

**Commissioner of the Dept. of Hous. Preserv. & Dev.
v Highpoint Assoc.**

2023 NY Slip Op 33994(U)

November 8, 2023

Civil Court of the City of New York, New York County

Docket Number: Index No. 301542/22

Judge: Norma J. Jennings

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: Housing Part S

COMMISSIONER OF THE DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT

HP index #301542/22

Petitioner,

DECISION AFTER TRIAL

-against-

HIGHPOINT ASSOCIATES,

Respondent.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: Housing Part S

DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT OF NEW YORK,

Petitioner,

HP Index #303185/21

-against-

DAN SHALOM
HIGHPOINT ASSOCIATES XII, LLC

DECISION AFTER TRIAL

Respondents.

HON. NORMA J. JENNINGS:

Petitioner commenced two proceedings against respondents one for the appointment of a 7A administrator, pursuant to RPAPL section 770, or in the alternative, an Order to Correct the violations in the subject premises, 410 West 46th Street, New York, New York. Petitioner alleges that the conditions in the subject premises affect the life, health, and safety of the residents as the premises have deteriorated as there were 179 violations when the case commenced and there are now over 350 violations in the building. Respondent has appeared by counsel who interposed an answer of general denial. The court held a trial in this proceeding on several dates between September 2022 and June2, 2023.

PETITIONER'S CASE:

Petitioner admitted into evidence, the affidavit of service (P1), the certified deed showing Highpoint Associates as the owner of the subject premises (P2), the Certified Multiple Dwelling Registration indicating that there is no registration on file for the premises, (P3), the Certified HPD Violation Report dated September 29, 2022 (P4), the 7A intake inspection report dated January 10, 2022 (P5), the building charge report dated September 19, 2022, (P6), the Department of Health and Mental Hygiene report

dated July 13, 2022 (P-7), OATH decision on hot water (P8), consent order under index #302163/21 by the Honorable Francis Ortiz index no. 56/21 (P9), and index #309822, and the Supreme Court proceeding. (P10).

Mr. Frederick Gualario testified on behalf of HPD. Mr. Gualario testified that he has been employed as a Construction Manager with over 30 years' experience. His duties include conducting inspections on buildings from the roof to the cellar, checking cellar systems and living conditions. Mr. Gualario testified he visited the subject premises which consists of fifteen (15) units, on October 21, 2021, November 22, 2021, April 20, 2022, and September 20, 2022. After completing his inspections, Mr. Gualario created a Scope of Work (P11) and issued a 7A Intake Inspection Report (P-12). On October 20, 2021 he inspected the façade, public hallways, the roof, stairwells, and apartment 2B which was vacant. Mr. Gualario testified that the façade had purging which can cause the rain to go into the building, the front door was not working, and the walls needed plaster and painting. Mr. Gualario testified he was able to gain entry to apartment 2B because the lock was broken and the apartment "was destroyed," there was mold, peeling paint, garbage, evidence of drug use and liquor bottles," it looked like squatters were living in the apartment". Mr. Gualario testified he then went to the roof, where the push bar was broken, the roof was leaking, and there were materials stored for 412 West 46th street. He could not obtain access to the cellar, the entrance by the stairs was rotting, the steel was corroded, and the stairwell was temporarily shored up.

Mr. Gualario's second visit occurred on November 22, 2021, and on this visit, he again attempted to gain access to the vacant apartments. Introduced into evidence as petitioner's exhibits 11A-11J and 12A-12K were pictures Mr. Gualario took during this inspection of the façade of the building (11A), the backyard (11B), the shoring underneath the stairs (11C), the Con Edison box which was rusted (11D), the shoring and entrance to the cellar which Mr. Gualario testified was not done properly (11E), the front entry way which Mr. Gualario testified the first step was a tripping hazard (11F), the front side walk where one slab is higher than the other which can also be a tripping hazard(11H), garbage in front of the building (11I), and two open windows to apartment 2C where rain and snow could get into the apartment (11J). The windows having signs of leaking and the 1st floor has water damage (12A and 12F), the first floor hallway the paint is cracking (12B), 2nd floor hallway tiles broken and dirty (12C), 2nd floor hallway leaking and peeling paint (12D and 12E), broken mailboxes (12G and 12H), dirty stairwell (12I), 3rd floor dirty tiles in the public hallway (12J), and the broken door to the roof, mold and leaking of the skylight window which was boarded up, which Mr. Gualario testified should not be boarded up. (12K).

Mr. Gualario testified that he also visited the premises on April 20, 2022, and took pictures of apartment 3C. Admitted into evidence as petitioner's exhibits 13A-13O were pictures of the front door with no lock (13A), mold in the kitchen, water leaks, and no cabinets (13B), debris on the floor and collapsed kitchen ceiling (13C), kitchen wall leaks (13D), kitchen and bathroom ceiling collapsed (P13E, 13F, 13H), mold in the bathroom sink (13I and 13J), mold on the floor, floor joints rotting (13K and 13L), a picture of the bedroom window showing an extension cord from the cellar to the apartment for power (13M), the light socket that appears to be shorted out with fire damage in the living room/dining area (13N), and water damages on the walls, the door off, and a frame creating a bedroom (13O).

Mr. Gualario testified that his last inspection of the premises occurred on September 20, 2022 when he was able to gain entry to apartment 5C, took pictures and testified to the conditions in the photographs. Introduced into evidence as petitioner's exhibits 14A-14Z were pictures of the floor coming up (R14A), cracked and missing tiles in the bathroom (R14B), mold in the shower, vanity, and the tub was missing (R14C), mold in the bathtub (R14D), cracked tiles and mold in the bathroom (R14E), the bathroom

showerhead was missing, no caulking around the shower which Mr. Gualario testified causes water to go through to the other apartments and causes mold. (14F), cracked paint in the bedroom and signs of a water leak (14G and 14H), the floor rotting and showing water damage, (R14I, 14J, 14L), the rusted radiator valve (R14M and 14N), the windowsill molding, peeling paint and signs of water leak (R14O), and the living room window on the left side rotting (R14P). Mr. Gualario also took photographs of the public hallway stairwell going to the third floor which showed signs of a leak and parging (R14Q), mold on the left side of the window (R14R), the roof by the side of the bulkhead showing parging which causes water damage and leaks into the building (R14S), capping around the roof was cracked which Mr. Gualario referred to as “Allegatoring” which shows the peeling of the roof which allows the water to penetrate through the wall (R14T), the first floor public hallway showed water damage, (R14U), the vestibule door does not close properly, (R14V), the first floor hallway, dirty, tiles warped and coming up, (14W), water damage on the walls of the first floor hallway, (R14X), the 1st floor ceiling needs painting (R14Y), and holes in the concrete under the stairs. (R14Z).

Mr. Gualario testified that after his inspections he creates a report from the roof to the cellar, and on the systems in the building. He prepared the report on January 2, 2022, and signed it on January 10, 2022. Based upon his inspections the roof needed to be replaced, the exterior has parging on the bricks and need new pointing, caulking, and the windows in apartment 5B need a gut rehab, the apartment needs painting, new kitchen cabinets, the plumbing and electricity are old as there was evidence of sparking and need to be replaced, as well as the piping needs replacing. Mr. Gualario also testified that the front door to apartment 2B needs a self-closing lock, the public hallways need to be scraped and painted, new lighting and windows, and an Integrated Pest Management Plan put in place as there is an infestation, of rats, mice, and roaches. The intercom system is not functional, a new domestic water system needs to be put in because there are leaks and mixed piping throughout, electrical work needs to be done as the wires are shorting, new subpanels are needed in the apartments as the breakers are corroded and oxidized which can cause a fire, and the heating system needs replacing. Mr. Gualario further testified that the boiler was made functional through emergency work done by HPD. The charge report indicated that HPD provided oil to the premises a month or two ago, and did emergency repairs to the hallway lights, cleared the fire escapes, replaced the front door lock twice, and there were five violations for heat and hot water, on February 16, 2022, August 31, 2022, September 26, 2022, and September 27, 2022. Mr. Gualario testified that during his inspections he did not observe a superintendent but did see someone sweeping the public hallways, however, the person did not have a key to the cellar, and he did not observe any work being done on the premises.

CROSS-EXAMINATION:

On cross-examination, Mr. Gualario testified that he visited the subject premises four times on October 21, 2022, November 20, 2022, April 20, 2022, and September 20, 2022, and each time he visited he wrote a report. From his October visit he recalled that he inspected the front door which did not work properly, he knocked on the apartment doors but did not get access, and he took pictures during his November 2022 visit and he was never in apartment 2B. Mr. Gualario testified that it is his practice to take pictures during his inspections to verify the conditions, and if there was a defective condition he would take a picture. Mr. Gualario testified that he is a construction project manager but does not have a real estate construction or a general contractor license, is not a licensed electrician, nor does he have any experience in maintaining real property, or HVAC. However, Mr. Gualario testified that he has been in the business for years, has done carpentry, took electrical engineering and architectural classes, oversaw construction of a building from top to bottom and was in the asbestos business for six years. Petitioner’s (P5), dated January 10,

2022, states Mr. Gualario was at the building on November 20, 2021, Mr. Gualario stated that there can be multiple dates put on the report, however, the report only reflects conditions on October 20, 2021 the report also states that he went to apartments 2B, 2C, 4C, the roof/cellar, façade/ph/rear and front yard, however, he testified he never went into 2B but the report says he did. Mr. Gualario responded that the apartment numbers on the doors are off, so he was not sure, but if he says he did then he did.

Mr Gualario further testified that although in his direct examination he testified that he did not gain access to the cellar on October 20, 2021 the report describes the condition of the cellar so he must have gained access. Mr. Gualario acknowledged that during his direct testimony he stated the steam pipes needed to be replaced but the report states they are in good condition. The report also said the boiler is in good condition and supplied heat and hot water, which Mr. Gualario responded it was true at the time the report was written, as well as there were no violations for lead or mold even though he testified he saw mold. The report stated there was no structural damage nor was the box checked to repair or replace the stairs; he testified they needed to be replaced. Mr. Gualario also acknowledged that the brownstone façade, parapet, entrance door, and front door are checked off as in good condition, despite testifying during direct examination they needed to be replaced. Mr. Gualario testified that he did not take pictures of electrical wires sparking or of vermin but would have taken a picture if he saw a rat. He also did not recall in which apartment he saw mixed piping, but he saw it in the hot water line going into the kitchen and bathtubs. Mr. Gualario explained mixed piping means different types of material together, you cannot have cooper and brass together on a domestic water line, it violates the code and must be replaced.

TESTIMONY OF JOHN REEDS:

Mr. Reeds testified that he has been residing in apartment 5B at 410 West 46th street since 2015 when he moved from 412 West 46th Street after a fire. Mr. Reeds testified there have not been any repairs in his apartment for seven years, the floors are sinking, the living room floor is chipping, there are gaps in the floor where mice come into the apartment, cracked bathroom tiles, the bathtub needs caulking, the bathroom lights do not work, there are no outlets, and the bathroom door is falling off the hinges. Mr. Reeds testified that the roof leaks into his kitchen and bathroom, the stove does not light, the apartment has not been painted since he moved in, the windows in the bedroom do not stay up, and a window in the living room had to be taped shut because bugs were coming into the apartment. Mr. Reeds further testified that there have constantly had issues with the hot water, the longest period was in September 2022 when there was no hot water for a month, and every holiday there is no heat or hot water and frequently none on the weekend. Mr. Reeds testified initially he would email management when there was no hot water and sometimes, he would receive a response but most of the time he would just receive excuses.

Further, in the common areas there have been issues with the front door lock, apartment 1A and 3A are not secure and there are homeless people going in and out, the hallways are dirty and need plaster and painting, and the third and fourth floor hallway windows do not open and close. Mr. Reeds testified before DHPD was involved in the building he would contact the owner, but now he goes directly to HPD who put in a new front door and lock. Mr. Reeds further testified that there are ongoing issues with the garbage, which is not in a secure area, there are cracks in the stairwell, the intercom does not work, and although there has recently been an exterminator there are holes in the sidewalk where rats come up. Mr. Reeds testified there has not been a superintendent in the building for a while, but recently observed someone clean the hallway and a name and telephone number on the door and a gentleman who identified himself as the superintendent came to look at the kitchen floor, left a single box of tiles, and came back a

few days later, but Mr. Reeds told him he had to schedule a time, to which the gentleman responded to him to “do it yourself,” left the tiles and never returned.

CROSS-EXAMINATION OF JOHN REEDS:

On cross-examination Mr. Reeds testified that there has not been any work done in his apartment, that he let the worker in once, who returned without arranging access and he told him he needed to arrange access. Mr. Reeds testified that although the intercom goes in and out, the buzzer works, one window in his apartment does not stay up but the others work, and sometimes the front door works and there was a sign up in the building that there was a superintendent, but someone ripped it down. Mr. Reeds acknowledged that an exterminator has serviced his apartment once a month for some time, and since the trial started the common areas were painted, someone sweeps and removes the garbage, however, the floors are still filthy, and the front door has not worked in years. Mr. Reeds further testified that he has not contacted the landlord or the super about the garbage or cleaning and he told DHPD about the squatters in apartment 3A, who then put a padlock on the door. Petitioner did not call any further witnesses.

RESPONDENTS CASE:

DIRECT TESTIMONY OF ROBIN IGNICO December 9, 2022

Ms. Ignico testified she has been the Tenant Relations Manager since 2006 for Keystone Managing Inc., (“hereinafter respondent”) who manages the subject premises for Highpoint XII LLC Associates, her responsibilities include dealing with tenant complaints, repairs, and managing the vendors; she is not responsible for certifying violations. In 2019 all fifteen apartments were occupied, in 2020 eight to ten apartments were occupied, and now five apartments are occupied of which only two are paying rent. Ms. Ignico testified that there were no class C violations prior to 2019, and there are currently 339 violations in the building. Ms. Ignico testified that Choice Management was the managing agent for the premises but was outsourced during the Covid-19 pandemic. During the pandemic respondent laid off 27 maintenance technicians, Ms. Ignico testified, and she was on medical leave during this time and when she returned the building was a “complete disaster” there were rats, garbage, and windows were on the wrong side. Highpoint and Choice parted ways in July 2021, and she looked for a superintendent and technicians to get the building into shape and entered into an agreement (R-B11), dated October 1, 2021, with the Fifth Labor LLC to provide superintendent services who put up notices with their contact information, but she was unaware if the information was given to DHPD. Paragraph 27 of the agreement includes the scope of work to be performed by Fifth Labor including cleaning the building, mopping, securing the front door, calling the police when squatters are in the building, and removing the garbage Monday, Wednesday, and Friday, which coincided with the city’s garbage removal schedule.

Ms. Ignico testified that there were no issues with the heat or hot water in 2019 or 2020 because the building was on automatic fuel delivery once a week, but DHPD would fill the tank before the next delivery and now fuel is delivered on Wednesday and Friday. Ms. Ignico further testified that there were no issues with homeless before the pandemic, but they began breaking into the building in July 2021 and turned off the boiler. In attempt to prevent homeless individuals from coming into the building, management spoke with the police, installed self-closing doors, boarded up the windows, installed metal gates going into the boiler room, everything was done, except install cameras.

Ms. Ignico testified that Andrew Amezcuita was hired as a live in super in January 2023, a live in super is beneficial because they could deal with emergencies and squatters, he will be cleaning daily, taking out the trash, installing smoke/carbon monoxide detectors, restarting the boiler if it turns off, and chipping away at the violations as he was given a spreadsheet. The repairs the superintendent cannot do will be done by Bellet Construction, a licensed contractor, including repairing the roof, pointing, and sidewalk repair. Smalls Electricity fixed the lights in the hallway and was also hired to install a wireless intercom eight months but is not responding, Ms. Ignico identified a new electrician, but she could not remember the name. A plumber was also hired to address the leaks which goes into the lobby. To resolve the issue with the squatters, who broke into apartment 3A and shut off the boiler, they boarded up and nailed shut the windows in the vacant apartment, replaced the front door, and changed the locks and keys multiple times but she believes one of the tenants was letting the homeless into the building. Ms. Ignico testified since a new oil tank was installed in 410 eight months ago, there have not been any heat or hot water complaints. Super Fix LLC painted and plastered the entire building on October 4, 2022; however, the interior of the occupied apartments has not been painted because there is no money, and the tenants need to provide access.

To address the vermin issue respondent hired "Advanced Pest Control" to exterminate monthly, however, if there is an emergency, the exterminator can make an extra trip. Alvin Patterson, who is the owner of Advanced Pest Control, communicates by submitting a log with his invoice of who provided access for treatment and what services were performed. Mr. Patterson routinely inspects the building exterior, would tell if holes needed to be filled, if a tenant is hoarding, and would tell Ms. Ignico if Fifth Labor was not doing its job and removing the garbage to the sidewalk. Since Advanced Pest Control has been hired, Ms. Ignico testified, the complaints about pests have decreased and since Fifth Labor was hired the complaints about garbage has decreased. Ms. Ignico testified that she has not received any complaints about vermin in a year because the tenants go directly to DHPD.

Respondent introduced into evidence the monthly invoices submitted by Advanced Pest Control for extermination services dated February 23, 2022, March 12, 2022, April 9, 2022, April 27, 2022, May 14, 2022, June 11, 2022, July 9, 2022, August 15, 2022, September 10, 2022, October 4, 2022, and January 18, 2023). The purpose of the log submitted with the invoice, Ms. Ignico testified, is for her to call the tenants to find out why they are not giving access, and whether roaches, mice or bedbugs were treated. On the October 4, 2022 visit Mr. Patterson serviced the vacant units to make sure pests were not going into other apartments, apartment 3B and 5C refused service. The April 27, 2022 (C4) service was an emergency because of complaints, apartment 5A and 5B were treated but 3B and 5C refused services. There are sign-up sheets in the building so tenants are provided notice of when extermination is available, if a tenant is not available, she will call them to arrange a time when they are, and Mr. Patterson would make an extra trip.

Respondents exhibits D-1-D8 were service invoices for work on the heat and hot water, including an invoice from All Liberty Mechanical Solutions LLC dated November 25, 2021, (D8), and (D10 and D11) dated January 5th and 6th of 2022 for work on the boiler after receiving complaints about heat and hot water. Ms. Ignico testified that she knows the complaint has been resolved when she receives an email from the tenant saying thank you and she contacts the tenant for confirmation, she just does not take the word of the company. Respondent's (D13) was an email chain dated February 18, 2022, with Hands on Heating and (D14) was an invoice from Hands on Heating dated February 21, 2022, for calibrating the boiler to provide heat and hot water. Respondent's (D2) was an invoice from Boilerco, dated April 8,

2022, for work after tenants complained of too much heat which is treated as an emergency. Ms. Ignico testified that she did not recall receiving any heat or hot water complaints after this because the tenants go straight to DHPD, and she will then receive an alert on her phone followed by a notice of violation from DHPD. Respondents (D1) was an invoice from Bazini Engineering dated June 14, 2022, who did the plans and filed for the permits for the new oil tank in 410, (D4) was an invoice from National Mechanical Services dated April 29, 2022, who installed the oil tank. Ms. Ignico testified that this job was rushed because DHPD wanted to install the oil tank at triple the cost, but there was never a breach in heat and hot water between April 2022 when the tank was installed. There was an asbestos assessment conducted by A Plus Asbestos which had to be completed before the oil tank was installed, which was negative (G1).

