

**Steinberg v Parkash 2454 LLC**

2023 NY Slip Op 33970(U)

May 15, 2023

Civil Court of the City of New York, Bronx County

Docket Number: L&T Index No. 67990/18

Judge: Malaika N. Scott-McLaughlin

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART H

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JAIME STEINBERG,

L&T Index No. 67990/18

*Petitioner,*

-against-

**DECISION / ORDER**

PARKASH 2454 LLC,  
VED PARKASH,

*Respondents,*

And

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

*Co-Respondent.*

PREMISES: Apartment 6B  
2454 Tiebout Ave.  
Bronx, New York 10458

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**HON. MALAIKA N. SCOTT-MCLAUGHLIN, J.H.C.**

Recitation, as required by CPLR §2219(a), of the papers considered in review petitioner’s motion to, *inter alia*, restore:

<b>Papers</b>	<b>Numbered</b>
Notice of Motion, Affidavit, Affirmation and Exhibits Annexed	1
Opposition, Affidavit, Affirmation and Exhibits Annexed	2
Reply Affirmation	3

Upon the foregoing cited papers, the Decision and Order on this motion is as follows:

**Introduction and Procedural History**

Petitioner Jaime Steinberg (“Petitioner”) commenced this Housing Part (“HP”) and harassment proceeding against Respondent Parkash 2454 LLC and Respondent Ved Parkash (collectively, the “Respondents”) and Co-Respondent the Department of Housing Preservation and Development (“HPD”), regarding conditions in Apartment 6B located at 2454 Tiebout Avenue,

Bronx, New York 10458 (“Subject Premises”) and harassment. Petitioner, Respondents and HPD appeared in this proceeding through respective counsel.

On March 24, 2021, Petitioner and Respondents (collectively the “Parties”) entered into a Stipulation of Settlement (“Probationary Stipulation”) with the following terms, in pertinent part:

“SECTION I. Owner-Respondent’s[sic] representation and warranty as to roof repairs

“3. Owner-Respondents represent and warrant that repairs and improvements to the property were completed in September 2020 including roof repairs, repointing of exterior walls, and repairs to window bulkheads in and around Petitioner’s apartment. Owner-Respondents further represent and warrant that such additional repairs were sufficient to correct the causes or sources of leaks or water infiltration in Petitioner’s bedroom and living room identified in the August 17, 2020 Mold Assessment and Remediation Plan.

“SECTION II. Settlement of harassment claims

“4. The parties agree to settle Petitioner’s claims for relief pursuant to NYC Admin Code §§ 27-2005(d), 27-2115(m)(1), § 27-2115(m)(2) and § 27-2115(o) (“harassment claims”) conditional upon Owner-Respondents’ completion of the Probationary Period specified in Section III without default, and subject to the terms, conditions, and rights reserved in this Settlement.

“SECTION III. Probation and obligations during Probationary Period

“6. The parties agree to a Probationary Period beginning on the Effective Date<sup>1</sup> and ending at the conclusion of the 12<sup>th</sup> month (March 23, 2022) from the Effective Date.

“7. During the Probationary Period Owner-Respondent shall not engage in any acts of harassment towards Petitioner, . . .

“8. During the Probationary Period Owner-Respondents shall ensure that Petitioner’s apartment is free from mold, leaks and excessive moisture conditions.

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<sup>1</sup> The March 2021 Stipulation provides that the Effective Date is March 24, 2021.

“9. Owner-Respondents shall be deemed to have violated probation and defaulted on their obligations under Paragraphs 7 and 8 if any one of the following events occurs during the Probationary Period;

“(a) New York City Department of Housing Preservation and Development issues a violation at Petitioner’s apartment under Order No. 507 (leaky roof), 550 (mold), or 583 (water leak); or

“(b) Following a mold assessment performed pursuant to Article 32 of NYS Labor Law, a licensed mold assessor finds that mold remediation or abatement is required in Petitioner’s apartment; or

“(c) Following a mold assessment performed pursuant to Article 32 of NYS Labor Law, a licensed mold assessor finds that moisture content levels greater than 17% exist in a ceiling, wall, floor, or wood, masonry, or other plastered surface in Petitioner’s apartment.

“10. Each party may hire its own licensed mold assessor to perform an assessment of Petitioner’s apartment for the purpose of determining whether a default has occurred pursuant to Paragraph 9(b) or (c); in the event that the parties’ licensed mold assessors make conflicting findings as to any material issue, this proceeding may be restored to this Court for an adjudication as to whether Owner-Respondents defaults on their obligation to maintain Petitioner’s apartment free from mold, leaks, or excessive moisture.

