

Matter of Pak

OATH Index No. 2447/13 (Oct. 9, 2014), *adopted in part, rejected in part and remanded*, Loft Bd. Order No. 4334 (Nov. 20, 2014)

[Loft Bd. Dkt. No. TR-1068; 46 Old Fulton Street, Brooklyn, N.Y.]

Petitioners applied for coverage of a first floor unit at the subject premises, under the 2010 amendments to the Loft Law. ALJ found that the three petitioners resided at the premises for at least 12 consecutive months during the window period. There was undisputed proof that the unit met the Loft Law's size, window, and access requirements. Thus, the first floor rear of the premises is an IMD unit. The evidence also supported that petitioner Ahn continues to reside at the premises, and is entitled to protected occupancy status. Petitioners Pak and Hur moved to Maine in 2009, but as prime lessees, they continue to pay rent, and retain some furniture and clothing at the premises, which they occasionally visit. Accordingly, all three petitioners are entitled to protected occupancy status under the Loft Law and their applications should be granted.

Loft Board adopts finding that unit is an IMD unit. The Loft Board remands for determination as to whether Pak and Hur can show the loft is their primary residence as required for protected occupancy status under section 2-09(b)(4) of the Board's rules. Loft Board's decision regarding Ahn's status will be held in abeyance until Pak's status is determined.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
GIL SEON PAK, JUNG HUR, & HYOBIN AHN
Petitioners

REPORT AND RECOMMENDATION

INGRID M. ADDISON, *Administrative Law Judge*

Petitioners Gil Seon Pak, Jung Hur, and Hyobin Ahn ("petitioners" or "applicants"), filed an application with the Loft Board on March 4, 2013 (Loft Board Docket No. TR-1068), for a finding that they are the protected occupants of the first floor rear unit of an interim multiple dwelling ("IMD") located at 46 Old Fulton Street, Brooklyn, New York ("premises"), pursuant

to section 281(5) of Article 7-C of the Multiple Dwelling Law (“MDL” or “Loft Law”) (ALJ Ex. 1). Respondent owner, American International 2010, Inc., registered all but the first floor unit as covered units on March 11, 2014 (Pet. Ex. 1 at 2).

Respondent, whose answer was due by April 9, 2013, was declared in default when it failed to file a timely answer. Respondent filed its answer on or about July 22, 2013,¹ after the applicants posed no objection to vacating the default. In its answer, respondent asserted that the applicants did not residentially occupy the premises during the window period and therefore did not satisfy the requirements for coverage under the MDL (ALJ Ex. 2).

The Loft Board referred the matter to this tribunal. Despite attempts at settlement, no resolution was reached, and a hearing was held on July 22 and September 11, 2014. At the hearing, applicants Gil Seon Pak and Jung Hur testified with the assistance of a Korean interpreter. Hyobin Ahn also testified. The applicants also presented documentary evidence. Respondent appeared by counsel only.

For the following reasons, I find that the first floor rear of the premises is an IMD unit, having been occupied for 12 consecutive months during the inquiry period by Hyobin Ahn, who continues to reside there. She is therefore the protected occupant of the unit, and her application should be granted. The evidence proved that petitioners Gil Seon Pak and Jung Hur, who are the prime lessees, resided at the unit for at least 12 consecutive months during the window period, and moved to Maine in 2009. But, they left some clothing and furniture at the premises, continue to pay rent, and occasionally visit the unit. They therefore qualify for protected occupancy status, and their applications should be granted.

ANALYSIS

The subject building is a four-story building with six registered IMD units on floors 2, 3 and 4 (Pet. Ex. 1 at 2). Applicants Hyobin Ahn, Gil Seon Pak and Jung Hur are seeking coverage of the first floor rear unit of the premises.

To qualify for coverage, the applicants must establish, among other things, that (1) they resided at the premises for a period of 12 consecutive months during January 1, 2008 and December 31, 2009; (2) their unit has at least one entrance that does not require passage through

¹ Respondent’s principals reside in Florida and there appeared to be legitimate reasons for respondent’s untimely answer, including the retention of counsel in New York.

another residential unit to obtain access to the unit; and (3) it has at least one window opening onto a street or a lawful yard or court. Mult. Dwelling Law § 281(5) (Lexis 2014). Under section 2-09(b)(1) of the Loft Board rules, “the occupant qualified for protection under Article 7-C is the residential occupant in possession of a residential unit, covered as part of an IMD.” 29 RCNY § 2-09(b)(1) (Lexis 2014).