Respondent's exhibits (E1-E4) were invoices for repairs to the front door, from SOS Locksmith (E1), two invoices from Osiris Moseley dated April 6, 2022 (E2), and April 27, 2022 (E4), and from Open Locksmith dated September 30, 2022 (E5) where locks were installed on the vacant apartments because the homeless broke into the apartments and who broke the pipes resulting in water pouring into the other apartments. Respondent's (F1-F10) were receipts from Home Depot for materials purchased for repairs. Ms. Ignico testified that she holds the credit card, the worker chooses the materials then goes to the pro desk who then calls her, and she gives the credit card number, and the purchase is completed. Exhibit (RF1) was for a latch for the roof, (F2) was a receipt dated April 26, 2022. Respondent's (F3) was a Home Depot receipt dated May 25, 2022, to replace the lighting and for a ladder, F4 was a receipt dated June 22, 2022 for materials to plaster and paint the lobby, a bolt for the boiler room, smoke detector and carbon monoxide detector, and traps. Respondents (F5) was also on June 22, 2022, after the handyman had to return to purchase a lock for one of the apartments. Respondent's (F6) was a receipt dated June 23, 2022, for deadbolt locks for outside, wood screws, and plywood for broken windows. Respondent's (F7) was a receipt dated, July 1, 2022, for plywood to secure windows in vacant apartments, and a vanity. Exhibit F9 was a receipt dated July 27, 2022, for light bulbs and fixtures, and respondents F10 was a receipt dated December 28, 2022, for an electrical heater and replacement of the thermostat because the temperature was going in and out.

Respondent's exhibits (H) was a payment request from Mega Contracting and Design, dated October 7, 2021 for emergency plumbing repairs in apartment 4C for a leak that went from upstairs to the electrical panel and replacement of the shower body, and exhibits (I1-I3) were receipts from Smalls Electric dated January 13, 2022, June 30, 2022, and July 28, 2022, for replacement of the power cover, and replacement of light fixtures on the second floor. Ms. Ignico testified that she immediately receives the invoice when the work is done and to verify the work has been done, she will facetime with the superintendent. Respondent's (RK) was an invoice from Superfit LLC for services on multiple dates. Ms. Ignico further testified that respondent created a Violation Action Plan which was given to the superintendent to work on removing the violations, including painting the common areas, working with a plumber to fix the leaks because on February 4, 2023, a pipe burst between the third and first floor, no apartments were affected but the cellar and walls down to the basement were affected. As a result of the pipe bursting, the boiler had to be shut off and the pipe fixed, and water removed from the basement. The boiler is working but has a hole that requires a welder which was supposed to be completed by Fegruray 8, 2023. Ms. Ignico also testified she requested a year ago and again recently, for Bellet Construction to submit a proposal to replace the walls and ceiling, the interior of the basement, the façade, pointing and water proofing which was recommended in the 7A intake report. Ms. Ignico testified she has not received any complaints about the water line, there are no violations for electrical meters, gas meters, but she did ask Bellet to include in the proposal replacing them as well as the building exterior, gutters, dumbwaiter

bulkheads, replacing the skylight, how to properly seal the window openings, the area drains, pointing, and the facade.

In attempting to repair the self-closing doors, the super first went to the occupied apartments then to the unoccupied apartments to see if they needed a latch. The tenant in apartment 3B did not give access and the tenant in 2B is now giving access and the gas was repaired. She did not have any information on defective domestic water lines or leaks mentioned in the 7A intake report in apartment 2A. The radiator valves have not been replaced and are working, the apartment entrance doors some are in good condition, however, the unoccupied apartments are not at the top of the list. Ms. Ignico testified that despite the 7A intake report, that the floors are in bad shape, the hardwood floors are old but in good shape except for 3B and 5B which have not provided access to a floor contractor to do a proposal. Apartment 5B also has additional repairs including plaster/paint, a leak under the kitchen sink, and the bathroom and kitchen floor which were the tiles left by the superintendent.

The first-floor public hallway floor was not corrected, Ms. Ignico testified because the leaks first needed to be repaired and a wood contractor is needed for the wood floor which she is in the process of hiring. Ms. Ignico believes that the structure of the building, brownstone, parapets, cornices, and lintels are all in good condition. She asked the new superintendent to scrape and paint the fire escape, but he has not finished, and the cellar door was repaired with new locks and made self-closing. Although the 7A intake report recommends that 100 windows had to be replaced, however, Ms. Ignico testified she hired a window contractor who disagreed and replaced the glass in some. The 7A intake report recommends the roof be replaced because of leaks which Ms. Ignico testified were fixed in October or November 2022. Ms. Ignico acknowledged that the intercom system needs to be replaced and she was hoping to hire a new electrician. The vestibule door needs replacing, the hallway lighting was replaced in January 2022, locks have been added to the mailboxes, and the walls and ceilings have not been replaced. The 7A report recommended that the apartment doors need to be replaced, but Ms. Ignico testified five of the seven occupied apartments now have self-closing doors, except for 5B and 3B who have not granted access, and after the occupied apartments are completed, the unoccupied apartments would be done when the funds are available. In the public hallway 4 windows and 8 lights need to be replaced, as well as the dumbwaiters and seal three doors. Ms. Ignico does not agree with the report that 2B, 2C, and 4C need to be completely renovated because apartment 2B is rented by a corporate tenant and she is not sure if the violations were corrected, and apartment 2C is also rented by a corporate client and is vacant as far as she knows. She has also not received any notices about violations in the apartment.

Ms. Ignico testified that she does not agree with the recommended work to the concrete on the sidewalk, which is in good condition, with an estimated cost of \$18,000.00, a gut renovation on apartments at a cost of \$300,000 and replace the defective windows in all 15 apartments and cellars, at a cost \$110,000. As far as the roof, she has no information other than the report that the roof is leaking into apartments below or is in poor condition and needs to be replaced. If anything has to be done on the roof including replacement or any system including gutters, drains, will not be done unless it is recommended by Bellet. The building vestibule door she says is in good condition although the report says its inoperable. The location of the intercom system will be changed, she agrees the cellar has structural problems which would also be included in the Bellet proposal. The report also recommends replacing the electrical system at a cost of \$120,000, but Ms. Ignico testified she has never received any complaints from tenants and is also unaware of any violations for the gas meters which was recommended to be replaced at a cost of \$75,000.00. The violation stated that the boiler room door is not code approved but Ms. Ignico testified the room is locked and secured. The 7A report recommended replacement of the radiator valves, but the

heat works, there is no money to replace the valves and steam pipes as only 10 valves need to be replaced which the superintendent will work with the plumber to complete. Replacing the domestic water line was recommended in the 7A intake report, provide new water supply line, and replace all bathroom fixtures for a total cost of \$150,000.00 which Ms. Ignico testified she was not aware of outside of the report that the drainage/water system needed a complete overhaul which the landlord cannot afford. An Integrated Pest Management Plan has been put in place as recommended by the 7A intake report. Ms. Ignico believes the recommended work would cost twice as the report indicates of \$1.2 million dollars.

CROSS-EXAMINATION OF ROBIN IGNICO:

Ms. Ignico testified that she was not involved in registering the property with DHPD which has Mr. Sanatana listed as the managing agent. Petitioner's (P25) were tickets issued by the Department of Sanitation for trash out on non-collection days and for open trash bags with trash scattered about, and The New York City department of Health and Mental Hygiene (P26) dated June 22, 2022, August 19, 2022, November 10, 2022, and November 29, 2022, which were issued for signs of rats because she was told the homeless were messing up the trash. Ms. Ignico testified that Fifth Labor was responsible for removing the trash and as part of the agreement with respondent they must appear at the hearing any pay any fines. Ms. Ignico testified that since the new superintendent was hired there have not been violations issued by the Department of Sanitation or the Department of Health.

Ms. Ignico testified she believes that the violations in apartment 5C have been corrected including installation of a smoke detector, the kitchen sink, the front door, and window were replaced but she did not have any personal knowledge that the work was completed because the tenant's family will not allow anyone in the apartment. The floor in the public halls must be scraped but the leaks fixed first which would be part of the proposal submitted from Bellet as well as the façade, dumbwaiter, and roof bulkhead. Ms. Ignico did not agree with the recommendation that the water system and all of the windows be replaced but believes that only three windows need replacing which she has proposals for the owner to approve. The intake report also recommended that the electricity needed to be replaced in all 15 apartments, Ms. Ignico testified that she did not retain an electrician because the tenants have electricity, and an electrician told her that the electricity was sufficient. Ms. Ignico also testified that the radiator valves were replaced, and she is aware of when and in which apartments. Also, to rebuild the whole building would cost more than what DHPD estimated, Ms. Ignico acknowledged that she has no experience calculating costs of rebuilding or completing the repairs. Ms. Ignico acknowledged that she did not have any personal knowledge but believed the tenant in 3B was letting the homeless in the building, and she did not communicate with the tenant in 3B about access or commence a proceeding to gain access to the apartment to correct the violations.

TESTIMONY OF ANDREW AMEZQUITA SR:

Mr. Amezquita testified that he became the live in superintendent for the building on January 1, 2023. and there is a sign in the lobby with his contact information. Mr. Amezquita testified that he has been working in construction since he was nine, received a certificate in welding from APEX has his OSHA license and worked in welding for six months and electrical for two and a half years. Mr. Amezquita testified that when he became the superintendent the building was in "horrible" condition, it was dirty, had holes in the wall, no lights, and there were leaks. His responsibilities include cleaning the interior of the building, inspecting the boiler room, taking out the garbage, and doing basic repairs, but testified he cannot break

the walls or repair the boiler. Mr. Amezcuita testified that the entrance door is good and is self-closing, as well as the foyer door. The lobby repairs need to be done including painting, plastering, replacing the tiles replaced and priming of the ceiling. Mr. Amezcuita testified that "the hallway entrance lights are the best lights in the building, the other function but are dimmer." The occupied apartment doors are good, Mr. Amezcuita testified they are secure and self-closing, the vacant apartment doors are horrible and need replacing, which he is on track to replace within the next few weeks, but they are latched and padlocked.

Of the work recommended in the 7A intake report Mr. Amezcuita testified the most important to be addressed in his opinion is replacement of the water line on the A line that caused a leak to the main lobby. There is no active infestation of pests in the building, except in 4B because there was garbage underneath the sink. The hot water is running, there is no problem with the domestic water system, only 10 windows need replacing which he is getting bids to replace. He does not believe the electricity, or the roof needs to be replaced but fixed in the area that is leaking into 5B. Mr. Amezcuita testified that the structure of the cellar is good, the gas supply to the building is good, however, there were two tenants in 2B and 3B who had their gas turned off for nonpayment. The exterior of the building looks good except some of the windows are boarded up and the leak from the roof into apartment 5B. The apartment entrance doors to him do not need replacing, seven apartments are occupied, the eight vacant apartments are secured, and four door frames have been replaced.

Mr. Amezcuita does not agree with the 7A intake form that the façade is in poor condition, he is not aware of any leaks emanating from the building, that the domestic water line does not need to be replaced, except 2C where the water line froze and burst, and apartment 3A which also had a pipe burst causing damage to the bathrooms on the A line. The radiators do not need replacing, just the valves which he would be replacing in a week and does not believe the floor in 3B and 5B need replacing, however, he has not been able to gain access to either apartment. He has not had issues gaining access to other apartments to do repairs including 4C who contacts him every day to let him know there are drug addicts in the front of the building.

Mr. Amezcuita testified that he is not aware of any lead or mold violations, structural damage to the building, does not believe the sidewalk, or the entrance steps need to be replaced, and only two cellar windows need replacing and not the six recommended in the 7A report. The railings, gates, fences, are in good condition, the yard does not need 400 feet replaced because it's not concrete, just dirt and vegetation. Mr. Amezcuita agrees with the 7A intake report that the stonework, parapet, cornices, coping, gutters, the roof bulkhead, the self-closing building entrance door, structural foundation, joints, and windowsills are in good condition; the fire escape needs to be painted which is down the line as well as one of the exterior doors which has a damaged lock. The roof drain needs replacing, Mr. Amezcuita testified he has not worked on the intercom system but is not sure it is working but has never been told it was not working. The vestibule door does not need to be replaced but the floor needs to be repaired which he will do, the mailboxes are secured and have new locks and he has the keys, the 4th floor and 5th floor windows need to be replaced they are wood. Mr. Amezcuita disagreed that the walls and ceiling in the boiler room need to be replaced as well as the floor which is in good condition. The oil tank is in good condition, the heat pump, timer, hot water heater or the pipes do not need replacing according to Mr. Amezcuita.

For apartment 2B Mr. Amezcuita testified he has attempted to gain access to have the gas turned back on but does not believe the kitchen fixtures, bathtub or shower needs replacing but he did replace the toilet which was leaking and made the front door self-closing. Mr. Amezcuita testified that apartment 4C is not

in bad condition, there were mice because the tenant had garbage under the sink, he fixed the holes, the stove has one burner out, he repaired the sink and installed a carbon monoxide/smoke detector, there are no exposed wires, the floors are good, the radiators do not need replacing nor the kitchen cabinets, there is no mold, the bathtub does not need to be replaced, and the apartment was painted. The hot water valve came off causing flooding to the apartment which he will fix when heating season is over, and he does not know if the intercom is working. He has been in apartment 4C many times, in 5C once, and 3B has not granted access. He has not inspected or done work in 2C which is vacant and has a deadbolt lock. However, in February 2023 the water line burst which had to be repaired. The leak did not affect the common areas, he will sheetrock and plaster and paint, the kitchen and bathroom have been gutted out, he does not know if the electrical wiring was repaired but acknowledges the windows need to be replaced because DHPD broke them and boarded them up in 2A, 2C, and 3C allegedly to stop the homeless from coming into the building. Mr. Amezcuita testified that the DHPD did not give him a chance to do the work and the worker was yelling at him that "he was illegal that what he was doing was illegal." DHPD also broke the basement lock which he replaced with a combination lock and did not return to replace the seven windows it broke out several of which were custom made and he is looking for a contractor to replace those. Mr. Amezcuita acknowledged that apartment 5B does have an active leak from the roof that does not need replacing but tar put on it which cannot be done until it is nice outside.

