SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA ANNE CRANE** **PART** **IAS MOTION 15EFM**

Justice

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NAZOR, MARIA

Plaintiff,

- v -

NEW YORK CITY LOFT BOARD

Defendant.

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INDEX NO. 160900/2018

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 60, 64, 65, 66, 67, 68, 69, 70, 71

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, it is

In this Article 78 proceeding, petitioners Maria Nazor (Nazor) and Peter Mickle (Mickle) (together, petitioners) seek an order in the nature of mandamus compelling respondent New York City Loft Board (the Loft Board) to accept and determine an application for reconsideration or for an order annulling an administrative determination as a violation of lawful procedure, affected by error of law, arbitrary and capricious, or an abuse of discretion.

Respondents Loft Board, Helaine Balsam (Balsam), as Executive Director and General Counsel of the Loft Board, and Martha Cruz (Cruz), as Deputy General Counsel of the Loft Board (collectively, the Loft Board Respondents), cross-move, pursuant to CPLR 3211 (a) (2) and (7) and CPLR 7804 (f), for an order dismissing the petition. Nominal respondent Sydney Sol Group, Ltd. (Sydney) also cross-moves, pursuant to CPLR 3211 (a) (7) and 7804 (f), for an order dismissing the petition and directing petitioners to pay Sydney's costs and legal fees.

BACKGROUND

This proceeding is another on the issue of whether the building located at 544 West 27th Street, New York, New York (the Building) is an "interim multiple dwelling" under Article 7-C of the Multiple Dwelling Law (the Loft Law). Petitioners allege that they reside in the Building owned by Sydney and that their residential tenancies are covered and protected under the Loft Law (NY St Cts Elec Filing [NYSCEF] Doc No. 12, amended petition, ¶¶ 12-13 and 17-18).

A. The Loft Board's Procedural Rules

Multiple Dwelling Law § 282 provides for the establishment of a "special loft unit referred to … as the 'loft board'" to resolve complaints of owners and residents of interim multiple dwellings qualified for protection under the Loft Law. The Loft Board is charged with issuing rules and regulation governing its procedures in exercising its powers under the Loft Law (*see* NY City Loft Board Regulations [29 RCNY] § 1-02).

Relevant to this proceeding is New York City Loft Board Regulations (29 RCNY) § 1-06, that set forth the procedures for applications before the Loft Board. Applications before the Loft Board generally pertain to "coverage, hardship claims, rent adjustments, fixture fee disputes, exemptions, and any other matters within the purview of the Loft Board under Article 7-C of the Multiple Dwelling Law" (29 RCNY § 1-06 [a]). 29 RCNY § 1-06 (n) partially provides that "all final determinations regarding the disposition of any application filed with the Loft Board and brought to a hearing or inquest may be made by the Loft Board." Additionally, 29 RCNY § 1-06 (p) states, in pertinent part, that "[a] final Loft Board order shall constitute a final agency determination for purposes of commencement of the running of the statute of limitations for the filing of a petition pursuant to Article 78 of the Civil Practice Law and Rules challenging the Loft Board's order, unless a timely application for reconsideration has been filed."

29 RCNY § 1-07 details the procedural framework for reconsideration applications before the Loft Board. 29 RCNY § 1-07 (a) (2) reads, in part:

> "(2) Basis of the Reconsideration Application. *The Loft Board, upon the application of a party aggrieved by a determination of the Loft Board, may, in its sole discretion, reconsider its determination.* An application for reconsideration will be granted only under the following extraordinary circumstances: (i) an allegation of denial of due process or material fraud in the prior proceedings, (ii) an error of law, (iii) an erroneous determination based on a ground that was not argued by the parties at the time of the prior proceeding and that the parties could not have reasonably anticipated would be the basis for a determination, or (iv) discovery of probative, relevant evidence which could not have been discovered at the time of the hearing despite the exercise of due diligence"

(emphasis supplied). An application for reconsideration must be received by the Loft Board within 30 calendar days after the date the determination sought to be reconsidered was mailed (*see* 29 RCNY § 1-07 [b] [2]). Regarding judicial review of a Loft Board determination, 29 RCNY § 1-07 (d) partially states, as follows:

> "(d) Judicial Review. A Loft Board determination issued pursuant to § 1-06 of this title constitutes a final agency determination for purposes of commencement of the running of the statute of limitations for the filing of a petition pursuant to Article 78 of the Civil Practice Law and Rules challenging such determination and seeking judicial review, unless a timely application for reconsideration of the determination has been filed. If a reconsideration application was filed, and the Loft Board:
>
> . . .
>
> (2) Denies the reconsideration application, the underlying determination is deemed the final agency determination for purposes of judicial review, and the date of the denial of the reconsideration application is deemed the date of the final agency determination ...."

