

## ***Matter of Stathis***

OATH Index No. 347/15 (July 12, 2016), *dismissed as moot*,  
Loft Bd. Order No. 4764 (Apr. 19, 2018), **appended**  
[Loft Bd. Dkt. No. TR-1239, 145 Grand Street, New York, N.Y.]

Two tenants submitted an application for coverage under the Loft Law. At an inquest hearing where the building owner did not participate, petitioners provided sufficient evidence to demonstrate that three units in the building were residentially occupied during the 12-month window period and that petitioners are protected occupants. The application should be granted.

Because the owner registered the building as an IMD and recognized the applicants as protected tenants, the Loft Board dismissed the application as moot.

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### **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**CHRISTIAN STATHIS and LAURA AVIVA**  
*Petitioners*

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### **REPORT AND RECOMMENDATION**

**RAYMOND E. KRAMER**, *Administrative Law Judge*

Petitioners Christian Stathis and Laura Aviva filed a coverage application under section 281(5) of the Multiple Dwelling Law (MDL) on March 11, 2014, seeking a finding first that the building where they reside at 145 Grand Street, New York, New York (“building”) is the an interim multiple dwelling (“IMD”), and second that they are the protected occupants of the second and fourth floor units. Mult. Dwell. Law § 281(5) (Lexis 2016).

Petitioners served the application on all affected parties, including the owner, Wang & Associates, LLC, by mail on March 10, 2014. The building owner did not file an answer and received a notice of default. The owner then submitted a motion to vacate the default eight months after the statutory deadline. 29 RCNY § 1-06(i)(2) (Lexis 2016). In a memorandum decision issued on July 9, 2015, I denied the owner’s motion to vacate the default, finding that the owner’s motion was untimely and that it did not establish good cause for failing to file an

answer in time. *Matter of Stathis*, OATH Index No. 347/15, mem. dec. (July 9, 2015). The owner was therefore precluded from participating in the proceeding and an inquest hearing was held on December 21, 2015.<sup>1</sup>

Petitioners seek coverage under the 2010 amendments to the Loft Law, which added section 281(5) to the Multiple Dwelling Law L. 2010, Ch. 135 § 1 (eff. June 21, 2010) (adding MDL § 281(5)); L. 2010, Ch. 147 § 1 (eff. June 21, 2010) (amending MDL § 281(5)). The amendments designate a new qualifying window period from January 1, 2008 through December 31, 2009. To establish that a building is an IMD, petitioners must demonstrate that the building has been “occupied for residential purposes as the residence or home of any three or more families living independently from each other for a period of 12 consecutive months during the period commencing January 1, 2008, and ending December 31, 2009.” Mult. Dwell. Law § 281(5) (Lexis 2016).

A showing of residential occupancy requires that petitioner present “sufficient indicia of independent living to demonstrate its use as a family residence,” along with evidence “that the premises have been converted, at least in part, into a dwelling.” *Anthony v. NYC Loft Bd.*, 122 A.D.2d 725, 727 (1st Dep’t 1986) (citations omitted); *see also* 29 RCNY § 2-08(a)(3). This determination entails “a case by case analysis in which no one factor is determinative.” *Matter of Romano*, OATH Index No. 2661/14 at 2 (Nov. 18, 2015) *citing Matter of Boyers*, OATH Index Nos. 1338/12 at 13 (Feb. 10, 2014). Factors to consider include “the presence of permanent improvements, such as bathrooms, bathing facilities, closets, and walls erected to separate living areas, and the presence of non-permanent items reflecting residential use such as refrigerators, stoves, and beds.” *Id.*

A petitioner may also demonstrate residential occupancy through photographs of the unit being used residentially, personal effects, and interactions with other residents in the building. *Matter of Zhao*, OATH Index No. 2225/14 at 7 (Aug. 12, 2015); *Matter of Gurkin*, OATH Index No. 489/12 (Dec. 14, 2012), *adopted*, Loft Bd. Order No. 4186 (Oct. 17, 2013); *Matter of Gareza*, OATH Index Nos. 2061/12 & 760/13 at 8 (Dec. 12, 2012), *adopted in relevant part*, Loft Bd. Order No. 4243 (Feb. 20, 2014). Additionally, a petitioner may include circumstantial evidence of his or her intent to reside in a unit. *Matter of Ukai*, OATH Index Nos. 1394/14 and

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<sup>1</sup> John Wang, a principal of the respondent building owner, Wang & Associates, LLC, was present at the hearing and observed the proceedings.