CROSS-EXAMINATION OF MR. AMEZCUITA:

Mr. Amezcuita testified that this was the first time he has been employed as a live in superintendent. He did a walkthrough of the building before he took the job to see what was good and what was bad. Mr. Amezcuita purchases supplies for repairs at Home Depot and after he chooses the supplies, he goes to the pro desk who calls Ms. Ignico for approval. He became aware of the violations for not sweeping the front of the building when they were put on the front door of the building on February 20, 2023, and March 13, 2023. The Department of Sanitation also issued violations (P29) on February 4th, 13th, and 20th, 2023 to clean and disinfect the basement. Mr. Amezcuita testified that he has not cleaned the basement because he had to remove the rubbish, he swept but did not clean everything. Although the roof is leaking into apartment 5B Mr. Amezcuita testified that it does not need replacing but tar, he will bring a roofer when the tenant in 5B gives access, and as far as he knows the ceiling in apartment 4B has been fixed and he has changed the smoke detector/carbon monoxide detector. He does not agree with DHPD's recommendation to replace the chimney because there is nothing wrong with the chimney or the bulkhead despite DHPD placing a violation for both. Mr. Amezcuita testified he repaired the fire-retardant material at the ceiling, by scraping it off and he and started plastering but stopped because it is on the A line, has a leak and he needs to find out where the leak is coming from. Mr. Amezcuita agrees that the gutter and the drain needs to be replaced, and pointing needs to be done, however, there is no scheduled date for when the work would be completed.

Although he testified that the sidewalk did not need to be done, Mr. Amezcuita admitted that the picture of the sidewalk (14Z) showed there were still holes in the sidewalk and work needed to be done which he would cement the hole and fix the crack within the week. The door to the basement has not been replaced because he is trying to replace the lobby door at the same time. Mr. Amezcuita is aware there are different types of pipes in the building, some have copper, 2C had brass and that is why it burst. Mr. Amezcuita acknowledged when he took the job he was told about the violations and given a copy of the DHPD violation report so he could go about making the repairs, only 3B told him about the carbon monoxide/smoke detector but has not given him access to replace it.

The front stoop is not being supported by plywood, (exhibit 11E) but the garbage can platforms are, and he does not know why, because they were already there when he became the superintendent. Mr. Amezquita testified that he has no knowledge of whether the other windows other than the 10 he says needs to be replaced have been replaced, but the windows in 2A are aluminum and 3B will not give access. The 3rd story window has been fixed but he does not know if the public hallway window has been fixed, the window sash, paint and plaster in apartment 5B will be done when the tenant gives access. The occupied apartment doors are self-closing as well as the front doors which Mr. Amezquita testified, DHPD approved but on April 30, 2023, the FDNY broke one of the doors. The doors to the vacant apartments as well as the vestibule and cellar doors need to be replaced and he is looking for a door company to do the work. In apartment 5C the defective lock has not been corrected and he is not sure if the intercom has been replaced but does not believe there is a violation because the tenants can buzz in their guest. In Apartment 2A the kitchen floor has not been repaired, Mr. Amezquita testified because the apartment is vacant. In apartment 4C, the radiator does not have peeling paint, the apartment looked newly painted, and the kitchen countertop was good, just the stove must be fixed which has one burner. Mr. Amezquita testified that the tenant in 4C, Jodie, did not tell management her toilet was stopped up and he was unaware of the violations in her apartment which he would have repaired if she told him. The radiators valves in apartment 4C need to be replaced which he will do when heating season is over. The mailboxes have been secured, except one which he has to figure out when he will replace it because it does not have a door. Mr. Amezquita acknowledged that he has not tried to reach out to Ms. Ignico to resolve the issues with access to apartment 5B or have someone else do the repairs.

DIRECT TESTIMONY OF ALVIN PATTERSON:

Mr. Patterson is the owner of Advance Pest Control, he received his license in 2005 in 7A structural pest management, 7F food and wildlife nuisance operator, and 7C for termites. He also went to school for Integrated Pest Management which uses less pesticides and more direct application of non-pesticides. Mr. Patterson testified that he began providing exterminating services for the subject premises in August 2021 for mice, rats, and roaches; bedbug extermination is only provided when needed. Respondent's (C2) was the service agreement between Advanced Pest Control and respondent which is still in effect. Mr. Patterson testified that his company provides monthly services to the apartments as well as the common areas and basement and will perform additional services, if necessary. Before there was a superintendent in the building, Mr. Patterson testified, he would gain access to the building through a lockbox but now he calls the superintendent, who he met for the first time at the trial, to gain entry to the building. After service is completed, he provides an invoice to respondent which consists of a two-page sign in sheet, he checks off which apartments were serviced, who refused service, and what pesticides were used, the tenant will also sign that their apartment was serviced. He also inspects the common areas where he put three rat baits in the basement, one in the garbage area, and one in the front to the entrance to the basement. Mr. Patterson testified that he discussed with management what can be done to not make the matters worse, including putting garbage on the sidewalk, and as a result there are new garbage bins in front of the building, and he does not see any infestation of any kind.

Respondent introduced into evidence the monthly service reports by Advanced Pest Control, including the Pest Management Plan (RC-1) which Mr. Patterson testified he did not recall seeing or communicating with management on its completion. Mr. Patterson testified that there is a notice in the building to notify the tenants who to contact if there is an issue with pests, that he is providing services the second Saturday of the month and if the tenant is not available, they can call management to schedule service. Mr. Patterson testified that if there is an active rat infestation it would be evidenced by the traps

being eaten or rat borrows and would be included in the report so if it is not in the report, he did not see any. Respondent's (C2) was the April 27, 2022, service report which indicated that apartment 4C refused services but apartment 4A, 5A & 5B were serviced. Mr. Patterson testified that he uses bait stations for roaches and mice as well as spray and gel for roaches. The June 11, 2022, invoice, dated July 9, 2022, indicates he sprayed the hallways, and on August 15, 2022, service for the tenants was poor and he was unable to service the basement because he could not obtain access. Mr. Patterson added he has not had an issue gaining access now because there is a superintendent who he contacts prior to arriving. The September 10, 2022, invoice indicated that the basement was serviced as well as the garbage area for rats. Respondent's (C3) was the October 4, 2022, report which indicated the vacant apartments were serviced, but Mr. Patterson was not sure because it was not his handwriting and the tenants in the occupied apartments refused service. Mr. Patterson testified compared to August 2021 the conditions in the building regarding pest management and garbage removal has improved significantly as well as access to apartments to exterminate.

