

# DUE DILIGENCE REPORT

[REDACTED]

HPD MULTIPLE DWELLING REGISTRATION #: [REDACTED]

PREPARED FOR

[REDACTED]

PREPARED BY

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## Introduction

This report includes our due diligence research findings and an analysis of the rent regulatory status of the residential units of [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Throughout the report, we make recommendations as to what you must obtain from the seller in order to successfully apply to the Department of Housing Preservation and Development of the City of New York (“HPD”) for the issuance of a Certificate of No Harassment (“CONH”), the single most critical element to effectuating your demolition plans for the building.<sup>1</sup>

In order to assess your likelihood of success in applying for a CONH, we also include a review and analysis of the history of violations issued by the Department of Housing Preservation and Development of the City of New York (“HPD”) and the New York City Department of Buildings (“DOB”) against the building.

In addition, we searched the files of the Supreme Court of the State of New York, New York County, the Civil Court of the City of New York and the Housing Court of the City of New York for past and pending litigation that may expose you, as a future owner, to liability, and impede your ability to obtain a CONH. These court investigations also include a review of any judgments and liens held against the property which may be a duplication of what was reported in the December 20, 2013, report of Prestige Title, [REDACTED] but, for our purposes, is used to cross-reference the litigation research.

Our investigations produced the following results.

### **The Building’s Single Room Occupancy Status and Its Repercussions**

According to the latest HPD Multiple Dwelling Registration filed by the owner on or about September 6, 2013, the building consists of 15 Class B residential units spread over 4 stories. Interestingly, you reported and we found that the owner marketed the building as having 6 residential units (that is, 2 vacant units and 4 occupied Single Room Occupancy rent stabilized units). Notably, there were three anonymous complaints made to DOB in June, September and November 2013 alleging removal of load bearing walls and doors without permission. DOB closed the September and November 2013 complaints without gaining access to investigate the complaint and the June 2013 complaint was resolved after an investigator failed to find any illegal conversion. This data indicates that the seller may actually have illegally torn down walls to prepare to market the building for sale. There are no violations issued for illegal conversion, as explained in the DOB section below in this report.

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<sup>1</sup> This office has previously recommended that your contract to purchase the property should oblige the current owner to make its own application for a CONH.

We recommend you require the seller to explain and provide detailed documentation as to just exactly how the building came to be a 6 (2 Class A, 4 Class B) residential unit building from a 15 unit Class B unit dwelling. You should conduct a walk through now of the building paying particular attention to the number of units, *the freshness of the construction*, the layout of the units, and whether or not the units are currently occupied. Should you choose to purchase the building, on the eve of or better yet the morning of closing, you should conduct another walk through of the building to be sure no new tenants (or others) have taken occupancy. Then, immediately after you close, you should walk through the building again, change all the locks and secure the building to absolutely ensure nobody can enter it.<sup>2</sup> We have clients who go so far as to hire twenty-four hour security for the building in order to ensure no new transient tenants or other occupants take occupancy while HPD processes the application for a CONH.

### **Background on Single Room Occupancy Law**

The Multiple Dwelling Law defines single room occupancy as “the occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling, so that the occupant or occupants thereof reside separately and independently of other occupant or occupants of the same apartment.”

A “Class B” multiple dwelling is a multiple dwelling which is occupied transiently, i.e. more or less the temporary abode of individuals or families with or without meals.

However, the Class B multiple dwelling is often occupied as an SRO unit when an SRO tenancy is created. Generally speaking, SRO tenancies are created under oral agreements and do not have written leases. The most common way an individual becomes a permanent, SRO tenant is to reside in the building continuously for at least six months as a principal residence, or simply request a lease for a period of six months or longer, which the owner must provide within 15 days or reside in the building pursuant to a lease of six months or more lease, even if actual occupancy is less than six months. Unfortunately for building owners, this type of occupancy too easily gives rise to the creation of permanent tenancies with “special” rent stabilization protections.<sup>3</sup>

As briefly mentioned in the introduction of this report, in order to effectuate your demolition plans for the building, the seller must provide or you must successfully apply to HPD for a Certificate of No Harassment. As of January 6,

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<sup>2</sup> In this regard, we note that drafts of the contract this office has been dealing with obliges the seller to deliver the building empty at closing.

