

Judge Finds Fraud Claims Against HPD Not Time-Barred

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By Brendan Pierson

A Manhattan judge has ruled that claims accusing the Department of Housing Preservation and Development and developers of defrauding residents in a city-assisted co-op conversion in upper Manhattan can proceed.

Supreme Court Justice Joan Madden's (See Profile) decision in *Peny & Co. v. 936-938 Cliffcrest Housing Development Fund Corp.*, 850011/13, declined to add claims against HPD immediately, but said that the residents will be able to renew their motion to add those claims after she has reviewed internal HPD documents in camera. She rejected HPD's argument that the claims were time-barred.

Madden did allow the tenants to add claims against Shuhab Housing Development Funds Corp., the not-for-profit development corporation that was involved in the conversion.

The dispute arose out of HPD's Third Party Transfer program, designed to take tax-delinquent buildings in poor condition, rehabilitate them and transfer them to their residents. The program was created in 1996.

The building, 936-938 St. Nicholas Ave., was taken by the city and transferred to Shuhab, via another non-profit entity, in 2002. It received financing for rehabilitation work in the form of mortgages from HPD, in partnership with Fleet National Bank, and from Community Capital Bank, which subsequently assigned its mortgage to Peny & Co., a pension fund. Currently, HPD holds outstanding mortgages of about \$5 million on the building, and Peny holds an out-



standing mortgage of about \$1.2 million, according to Adam Leitman Bailey, who represents the residents.

The rehabilitation work was purportedly completed in 2006. Ownership of the building was transferred to a co-op corporation, and residents bought their units for the below-market price of \$2,510.

According to Bailey, however, only minimal rehabilitation work was actually done on the property, which he said remains in very poor condition. In 2012, he advised the residents to stop making payments on the mortgage. When Peny commenced a foreclosure action, they then moved to bring cross-claims against HPD and Shuhab. In court papers the residents allege that, "In a fraudulent scheme, corrupt agents of HPD, together with Shuhab and its co-conspirators pilfered the rehabilitation loan proceeds for their own personal gain."

The residents sought to bring claims under the Racketeer Influenced and Corrupt Organizations Act and Civil Rights Act, along with claims for fraud and for rescission of the mortgages. They alleged in court papers that the mortgages for the rehabilitation were "shams," and that Shuhab's principal, Lee Warshavsky, had been installed as the co-op corporation's secretary and treasurer in order to sign those mortgages. The residents also sought to bring claims against Warshavsky.

They sought to assert counterclaims against Peny and for a permanent injunction against it.

According to Bailey, the co-op has since become up to date in its mortgage payments.

On June 20, Madden granted the motion to add the

claims against Shuhab and Warshavsky.

She ruled that it was premature to add the claims against HPD because she had yet to review certain internal documents that HPD had been ordered in April to produce for in camera inspection. According to Bailey, those documents include an internal investigation into the loans related to the building.

However, Madden ruled that the residents could renew their motion to bring those claims later, if they could provide factual support for them.

She also rejected HPD's argument that the claims were time-barred because any fraud should have been discovered in 2006, saying, "It cannot be said on this record that the purported fraud and/or wrongdoing should have been discovered at that time."

Madden denied the motion to add claims against Peny, finding there was no evidence that it knew about any fraud.

"At best, the allegations in the proposed pleading can be read as suggesting that Peny knew or had reason to know about the alleged fraud committed by HPD or other entities and nonetheless took the assignment [of] the Note and Mortgage from [Community Capital Bank]," Madden said.

She denied the motion for a permanent injunction against it, finding that the residents had "not identified any right that Peny violated."

Shuhab is represented by Noorin Hamid, an associate at Wilson Elser Moskowitz Edelman & Dicker, who could not be reached for comment.

HPD is represented by Warren Shaw and Karen Ross of the city law department, which did not immediately return a request for comment.

In a letter to City Councilman Mark Levine in May, HPD Commissioner Vicki Been said there was no merit to the allegations.

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