

MEMORANDUM

TO: REF Attorneys and Legal Assistants

DATE: 12/13/85

FROM: Mary Sabatini DiStephan/Nancy Kramer *MSD*

RE: Final Deficiency Letters

When offering plans contain major deficiencies (e.g., they lack certified financials, or financial terms are grotesquely inadequate) or where statutorily required findings cannot be made (e.g., no excessive long term vacancies), it may be appropriate to issue final deficiency letters. These are to be distinguished from the normal 45-day deficiency letters which give sponsors' attorneys the opportunity to cure them with redlines.

Please talk with Mary about this decision before issuing such a letter.

Attached is an example of a good final deficiency letter, and others are available from Mary. It is important that they be very complete and contain the statutory bases for rejection. Always keep in mind that these letters are more likely to be challenged in Article 78 proceedings than are 45-day letter rejections and should therefore be very carefully drafted.

MSD/NK/bw
Attachment



STATE OF NEW YORK
DEPARTMENT OF LAW

ROBERT ABRAMS
Attorney General

TWO WORLD TRADE CENTER
NEW YORK, NY 10047

(212) 488-7576

December 2, 1985

Bernard Fromartz, Esq.
26 Court Street
Brooklyn, New York 11242

Re: 150 Hicks Street
File No. C85-320

Dear Sir:

The subject offering plan and related exhibits and supporting documentation submitted by you on June 3, 1985 pursuant to 13 NYCRR Part 18 are rejected from filing. Attached to this letter is a partial list of deficiencies in the submission. The list is not intended to be comprehensive. The Department of Law expressly reserves the right to note additional deficiencies.

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 violations of Article 23-A of the General Business Law and other applicable provisions of law.

Very truly yours,

HARVEY FELDMEIER
Assistant Attorney General

HF/bw
Attachment

List of Deficiencies
150 Hicks Place

1. The proposed offering plan for 150 Hicks Street Owners Corp. omits disclosure of mortgage terms. The sponsor does not disclose the existence of a letter of commitment for planned institutional mortgage financing and, therefore, does not disclose all material terms of promised institutional financing. Prospective purchasers should not be left to guess and cannot be expected to make an informed decision without disclosure of these terms. Proposed alternative purchase money mortgage financing, even with disclosure of all terms required by the Attorney General's regulations (here not done), still leaves a prospective purchaser to guess. These omissions are materially adverse (see 13 NYCRR 18.3(s)).
2. The proposal omits required disclosure regarding sponsor control of the apartment corporation (see 13 NYCRR 18.3(v)(5)). Sponsor did not state when direct and indirect voting control of the corporation board would be surrendered. This is left to implication only.
3. The proposal omits required disclosure regarding the declaration of effectiveness (see 13 NYCRR 18.3(r)(1)). Sponsor did not represent that no closing may occur until an amendment confirming such declaration has been accepted for filing.
4. Findings required under §352-eeee of the General Business Law Cannot be made.
 - (a) The exact dates of the vacancy two of ten residential apartments cannot be verified, therefore, findings regarding no long-term vacancies cannot be made.
 - (b) Sponsor did not represent in the proposal that if not declared effective within 15 months of presentation, the plan must be deemed abandoned.
 - (c) Affidavits of service and no long term vacancy are missing from the file.
 - (d) The proposal does not represent that it cannot be amended to become an "eviction" plan.
5. The proposal inaccurately represents that directors may be elected by cumulative voting (page 54). The certificate of incorporation for the apartment corporation contains no such provision (see §618 of the Business Corporation Law).
6. The proposal fails to disclose purchasers' right to 30 days notice to cure a default under the subscription agreement (see §503 of the Business Corporation Law, also see 13 NYCRR 18.3(p)(4) and (7)).

List of Deficiencies

-2-

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7. The proposal omits footnotes disclosing the basis for budget projections (see 13NYCRR 18.3(g)(3)(i) through (XIV)). Expenses projected for the first year of cooperative operation, excluding mortgage costs, are lower than those shown for actual operations during the years 1983 and 1984. Operation of the cooperative is projected to begin on January 1, 1986. These representations unsubstantiated by any of the required footnoting, appear unrealistic and deceptively low.
 8. In view of the deficiencies noted above, the proposed offering plan does not meet the minimum requirements enumerated under 13NYCRR 18.1(d).