

THE CITY OF NEW YORK
DEPARTMENT OF BUILDINGS

DEPARTMENTAL MEMORANDUM

DATE: May 8, 1984

TO: BOROUGH SUPERINTENDENTS
FROM: Commissioner Charles M. Smith, *CMS*, R.A.
SUBJECT: Owner's Authorization

In recent months, several cases have raised the issue of under what circumstances a lessee is authorized to file applications with this Department. A related issue has also arisen of whether an approval or permit should not be issued (or should be revoked) where the lessee filed the application and the fee owner subsequently informed the Department that the filing did not have his authorization.

The Boroughs are advised, as follows:

1. A lessee may file an application for approval of plans or issuance of a permit pursuant to Sub-articles 108.0 and 109.0 of the Building Code. Such application must include a signed notarized statement by the applicant that the owner has authorized the filing of the application.
2. If the fee owner of the premises notifies the Department in writing that he (or she) did not authorize the filing of the application, the processing of the application shall immediately cease and the lessee notified of the action. If any approval or permit had been issued, such approval or permit shall be revoked. The above steps shall be taken regardless of the status of the application or the work.
3. No lessee may file in the capacity of a lessee an application for a certificate of occupancy or TCO. A lessee (or any other person) may file such application when it is acting in behalf of the fee owner.

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cc: Deputy Commissioner Minkin
Deputy Commissioner Madonia
Assistant Commissioner Dennis
Assistant Commissioner White
Executive Engineer Polsky
Executive Staff
BIAC
Industry

1982

490-83-A

APPLICANT—Ronald Ogur, P.E., for Bun and Burger of Rockefeller Plaza, Incorporated, lessee. Lee National Corporation, owner.

SUBJECT—Application May 10, 1983—appeal to determine whether the Department of Buildings properly revoked the permit upon determination that the application was not authorized by the "owner" as defined in the Building Code.

PREMISES AFFECTED—16 West 48th Street, south side, 250 feet west of Fifth Avenue, Block 1263, Lot 48, Borough of Manhattan.

APPEARANCES—

For Applicant: Ronald Ogur, P.E.
For Opposition: Herman Badillo.

ACTION OF BOARD—Appeal denied.

THE VOTE TO GRANT—

Affirmative: 0
Negative: Chairperson Deutsch, Vice Chairman Fossella,
Commissioner Carroll, Commissioner Wolf,
Commissioner Bockman and Commissioner Irtira 6

THE RESOLUTION—

WHEREAS, the letter of the Counsel of the Building Department, Dated April 11, 1983, acting on Alt. #204/82, reads:

"This is to advise that after extensive discussions with the Law Department and the staff of this department, we must affirm the decision of the Borough Superintendent, in revoking the referenced approval and permit.

The above-mentioned discussions included a review of your proposal to totally indemnify the City from any damages that might flow from a restoration of the approvals of relevant permits and applications by posting an escrow fund sufficient to cover any and all work necessary to restore the premises to its original condition. This proposal fails to address the basic issue as to whether your client, the net lessee at 16 West 48th

Street can be deemed to be the owner as such term is defined in the building code, and the broader question was to whether any net lessee could qualify as an owner. In reviewing this question, we have taken note of the fact that the definition of owner which existed in the building code prior to 1968 very specifically included lessee, but that the term lessee was excluded from the current definition of owner, additionally, we are reviewing other questions of intent and practical interpretation which necessarily entail a very indepth and broad review. Accordingly, I advise that it is the position of the Department of Buildings that a fee owner's authorization will be required by lessees in order to perform alteration work at a premise, and if said fee owner objects to the work on the grounds that he did not authorize the filing of the application then this department will revoke said permit. I hope that you will now at least be in a position to move forward in other areas to assert your rights."

and

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WHEREAS, the Departmental Memorandum of the Borough Superintendent of the Building Department, dated December 8, 1982, acting on Alt. #204/82, Permit #4145/82, reads:

"Enclosed is a copy of an amendment requesting reinstatement of the above captioned alteration application and permit, and a lease submitted to support the claim of the lessee to the right to act as 'owner' as defined in Section C26-201.0 of the Administrative Code in authorizing filing of applications as required in Section C26-108.5 of said code.

The approval of the application and the permit were revoked on October 18, 1982, based on the statement of the owner, Lee National Corporation, that it did not authorize the filing. (copy of revocation letter enclosed).

Your assistance in determining the validity of the lessee's claim is requested.

Please note that litigation regarding this matter is being handled by Lorraine Mohn of the Law Department."

and

WHEREAS, the letter of the Borough Superintendent of the Building Department, dated October 18, 1982, acting on Alt. #204/82, and BN 5294/82, reads:

"Lee National Corporation, owner of the above captioned premises, has informed this Department that it did not authorize the filing of the above applications and does not authorize the work described therein.

Therefore, the approval and/or acceptance of the above application is hereby withdrawn and all permits issued thereunder are hereby Revoked pursuant to Section C26-118.7 of the Administrative Code.

Notice is hereby given that all work being performed in execution of said construction shall be immediately stopped as per Section C26-123.1 of the Administrative Code."

and

WHEREAS, under Sec. C26-109.5 of the Building Code, an applicant for a building permit is required to submit to the Department of Buildings an affidavit attesting that he/she is authorized by the "owner" of the premises to make the application; and

WHEREAS, Sec. C26-201.0 of the code defines "owner" as the "person having legal title to the premises; a mortgagee or vendee in possession; a trustee in bankruptcy; a receiver or any other person having legal ownership or control of the premises"; and

WHEREAS, in the case the applicant submitted an affidavit stating that he was authorized by a lessee of the property who fulfilled the definition of "owner," and

WHEREAS, subsequent to the receipt of the affidavit, the Department of Buildings received information from the fee owner of the premises that it had not given authorization and that the applicant was acting on behalf of a lessee who, the owner claims, did

not have authority to seek permits or perform the proposed alterations; and

WHEREAS, the applicant claims that the authority to seek permits and to carry out the work was granted to the lessee by the terms of the lease; and

WHEREAS, neither the Department of Buildings nor this Board possesses the jurisdiction to apply landlord and tenant law, or to interpret the rights of parties under leases drawn up between themselves; and

WHEREAS, until resolution of the lease dispute, the Department or the Board cannot determine whether the lessee can meet the definition of "owner;" and

WHEREAS, when the Department of Buildings has received information that demonstrates such a landlord and tenant dispute and calls into question whether an applicant has proper authorization, the Department can find that the code requirement of an affidavit of authorization may not have been fulfilled, and that the permit must be revoked.

Resolved, that the decision of the Department of Buildings, dated April 11, 1983, acting on Alt. Applic. No. 204/82, be and it hereby is affirmed, and that the appeal be and it hereby is denied.

Adopted by the Board of Standards and Appeals, January 10, 1984.

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