

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH  
Justice

PART 32

Richard Fiscina  
vs.  
NYC Loft Board

INDEX NO. 156504/17  
MOTION DATE 4-10-18  
MOTION SEQ. NO. 1

The following papers, numbered 1 to 4, were read on this motion to/for Art 78  
Notice of Motion/Order to Show Cause — Affidavits — Exhibits 1  
Answering Affidavits — Exhibits 2, 3  
Replying Affidavits 4

Upon the foregoing papers, it is ordered that this motion is Petition is Granted.

After oral argument, the petition is granted because the order for reconsideration LBSO 4630 and the underlying Loft Board Order, 4480 were without rational basis.

Here, the building owner and tenants/residents have settled their differences and the loft Board has refused to accept the settlement. This leaves two options — one is for the tenants to default at the forced hearing and the other is for the tenants to spend plenty of money and time litigating something they do not wish to litigate. Both options are wasteful and make no sense. While the loft board may not agree with the settlement, it is irrational to refuse to allow an applicant to withdraw his application.

To be clear, this Court is not finding irrational the loft board's position to not approve a settlement it considered inappropriate — this Court does find it ~~irrational~~ irrational to refuse to allow the applicant to withdraw the application and force litigation.

Dated: 4-10-18 Judgment for Petitioner.

[Signature], J.S.C.  
HON. ARLENE P. BLUTH  
 NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

- 1. CHECK ONE:  CASE DISPOSED
- 2. CHECK AS APPROPRIATE: MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER  DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE