § 281(3) of the ("MDL"). We agree.

Analysis

Section 281(1) of the Multiple Dwelling Law states that interim multiple dwelling means "any building or structure or portion thereof …. which (i) at any time was occupied for manufacturing, commercial, or warehouse purposes; and (ii) lacks a certificate of occupancy pursuant to section three hundred and one … and (iii) on December first nineteen hundred eighty-one was occupied for residential purposes since April 1, nineteen hundred eighty as a residence or home of any three or more families living independently of another."

A. Horizontal Multiple Dwelling Status

Section 2-08(a)(i) of the Loft Board rules and § 12-10 of the Zoning Resolution define a building as any structure which:

(A) is permanently affixed to land
(B) has one or more floors and a roof
(C) is bounded by either open area or the lot lines of a zoning lot
(D) may be a row of structures and have one or more structures on a single zoning lot.

Pursuant to § 2-08(a)(i), the Loft Board shall consider the following factors in determining whether a structure is a single building as distinguished from more than one 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-loadbearing 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; the pattern of usage of the building during the period from April 1, 1980 to December 1, 1981.

Based on the information presented about these factors, we accept Judge Lewis' finding that the Building constitutes a horizontal multiple dwelling. The record shows that all three structures are owned by the Owner. All three were constructed at different times but are interconnected. *See*, Transcript dated January 14, 2009 ("Transcript") at 467. One can access any part of the Building without going outside. *Id.* at 414-415. The Buildings share a boiler, passenger and freight elevators. *Id.* Their mechanical systems are comingled. There is one sprinkler system, one gas main pipe and one electrical line for the Building. *Id.* at 467-469 and Architect's Report dated July 28, 1978. The Building does not have a certificate of occupancy.

The record does contain evidence that the structures are on two separate tax lots. The Owner receives two tax bills and pays them separately. *Id.* at 449. However, we find that the Owner's separate payments do not preclude a finding that the Building is a horizontal multiple dwelling in light of the fact that the essential building services provided have been substantially comingled and two of the structures (337 Park Avenue South and 102 East Street) are on the same tax lot as required by § 2-08(a)(i)(D). *Id.* at 449-450.

Article 7-C Coverage

Section 281(1) of the Multiple Dwelling Law states that interim multiple dwelling means "any building or structure or portion thereof …. which (i) at any time was occupied for manufacturing, commercial, or warehouse purposes; and (ii) lacks a certificate of occupancy pursuant to section three hundred and one … and (iii) on December first nineteen hundred eighty-one was occupied for residential purposes since April 1, nineteen hundred eighty as a residence or home of any three or more families living independently of another."

Section 281(3) of the Multiple Dwelling Law states that in addition to the residents of an interim multiple dwelling, residential occupants in units first occupied after April first, nineteen hundred eighty and prior to April first, nineteen hundred eighty-one shall be qualified for protection pursuant to this article, provided that the building or any portion thereof otherwise qualifies as an interim multiple dwelling, and the tenants are eligible under the local zoning resolution for such occupancy.

In its answer, the Owner disputed that the Building meets the criteria set forth in § 281 of the MDL. It did not dispute that the Building was previously used for non-residential purposes and it lacked a residential certificate of occupancy but it did challenge the Tenants' allegation that there were any residential tenancies in the Building during the Loft Law's window period - April 1, 1980 through December 1, 1981 ("Window Period").

However, Judge Lewis found that the Tenants and their witnesses presented credible evidence of residential use in units 3E, 4B, 5A and 6A during the Window Period and for unit 4F before April 1, 1981. For each of the Units, the Tenants presented testimony from either the unit's Window Period occupant themselves or from individuals who had personal knowledge of the residential use during the Window Period due to their interaction with the occupant at that time. Judge Lewis noted that the Tenants' witnesses, four of whom no longer lived in the Building and travelled considerable distances to provide the testimony, had no apparent reason to provide false testimony. *See*, Report at 8.

The Owner failed to provide any evidence to disprove the Tenants' evidence of residential use during the Window Period. During his testimony, Andrew Zamel, the Owner's only witness, stated that he did not know whether the Units were residentially occupied during the Window Period. *See*, Transcript at 463-464. He only knew of possible alternate addresses for some of the Units. This is simply insufficient to disprove the Tenants' evidence of residential use in the Unit during the Window Period.

Judge Lewis' analysis regarding units 2D, 3D, 4C, 4D, 5B and 5C is hereby rejected. The Tenants did not seek Article 7-C coverage for these units in the application. Judge Lewis' findings that these units were occupied during the Relevant Period are not necessary for the finding of coverage for the Buildings and the Units because the Building is deemed a horizontal multiple dwelling.

Accordingly, the Tenants' application for Article 7-C coverage for the Buildings is granted. The Buildings and Units 3E, 4B, 4F, 5A and 6A are deemed covered by Article 7-C of the Multiple Dwelling Law. The Owner is directed to register the Buildings as an interim multiple dwelling within thirty days of the mailing of this Order. Failure to do so may result in fines and late fees against the Owner for failure to register.

DATED: November 19, 2009

Robert D. LiMandri
Chairperson

DATE LOFT BOARD ORDER MAILED:

AMENDED ORDER

NEW YORK CITY LOFT BOARD

In the Matter of the Application of **333 PAS Co O TENANTS GROUP**	**Loft Board Order No. 3552** **Docket No. TR-0769** **RE: 333 Park Avenue South** **New York, New York** **IMD No. NONE**

ORDER

The New York City Loft Board ("Loft Board") accepts in part and rejects in part the Report and Recommendation ("Report") of Administrative Law Judge Faye Lewis, dated June 30, 2009.

On May 5, 2005, Jim Steward and Heather Faulding, the occupants of unit 3E, Rachel Colbert, the occupant of unit 4B, Richard Lewis, the occupant of unit 4F, Kevin Luke, occupant of unit 5A and Alexandra Murray and Patrick Duffy, occupants of unit 6A, (collectively "Tenants") in 333 Park Avenue South, New York, New York filed an application seeking findings that: 1) 333 Park Avenue South together with the buildings located at 102 East 25th Street and 337 Park Avenue South (collectively "Building") are a horizontal multiple dwelling and 2) units 3E, 4B, 4F, 5A and 6A ("Units") are covered by Article 7-C of the Multiple Dwelling Law ("MDL").

On June 1, 2005, Jeff Nuncey, the occupant of 4C, filed an answer in support of the coverage application. Danielle Fenton and Richard Law, former occupants in the Building, filed answers in support of the application on June 6, 2005 and June 7, 2005, respectively. Joyce and Alan Chasan, occupants of unit 2A, also filed an answer in support of the application. On June 7, 2005, Watton Studio Corp. ("Owner"), the owner of the Building, filed an answer alleging that the Building is not an interim multiple dwelling because the Building is a commercial cooperative and it was not residentially occupied during the relevant period for Loft Law coverage. Bloch Graulich Whelan Inc., a shareholder of the Owner, also filed an answer in opposition to the application.

The Loft Board transferred the application to the Office of Administrative Trials and Hearings ("OATH") which assigned the case to Administrative Law Judge Faye Lewis for adjudication. Judge Lewis conducted hearings over three days. Andrew Zamel, a majority shareholder, testified for the Owner. Danielle Fenton, Valerie Santagto, Carlos Falci, Tito Barberas and Joseph Piscioneri, all former occupants of the Building and Richard Lewis, one of the Tenants testified in support of the application.

In her Report, Judge Lewis found that the Building is a horizontal multiple dwelling and units 3E, 4B, 5A and 6A ("Units") are covered units under § 281(1) of the MDL. *See*, Report at 5. Based on the finding that the Building is covered by Article 7-C, Judge Lewis found that unit 4F is also covered pursuant to § 281(3) of the ("MDL"). We agree.

Analysis

Section 281(1) of the Multiple Dwelling Law states that interim multiple dwelling means "any building or structure or portion thereof …. which (i) at any time was occupied for manufacturing, commercial, or warehouse purposes; and (ii) lacks a certificate of occupancy pursuant to section three hundred and one … and (iii) on December first nineteen hundred eighty-one was occupied for residential purposes since April 1, nineteen hundred eighty as a residence or home of any three or more families living independently of another."

A. Horizontal Multiple Dwelling Status

Section 2-08(a)(i) of the Loft Board rules and § 12-10 of the Zoning Resolution define a building as any structure which:

(E) is permanently affixed to land
(F) has one or more floors and a roof
(G) is bounded by either open area or the lot lines of a zoning lot
(H) may be a row of structures and have one or more structures on a single zoning lot.

Pursuant to § 2-08(a)(i), the Loft Board shall consider the following factors in determining whether a structure is a single building as distinguished from more than one building for purposes of Article 7-C coverage:

(F) whether the structure is under common ownership;
(G) 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-loadbearing partitions;
(H) 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.
(I) whether the owner or predecessor has at any time represented in applications or other official papers that the structure was a single building;
(J) whether a single certificate has been issued for the structure; the pattern of usage of the building during the period from April 1, 1980 to December 1, 1981.

Based on the information presented about these factors, we accept Judge Lewis' finding that the Building constitutes a horizontal multiple dwelling. The record shows that all three structures are owned by the Owner. All three were constructed at different times but are interconnected. *See*, Transcript dated January 14, 2009 ("Transcript") at 467. One can access any part of the Building without going outside. *Id.* at 414-415. The Buildings share a boiler, passenger and freight elevators. *Id.* Their mechanical systems are comingled. There is one sprinkler system, one gas main pipe and one electrical line for the Building. *Id.* at 467-469 and Architect's Report dated July 28, 1978. The Building does not have a certificate of occupancy.

The record does contain evidence that the structures are on two separate tax lots. The Owner receives two tax bills and pays them separately. *Id.* at 449. However, we find that the Owner's separate payments do not preclude a finding that the Building is a horizontal multiple dwelling in light of the fact that the essential building services provided have been substantially comingled and two of the structures (337 Park Avenue South and 102 East Street) are on the same tax lot as required by § 2-08(a)(i)(D). *Id.* at 449-450.

Article 7-C Coverage

Section 281(1) of the Multiple Dwelling Law states that interim multiple dwelling means "any building or structure or portion thereof …. which (i) at any time was occupied for manufacturing, commercial, or warehouse purposes; and (ii) lacks a certificate of occupancy pursuant to section three hundred and one … and (iii) on December first nineteen hundred eighty-one was occupied for residential purposes since April 1, nineteen hundred eighty as a residence or home of any three or more families living independently of another."

Section 281(3) of the Multiple Dwelling Law states that in addition to the residents of an interim multiple dwelling, residential occupants in units first occupied after April first, nineteen hundred eighty and prior to April first, nineteen hundred eighty-one shall be qualified for protection pursuant to this article, provided that the building or any portion thereof otherwise qualifies as an interim multiple dwelling, and the tenants are eligible under the local zoning resolution for such occupancy.

In its answer, the Owner disputed that the Building meets the criteria set forth in § 281 of the MDL. It did not dispute that the Building was previously used for non-residential purposes and it lacked a residential certificate of occupancy but it did challenge the Tenants' allegation that there were any residential tenancies in the Building during the Loft Law's window period - April 1, 1980 through December 1, 1981 ("Window Period").

However, Judge Lewis found that the Tenants and their witnesses presented credible evidence of residential use in units 3E, 4B, 5A and 6A during the Window Period and for unit 4F before April 1, 1981. For each of the Units, the Tenants presented testimony from either the unit's Window Period occupant themselves or from individuals who had personal knowledge of the residential use during the Window Period due to their interaction with the occupant at that time. Judge Lewis noted that the Tenants' witnesses, four of whom no longer lived in the Building and travelled considerable distances to provide the testimony, had no apparent reason to provide false testimony. *See*, Report at 8.

The Owner failed to provide any evidence to disprove the Tenants' evidence of residential use during the Window Period. During his testimony, Andrew Zamel, the Owner's only witness, stated that he did not know whether the Units were residentially occupied during the Window Period. *See*, Transcript at 463-464. He only knew of possible alternate addresses for some of the Units. This is simply insufficient to disprove the Tenants' evidence of residential use in the Unit during the Window Period.

Judge Lewis' analysis regarding units 2D, 3D, 4C, 4D, 5B and 5C is hereby rejected in the context of this application. The Tenants did not seek Article 7-C coverage for these units in the application. Judge Lewis' findings that these units were occupied during the Relevant Period are not necessary for the finding of coverage for the Buildings and the Units because the Building is deemed a horizontal multiple dwelling.

Accordingly, the Tenants' application for Article 7-C coverage for the Buildings is granted. The Buildings and Units 3E, 4B, 4F, 5A and 6A are deemed covered by Article 7-C of the Multiple Dwelling Law. The Owner is directed to register the Buildings as an interim multiple dwelling within thirty days of the mailing of this Order. Failure to do so may result in fines and late fees against the Owner for failure to register.

