



NEW YORK CITY LOFT BOARD

116 Nassau Street - 11th Floor
New York, N.Y. 10038

(212) 566-1438

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MEMORANDUM

TO: Loft Board Members

FROM: Kenneth E. Demario

RE: Passing Along Article 7-C Compliance
Costs to the Loft Tenants

DATE: October 16, 1984

A question has been posed as to whether, under Article 7-C, all necessary and reasonable costs of compliance with Article 7-B must be passed along to tenants or whether the Loft Board is authorized to impose only a partial pass-along. Our research and statutory analysis lead us to the conclusion that all necessary and reasonable costs incurred in achieving code compliance must be passed along.

The specific provisions dealing with calculation of the allowable pass-along attributable to code compliance are Sections 286(4) and 286(5). The language of these provisions of the Multiple Dwelling Law unequivocally expresses the Legislature's intent that all necessary and reasonable compliance costs be passed along to loft tenants.

The Legislature's intent must be adhered to when giving effect to the provisions of a statute. Finger Lakes Racing Association, Inc. v. New York State Racing and Wagering Board, 45 N.Y. 2d 471, 479, 410 N.Y.S. 2d 268, 273, 382 N.E. 2d 1131, 1135 (1978). Legislative intent is first sought in the language of the statute. Albano v. Kirby, 36 N.Y. 2d 526, 530, 369 N.Y.S. 2d 655, 658, 330 N.E. 2d 615, 618 (2nd Dept. 1975). Where the statutory language is plain and unambiguous, the statute must be construed and acted on in accordance with its expressed terms. Drelich v. Kenlyn Homes, Inc. 86 A.D. 2d 648, 649, 446 N.Y.S. 2d 408, 410 (1982).

Section 286 of the Multiple Dwelling Law (MDL) prescribes a specific and straight forward formula whereby "the costs necessarily and reasonably incurred" in complying with Article 7-C are to be transferred through rent adjustments from the loft owners to their tenants. In the absence of any modifier preceding the definite article "the", the plain meaning of the quoted language requires pass-along of all necessary and reasonable code compliance costs. Had something less been intended, an appropriate modifier would have been employed. Under MDL §286(5), the adjustment in rent attributable to the cost of compliance is found by dividing all reasonable and necessary improvement costs, exclusive of interest and service charges, by a ten-year period of amortization, or a fifteen-year period if mortgage debt to an institutional or Board-approved lender is included.

Thus, MDL §286 directs the Loft Board to include the maximum tenth or fifteenth amount attributable to reasonable compliance costs in adjusting the loft tenant's rent. In the absence of a clearly expressed legislative intent to the contrary, the plain meaning of this statutory language cannot be disregarded. Carr v. New York State Board of Elections, 40 N.Y. 2d 556, 559, 388 N.Y.S. 2d 87, 89, 356 N.E. 2d 713, 715 (1976).

Though the language of the statute is clear, it is also appropriate to examine the legislative history to determine intent. New York State Bankers Association v. Albright, 38 N.Y. 2d 430, 434, 381 N.Y.S. 2d 17, 19, 343 N.E. 2d 735, 737 (1975). The legislative debate preceding passage of Article 7-C confirms the clear meaning of Section 286 and provides further evidence of the legislative intent with regard to compliance cost transfers. See, Civil Service Employees Association, Inc. v. Oneida Co. 78 A.D. 2d 1004, 1005, 433 N.Y.S. 2d 907, 909, (4th Dept. 1980) ("Pre-enactment statements, particularly those of a bill's sponsor, are properly considered as part of the legislative history"). Particularly significant are the statements of Assemblymen Grannis and Viggiano in answer to questions concerning the pass-along:

Grannis: The tenants will be called on to come up with the entire cost of bringing these buildings up to code, including the cost of financing

over a period of time. Record of Proceedings of the Assembly of the State of New York, June 9, 1982, p. 8107.

Viggiano (co-sponsor): Under this bill, the entire cost -- this is the precedent we are setting here today that I don't particularly like, but it is the best shot we have for some type of protection. Under this bill the entire cost of getting the CO [Certificate of Occupancy] is borne entirely by the tenant, that is, including the interest on the mortgage. Id. at 8099.

Therefore, the Loft Board would have to ignore the legislative history's expression of legislative intent, as well as that expression of intent as found in the statutory language, in order to pass on less than all reasonable and necessary costs of compliance.

Principles of statutory construction require that a statute be construed as a whole and that its various sections be considered together and with reference to each other. People v. Mobil Oil Corp., 48 N.Y. 2d 192, 199, 422 N.Y.S. 2d 33, 38, 397 N.E. 2d 724, 728 (1979). Article 7-C, considered in its entirety, sets forth a system under which illegal loft residences are to be made to comply with multiple-dwelling safety standards while minimizing the displacement of original tenants. MDL §280. Displacement is prevented by assuring tenants a lease and a stabilized base rental established by their pre-Article-7-C rents and allowable increases under Loft Board Order No. 1. MDL §284(4). Further, by establishing a schedule of reasonable costs which covers only necessary and reasonable work to achieve code compliance, the Loft Board is to protect tenants against the cost of luxury conversions, which would effectively displace them. However, the statute does not provide for compelling an owner to pay for code improvements for which he may not be reimbursed directly through the pass-along provisions set forth in Sections 286(4) and (5).

Although "...effect and meaning must, if possible, be given to the entire statute and every part and word thereof..." Sanders v. Winship, 57 N.Y. 2d 391, 396, 456 N.Y.S. 2d 720, 723 (1982), emphasizing selected words or phrases to the point of segregating them from their context is violative of the norms of statutory construction. Albano v. Kirby, 36 N.Y. 2d at 530, 369 N.Y.S. 2d at 656, 330 N.E. 2d at 619. Thus, if the phrase from the legislative findings (MDL §280) "...to establish a system whereby residential rentals can be reasonably adjusted so that residential tenants can assist in paying the cost of such legalization..." (emphasis added) is read apart from its context, it might be interpreted as indicating a legislative desire to have loft tenants pay less than all compliance costs. Such an interpretation is impermissible as it would serve to nullify MDL §286. However, when read with the other legislative findings and the rental adjustment provisions of MDL §286, the proper,

statutorily harmonious meaning of the "assist" phrase becomes manifest: the tenant assists in the compliance effort by repaying the owner over time for the money and/or credit which the owner must expend immediately. By limiting the pass-along to only "the necessary and reasonable costs" incurred in achieving code compliance, Section 286 gives meaning to the term "assist" in the legislative findings of Section 280. Additionally, it should be remembered that as a matter of statutory construction, however emphasized, such a general statement as the "assist" phrase would be subordinate to the more specific provisions for passing on compliance costs found in MDL §286. People v. Mobil Oil Corp. 48 N.Y. 2d at 200, 422 N.Y.S. 2d at 38, 397 N.E. 2d at 728.

Additionally, the Loft Board's administrative authority under Article 7-C does not permit it to presume an unstated power to assign Section 286(5) compliance costs permanently to the loft owner.

In Article 7-C, the Legislature delegated to the Loft Board the authority to determine "...the costs necessarily and reasonably incurred, including financing, in obtaining compliance with this article pursuant to a schedule of reasonable costs to be promulgated by it," (MDL §286(5)), and to include these costs in rent adjustments. MDL §286(4). This delegation of authority, however, cannot serve as the basis for implying additional powers not specifically required for the performance of delegated tasks. Finger Lakes Racing Association, Inc. v. New York State Racing and Wagering Board, 45 N.Y. 2d at 480, 410 N.Y.S. 2d at 278, 382 N.E. 2d 1136. This prohibition is particularly strong where the power sought by implication is contrary to the prescribed standards by which delegated power is governed, i.e., the specific pass along provision of MDL §286(4). Consequently, the Loft Board may not relieve tenants from the statutory obligation of repaying owners all of their MDL §286(5) reasonable and necessary code compliance costs under an implied delegation of legislative authority.

KED:rn