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Eatery Loses Abatement Bid in Sandy Aftermath

By Brendan Pierson

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A lower Manhattan eatery that lost power in Hurricane Sandy is not entitled to a rent abatement for the months it had to supply its own electricity with a generator, Manhattan Civil Court Judge Jennifer Schecter has ruled. The decision in *Maiden Lane Properties v. Just Salad Partners*, 056312/13, was handed down yesterday following a bench trial. It was one of the first final dispositions in a lawsuit arising from Sandy.

The store, a branch of the Just Salad chain, lost power following the Oct. 29 storm along with the rest of the mixed-use residential and commercial building. The building owner provided a generator for the residential tenants, but did not allow Just Salad to use it, saying it might not generate enough power. Just Salad got its own generator so it could continue doing business.

Just Salad did not pay rent in December and January, and paid only partial rent in February, saying it was entitled to a complete abatement while it went without its normal source of power. It pointed to a provision in its lease that said its rent would be abated if the premises "are totally damaged or rendered wholly unusable by fire or other casualty." However, Schecter said the provision in Just Salad's lease dealing with property damage did not cover loss of electricity because the lease contained a separate provision requiring Just Salad to get its own electricity.

"There was no evidence that the Premises was physically 'damaged' by the storm in a manner that would implicate" the damage part of the lease, Schecter wrote. The lease, she added, "makes plain that the unavailability of electricity does not entitle Just Salad to a rent abatement."

The landlord was represented by **Adam Leitman Bailey P.C.** Counsel to Just Salad was Belkin Burden Wenig & Goldman.