

**Department of Hous. Preserv. & Dev. of the City of  
N.Y. v Ohebshalom**

2024 NY Slip Op 31258(U)

April 10, 2024

Civil Court of the City of New York, Queens County

Docket Number: Index No. L&T 301645/21

Judge: Clinton J. Guthrie

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: HOUSING PART B

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DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT OF  
THE CITY OF NEW YORK,  
Petitioner,

Index No. L&T 301645/21

against

**DECISION/ORDER**

DANIEL OHEBSHALOM A/K/A DAN SHALOM,  
ROBIN IGNICO, HIGHPOINT ASSOCIATES VI,  
LLC,  
Respondents.

Premises:  
84-53 Dana Court  
Queens, NY 11379

-----X  
Present:

HON. CLINTON J. GUTHRIE, J.H.C.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s order to show cause for civil and criminal contempt and for other remedies (Seq. 4):

<b>Papers</b>	<b>Numbered</b>
Order to Show Cause & Affirmation/Affidavit/Exhibits Annexed.....	<u>1 (NYSCEF #56-74)</u>
Affirmation in Opposition & Affidavits/Exhibits Annexed.....	<u>2 (NYSCEF #75-78)</u>

Upon the foregoing cited papers, the decision and order on petitioner’s order to show cause for civil and criminal contempt and for other relief (Seq. 4) is as follows.

PROCEDURAL HISTORY AND INSTANT MOTION

The court elaborated upon the full procedural history of this HP proceeding in the Decision/Order on petitioner’s prior motion for contempt (Seq. 3), dated November 29, 2023 (*see Dept. of Hous. Preserv. & Dev. of the City of N.Y. v. Ohebshalom*, 81 Misc 3d 1210[A], 2023 NY Slip Op 51313[U] [Civ Ct, Queens County 2023]). The prior motion was granted in part and set for a hearing on attorney’s fees arising from civil contempt and as to criminal contempt, in relation to the January 31, 2022 Consent Order.

The instant motion (hereinafter the “Third Contempt Motion”), brought by order to show

cause, also seeks criminal and civil contempt, in relation to the Interim Consent Order dated December 6, 2022 (hereinafter the “Interim Consent Order”). The Interim Consent Order was executed by the attorneys for petitioner and respondents Donald Ammons, Highpoint Associates VI, LLC, Daniel Ohebshalom a/k/a Dan Shalom, and Robin Ignico, and so-ordered by this court.<sup>1</sup>

Subsequent to the argument on the instant motion, new attorneys have substituted into the case for Highpoint Associates VI, LLC, Daniel Ohebshalom, and Robin Ignico.

I. Civil Contempt

Petitioner’s Third Contempt Motion first seeks civil contempt for respondents’ alleged noncompliance with the Interim Consent Order. Under Judiciary Law § 753, a court of record has the power to punish, by fine and imprisonment, or either, “a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced.” *See generally El-Dehdan v. El-Dehdan*, 26 NY3d 19, 28-29 [2015]. A civil contempt is “one where the rights of an individual have been harmed by the contemnor’s failure to obey a court order.” *Dept. of Envtl. Protection v. Dept. of Envtl. Conservation*, 70 NY2d 233, 239 [1987]. For civil contempt to lie, “it must be established that the rights of a party to the litigation have been prejudiced.” *Id.* at 239. Furthermore, “[t]o sustain a finding of civil or criminal contempt based on an alleged violation of a court order it is necessary to establish that a lawful order of the court clearly expressing an unequivocal mandate was in effect [and] appear with reasonable certainty that the order has been disobeyed.” *Id.* at 240. Finally, “the party charged must have had knowledge of the court’s order.” *Id.* at 240. The elements of civil contempt must be demonstrated by clear and

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<sup>1</sup> The court notes that Daniel Ammons was discontinued from the case by the Consent Order dated January 31, 2022, thus rendering his inclusion in the Interim Consent Order to have been in error.

convincing evidence (*see El-Dehdan*, 26 NY3d at 29).