CROSS-EXAMINATION OF MR. PATTERSON:

Mr. Patterson stated he received his license from the State of New York, Department of Environmental Conservation. He has no idea why he was testifying but has provided monthly extermination services every other Saturday. Mr. Patterson testified that although he did not have his records with him, for the most part from August 2021 through August 2022 he provided monthly exterminating services. He exterminates the public areas including, the basement, hallways, and the garbage areas where bins have been placed. The procedure is that there is a sign-up sheet which he will have when he goes to the building and knocks on every door and records the response. Mr. Patterson testified if you see holes in the garbage area it would be rats as mice are in the apartments and rats are outside but the sidewalk is concrete so there cannot be burrows. Mr. Patterson testified that the hallways have been kept pretty good, however garbage was accumulating he spoke with Robin and there are new garbage bins, and the garbage is being placed outside. Mr. Patterson testified that vacant apartments were serviced on October 4, 2022, but cannot recall any other times he serviced the vacant apartments. Mr. Patterson testified he did not recall if he knew there were Department of Health violations for rats in front of the building, but he did place baits outside of the building as well as in the basement, garbage area, and the entrance to the basement. Part of his duties include looking for and sealing burrows or holes behind the stove, refrigerator, and pipes with steel wool or foam, but any structural work is not his responsibility. Mr. Patterson further testified that DHPD issued violations for roaches but if Robin told him he would make an extra trip, and the last time he exterminated was in April 2023.

POST TRIAL MEMORANDUM'S:

In its post-trial memorandum petitioner argues that the conditions in the subject building are detrimental to life, health, and safety because at the time the proceeding was commenced there were 179 open violations, of which 46 are class "C" immediately hazardous violations and 81 were class "B" hazardous violations. Currently there are now over 300 outstanding violations in the building for rats, roach infestation, self-closing doors, plaster and paint, roof leaks, failure to provide a janitor, defective and sloping wood floors, inadequate supply of electricity, trash, broken fixtures in the public hall, scrape and paint fire escapes, pointing, leaky faucets, defective spring balance and failure to provide adequate heat and hot water. During the trial, respondents failed to provide proof of adequate heat and hot water and received violations on August 31, 2022, September 26, 2022, September 27, 2022, October 31, 2022, February 4, and February 16, 2023, April 30, 2023. Petitioner argues that DHPD provided heat and hot

water through its Emergency Repair Program, therefore, the court can consider respondents failure to provide adequate heat and hot water a deprivation of services. Respondent also received violations for trash and rodents, despite the testimony of Mr. Patterson that he provided monthly extermination services. DHPD also performed emergency repairs including to the boiler and provided fuel to facilitate the tenants obtaining heat and hot water, made the doors self-closing, secured the fire escape and roof. Despite HPD's efforts to correct the immediately hazardous violations, the condition of the building continued to deteriorate and at the end of the trial the building received 250 more violations for a total of 429.

Petitioner further argues that respondent has not proven any defenses to the proceeding, although they have remedied some of the conditions, including hiring a superintendent and respondent has conceded repairs are needed. There are conditions in the building that affect the life, health, and safety of other tenants, including the radiator valves, which could cause an explosion, and drug addicts in the building. Petitioner further argues that the court may appoint a 7-A administrator despite respondents making significant repairs. Respondents also did not prove the defense of failure to give access, as Mr. Ignico and Mr. Amezcua both testified on cross-examination that Mr. Reed gave Mr. Amezcua access to do repairs, but he now refuses to enter Mr. Reed's apartment because he is required to relinquish his phone, and he will not enter Mr. Gargan's apartment because his roommate is hostile. Petitioner further argues respondent has also failed to complete the repairs in the public areas where access is not necessary.

Respondent argues that the court has the discretion to appoint a 7-A administrator and can allow the building owner to enter into an agreement to complete repairs. An administrator is not warranted if any remaining conditions are not so significant or numerous as to deprive the tenants of essential services or endanger their life, health, or safety. Respondents further argue that the RPAPL requires either one-third or more of the tenants or the commissioner of DHPD maintain a proceeding for a 7-A administrator, however the fact that only a small number of the tenants in possession testify at trial in support of the petition plainly "makes the cases weaker," and the court may give a negative inference if the petitioner fails to call at least one-third of the tenants to testify at trial. Respondent argues that even if after trial where the allegations in the petition have been affirmatively established and the owner has failed to establish any of the defenses in RPAPL 775, and the facts warrant appointment of a 7A administrator, the court or other interested party may apply to the court for permission to remove or remedy the conditions specified in the petition.

DECISION:

Article 7A of the RPAPL authorizes the commissioner of the Department of Housing Preservation and Development ("DHPD) to commence a 7A proceeding. The proceeding may be maintained when there is a lack of heat or running water, light, electricity, adequate sewage disposal facilities or any other condition dangerous to life, health or safety, which has existed for five days, or an infestation of rodents, or any combination of such conditions; or course of conduct by the owner or his agents of harassment, illegal eviction, continued deprivation of services or other acts dangerous to life, health and safety. RPAPL section 770(1). Petitioner has the burden of proving that there are conditions which are dangerous to life, health, and safety or that the premises lack essential services. Respondent argues that the court has the discretion to appoint a 7A administrator which is not warranted if no "immediately hazardous conditions exist," or emergency conditions where any remaining uncorrected conditions are not so significant or numerous as to deprive the tenants of essential services or endanger their life, health, or safety. To determine whether dangerous conditions exist, courts generally consider housing violations

placed by the municipal department charged with the enforcement of housing maintenance laws. *Maresca v. 167 Bleeker, Inc.* 121 Misc.2d 846 (N.Y.C. Civ. Ct. 1983).

Here, petitioner has satisfied its burden by testimonial and documentary evidence that there is deprivation of services that are dangerous to life, health and safety to the residents at 410 West 46th street. At the time the proceeding commenced there were 179 violations placed by DHPD, the December 8, 2022, inspection report listed 339 violations, 87 Class “C” “immediately hazardous” violations, 185 Class “B” “hazardous” violations, and 67 Class “A” “Non-Hazardous” violations. The September 29, 2022, DHPD report had a total of 350 violations, 90 Class “C” violations, 182 Class “B”, and 78 Class “A” violations. At the conclusion of the trial there were over 300 violations of which several were issued during the pendency of the trial for lack of heat and hot water. The Department of Mental Health and Hygiene issued violations for rats and the Department of Sanitation issued violations for improper disposal of trash. Respondent has failed to present evidence that these violations have been corrected and acknowledge that many remain outstanding.

There are numerous outstanding Class C and Class B violations that are serious, a condition classified as “hazardous” is certainly “dangerous.” *Maresca v. 167 Beecker, Inc.*, 121 Misc.2d 846 (Civ. Ct. N.Y. Co. 1983). Immediately hazardous conditions include repeated interruptions of the heat and hot water that occurred even during the trial. Ms. Ignico and Mr. Amezquita testified that there is a leak in the roof going into apartment 5B, and although they allege that Mr. Reeds is not granting them access, they acknowledge that he has given access to the exterminator. Mr. Amezquita testified that he will not go into Mr. Reeds apartment because he does not want to relinquish his phone and there has not been a discussion of another worker doing the repairs nor has management reached out to Mr. Reeds to arrange access. Ms. Ignico testified prior to 2019 there were no violations recorded for heat and hot water, but the violation reports submitted into evidence, show that there were violations placed prior to 2019. Ms. Ignico and Mr. Amezquita also disagreed with the recommendations in the 7A report, however, respondent did not offer or introduce into evidence any proof that the violations did not exist or were corrected. The court also inspected the subject premises as part of the trial on May 31, 2023, including the vacant apartments, where there were no ceilings and the wood beams were exposed, the bathroom and kitchen fixtures were ripped out, as well as the floors were ripped up and crumbling and the windows were boarded up.

After petitioner establishes conditions that are dangerous to the life, health, and safety of the tenants, the burden shifts to respondent to prove a defense. It shall be sufficient defenses to the proceeding, if the owner or any mortgagee or lienor of record establish that: RPAPL section 775, a.) the condition or conditions alleged in the petition did not in fact exist or that such condition or conditions have been removed or remedied; b) such condition or conditions has been caused by a petitioning tenant or tenants or members of the family or families of such petitioner or petitioners or of their guests or by other residents of the dwelling or their families or guests; or c) any tenant or resident of the dwelling has refused entry to the owner or resident of the dwelling has refused entry to the owner or his agent to a portion of the premises for the purpose of correcting such condition or conditions.

Respondents have failed to establish a defense to this proceeding, that the conditions did not exist or have been removed. Although Mr. Patterson credibly testified to exterminating every month, the other violations are still outstanding, Bellet Construction never submitted a proposal to do work to correct many of the violations, and Mr. Amezquita throughout his testimony continuously testified that he was going to get to correcting certain violations and was looking into hiring contractors to work on other violations. Respondent has also failed to establish that the outstanding violations are not significant or

numerous that they deprive tenants of essential services or endanger their life, health, or safety because even during the trial there were violations issued for heat and hot water and tickets issued for rats and improper disposal of garbage. Respondent also failed to establish that the tenants, who only occupy five of the 15 apartments caused the conditions or failed to grant access for repairs. Respondent does not need access to repair the roof, hallways or vacant apartments and these violations also have not been corrected.

Respondent also argues that the failure of one-third of the tenants to testify in support of the petition plainly “makes the case weaker” and the court may give a negative inference if the petitioner fails to call at least one-third of the tenants to testify at trial. *In Re Brown*, 2016 NYLJ Lexis 4264 (Civ. Ct. Kings Co.). RPAPL section 770(1) requires that at least one third of the affected tenants “maintain” the proceeding, must be seen as a safeguard provided by the legislature to ensure that a landlord will not be divested of his or her property interest by the imposition of an administrator at the request of only a minority of the tenants in occupancy. *Wall St. Transcript Corp v. Finch Apt. Corp.*, 148 Misc.2d 181 (Civ. Ct. NY County 1990). However, in this proceeding the petition was not filed by the tenants of the building, but by the Commissioner of the Department of Housing Preservation and Development and there is no requirement that one-third of the tenants testify.

Respondent further argued that if the court appoints a 7A administrator, respondent reserves the right to apply for time to complete all remaining repairs pursuant to RPAPL section 777(a) which provides:

If, after a trial, the court shall determine that the fact alleged in the petition have been affirmatively established by the petitioner’s that none of the three defenses... has been affirmatively established by the owner....and that the facts alleged in the petition warrant the granting of the relief sought, and if the owner...shall apply to the court to be permitted to remove or remedy the conditions specified in such petition and shall (1) demonstrate the ability promptly to undertake the work required; and (2) post security for the performance thereof within the time, and in the amount and manner, deemed necessary by the court, then the court, in lieu of rendering judgment may issue an order permitting the owner to perform the work within a time fixed by the court.

Based upon the court’s inspection, the HPD violation reports, and the testimony of the witnesses, the owner has had months to correct the violations since receiving the reports or made some effort to correct these violations during this proceeding. The court is not convinced that respondent will suddenly make correcting the violations a priority, especially while during trial Ms. Ignico repeatedly stated that there was no money to do repairs as there were only two tenants paying rent.

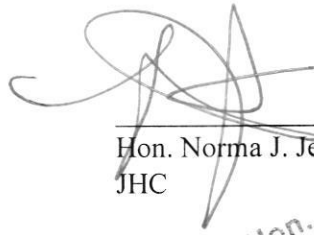
After trial the Court shall render a final judgment either (a) dismissing the petition for failure to affirmatively establish the allegations or because the respondent has established one of the defenses in RPAPL section 775, or (b) appoint an administrator for the subject building pursuant to RPAPL section 778 under which the rent due shall be paid to the administrator and shall be used to correct the violations alleged in the petition. The court, in lieu of appointing an administrator, may in its discretion, permit the owner to remedy the conditions specified in the petition, upon a demonstration by the owner of the ability to promptly undertake the work required and posting sufficient security. RPAPL section 777. Here, the petitioner has satisfied it’s burden by testimonial and documentary evidence that there is deprivation of services that are dangerous to life, health, and safety of the residents of 410 West 4th Street. Respondent

has failed to establish a defense to the proceeding and has not demonstrated that it can promptly undertake the work required or post sufficient security.

Accordingly, the court finds that conditions exist at the subject multiple dwelling which compel the appointment of an administrator pursuant to RPAPL article 7-A. Counsel for the petitioner is to prepare the Order consistent with this opinion and with the applicable provisions of article 7-A.

This constitutes the decision and order of this court. The court will mail a copy of this order to both sides and upload to NYSECF. The parties may retrieve their exhibits in Part S, room 1164b which will be retained for thirty (30) days.

Dated: November 8, 2023
New York, New York



Hon. Norma J. Jennings
JHC
Hon. Norma Jennings
Judge, Housing Court

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