Ms. Ahn’s testimony that the space occupied by the applicants is approximately 1,300 to 1,400 square feet, has three windows that look out onto Doughty Street, and is accessed from the street through a separate door at the rear of the building went unchallenged (Tr. 13-14). Thus, the only issues in dispute are whether the unit was residentially occupied for 12 consecutive months during the window period and whether the applicants are entitled to coverage as protected occupants.

Residential Occupancy of the Premises During the Window Period

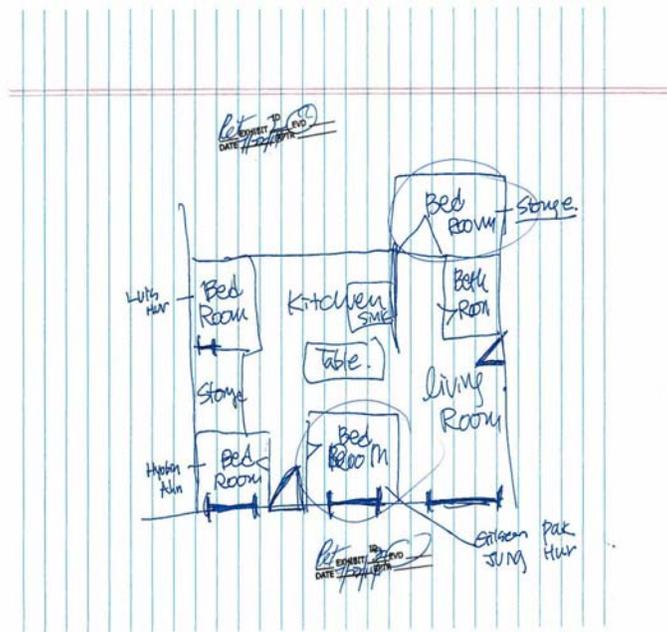
The evidence supports a finding that all three applicants resided in the first floor rear of the premises for at least 12 consecutive months during the window period. However, applicants Gil Seon Pak and Jung Hur, who are married, and their eight-year-old son Luis, relocated to Maine in 2009.

Hyobin Ahn

Applicant Hyobin Ahn is Ms. Pak’s niece (Tr. 7). The three applicants, and Luis, moved into the subject premises in early 2007, pursuant to a two-year “Share Rental Agreement” with former landlord Donald Bar, for a period commencing on March 6, 2007 (Ahn: Tr. 6, 8, 17; Pak: Tr. 58-59, 61, 63; Pet. Ex. 32). The agreement states that “This is a commercial rental - no services – basically raw loft space” and names all three applicants and Luis as the intended occupants of the space (Pet. Ex. 32). Mr. Hur testified that he is an artist and needed a studio and living space (Tr. 113). The space was not suitable for residential occupancy, so the landlord’s son and someone later hired by Ms. Pak and Mr. Hur, created living quarters in 2007, which included three bedrooms, a storage room, a bathroom with a bathtub, sink and toilet, and a washer and dryer. They also created a kitchen in which they installed cabinets, a stove, and a refrigerator, and overhead lighting (Ahn: Tr. 8-11, 28; Pak: Tr. 59-61; Hur: Tr. 127-28; Pet. Exs. 3H, K, M).

Ms. Ahn, who was a student at Hunter College when she moved into the premises, testified that a bed, desk, a chest of drawers and a clothes closet were purchased for her room as well as for Luis's room. Ms. Pak's and Mr. Hur's bedroom contained a television, bed and two big "drawers" where they stored their clothes and personal effects (Tr. 16-18, 32-33). Ms. Ahn drew a rough sketch of the unit's configuration after it had been altered (Tr. 12-13; Pet. Ex. 2). It showed four bedrooms, a kitchen, living room, and bathroom. Ms. Ahn occupied the bedroom at the lower left side of the drawing until 2010, while Luis occupied the one at the upper left side. Another bedroom at the lower part of her drawing ("front bedroom") was occupied by Ms. Pak, who concurred with the configuration, and Mr. Hur, while the bedroom on the upper right was used for storage only ("storage room") (Ahn: Tr. 16-17, 26-27, 29; Pak: Tr. 61-62, 85).

