

# ***Matter of American Package Co., Inc.***

OATH Index Nos. 2206/13 & 2207/13 (Nov. 15, 2013)

[Loft Bd. Dkt. Nos. LC-0161 & TR-1014]

Tenants filed coverage application for 13 units. Owner registered the building and all but one unit that sought coverage. For the contested unit, ALJ finds that a skylight is not a window within the meaning of section 281(5) of the MDL and recommends denial of tenant's coverage application. The remaining 12 units are covered.

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

*In the Matter of*  
**AMERICAN PACKAGE COMPANY, INC. and  
VARIOUS TENANTS OF 226 FRANKLIN STREET**

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### **REPORT AND RECOMMENDATION**

**KEVIN F. CASEY**, *Administrative Law Judge*

On April 5, 2012, the Loft Board referred a coverage application for 20 tenants and 13 units to this tribunal. *See* Appendix A (List of Applicants). On or about August 28, 2012, the building's owner, American Package Company, Inc., registered the building and all of the units, including unit G53, under section 281(5) of the Multiple Dwelling Law (MDL). On October 15, 2012, the owner filed a separate application contesting coverage of unit G53 as an interim multiple dwelling (IMD) unit.

On July 29, 2013, the parties agreed to consolidate the applications and that all the coverage applications had been resolved and the units registered, except for Fredrick M. Urbanelli in unit G53 (Tr. 4-5; Urbanelli Mem. at 1; Owner Mem. at 1). The parties also agreed that the only disputed issue regarding coverage of unit G53 was whether the skylights in the unit qualify as windows within section 281(5) of the MDL. They further agreed that the issue should be decided on written submissions. Following receipt of written submissions from each side, including responses to a supplemental request for information, the record was closed on October 24, 2013.

For the reasons that follow, I find that the skylights in unit G53 are not windows and they do not face a street, court, or yard. I recommend denial of Mr. Urbanelli's coverage application.

## **PRELIMINARY ISSUES**

### **Correction of Registration**

This matter began with an application by 20 tenants seeking coverage for 13 units (Appendix A, attached). The owner later registered the building and 26 units, including 12 of the units listed on the coverage application. For those 12 units, the coverage application is moot. *Matter of Tenants of 13-15 Thames Street*, OATH Index Nos. 210/13, 211/13, & 218/13 at 2 (Mar. 21, 2013) (“registration makes the coverage of the buildings moot”). Except for Mr. Urbanelli in unit G53, the owner did not contest that all of the other applicants were protected occupants. However, some of those uncontested applicants were omitted or misidentified on the registration statement (Frazer e-mail, June 26, 2013). Because the owner did not contest coverage for any applicant besides Mr. Urbanelli, the registration statement should be corrected to include the other tenants named on the coverage application. A list of corrections to be made to the registration statement is attached (Appendix B).

### **Amendment of Owner’s Application**

In its application contesting coverage of unit G53, the owner argued that the unit was exempt from the Loft Law because it was less than 550 square feet in area. *See* Application, OATH Index No. 2206/13, Loft Board Docket Number LC-0161. The Loft Law was later amended, reducing the minimum size of an IMD unit to 400 square feet. *See* MDL § 281(5), as amended by 2013 N.Y. Laws ch. 4, § 21 (eff. Jan. 30, 2013). On July 29, 2013, when the parties appeared for the first conference at this tribunal on the consolidated applications, the owner moved to amend its application to include the claim that unit G53 was not entitled to coverage because it lacked a window (Tr. 5). *See* 29 RCNY § 1-06(h) (“An applicant or affected party may submit amended pleadings at any time up to and including the date of the first scheduled conference.”). Because the request was timely and there was no prejudice, I granted the owner’s request to amend the application, over Mr. Urbanelli’s objection (Tr. 6). *See, e.g., Matter of Tenants of 101-107 South 6th Street, Brooklyn*, OATH Index No. 1290/12 (Apr. 27, 2012) (granting tenants’ motion to amend applications prior to hearing, where there was no prejudice to owner who would have opportunity to contest coverage at a hearing).

## **ANALYSIS**

The MDL provides that in order for a unit to be covered as an IMD, among other things, the unit must have “at least one window opening onto a street or a lawful yard or court as defined in the zoning resolution for such municipality.” MDL § 281(5).

It is undisputed that there are no windows in any of the walls of unit G53 (Urbanelli Mem. at 1). Instead, the unit has three skylights, two of which are approximately 90 inches by 90 inches and one which is approximately 60 inches by 40 inches. It is also undisputed that the skylights are in the ceiling and do not open (Shapiro e-mail, Oct. 21, 2013; Frazer e-mail, Oct. 24, 2013). Mr. Urbanelli submitted photos showing that the skylights face the sky and that the panes are lined with chicken wire (Frazer e-mail, Oct. 24, 2013; Appendix C).

