

Matter of Tenants of 223 15th Street

OATH Index No. 2399/08, mem dec. (October 17, 2008)
[Loft Bd. Dkt. No. TR-0780; 223 15th Street, Brooklyn, N.Y.]

Omnibus discovery motion submitted. Granted in part; denied in part.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
TENANTS OF 223 15th STREET
Petitioner

MEMORANDUM DECISION

KARA J. MILLER, *Administrative Law Judge*

This is a tenant initiated Loft Law coverage application involving four units in 223 15th Street, Brooklyn, New York (the “building”), received by the Loft Board on September 11, 2007. Petitioners Jeff Larvia, Kellie Murphy, Simon Basse, Alice Gleason, Cynthia Rothschild, Barbara Schulman, and Ryan Monihan (“tenants” or “petitioners”) seek a determination that each is a protected occupant and a finding of coverage for the first, second, third, and fourth floors of the building, pursuant to Article 7-C of the Multiple Dwelling Law and 29 RCNY sections 2-08 and 2-09. Respondent 223 15th Street Corporation filed an answer on April 16, 2008, opposing the application.

On August 19, 2008, respondent moved for leave to depose the tenants in order to “explore the *bona fides* of petitioners’ claim for Loft Board coverage.” In addition, respondent sought leave to serve (1) subpoenas *duces tecum* upon ConEdison, CableVision, Keyspan, and Verizon (“utility companies”) to obtain utility records from 1980 to present for the building; (2) subpoenas *ad testificandum* and *duces tecum* upon tenants to compel their testimony as witnesses at the hearing; and (3) subpoenas *ad testificandum* and *duces tecum* upon non-parties Cary Dean Hart, David E. Nurmi, Kenneth Fishman, Gregory Crane, and Jane Crane (“non-parties”) to compel their testimony and the production of certain documents. Finally, on August 20, 2008, respondent served petitioners with a notice of discovery and inspection seeking the production of a range of documents including leases, tax returns, and utility bills.

By motion dated September 11, 2008, petitioners did not oppose respondent's deposition requests but rather sought leave to depose respondent's principals Stanley Gallant and Jack Sternklar, and respondent's agent Larry Malitsky, to examine their knowledge, or lack thereof, of residential use. Additionally, petitioners did not oppose respondent's request for subpoenas *duces tecum* on the utility companies or for subpoenas *ad testificandum and duces tecum* on petitioners and the non-parties. Petitioners did oppose respondent's August 20, 2008, notice of discovery and inspection, and sought a protection order rejecting it *in toto* or, in the alternative, limiting it in scope. At the same time, petitioners submitted their own notice of discovery and inspection, demanding respondent produce documents including leases, certain correspondence, and insurance policies.

Respondent objected to petitioners' deposition and discovery requests and filed a motion seeking a protective order on September 25, 2008, arguing that in order to prove its case, petitioners need only rely upon their own testimony and records. Petitioners filed an additional affirmation in support of their deposition and discovery requests on October 7, 2008.

Both respondent's and petitioners' request for depositions are denied. Under OATH's rules of practice, depositions are considered an "extraordinary discovery device" and a party seeking permission to take depositions must therefore "show a special heightened need" before they will be authorized. *Tenants of 51-55 W. 28th St. v. Jo-Fra Properties, Inc.*, OATH Index No. 1019/05, mem. dec. (July 19, 2005) (citing *Conflicts of Interest Bd. v. Katsorhis*, OATH Index No. 1531/97, mem. dec., at 10 (June 27, 1997)) (denying motion to take depositions "absent a showing of special need"); *Dep't of Buildings v. Fekete*, OATH Index Nos. 1118/07 & 1119/07, mem. dec. (Mar. 23, 2007) (denying motion to take depositions where respondent failed to show "good cause as to why depositions should be permitted"). Here, neither respondent nor petitioners have demonstrated a special heightened need for depositions.

Additionally, as petitioners did not object to respondent's request for subpoenas *duces tecum* to be served upon the utility companies and subpoenas *ad testificandum and duces tecum* to be served upon the non-parties, these requests are granted, contingent upon the following: respondent must submit hard copies of the subpoenas *duces tecum* to be served upon the utility companies to me within three business days of this order and hard copies of the subpoenas *ad testificandum and duces tecum* to be served upon the non-parties within ten business days of this order. The subpoenas must be paper clipped together, rather than bound or stapled, and be updated to reflect the revised dates of the hearing. Respondent's attorney was twice previously

instructed to submit such hard copies of the requested subpoenas to me: initially during a conference call with opposing counsel, and then by e-mail dated September 19, 2008. Respondent's counsel failed to do so. In the future, such requests by the trial judge will be made only once. If the request is not complied with, the motion will be denied and evidence precluded.

Respondent's request for subpoenas *ad testificandum and duces tecum* to be served upon petitioners is denied, however, as they are unnecessary. The petitioners plan on testifying at the hearing on their own behalf and, as such, there is no need to subpoena them to do so.

With regards to respondent's August 20, 2008, notice of discovery and inspection, respondent seeks from petitioners the production of documents in 23 categories dating from April 1, 1980, through the present. As the requested documents are potentially relevant to petitioners' application and therefore respondent's defense, petitioners' request for a protective order is denied and respondent's request is granted in its entirety. For the same reason, petitioners' September 11, 2008, notice of discovery and inspection, seeking from respondent the production of documents in nine categories dating from April 1, 1980, to present, is also granted in its entirety, and respondent's request for a protective order denied.

The parties are instructed that they shall have until November 14, 2008, to complete the document exchange.

The parties are further instructed to submit to the tribunal a list of witnesses they plan on calling and exhibits they plan on introducing during the hearing by December 1, 2008.

Kara J. Miller
Administrative Law Judge

October 17, 2008

APPEARANCES:

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