Applicant Ahn's Free-Hand Sketch of the 1st Floor Rear of the Premises (Pet. Ex. 2)



Documents to Support Ahn's Residency During Window Period

Ms. Ahn presented undated photographs of the premises which she claimed to have taken in 2012 or 2013 (Tr. 25-29; Pet. Exs. 3A-N). They show indicia of residential occupancy of the premises. For instance, the room which Ms. Ahn identified as hers contained a bed, a desk with a laptop computer, a chair, a floor-length mirror propped against one wall, and a space heater (Tr. 25-26; Pet. Ex. 3A). Luis's bedroom showed a small bedside table with a lamp, and the

partial view of a bed with its coverlet turned back (Tr. 26; Pet. Ex. 3B). Ms. Ahn identified three different rooms in the photos as Ms. Pak's and Mr. Hur's bedroom. The first room contained a bed, a desk on which there were multiple folders and a desk lamp, and various wall displays including what appeared to be a calendar (Tr. 27-28; Pet. Exs. 3C, G). The other two rooms were furnished differently from each other and from the first one. One appeared to contain a chest of drawers, a clothes hamper, and a waste paper basket. No bed was discernible. The other contained a bed jammed up against a wall, in what appeared to be very cramped space (Tr. 28-29; Pet. Exs. 3I, J). Multiple views of the living room showed a large sofa and chair, and a free-standing display cabinet (Tr. 27-28; Pet. Exs. 3D, E, F, L). The unit also contained a kitchen with a stove, refrigerator, sink, and a large table (Tr. 28-29; Pet. Exs. 3H, K). A partial photo of the bathroom showed a bathtub, what appeared to be a sink with vanity, and a washer and dryer stacked between the bathtub and sink (Tr. 29; Pet. Ex. 3M).

Ms. Ahn graduated from Hunter College in 2009, decided to attend graduate school, and continues to reside at the premises (Tr. 32-33). Her bank statements from December 2007 through July 2009, and from December 2009 through June 2010, listed the subject premises as her address, as did her credit card statements from January through August 2010 (Pet. Exs. 7, 8, 9).² Ms. Ahn submitted correspondence dated August 22, 2008, and March 18, 2009, from the Social Security Administration regarding her application for a Social Security card (Pet. Ex. 10). She submitted a copy of an I-797 notice of action from the Department of Homeland Security, dated January 15, 2009, granting her application for employment authorization (Pet. Ex. 6). Both federal agencies addressed Ms. Ahn at the subject premises. Ms. Ahn's transcripts from Hunter College's Registrar's Office dated October 16, 2008 and March 17, 2009, and a tuition billing statement dated May 30, 2008, also show the Cadman Plaza West alternate address for the premises (Pet. Exs. 5A-C). In addition, Ms. Ahn's temporary visitor driver's license, issued on March 23, 2010, with an expiration date of December 31, 2012, displayed her address as 46 Old Fulton Street, Brooklyn (Pet. Ex. 4).

This tribunal and the Loft Board have considered evidence of a tenant's intent to make his or her unit a residence, such as the receipt of mail at the unit, whether the unit's address is

² Petitioner's exhibits 8 and 9 reflect the address as 46 Cadman Plaza West, which Ms. Ahn claimed to be an alternate address for the building (Tr. 38-39). Upon review of the Property Profile overview at the New York City Department of Buildings website, I notified counsel that I was taking official notice that 46 Cadman Plaza West is indeed an alternate address for 46 Old Fulton Street.

used for voter registration, driver's license, and other official documents, and whether the tenant has maintained another residence. *See, e.g., Matter of Gareza*, OATH Index Nos. 2061/12 & 760/13 at 8 (Dec. 12, 2012), *accepted in part, rejected in part*, Loft Bd. Order No. 4243 (Feb. 20, 2014) (receiving mail and tax documents at the address, using the address on a bank account, and being registered to vote at the address was evidence of residential use); *Matter of the Tenants of 141-155 S. Fifth Street*, Loft Bd. Order No. 1739, 15 Loft Bd. Rptr. 199, 212 (Jan. 19, 1995) (tenant's listing the loft address as his home address on tax returns and marriage certificate, and his homeowner's insurance policy on the unit, evinced an intent to build himself a home); *Matter of Mussman*, Loft Bd. Order No. 905, 9 Loft Bd. Rptr. 50, 59 (May 25, 1989) (finding that tenant did not residentially occupy the unit based in part on automobile registration, automobile insurance, and voter registration reflecting another address plus the tenant's inability to explain why his wife resided at that address without him); *Matter of Muschel*, Loft Bd. Order No. 33, 1 Loft Bd. Rptr. 27, 30 (Nov. 23, 1983) (documents such as tax returns, checks, and a passport, indicating the loft was applicant's residence, was persuasive because "the Board considers where one holds oneself out as residing as probative of where one resides in fact.").

