



MEMORANDUM

TO: REF Attorneys, Paralegals & Law Students

DATE: 11/24/87

FROM: Mary Sabatini DiStephan *MSD*

RE: Excessive Long-Term Vacancy Findings

For your information, attached please find a copy of a recent Supreme Court, Albany County decision, 62nd Street East Associates v. Robert Abrams, concerning final deficiency letters indicating that the Department of Law cannot make a finding of no excessive long-term vacancies. The Court stated that the letter should "adequately articulate how the Attorney General arrived at the conclusion that excessive long-term vacancies did exist".

When writing such a letter please be as comprehensive as possible and as in all final deficiency letters, let me see the letter before it is mailed.

MSD:kd

Attachment

NEW
DETERMINATION
ELTV

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of
62ND STREET EAST ASSOCIATES,

Petitioner,

For a judgment pursuant to Article 78 of
the Civil Practice Law and Rules

DECISION

-against-

Index No. 5644-78
RJI No. ST0955

ROBERT ABRAMS, Attorney General
of the State of New York,

Respondent.

APPEARANCES LIPPMAN & HASHMALL
 (David M. Hashmall of Counsel)
 Attorneys for Petitioner
 551 Fifth Avenue
 New York, New York 10176

ROBERT ABRAMS, Attorney General
of the State of New York
(Gerald J. Hurwitz of Counsel)
120 Broadway
New York, New York 10271

ROBERT F. DORAN, J.

Petitioner, a limited partnership, purchased 245-247 East 62nd Street, New York, New York on April 17, 1986. The real property consists of two contiguous apartment buildings, each containing 24 apartments.

At the time petitioner purchased the real property (April 17, 1986), there were 31 vacant apartments. Petitioner alleges all of the 31 apartments required extensive renovation and construction in order to be made habitable. Petitioner

claims many of the apartments lacked kitchens and bathrooms and virtually all of them were stripped of walls and floors and lacked usable plumbing lines and electrical lines.

Petitioner, soon after purchase, commenced a "gut renovation" project designed to make individual apartment units livable and to upgrade the buildings on a whole. Petitioner borrowed \$1,000,000 specifically for the renovation project. The \$1,000,000 represented more than 25% of the purchase price, and over \$750,000 has been expended.

On September 10, 1986, petitioner filed an offering plan with the Attorney General to convert the real property to cooperative ownership. On the date the plan was offered, the vacancy rate was 64.5%. Petitioner alleges that the "normal average vacancy rate for the two years prior to the submission of the plan on September 10, 1986 was 52.6%, and, therefore, the petitioner had met its burden of showing the absence of excessive vacancies under the two-prong test found in General Business Law §352-eeee(2)(e).

The Department of Law by letter dated May 7, 1987 rejected the offering plan on the basis that the Attorney General was unable to make a finding that, on the date the plan was submitted for filing, an excessive number of long-term vacancies did not exist.

The problem confronting the Court is that the rejection letter signed by an Assistant Attorney General, Cindy Freidmutter, failed to adequately articulate how the

Attorney General arrived at the conclusion that excessive long-term vacancies did exist.

In the second paragraph of the May 7, 1987 letter, the Assistant Attorney General merely alludes to the first prong of the test under General Business Law §382-eeee(2)(e) and does not articulate whether the vacancy rate was in excess of a percentage that is double the normal average vacancy rate for the building or group of buildings for two years prior to the January preceeding the date the offering statement or prospective was first submitted to the Department of Law.

In the brief of the Attorney General, it is clear that the Attorney General is alleging that it did make such a determination. However, the Court is confronted with a letter determination which does not state the basis for rejection.

The Court seems to be met with a situation that often occurs in zoning cases where a review of a denial or granting of a special permit or variance comes to a Court without any findings of fact being made by the local zoning board of appeals.

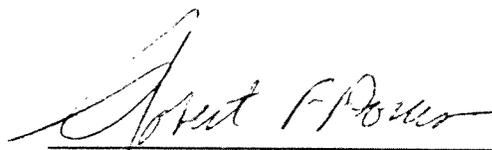
As stated in 24 Carmody-Wait 2d §145:347: "If the record of the proceedings under consideration by the court is barren of findings of fact or of the conclusions and reasons of the determinations, or fails to disclose private knowledge or information on which the decision is based, or is

otherwise incomplete so that proper review of the determination cannot be made, the matter will be remitted to the body or officer for further consideration or a de novo determination."

The Court concludes that on the basis of this record, it is necessary and appropriate to remit this matter to the Attorney General for him to articulate in full his findings and his reasons for rejecting the filing.

SUBMIT ORDER

Date November 17, 1987

A handwritten signature in cursive script, appearing to read "Robert F. Doran", written over a horizontal line.

Robert F. Doran, J.S.C.