“11. Upon any alleged default by Owner-Respondents under Paragraphs 7 and 8, Petitioner may restore the proceeding to the Court calendar upon 14 days notice of motion for a hearing to determine if a breach of this stipulation has occurred.

“12. Prior to any restoration by Petitioner, Petitioner must notify Respondent or Respondent’s attorney of any condition in the apartment.

“13. If after a hearing it is determined that a breach of this stipulation has occurred, Petitioner may seek the relief sought in subparagraphs (d) – (j) of the Amended & Supplemental Verified Petition, verified on August 21, 2019. Owner-Respondents reserve all defenses thereto.”

Petitioner moved, by Notice of Motion dated March 23, 2022, for an Order: (a) pursuant to the New York City Civil Court Act (“Civil Court Act”) §110(c) and New York City Administrative Code (“NYC Admin Code”) §27-2121, directing Respondents to utilize a mold assessor, remediation contractor, and abatement workers with valid New York State Department of Labor-issued mold licenses to perform all work necessary to abate and remove mold- and leak-related violations at the Subject Premises and enjoining Respondents from using any unlicensed workers to perform work related to the abatement of mold conditions within the Subject Premises; (b) pursuant to Civil Court Act §110(c) and NYC Admin Code §27-2121, directing Respondents to comply with all requirements and procedures enacted in Local Law 55 of 2018 of the City of New York with regard to existing mold-related violations; (c) finding the acts described in the Petition constitute violations of NYC Admin Code §27-2005(d) and classifying them as a “C” violation immediately hazardous violation pursuant to NYC Admin Code § 27-2115(m)(1); (d) enjoining Respondents from further violations of NYC Admin Code §27-2005(d) in accordance with §27-2121 and pursuant to §27-2115(m)(2); (e) directing Respondents to pay a civil penalty for violating NYC Admin Code §27-2005(d); (f) recommending or employing any other remedy, program, procedure, or sanction authorized by law for the enforcement of the housing standards at issue, pursuant to the Civil Court Act §110; and (g) awarding compensatory damages and attorneys’ fees and costs pursuant to the NYC Admin Code §27-2115(o).

Respondents submitted opposition papers. Thereafter, Petitioner submitted reply papers. HPD did not submit papers in response to Petitioner’s Notice of Motion.

The Court, in a Decision and Order, dated August 3, 2022, granted Petitioner's motion to the extent of setting the matter down for a hearing to determine whether a breach of the Probationary Stipulation occurred.

### Hearing

The Court conducted the hearing over the course of four days – October 6, 2022, November 30, 2022, January 10, 2023 and February 9, 2023. Petitioner testified on his own behalf. Respondents called two witnesses - - Anurag Parkash, an agent of Respondents, and Enrique Reyes, the Superintendent for the Subject Premises. HPD appeared through counsel at the hearing.

HPD entered into evidence the HPD Closed Violation Summary Report, dated October 6, 2022. The Court took judicial notice of the HPD Inspection Reports, dated February 7, 2023 and February 9, 2023, respectively, and the listed open HPD violations.

Petitioner entered into evidence the following documents: (1) the Probationary Stipulation; (2) an undated photograph of water on a window sill and water condensation on a window; (3) a photograph of a kitchen window sill and frame, dated November 6, 2021; (4) a photograph of a bathroom wall behind a toilet, dated November 10, 2021, (5) an undated photograph of the living room window with water condensation; (6) a photograph of a window sill and window frame with water condensation and damp plaster, dated November 8, 2021; (7) a photograph of the bedroom window and window sill, dated November 6, 2021; and (8) a photograph of the kitchen wall near a window with damp plaster, dated July 9, 2021.

Petitioner also entered into evidence the following subpoena records from HPD: (i) a certified copy of a HPD Complaint History Report, dated November 2, 2022, for the time period March 1, 2021 to November 2, 2022; and (ii) a certified copy of a HPD Closed Violation Summary

Report, dated November 2, 2022. Additionally, Petitioner entered into evidence a copy of a FISP Report, dated October 2020 from the New York City Department of Buildings Public Portal (“FISP Report”).

Petitioner, who is elderly, testified that, during the probationary period, conditions existed in the Subject Premises in relation to water, humidity, mildew, and the apartment windows. Petitioner testified that he took pictures of the window water condition, the mold condition and the mildew condition during the probationary period.