I find that Ms. Ahn's testimony that she resided at the premises for at least 12 consecutive months during the inquiry period and that she continues to reside there is supported by her documentary evidence, particularly the official documents from federal and state agencies, and from her college, where she is pursuing an advanced degree. This evidence, along with the testimony that the space was fully configured for residential use with bedrooms, a kitchen, and a bathroom, is sufficient to find that the unit is an IMD and that Ms. Ahn is a protected occupant who is entitled to coverage under the Loft Law.

Gil Seon Pak and Jung Hur

The testimony and evidence supported a finding that petitioners Gil Seon Pak and Jung Hur resided at the premises for at least 12 consecutive months during the window period but that they moved to Maine in 2009.

When they moved into the premises in early 2007, Ms. Pak and Mr. Hur worked at "Kirara," a restaurant in the West Village (Ahn: Tr. 32-33; Pak: Tr. 62). The testimony conflicted in terms of what room Ms. Pak and Mr. Hur actually occupied. Upon review of Ms. Ahn's sketch, Ms. Pak agreed that she and her husband occupied the front bedroom (Tr. 61-62, 85). But, Mr. Hur claimed that that room did not have and never had a bed and insisted that he

used it as his office while he and Ms. Pak occupied the storage room which was converted to their bedroom after four months of construction work (Tr. 151, 153, 155). For their room, they purchased a queen-sized bed with a mattress and backboard (Tr. 155-56). There were no photographs depicting the configuration he described in his room.

Applicants Pak and Hur purchased a restaurant in Maine in September 2008 (Ahn: Tr. 48; Pak: Tr. 76; Hur: Tr. 138, 142-43). Mr. Hur moved to Maine in January 2009, preceding his wife and son, who followed in the summer of the same year (Ahn: Tr. 18-19, 47; Pak: Tr. 76; Hur: Tr. 138). The restaurant has 30 employees which has remained constant since they opened, and it is open for business seven days a week (Pak: Tr. 87-88; Hur: Tr. 143-44). For his first few months in Maine, Mr. Hur lived on the third floor of the three-story building that housed the restaurant (Tr. 138). When Ms. Pak and Luis moved to Maine, the family moved into a rented house in Cape Elizabeth. Luis, who was ten years old when he moved to Maine, was enrolled in, and has attended school in Maine since 2009 (Ahn: Tr. 49-50; Pak: Tr. 76, 86-87; Hur: Tr. 138, 169).

The testimony of the three applicants conflicted regarding the use of the premises after Mr. Hur moved to Maine. Ms. Ahn testified that in January 2009, Ms. Jeung, a family friend and Ms. Pak's legal ward, came to live at the premises. Ms. Jeung moved into the front bedroom, while Ms. Pak and Mr. Hur moved to the storage room. Ms. Jeung left for college in the middle of 2010 (Tr. 21-24). Mr. Hur corroborated Ms. Ahn's testimony that when Ms. Jeung moved in, she was given the front bedroom (Tr. 149, 160). But according to him, Ms. Jeung lived at the premises for approximately two years, from summer 2009 until 2011, when she returned to Korea (Tr. 150, 174).

Ms. Pak initially testified that no one occupied the front bedroom after she and her husband went to Maine (Tr. 91-92, 97). Instead, she identified Ms. Ahn's bedroom as the one occupied by Ms. Jeung (Tr. 101). Later, she stated that the front bedroom was used by Ms. Jeung from 2009 until she left for college in June or July 2010 (Tr. 102-03). Ms. Pak also testified that the front bedroom remained vacant even to this day and was not sublet to anyone. Yet she indicated that "even now my son is staying in that room right now for summer school" (Tr. 91-92). She also said that in 2009, "a friend" stayed in her son's bedroom. But she could not recall the specific period during which that person stayed (Tr. 92-95).

Ms. Pak testified that when they moved to Maine, they only took some of their clothes because “we knew that we were going to come back, and we knew that we were going to go back and forth a lot, so we didn’t bring anything except for part of our clothes, not all of it” (Tr. 76). The remainder of their clothes was left in the storage room which contained a closet. In the front bedroom, they left a bed, a small closet, a television, and a throw rug (Tr. 86). They took no furniture because Ms. Pak expected to “go back and forth often” and Mr. Hur “knew that [they] would return to New York” (Pak: Tr. 77, 83; Hur: Tr. 140; Ahn: Tr. 19, 21). So they even left their son’s bed (Tr. 79)

Mr. Hur testified that when Ms. Jeung moved into the front bedroom, she purchased her own bed which she threw out before leaving (Tr. 174-75). Contrary to his wife’s testimony, Mr. Hur stated that he took his television to Maine (Tr. 140). He also offered convoluted testimony that a number of beds in the unit, including his son’s, became broken and had to be thrown out (Tr. 157-61).

The three applicants testified as to Ms. Pak’s and Mr. Hur’s sporadic visits to the premises after their move to Maine.

Ms. Pak’s Visits from Maine

According to Ms. Ahn, Ms. Pak returns every month and stays for “sometimes three or four days, sometimes five-six days.” When she comes, she sleeps in the storage room (Tr. 21, 23).

Ms. Pak testified that after September 2009, she returned about two to three times per month to check on Ms. Jeung, attend to personal matters, and meet with her accountant. Her visits would span two to three days, or sometimes an entire week. She would stay in the storage room where she slept on a “thick blanket” (Tr. 80, 98). She claimed that in “Oriental” culture, some people do not use beds (Tr. 98).

Mr. Hur testified that effective September 2009, his wife returned to New York at least once per month, and would stay five or six days (Tr. 164).

Mr. Hur’s Visits from Maine

Ms. Ahn testified that after Mr. Hur moved to Maine, he returned to Brooklyn every two months, and while the length of his stay depended upon his art business, he generally stayed about three or four days, or sometimes even six days (Tr. 19-20).

Ms. Pak testified that from 2009 through June 2010, Mr. Hur returned to New York, sometimes to purchase ingredients for the restaurant, and sometimes for art shows. His visits would last two or three days or sometimes a week. Like her, he would stay in the storage room on the blanket which is folded and put away after use (Tr. 82-83, 98-99, 100-01).

Mr. Hur testified that from September 2008³ and throughout 2009, he returned to the premises twice a month, every other week, to purchase supplies and quality ingredients for the restaurant (Tr. 139, 144-45). In 2009, when he visited, he would leave Maine on a Saturday night, get to New York on Sunday, and return to Maine on Thursday. But his routine changed in 2010, because he was commissioned for an art exhibition at the White Box Gallery in New York, scheduled for summer 2011 (Tr. 145-46; Pet. Ex. 33). In preparation for his exhibition, he spent about 20 days each month at the premises (Tr. 147). When he stayed in New York, he would use both the storage room and the front bedroom. At one point, he testified that he and his wife did not visit New York at the same time (Tr. 164). But he also testified that if they came to New York together, they would sometimes stay in Luis's old bedroom (Tr. 163-66).

Documents to Support Pak's and Hur's Residency During Window Period

Ms. Pak and Mr. Hur submitted copies of their joint tax returns for 2007 and 2008 which listed the premises as their address. Their claim for child and dependent care credit which was attached to their tax return, disclosed the New York City public school that their son attended (Tr. 64-65; Pet. Exs. 12-13). Social Security statements dated February 2008 and February 2009, and a letter from the Social Security Administration in 2008, were addressed to Ms. Pak at the subject premises (Tr. 74; Pet. Exs. 20-21). Likewise, Social Security statements dated August 2008 and August 2009, were addressed to Mr. Hur at the subject premises (Pet. Ex. 31).

