

# DUE DILIGENCE REPORT

  
HPD MULTIPLE DWELLING REGISTRATION #: 

PREPARED FOR



PREPARED BY

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## INTRODUCTION

The initial, primary purpose of this due diligence report was to advise you on the rent regulatory status of each of the units of [REDACTED], New York, N.Y.. However, that purpose evolved quickly after learning that the building suffered three fires in the past ten years and that at this point in time, it is purportedly vacant. This report will set forth those certain provisions that must be included in the contract to purchase the building, should you choose to do so, in light of its history and current regulatory status.

This report also provides preliminary lien search results to advise you of the many entities that currently have a stake in the property, according to the Supreme Court's docketing database. As you likely know, customarily prior to closing, a title search run on the property provides a more complete and up to date picture of the liens held against the property.

In addition, we conducted a search of 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 pending and past litigation with respect to this building. Specifically, that research aids in assessing the risks and exposure to liability due to litigation associated with the property, particularly after the first fire that took place in November 2002.

We also evaluated the building's registration history with the Division of Housing and Community Renewal together with a history of cases brought by or against the building's rent regulated tenants.

Since our investigation revealed an unusually large amount of litigation associated with this building and retrieval of the files from the various public authorities takes several weeks, we have reason to believe that the things we found represent the tip of an iceberg and, very much like the iceberg that sank the Titanic, the greatest dangers could very well be hidden beneath the surface and will only fully arise over a longer period of time.

With that in mind, our investigations produced the following results.

### THE RENT REGULATED TENANTS

On November 20, 2002, a six alarm fire caused all tenants to flee the building and we believe, none of the residents have been permitted to return to the building to reside. In situations like this, potential purchasers must be wary of squatters who may be residing at the building. The savvy purchaser

will insist on walking through the building to ensure it is squatter free, prior to executing the purchase contract. If squatters are found, then the seller should be required to ensure the squatters are either evicted or have moved out prior to closing. Annexed hereto as Exhibit "1" is the New York Times article that reported on the November 20, 2002 fire, together with the DNAinfo.com report on the March 2012 fires. Neither of these recent fires appear to have any impact on our due diligence analysis. While our research has not revealed causes for any of the three fires, this kind of pattern in a building is consistent with other buildings in the City that have been the sites of one or more acts of arson. While any investigation of the 2002 fire is no doubt either closed or cold, there may be things happening with respect to the 2012 fires, the results of which we cannot presently ascertain. Most likely, they would only affect the ownership at the time of those fires and not any purchaser, unless some link between the two interests appeared.

Squatters aside, it appears that many of the tenants who were forced to flee the building sought to ensure that their regulated tenancies were protected and that they would be reinstated to possession of their apartments after the owner repaired the building. Our research revealed that the tenants of forty-four units filed applications with the Division of Housing and Community Renewal ("DHCR") immediately after the fire requesting that their rent be reduced to \$1.00 per month until they move back in to their apartments, essentially. That \$1.00 payment each month indicates the tenant's continuing intention to return to the apartment after construction. It appears that all of the rent regulated tenants who fled due to the fire obtained \$1.00 per month orders. There are, however, no public records maintained of who, if any of them, are actually paying the \$1.00 per month.

Indeed, ten years has elapsed since the fire forced the tenants out of their apartments. Obviously, there is a strong likelihood that many of the tenants are not likely to return to the building or moreover, may not be easily found after the building is rebuilt. However, if the \$1.00 per month tenants paid the \$1.00 each and every month since the issuance of the DHCR orders, then they are entitled to return to their apartments after the building is restored and a Certificate of Occupancy is issued. If a tenant failed to pay the \$1.00, the tenant is not entitled to return to the building, but any new tenants would be rent stabilized because none of the work performed to rebuild the building can go toward "substantial rehabilitation" for the purpose of deregulation. Returning tenants, if any, would return at their old rent rates. New tenants would still be rent stabilized, but at rates that would have to be set comparing the rents to other similar rent stabilized units in the immediate vicinity of the building.

One available option to facilitate deregulation of the units is for the owner to file a demolition application with the DHCR. Since [REDACTED] is not a landmark building, it is overwhelmingly likely that DHCR will grant a demolition application. It takes some two years for the DHCR to process a demolition application. During the interim, the building remains at status quo and would have to be carried out of the owner's other financial resources as to taxes, insurance, etc. The owner seeking to succeed in a demolition application would be better off having no tenants at all – if the owner can sustain the expense of a nonproductive building sitting there, doing nothing but drinking cash.

Curiously, tenants of 2 of the 44 units applied to DHCR for an order directing the landlord to renew their leases. It appears DHCR granted those applications in 2004 and 2009.

A copy of the DHCR case list is annexed hereto as Exhibit “2”. The cases identified as “Tenant Decreased Service” are the \$1.00 per month cases. The affected units are identified on the left side of the chart, next to the Docket No. The two non-renewal of lease cases are listed on Exhibit “2”. The complete case files can be obtained from the DHCR pursuant to a Freedom of Information Law (“FOIL”) request which we can submit on your behalf, if you wish. Those requests are typically fulfilled within four weeks. Such a FOIL request would incorporate *all* of the DHCR records with respect to the building and could reveal additional icebergs.

The building was last registered with DHCR in 2004 when the then owner presumably attempted to deregulate the units on paper by registering the units as “Vacant.” However, in light of the DHCR \$1.00 per month orders, there is still a possibility that the regulated tenants may return the building, as previously advised. Under well established legal principles, such fraudulent filings are void and the tenants have *forever* to contest them.

A copy of the DHCR Rent Roll is annexed hereto as Exhibit “3”.

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

The Department of Buildings classifies [REDACTED] as a “D1-Elevator Building.” This Department of Finance Building Classification is used to classify the premises' tax status, as distinct from its legal use, which is typically set forth in a Certificate of Occupancy. Since the building suffered the fires and there is no Certificate of Occupancy issued for this building, we rely on other sources, such as the building's HPD Registration Summary Report (Exhibit “4”) and Property Shark, for an accounting of the

number of apartments there were in the building. It appears there were either 48 or 50 residential units in the building prior to the first fire.

As of November 28, 2012, there are 77 violations that the Department of Buildings considers open. Fourteen of the 77 violations are for “Work Without a Permit” and are likely to result in civil penalties once an application for a work permit is submitted. The majority of the open violations appear to be related to construction at the building after the November 2002 fire and the need for the DOB Special Operations or Emergency Response team to inspect the building. Notably, the fines related to the open violations amount to at least \$75,950. If you decide to purchase the building, you should receive a credit for all of the penalties and fines, both of record and prospectively assessed against the building as a result of these open violations.

The DOB Property Profile Overviews for the building is annexed hereto as Exhibit “5”.

A list of open ECB violations is annexed hereto as Exhibit “6”. A list of open DOB violation is annexed hereto as Exhibit “7”. Full details as to each violation can be viewed on the Department of Buildings BIS website.

**The Department of Housing Preservation and Development  
of the City of New York (“HPD”)**

There are 364 violations that the HPD considers open at [REDACTED] as of November 28, 2012. However, only one of the 364 is considered significant at this time because the balance of the violations predates the November 20, 2002 fire. That one violation prohibits anyone, except the building’s caretaker, from entering the building until a new certificate of occupancy is obtained.

Having said that, you may want to investigate whether any penalties or administrative fees have been assessed for any of the open violations and ensure you get credit for them prior to closing.

Annexed hereto as Exhibit “4” is the HPD Building Registration Summary Report for each the buildings.

## Property Shark Report

We have included a copy of the Property Shark Report with respect to this building, including information pertaining to the neighborhood, ownership, property tax assessment, zoning and size.

A copy of the report is annexed hereto as Exhibit "8".

## Court Investigations

Our court investigations focused on cases commenced after the November 20, 2002, fire. As previously mentioned, if you decide to purchase the building, you should rely on the pre-closing title report for data on judgments and liens against the building. It appears that these could be substantial.

### Housing Court

Our research at the Housing Court, New York County, revealed a 2003 case brought by one of the tenants against the landlord, seeking a court order to correct violations issued against the building as a result of the fire. Court files for cases dated prior to 2008 are in storage and not readily available for review. We requested the file be retrieved from the court's storage facilities and have been informed that it may take 6 to 8 weeks for the file to come in. However, details of the case found on the court's computerized database revealed that the case was marked off calendar on September 27, 2007. It is very likely that the case would be deemed abandoned should the tenant try to reinstate it, say, after the building is rebuilt.

### Civil Court

The following two cases were brought by tenants against the owner in 2003, the year after the fire, but appear to have been abandoned shortly after they were commenced.

██████████ v. ██████████ Index No. ██████████  
██████████ v. ██████████ Index No. ██████████

██████████ and ██████████ were registered with DHCR as the tenants in Apartments 4 and 33 immediately prior to the fire. They are among the tenants who obtained \$1.00 per month orders.

## Supreme Court

Our investigation at the Supreme Court revealed what potentially could be significant liens against the property held by the City of New York and HPD. Again, you should rely on the pre-closing title report for updated judgments and liens held against the building.

Notably, it appears that the City of New York thru HPD commenced a proceeding against the owner, seeking the appointment of a 7A administrator to oversee the building in 2001, the year before the first fire. Generally speaking, 7A administrators are appointed to buildings that have been abandoned and/or mismanaged by its owners. The 7A administrator is charged with the responsibility of collecting rents and ensuring all services are provided to the tenants. It is often incredibly difficult to obtain an order to discharge an administrator regardless of whether the owner can demonstrate the financial and managerial ability to run the building. Because a fire occurred in this building shortly after the appointment, it may not be as difficult for this building, but it certainly is indicative of how the City of New York and HPD perceived the building which often gives an owner a preview of how scrutinizing the agencies may be in the future. If feasible, you should ask the seller for a disclosure of whether there is a 7A administrator appointed to the building prior to signing the purchase contract. That 2001 file is in the court storage and will take up to nine weeks to arrive.

Annexed hereto as Exhibit "9" is a general listing and details of cases, judgments and liens associated with the building. We can research more detail on any of the cases, judgments or liens at your request.

## CONCLUSION

This building would be an unusually high risk investment. However, knowledge of that risk level can drive the price down to a place where it could be worth the risk for the right investor.