The procedures for appealing a written determination made by Loft Board staff are outlined in 29 RCNY § 1-07.1. 29 RCNY § 1-07.1 (a) (1) (a) reads, in part:

> "Right to Appeal. (1) A person aggrieved by a written determination of the Loft Board staff, with respect to any matter that is not required by these rules to be determined by the full Loft Board ... may appeal such determination to the Loft Board. The determination of the Loft Board pursuant to such appeal constitutes the final agency determination from which judicial review may be sought."

An application appealing a determination made by Loft Board staff must be received by the Loft Board within 45 calendar days of the date the determination was mailed (*see* 29 RCNY § 1-07.1 [2] [b] [1]).

B. The Proceedings Before the Loft Board

In March 2014, petitioners filed an application seeking coverage and protected occupant status under the Loft Law. Multiple Dwelling Law § 281 (5), added by L 2010, ch 135 § 1 and amended by L 2010, ch 147 § 1, expanded the definition of an "interim multiple dwelling," or IMD, to include buildings located north of West 24th Street, south of West 27th Street, west of Tenth Avenue and east of Eleventh Avenue that were occupied by three or more families living independently from each other for 12 consecutive months between January 1, 2008 and December 31, 2009. The Loft Board referred the coverage application to the New York City Office of Administrative Trials and Hearings (OATH), where a seven-day hearing was held before Administrative Law Judge Alessandra F. Zorgniotti (ALJ Zorgniotti), who recommended denying coverage (NYSCEF Doc No. 14, amended petition, exhibit B at 1).

In Loft Board Order No. 4668 dated April 28, 2017 and mailed the same day, the Loft Board accepted ALJ Zorgniotti's recommendation, and concluded that petitioners failed to demonstrate that the Building qualified as an interim multiple dwelling by showing that two families lived independently of each other between January 1, 2008 and December 31, 2009 (the 2008-2009 Window) (*id.* at 4). Petitioners had argued that Shimon Milul (Milul), Sydney's principal, resided in unit 5N, but the Loft Board found that Milul's use of the unit "would not

qualify it as an IMD because it was not occupied as a residence or home during the Window Period" (*id.* at 30).

On May 26, 2017, petitioners filed an application for reconsideration of Loft Board Order No. 4668 with the Loft Board, as was permissible under 29 RCNY § 1-07 (a) (NYSCEF Doc No. 15, amended petition, exhibit C at 1). In Loft Board Order No. 4796 dated September 20, 2018 and mailed September 28, 2018, the Loft Board denied the reconsideration application, reasoning that: petitioners had not been denied due process; the inadvertent use of the phrase "primarily resided" was not an error of law; and, the determination was based on the evidence (*id.* at 2-5). The Loft Board also determined that petitioners' claim of bias was unfounded (*id.* at 5).

Petitioners challenged both orders in an Article 78 proceeding captioned *Matter of Nazor v New York City Loft Bd.*, Sup Ct, NY County, index No. 159870/2018 (*Nazor I*). The matter was transferred to the Appellate Division, First Department, for resolution, and the Court concluded that substantial evidence supported the Loft Board's determination that neither Mickle nor Milul resided in the Building for 12 consecutive months during the 2008-2009 Window (*see Matter of Nazor v New York City Loft Bd.*, 179 AD3d 609, 609 [1st Dept 2020], *rearg denied, lv denied* 2020 NY Slip Op 65795[U] [1st Dept 2020], *lv dismissed, lv denied* 35 NY3d 1053 [2020]). Additionally, the Court found that "[t]he Loft Board providently exercised its discretion in denying tenants' reconsideration application" (*id.* at 610).

Prior to the resolution in *Nazor I*, petitioners allege that they discovered Milul had signed an "Affidavit for Judgment by Confession" sworn to January 28, 2013 and a guaranty signed the same date in which he attested that he resided at the Building (NYSCEF Doc No. 13, amended petition, exhibit A at 66 and 74). The documents had been filed and made publicly available in September 2018 in an unrelated action brought against Milul (NYSCEF Doc No. 12, ¶ 3).

