Order

NEW YORK CITY LOFT BOARD

In the Matter of the Application of	**Loft Board Order No. 3980**
DANIEL PELLI	**Docket No. LT-0011**
	RE: 5 West 21st Street New York, New York
	IMD No. 10567

ORDER

The New York City Loft Board ("Loft Board") accepts the Report and Recommendation ("Report"), dated January 27, 2012 issued by Administrative Law Judge Alessandra F. Zorgniotti.

In *Matter of Bryne and Connors*, Loft Board Order No. 3016 ("Order") dated February 16, 2006, the Loft Board issued a harassment order against Daniel Pelli ("Owner"), the owner of the building located at 5 West 21st Street, New York, New York and imposed fines totaling $5,000 against the Owner. The Loft Board prohibited the Owner from filing an application seeking a termination of the harassment finding for two-years after the date of the harassment order.

On August 26, 2011, well after the two-year period, the Owner filed an application seeking termination of a harassment finding pursuant to Title 29 of the Rules of the City of New City ("29 RCNY") § 2-02(d)(2)(i). On September 26, 2011, William Connors and Susan Byrne ("Tenants"), the tenants in the fifth floor unit, filed an answer opposing the application. The Loft Board did not receive any other answer to the application.

The Loft Board forwarded the application to the Office of Administrative Trials and Hearings, which assigned it to Judge Kara Miller for conferencing and Judge Alessandra Zorgniotti for a hearing. During a conference on January 9, 2012, the Tenants withdrew their answer to the application on the record. On January 17, 2012, Judge Zorgniotti conducted an inquest on the application. The Owner was the only witness. In her Report, Judge Zorgniotti recommended that the application be granted. We agree.

The Loft Board finds that, pursuant to 29 RCNY§ 2-02(d)(2)(i), the Owner has satisfied all of the requirements for terminating the harassment finding. The record shows that the Tenants withdrew their answer and their opposition to the termination of the harassment order due to the separate agreement; the Department of Buildings issued a final residential certificate of occupancy on April 12, 2011; the Owner has paid all fines;

and the building's registration is current. The Loft Board records show that there are no other orders of harassment outstanding for the building.

Accordingly, this application for an order terminating the harassment finding in the Order is granted.

DATED: March 1, 2012

Robert D. LiMandri
Chairperson

DATE LOFT ORDER MAILED: MAR 07 2012

Members Concurring: Bolden-Rivera; Foggin; Barowitz; Mayer; Spadafora; Delaney; Schachter; Shelton; LiMandri (9)

Members Dissenting: (0)

Matter of Pelli

OATH Index No. 911/12 (Jan. 27, 2012)
[Loft Bd. Dkt. No. LT-0011; 5 West 21st Street, New York, N.Y.]

Owner filed application to terminate prior Loft Board Order finding harassment of tenants. Application conformed to all requirements for consideration of such an application. ALJ recommended that finding of harassment be terminated.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DANIEL PELLI
Applicant

REPORT AND RECOMMENDATION

ALESSANDRA F. ZORGNIOTTI, *Administrative Law Judge*

This application was brought by Daniel Pelli, the owner of the interim multiple dwelling ("IMD") located at 5 West 21st Street, New York, New York, pursuant to title 29, section 2-02(d)(2)(i) of the Rules of the City of New York ("RCNY"). Applicant seeks an order to terminate a prior Loft Board Order finding harassment of tenants (ALJ Ex. 2).

A hearing on the application was held on January 17, 2012. For the reasons below, I find that the application conforms to all requirements for consideration of such an application and recommend that it be granted.

BACKGROUND

On March 2, 2006, the Loft Board found that applicant had harassed tenants, William Conners and Susan Byrne ("tenants") and imposed a $5,000 fine and prohibited an application seeking termination of this determination for two years. *Matter of Byrne*, Loft Bd. Order No. 3016 (Feb. 16, 2006), *adopting*, OATH Index No. 223/04 (June 20, 2005) (ALJ Ex. 1).

On August 26, 2011, applicant filed the instant application seeking to have the harassment finding terminated (ALJ Ex. 2).

By answer dated September 25, 2011, the tenants opposed the application and alleged that applicant engaged in further harassment (ALJ Ex. 3). Specifically the tenants alleged that applicant: sought access to the IMD unit for vindictive purposes; made misrepresentations to the Loft Board; threatened and menaced them; denied them adequate heat and telephone services; interfered with their mail service; filed a fraudulent certificate of occupancy; and rented units in the building as illegal hotel rooms.