The Interim Consent Order clearly expressed unequivocal mandates that were binding upon respondents. Namely, respondents were required to: hire a superintendent and a registered managing agent by December 31, 2022 and provide appropriate notices of the hiring of the superintendent at the building and of the hiring of the superintendent and managing agent to DHPD by January 4, 2023; provide a scope of work with minimum requirements to DHPD by January 4, 2023; maintain heat and hot water as required by the Housing Maintenance Code and Multiple Dwelling Law; timely and truthfully certify DHPD violations as they are corrected; submit an integrated pest management plan to counsel for DHPD by January 4, 2022 [sic]; secure any vacant units and common area doors (via installation of locks or repairs) by December 6, 2022; and submit a multiple dwelling registration statement to DHPD by January 4, 2023. The Interim Consent Order also includes several procedural stipulations, but the foregoing constitutes the list of material obligations placed upon respondents. Respondents had knowledge of the Interim Consent Order via their attorney's execution of it and via service of a so-ordered copy upon their attorney via NYSCEF (*see Dept. of Env'tl. Protection*, 70 NY2d at 242).

Petitioner's Third Contempt Motion is supported by an attorney affirmation, an affidavit of Matthew Thumann, who resides in the subject building, and various exhibits. Petitioner's attorney highlights the fact that 12 violations for lack of hot water and three (3) class "C" violations for lack of heat were placed in the building between the date of the Interim Consent Order and February 3, 2023. These violations are included in the Violation Summary Report (hereinafter "VSR") dated February 6, 2023, which is annexed to the motion. Mr. Thumann's affidavit also describes outages of heat and hot water in his apartment after the entry of the Interim Consent Order. While respondents annex an affidavit from Robin Ignico, the Tenant

Relations Manager for Highpoint Associates VI, LLC, and invoices for boiler repairs, these submissions do not refute the existence of the violations, which were not certified as corrected as of the time that petitioner made its motion (*see Fiondella v. 345 W. 70th Tenants Corp.*, 217 AD3d 495, 496 [1st Dept 2023] [DHPD violations are prima facie evidence of conditions affecting life, health or safety]; *Dept. of Hous. Preserv. & Dev. v. Knoll*, 120 Misc 2d 813, 814 [App Term, 2d Dept 1983]). Moreover, inasmuch as Robin Ignico does not swear to having personal knowledge of the conditions in the building (and, it must be noted, signed and notarized her affidavit in Los Angeles, California), the court does not find that her affidavit contradicts the specific allegations of Mr. Thumann, a tenant in the building, and the uncorrected violations for heat and hot water. Thus, the court finds that petitioner has established by clear and convincing evidence that respondents failed to maintain heat and hot water as required by the Housing Maintenance Code, in contravention of the Interim Consent Order's unequivocal mandate.

Additionally, petitioner asserts and respondents do not dispute that respondents failed to hire a superintendent or registered managing agent by December 31, 2022, and failed to notify DHPD of the same by January 4, 2023. While respondents assert that a live-in superintendent, Rafael Espinoza, was hired as of January 6, 2023, this was clearly not done within the time limit agreed to in the Interim Consent Order.<sup>2</sup> Additionally, although Robin Ignico details efforts to locate a registered managing agent for the building, including contacting real estate brokers, property management companies, and DHPD's Alternative Enforcement Program (AEP) staff, placing advertisements, and calling 311, the fact remains that no managing agent was hired within the time stipulated by respondents. Good faith efforts to comply with a court-ordered

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<sup>2</sup> While there is a substantial dispute about whether Rafael Espinoza was actually living at the subject premises after he was hired, there is no dispute that his hiring was not done within the time mandated in the Interim Consent Order. It is also undisputed that respondents did not post a notice with a superintendent's name and contact information at the subject premises, as required to be done by January 4, 2023.

mandate are not sufficient to avoid civil contempt (*see McCain v. Dinkins*, 84 NY2d 216, 227 [1994]; *Peters v. Sage Group Assocs.*, 238 AD2d 123, 123 [1st Dept 1997]; *NYC Dept. of Hous. Preserv. & Dev. v. Napa Partners LLC*, 2024 NY Slip Op 30892[U], \*7 [Civ Ct, Queens County 2024]).

Furthermore, Petitioner asserts that respondents failed to truthfully and timely certify violations. The VSR annexed to the motion shows 421 open violations for the subject building as of February 2023. A substantial number were open beyond the certification period allowed by law (*see* NYC Admin. Code § 27-2115(f)). Respondents' defense to the failure to timely certify the violations solely relates to its "good faith efforts" to hire a registered managing agent, who would be necessary for certifying the violations. As the court previously observed, those efforts, even if accepted as good faith, do not constitute a defense to civil contempt (*see McCain v. Dinkins*, 84 NY2d at 227).