Ms. Pak and Mr. Hur also submitted: 1) copies of cable company bills to June 2010, and National Grid statements to August 2013 (Pet. Exs. 14, 25); 2) copies of Ms. Pak's bank statements from January 2008 to January 2009, and Mr. Hur's bank statements from two different banks for March 2008 through February 2010, and December 2007 through December 2010 (Pet. Exs. 15, 18-19, 26-27); 3) cancelled checks for rent payments from January 2009 through December 2009, and from June 29, 2010 to January 2014 (Pet. Exs. 24N-GG); 4) Ms. Pak's credit card records from January 2008 through December 2009, and Mr. Hur's credit card statements from January 2009 through June 2010, with transaction pages for the 2010 statements

³ Mr. Hur had previously testified that he moved to Maine in January 2009 (Tr. 138).

omitted (Pet. Exs. 16-17, 28-30); and 5) documents relating to Ms. Pak's hospitalization during the window period (Pet. Ex. 22). All the documents displayed the subject premises as Ms. Pak's and Mr. Hur's address.

In his closing arguments and post-hearing brief, applicants' counsel argued that to be covered, the unit is not required to be the primary residence of the applicant (Tr. 182-84; Pet. Brief at 3). Counsel is correct. Neither the Loft Law nor the Loft Board rules require that the unit for which an applicant seeks coverage must be his or her primary residence. *See Vlachos v. NYC Loft Bd.*, 70 N.Y.2d 769, 770 (1987); *BOR Realty Corp. v. NYC Loft Bd.*, 129 A.D.2d 496 (1st Dep't 1987), *aff'd*, 70 N.Y.2d 720 (1987); *Matter of Cohen*, OATH Index No. 2015/12 at 4-5 (Aug. 23, 2013), *adopted*, Loft Bd. Order No. 4261 (Mar. 20, 2014); *Matter of Pels*, OATH Index No. 2481/11 at 11-12 (June 20, 2012), *adopted*, Loft Bd. Order No. 4161 (June 20, 2013). Applicants' counsel relied primarily on *Matter of Pels*, arguing that it was most compelling and controlling in this case (Pet. Brief at 2).

In *Matter of Pels*, the applicant leased a unit in 1985 as a sculpting studio ("loft unit"). She simultaneously leased a penthouse apartment in the same building for residential purposes. In 1993, while teaching at a university in Iowa, she sublet the penthouse apartment. Before moving, however, she added a bedroom to the loft unit so she would have somewhere to sleep when she visited New York during her teaching year. When her teaching assignment ended, she returned to New York but was unable to regain possession of the penthouse from the sub-lessee. She therefore took up residence in the loft unit, made physical improvements to it, and continued to live there. The owner argued, among other things, that Pels was not entitled to coverage because she was not an *actual resident* during the period she was away teaching in Michigan. *Matter of Pels*, OATH 2481/11 at 10. Administrative Law Judge Tynia Richard found that the applicant proved that her residence in Detroit "was at most temporary," and that Pels was the protected occupant of the unit. She made this finding despite the fact that Pels was away for two and a half years, had registered and insured her car in Michigan, paid taxes in Michigan, had registered to vote there and spent most of her time there. The proof that Pels had every intention of returning to her residence in New York at the end of her teaching engagement, and eventually did so was sufficient to establish that Pels occupied the unit as a residential tenant. *Id.*

This case is distinguishable from *Matter of Pels*, in that Ms. Pels traveled back and forth during the window period, and the tribunal had to address whether her itinerant schedule

negatively impacted her residency in her loft during the window period, and thus her qualification for coverage. Here, there was never a question as to where Ms. Pak and Mr. Hur resided during the window period. Their testimony and the official documents submitted, such as their federal income tax returns and statements from the Social Security Administration were indisputable and sufficient for me to find that they resided at the premises for at least 12 consecutive months during the window period. Thus, window-period occupancy is not at issue. The question is whether residency for 12 consecutive months during the window period automatically qualifies Pak and Hur as protected occupants.

Section 2-09(b)(1) of the Loft Board rules provides that “the occupant qualified for protection under Article 7-C is the residential occupant in possession of a residential unit, covered as part of an IMD.” 29 RCNY § 2-09(b)(1) (Lexis 2014). Thus, a separate inquiry into whether Pak and Hur are residential occupants in possession of the subject unit even though they reside in Maine, is warranted.

