

Matter of American Package Co. Inc.

OATH Index No. 1971/20 (Sept 28, 2020), *subsequent history*, Loft Bd. Order No. 5023 (Jan. 21, 2021), **appended**

[Loft Bd. Dkt. No. LS-0259; 226-240 Franklin Street, N.Y., N.Y.]

Owner filed an application seeking access to single unit. Occupant denied access and argued that application must be denied because the access notice did not comply with the Loft Board’s access rule, 29 RCNY 2-01(g). ALJ found that the owner’s first access notice lacked information regarding the scope of work to be performed and did not provide a range of five consecutive workdays for commencement of work as required by rule 2-01(g). Denial of application recommended.

The owner subsequently withdrew the access application without prejudice. Loft Bd. Order No. 5023 (Jan. 21, 2021).

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

In the Matter of
AMERICAN PACKAGE CO. INC.
Petitioner

REVISED REPORT AND RECOMMENDATION

INGRID M. ADDISON, *Administrative Law Judge*

This is an access application brought by petitioner, American Package Co. Inc., the owner of the interim multiple dwelling at 226-240 Franklin Street, New York, under Article 7-C of the Multiple Dwelling Law (“MDL”) and section 2-01(g) of the Loft Board’s rules. The owner seeks access to unit G12 to perform legalization work as described in the approved narrative statement.

The Loft Board received the application on February 14, 2020 and copies were served by regular and certified mail on February 11, 2020, on Theodore C. Lockhart, the residential occupant of unit G12 (ALJ Ex. 1). An answer from Mr. Lockhart was received by the Loft Board on February 28, 2020 (ALJ Ex. 2).

Settlement conferences were conducted by Administrative Law Judge Noel R. Garcia on May 12, June 24, and July 1, 2020, but the matter did not settle.

Due to the COVID-19 pandemic a video trial was conducted remotely by WebEx on September 3, 2020. Both parties were represented by counsel. Petitioner presented its case through documentary evidence. No witnesses were called. The record was closed on September 11, 2020.

ANALYSIS

On December 10, 2019, the owner mailed a notice to Mr. Lockhart seeking access to unit G12 “to complete the legalization work listed for the Unit in the approved narrative statement dated August 2, 2018.” ALJ Ex. 1, Ex. D (first access notice). The notice stated that the work was expected to take more than 5 consecutive business days and it asked Mr. Lockhart to select a starting date from among January 20, 21, 22, 23 or 27, 2020. The notice also indicated that the work would be performed by JDP Design Construction Inc. *Id.*

On December 29, 2019, Mr. Lockhart informed the owner that he “was declining your request to begin work” on any of the proposed January dates “because there are issues in the Amended Narrative Statement which need to be discussed” (ALJ Ex. 2). Mr. Lockhart asked to defer access to his unit until after an upcoming Loft Board conference which was scheduled to discuss the concerns of all the affected tenants in the building.

On January 2, 2020, the owner wrote that since Mr. Lockhart did not choose a date for the work to begin, he set January 20, 2020 as the start date (ALJ Ex. 1, Ex. E) (second access notice). The second access notice indicated that the work was expected to take three to four months to complete (*Id.*).

On January 21, 2020, Violet Lautan, the owner’s office manager, and Sean Singh of JBS Project Management knocked on the door to unit G12. Mr. Lockhart opened the door, but he refused to let them in (ALJ Ex. 1: Aff. of V. Lautan).

Although there appears to be no dispute that Mr. Lockhart refused access when the owner’s agents knocked on his door, he argues that the application should be dismissed because the owner did not comply with the Loft Board’s access rule, 29 RCNY § 2-01(g)(1), in that the first notice did not include the scope of work to be done or provide a range of five consecutive work days for the work to begin (Tr. 6).

Section 2-01(g)(1) of the Loft Board's rules, captioned "Notice to occupants of proposed work, repairs and inspections and occupant's obligation to provide access," requires that, unless otherwise agreed, an owner must give an occupant a request for access and include the approximate start date, duration, and scope of work to be performed. In light of important privacy concerns, the owner has the burden of proving compliance with Loft Board's straightforward written notice requirements for access application. *Matter of 141 Spencer LLC*, OATH Index No. 2311/15 at 3 (Aug. 6, 2015), *adopted*, Loft Bd. Order No. 4443 (Nov. 19, 2015), *citing*, *Matter of Pelli*, Loft Board Order No. 2604 (Jan. 23, 2001).

First, regarding the scope of work argument, section 2-01(g)(1) requires an owner to provide written notice of the scope of all work to be performed within an occupant's unit. The Loft Board has noted:

Although the rule does not indicate how specific the description of the work the owner seeks access to undertake should be, the description should be specific enough to inform tenants which areas of their apartments will be affected and to provide tenants some idea of the degree to which the work will interfere with the use of their unit.

Matter of 20 Beaver Street LLC, Loft Bd. Order No. 3086 at 2 (July 20, 2006).

The owner argues sufficient notice of the scope of work was provided because the access notice refers to the work that was provided in the narrative statement. Mr. Lockhart argues that the notice was insufficient because the narrative statement was not attached to the access notice.

In *Matter of 20 Beaver Street LLC*, the Loft Board rejected the argument the scope of work requirement could be met by "grafting the narrative statement" onto the access notice.

The conclusion that a tenant has actual notice of proposed work simply because the tenant possesses the narrative statement would defeat the purposes underlying 29 RCNY § 2-01(g)(1). The narrative statement lists the broad range of work planned for legalizing an entire building. The access notice serves to identify the particular work intended for part of the tenant's unit on specified dates. A tenant does not have to comb through the narrative statement to determine the work an owner is seeking access to perform in the tenant's residence on the designated dates.

Matter of 20 Beaver Street LLC, Loft Bd. Order No. 3086 at 3.

To illustrate, counsel for the owner indicated pages 76 to 78 refer to Mr. Lockhart's loft (Tr. 8).

In addition, the first access notice failed to provide a range of five consecutive working days for commencement of the work as required by section 2-01(g)(1) of the Board's rules. The initial access notice "need not provide an exact date for the work, but must provide... a range of five consecutive working days during which work which is expected to require more than one consecutive working day will begin" 29 RCNY§ 2-01(g)(1). Here, the work was expected to take more than one day, but the owner did not provide "a range of five consecutive working days" for the commencement of work. The five days offered by the owner in the first access notice, January 20, 21, 22, 23, and 27, are not five consecutive workdays, as January 20 was a holiday (Martin Luther King Day) and January 24, a Friday, was skipped over, as the owner jumped to January 27, the following Monday. As the Loft Board has required strict compliance with the notice provision of its access rule, this too is a basis to deny the application.

FINDING AND CONCLUSION

1. Petitioner failed to prove that the December 10, 2019 access notice provided the occupant with sufficient notice of the scope of work, as required by section 2-01(g)(1) of the Loft Board's rules.
2. In its December 10, 2019 access notice petitioner failed to provide a range of five consecutive work days for the start of work, as required by section 2-01(g)(1) of the Loft Board's rules.

RECOMMENDATION

Petitioner's access application for unit G12 should be denied. Nonetheless, the parties are encouraged to work together to arrange for access so that the legalization work can be completed.

Ingrid M. Addison
Administrative Law Judge

September 28, 2020

SUBMITTED TO:

MELANIE E. LA ROCCA

Commissioner

APPEARANCES:

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Attorneys for Respondent

BY: DAVID FRAZER, ESQ.

ORDER

NEW YORK CITY LOFT BOARD

In the Matter of the Application of

AMERICAN PACKAGE COMPANY INC.

Loft Board Order No. 5023

Docket No.: LS-0259

**RE: 226-240 Franklin Street¹
Brooklyn, New York**

IMD No.: 30077

ORDER

On February 14, 2020, American Package Company Inc. ("Owner"), the owner of the building located at 226-240 Franklin Street, Brooklyn, New York ("Building"), filed with the New York City Loft Board ("Loft Board") an application seeking an order to direct Theodore Lockhart ("Tenant"), the residential occupant of Unit G12, to provide Owner with access to his unit. The Loft Board staff docketed Owner's application as LS-0259.

On February 28, 2020, Tenant filed an answer in response to Owner's access application.

The Loft Board staff transferred the case to the Office of Administrative Trials and Hearings ("OATH"), which assigned the matter to Administrative Law Judge Ingrid M. Addison for adjudication.

On May 12, 2020, June 24, 2020, and July 1, 2020, settlement conferences were conducted at OATH. However, the matter did not settle.

On September 3, 2020, a trial was held remotely by video.

On September 11, 2020, the record was closed.

On September 28, 2020, Judge Addison issued a Report and Recommendation, in which she recommended that Owner's access application be denied on two grounds. First, Owner had failed to establish that Owner's first access notice had provided Tenant with sufficient notice of the scope of work, as required by the Loft Board's rules. Second, in its first access notice, Owner had failed to provide a range of five consecutive workdays for the start of work, as required by the Loft Board's rules.

By a letter dated November 9, 2020, Owner informed Judge Addison and the Loft Board that, while it still needed access to Unit G12, Owner was withdrawing its access application without prejudice. Owner explained that it had served a new access notice on Tenant and that it would commence a new proceeding if necessary.

Owner's access application is deemed withdrawn without prejudice.

DATED: January 21, 2021

¹ Alternative addresses include 90-94 Freeman Street, 100-118 Freeman Street, and 91-115 Green Street.



Renaldo Hylton
Chairperson

Board Members Concurring: Barowitz, Roche, Hernandez, Hylton, DeLaney, Torres, Roslund, Rajan, Hylton

DATE LOFT BOARD ORDER MAILED: **JAN 29 2021**