Finally, petitioner alleges that respondents failed to provide an acceptable scope of work by January 4, 2023. Specifically, petitioner's attorney asserts that the scope of work provided by respondents through their attorney lacked every "location" section from a sample DHPD 7-A scope of work, did not address repair of building systems and/or structural issues, and did not explain how respondents would repair violations whose DHPD "Order No." appeared more than once on the VSR. The motion includes a letter sent by email to respondents' attorney from January 5, 2023, the same date as when the proposed scope of work was received, with DHPD's objections (which was required by the Interim Consent Order). Respondents' opposition to the allegation of an acceptable scope of work amounts to an argument that while the proposed scope of work did not follow the proposed DHPD 7-A scope of work in all respects, it was adequate to comply with respondents' obligations under the Interim Consent Order.

Upon review of the proposed scope of work submitted by respondents, the court finds that it does not comport with the requirement for an acceptable scope of work included in the Interim Consent Order, even allowing for variances in format. Under several violations listed in individual apartments, the notation simply states, “super to fix.” This conclusory statement does not “clearly identify what needs to be done to repair any conditions underlying each open violation.” Additionally, for violations related to structural conditions, a notation of “Bellet Construction” is all that is stated. This provides no germane information except the name of a company that may or not be contracted with respondents. Thus, respondents have also failed to comply with the Interim Consent Order insofar as they did not provide an acceptable scope of work with the time period set out in the Order.

The court also finds that the motion record establishes through clear and convincing evidence that respondents’ disobedience of the Interim Consent Order prejudiced the tenants in the subject building (*see Dept. of Hous. Preserv. & Dev. v. Deka Realty Corp.*, 208 AD2d 37, 44 [2d Dept 1995]). The affidavit of Mr. Thumann details the deleterious effects that the heat and hot water outages after the entry of the Interim Consent Order had upon him. Additionally, the continued existence of open violations after respondents’ failure to meet the aforementioned obligations incorporated in the Interim Consent Order, whose purpose was to expedite repairs and the correction of violations, “necessarily” impaired the building’s tenants’ rights (*see Various Tenants of 446-448 W. 167th St. v. New York City Dept. of Hous. Preserv. & Dev.*, 153 Misc 2d 221, 222 [App Term, 1st Dept 1992], *aff’d* 194 AD2d 311 [1st Dept 1993]; *Dept. of Hous. Preserv. & Dev. of the City of N.Y. v. Jones*, 2022 NY Slip Op 33589[U], \*3 [Civ Ct, Kings County 2022]).

Accordingly, the court finds that petitioner has established that respondents Highpoint

Associates VI, LLC, Daniel Ohebshalom a/k/a Dan Shalom, and Robin Ignico are in civil contempt of the December 6, 2022 Interim Consent Order by clear and convincing evidence (*see El-Dehdan*, 26 NY3d at 29). As respondents have not raised a factual dispute as to the elements of civil contempt or a viable defense, a hearing is not required for the civil contempt finding to be made (*see El-Dehdan*, 26 NY3d at 17; *Mollah v. Mollah*, 136 AD3d 992, 993 [2d Dept 2016]).

Having found respondents in civil contempt, an appropriate civil contempt penalty must be imposed. *See* Judiciary Law § 753. A civil contempt penalty must be “designed not to punish but, rather, to compensate the injured private party or to coerce compliance with the court’s mandate or both.” *Dept. of Envtl. Protection*, 70 NY2d at 239; *see also Deka Realty Corp.*, 208 AD2d at 44. The court refrains from imposing imprisonment, as it was acknowledged by counsels at an April 5, 2024 appearance that Daniel Ohebshalom a/k/a Dan Shalom and Robin Ignico, have no further involvement in the subject building after a UCC foreclosure in July 2023. Thus, there is no “coercive” justification for incarceration of the individual respondents. Inasmuch as Highpoint VI, LLC is controlled by new management that had no involvement in the subject building at the time that petitioner made the instant motion, the court does not find that incarceration of any of its employees is warranted as a penalty for civil contempt in relation to the Interim Consent Order.