DATED: November 19, 2009

Robert D. LiMandri
Chairperson

DATE LOFT BOARD ORDER MAILED:

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Shelton, Spadafora (6)

Member absent: Mayer (1)

Proposed Order

NEW YORK CITY LOFT BOARD

In the Matter of the Application of **117-119 LEASING CORP.**	**Loft Board Order No.** **Docket No. LE-0248/RG-0188** **RE: 117-119 Mercer Street** **New York, New York** **IMD No. 10076**

ORDER

The New York City Loft Board ("Loft Board") accepts the Report and Recommendation of General Deputy Counsel, Martha Cruz, dated January 5, 2010.

On May 12, 1999, the New York City Department of Buildings issued a final certificate of occupancy for 117-119 Mercer Street, New York, New York ("Building") under certificate number 116991. The owner of the Building, 117-119 Leasing Corporation ("Owner"), is in compliance with Multiple Dwelling Law ("MDL") § 284(1).

The post-legalization rent adjustments for the Interim Multiple Dwelling ("IMD") units on the fourth and fifth floors in the Building are set forth in the attached Report and Recommendation. The initial legal regulated rents for the IMD units are as follow:

Fourth Floor Unit/Fourth Floor South Unit:	$1,178.34
Fifth Floor Unit/Fifth Floor South Unit:	$1,188.97

The tenants for the fourth and fifth floor units are deemed to have agreed to RGB increases applicable to one-year and two-year leases, respectively. The initial rent term for the fourth floor unit is from December 1, 2009 through November 30, 2010 and the initial rent term for the fifth floor unit is December 1, 2009 through November 30, 2011.

The Owner is directed to register the Building with the New York City Housing Preservation and Development and these units with the New York State Division of Housing and Community Renewal.[3] Further, the Owner is directed to provide the residential occupants of these units with a residential lease subject to the provisions regarding evictions and regulations of rent set forth in the Emergency Tenant Protection Act of 1974, pursuant to the terms set forth in the Report and Recommendation.

A final rent adjustment is not necessary for the third floor unit in the Building because the Owner purchased the rights to this unit in May 1985. The Owner has indicated to Loft Board staff that it intends to use this unit for non-residential purposes. On January 4, 2010, the Loft Board staff inspected the third floor unit and found it was occupied for commercial purposes.

Consequently, pursuant to MDL § 286(12) and to Title 29 of the Rules of the City of New York § 2-10(c)(1), third floor IMD unit is not subject to rent regulation. Pursuant to Title 29 of the Rules of the City of New York § 2-10(c)(1)(i), the Owner is no longer subject to the legalization requirements of Article 7-C of the MDL in connection with the third floor unit.

[3] As a point of information, the Owner must register the building with New York City Department of Housing Preservation and Development, under Multiple Dwelling Law §325, before the building can be registered with the Division of Housing and Community Renewal.

Effective thirty-five days from the date of this Order, this Building is no longer an IMD and is no longer under the jurisdiction of the Loft Board.

DATED: January 21, 2010

Robert D. LiMandri
Chairperson

DATE LOFT BOARD ORDER MAILED:

NEW YORK CITY LOFT BOARD

In the Matter of the Application of **117-119 LEASING CORP.**	**REPORT AND RECOMMENDATION** **Docket No. LE-0248/RG-0188** **RE: 117 Mercer Street** **New York, New York** **IMD No. 10076**

MARTHA CRUZ, GENERAL DEPUTY COUNSEL

BACKGROUND

On May 12, 1999, the New York City Department of Buildings issued a final certificate of occupancy for 117-119 Mercer Street, New York, New York ("Building") under certificate number 116991. Pursuant to Title 29 of the Rules of the City of New York ("29 RCNY") § 2-01(i)(1), the owner of the building, 117-119 Leasing Corporation ("Owner"), was then eligible to apply for rent adjustments based on the costs of code compliance and Rent Guidelines Board ("RGB") increases.

On February 14, 2000, the Owner of the Building filed an application seeking rent adjustments based on the necessary and reasonable costs of obtaining a final certificate of occupancy for the fourth and the fifth floor units in the Building. Loft Board docketed the rent adjustment application as LE-0248.

On November 21, 2001, the Owner filed a Notice of RGB Increase Filing ("RGB Notice") for the fourth floor and fifth floor units, which the Loft Board docketed as RG-0188.

On November 20, 2009, the Loft Board staff conducted an informal conference for the rent adjustment application. In an agreement dated December 16, 2009, the occupants of the fourth and the fifth floor units and the Owner settled the rent adjustment application. The parties agreed to the monthly base rents for the fourth and the fifth floor units and the monthly pass-along legalization costs for each unit.