Petitioners maintain that Milul's sworn statement about his residency at the Building directly contradicted his sworn testimony before ALJ Zorgniotti where he denied ever residing there (*id.*, ¶¶ 5 and 26). On October 24, 2018, petitioners filed a second application for reconsideration (the Second Reconsideration Application) of Loft Order Nos. 4668 and 4796, citing "material fraud" and an "erroneous determination" as the bases for the application (*id.*, ¶ 28; NYSCEF Doc No. 13 at 3).

By letter dated November 14, 2018, Cruz, on behalf of the Loft Board (NYSCEF Doc No. 12, ¶ 29), "rejected" the Second Reconsideration Application, writing, in part, "[w]e are unable to process your application" (NYSCEF Doc No. 16, amended petition, exhibit D at 1). Referencing 29 RCNY § 1-07 (d), Cruz informed petitioners that the rule did not permit reconsideration of an order issued on a prior reconsideration application (*id.* at 1-2).

Two days after the date of Cruz's letter, Sydney filed an answer to the Second Reconsideration Application with the Loft Board (NYSCEF Doc No. 47, Milul aff, exhibit D at 1). Sydney had asserted that there was no basis for reconsideration since the statement in Milul's affidavit attesting to his residency at the Building was made in error (*id.* at 14-15). Milul, who executed the affidavit in connection with the refinancing of a business loan, claimed that the originator for the loan was aware that he lived in New Jersey (*id.* at 14).

Petitioners commenced the present proceeding by filing a petition on November 21, 2018 and amending the petition on January 11, 2019. As a first cause of action, petitioners seek a writ of mandamus compelling the Loft Board to accept, determine and then grant the Second Reconsideration Application on the ground that the Loft Board and its staff neglected their legal duty by summarily rejecting it (NYSCEF Doc No. 12, ¶¶ 10, 42, 50 and 55). Petitioners maintain that 29 RCNY § 1-07 (a) (2) (i) and (iv) provide that the Loft Board will grant reconsideration

under "extraordinary circumstances," such as an "error of law" or upon the "discovery of probative, relevant evidence which could not have been discovered at the time of the hearing despite the exercise of due diligence" (*id.*, ¶ 38). Petitioners further allege that there is no Loft Board rule limiting the number of reconsideration applications on any coverage proceeding or precluding reconsideration of a previous reconsideration application that has been denied (*id.*, ¶ 39 and 43). Petitioners also claim that Loft Board staff concealed their rejection of the Second Reconsideration Application from the Loft Board, as evidenced in minutes from a November 15, 2018 meeting (*id.*, ¶ 48; NYSCEF Doc No. 17, amended petition, exhibit at 2). As a second cause of action, petitioners seek to annul the Loft Board's perfunctory refusal to determine the Second Reconsideration Application as arbitrary and capricious, an error of law, a procedural violation, and an abuse of discretion.

In lieu of answering, the Loft Board Respondents and Sydney cross-move for dismissal of the petition and this proceeding. The Loft Board Respondents and Sydney cross-move to dismiss the first cause of action on the ground that the petition fails to state a cause of action for mandamus, arguing that the Loft Board and its staff did not act in violation of law by rejecting the Second Reconsideration Application. Sydney further argues that under the Loft Board's rules, whether the Loft Board chooses to consider a request for reconsideration is entirely discretionary, and that mandamus is not available to compel the performance of a discretionary act. Even if mandamus was an available remedy, Sydney posits that it would be inequitable to direct reconsideration because it could lead to inconsistent orders from the Appellate Division in *Nazor I* and the Loft Board on the Second Reconsideration Application.

The Loft Board Defendants separately contend that petitioners failed to exhaust all administrative remedies when they failed to lodge an administrative appeal of the Loft Board staff's rejection of the Second Reconsideration Application in accordance with 29 RCNY § 1-07.1.

In response, petitioners submit that the cross motions should be denied on procedural and substantive grounds. They assert that Cruz's letter is not the type of written determination which may be appealed under 29 RCNY § 1-07.1, since 29 RCNY § 1-06 (p) requires a Loft Board staff member assigned to a case to prepare and deliver a written report and recommendation for the Loft Board. Petitioners maintain that "the crux of this mandamus proceeding is that Loft Board staff refused to perform its duty to refer matters that the Loft Board must itself determine – including coverage and reconsideration applications – and, instead, unlawfully 'rejected' such an application" (NYSCEF Doc No. 51, Bruce H. Wiener affirmation, ¶ 8). They submit that it is the staff's ministerial duty to refer all reconsideration applications to the Loft Board.

