

Matter of 67 Vestry Street, LLC

OATH Index No. 2950/10 (Aug. 3, 2010)

[Loft Bd. Dkt. No. LB-0181; 67 Vestry Street, New York, N.Y.]

ALJ recommended that the Loft Board declare IMD unit abandoned by protected occupant who died, leaving unit vacant. Deceased's estate withdrew all claims to unit.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
67 VESTRY STREET, LLC
Petitioner

REPORT AND RECOMMENDATION

ALESSANDRA F. ZORNIOTTI, *Administrative Law Judge*

This abandonment application was brought by petitioner 67 Vestry Street, LLC, the owner of the interim multiple dwelling ("IMD") located at 67 Vestry Street, New York, New York, pursuant to section 282 of Article 7-C of the Multiple Dwelling Law and title 29, sections 1-06 and 2-10(f) of the Rules of the City of New York ("RCNY"). The owner seeks a declaration that the IMD unit 2SE (also known as 2A) in the building has been abandoned based on the death of the sole occupant of record, John Mohr (ALJ Ex. 1).

The application was filed with the Loft Board on April 5, 2010 (ALJ Ex. 1). The Board's staff served the affected parties with notice of the application and an opportunity to answer by mail on April 15, 2010. Pursuant to 29 RCNY § 1-06(c), the affected parties had 30 days from the date of service completion to answer. No answers were filed.

On June 16, 2010 the Loft Board docketed the matter with this tribunal pursuant to 29 RCNY section 1-06(j)(2)(ii), and a hearing was scheduled for July 19, 2010 (ALJ Ex. 2). All affected parties were served by mail with a combined notice of the hearing and default on June 28, 2010, pursuant to 29 RCNY section 1-06(i)(1) (ALJ Ex. 2). None of the parties sought relief from default pursuant to 29 RCNY section 1-06(i)(2). At the hearing, only petitioner appeared and an inquest was held.

For the reasons set forth below, I recommend that the application be granted.

ANALYSIS

Mr. Leibowitz testified that he is the manager of the subject premises, which was purchased by 67 Vestry Street, LLC, on April 1, 2005 (Tr. 7; Pet. Ex. 1). At that time, unit 2SW1 was leased and occupied by John Mohr (Pet. Ex. 2).¹ According to Mr. Leibowitz, Mr. Mohr was the occupant of the unit (Tr. 9, 16). There is no evidence that anyone occupied the unit with Mr. Mohr and he is the only person listed on the lease.

Mr. Leibowitz testified that on September 17, 2009, he received a call from Mr. Mohr's cousin informing him of Mr. Mohr's death (Tr. 10-11). At the hearing petitioner presented a copy of Mr. Mohr's death certificate showing that he died on September 8, 2009 (Pet. Ex. 3).

Petitioner also submitted a Notice of the Public Administrator dated November 17, 2009, stating that the Public Administrator was taking "possession of and collecting the goods, chattels and credits of John Mohr," pursuant to Section 1118 of the Surrogate's Court Procedure Act of the State of New York (Tr. 12; Pet. Ex. 4). On February 25, 2010, the Public Administrator advised petitioner that it "surrenders all rights, titles and interests" that Mr. Mohr "had or may have had in the premises under" decedent's lease with 67 Vestry Street, LLC (Tr. 13; Pet. Ex. 5).

Mr. Leibowitz testified that since October 2009, no rent has been paid for the unit occupied by Mr. Mohr and that no one has made any claims regarding the unit (Tr. 15-16).

Petitioner timely filed this abandonment application with the Loft Board on April 5, 2010. *See* 29 RCNY § 2-10(f) (Lexis 2009).

The Loft Board rules define abandonment as "the relinquishment of possession of a unit and all rights relating to a unit . . . by the death of an IMD tenant, provided no family member, as defined in 29 RCNY § 2-08.1(c)(3), is denied the benefits of succession rights . . ." 29 RCNY § 2-10(f)(2) (Lexis 2009). In order for a petitioner to establish that a unit has been abandoned as a result of a death, "proof of the death . . . shall be made by the presentation of a death certificate, the testimony of a relative of the occupant alleged to be dead, or any other trustworthy evidence." 29 RCNY 2-10(f)(5) (Lexis 2009).

Here, petitioner submitted the protected occupant's death certificate. Petitioner also presented the credible testimony of the managing agent who stated that he was advised by a

¹ There is a discrepancy in the designations used for Mr. Mohr's unit. In the application the unit is identified as unit 2SE (2A) but the lease identifies it as 2SWI. At the hearing, counsel referred to the unit as 2SW, 2A, and 2SW1 (Tr. 10).

family member of Mr. Mohr's death, that no rents have been paid since his death, and that no one has made any claims regarding the unit. Petitioner also provided documentation from the Public Administrator demonstrating that decedent's estate had surrendered all rights, titles and interests to the unit. Accordingly, the petition should be granted. *Matter of Peachy*, OATH Index No. 746/09 at 5 (Dec. 3, 2008), *adopted*, Loft Bd. Order No. 3492 (Mar. 19, 2009); *Matter of 46 West 22nd Street, LLC*, OATH Index No. 1726/08 at 3 (May 1, 2008), *adopted*, Loft Bd. Order No. 3566 (Mar. 18, 2010).

FINDINGS AND CONCLUSION

1. John Mohr, the protected occupant of IMD unit 2SE or 2SW1 also known as unit 2A at 67 Vestry Street, New York County, died on September 8, 2009.
2. Decedent's estate surrendered all rights, titles and interests to the IMD unit.

RECOMMENDATION

I recommend that the Loft Board grant the application and declare the IMD unit occupied by Mr. Mohr to be abandoned.

Alessandra F. Zornio
Administrative Law Judge

August 3, 2010

SUBMITTED TO:

ROBERT D. LIMANDRI
Chair

APPEARANCES:

NEIL P. RITTER ESQ.
Attorney for Petitioner

No Appearance for Respondents