In lieu of imprisonment, the court will impose a fine. Judiciary Law § 773 sets out the fines to be imposed upon a contempt finding. If “actual loss or injury” is proven, the fine will be in the amount of said loss or injury. “Where it is not shown that an actual loss or injury has been caused, a fine may be imposed, not exceeding the amount of the complainant’s costs and expenses, and two hundred fifty dollars in addition thereto, and must be collected and paid, in



like manner.” Since petitioner did not present any evidence of tenant damages or request the same in its motion, the court will impose the \$250.00 statutory amount against each respondent, in addition to petitioner’s attorney’s fees, which constitute “costs and expenses,” as the civil contempt fine (*see Matter of Ferrante v. Stanford*, 172 AD3d 31, 39 [2d Dept 2019]; *Matter of Barclays Bank, PLC v. Hughes*, 306 AD2d 406, 407 [2d Dept 2003]). The court will schedule a hearing on petitioner’s attorney’s fees related to the instant civil contempt motion on May 23, 2024 at 2:15 PM, Part B, Room 403. Upon a determination after the hearing or by agreement of the parties, a fine in the total amount \$250.00 per respondent plus reasonable legal fees will be imposed by separate order. Any fees award will be imposed jointly against respondents.

## II. Criminal Contempt

Petitioner also seeks criminal contempt against respondents in relation to the December 6, 2022 Interim Consent Order. Under Judiciary Law § 750(a)(3), a “court of record has power to punish for a criminal contempt, a person guilty of...wilful disobedience to its lawful mandate.” Unlike civil contempt, “the aim in a criminal contempt proceeding is solely to punish the contemnor for disobeying a court order, the penalty imposed being punitive rather than compensatory.” *Dept. of Env'tl. Protection*, 70 NY2d at 239. To sustain a finding of criminal contempt, “there must be proof beyond a reasonable doubt that the contemnor willfully failed to obey an order of the court.” *Matter of Rubackin v. Rubackin*, 62 AD3d 11, 16 [2d Dept 2009]; *see also Rush v. Save My Home Corp.*, 145 AD3d 930, 931 [2d Dept 2016]; *Deka Realty Corp.*, 208 AD2d at 45 [“[T]he gravamen of criminal contempt is willful disobedience of the court’s lawful mandate.”]. Additionally, personal service (CPLR § 308) of the order to show cause is required for criminal contempt to lie. *See Gouiran Holdings, Inc. v. McCormick*, 163 AD2d 44, 45 [1st Dept 1990].

As for service, petitioner has filed affidavits of service to NYSCEF that facially show service pursuant to CPLR § 308 upon each respondent. Respondents do not raise a challenge to service of the contempt motion. Moving to the merits of the criminal contempt motion, the court finds that issues of fact exist as to whether respondents Highpoint Associates VI, LLC, Daniel Ohebshalom a/k/a Dan Shalom, and Robin Ignico “willfully disobeyed” the mandates included in the December 6, 2022 Interim Consent Order beyond a reasonable doubt that require a hearing (*see Matter of Rubackin*, 62 AD3d at 17; *Delijani v. Delijani*, 107 AD3d 930, 931 [2d Dept 2013] [Finding, after a “hearing,” that appellant’s repeated violations of a stipulation demonstrated willfulness]; *Deka Realty Corp.*, 208 AD2d at 40 [Affirming criminal contempt finding after “nonjury trial.”]). While, as the court found above, respondents unequivocally disobeyed several requirements contained in Interim Consent Order such that civil contempt was warranted, the court finds that the opposition papers set forth proof of sufficient efforts by Robin Ignico and Highpoint Associates VI, LLC to attempt to comply such that the court cannot make a finding of willful disobedience beyond a reasonable doubt in relation to those two respondents in the absence of an evidentiary hearing. The criminal contempt hearing shall also be scheduled for May 23, 2024 at 2:15 PM, Part B, Room 403.

