

**Department of Hous. Preserv. & Dev. of the
City of N.Y. (DHPD) v 1755 Clay**

2023 NY Slip Op 34623(U)

October 10, 2023

Civil Court of the City of New York, Bronx County

Docket Number: Index No. 312522-21

Judge: David J. Bryan

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

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
OF THE CITY OF NEW YORK (DHPD)
PETITIONER,

Index No. 312522-21

- against -

1755 CLAY
JONATHAN WEINER
BEN RIEDER

RESPONDENTS.

SUBJECT PREMISES: 1755 CLAY AVENUE
BRONX, NY 10457

Present: Hon. David J. Bryan
Judge, Housing Court

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Petitioner is represented by DHPD Housing Litigation Div. by Jemma An

Respondent is represented by Moss & Tapia Law LLC.

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Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion.

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Papers

Order to Show Cause, Petition, Exhibits	1
Answer	2
Respondent's Post-Trial Memo of Law, Exhibits	3
Petitioner's Post-Trial Memo of Law	4

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After a bench trial, the Court decides as follows:

DHPD brings this action to have the Court find that the respondents falsely certified twenty-nine of their corrections of violations of the Housing Maintenance Code. The respondents answered the petition with various defenses, including the form of the violation, the violations being closed, and improper and incomplete violation reports. For the reason stated herein, the petition is GRANTED, and the respondent shall pay \$7,500.00 to the New York City Department of Finance.

The Department of Housing Preservation and Development (DHPD) presented its case through the admission of five documents. Exhibit 1 was a certified copy of the Property Registration Form. Exhibit 2 was a certified copy of the respondent's application, Ben Rieder, to use DHPD's online certification system. Exhibit 3 was a listing of the violations at issue in this case. Exhibit 4 was a certified copy of the DHPD inspection report indicating the status of violations certified by the respondent. Exhibit 5 was the notice sent to the respondents by DHPD

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giving notice that the certification of repairs was rejected. DHPD rested its case without any testimony.

David Tennenbaum testified on behalf of the respondents. Mr. Tennenbaum testified that his duties included oversight of the legal department, compliance, charges and entries of rent, general management, and “anything and everything.” The testimony was that Mr. Tennenbaum did not often visit the buildings he manages, but this case caused him to see the subject premises. The testimony of Mr. Tennenbaum focused on impeaching the petitioner’s evidence by questioning whether the re-inspections could have been performed as indicated. For example, Mr. Tennenbaum noted that Exhibit 2 shows that the inspector entered the building, conducted an inspection, and exited in under four minutes. Several instances of inspections being performed very quickly were cited as well. Mr. Tennenbaum testified that he failed to replicate the timing of the inspections. This led to the conclusion that the conclusions drawn from Exhibit 4’s results were unreliable.

On cross-examination, DHPD elicited testimony that revealed that Mr. Tennenbaum did not witness the violations being corrected, that he did not certify the violations being corrected, and that he could not testify as to the dates when the violations were corrected. Mr. Tennenbaum could not testify to the dates of his experiments in replicating the inspector’s timing.

APPLICABLE LAW

“A person who violates any law relating to housing standards shall be subject to a civil penalty . . . A person willfully making a false certification of correction of a violation shall be subject to a civil penalty . . .”. HMC (Admin. Code) § 27-2115(a).

In any proceeding that relates to a false statement in a certification of correction of a violation ... if an inspection made within six months after the filing of the certification finds a condition constituting a violation that is the same as the condition described in the notice of violation with respect to which such certification was filed, there shall be a rebuttable presumption that the condition described in such notice of violation continued and is the same condition found in the inspection. DHPD v Cashton, A.S. Inc, 44 Misc. 3d 1221(A), 1221A citing §28-211.1.1 of the New York City Administrative Code.

DHPD may submit its computerized violation files relevant to enforcing state and local laws. These records are to be treated as *prima facie* evidence of the matter asserted, and the Court is to take judicial notice of those records. NY CLS Mult D § 328

DISCUSSION

DHPD commenced this matter to enforce its mandate to maintain housing standards in the City of New York. The evidence presented at trial was entirely documentary, but each element of the *prima facie* case was proven. The deference that the Multiple Dwelling Law¹ gives to the records of DHPD leads to the conclusion that violations existed, the respondent was notified as to those violations, and a subsequent inspection showed the violations persisted. However, the respondent certified them corrected, and notice of the subsequent inspection was provided to the respondent.

The respondent provided testimony that cast aspersions on the ability of the inspectors to determine the persistence of the violations within the parameters in their reports. However, the

¹ NY CLS Mult D § 328

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respondents should have presented the testimony of someone who corrected the violations or had direct knowledge of the corrections. Mr. Tennenbaum could not testify to Mr. Rieder's choice to certify the correction of these violations. No one testified to seeing the inspectors on the reinspection date and their failure to perform the inspections. While there may have been some inconsistency in the timekeeping during the inspection, the essential accusation of false certification was never meaningfully challenged. Without a statement from a witness with direct knowledge that the repairs were performed, the Court accepts the petitioner's contentions.

CONCLUSION

As discussed above, after trial, this Court finds that DHPD has met its burden to show that the respondents falsely certified completed repairs as alleged in the petition. The respondents failed to support the contention that they truthfully certified the repairs performed. The petitioner submitted twenty-nine violations, each requiring payment of \$250.00. As such, civil penalties for \$7,250.00, payable to the New York City Department of Finance, are appropriate. This is the decision of the Court and will be uploaded to NYCEF.

Date: October 10, 2023



David J. Bryan,
Housing Judge, Civil Court