Petitioner also testified that, during the probationary period, he called 311 multiple times to file complaints about conditions in the Subject Premises and thereafter a person came to inspect the Subject Premises. He testified that he spoke with HPD during the probationary period as well. Petitioner testified that Respondents sent workers to perform humidity testing in the Subject Premises. He testified that he believed Respondents failed to address the conditions in the Subject Premises during the probationary period.

On cross examination, Petitioner testified that there are four radiators in the Subject Premises, which have been recently replaced by Respondents, and that Respondents installed radiator covers on said radiators in 2022. He testified that the humidity and window water conditions remained an issue after the installation of radiator covers in 2022. He testified that he has observed water pooling on the window sills. He testified that, on the old radiators, he was able to access the radiator valves. He testified that he can also access radiator valves on the new radiators but that he doesn’t need to access the valves on the new radiators. He testified that he didn’t know the source of the condensation on the apartment windows. He testified that he did not have mold testing performed in the Subject Premises because he lacked money.

Petitioner testified that he believes Respondents' workers perform superficial patch and paint work. Petitioner acknowledged having seen the letter written by TakeRoot Justice, dated January 14, 2022. Petitioner then rested.

On Respondents' case, the following documents were entered into evidence: (a) a copy of email exchanges, dated January 14, 2022, between Respondents' counsel and Petitioner's prior counsel, with an annexed Letter, dated January 14, 2022, by TakeRoot Justice to Respondents' counsel, regarding breach of the Probationary Stipulation; and (b) an email, dated December 20, 2021, by Respondents' counsel to Petitioner's former counsel requesting photographs of conditions in the Subject Premises and requesting access dates to address conditions.

Respondents called Anurag Parkash ("Parkash"), the property manager and an attorney, as a witness. Parkash testified that the Subject Building is approximately one hundred (100) years old.

Parkash testified that the parties agreed upon a mold company and a contractor which Respondents then hired to prepare a mold report and perform remediation work in the Subject Premises. Parkash further testified that, on consent of the parties and prior to the probationary period, all the windows in the Subject Premises were replaced in an attempt to solve the window condensation issue in the Subject Premises. Parkash testified that he believes that window condensation occurs when the steam heat comes on and the windows are cold which results in the window "sweating".

Parkash testified that he believed, on prior occasions, Petitioner had removed the radiator valves. He testified that upon removal of radiator valves steam heat occurs and creates excess condensation on the windows. Parkash testified that Respondents installed radiator covers in the

Subject Premises to help decrease window condensation. Parkash also testified that the radiators throughout the Subject Premises were replaced as well. Parkash testified that, during the probationary period, Petitioner did not directly reach out to his office to report excess moisture.

On cross examination, Parkash testified that, prior to Respondents' entry into the Probationary Stipulation, he had personal knowledge and access to the Subject Premises, because Respondents performed work in said premises. Parkash testified that, after the parties entered into the Probationary Stipulation, he was no longer allowed access to the Subject Premises pursuant to the terms of said stipulation. He further testified that he does not have personal knowledge of the Subject Premises during the probationary period as result of the terms of the Probationary Stipulation.

Petitioner acknowledged that Respondents have been dealing with the mold issue for several years in the Subject Premises. Parkash described the extensive renovations and work Respondents performed in the Subject Premises around the time of the execution of the Probation Stipulation, which included placing Petitioner in a hotel, window replacement, sheetrock replacement, radiator replacement, and interior bricks replacement. He also acknowledged that he is not expert on mold, leaks or condensation.

Parkash testified that Respondents performed work in the Subject Premises and another unit, 6M, around the same time, because Apartment 6M had similar issues to the Subject Premises. He testified that Respondents changed the bedroom walls only in Apartment 6M and that windows were not changed.

Parkash acknowledged the FISP Report. He testified that Respondents' engineer submitted the FISP Report to the New York City Department of Buildings ("DOB") to obtain permission to

perform façade work on the Subject Building. Parkash testified that the façade work has not commenced yet, and that the recommendations from the FISP Report have yet to be implemented.

Parkash testified that, prior to the probationary period and upon request of Petitioner or Petitioner's counsel, Respondents hired mold assessment companies and mold remediation companies to address items in the Subject Premises. He testified that, during the probationary period, Respondents did not hire a mold assessment company or a mold remediation company. Parkash acknowledged receiving notification of HPD violations. He also acknowledged receipt of a letter from Petitioner's counsel regarding conditions in the Subject Premises. Parkash acknowledged that Petitioner had filed prior harassment cases against Respondents with the New York State Division of Housing and Community Renewal ("DHCR") and the New York State Human Rights Commission.

