

<b>Perlis v Schwesinger</b>
2022 NY Slip Op 32339(U)
July 11, 2022
Civil Court of the City of New York, New York County
Docket Number: Index No. HP 209/21
Judge: Jean T. Schneider
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK

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Index No. HP 209/21

DONALD PERLIS,

Petitioner,

-against-

DECISION/ORDER

ERIC SCHWESINGER, et al.,

Respondents.

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SCHNEIDER, J.

There is a significant litigation history between these parties that provides context for the proceeding currently before this court.

In December 2020, Hon. Jack Stoller directed the entry of a final judgment for possession of the subject apartment after trial against tenant Donald Perlis and in favor of landlord Eric Schwesinger in a holdover proceeding on the grounds of nuisance. Judge Stoller found as facts that Perlis had caused at least two leaks in his apartment, that he had failed to report many other leaks to Schwesinger in timely fashion, and that he had denied and delayed access to repair the leaks. Judge Stoller noted that uncorrected leaks could cause structural damage and mold growth. Perlis commenced this HP proceeding seeking correction of alleged violations of the Housing Maintenance Code, including alleged mold, soon after his receipt of Judge Stoller’s decision after trial. Judge Stoller’s determination in the nuisance case was affirmed by the Appellate Term, First Department, on June 30, 2022. The Appellate Term held, among other things, that Perlis had no right to cure the nuisance. In addition, Hon. Frances Ortiz of this court determined in April 2022, that there was no right to cure the nuisance, and that Perlis was not entitled to a further stay of execution of the warrant. Respondent Schwesinger informed the court in his post-trial memorandum in this case that Perlis’s eviction is scheduled for later this month.

There is also pending litigation in the Supreme Court in which Perlis seeks damages from Schwesinger for, among other things, damage done to him by mold in his apartment.

The petition in this HP case alleges that Perlis's apartment contains violations of the Housing Maintenance Code that respondent Schwesinger has an obligation to correct. The petition seeks an order to correct. Early in the proceeding, the New York City Department of Housing Preservation and Development inspected the apartment and placed a significant number of violations. Notably, HPD did not place a violation for mold. Both parties agreed at the commencement of the trial that all of the conditions that led to these violations had been corrected. The case proceeded to trial solely on Perlis's claim that HPD should be ordered to place violations for mold, and that Schwesinger should be ordered to correct the violations.

After a lengthy trial at which both sides had the opportunity to present testimony and documents, this court finds that petitioner Perlis has not met his burden to prove that there is currently mold constituting a violation of the Housing Maintenance Code in his apartment. Accordingly, the proceeding is dismissed on the merits.

Petitioner's expert witness, Ed Olmstead, presented some evidence of visible mold at certain points in the past. The evidence shows that this condition had been corrected long before the trial, and that HPD had declined to place violations based upon it. At best, petitioner's evidence showed that there was mold growth inside an apartment wall, and that the area had been fully sealed off from the apartment. There was no evidence that, at the time of trial, that area of mold had entered the apartment or presented a hazard to its inhabitants.

Respondent Schwesinger testified credibly at the trial that he had made every effort, in good faith, to address petitioner Perlis's complaints and to correct violations in timely fashion. He credibly described the extensive work he did in the apartment over the course of several years, and specifically during the pendency of this case. Respondent lies next door to the petitioner, and he explained credibly

that he and his family would also be at risk if there were hazardous conditions in the petitioner's apartment. Petitioner Perlis did not testify.

The court thanks counsel for both parties for their extensive and entirely professional presentations at trial despite the challenges presented both by the continuing pandemic and by the court's scheduling issues.

Dated: 7/11/22



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J. H. C.

**JEAN T. SCHNEIDER  
JUDGE, HOUSING PART**