<sup>3</sup> The disadvantages to a owner of ownership of an SRO building are immense, but beyond the scope of this report.

2014, the HPD SRO Unit had no records of an application ever being filed for this property.

In processing CONH applications, the inquiry period employed by HPD is the thirty-six month prior to acceptance of your application by HPD or if an alteration or demolition application is made to the DOB, thirty-six months prior to the date that application was made. The inquiry period ends when a final determination is made by HPD. During the inquiry period, HPD investigates any evidence of harassment which if found, would then call for an administrative hearing on whether the owner/prior owner harassed the tenants in order to vacate the building.

### **Important Recommendations for a Successful CONH Application**

You may apply for the CONH as a contract vendee if you are in possession of the property and if you can show HPD proof of sufficient property insurance. However, you should keep in mind that any harassing conduct committed by any prior owner will be used against you by HPD when it considers your application which is precisely why it is critical to follow the recommendations set forth through this report.

The most critical of those recommendations is to obtain an affidavit, sworn to on a date as close to your closing date or application date as possible, from each SRO tenant that he/she has never been harassed during its tenancy which began on the specific date set forth in the affidavit and ended on the specific date set forth in the affidavit.

As previously mentioned, the mere request for a lease for a six month period or more creates a permanent SRO tenancy, which is precisely why our second most critical recommendation is to ensure that the seller does not allow any new occupants into the building whatsoever. Needless to say, you should ensure that the seller is prohibited from entering into any new leases once the contract is signed.<sup>4</sup>

For your convenience and ready reference, annexed hereto as Exhibit "1" is a copy of the application for a CONH together with submission instructions.

### **The Division of Housing and Community Renewal of the State of New York (Lack of Rent Registrations)**

While the owner is not required to provide renewal leases as he/she is required to do in "standard" rent stabilized apartment buildings<sup>5</sup>, the owner is required to register the SRO rents with the Division of Housing and Community

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<sup>4</sup> Such a clause was present in the draft of the contract reviewed by this office.

<sup>5</sup> Unless a so-called "permanent tenant" requested a lease.

Renewal of the State of New York (“DHCR”). As of January 3, 2014, the seller had not complied with the registration requirement, thus making it impossible for you to ascertain what the legal regulated rents should be, absent seeing actual, fully executed leases dating back at least four years. We understand the seller or its agent has represented that registrations have been filed and are pending and reiterate our recommendation that you obtain and forward copies of the registration for our evaluation.

The downside to you as a prospective purchaser is if ever a tenant were to claim fraud with respect to the calculation of the legal regulated rent today you cannot perform a logical evaluation of how the rent was calculated over the years in the absence of a full history of rent registration and/or fully executed leases for every year in question. There is effectively no statute of limitations on claims of fraud by a tenant who is challenging the legality of how a legal regulated rent came to be.<sup>6</sup> Complete DHCR registrations would at least tell you what the landlord claimed the legal regulated rent to be in any given registration year.

A copy of the Letter from DHCR indicating there are no cases or registrations for the building is annexed hereto as Exhibit “2”.

## **New York City Violations Issued Against the Building**

### **NYC Department of Buildings (DOB)**

#### **Overview of the Building**

The Department of Buildings classifies this building as “C4-Walk Up Apartment”. This is a Department of Finance classification used to classify the premises’ tax status, as distinct from its legal use which is typically set forth in the Certificate of Occupancy. As noted below, there is no Certificate of Occupancy for this building on file with the DOB and a walk-thru and inspection of the building is highly recommended and necessary to verify the use of the building and confirm exactly how many and what type of residential units there are in the building.

A Certificate of Occupancy would indicate the legal use of the property, i.e. commercial, residential, storage, garage use). The lack of a Certificate of Occupancy indicates that the building was constructed prior to [REDACTED] and that there has been no change in use of the property nor have there been any additions to the building. Nineteen thirty-eight is when the City began to require property owners to file a Certificate of Occupancy application if construction or alteration changed their building's use, occupancy, or means of exit. However, as previously noted, we have reason to believe that the removal of partitions is recent and therefore a

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<sup>6</sup> However, as a practical matter, with the passage of time, the likelihood of such a suit arising gradually diminishes.

