

<b>City of New York v Bay Ridge Prince LLC</b>
2017 NY Slip Op 31354(U)
May 12, 2017
Supreme Court, Kings County
Docket Number: 503152/2016
Judge: Dawn M. Jimenez-Salta
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

**AMENDED  
DECISION and ORDER**

-----x  
THE CITY OF NEW YORK,

Plaintiff,

Index No. 503152/2016

-against-

BAY RIDGE PRINCE LLC,

Defendants.  
-----x

HON. DAWN JIMENEZ-SALTA

Recitation, as required by *CPLR §2219(a)*, of the papers considered in the review of:

1. The City of New York’s (the City) Notice of Motion and Affirmation in Support, dated June 3, 2016;
2. Bay Ridge Prince, LLC’s (BRP) Affirmation in Opposition, dated July 14, 2016;
3. BRP’s Memorandum of Law in Opposition to Motion, dated July 14, 2016;
4. The City’s Reply Affirmation, dated July 28, 2016.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion.....	City 1 [Exh. 1-16]
Affirmation Annexed.....	Balsam Affirmation
Affirmation in Opposition.....	BRP 2 [Exh. 1]
Memorandum of Law.....	BRP 3
Replying Affidavits.....	City 4 [Exh. 17-19]

Upon consideration of the foregoing papers, the City’s motion to enforce the Environmental Control Board’s (ECB) decision and orders as authorized by §1049-a(d)(3) of the New York City Charter in the amount of \$114,00.00 based on penalties resulting from two notices of violation (NOV) issued against BRP is decided as follows: The City’s request for enforcement of the ECB Decision and Order for NOV no. 035096212Z (NOV 12Z) is denied; the City’s request for enforcement of the ECB Decision and Order for NOV no. 035151758J (NOV 58J) is granted.<sup>1</sup>

**BACKGROUND AND PROCEDURAL HISTORY**

This is a cause of action brought forth by the Mayor’s Office of Special Enforcement on behalf of the City of New York, to enforce two decisions and orders issued by the ECB as authorized by §1049-a(d)(3) of the New York City Charter against BRP. BRP, a limited liability corporation, is the owner of the building located at 315 93rd Street, Brooklyn, New York (Subject Premises). The City seeks the payment of penalties issued for two separate NOV’s

<sup>1</sup> Notwithstanding the City’s failure to serve, BRP appeared before the ECB hearing on October 19, 2015 and failed to raise the defense of insufficient service of process, thereby waiving its jurisdictional defense.

issued by Department of Building (DOB) inspectors on June 18, 2014 and April 1, 2015, respectively.

## ARGUMENT

In its Motion, brought forth on June 3, 2016, the City, through the Affirmation of attorney David Lepard, alleges that BRP operated the Subject Premises in “a manner which jeopardized the safety of its occupants and the public at large.” Upon observation of these “hazardous violations” two separate DOB inspectors issued BRP an NOV: NOV 12Z issued on June 18, 2014 and NOV 58J, issued on April 1, 2015. The City insists that both NOVs were properly served on BRP in compliance with the service requirements of §1049-a of the City Charter.

### NOV 12Z

On June 18, 2014, DOB Inspector Vladimir Pugach issued NOV 12Z which notified BRP that a hearing would be held before the ECB on August 4, 2014.<sup>2</sup> However, he found “[n]o reasonable party to accept service as per front desk [clerk]” and posted NOV 12Z at the “front desk,” an area the City describes as “a conspicuous place of the Subject Premises where the violation occurred.”<sup>3</sup> The corresponding Hearing Notice was mailed on June 18, 2014. The ECB also mailed NOV 12Z to BRP at the Subject Premises on July 15, 2014 in accordance with §1049-a(d)(2)(b). The ECB also mailed NOV 12Z to “Fried,” the individual the City alleges is registered with HPD as the agent for Defendant BRP, at 3417 Avenue J, Brooklyn, NY 11219-4147, in accordance with §1049-a(d)(2)(b)(i).<sup>4</sup>

BRP failed to appear for the August 4, 2014 hearing and the ECB issued a default and imposed a penalty. The ECB mailed notice of the “Decision and Order Based on Failure to Answer Ticket.” This notice advised BRP that it failed to appear before the ECB on August 4, 2014, that the ECB decided the case against BRP, and that BRP must pay a penalty in the amount of \$61,000 and immediately correct the issue shown on the violation. This notice further advised BRP that in order to avoid paying the penalty, BRP must either admit to the violation and pay a special reduced fine of \$48,230.00 and correct the issues shown on the violation, or request a new hearing. The notice specifies that a new hearing will be granted if the request is made within forty-five (45) days of the date of the missed hearing or upon good cause shown if made within thirty (30) days of the mailing of the order.<sup>5</sup> Copies of the notice of the “Decision and Order Based on Failure to Answer Ticket,” were also mailed to BRP at the Subject Premises where the violation occurred and to “Fried” at 3417 Avenue J, Brooklyn, N.Y. 11219-4147.<sup>6</sup> The ECB also mailed a dunning letter<sup>7</sup> and a collection notice to BRP in accordance with the City Charter and ECB policies. Nonetheless, BRP failed to timely respond or object to the Default Order and the penalty. The City maintains that BRP’s time to challenge the ECB’s

<sup>2</sup> See, Lepard Affirmation Exh. 2

<sup>3</sup> See, Lepard Affirmation ¶30

<sup>4</sup> See, Lepard Affirmation Exh. 14

<sup>5</sup> See, Lepard Affirmation Exh. 5

<sup>6</sup> See, Lepard Affirmation Exh. 6

<sup>7</sup> A letter informing the respondent that the City may seek a legal judgment. See, Balsam Affirmation ¶16

rulings has elapsed. Pursuant to 48 RCNY §§3-82(b) and (c), BRP failed to request a new hearing to vacate the default within forty-five (45) days from the date of the hearing or thirty (30) days from the date of the mailing of NOV 12Z.

## NOV 58J

On April 1, 2015, DOB Inspector Krzysztof Pareczewski issued NOV 58J which notified BRP that a hearing would be held before the ECB on May 18, 2015.<sup>8</sup> However, he found “[n]o reasonable party to accept service as per front desk...clerk” and posted NOV 12Z at the “front entry door,” an area the City describes as “a conspicuous place of the Subject Premises where the violation occurred.”<sup>9</sup> The corresponding Hearing Notice was also mailed on April 1, 2015. NOV 58J was then mailed on April 13, 2015 to BRP at the Subject Premises and to “Dejesus,” the individual the City alleges is registered as BRP’s agent with HPD at 157-02 Cross Bay Blvd., Howard Beach, New York 11414.<sup>10</sup> See, §1049-a(d)(2)(b)(ii). The City again states that the ECB served its Decision and Order for NOV 58J by mail.<sup>11</sup>

The hearing was adjourned to October 19, 2015 and BRP sent an authorized representative, Michael Rowe to appear before the ECB. Mr. Rowe denied the violation but offered no rebuttal. Consequently, the ECB hearing officer found BRP to be “In Violation” and ordered a \$53,000 penalty.<sup>12</sup> On October 22, 2015, the ECB mailed BRP a copy of its Decision and Order.<sup>13</sup>

The City explains the procedural requirements for appealing an ECB hearing decision are provided by 48 RCNY §3-71. The ECB must receive a written exception to its decision within thirty (30) days of service on the aggrieved party. Every ECB Decision and Order is served together with a notice explaining this procedural requirement for appeal.<sup>14</sup> The City contends that BRP did not appeal the October 21, 2015 ECB Decision and Order. BRP failed to appeal the Decision and Order within thirty (30) days. BRP also failed to file an Article 78 within the four-month statute of limitations provided by CPLR 217.

The City maintains that on both occasions, DOB inspectors made a “reasonable attempt” to effectuate personal service of the NOV’s on an individual authorized to accept service before resorting to the affix-and-mail method of service. The City bases its argument on the ruling of *Mestecky v. City of New York*, wherein the First Department held that “one attempt at personal service satisfies the ‘reasonable attempt’ requirement set forth in section 1049-a(d)(2)(b).” See, *Mestecky v. City of New York*, 133 A.D.3d 431 (1st Dept. 2015). The City acknowledges that decisions from Queens County Supreme Court have held that more than a single attempt at personal service is necessary in order to meet the “reasonable attempt” standard and that the Second Department Second Department has yet to address the issue of whether more than one attempt is required in order to satisfy the City Charter’s “reasonable attempt” standard.

<sup>8</sup> See, Lepard Affirmation Exh. 7

<sup>9</sup> See, Lepard Affirmation ¶35

<sup>10</sup> See, Lepard Affirmation Exh. 16

<sup>11</sup> See, Lepard Affirmation Exh. 10 and 11

<sup>12</sup> See, Lepard Affirmation Exh. 10

<sup>13</sup> See, Lepard Affirmation Exh. 11

<sup>14</sup> See, Balsam Affirmation

However, the City argues that the First Department ruling in *Mesteky* must be followed pursuant to the doctrine *stare decisis*. See, *Mountain View Coach Lines v. Storms*, 102 A.D.2d 663, 664 (2d Dept. 1984).

The City further maintains that the ECB served all the underlying NOV's, Decisions and Orders, and Default Judgments in full compliance with §1049-a(d)(2)(a) of the City Charter. The City relies on the Affirmation of Helaine Balsam, an attorney from the New York City Office of Administrative Trials and Hearings (OATH), the agency which oversees the ECB, to provide an explanation of the practice and procedures the ECB follows in serving its notices.<sup>15</sup> Ms. Balsam explains that upon issuing an NOV, the DOB agent will enter the relevant information pertaining to the violation into the Automated Information Management System (AIMS). The AIMS will then generate a "Hearing Notice" which is mailed to "some of the addresses" found within records maintained by the Department of Finance (DOF), the Department of Housing Preservation and Development (HPD), and the DOB, the agency which issued the NOV.

The City concludes that this Court has jurisdiction to enforce the ECB's decisions and orders. Pursuant to §1049-a(d)(3) of the City Charter, the ECB may apply to a court of "competent jurisdiction" for enforcement of its decisions and orders in which penalties exceed \$25,000. See, *Matter of JT Tai & Co., Inc. v. City of New York*, 85 A.D.3d 433 (1st Dept. 2011).

In its opposition papers, the affirmation of attorney Michael Lagnado and memorandum of law in support of opposition filed on July 14, 2016, BRP argues that the default judgments must be vacated due to the City's failure to follow City Charter procedures. Specifically, the City failed to comply with §1049-a (d)(1)(h) which provides that before a default judgment may be entered, the City must notify the respondent via first class mail of the following facts: (1) the ECB's default decision order and the penalty imposed; (2) that a judgment would be entered in the Civil Court of the City of New York; and (3) the respondent could avoid entry of the judgment by requesting a stay of default for good cause shown and either requesting a new hearing or entering a plea within thirty (30) days of the mailing of notice.

BRP states that the "touchstones of procedural due process, notice and opportunity to be heard, apply to administrative proceedings." See, *Matter of Gallo v. City of New York*, 36 Misc.3d 1204(A), 2012 (Sup Ct, Queens County 2012). "As the party asserting jurisdiction, it is the City's burden to prove it has satisfied the statutory requirements for service." See, *72A Realty Associates v. New York City Environmental Control Board*, 275 A.D.2d 284, (1st Dept. 2000), citing *Stewart v. Volkswagen*, 81 N.Y.2d 203, 597 N.Y.S.2d 612 (1993).

BRP denies that DOB Inspectors made a "reasonable attempt" to effectuate personal service. Prior to posting the NOV's to an unspecified area of Subject Premises, DOB inspectors aver in their Affidavits of Service, that no "responsible party" was available to accept service. However, both DOB Inspectors fail to identify, either by name or position, the "responsible party" whom they sought to serve. BRP maintains that this inept effort at service does not

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<sup>15</sup> This Court notes that although Ms. Balsam avers that she is "fully aware of the facts set forth herein based upon [her] personal knowledge," she provides no details concerning the parties, NOV's, dates, or addresses specific to the present case.

satisfy the City Charter which provides that a “reasonable attempt” must be made to deliver the notices to a person on the premises amenable to service as provided by Article 3 of the CPLR and Article 3 of the BCL. See, City Charter §1049-a(d)(2)(a)(ii)(b). See, *First Horizons Home Loans v. New York City Envtl. Control Bd.*, 118 A.D.3d 875 (2d Dept. 2014); *Wilner v. Beddoe*, 102 A.D.3d 582 (1st Dept. 2013). Accordingly, the City was not entitled to avail itself of the substituted affix-and-mail method of service set forth by the City Charter.

BRP argues that even if the City met the “reasonable attempt” standard and affix-and-mail service was permitted, the City still failed to mail copies of the NOV’s to BRP or its registered agent at one of the three addresses set forth in §1049-a(d)(2)(a)(i)(ii) or (iii). BRP refers to the Balsam Affirmation to support its position that the City mailed the NOV’s to unauthorized individuals at various addresses in derogation of the City Charter. According to her Affirmation, Ms. Balsam states that a “Hearing Notice” is mailed to “some of the addresses” obtained from the records of municipal agencies such as the DOF, HPD, and DOB. BRP objects to this method and further points out that the City failed to include the records of these municipal agencies its motion papers. Accordingly, the City failed to submit evidence demonstrating that “Fried” or “Dejesus” were registered as agents for BRP. Therefore, the mailing of the NOV’s to these individuals did not constitute sufficient service under the City Charter.

BRP further contends that the City failed to submit any evidence, including an affidavit from an individual with personal knowledge, to establish proof of service. The Balsam Affirmation is insufficient as it merely describes the ECB’s general “practice and procedures” in its ordinary issuance of NOV’s without specifying the details of the present case. The City’s claim that it files an affidavit of service “in the regular course of business,” does not constitute proof of service. Similarly, the computer records and affidavits of daily mailing submitted by the City also fail to establish proof of service.

BRP concludes that the City may not enter the ECB Judgments due to §1049-a (d)(1)(g) of the City Charter which provides that no ECB judgment which exceeds \$25,000 may be entered in the civil court within the city or state of New York.<sup>16</sup> Therefore, the City’s motion to enforce penalties in the amount of \$53,000 and \$61,000 must be denied. BRP further objects to the City’s assertion that BRP failed to exhaust its administrative remedies. BRP maintains that it could not have failed to exhaust all legal remedies without having been properly served with notice. See, *Plon Realty Corp., v. City*, 2008 N.Y. Slip Op 32158(U).

In its Reply Affirmation filed on July 28, 2016, the City argues that judgment must be granted in its favor as BRP failed to establish the existence of a triable issue of fact. Mr. Lagnado’s affirmation alone cannot establish the existence of a triable issue of fact as the general rule holds that “a conclusory affidavit denying receipt of the pleadings, without further explanation...[is] insufficient to rebut the presumption of service created by the process server’s affidavit.” See, *Gonzalez v. City of New York*, 106 A.D.3d 436, 437 (1st Dept. 2013). As such BRP’s “blanket statement” denial of proper service has no evidentiary basis. Further, BRP’s allegation that the City failed to mail the NOV’s and Hearing Notices are entirely refuted by the

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<sup>16</sup> This Court notes that BRP misinterprets this provision of the City Charter. The amount of \$25,000 is the Civil Court cap. Accordingly, the City must apply to this Court to enforce the judgments.

Affidavits of Mailing attached to the records.<sup>17</sup> The City notes that a separate mailing of the Hearing Notice is not required under the City Charter as the NOV itself provides notice of the hearing. Notwithstanding the legal deficiency of its opposition papers, the City contends that BRP's arguments against the City's motion are entirely refuted by the record.

The City also denies BRP's allegations of improper service. The Affidavits of Service attached to the record directly refute Defendant's claims that no "reasonable attempt" was made to serve BRP and that the NOV's were affixed to an "unspecified place." The City also maintains that the DOB Inspectors' failure to provide the name of the "responsible" person or agent they sought to personally serve does not diminish their "reasonable attempt" at service or render the Affidavits deficient. The City Charter does not require DOB Inspectors to provide the name of the "responsible" person they seek to serve. The City argues that such a requirement would be unreasonable considering that DOB inspectors have no indication of who is authorized to accept service at the time they issue the violations. The City Charter only requires that the respondent be served with the notice of the violation pursuant to §1049-a (d)(2) and that such notice be served before a default may be entered pursuant to §1049-a(d)(1)(h).

The City maintains that contrary to BRP's allegations, the City followed its own procedures in mailing NOV 12Z to "Fried," as the agent registered with HPD for BRP and NOV 58J to "Dejesus," as the agent registered with HPD for BRP. The City attaches certified copies of a 2013 and 2014 HPD "Property Registration Form" completed for the Subject Premises.<sup>18</sup> In the 2013 HPD Property Registration Form, the name "Moses Fried" is listed as "Responsible Person #1" in box "5A1" with a business address of "3417 Avenue J, Brooklyn, N.Y. 11210." The City asserts that this record was in effect at the time the City issued and served NOV 12Z. In the 2014 HPD Property Registration Form, the name "Inez Dejesus," along with the title "Manager" is listed as "Responsible Person #1" in box "5A1" with a business address of "157-02 Cross Bay Blvd., Apt. 203, Howard Beach, NY 11414." The City asserts that this record was in effect at the time the City issued and served NOV 58J.

Furthermore, BRP's claim that the City never notified BRP of the consequences of its default for NOV 12Z is entirely refuted by the evidence. The Affidavit of Mailing establishes that the Decision and Order was mailed to BRP at 315 93rd St., Brooklyn, and to "Fried" at 3417 Avenue J, Brooklyn, on August 12, 2014.<sup>19</sup> The language of the Decision and Order itself, explicitly advised BRP that the case was decided against it, a \$61,000 was imposed, and that should BRP fail to pay the penalty, the City would obtain "a legal judgment in Civil Court for \$61,000.00 against BAY RIDGE PRINCE LLC..."<sup>20</sup>

The City concludes that this matter is properly before this Court. BRP misinterpreted §1049-a(d)(1)(g) of City Charter provision to mean that the ECB cannot enforce penalties in excess of \$25,000 in the civil courts of New York. However, the City clarifies that pursuant to §1049-a(d)(3) of the City Charter, the ECB may apply to a court of "competent jurisdiction" for

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<sup>17</sup> See, Lepard Affirmation Exh. 14 and 16

<sup>18</sup> See, Lepard Affirmation Exh. 18 and 19

<sup>19</sup> See, Lepard Affirmation Exh. 6

<sup>20</sup> See, Lepard Affirmation Exh. 5

enforcement of its decisions and orders in which penalties exceed \$25,000. See, *Matter of JT Tai & Co., Inc.*, 85 A.D.3d 433.

### COURT'S RULING

“It is well settled that the principles of due process applicable to criminal trials apply to government administrative hearings.” See, *Wolfe v. Kelly*, 79 A.D.3d 406, 911 N.Y.S.2d 362 (1st Dept. 2010), citing *Matter of Murray v. Murphy*, 24 N.Y.2d 150, 157 (1969). “Chief among the principles of due process is notice of the charges.” *Id.* ““The incontestable starting proposition in cases of this kind is that once jurisdiction and service of process are questioned, plaintiffs have the burden of proving satisfaction of statutory due process prerequisites.” See, Steward, 81 NY2d at 207, citing *Lamarr v. Klien*, 35 AD2d 248 (1970). “The burden of establishing the propriety of services rests upon the party asserting jurisdiction...” See, *72A Realty Assocs.*, 275 AD2d 284, 285-286.