On redirect, Parkash testified that the FISP Report referred to the South and West portions of the building and that the Subject Premises is located on the North East portion of the Subject Building. He testified that he did not believe that the cause of the conditions at issue in the hearing were from lack of repair by Respondents of the roof or bulkheads in the Subject Building, because Petitioner's photographs depicted water around the windows of the Subject Premises. Parkash further testified that, during the probationary period, Respondents received notice of HPD violations from the HPD website.

On recross, Parkash testified that the Subject Premises is on the North East side of the Subject Building. He acknowledged that the FISP Report mentions cracks in the building façade on all sides of the Subject Building.

Respondents then called as a witness Enrique Reyes (“Reyes”), the Superintendent for the Subject Building and an employee of Ved Parkash. Reyes testified that he has been the Superintendent for the Subject Building for approximately eleven years.

Reyes testified that, since March 2021, he has been inside Subject Premises on multiple occasions to address moisture conditions and that he did not observe water coming in from the walls or the windows during that time. Reyes testified that Petitioner stated to Reyes that he used to close the radiator valves due to a smell emanating from the radiators when heat came out.

Reyes then described what occurs when the radiators are turned off and the heat is on. Reyes stated that when radiators are closed off and heat is on, that the heat turns into water which stays inside the radiator, and afterwards when the radiator valve is opened the moisture and water comes out of the radiator and that causes condensation in the apartment rooms. He stated that the excess steam from the radiators turns into moisture and that if the moisture is not cleaned up then the moisture condensates and creates pools of water. Reyes testified that he believed the moisture in the Subject Premises was caused by the condensation from the steam and window.

Reyes testified that, after March 2021, he installed radiator covers, which were screwed into the wall, to control the moisture and steam conditions in the rooms in the Subject Premises. He testified that he believed the radiator covers solved the condensation issue in the Subject Premises. Reyes testified that, after installation of the radiator covers, he received a phone call from Petitioner that the radiator covers were falling off. Reyes testified that, upon his arrival at the Subject Premises, he observed that the radiator covers had been yanked out of the walls.

On cross examination, Reyes testified that he is an expert on condensation and radiators based on his eleven (11) years of experience as a Superintendent. He described the methods he

has used to investigate prior condensation issues and radiator issues. He testified that a few other units in the Subject Building have had excessive moisture issues. He testified that, prior to the COVID19 pandemic, another unit – 6M – had a bad mold condition and that it was repaired. He testified that the mold was caused from water infiltration from the exterior bricks. Reyes testified, that, during the probationary period, he went to Petitioner’s apartment on several occasions after Respondents’ office received a complaint. Then Respondents rested.

Thereafter, the parties gave closing arguments. After closing arguments, the Court reserved decision.

### **Findings of Fact and Conclusions of Law**

The Court set this matter down for a hearing to determine whether there was a breach of the Probationary Stipulation. It is undisputed that the one (1) year probationary period was March 24, 2021 through March 23, 2022. Petitioner filed a Notice of Motion on March 23, 2022.

#### ***Breach of Stipulation***

Section III of the Probationary Stipulation governs Respondents’ conduct during the probationary period and it provides that the Respondents shall: (1) not engage in acts of harassment towards Petitioner as the term harassment is defined in NYC Admin Code 27-2004(a)(48); or (2) ensure the Subject Premises is free from mold, leaks and excessive moisture condition. Paragraph 9 of Section III further provides that Respondents will be deemed to have violated probation if any of the following events occur during the probationary period which include: (i) HPD issuing a violation under Order No. 507 (leaky roof), 550 (mold) or 582 (water leak); or (ii) following a

mold assessment, a licensed mold assessor finds that mold remediation or abatement is required in the Subject Premises; or (iii) following a mold assessment, a licensed mold assessor finds that moisture content levels greater than 17% exist in a ceiling, wall, floor or wood, masonry, or other plastered surface in the Subject Premises.

The Probationary Stipulation further provides, in paragraph 10 of Section III, that upon any alleged default by Respondents under paragraph 7 and paragraph 8 of the Probationary Stipulation, Petitioner may restore the proceeding to the court calendar to determine if a breach of said stipulation has occurred.

Here, based on the testimonial and documentary evidence presented at the hearing and pursuant to the terms of the Probationary Stipulation, the Court finds that Petitioner established that Respondents breached the Probationary Stipulation due to HPD's issuance of violations under Order No. 550 (mold) and Order No. 583 (water leak) for the Subject Premises during the probationary period.