As an initial matter, Ms. Pak’s and Mr. Hur’s testimony regarding the frequency of their visits to New York and where they slept was inconsistent and often confusing. Their counsel suggested that their confusing testimony stemmed from their lack of fluency in English (Tr. 182). But I was not persuaded by that explanation. The in-person interpreter often repeated translations for both parties and asked for clarification of their answers. The interpreter also provided clarification if either party was unable to understand any of the questions posed. This appeared more likely than not to be a case of confusion caused by petitioners’ urgent attempt to convey that they have not surrendered their right to the premises, despite the fact that there is little about their move to Maine that could be considered temporary. They made a significant financial investment when they purchased a restaurant with 30 employees, and appear to have settled in Maine, hundreds of miles away from New York. They enrolled their son in school in Maine. They purchased furniture for their new home, and by all accounts, disposed of broken furniture from the subject premises. But for the following reasons, none of this affects their entitlement to protected occupancy status.

In spite of their inconsistencies regarding the frequency of their visits to New York, their testimony was sufficiently corroborated by Ms. Ahn for me to find that Ms. Pak and Mr. Hur periodically visited and stayed at the subject premises where they left some furniture. Ms. Ahn’s photos, taken in 2012 and 2013, display a unit with all the trappings of residential use, not just in

her bedroom, but in the other bedrooms and the kitchen. It would be difficult to fathom that by herself, Ms. Ahn created the lived-in appearance in all the rooms, simply to persuade this tribunal that Ms. Pak and Mr. Hur frequently use the premises. Moreover, the evidence established that Mr. Hur did indeed have an art exhibit in August 2011, supporting his testimony that he returned to New York and stayed at the premises in preparation for the exhibition (Pet. Ex. 33).

The only rental agreement that petitioners presented was the one that they executed in 2007 with the former landlord. That expired in March 2010. So there appears to be no current lease in effect. Ms. Pak and Mr. Hur are nonetheless the prime lessees,⁴ and continue to remain in privity with the landlord by paying the rent which the landlord continues to accept. Notably, they have not sublet their rooms. Their niece, who is in graduate school, continues to reside at the premises. No evidence was presented that she ever contributed to the rent, even prior to Ms. Pak's and Mr. Hur's move to Maine in 2009. While they provided no cancelled checks for the first six months of 2010, and there was no explanation why the first cancelled check that they submitted for 2010 was dated June 29, 2010, approximately one week after the passage of the 2010 amendments to the Loft Law, respondent submitted nothing to challenge that the rent was ever paid by anyone other than Ms. Pak or Mr. Hur.

In short, I found that petitioners Pak and Hur moved to Maine in 2009, but they remained connected to the premises, and retained the right to possess and occupy it at any time by virtue of their continued rent payments. Therefore, they, as well as Ms. Ahn, are entitled to be recognized as protected occupants of the unit.

Accordingly, the applications of Ms. Pak and Mr. Hur should be granted.

FINDINGS AND CONCLUSIONS

1. Petitioners Ahn, Pak and Hur resided at the first floor rear unit of the subject premises since early 2007, when Ms. Pak executed a rental agreement with the landlord.

⁴ Pursuant to the Loft Board rules, "Prime lessee means the party with whom the landlord entered into a lease or rental agreement for use and occupancy of a portion of an IMD, which is being used residentially, regardless of whether the lessee is currently in occupancy or whether the lease remains in effect." "Privity means a direct contractual relationship between two parties, which may be established explicitly, implicitly or by operation of law." 29 RCNY § 2-09(a) (Lexis 2014).

2. All three petitioners resided at the premises for at least 12 consecutive months during the window period.
3. Since there is no dispute as to the other criteria under section 281(5) of the Loft Law for qualification as an IMD unit, the first floor rear unit of the subject premises is an IMD unit.
4. Petitioner Ahn, who continues to reside there is the protected occupant of the first floor rear unit of the premises.
5. Petitioners Pak and Hur moved to Maine in 2009, but retain the right to possess the premises by continuing to pay rent and occasionally staying at the premises when they visit New York. They are therefore entitled to be recognized as protected occupants.

RECOMMENDATION

The coverage application of all three petitioners should be granted.

Ingrid M. Addison
Administrative Law Judge

October 9, 2014

SUBMITTED TO:

RICK D. CHANDLER, P.E.
Chair

APPEARANCES:

DAVID FRAZER, ESQ.
Attorney for Petitioners

SMITH & SHAPIRO
Attorneys for Owner

BY: HARRY SHAPIRO, ESQ.