

Matter of Bikman v New York City Loft Bd.

2007 NY Slip Op 30541(U)

March 28, 2007

Supreme Court, New York County

Docket Number: 0113398/2006

Judge: Emily Jane Goodman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EMILY JANE GOODMAN
Justice

PART 17

Index Number : 113398/2006
BIKMAN, CHARLA
vs
LOFT BOARD
Sequence Number : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered _____ in this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No *Debtors*

Upon the foregoing papers, it is ordered that this motion *is decided as*
affirmed

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the County Clerk's Desk (Room 41B).

Dated: 3/28/07

[Signature]

J.S.C.
EMILY JANE GOODMAN

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17

-----X

In the Matter of the Application of
Charla Bikman as Administrator of the
Estate of Minda Bikman,

Index No. 113398/06

Petitioner,

For a Judgment Pursuant to CPLR Article 78

-against-

NEW YORK CITY LOFT BOARD,

Respondent.

-----X

EMILY JANE GOODMAN, J.S.C.:

Petitioner Charla Bikman as Administrator of the Estate of Minda Bikman brings this Article 78 proceeding, pro se, to annul respondent New York City Loft Board (Board) Order No. 2770, dated January 9, 2003. Petitioner also seeks an order remanding this matter to the Board for an appraisal of tenant fixtures and improvements, and re-regulating the rent for the premises, pursuant to the Loft Law, Multiple Dwelling Law (MDL) §§ 280-286.

The late Minda Bikman was the tenant of a loft (Loft) on the third floor of the building located at 595 Broadway. The petition alleges that Ms. Bikman took possession of the Loft in 1974 and improved the raw space by installing a kitchen and bathroom and making other improvements that, together, are valued at more than \$40,000. Ms. Bikman's tenancy was governed by the Loft Law. Order 2770 held that the Loft was abandoned when Ms. Bikman died, and

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100 Nassau Street, New York, NY 10038.

that petitioner had no right to be reimbursed for the value of the improvements to the Loft.

MDL § 286 (6) provides that:

a residential tenant qualified for protection pursuant to this chapter may sell any improvements to the unit made or purchased by him to an incoming tenant provided, however, that the tenant shall first offer the improvements to the owner for an amount equal to their fair market value. Upon purchase of such improvements by the owner, any unit subject to rent regulation solely by reason of this article ... shall be exempted from the provisions of this article requiring rent regulation

29 RCNY § 2-09 (b) (1) provides, in relevant part, that: the occupant qualified for protection under Article 7-C [the Loft Law] shall be the residential occupant in possession of a residential unit, covered as part of an IMD [interim multiple dwelling].

The procedural history of this proceeding, and of the related litigation underlying it, is long and multi-branched, but for the most part, it is irrelevant here. Respondent argues, for example, that the Board's Order No. 3049, which denied petitioner's application for reconsideration of Order No. 2770, was correctly decided. Order No. 3049, however, is not before this court. The Board's rules provide that, when the Board denies an application for reconsideration, "the underlying order shall be deemed the final agency determination from which judicial review may be

sought." 29 RCNY § 1-07 (d) (ii). Accordingly, only Order No. 2770 is subject to review here. Respondent also argues that Charla Bikman waived any right to the sale of the fixtures in the Loft, pursuant to MDL § 286 (6), when she surrendered the keys to the Loft, as the result of certain litigation in the New York City Housing Court in which she, personally, was the defendant. However, Charla Bikman, in her personal capacity, could not waive any rights belonging to petitioner, and the ALJ's determination of abandonment was not based on this argument. Accordingly, the Housing Court litigation is irrelevant here.

The court turns, therefore, to the Order, which adopted the reasoning and the recommendation of the Administrative Law Judge (ALJ). The ALJ concluded that 29 RCNY § 2-09 (b) (1) expressly limits the right of sale to the protected occupant, and that the Estate was not a residential occupant qualified for protection under the Loft Law. The ALJ added that the governing statute and regulations were plain and unambiguous, and that, therefore, the omission of any language extending to the estate of an occupant the right to sell fixtures should be presumed to have been intentional. The ALJ further reasoned that the Loft Law should be read in pari materia with the Rent Stabilization Code, which, except for certain express provisions, does not grant any possessory rights to an estate.

Finally, the ALJ granted the landlord's application for a determination that the Loft was abandoned (and, therefore, no longer subject to rent regulation) on the grounds that 29 RCNY § 2-

10 (f) (2) defines abandonment as "the voluntary relinquishment of possession of a unit ... with the intention of never resuming possession ... ," and that numerous Board decisions have held that the death of a protected occupant establishes an abandonment.

The ALJ's reasoning does not need to be discussed here, because this proceeding is squarely governed by the decision of the Appellate Division, First Department in Moskowitz v Jorden (27 AD3d 305 [1st Dept 2006]), and, is in error of law. That case held that the estate of a tenant who had lived in a unit governed by the Loft Law was entitled to compensation for the sale of the tenant's improvements pursuant to MDL § 286 (6). The Court noted that prior Loft Board decisions on this issue were not entitled to deference as the issue is solely one of statutory interpretation. The Court further noted that the purpose of the statute was to prevent windfalls to owners and that the concept would apply equally to instances where the tenant's estate sought the compensation. The Surrogate's Court's decision (Matter of Estate of Jorden, Deceased, 8 Misc 3d 789 [Sur Ct, NY City, 2005]), which the Moskowitz Court affirmed, expressly rejected the statutory interpretation of the ALJ, upon which Order 2770 rests, as well as the ALJ's reasoning by analogy to the Rent Stabilization Code. As the Surrogate pointed out, the Rent Stabilization Code does not provide to anyone a right of compensation for improvements.

Accordingly, it is hereby

ADJUDGED that the Petition is granted and the decision of the New York City Loft Board Order No. 2770 is annulled; and it is

further

ADJUDGED that this matter is remanded to the Loft Board for an appraisal of the fixtures and improvements installed and made by the late Minda Bikman in the subject premises; and it is further

ADJUDGED that pending the sale of the fixtures and improvements, the rent for the third floor front unit in 595 Broadway remains regulated pursuant to Article 7-C of the Multiple Dwelling Law.

This constitutes the Decision, Order and Judgment of the court.

Dated: March 28, 2007

ENTER:



J.S.C.
EMILY JANE GOODMAN

UNFILED JUDGMENT
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