Certificate of Occupancy *would* be required. This is an area of considerable concern.<sup>7</sup>

In lieu of a Certificate of Occupancy, an owner or prospective buyer may obtain a Letter of No Objection to confirm the legal use of the building. We recommend you request the seller provide a Letter of No Objection. However, if ever you need to know the legal use of this or any building in New York City, you can obtain a Letter of No Objection from the Department of Buildings' office in the borough where the property is located. Upon request, we can obtain the Letter of No Objection for you. For your convenience, we provide below a link to details regarding obtaining a Letter of No Objection from the Department of Buildings.

<http://www1.nyc.gov/nyc-resources/service/1350/certificate-of-occupancy-and-letter-of-no-objection>

### **DOB Violations**

There are 6 open DOB boiler violations. You can view the 6 open violations online using the New York City Department of Buildings' Buildings Information System ("DOB BIS") located at <http://a810-bisweb.nyc.gov/bisweb/bsqpm01.jsp>. You can easily access that site by conducting a Google search on "Building Information System." We provide a screenshot of the DOB BIS page to offer a summary view of the open violations and the dates they were issued. The 6 open violations are all boiler violations issued in the years [REDACTED] through 2009. You should require the seller correct, or if already corrected, certify and pay any imposed fines prior to closing or alternatively, ensure you receive a credit for the cost of correcting violations that are open on the date of closing.<sup>8</sup>

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<sup>7</sup> In our experience, illegality breeds illegality. If the removal of partitions was illegal, it raises a red flag that tenants may well have been harassed.

<sup>8</sup> We neither take a position nor offer advice regarding correcting a boiler violation at a building being torn down.

**NYC Department of Buildings**

DOB Violations

Premises: [REDACTED]

BIN: [REDACTED] Block: [REDACTED] Lot: [REDACTED]

NUMBER TYPE FILE DATE

V\* [REDACTED] DOB VIOLATION - CLOSED

00/00 [REDACTED]

**CLOSURE DATE:** 09/28/2011

[REDACTED]	DOB VIOLATION - ACTIVE	02/10/ [REDACTED]
[REDACTED]	DOB VIOLATION - ACTIVE	09/16/ [REDACTED]
[REDACTED]	DOB VIOLATION - ACTIVE	05/04/ [REDACTED]
[REDACTED]	DOB VIOLATION - ACTIVE	03/16/ [REDACTED]
[REDACTED]	DOB VIOLATION - ACTIVE	02/07/2000
[REDACTED]	DOB VIOLATION - ACTIVE	01/01/2009

There is one open ECB Violation dating back to 2004 for failure to maintain a roof water tank and allowing ice to form on it. A screenshot of the ECB Violation Query Results is pasted below for you to summararily view the dates of issuance and resolution of each violation.

**NYC Department of Buildings**

ECB Query By Location

Premises: [REDACTED]

BIN: [REDACTED] Block: [REDACTED] Lot: [REDACTED] CB: [REDACTED]

<b>Dept. of Buildings Violations &amp; Compliance</b>
<b>Total Issued = 4 Open (Non-Compliance) = 1</b>

<b>ECB Hearings</b>
<b>Completed / Defaulted = 4 Pending = 0</b>

ECB Number	Dept. of Buildings Violation Status	Respondent	ECB Hearing Status	Viol Date	Infraction Codes	ECB Penalty Due
[REDACTED]	OPEN - NO COMPLIANCE RECORDED <b>Severity:</b> HAZARDOUS	[REDACTED] ST. CO, A CO <b>Inspect Unit:</b> SPECIAL OPERATIONS	IN VIOLATION	02/ [REDACTED] 2004	<a href="#">B7A</a>	\$0.00
[REDACTED]	RESOLVED - CURE ACCEPTED <b>Severity:</b> NON-HAZARDOUS	[REDACTED] <b>Inspect Unit:</b> CONSTRUCTION	CURED/IN-VIO	10/20/2004	<a href="#">B06</a>	\$0.00
			<b>Viol Type:</b> CONSTRUCTION			
			<b>Viol Type:</b> CONSTRUCTION			