DISCUSSION

A motion brought under CPLR 3211 (a) (7) addresses the sufficiency of a pleading (*see Aristy-Farer v State of New York*, 29 NY3d 501, 509 [2017]). The court must "accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). "[I]f from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law," the motion will be denied (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

CPLR 3211 (a) (2) allows the dismissal based on the lack of subject matter jurisdiction. It is well settled that a party challenging an agency determination must exhaust all administrative remedies before commencing an Article 78 proceeding (*see Walton v New York State Dept. of*

Correctional Servs., 8 NY3d 186, 195 [2007]; *accord Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52, 57 [1978]). A party's failure to exhaust its administrative remedies deprives the court of subject matter jurisdiction (*see Matter of Newton v Police Dept. of City of N.Y.*, 183 AD2d 621, 623 [1st Dept 1992]).

As a preliminary matter, petitioners' procedural arguments in opposition to the cross motions are unpersuasive. First, petitioners object to Balsam having notarized the affidavit of Irma Rivera, to which a number of exhibits are attached. In support, they cite *Sumkin v Hammonds* (177 Misc 2d 1006, 1009 [Dist Ct, Nassau County 1998]) for the proposition that an affidavit notarized by a petitioner who is a party to a proceeding and has a direct pecuniary interest is considered a nullity. This court, though, is not bound by the determination in *Sumkin*. In any event, the court may consider a party's affidavit notarized by another party (*see York Towers, Inc. v Kotick*, 2012 NY Slip Op 30648[U], *5 [Sup Ct, NY County 2012], citing *Matter of Siani v Clark*, 23 Misc 3d 1123[A], 2009 NY Slip Op 50906[U], *2 [Sup Ct, Albany County 2009]). The court will also excuse Sydney's cross motion filed outside of the time frame stipulated by the parties for the submission of responsive papers (NYSCEF Doc No. 11). There is no prejudice to petitioners (*see Guzetti v City of New York*, 32 AD3d 234, 234 [1st Dept 2006]), who have submitted a reply.

A. The First Cause of Action for Mandamus Relief

"'[A]rticle 78 relief in the form of mandamus to compel may be granted only where a petitioner establishes a 'clear legal right' to the relief requested" (*Matter of Council of City of N.Y. v Bloomberg*, 6 NY3d 380, 388 [2006], quoting *Matter of Brusco v Braun*, 84 NY2d 674, 679 [1994]). Generally, "[a] writ of mandamus is an extraordinary remedy that is available only in limited circumstances" (*Alliance to End Chickens as Kaporos v New York City Police Dept.*, 32 NY3d 1091, 1093 [2018], *cert denied* — US —, 139 S Ct 2651 [2019], *reh denied* — US —, 140

S Ct 18 [2019]), such as enforcing "positively required to be done by a provision of law" (*Matter of County of Chemung v Shah*, 28 NY3d 244, 266 [2016]. quoting *Matter of Walsh v LaGuardia*, 269 NY 437, 441 [1936]). Mandamus, though, is not appropriate if performance of the administrative or ministerial act is discretionary (*see Matter of Hamptons Hosp. & Med. Ctr. v Moore*, 52 NY2d 88, 96 [1981]). Thus, it is the "nature of the duty sought to be commanded – i.e, mandatory, non-discretionary action" that controls (*Alliance to End Chickens as Kaporos*, 152 AD3d 113, 117 [1st Dept 2017], *affd* 32 NY3d 1091 [2018]). "A ministerial act is best described as one that is mandated by some rule, law or other standard and typically involves a compulsory result" (*id.* at 117, citing *New York Civ. Liberties Union v State of New York*, 4 NY3d 175, 184 [2005], *rearg denied* 4 NY3d 175 [2005]). Conversely, a discretionary act is one that "involve[s] the exercise of reasoned judgment, which could typically produce different acceptable results" (*id.*).