In support of a finding that a skylight qualifies as a window under the MDL, Mr. Urbanelli asserts that the Loft Law should be broadly construed to spread its beneficial impact as wide as possible. *See, e.g., Ass’n of Commercial Property Owners, Inc. v. NYC Loft Bd.*, 118 A.D.2d 312, 318 (1st Dep’t 1986), *aff’d*, 71 N.Y.2d 915 (1988) (“Given the choice of two interpretations of the Loft Law, one restricting coverage and one broadening it, the remedial nature of the legislation forcefully argues for the adoption of the latter course. . . . To the extent the Loft Law is restricted in its coverage, the purpose of the law is defeated.”) (citation omitted). Mr. Urbanelli also asserts that skylights may be used to meet the minimum light and air requirements for the legalization standards applicable to lofts. *See, e.g.*, MDL § 277(7)(e)(i) (a kitchenette shall be ventilated by natural or mechanical means and, if ventilated by natural means, “[w]hen the space is located at the top story, the window or windows may be replaced with a skylight . . . .”); *see also Matter of 545 Broadway Tenants’ Association*, OATH Index No. 1090/03 (Aug. 3, 2005) [Loft Bd. Dkt. No. BP-0044], *adopted*, Loft Bd. Order No. 2973 (Oct. 20, 2005) (Loft Board adopted tenants’ alternate plan for meeting light and air requirements by installing skylights to legalize IMD). Mr. Urbanelli therefore claims this tribunal should interpret the term “window” in section 281(5) to include a skylight.

The owner claims that the plain language of the statute requires a window. *See Doctors Council v. NYC Employees’ Retirement System*, 71 N.Y.2d 669, 674-75 (1988) (“It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature, and where the statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used.”) (quoting *Patrolmen’s Benevolent Assn. v. City of New York*, 41 N.Y.2d 205, 208 (1976)). The owner cites several sections of the Administrative Code and MDL to show that the legislature distinguishes between a window and skylight and specifically provides when a skylight may

substitute for a window. *See, e.g.*, Admin. Code § 27-2059(a)(3) (“For a room located on the top story, a skylight of the dimensions required in subdivision b may be substituted for a window.”); MDL § 178 (“Where the stair and public halls are not provided on each story with windows opening to a street, yard or court, a skylight equipped with ridge ventilators having an opening of forty square inches or more shall be provided . . .”).

A skylight is not a window. The plain meaning of “window” is “an opening in a wall or side of a building . . . to admit light or air, or both, and to afford a view of what is outside or inside.” Oxford English Dictionary (Online ed. 2013); *see also* Merriam-Webster Dictionary (Online ed. 2013) (“an opening especially in the wall of a building for admission of light and air that is usually closed by casements or sashes containing transparent material (as glass) and capable of being opened and shut”). Here, the parties agree that the skylights in unit G53 are located in the ceiling and do not open. Thus, the skylights do not satisfy the requirements of section 281(5) of the MDL. Not only do the skylights not open, they do not face a street, yard, or court. Instead, they face the sky. To find that these skylights are windows which open onto a street, yard, or court would ignore the statute’s plain command.

While the Loft Law is meant to cover as many applicants as possible, I cannot look beyond an unambiguous statute to consider the legislative history or intent. *Meltzer v. Koenigsberg*, 302 N.Y. 523, 525 (1951) (“It is not allowable to interpret what has no need of interpretation, and when the words have a definite and precise meaning, to go elsewhere in search of conjecture in order to restrict or extend the meaning.”) (quoting *McCluskey v. Cromwell*, 11 N.Y. 563, 601 (1854)). Even if I looked beyond the plain wording of the statute, the outcome would remain the same in this case. It may be possible that a skylight could serve the same purposes as a window, as a particular skylight could provide light, ventilation, and access to the unit in case of a fire. Here, however, as these skylights do not open they cannot provide ventilation. And, because of their location and size, it is unlikely that they could allow for emergency access to the unit.

Accordingly, the skylights of unit G53 fail to qualify as a window facing a street, court or yard, within the plain language of the statute and fail to serve the same purposes of a window.

### **FINDINGS AND CONCLUSIONS**

1. The skylights in unit G53 are not windows within the meaning of section 281(5).

2. Unit G53 does not meet the requirements for coverage as an IMD.

**RECOMMENDATION**

I recommend that Mr. Urbanelli's application to cover unit G53 be denied and the owner's application to decover that unit be granted. The remaining applicants who sought coverage under the Loft Law are protected occupants and their units are covered.

Kevin F. Casey  
Administrative Law Judge

November 15, 2013

SUBMITTED TO:

**ROBERT D. LIMANDRI**  
*Chair*

APPEARANCES:

**DAVID E. FRAZER, ESQ.**  
*Mr. Urbanelli's Attorney*

**SMITH & SHAPIRO**  
*Owner's Attorney*

**BY: HARRY SHAPIRO, ESQ.**

APPENDIX A  
COVERAGE APPLICANTS LB Dkt. No. TR-1014

Unit	Name
F2	Eric William Allison and Mary Ann Allison
F5	Marshall Weber and Chelsea Bailey
F105	Andrew Barlow
F106	Heather Troy and Michael K
F108	Camilo Cerro and Renee McNamara
F109	Robert Kolb and Tanya Kolb
F111	Andrew Frasz and Eric Frasz
F118	Oliver Haslegrave and Evan Haslegrave
F119	Alan Tansey
F121	Thiago de Mello Beuno
G25	Steffan Ringelmann
G51	Kathryn Downie
G53	Fredrick M. Urbanelli

APPENDIX B  
CORRECTIONS TO REGISTRATION STATEMENT

Unit	Correction
F5	Add Chelsea Bailey as tenant.
F106	Add Michael K as tenant.
F108	Correct spelling for <i>Camilo</i> Cerro and add Renee McNamara as tenant.
F109	Add Robert Kolb as tenant.
F118	Correct spelling for Oliver <i>Haslegrave</i> .
F119	Correct name for tenant should be Alan Tansey, without middle initial.
F121	Correct spelling for Thiago de Mello <i>Bueno</i> .

APPENDIX C  
PHOTOGRAPHS OF SKYLIGHTS IN UNIT G53

