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2022-02-15

### Matter of Robinson Callen v. New York City Loft Board

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# State of New York Court of Appeals

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## MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 4  
In the Matter of Robinson Callen,  
&c.,  
Respondent,  
v.  
New York City Loft Board,  
Appellant,  
Richard Fiscina, et al.,  
Respondents.  
(And Another Proceeding.)

Diana Lawless, for appellant.  
Margaret B. Sandercock, for respondents Luke Weinstock, et al.  
Magda L. Cruz, for respondent Robinson Callen, &c.

### MEMORANDUM.:

In each proceeding, the order insofar as appealed from should be reversed, with costs, and the matter remitted to the Appellate Division with directions to remand to the New York City Loft Board for further proceedings in accordance with this memorandum.

In accordance with its regulations (*see* 29 RCNY § 1-06 [j] [5]), the Loft Board reviewed and rejected the parties' proposed settlement agreement as perpetuating an illegal living arrangement. The rationality of that determination is not before us (*see 511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 151 n 3 [2002]). Under these limited circumstances, it was not irrational for the Board to remand for further proceedings, thereby declining to give effect to a provision of the settlement agreement in which tenants purported to withdraw their application for Loft Law coverage.

In each proceeding, order insofar as appealed from reversed, with costs, and matter remitted to the Appellate Division, First Department, with directions to remand to the New York City Loft Board for further proceedings in accordance with the memorandum herein. Chief Judge DiFiore and Judges Rivera, Garcia, Wilson, Singas and Cannataro concur. Judge Troutman took no part.

Decided February 15, 2022