ANALYSIS

According to Loft Board records, on January 18, 1983, the previous owner of the Building registered three IMD units in the Building. The registration form listed three units: one on the third floor, one on the fourth floor and one on the fifth floor.

The final certificate of occupancy issued for the Building lists the fourth and fifth floor units as Joint Living Work Quarters for Artists. Thus, the Building is in compliance with Multiple Dwelling Law ("MDL") § 284(1). *See, Application of Teliman Holding Corp.*, Loft Board Order No. 2052 (Jan. 9, 1997); *Application of Halebid Corp.*, Loft Board Order No. 585 (Apr. 30, 1987).

Loft Board records also show that a sale of rights pursuant to Multiple Dwelling Law ("MDL") § 286(12) was executed on May 1, 1985 for the third floor unit between the previous owner, Reliable Wool Stock Corp. and former occupant, William Stein.

On September 24, 1993, a Declaration of Intent form was filed for the third floor unit indicating that this unit had been converted to non-residential use. On January 4, 2010, the Loft Board staff inspected the third floor unit and found it was being used for commercial purposes. Consequently, pursuant to MDL § 286(12) and to Title 29 of the Rules of the City of New York ("29 RCNY") § 2-10(c)(1)(i), the Owner is no longer subject to the legalization requirements of Article 7-C of the Multiple Dwelling Law for the third floor unit.

Pursuant to 29 RCNY § 2-01(i)(1)(i), the amount of each RGB increase shall be equal to the percentage increase applicable to one or two-year leases as established by the Rent Guidelines Board on the date the application is submitted and on each anniversary thereafter. In this case, the Owner filed the RGB Notice on November 28, 2001. The rent increase percentage applicable to a one-year lease on December 1, 2001 was 1% and for a two-year lease 2%. Additionally, pursuant to 29 RCNY § 2-01(i)(1)(i), the applicable rent increase becomes effective the first day of the first month following the day the owner files the RGB application.

Fourth Floor Unit/Fourth Floor South

Prior to December 1, 2001, the effective date of the RGB increase, the base rent for the fourth floor unit was $934.80. Joanna Gangemi, the occupant of the fourth floor unit, failed to respond to the RGB Notice. Pursuant to 29 RCNY § 2-01(i)(1)(iii) and § 2-01(i)(1)(iv) Ms. Gangemi is deemed to have accepted the rent amount stated in the RGB Notice and to have elected RGB increases applicable to one-year leases.

Effective on December 1, 2001, the Owner was entitled to RGB increases. The following is a calculation of the rent for the unit applying RGB increase percentages applicable to one-year leases:

DATE OF INCREASE	% INCREASE FOR 1 YEAR LEASES	OLD RENT	INCREASE AMOUNT	NEW BASE RENT
12/1/2001-11/30/2002	1%	$934.80	$9.35	$944.15
12/1/2002-11/30/2003	1%	$944.15	$9.44	$953.59
12/1/2003-11/30/2004	4%	$953.59	$38.14	$991.73
12/1/2004-11/30/2005	2.5%	$991.73	$24.79	$1,016.52
12/1/2005-11/30/2006	2.25%	$1,016.52	$22.87	$1,039.39
12/1/2006-11/30/2007	3.75%	$1,039.39	$38.98	$1,078.37
12/1/2007-11/30/2008	2.5%	$1,078.37	$26.96	$1,105.33
12/1/2008-11/30/2009	3.5%	$1,105.33	$38.69	$1,144.02
12/1/2009-11/30/2010	3%	$1,144.02	$34.32	$1,178.34

Pursuant to 29 RCNY § 2-01(i)(1)(i), the base rent for the fourth floor unit as of December 1, 2009, is $1,178.34. The period of this rent level is December 1, 2009 through November 30, 2010 and should be deemed the initial legal regulated rent.

Pursuant to the stipulation settling the rent adjustment application, Joanna Gangemi agreed to pay $65 a month for 120 months as a rent adjustment for the code compliance costs attributed to the fourth floor unit/unit 4S. The payment of the code compliance costs was to begin on January 1, 2010 through December 31, 2019.

Fifth Floor Unit/Fifth Floor South

Prior to December 1, 2001, the effective date of the RGB increase, the base rent for the fifth floor unit was $934.42. On December 27, 2001, Harriet Shorr, the occupant of the fifth floor unit, answered the **RGB** Notice, confirmed the rent amount listed for the base rent, and elected to be governed by RGB increases applicable to two-year leases.

Effective on December 1, 2001, the Owner was entitled to RGB increases. The following is a calculation of the rent for the unit applying RGB increase percentages applicable to two-year leases:

DATE OF INCREASE	% INCREASE FOR 2 YEAR LEASES	OLD RENT	INCREASE AMOUNT	NEW BASE RENT
12/1/2001-11/30/2003	2%	$934.42	$18.69	$953.11
12/1/2003-11/30/2005	7%	$953.11	$66.72	$1,019.83
12/1/2005-11/30/2007	4.5%	$1,019.83	$45.89	$1,065.72
12/1/2007-11/30/2009	5.25%	$1,065.72	$55.95	$1,121.67
12/1/2009-11/30/2011	6%	$1,121.67	$67.30	$1,188.97

Pursuant to 29 RCNY § 2-01(i)(1)(i), the base rent for the fifth floor unit as of December 1, 2009, is $1,188.97. The period of this rent level is December 1, 2009 through November 30, 2011 and should be deemed the initial legal regulated rent.

Pursuant to the stipulation settling the rent adjustment application, Harriet Shorr and Jim Long agreed to pay $55 a month for 120 months as a rent adjustment for the code compliance costs attributed to the fifth floor unit/unit 5S. The payment of the code compliance costs began on January 1, 2010 through December 31, 2019.

RECOMMENDATION

Based on the foregoing, I recommend that the Loft Board determine that the Owner of the building located at 117-119 Mercer Street, New York, New York is no longer subject to the legalization requirements in Article 7-C of the Multiple Dwelling Law for the third floor unit, is in compliance with MDL § 284(1) for the third and fourth floor units and is no longer an IMD. Additionally, I recommend that the Owner be directed to register the third and fourth floor units with the New York City Housing, Preservation and Development and the New York State Division of Housing and Community Renewal.

_____
Martha Cruz
Deputy General Counsel

DATED: January 5, 2010

AMENDED ORDER

NEW YORK CITY LOFT BOARD

In the Matter of the Application of	**Loft Board Order No. 3553**
	Docket No. LE-0248/RG-0188
117-119 LEASING CORP.	**RE: 117-119 Mercer Street New York, New York**
	IMD No. 10076

ORDER

The New York City Loft Board ("Loft Board") accepts the Report and Recommendation of General Deputy Counsel, Martha Cruz, dated January 5, 2010.

On May 12, 1999, the New York City Department of Buildings issued a final certificate of occupancy for 117-119 Mercer Street, New York, New York ("Building") under certificate number 116991. The owner of the Building, 117-119 Leasing Corporation ("Owner"), is in compliance with Multiple Dwelling Law ("MDL") § 284(1).

The post-legalization rent adjustments for the Interim Multiple Dwelling ("IMD") units on the fourth and fifth floors in the Building are set forth in the attached Report and Recommendation. The initial legal regulated rents for the IMD units are as follow:

Fourth Floor Unit/Fourth Floor South Unit:	$1,178.34
Fifth Floor Unit/Fifth Floor South Unit:	$1,188.97

The tenants for the fourth and fifth floor units are deemed to have agreed to RGB increases applicable to one-year and two-year leases, respectively. The initial rent term for the fourth floor unit is from December 1, 2009 through November 30, 2010 and the initial rent term for the fifth floor unit is December 1, 2009 through November 30, 2011.

The Owner is directed to register the Building with the New York City Housing Preservation and Development and these units with the New York State Division of Housing and Community Renewal.[4] Further, the Owner is directed to provide the residential occupants of these units with a residential lease subject to the provisions regarding evictions and regulations of rent set forth in the Emergency Tenant Protection Act of 1974, pursuant to the terms set forth in the Report and Recommendation.

A final rent adjustment is not necessary for the third floor unit in the Building because the Owner purchased the rights to this unit in May 1985. The Owner has indicated to Loft Board staff that it intends to use this unit for non-residential purposes. On January 4, 2010, the Loft Board staff inspected the third floor unit and found it was occupied for commercial purposes.

Consequently, pursuant to MDL § 286(12) and to Title 29 of the Rules of the City of New York § 2-10(c)(1), third floor IMD unit is not subject to rent regulation. Pursuant to Title 29 of the Rules of the City of New York § 2-10(c)(1)(i), the Owner is no longer subject to the legalization requirements of Article 7-C of the MDL in connection with the third floor unit.

Effective thirty-five days from the date of this Order, this Building is no longer an IMD and is no longer under the jurisdiction of the Loft Board.