1220/15 at 26 (Nov. 2, 2015); *Zhao*, OATH 2225/14 at 8. Examples of this type of evidence include the receipt of mail at the unit, the use of the unit's address for voter registration, bank and other financial records, tax returns, driver's licenses, and vehicle registration. *See Gareza*, OATH 2061/12 & 760/13 at 7-8; *Gurkin*, OATH 489/12 at 15.

The building in the present case is four stories tall with a commercial unit on the first floor and in the basement (Tr. 11, 57-58). Petitioners, who occupy the second and fourth floor units of 145 Grand Street, each testified at the hearing and presented a witness along with extensive documentary evidence in support of their application. The occupant who is alleged to have lived on the third floor unit during the window period was not present at the hearing, however, petitioners provided testimony and documentary evidence regarding the occupancy of this space.

As an initial matter, petitioners presented information from the Department of Buildings' website demonstrating that the building lacks certification of occupancy and was classified by the owners in 2010 under the category "commercial buildings" (Tr. 8-9; Pet. Ex. 1). Additionally, petitioners provided a printout from the New York City Department of Finance indicating that the building was in "Tax Class 4," which designates a non-residential property (Tr. 10; Pet. Ex. 2).

## ANALYSIS

### **Proof of Interim Multiple Dwelling**

On the first issue of whether the building at 145 Grand Street should be considered an IMD, I find that the evidence presented by petitioners is sufficient to show that three units in the building – the second, third and fourth floor units - were residentially occupied for at least twelve consecutive months during the window period.

#### Laura Aviva, Fourth Floor

Laura Aviva, the current occupant of the fourth floor unit at 145 Grand Street, testified that she first moved into the building in August of 2002. At the time, she was looking for a place to live and two of her friends, Bill Booth and Jihye Song, who were living in the fourth floor unit, alerted her that the residential occupant of the third floor unit, John Kelleran, was moving out. Ms. Aviva arranged to take over that space and did so in August 2002 (Tr. 12).

Ms. Aviva testified that she resided in the third floor unit as her primary and only residence until September 1, 2008, when she moved upstairs into the fourth floor unit upon the departure of her friends, Mr. Booth and Ms. Song (Tr. 11). Prior to and continuing after she moved into the fourth floor unit, Ms. Aviva renovated the unit, completing the work in October 2008. She submitted photographs to show the unit during and after the renovations (Tr. 15, 37-38; Pet. Exs. 4, 5).

Ms. Aviva described the finalized unit in detail, which includes an entrance to her unit from the third floor landing, and an internal staircase leading to an open plan space on the fourth floor with a living and dining area, a bathroom and kitchen and a wall of glass doors separating the bedroom from the living area (Tr. 21-23). The photos depict a fully furnished unit with modern fixtures in the bathroom and kitchen areas. The unit is 43 feet by 17 feet (731 sq. ft.) in size and runs from the front to the rear of the building. There are three windows in the front facing Grand Street and three windows in the rear of the unit, facing the back (Tr. 15, 63). Ms. Aviva stated that since September 2008, she has slept in the fourth floor unit almost every night, eaten most meals there, and has not rented or owned any other property (Tr. 16).

Ms. Aviva also presented circumstantial evidence that the fourth floor unit was her residential address for the period at issue. Her phone bill records from January 2008 through August 2008 show her address listed simply as 145 Grand Street, with two exceptions, the bills for April and May 2008. Those bills reflect her address as 145 Grand Street “FLR 4” at a time when she testified she was still living in the third floor unit. That apparent discrepancy was not addressed at trial, but did not detract from overall highly credible testimony regarding the time periods during which she lived in both the third and fourth floor units. Significantly, her phone records for September 2008 through December 2009 reflect her address as 145 Grand Street, “FLR 4,” and corroborate her testimony that she had fully moved into the fourth floor unit as of September 2008 (Tr. 24-25; Pet. Ex. 6). Ms. Aviva also submitted voter registration forms dated from 2004 (Tr. 25-26; Pet. Ex. 7). For her initial voter registration, Ms. Aviva’s address is listed as “145 Grand Street, Number 3” but later records indicate that her address was changed to the fourth floor. *Id.*

Additionally, Ms. Aviva provided gas bills for the period of September 2008 to December 2009, which list her address as “145 Grand Street, 4FL, Manhattan, NY 11013” (Tr. 26-27; Pet. Ex. 8). Her credit card bills from January 2008 to December 2009 and tax returns

from 2009 similarly include the fourth floor address (Tr. 27-28, 29; Pet. Exs. 9, 10). Ms. Aviva also offered a document from the Internal Revenue Service detailing her pay from freelance work in 2008, which lists both her third and fourth floor addresses at 145 Grand Street as well as two entries with a California address (Tr. 30-31; Pet. Ex. 11). She explained in her testimony that the California address was her parents' address and that she was living there at the time that she set up the trusts some years earlier. She further explained that she had just never updated the address for those trusts after moving to New York (Tr. 31). Finally, Ms. Aviva presented bank statements from January 2008 to January 2010 (Tr. 32; Pet. Ex. 12). The statements list the third floor address from January 2008 through August 2008 and then the fourth floor address from September 2008 to January 2010, again fully corroborating her testimony. *Id.*

Ms. Aviva's friend, Susan Naci, also testified as to Ms. Aviva's residential occupancy of the fourth floor unit at 145 Grand Street. Ms. Naci and Ms. Aviva have been close friends since 2004 (Tr. 39-40). Ms. Naci stated that she has frequently visited Ms. Aviva at 145 Grand Street over the years, both when Ms. Aviva lived in the third and fourth floor units (Tr. 40-41). Ms. Naci described the residential features of both units, including kitchens, bathrooms, and living areas (Tr. 42). She testified that she has eaten meals in both units, co-hosted dinner parties with Ms. Aviva in the latter's units, and she recalled eating on the outside deck during the time that Ms. Aviva lived in the third floor unit (Tr. 40-41). She continues to visit Ms. Aviva in the fourth floor unit.

Similarly, petitioner Christian Stathis testified that he has known Ms. Aviva as a neighbor since he moved into the building in April 2003. He testified that over the years he has visited with her when she was living in both the third and fourth floor units. He knew her friends, Mr. Booth and Ms. Song, who were living in the fourth floor unit when he moved into the building. He recalled that they moved out and that Ms. Aviva moved into their unit around August 2008. He described the layout of Ms. Aviva's fourth floor unit and its residential features in some detail and he corroborated her testimony about her residency there (Tr. 59, 62-63).

On the basis of Ms. Aviva's credible testimony, as corroborated by two credible witnesses and substantial photographic and documentary evidence, I find that she has met her burden and established that she residentially occupied the fourth floor unit at 145 Grand Street unit for at least 12 consecutive months during the window period of January 2008 through December 2009.

Christian Stathis, Second Floor

Mr. Stathis testified that he moved into the second floor unit at 145 Grand Street in April 2003, signing a May 1st lease with the respondent owner, Wang & Associates, LLC (Tr. 43-44). He learned of the space through its prior occupant, a friend, who notified him that she would be moving out (Tr. 44). The term of the lease was for five years, with an option to renew for five additional years. A copy of the lease, signed by him and John Wang as a principal of respondent owner, was admitted into evidence (Pet. Ex. 13). While the third page of the lease indicates that the use of the space would be commercial or for a photo studio and related business, Mr. Stathis testified that Mr. Wang had “full knowledge” that Mr. Stathis intended to live there and that such was his reason for moving there, although as a photographer he also occasionally used his space for a photo shoot (Tr. 45-46). Mr. Stathis did not own or rent any other residential properties from 2003 on (Tr. 46).

Mr. Stathis testified that the second floor unit is 1200 square feet in size. Like the other floors, it runs from the front to the back of the building and has three windows in the front facing Grand Street and three windows at the rear. Access to the building at street level is through an unlocked glass door. There is a small foyer with mailboxes and a locked internal glass door leading to a stairwell. Mr. Stathis’s unit is one flight up. Entrance to his unit is gained through a locked door at the second floor landing from the common hallway (Tr. 55; Pet. Ex. 15C).

Upon moving into the second floor unit in the building, Mr. Stathis completely renovated the space with the knowledge and consent of the owner. Previously, the unit was an open space, with a bathroom, small kitchen, living area and bedroom in the back. Mr. Stathis changed the layout, repainted, altered the lighting, and put in a new kitchen and bathroom with modern fixtures (Tr. 46). The work was finalized in 2005 (Tr. 47). Mr. Stathis presented both a hand-drawn floor plan of the second floor unit and photographs that were taken by his friend (Pet. Exs. 14, 15). Referring to these documents, Mr. Stathis testified about the layout and details of the apartment, which include an open dining and living area, a built-in daybed unit, a glass-walled bathroom, a kitchen area, and a bedroom separated by a curtain (Tr. 48-53).

In 2008, Mr. Stathis and the building owner, Mr. Wang, were in a legal dispute over the terms of Mr. Stathis’s lease renewal (Tr. 55-56). The parties reached an agreement on December 31, 2008, and the resulting stipulation was presented at this hearing. *Id.* The stipulation sets out the terms of Mr. Stathis’s eight-year lease renewal and includes the address “145 Grand Street,

2<sup>nd</sup> Floor” (Pet. Ex. 16). As part of the stipulation, respondent owner explicitly agreed to the residential use of the space (Pet. Ex. 16).

As additional circumstantial evidence, Mr. Stathis submitted copies of two of his driver’s licenses, valid from 2007 to 2010 and 2010 to 2018 respectively, both of which list his address as the second floor at 145 Grand Street (Tr. 64-66; Pet. Exs. 17, 18). Mr. Stathis also offered Department of Motor Vehicles records, including a record of a registration suspension from 2005 and a copy of his current vehicle registration, which list the same address (Tr. 66-67; Pet. Exs. 19, 20). Additionally, Mr. Stathis provided records of his gas meter activity that list his name and address on the second floor unit and indicate that his account was effective since December 2003 (Tr. 69-70; Pet. Ex. 22 at 17). Mr. Stathis’s cable bills from November 2008 to December 2010 and his bank statements from January 2009 to February 2010, similarly list his address on the second floor (Tr. 71-73; Pet. Exs. 24, 25).

A friend of Mr. Stathis, Alfonso Lledo, who has known him since around 2002, testified that he has frequently visited Mr. Stathis at the latter’s second floor apartment at 145 Grand Street over the years, and he was able to describe its residential features, including the open layout of the space and the glass-walled bathroom (Tr. 76-78). Mr. Lledo also confirmed that Mr. Stathis performed substantial renovations to the unit over a couple of years after moving in (Tr. 77-78). Mr. Lledo testified that he visited the apartment from 2008 to 2009 on a continual basis and was able to identify the photos of Mr. Stathis’s apartment that were submitted into evidence and the contents that they depicted (Tr. 78-81). He confirmed Mr. Stathis’s residential occupancy of the second floor unit during the window period.

Ms. Aviva provided additional corroborating testimony that Mr. Stathis residentially occupied that space, before, during and since the window period. She recalled that Mr. Stathis moved into the building on the second floor shortly after she did, either in late in 2002 or possibly 2003 and has continuously resided there since (Tr. 33). She testified that they have had almost daily contact over that time and that they see each other in and around the building, accept packages for one another and have keys for each other’s units. She has also visited him in his second floor unit many times over the years (Tr. 33-34).

Based on the credible testimony of Mr. Stathis, the credible testimony of Mr. Lledo and Ms. Aviva, and the substantial corroborating documentary and photographic evidence, I find that Mr. Stathis met his burden and established that he was the residential occupant of the second

floor unit of the building throughout the window period from January 2008 through December 2009.

David Kelleran, Third Floor

The key issue here is whether petitioners presented sufficient evidence to demonstrate that the third floor unit of the building was residentially occupied during the window period. As noted, the former occupant, David Kelleran, who is alleged to have lived there between January 2008 and December 2009, did not appear at the hearing. However, weighing the uncontested evidence offered by petitioners here, I find that they have provided sufficient proof that the third floor was also residentially occupied for the requisite time.

