

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13240
Y/hu

_____AD3d_____

Argued - November 16, 2006

ANITA R. FLORIO, J.P.
WILLIAM F. MASTRO
ROBERT A. SPOLZINO
PETER B. SKELOS, JJ.

2005-06144

DECISION & ORDER

In the Matter of Farouk El Nazer, appellant, v
Department of Housing Preservation and Development
(Code Enforcement), respondent.

(Index No. 80061/05)

Farouk El Nazer, Staten Island, N.Y., appellant pro se.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Pamela Seider Dolgow
and Suzanne K. Colt of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review, inter alia, a determination of the respondent Department of Housing Preservation and Development (Code Enforcement) dated January 26, 2005, which directed that an apartment located in a building owned by the petitioner be vacated, the petitioner appeals from a judgment of the Supreme Court, Richmond County (Straniere, J.), dated May 31, 2005, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, without costs or disbursements.

Contrary to the petitioner's arguments, there is no evidence in the record to demonstrate that a plan for the basement apartment in his multiple dwelling was ever filed with the Department of Buildings, or that the petitioner ever applied for the necessary permits. Under the Multiple Dwelling Law, the absence of such a filing and permit renders the basement apartment unlawful (see Multiple Dwelling Law § 300[6]). Moreover, neither a 1975 criminal court proceeding nor a 1996 landlord-tenant proceeding conclusively established the legality or illegality of the

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basement apartment. As the only available evidence shows a lack of compliance with the Multiple Dwelling Law, the respondent's issuance of a violation and a partial vacate order was reasonable and lawful.

FLORIO, J.P., MASTRO, SPOLZINO and SKELOS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, stylized initial "J".

James Edward Pelzer
Clerk of the Court