As for Daniel Ohebshalom a/k/a Dan Shalom, however, there is no affidavit from him annexed to the opposition papers and no proof otherwise to explain or justify his noncompliance with the Interim Consent Order. Thus, the court finds that the motion record establishes that he willfully disobeyed the Interim Consent Order beyond a reasonable doubt and will impose a \$1,000.00 statutory fine (*see* Judiciary Law § 751). Under governing Court of Appeals precedent and Judiciary Law § 791, the fine shall be made to the New York City Department of Finance within thirty (30) days of the service of this Decision/Order with notice of entry (*see*

*Goodman v. State*, 31 NY2d 381, 385 [1972]). In the event that Daniel Ohebshalom a/k/a Dan Shalom fails to pay the fine in a timely manner, Corporation Counsel of the City of New York may seek the issuance of a monetary judgment in the amount of \$1,000.00 upon ex parte application to the court. Petitioner's attorney shall mail a copy of this Decision/Order to Sylvia O. Hinds-Radix, Corporation Counsel, 100 Church Street, New York, New York 10007, on or before April 19, 2024.

### III. Civil Penalties

Petitioner's motion seeks civil penalties for heat and hot water violations issued after the December 6, 2022 Interim Consent Order. The violations, which are documented in the VSR annexed to petitioner's motion, constitute prima facie evidence that the underlying conditions affecting life, health, and/or safety exist (*see Fiondella v. 345 W. 70th Tenants Corp.*, 217 AD3d 495, 496 [1st Dept 2023]; *Dept. of Hous. Preserv. & Dev. v. Knoll*, 120 Misc 2d 813, 814 [App Term, 2d Dept 1983]). Additionally, NYC Admin. Code § 27-2115(k)(1) provides a presumption that the condition constituting each relevant violation continues after the notice of violation is affixed (*see also Dept. of Hous. Preserv. & Dev. v. De Bona*, 101 AD2d 875, 876 [2d Dept 1984]; *Dept. of Hous. Preserv. of the City of N.Y. v. 992 Jefferson Ave. LLC*, 2021 NY Slip Op 32078[U], \*3 [Civ Ct, Kings County 2021]). The court does not find that respondents' opposition sets forth any viable defense to the lack of correction and certification of these violations, particularly where Robin Ignico's affidavit admits that respondents could not certify any of the violations because they had been unable to hire a registered managing agent (*see 992 Jefferson Ave. LLC*, 2021 NY Slip Op 32078[U], \*4).

Accordingly, the court will award civil penalties, which shall be reduced to a judgment in favor of DHPD and against respondents jointly, for all heat and hot water violations *issued* by

DHPD between December 6, 2022 and February 6, 2023, the date of petitioner's motion (inclusive of both dates) and *accruing* through March 20, 2023, the date of argument of petitioner's instant motion (*see Deko Realty Corp.*, 208 AD2d at 46 [Affirming civil penalties imposed through the last day of trial]). Petitioner's attorney shall submit a proposed judgment with calculations to NYSCEF on or before April 30, 2024.

### CONCLUSION

Accordingly, for the reasons stated herein, petitioner's motion is granted to the extent of finding that respondents Highpoint Associates VI, LLC, Daniel Ohebshalom a/k/a Dan Shalom, and Robin Ignico are in civil contempt of the December 6, 2022 Interim Consent Order, that the same respondents are subject to a civil contempt fine, which will be imposed after a hearing on petitioner's attorney's fees relevant to the instant contempt motion, that a hearing shall be held upon petitioner's motion for criminal contempt as to Highpoint Associates VI, LLC and Robin Ignico, and that Daniel Ohebshalom a/k/a Dan Shalom is in criminal contempt of the December 6, 2022 Interim Consent Order and shall pay the \$1,000.00 statutory fine as detailed herein. In addition, civil penalties are imposed to the extent stated herein. The combined attorney's fees hearing and criminal contempt hearing for this motion and the Second Contempt Motion (*see Ohebshalom*, 2023 NY Slip Op 51313[U], \*6) will be scheduled for May 23, 2024 at 2:15 PM in Part B, Room 403.<sup>3</sup> Any pre-marked exhibits shall be emailed to the court on or before May 21, 2024 (qn-housing-403@nycourts.gov). This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: April 10, 2024  
Queens, New York

  
CLINTON J. GUTHRIE, J.H.C.

SO ORDERED - HON. CLINTON J. GUTHRIE

<sup>3</sup> The court notes that it recently heard argument on a motion to renew and reargue the Decision/Order resolving the Second Contempt Motion and the hearing on the Second Contempt Motion remains subject to the court's ultimate order on the motion to renew and reargue.