Ms. Aviva's credible testimony established that the third floor unit was occupied residentially from 2002 to at least 2010. Petitioner herself lived on the third floor from August 2002 through August 2008, including eight months during the window period from January 2008 through August 2008 (Tr. 11). As noted, she had originally moved into the third floor unit after Mr. Kelleran's brother John moved out in August 2002 (Tr. 11, 13, 34). Ms. Aviva paid rent to John, who held the lease, and who in turn paid the owner (Tr. 13).

To demonstrate the residential nature of the third floor unit during the years that she lived there, Ms. Aviva presented photographs and provided descriptive testimony of the unit. She testified that it was 516 square feet in size, and also like the other units, had three windows in front facing Grand Street and three windows in the rear. The photos show that the unit had an entrance from the common hallway (Pet. Ex. 3). The photos, as amplified by her testimony, demonstrated that the unit included a living room area, kitchen, bathroom, a separate bedroom and an outside deck at the rear of the unit, which Ms. Aviva testified she used as part of her living space. The photos depict a picnic table, chairs and lights on the deck, and she and Ms. Naci described having meals there on occasion (Tr. 13, 17-18; Pet. Ex 3). Mr. Stathis, who testified that he visited Ms. Aviva in the third floor unit quite a few times, corroborated her description of the unit (Tr. 59-60).

When Ms. Aviva moved into the fourth floor unit in September 2008, David Kelleran, John's brother, moved into the third floor space (Tr. 34-35). Ms. Aviva testified that Mr. Kelleran was anxious for her to leave the unit so that he could move in and the two of them were in communication during the moving process (Tr. 34-35). According to Ms. Aviva, Mr. Kelleran

owns a construction company and helped her complete some of the renovations in her fourth floor unit. *Id.*

Ms. Aviva stated that the building is small and so neighbors see each other often in the hallway (Tr. 33). After Mr. Kelleran moved in, Ms. Aviva would see him and his children frequently (Tr. 34-35). She testified that Mr. Kelleran lived on the third floor until 2011 (Tr. 36). Petitioner Mr. Stathis also would see Mr. Kelleran in the building from 2008 on, though he was less certain of when Mr. Kelleran moved out, stating that it was either 2010 or 2011 (Tr. 61-62).

In addition to testimony regarding Mr. Kelleran's presence in the building from September 2008 to around 2011, both petitioners confirmed that there were residential elements in the third floor unit when he lived there. Mr. Stathis visited the unit when Mr. Kelleran lived there and noted that Mr. Kelleran modified the kitchen, installed bunk beds, and added a bench (Tr. 61-62). Ms. Aviva similarly detailed Mr. Kelleran's renovations of the space, noting that he opened up the kitchen area, closed off the walk-in closet, and created a second bedroom with bunk beds (Tr. 35).

Petitioners also provided some documentary evidence regarding Mr. Kelleran's residential occupancy of the third floor. In the general gas company records for 145 Grand Street that Mr. Stathis introduced in support of his own application, David Kelleran's name is listed with the third floor address along with the effective date of December 2008 (Tr. 69-70; Pet. Ex. 22). This date corroborates both petitioners' testimony that Mr. Kelleran began living in the building in 2008. Moreover, following a subpoena of all gas company records relating to David Kelleran, petitioners recovered a document listing David Kelleran's name on a form with the heading "Premise Information" and including the third floor 145 Grand Street address (Tr. 70-71; Pet. Ex. 23). It shows that gas service was provided to that unit from December 2008 through January 2012.<sup>2</sup>

Petitioners have offered credible testimony regarding residential occupancy of the third floor unit. Ms. Aviva established that she lived there from August 2002 through August 2008 and that Mr. Kelleran lived in the unit until at least 2010. Together, Mr. Kelleran and Ms. Aviva residentially occupied the third floor unit during the entire window period from January 2008 to December 2009, with Mr. Kelleran alone residing in that unit from September 2008 until well

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<sup>2</sup> Ms. Aviva testified that the "senior Wangs," the parents of John Wang, a principal of respondent owner Wang & Associates, LLC, currently reside in the third floor unit (Tr. 36).

after December 2009. Both petitioners confirmed the time when Mr. Kelleran moved into the building in September 2008 and were certain that he lived there at least until 2010, having seen him and his family often around the building. Moreover, their testimony regarding the physical elements of the interior space drawn from direct experience in the third floor unit further underscore that the space was being used residentially. Finally, Mr. Kelleran's name listed on the gas records from 2008 provides useful corroborative evidence.

Taken together, this uncontested evidence is sufficient to establish that the third floor unit was consecutively occupied as a residence for at least 12 months during the period from January 2008 to December 2009. In sum, petitioners have met their burden in establishing that the building is an IMD containing three IMD units.

### **Proof of Protected Occupant Status**

In addition to a finding that the building is an IMD, petitioners seek a finding that they are protected occupants of their respective units. Mult. Dwell. Law § 281(5) (Lexis 2016). During the hearing, the parties did not offer evidence specific to their claim for protected occupant status or make direct arguments to that effect. Nevertheless, the evidence on the record is sufficient for me to find that both petitioners should be protected.

Loft Board rule 2-09(b)(1) presumptively protects the current residential occupant in possession of an IMD unit. This rule has been interpreted to cover prime lessees. *See, e.g., Gareza*, OATH 2061/12 & 760/13 at 3-4. However, the Loft Board rules clarify that if the occupant is not the prime lessee but was in possession of the premises prior to June 21, 2010, the landlord's lack of consent to the occupant's sublet, assignment, or subdivision does not affect the right of that occupant to protection. 29 RCNY §2-09(b)(2).

Some recent Loft Board decisions have raised questions about 2-09(b)(2) and the rights of occupants who are not prime lessees, suggesting that not all parties in an assignment, sublet, or subdivision prior to June 21, 2010 should be deemed protected occupants. However, it is important to note that in these cases, there was a prime lessee or individual with a rental agreement on the premises and the party seeking protection, by contrast, had no proof of a rental agreement or paying rent. *See Matter of Various Tenants of 357 Bowery*, Loft Bd. Order No. 4350 (Jan. 15, 2015) (finding that prime lessee in possession was the sole residential occupant entitled to protection and denying application of occupant with no proof of sublet, assignment, or

subdivision); *Matter of Belke*, Loft Bd. Order No. 4348 (Jan. 15, 2015) (remanding case because the applicant who was a roommate of the prime lessee could not be protected without a finding as to the status of the prime lessee); *see also Matter of Stone*, OATH Index No. 1945/14 at 15-20 (June 4, 2015) (finding that occupant who provided evidence of a rental agreement was protected while other applicants who failed to provide sufficient evidence of a rental agreement or that they were paying rent were not).

Turning first to Mr. Stathis, he should be considered a protected occupant because he is the prime lessee of the second floor unit, the unit is his primary residence, and his tenancy began prior to June 2010 in 2002 (Pet. Ex. 13). 29 RCNY §2-09(b)(1).

Ms. Aviva should similarly be protected. While she did not provide a formal lease or rental agreement, there is no evidence in the record that there is a prime lessee or another individual with a rental agreement living in or otherwise possessing the fourth floor unit. *Cf. Matter of Various Tenants of 357 Bowery*, Loft Bd. Order No. 4350 (Jan. 15, 2015). Accordingly, since Ms. Aviva has been living in the fourth floor unit as her primary residence since September 2008 and has been the sole occupant, she should be protected under the Loft Law. 29 RCNY §§2-09(b)(1),(2).

### **FINDINGS AND CONCLUSIONS**

1. Ms. Aviva's unit on the fourth floor of 145 Grand Street was residentially occupied for at least 12 consecutive months during the window period.
2. Mr. Kellera's unit on the third floor of 145 Grand Street was residentially occupied for at least 12 consecutive months during the window period.
3. Mr. Stathis's unit on the second floor of 145 Grand Street was residentially occupied for at least 12 consecutive months during the window period.
4. The building at 145 Grand Street is an interim multiple dwelling ("IMD") and that the second, third, and fourth floor units are IMD units.
5. Mr. Stathis is the protected occupant of the second floor unit.
6. Ms. Aviva is the protected occupant of the fourth floor unit.

**RECOMMENDATION**

Petitioners have established for Loft Board coverage purposes that three units in the building were residentially occupied for at least 12 consecutive months during the window period and that they are protected occupants. Petitioners' application should be granted.