Here, the Loft Board Respondents and Sydney have demonstrated that the petition fails to state a cause of action for a writ of mandamus. Petitioners effectively seek to direct the Loft Board on how to perform its duties, because the grant of mandamus relief presumes that the Loft Board will accept, consider and determine the Second Reconsideration Application. However, whether the Loft Board will consider an application for reconsideration is entirely discretionary and only if one of the four circumstances enumerated in 29 RCNY § 1-07 (a) (2) has been presented. A reconsideration application must also be timely filed (*see* 29 RCNY § 1-07 [b] [2]). Thus, review of any application for reconsideration that has been filed necessarily involves reasoned judgment by the Loft Board and its employees. As such, petitioners cannot show they have a clear legal right to the relief demanded.

Additionally, respondents have shown that the Loft Board's procedural rules do not contemplate the filing of multiple reconsideration applications once an earlier-filed application to reconsider the same underlying determination on a coverage application has been denied. In this regard, the Loft Board's interpretation of its own rules is entitled to deference (*see Barrett Japaning, Inc. v Bialobroda*, 190 AD3d 544, 545 [1st Dept 2021]).

Ordinarily, "[j]udicial deference to an agency's interpretation of its rules and regulations is warranted because, having authored the promulgated text and exercised its legislatively delegated authority in interpreting it, the agency is best positioned to accurately describe the intent and construction of its chosen language" *(Andryeyeva v New York Health Care, Inc.*, 33 NY3d 152, 174 [2019]). That said, "[c]ourts must scrutinize administrative rules for genuine reasonableness and rationality in the specific context presented by a case" (*Kuppersmith v Dowling*, 93 NY2d 90, 96 [1999]). Thus, "[a]n agency has broad power to construe and interpret its own rules, and its interpretation must be upheld where … it is rational" (*Shih v Waterfront Commn. of N.Y.*, 83 AD3d 564, 565 [1st Dept 2011], *lv denied* 18 NY3d 804 [2012]; *Matter of 902 Assoc. v New York City Loft Bd.*, 229 AD2d 351, 352 [1st Dept 1996] [stating that "the Loft Board's interpretation of its own regulations should be upheld if not irrational or unreasonable]).

Applying these precepts, 29 RCNY § 1-07 (d) (2) provides that once the Loft Board denies a reconsideration application, then the underlying determination constitutes the agency's final determination. Based on the agency's interpretation of its own rules, the Loft Board, through Balsam and Cruz, could not have accepted the Second Reconsideration Application because Loft Board Order No. 4796, that denied reconsideration of petitioners' coverage application, rendered Loft Board Order No. 4668 the Loft Board's final agency determination. The rule does not expressly permit the filing of multiple reconsideration applications on the same underlying

determination. Further, nothing in the Loft Board's regulations requires the Loft Board or its staff to accept and refer a second application for reconsideration to the full Loft Board after a final determination on a prior reconsideration application has already been made.

Moreover, the Loft Board's rule is not irrational or unreasonable as it encourages the finality of agency determinations (*see Matter of Centennial Restorations Co. v Abrams*, 180 AD2d 340, 344 [3d Dept 1992] [stating that "[i]n the absence of any statutory reservation of discretionary agency authority to reconsider its determinations, New York applies a long-standing policy of finality to the nonquasi-judicial determinations of an administrative agency"]). If the Loft Board were to accept and grant reconsideration based on events that occurred after a final determination has been made, then the practice "would defeat finality and could subject an otherwise final order to endless recurring review" (*Matter of Rizzo v New York State Div. of Hous. & Community Renewal*, 6 NY3d 104, 110 [2005] [internal quotation marks and citation omitted]). This is especially the case where, as here, petitioners had already brought *Nazor I* to contest the Loft Board's final determination on the coverage application and the first reconsideration application. Therefore, petitioners cannot show that they have a clear right to the relief demanded.

Petitioners' argument that the Loft Board Respondents have conceded that they refused to act on a lawfully-filed reconsideration application is without merit. As explained above, the Loft Board Respondents and Sydney have demonstrated that the filing of the Second Reconsideration Application was not permitted under the Loft Board's rules. Hence, the Second Reconsideration Application could not have been a lawfully-filled application on which the Loft Board must act.[1]

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[1] Although petitioners contend that the Second Reconsideration Application is timely filed (NYSCEF Doc No. 12, ¶¶ 31 and 49), 29 RCNY § 1-07 [b] [2] instructs a party to file a reconsideration application within 30 days of the mailing date of the determination to be reconsidered. Here, petitioners filed the Second Reconsideration Application more than one year after the Loft Board mailed Loft Board Order No. 4668.