RESOLVED - CURE ACCEPTED	DP	CURED/IN-VIO	02/27/2007	<a href="#">B04</a>	\$0.00
<b>Severity:</b> NON-HAZARDOUS	<b>Inspect Unit:</b> CONSTRUCTION			<b>Viol Type:</b> CONSTRUCTION	
RESOLVED - CERTIFICATE ACCEPTED	142 CP	IN VIOLATION	02/2013	<a href="#">354</a>	\$0.00
<b>Severity:</b> CLASS - 3	<b>Inspect Unit:</b> BOILER DIVISION			<b>Viol Type:</b> BOILER	

**Department of Housing Preservation and Development of the City of New York ("HPD")**

Provided below are is the Building's Registration Summary Report followed by the open HPD violations as of January 8, 2013.

<b>The selected address:</b>												
HPD#	Range	Block	Lot	CD	CensusTract	Stories	A Units	B Units	Ownership	Registration#	Class	
	142-142			4	8700	4	0	15	PVT		P	

**Building Registration Summary Report**

Owner	Last Reg Dt Reg Expire Dt	Organization	Last Nm	First Nm	House No	Street Nm	Apt	City	State	Zip
Head Officer	09/06/2013 09/01/2014									
	09/06/2013 09/01/2014									
Managing Agent	09/06/2013 09/01/2014									
Shareholder	09/06/2013 09/01/2014									

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**Open Violations - ALL DATES**

There are 11 Violations. Arranged by category: A class: 1 B class: 10 C class: 0 I class: 0

Apt Story	Reported Date, nov ISSUED Date	Hzrd Class	Order no	Violation ID, NOV ID	Violation Description	Status Status Date	Certify By Date Actual Cert. Date
- 4	2010/06/30 2010/07/06	A			§ 27-2005 adm code & 309 m/d law abate the nuisance consisting of evidence of water leak at window at community bathroom, 4th story	NOV LATE 2010/11/09	2010/10/23 2010/11/09
- 4	2008/09/17 2008/09/17	B			§ 27-2039 adm code provide adequate light of not less than 60 watts incandescent or equivalent illumination .. at public hall, 4th story	NOV SENT 2008/09/17	2008/11/07
4B 4	2008/09/17 2008/09/17	B			§ 27-2005 adm code replace with new the broken or defective painted sprinkler head located at b-room 4b, 4th story, 1st b-room from east at south	NOV SENT 2008/09/17	2008/11/07
4B 4	2008/09/17 2008/09/17	B			§ 27-2026 adm code repair the broken or defective connection wasteline at sink in the kitchenette located at b-room 4b, 4th story, 1st b-room from east at south	NOV SENT 2008/09/17	2008/11/07
- 4	2008/09/17 2008/09/17	B			§ 27-2005 adm code properly secure the loose closet door at public hall, 4th story	NOV SENT 2008/09/17	2008/11/07
- 1	11/06 12/07	B			§ 27-2040 adm code provide adequate lighting at or near the outside of the front entranceway of the building and keep same burning from sunset every day to sunrise on the day following 200 watts minimum required.	NOV LATE 2008/03/13	2000/01/31
--	03/21 04/09	B			§ 27-2005 adm code properly repair with similar material the broken or defective plaster board ceiling around skylight 4 sty public hall.	NOV LATE 2008/03/13	6/03
--	03/14 03/26	B			§ 27-2005 adm code repair the broken or defective plastered surfaces and paint in a uniform color walls & ceiling 2 sty public hall bathroom.	NOV LATE 2008/03/13	5/20
--	10/22 01/05	B			§ 27-2005 adm code properly repair with similar material the broken or defective ceiling at 2nd sty public hall.	NOV SENT 2008/07/07	03/01
--	10/22 01/05	B			§ 27-2005 adm code repair the broken or defective plastered surfaces and paint in a uniform color ceiling and walls at community bathroom at 2nd sty public hall.	NOV SENT 2008/07/07	3/01
--	10/22 01/05	B			§ 27-2005 adm code properly repair the broken or defective interior incasement and stool out window of comminity bathroom at 2nd sty public hall.	NOV SENT 2008/07/07	03/01