This Court finds that the City failed to follow its own procedures as set forth in the City Charter and properly serve BRP with the NOV's. “The New York City Charter provides that notices of violation issued in connection with matters overseen by the Board must be ‘served in the same manner as is prescribed for service of process by [CPLR article 3] or [Business Corporation Law article 3].” See, *First Horizon Home Loans*, 118 A.D.3d 875; New York City Charter §1049-a (d)(2)(a); see also, *Matter of Wilner*, 102 A.D.3d 582. This Court notes there are four enumerated exceptions to this provision, one of which applies to the present case, §1049-a(d)(2)(a)(ii). This provision states that service of a notice of violation over which the DOB is charged with enforcement and the ECB has jurisdiction, may be made “by affixing such notice in a conspicuous place to the premises where the violation occurred.” See, New York City Charter §1049-a(d)(2)(a)(ii).

However, even with respect to this exception, the alternative service method may not be utilized unless, “a reasonable attempt has been made to deliver such notice...as provided for by [CPLR article 3] or [Business Corporation Law article 3].” See, *Matter of Wilner*, 102 A.D.3d 582; New York City Charter §1049-a(d)(2)(b). Pursuant to the New York Department of State Division of Corporations, BRP is registered as a “domestic limited liability company.”<sup>21</sup> In the State of New York, service on such an entity may be made pursuant to CPLR 311-a or pursuant to article III of the Limited Liability Company Law. Service made pursuant to CPLR 311-a requires that personal delivery be made to an individual member or manager of the LLC, a person authorized by appointment to receive process, or an agent registered with the DOS Secretary of State. Service made pursuant to Article III of the Limited Liability Company Law must be effectuated upon the Secretary of State or a designated registered agent. “A plaintiff who attempts to effectuate personal service on a domestic limited liability company through service on an individual possessing the aforementioned specific status must serve the

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<sup>21</sup> See, (NYS Department of State Division of Corporations Entity Information, [https://appext20.dos.ny.gov/corp\\_public/CORPSEARCH.ENTITY\\_INFORMATION?p\\_token=42EF769D078FE3039EF11B7DF1DE63484A72DB1AE64FE718560C1E73C9B60E7B89FC04E7D864243E369E6C9F2ABC9D72&p\\_nameid=FA057C6BA8A064C3&p\\_corpid=752272EC691BF31F&p\\_captcha=11434&p\\_captcha\\_check=A3FED0D8D7897CAB&p\\_entity\\_name=%42%61%79%20%52%69%64%67%65%20%50%72%69%6E%63%65&p\\_name\\_type=%41&p\\_search\\_type=%42%45%47%49%4E%53&p\\_srch\\_results\\_page=0](https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_token=42EF769D078FE3039EF11B7DF1DE63484A72DB1AE64FE718560C1E73C9B60E7B89FC04E7D864243E369E6C9F2ABC9D72&p_nameid=FA057C6BA8A064C3&p_corpid=752272EC691BF31F&p_captcha=11434&p_captcha_check=A3FED0D8D7897CAB&p_entity_name=%42%61%79%20%52%69%64%67%65%20%50%72%69%6E%63%65&p_name_type=%41&p_search_type=%42%45%47%49%4E%53&p_srch_results_page=0)).

specific status individual in accordance with CPLR 308.” See, *Right Choice Holding, Inc. v. 199 St. LLC*, 48 Misc 3d 227, 231 (Sup Ct, Kings County 2015).<sup>22</sup>

Here, the City failed to demonstrate that prior to resorting to the City Charter’s alternative method of service, DOB inspectors made a “reasonable attempt” to personally serve the NOV’s upon BRP pursuant to CPLR 308. DOB Inspector Pugach averred in his Affidavit of Service for NOV 12Z, “[n]o responsible party available to accept service as per front desk.” DOB Inspector Parczewski similarly averred in his Affidavit of Service for NOV 58J, “[n]o responsible party to accept service per hotel check in clerk.” Contrary to the City’s position, this description fails to provide an explanation for “how the inspectors attempted to find responsible persons to accept service of the NOV’s.”<sup>23</sup> See, *First Horizon Home Loans*, 118 A.D.3d 875; *Gallo v. City of New York*, 36 Misc.3d 1204(A). Neither DOB Inspector set forth any details, such as the name or description of an individual authorized to accept service, what reasonable efforts were made to locate such an individual, or whether further inquiries were made to other employees in an attempt to locate such an individual amenable to service. “The failure to make any effort at personal service runs afoul of the New York City Charter’s directive that a ‘reasonable attempt’ at personal service be made prior to resort of alternative means of service.” See, *Matter of Wilner*, 102 A.D.3d 582; see also, *Gallo v. City of New York*, 36 Misc.3d 1204(A).<sup>24</sup>

This Court understands that both the history and language of City Charter §1049-a(d)(2) demonstrates a legislative intent to make service under the Charter less arduous than service under Article 3 of the CPLR. However, this does not give the City license to entirely circumvent the constitutional requirements of procedural due process and fail to make the minimal effort to properly serve BRP. This Court must deny the City’s request for enforcement of the NOV 12Z

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<sup>22</sup> Although *Right Choice* was decided by a justice of this Court, “[a] decision of a court of equal or inferior jurisdiction is not necessarily controlling, though entitled to respectful consideration.” (McKinney’s Cons Laws of NY, Book 1, Statutes §72 at 143-144).

<sup>23</sup> See, Plaintiff’s Reply Affirmation ¶ 22.

<sup>24</sup> This Court notes that application of the holding in *Mestecky* that a single attempt at personal service satisfies “reasonable attempt” to the facts herein does not change this Court’s conclusion that service was ineffective. The holding in *Matter of First Horizon Home Loans*, as quoted above, suggests that more effort is required to meet the “reasonable attempt” standard. Furthermore, it is *Matter of First Horizon Home Loans* and not *Mestecky* that is binding on this Court. See, *Mountain View Coach Lines*, 102 A.D.2d 663, 664.

as it finds the City's single, half-hearted attempt to effectuate personal service inadequate. Notwithstanding the improper service of NOV 58J, BRP waived all objections to service by appearing before the ECB and arguing against the merits of the violation. See, *Cadlerock Joint Venture, L.P., v. Kierstedt*, 119 AD3d 627, 628 (2d Dept. 2014), citing *Taveras v. City of New York*, 108 AD3d 614, 617 (2d Dept. 2013); *Frederic v. Israel*, 104 AD3d 909, 910 (2d Dept. 2013). See also, *Matter of Petrosino Trucking v. Martinez*, 16 AD3d 691, 691-692 (2d Dept. 2005) (in administrative hearing, petitioner waived jurisdictional objections by appearance and participation in the hearing on the merits).

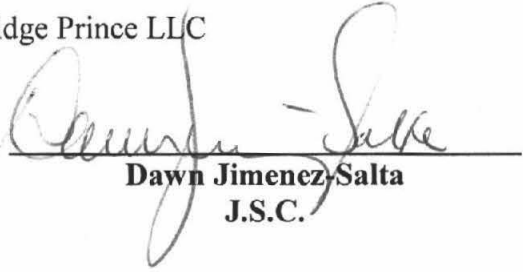
For all the reasons set forth above, the Decision of this Court is as follows:

ORDERED: The City's request for entry of a default judgment for the ECB's Decision and Order for NOV no. 035151758J is GRANTED,

ORDERED: The City's request for entry of a default judgment for the ECB's Decision and Order for NOV no. 035096212Z is DENIED.

This constitutes the decision of this Court.

Dated May 12, 2017  
Brooklyn, New York  
City of New York v. Bay Ridge Prince LLC  
Index No. 503152/2016

  
Dawn Jimenez-Salta  
J.S.C.

Hon. Dawn Jimenez-Salta

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