DATED: January 21, 2010

[4] As a point of information, the Owner must register the building with New York City Department of Housing Preservation and Development, under Multiple Dwelling Law §325, before the building can be registered with the Division of Housing and Community Renewal.

Robert D. LiMandri
Chairperson

DATE LOFT BOARD ORDER MAILED:

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Shelton, Spadafora (6)

Member absent: Mayer (1)

NEW YORK CITY LOFT BOARD

In the Matter of the Application of **117-119 LEASING CORP.**	**REPORT AND RECOMMENDATION** **Docket No. LE-0248/RG-0188** **RE: 117 Mercer Street** **New York, New York** **IMD No. 10076**

MARTHA CRUZ, GENERAL DEPUTY COUNSEL

BACKGROUND

On May 12, 1999, the New York City Department of Buildings issued a final certificate of occupancy for 117-119 Mercer Street, New York, New York ("Building") under certificate number 116991. Pursuant to Title 29 of the Rules of the City of New York ("29 RCNY") § 2-01(i)(1), the owner of the building, 117-119 Leasing Corporation ("Owner"), was then eligible to apply for rent adjustments based on the costs of code compliance and Rent Guidelines Board ("RGB") increases.

On February 14, 2000, the Owner of the Building filed an application seeking rent adjustments based on the necessary and reasonable costs of obtaining a final certificate of occupancy for the fourth and the fifth floor units in the Building. Loft Board docketed the rent adjustment application as LE-0248.

On November 21, 2001, the Owner filed a Notice of RGB Increase Filing ("RGB Notice") for the fourth floor and fifth floor units, which the Loft Board docketed as RG-0188.

On November 20, 2009, the Loft Board staff conducted an informal conference for the rent adjustment application. In an agreement dated December 16, 2009, the occupants of the fourth and the fifth floor units and the Owner settled the rent adjustment application. The parties agreed to the monthly base rents for the fourth and the fifth floor units and the monthly pass-along legalization costs for each unit.

ANALYSIS

According to Loft Board records, on January 18, 1983, the previous owner of the Building registered three IMD units in the Building. The registration form listed three units: one on the third floor, one on the fourth floor and one on the fifth floor.

The final certificate of occupancy issued for the Building lists the fourth and fifth floor units as Joint Living Work Quarters for Artists. Thus, the Building is in compliance with Multiple Dwelling Law

("MDL") § 284(1). *See, Application of Teliman Holding Corp.*, Loft Board Order No. 2052 (Jan. 9, 1997); *Application of Halebid Corp*., Loft Board Order No. 585 (Apr. 30, 1987).

Loft Board records also show that a sale of rights pursuant to Multiple Dwelling Law ("MDL") § 286(12) was executed on May 1, 1985 for the third floor unit between the previous owner, Reliable Wool Stock Corp. and former occupant, William Stein.

On September 24, 1993, a Declaration of Intent form was filed for the third floor unit indicating that this unit had been converted to non-residential use. On January 4, 2010, the Loft Board staff inspected the third floor unit and found it was being used for commercial purposes. Consequently, pursuant to MDL § 286(12) and to Title 29 of the Rules of the City of New York ("29 RCNY") § 2-10(c)(1)(i), the Owner is no longer subject to the legalization requirements of Article 7-C of the Multiple Dwelling Law for the third floor unit.

Pursuant to 29 RCNY § 2-01(i)(1)(i), the amount of each RGB increase shall be equal to the percentage increase applicable to one or two-year leases as established by the Rent Guidelines Board on the date the application is submitted and on each anniversary thereafter. In this case, the Owner filed the RGB Notice on November 28, 2001. The rent increase percentage applicable to a one-year lease on December 1, 2001 was 1% and for a two-year lease 2%. Additionally, pursuant to 29 RCNY § 2-01(i)(1)(i), the applicable rent increase becomes effective the first day of the first month following the day the owner files the RGB application.

Fourth Floor Unit/Fourth Floor South

Prior to December 1, 2001, the effective date of the RGB increase, the base rent for the fourth floor unit was $934.80. Joanna Gangemi, the occupant of the fourth floor unit, failed to respond to the RGB Notice. Pursuant to 29 RCNY § 2-01(i)(1)(iii) and § 2-01(i)(1)(iv) Ms. Gangemi is deemed to have accepted the rent amount stated in the RGB Notice and to have elected RGB increases applicable to one-year leases.

Effective on December 1, 2001, the Owner was entitled to RGB increases. The following is a calculation of the rent for the unit applying RGB increase percentages applicable to one-year leases:

DATE OF INCREASE	% INCREASE FOR 1 YEAR LEASES	OLD RENT	INCREASE AMOUNT	NEW BASE RENT
12/1/2001-11/30/2002	1%	$934.80	$9.35	$944.15
12/1/2002-11/30/2003	1%	$944.15	$9.44	$953.59
12/1/2003-11/30/2004	4%	$953.59	$38.14	$991.73
12/1/2004-11/30/2005	2.5%	$991.73	$24.79	$1,016.52
12/1/2005-11/30/2006	2.25%	$1,016.52	$22.87	$1,039.39
12/1/2006-11/30/2007	3.75%	$1,039.39	$38.98	$1,078.37
12/1/2007-11/30/2008	2.5%	$1,078.37	$26.96	$1,105.33
12/1/2008-11/30/2009	3.5%	$1,105.33	$38.69	$1,144.02
12/1/2009-11/30/2010	3%	$1,144.02	$34.32	$1,178.34

Pursuant to 29 RCNY § 2-01(i)(1)(i), the base rent for the fourth floor unit as of December 1, 2009, is $1,178.34. The period of this rent level is December 1, 2009 through November 30, 2010 and should be deemed the initial legal regulated rent.

Pursuant to the stipulation settling the rent adjustment application, Joanna Gangemi agreed to pay $65 a month for 120 months as a rent adjustment for the code compliance costs attributed to the fourth floor unit/unit 4S. The payment of the code compliance costs was to begin on January 1, 2010 through December 31, 2019.

Fifth Floor Unit/Fifth Floor South

Prior to December 1, 2001, the effective date of the RGB increase, the base rent for the fifth floor unit was $934.42. On December 27, 2001, Harriet Shorr, the occupant of the fifth floor unit, answered the RGB Notice, confirmed the rent amount listed for the base rent, and elected to be governed by RGB increases applicable to two-year leases.

Effective on December 1, 2001, the Owner was entitled to RGB increases. The following is a calculation of the rent for the unit applying RGB increase percentages applicable to two-year leases:

DATE OF INCREASE	% INCREASE FOR 2 YEAR LEASES	OLD RENT	INCREASE AMOUNT	NEW BASE RENT
12/1/2001-11/30/2003	2%	$934.42	$18.69	$953.11
12/1/2003-11/30/2005	7%	$953.11	$66.72	$1,019.83
12/1/2005-11/30/2007	4.5%	$1,019.83	$45.89	$1,065.72
12/1/2007-11/30/2009	5.25%	$1,065.72	$55.95	$1,121.67
12/1/2009-11/30/2011	6%	$1,121.67	$67.30	$1,188.97

Pursuant to 29 RCNY § 2-01(i)(1)(i), the base rent for the fifth floor unit as of December 1, 2009, is $1,188.97. The period of this rent level is December 1, 2009 through November 30, 2011 and should be deemed the initial legal regulated rent.

Pursuant to the stipulation settling the rent adjustment application, Harriet Shorr and Jim Long agreed to pay $55 a month for 120 months as a rent adjustment for the code compliance costs attributed to the fifth floor unit/unit 5S. The payment of the code compliance costs began on January 1, 2010 through December 31, 2019.

RECOMMENDATION

Based on the foregoing, I recommend that the Loft Board determine that the Owner of the building located at 117-119 Mercer Street, New York, New York is no longer subject to the legalization requirements in Article 7-C of the Multiple Dwelling Law for the third floor unit, is in compliance with MDL § 284(1) for the fourth and fifth floor units and is no longer an IMD. Additionally, I recommend that the Owner be directed to register the fourth and fifth floor units with the New York City Housing, Preservation and Development and the New York State Division of Housing and Community Renewal.

_____
Martha Cruz
Deputy General Counsel

DATED: January 5, 2010

Case #9.	38 West 26 Street / 12 Lofts Realty, Inc.	38 West 26th Street	LE-0313	MC/MC

Motion: Mr. DeLaney moved to accept the proposed order. Ms. Bolden-Rivera seconded the motion.

Members concurring: Barowitz, Bolden-Rivera, DeLaney, Chairperson LiMandri, Shelton, Spadafora (6)

Member absent: Mayer (1)

Chairperson LiMandri concluded the January 21, 2010 Loft Board public meeting and thanked everyone for attending. He announced that the next public meeting will be held at Spector Hall, 22 Reade Street, on Thursday, February 18, 2010 at 2:00 p.m.

The meeting ended at 3:40 p.m.