



MEMORANDUM

TO: REF Attorneys, Paralegals & Law Students

DATE: 11/21/90

FROM: Mary Sabatini DiStephan *MSD*

RE: Loft Law

Attached Please find a copy of a final deficiency letter written by our resident Loft Law expert, Ken DeMario, based on excessive long-term vacancies at a building covered by the Loft Law (Article 7-C of the Multiple Dwelling Law).

I am distributing it to make you aware of the Loft Law issues and to commend Ken on the clarity of his discussion of a rather complex subject.

Great job, Ken.

MSD/add



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DEPARTMENT OF LAW
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FREDERICK K. MEHLMAN
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Real Estate Financing Bureau

November 21, 1990

Mordechai Lipkis, Esq.
11 Riverside Drive
New York, NY 10023

Re: 49 Walker Street
New York, NY
File No. CC90-0003

Dear Mr. Lipkis:

The subject offering plan and related exhibits and supporting documentation submitted by you on May 24, 1990 pursuant to Section 352-eeee of the General Business Law and 13 NYCRR Parts 18 and 23 is rejected for filing.

The Department of Law is unable to make the finding that an excessive number of long-term vacancies did not exist on May 24, 1990, the date the prospectus was submitted to the Department. Without such a finding the plan cannot be accepted for filing. GBL §352-eeee(2)(e).

The affidavit of Mordechai Lipkis, dated May 22, 1990, concerning long-term vacancies states that there are "no vacant dwelling units in the property and, therefore, there is no long-term vacancies of dwelling units [sic]. In support of this statement, the affidavit states:

The current Certificate of Occupancy does not permit residential use. None of the vacant lofts can at this time be rented for residential use.

The plan, at page 41, states that all of the 4 apartments being offered for sale are subject to Article 7-C of the Multiple Dwelling Law (the Loft Law). It further indicates that only unit 4B is occupied (p. 15).

The statement in the affidavit that none of the vacant lofts can be rented for residential use is not correct.

Section 283 of the MDL specifically states:

Occupancy permitted. Notwithstanding any other provision of this chapter or any other law, code, rule or regulation, occupancy for residential purposes of residential units covered by this article is permitted, if such occupancy is in compliance with this article.

Sections 286(6) (sale of fixtures) and (12) (sale of rights) of the MDL and the regulations adopted by the New York City Loft Board pursuant to such sections further establish that the right to rent such spaces for residential use, despite the lack of a residential certificate of occupancy, extends beyond the initial occupants covered by the Loft Law. Units covered by the law may continue to be rented for residential purposes to future generations of tenants as the building proceeds toward the statutory goal of obtaining a residential certificate of occupancy pursuant to the mandates of Section 284 of the MDL.

Further, Section I (J) (2) of Loft Board Coverage Regulations provides that any unit subject to Article 7-C which becomes vacant pursuant to the eviction of a residential occupant remains subject to the legalization and rent regulation requirements of Article 7-C as a residential unit, unless the landlord converts such unit to a legal non-residential use and files with the Loft Board an irrevocable recorded covenant that the unit will not be re-converted to residential use for fifteen (15) years.

There is no suggestion in this plan or supporting documents that the sponsor intended to convert units 2B, 3B and 5B to commercial uses in conformity with the existing certificate of occupancy or that an irrevocable covenant to such effect was ever filed. On the contrary, by the terms of the plan, the sponsor intends to sell the units as residential lofts and to continue to comply with Section 284 of the MDL to obtain a residential certificate of occupancy.

Therefore, on the undisputed evidence that units 2B, 3B and 5B, 75% of the units offered for sale, have been vacant for more than five months prior to submission of the prospectus, the plan is rejected for filing.

The Department will not consider any further submissions on the proposed offering plan unless tenants are served with a new red herring, the four-month statutory time period for the Department to act has elapsed, a new deposit on the filing fee is submitted and the Department can make the applicable statutory findings as of the new submission date.

The issuance of this deficiency letter shall not be construed to be a waiver of or limitation on the Attorney General's authority to take enforcement action for violation of Article 23-A of the General Business Law or other applicable provisions of law.

Sincerely,



KENNETH E. DEMARIO
Assistant Attorney General