Raymond E. Kramer  
Administrative Law Judge

July 12, 2016

SUBMITTED TO:

**RICK D. CHANDLER, P.E.**  
*Commissioner*

APPEARANCES:

**MICHAEL KOZEK, ESQ.**  
*Attorney for Petitioner Christian Stathis*

**DAVID F. YAHNER, ESQ.**  
*Attorney for Petitioner Laura Aviva*

*No appearance by or for respondent*

**ORDER**

**NEW YORK CITY LOFT BOARD**

*In the Matter of the Application of*

**CHRISTIAN STATHIS AND LAURA AVIVA**

**Loft Board Order No. 4764**

**Docket No. TR-1239**

**RE: 145 Grand Street  
New York, New York**

**IMD No. 10934**

**ORDER**

Since the Owner registered the Building, the Units and Tenants as protected occupants, the New York City Loft Board ("Loft Board") rejects as moot the Report and Recommendation of Administrative Law Judge Raymond E. Kramer dated July 12, 2016 ("Report").

**BACKGROUND**

On March 11, 2014, Christian Stathis, occupant of the second floor unit and Laura Aviva (collectively "Tenants"), occupant of the fourth floor (collectively "Units") in the building located at 145 Grand Street, New York, New York ("Building"), filed a joint application seeking Article 7-C coverage for their respective units pursuant to § 281(5) of the Multiple Dwelling Law ("MDL") and protected occupant status. No answers were filed.

The Loft Board transferred the application to the Office of Administrative Trials and Hearings, which assigned the matter to Administrative Law Judge Raymond E. Kramer for adjudication.

On July 9, 2015, Judge Kramer issued a Memorandum Decision denying Wang & Associates, LLC's ("Owner") motion to vacate its default, finding that Owner's motion was untimely and that Owner did not establish good cause for failing to file an answer.

On July 12, 2016, Judge Kramer issued the Report recommending a finding that the Building is an interim multiple dwelling ("IMD") pursuant to MDL § 281(5) containing three IMD units, the second, third and fourth floor units and that the Tenants are the protected occupants of their respective units.

On February 23, 2017, Owner filed an application registering the Building as an IMD, the second, third and fourth floor units as IMD units and Tenants as the protected occupants of their respective units. On May 4, 2017, Owner filed an application to register Zhi Yu Wang as the current occupant of the third floor unit. The Loft Board issued an IMD number for the Building on May 16, 2017. As more than forty-five (45) calendar days have passed since Owner filed the registration application, Owner may not seek decoupage of the Building pursuant to Title 29 of the Rules of the City of New York § 2-05(b)(5).

**CONCLUSION**

The Loft Board rejects the Report only to the extent that the coverage and protected occupant claims raised by Tenants are moot.

The application is deemed dismissed as moot. The second and fourth floor units are IMD units and Tenants are the protected occupants of their respective units.

DATED: April 19, 2018



Renaldo Hylton  
Chairperson

Board Members Concurring: Carver, Barowitz, Hernandez, DeLaney, Schachter, Hylton

Board Members Absent: Roche

DATE LOFT BOARD ORDER MAILED: **APR 27 2018**

## Opinions from the April 19, 2018 Loft Board Meeting

### #9, Stathis and Aviva, 145 Grand Street

Opinion of Chuck DeLaney:

As the Loft Board tenant representative, I voted in favor of adopting this order. However, I am concerned with the language that suggests the Loft Board “rejects” the Report and Recommendation of the OATH judge in this case. There was a lengthy trial and issues were raised and addressed in the Report and Recommendation. That the landlord registered the building making the tenant application moot should not negate the findings in the Report.

The problem here seems to stem from the language in the Loft Board’s rules which limits its options with regard to a Report and Recommendation proffered by OATH: “The Loft Board may accept, reject, remand, defer or modify the disposition recommended by...” (29RCNY 1-06(n)).

This apparently leaves the Board no relevant verb to apply to the circumstances in this case. Perhaps the rule should make clear that in a situation such as this, where a report is issued, with a recommendation that the application should be granted, but the landlord folds its hand by registering the building prior to the Board taking action, that the Board has the option of giving its endorsement to the contents of the Report and Recommendation.