During the probationary period, HPD issued three (3) "A" violations under Order No. 550; violation ## 14659682, # 14659678, and # 14659676, and the violations were certified as corrected within thirty (30) days of the issuance of the Notice of Violation. During the probationary period, HPD issued two "B" violations under Order No. 583: violation ## 14659675 and 14659680, and the violations were certified as corrected within thirty (30) days of issuance of the Notice of Violation. Pursuant to the HPD Inspection Reports, dated February 7, 2023 and February 9, 2023, respectively, there are no open HPD violations under Order No. 550 (mold) and Order No. 583 (water leak) listed on said reports.

Thus, pursuant to the terms of the Probationary Stipulation, the Court finds that Respondents have engaged in harassment. The Court enters an injunction against Respondents directing Respondents to refrain from engaging in any proscribed conduct stated in NYC Admin Code §27-2205(d) and §27-2004(a)(48). The Court further directs HPD to place a “C” violation on the Subject Premises for harassment.

It is ordered and adjudged that the clerk of the court enter a judgment for civil penalties in favor of HPD against Respondents in the sum of \$2,000.00 and that HPD have execution thereof and said sum shall also be a lien against the Subject Premises, Block 03022 and Lot 0058.

### ***Compensatory Damages and Attorney’s Fees***

Petitioner seeks an award of compensatory damages and attorney’s fees pursuant to NYC Admin Code § 27-2115(o). “Compensatory damages cannot be contingent or speculative, but ascertainable to a degree of reasonable certainty” (*Hucey v Frezza*, 2021 NY Slip Op 50186[U][Civ Ct, Kings County 2021]; see *EJ Brooks Co v Cambridge Sec. Seals*, 31 NY3d 441, 448 – 449 [2018]). Petitioner did not submit sufficient proof as to the amount of damages he sustained. In absence of such proof, the Court can award Petitioner compensatory damages of \$1,000.00 (NYC Admin § 27-2115[o]). Here, the Court awards Petitioner compensatory damages in the amount of \$1,000.00 as against Respondents. Given the mixed outcome of Petitioner’s motion, as further detailed below, the Court declines to award attorney’s fees at this time, without prejudice to a separately filed application for the same.

*Mold Assessor & Local Law 55 of 2018 of the City of New York*

In his motion, Petitioner requests that the Court direct Respondents: (a) to utilize a mold assessor, remediation contractor and abatement workers with valid New York State Department of Labor issued mold licenses to perform all work necessary to abate and remove mold and leak-related violations at the Subject Premises and enjoin Respondents from using any unlicensed workers to perform work related to the abatement of mold conditions within the Subject Premises; and (b) to comply with all requirements and procedures enacted in Local Law 55 of 2018 of the City of New York with regard to existing mold-related violations.

Pursuant to the HPD Inspection Reports, dated February 7, 2023 and February 9, 2023, there are no open HPD violations for mold for the Subject Premises. Petitioner's photographic hearing evidence showed mold conditions in the Subject Premises in 2021. Petitioner did not submit a report from a mold assessor that there are mold-related conditions presently in the Subject Premises. Therefore, based on the foregoing, these portions of Petitioner's motion are denied as moot.

**Conclusion**

Accordingly, after hearing, Petitioner's motion is granted in part and denied in part.

ORDERED that Respondents are enjoined from engaging in any harassment conduct prohibited by NYC Admin Code §27-2005(d) and defined in NYC Admin Code §27-2004(a)(48), and it is further

ORDERED that HPD shall place a “C” violation on the Subject Premises for harassment, upon service of a copy of this Order together with Notice of Entry by any party on HPD; and it is further

ORDERED that the Court awards HPD civil penalties against Respondents in the amount of \$2,000.00 to be enforced against the Building, at Block 03022, Lot 0058 of the borough of the Bronx and it is further

ORDERED that the Court awards Petitioner a judgment for compensatory damages in the amount of \$1,000.00 as against Respondents, jointly and severally, and it is further.

ORDERED service of this Order may be made upon all parties or their attorneys by 1<sup>st</sup> class mail with certificate of mailing. Proof of service shall be filed on NYSCEF.

This Decision and Order is without prejudice to any claims or defenses that the parties may have against one another.

This constitutes the Decision and Order of this court, which is being sent to the parties.

Dated: May 15, 2023  
Bronx, New York

  
**APPROVED**  
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MALAIKA N. SCOTT-MCLAUGHLIN, J.H.C.

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