On January 9, 2012, applicant and tenants appeared at OATH before Administrative Law Judge Kara J. Miller for a settlement conference. At the conference the parties reached an agreement with respect to the selling of the tenants' fixtures and their vacating the IMD unit. Relevant to the instant application, tenants also agreed to withdraw their answer opposing the application to have the prior harassment finding terminated (Tr. 10; ALJ Ex. 4). A hearing on the application was scheduled for January 17, 2012.

At the hearing, only applicant appeared and an inquest was held. Applicant, an attorney who appeared *pro se*, submitted a copy of the IMD's certificate of occupancy dated April 12, 2011 (Pet. Ex. 1) and a December 7, 2011, letter from the Loft Board's Public Information Officer stating that the IMD is registered and there are no outstanding fines or fees due (Pet. Ex. 2). Even though the application was unopposed, applicant denied that any harassment of tenants occurred and provided documentation and testimony in response to the withdrawn allegations in the answer (Tr. 16-33; Pet. Exs. 3, 4, 5).

ANALYSIS

Pursuant to Loft Board rule 2-02(d)(2)(i) "a landlord . . . found guilty of harassment . . . may apply to the Loft Board . . . following the period of time specified in the order containing the finding of harassment, for an order terminating such finding." The Loft Board may grant such relief if it finds that no further harassment has occurred, the landlord has obtained at least a temporary certificate of occupancy, has paid all fines assessed, and has properly registered the building with the Loft Board. 29 RCNY § 2-02(d)(2)(i)(A)-(D).

It is more than two years since Loft Board Order Number 3016 was issued in 2006 and consideration of the above-listed factors indicates that the harassment finding should be terminated.

First, there is no reliable evidence in the record to support a finding that applicant engaged in tenant harassment since 2006. Applicant's sworn testimony that there was no harassment was uncontroverted. The tenants' withdrawn answer should not be considered evidence of harassment. In fact, based upon the terms of the January 9, 2012 settlement, the tenants have no complaints against applicant and do not oppose his application to terminate the harassment finding. *Matter of Rokosz*, OATH Index No. 1970/05 at 3 (Mar. 27, 2006), *adopted*, Loft Bd. Order No. 3054 (May 18, 2006) (where tenants withdrew their answers pursuant to a settlement, "IMD tenants have no complaints against the current owner since they do not oppose her application to terminate the harassment finding."); *see also Matter of Falcon Properties Inc.*, OATH Index No. 444/07 at 2 (Mar. 27, 2007), *adopted*, Loft Bd. Order No. 3438 (May 15, 2008) (tenants' withdrawal of answer and objections pursuant to a negotiated settlement, as well as their failure to present evidence at the hearing, supports owner's assertion that no further harassment has occurred); *Matter of 145 Reade LLC*, OATH Index No. 1588/03 at 2 n.1 (Nov. 25, 2003), *adopted*, Loft Bd. Order No. 2839 (Jan. 15, 2003) (declining to consider answer that was withdrawn by tenant).

Moreover, applicant has obtained a certificate of occupancy in 2011 in compliance with Article 7-C of the Multiple Dwelling Law. Applicant is also apparently in compliance with the regulations relating to registration of the IMD and there are no outstanding fines.

Thus, the application conforms with all requirements set forth in Loft Board rule 2-02(d)(2)(i).

RECOMMENDATION

I therefore recommend that the application for termination of the finding of harassment be granted.

Alessandra F. Zorgniotti
Administrative Law Judge

January 27, 2012

SUBMITTED TO:

ROBERT D. LIMANDRI
Chair

APPEARANCES:

DANIEL PELLI, ESQ.
Applicant

No Appearance by Respondent-Tenants

NOTICE

A party aggrieved by a determination of the Loft Board may file an application for reconsideration of the determination. Under 29 RCNY § 1-07(b), an aggrieved party must serve the reconsideration application on the affected parties to the prior proceeding. Service of the application shall be completed in accordance with 29 RCNY § 1-06. The aggrieved party must then file the application at the Loft Board's office along with proof of service and the required application fee. Under section 1-07(b), "(t)o be considered timely, a reconsideration application must be received by the Loft Board within 30 days of the date of mailing by the Loft Board of the determination sought to be reconsidered."

Pursuant to 29 RCNY §1-07(d):

> A Loft Board determination pursuant to section 1-06 if these rules shall be the final agency determination for the purpose of judicial review, unless a timely application for reconsideration of the determination has been filed. In such case, (i) if the Loft Board modifies or revokes the underlying order, such revocation or modification shall be deemed the final agency determination from which judicial review may be sought; (ii) if the Loft Board denies the reconsideration application, the underlying order shall be deemed the final agency determination; and (iii) if the Loft Board decided the reconsideration application by remanding the matter to the hearing officer for further proceeding, neither the underlying order nor the remand order shall constitute a final agency determination, and no judicial review may be sought until such time as the Loft Board issues a final agency determination following the remand.