The series of 2008 violations in connection to Apartment 4B are likely to be the subject of the 2008 HP Case we discovered during our court investigations. HP Cases are cases commenced by tenants complaining of the need for repairs and/or the landlord's failure to comply with the Housing Maintenance Code. Typically, in those proceedings, HPD conducts an inspection if it had not already done so to investigate the complaints and issue violations where necessary. Unfortunately, 2008 cases are currently housed in the Court Archives and are not readily available for review. We have submitted a request for the file and the court clerk advised that those requests currently take up to three months to fulfill. While the mere existence of this case and the corresponding violation may be enough for HPD to find that the owner's failure to comply with the Housing Maintenance Code constitutes harassment of the tenant, the fact that the litigation was quickly discontinued after just one court adjournment is a positive sign for your plans.

However, without being able to review the pleadings and final disposition in that case, we cannot fully assess how HPD will view that proceeding when it considers your application for a CONH.

Nonetheless, it may be worth your while to negotiate a credit for each of the open HPD violations or have them resolved by the closing date and demand proof of payment for all associated administrative fees, if any. When you conduct the pre-closing walk-thru of the building, you should confirm that each violation has been corrected and photograph each repair.

### **Property Shark Report**

The Property Shark Report for the building, which includes information pertaining to the neighborhood, ownership, property tax assessment, zoning and size, is provided as Exhibit "3" to this report.

### **Court Investigations**

#### **Housing and Civil Court Cases**

The 2008 HP Case discussed in the HPD section of this report is the only housing court case brought against the current and predecessor owners of the building. Importantly, there are *no* housing court cases brought by the current or predecessor owners against any tenant. This is a very strong sign to HPD that the landlord has not harassed any of the tenants.

Similarly, there are no civil court cases brought by or against the current and predecessor owners of the building.

#### **Supreme Court**

There is a [REDACTED] Supreme Court personal injury case filed by one [REDACTED] against the current owner. It is unclear whether [REDACTED] was/is a tenant of the building as the pleadings in that case do not specifically state where he resides. He simply alleges that he was in the stairwell of the building at the time he sustained personal injuries. Interestingly, [REDACTED] abandoned the case and the court marked it off calendar on January 21, [REDACTED] giving [REDACTED] 60 days to restore the case. There is no further action reported in the case. We do not anticipate that this case will affect HPD's evaluation of any further CONH application. A copy of the [REDACTED] case file is annexed hereto as Exhibit "4".

We also ran judgment and lien searches by block and lot number. A detailed listing of each of the hits we obtained is provided under Exhibit "5" to this report.

In sum, we see a history of tax liens totaling \$11,044.02 but each of those liens appears to be satisfied. There is also a [REDACTED] sidewalk lien presumably for a sidewalk violation at that time.

We recommend you ensure that satisfactions of judgment are filed for each and every judgment and lien prior to closing, should you choose to purchase the building.

As you know, customarily prior to closing a title search is run on the property which provides a more complete and up to date picture of the liens held against the property. We urge you to rely on the results of that pre-closing search. While we report our findings on lien research here, our research and analysis is both focused and tailored toward those findings which affect our rent regulatory due diligence analysis.

## CONCLUSION

This building concerns us. There seems to be little doubt that there was some kind of impropriety involved in the reduction of the number of SRO units in this building. That impropriety leads to a well grounded suspicion that harassment of tenants actually took place. The definitions of harassment are extremely broad and include things like excessive buy out offers. They do not require things as brazen as removing doors from hinges. Since the CONH is central to your plans for this building, such considerations are paramount in this report. In a *normal* due diligence report, such considerations would take a back seat to other matters. Yet, there are other areas of concern as well, notably the lack of proper DHCR registrations. While for your present goals for the building, that is a relatively unimportant matter, the extent to which it betokens a culture of illegality in the management of the building, it is a matter of considerable concern. Further, in our experience, the number of SRO buildings in New York City where the management office runs completely on the up and up is depressingly low. This could lead to other problems coming out of hiding.