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publication in the New York Reports.

No. 45
In the Matter of Charla Bikman,
&c.,
 Respondent,
 v.
New York City Loft Board,
 Appellant.

Marta Ross, for appellant.
Respondent, pro se.

JONES, J.:

The question before this Court is whether the estate of a deceased loft tenant is entitled to recoup the value of improvements made by the tenant pursuant to Multiple Dwelling Law § 286 (6). We answer in the affirmative.

Decedent Minda Bikman became a resident of the subject

Manhattan loft in 1974 and was the protected tenant under article 7-C of the Multiple Dwelling Law.¹ Minda died in 1997 and petitioner Charla Bikman, Minda's sister, represents the estate. During her tenancy, Minda improved the raw loft space by installing a kitchen and bathroom and making other alterations that, according to petitioner, are valued at more than \$40,000. In 1981, the building was purchased by 595 Broadway Associates (Broadway). In 1999, after learning of Minda's death, Broadway sought a Civil Court judgment of possession and use and occupancy which it obtained in 2001. Subsequently, in 2001, Broadway applied to the Loft Board for an abandonment order pursuant to 29 RCNY § 2-10 (f). The matter was transferred to the Office of Administrative Trials and Hearings and assigned to an Administrative Law Judge (ALJ) for adjudication. At the ensuing hearing, petitioner opposed Broadway's abandonment application, claiming that Broadway was not entitled to an abandonment order until such time as it reimbursed the estate for the value of the fixtures and improvements pursuant to Multiple Dwelling Law § 286 (6).

¹ This article was enacted in response to a serious public emergency created by the increasing number of conversions of commercial and manufacturing loft buildings to residential use without compliance with applicable building codes and minimum health, safety and fire protection standards (see Multiple Dwelling Law § 280). This legislation, among other things, is meant to effectuate legalization of the loft buildings and at the same time protect loft residents from being forced to relocate (id.).

The ALJ recommended that Broadway's application be granted and that petitioner's claim be denied because Multiple Dwelling Law § 286 (6) and 29 RCNY § 2-09 (b) (1) expressly limit the right of sale to the occupant qualified for protection under the Loft Law. Therefore, the ALJ decided that the estate was not entitled to the value of improvements, as only the residential occupant is protected under the law. The Loft Board affirmed the findings of the ALJ that the Unit had been abandoned and denied petitioner's request for reimbursement of the value of the improvements. Petitioner's application for reconsideration was denied and she commenced this Article 78 proceeding.

Supreme Court annulled the Loft Board's determination holding that the proceeding was governed by Moskowitz v Jorden (27 AD3d 305 [1st Dept 2006], lv dismissed 7 NY3d 783 [2006]), which holds that the estate of a tenant who resided in a unit governed by the Loft Law was entitled to compensation for improvements pursuant to Multiple Dwelling Law § 286 (6). The Appellate Division affirmed Supreme Court's order annulling the determination of the Loft Board and concluded that it was error to grant Broadway's abandonment application without requiring a sale of the improvements and compensation to the estate.

Under Multiple Dwelling Law § 286 (6), a residential tenant may, subject to procedures established by the Loft Board, sell any improvement to a unit in a dwelling covered under this statute-made or purchased by him-to the owner of the premises or

an incoming tenant.² In Moskowitz, the First Department rejected the statutory interpretation of Multiple Dwelling Law § 286 (6) by the ALJ which denied reimbursement to the estate. The court determined that prior Loft Board decisions on this issue were not entitled to deference because the issue was solely one of statutory interpretation, and "not specialized knowledge and understanding of operational practices or an evaluation of factual data and inferences to be drawn therefrom" (Moskowitz, 27 AD3d at 306, citing Matter of KSLM-Columbus Apts., Inc. v New York State Div. of Hous. & Community Renewal, 5 NY3d 303, 312 [2005]).

We agree that the Loft Board's interpretation of Multiple Dwelling Law § 286 (6) is not entitled to deference as the issue is solely a matter of statutory interpretation. In construing this statute, we look to its legislative intent and conclude that section 286 (6) was enacted to prevent an owner from receiving unearned enrichment, thereby depriving compensation to the tenants who paid for the improvements (see 577 Broadway Real Estate Partners v Giacinto, 182 AD2d 374 [1st Dept 1992]). As such, it would be unfair to deprive the estate

² The Loft Board is an administrative body, consisting of representatives of the public, the real estate industry, loft residential tenants and loft manufacturing interests, all of whom are appointed by the mayor of a municipality. The duties of the Loft Board are set forth in Multiple Dwelling Law § 282 and include the determination of controversies arising over the fair market value of a residential tenant's fixtures.

of the value of property which would have enured to the benefit of the tenant, had the tenant lived.

Based on the foregoing, we hold that Multiple Dwelling Law § 286 (6) permits the estate of a deceased tenant to recoup the value of fixtures and improvements made to the property.

Accordingly, the order of the Appellate Division should be affirmed, with costs.

* * * * *

Order affirmed, with costs. Opinion by Judge Jones. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Pigott concur.

Decided April 1, 2010