Petitioners' contention that 29 RCNY § 1-06.1, entitled "Limitations on Applications," does not restrict the number of reconsideration applications a party may bring is also unconvincing. As petitioners correctly observe, the rule sets forth the time frames within which a coverage application or an initial registration application form must be filed. However, the fact that reconsideration applications are not discussed does not mean that multiple reconsideration applications on the same underlying coverage application or reconsideration application may be filed. Interpreting 29 RCNY § 1-06.1 in this manner would conflict with the language in 29 RCNY § 1-07 (d) (2) and the finality of any determination made by the Loft Board.

Nor is there merit to petitioners' claim of bias on the part of Loft Board staff. Petitioners allege that Balsam neglected to mention the newly discovered evidence about Milul allegedly residing at the Building four years outside of the 2008-2009 Window at a meeting of the full Loft Board. Petitioners, though, fail to acknowledge that the Loft Board had already issued a final determination on the coverage issue and on the first reconsideration application. As the Loft Board rules did not allow for a reconsideration application to be filed after a prior reconsideration application has been denied, Balsam, Cruz and the Loft Board's staff could not have referred the Second Reconsideration Application to the Loft Board for a determination. Accordingly, the cross motions to dismiss of the first cause of action are granted.

B. The Second Cause of Action under CPLR 7803 (3)

Judicial review of administrative determinations is limited to the questions of law described in CPLR 7803 (*see Matter of Featherstone v Franco*, 95 NY2d 550, 554 [2000]). Where a determination that did not require a hearing mandated by law is made, judicial review is limited to whether the agency's determination was irrational, arbitrary and capricious or contrary to law (*see*

Matter of Adirondack Wild: Friends of the Forest Preserve v New York State Adirondack Park Agency, 34 NY3d 184, 191 [2019]; *see* CPLR 7803 [3]). Thus, the court "must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious'" (*Matter of Brookford, LLC v New York State Div. of Hous. & Community Renewal*, 31 NY3d 679, 684 [2018], quoting *Matter of Gilman v New York State Div. of Housing & Community Renewal*, 99 NY2d 144, 149 [2002]). An action is considered arbitrary or capricious when it is taken "without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). "If the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency" (*Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]).

For the same reasons set forth above, the court finds that "the Loft Board's determination was rational and not arbitrary and capricious or contrary to law or procedure" (*Barrett Japaning, Inc.*, 190 AD3d at 545). Courts will defer to an agency's interpretation of its own rules and regulations if rational and reasonable (see *Matter of 902 Assoc.*, 229 AD2d at 352; *accord Matter of Peckham*, 30 NY2d at 431). Here, the Loft Board's interpretation of its rule enforcing the finality of its agency determination is rational and reasonable. Consequently, the Loft Board did not violate its own rule by rejecting the Second Reconsideration Application.

C. Petitioners' Failure to Exhaust Their Administrative Remedies

In view of the foregoing, the court need not address whether petitioners failed to exhaust their administrative remedies.

D. Sydney's Request for Legal Fees

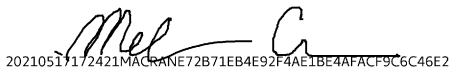
The court denies Sydney's request to recover its legal fees and expenses incurred in this proceeding (*see Sanger v Lavine*, 56 AD2d 518, 518-519 [1st Dept 1977], *lv denied* 41 NY2d 807 [1977] [stating that "[n]ormally parties are not so entitled [to recover their attorneys' fees], even if the proceeding is litigated to successful final adjudication by the court"]). Sydney has not demonstrated a basis for an award of its legal fees.

Accordingly, it is

ORDERED that the cross motion of respondents Loft Board, Helaine Balsam, as Executive Director and General Counsel of the Loft Board, and Martha Cruz, as Deputy General Counsel of New York City Loft Board, to dismiss the petition brought by petitioners Maria Nazor and Peter Mickle is granted; and it is further

ORDERED that the cross motion of nominal respondent Sydney Sol Group, Ltd. to dismiss the petition brought by petitioners Maria Nazor and Peter Mickle is granted to the extent of dismissing the petition, and the balance of the cross motion is otherwise denied; and it is further

ORDERED and ADJUDGED that the petition brought by petitioners Maria Nazor and Peter Mickle is denied and the proceeding is dismissed.



5/17/2021
DATE

MELISSA ANNE CRANE, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[X]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE