

**NYC Dept. of Hous. Preserv. & Dev. v Napa Partners
LLC**

2024 NY Slip Op 30892(U)

March 15, 2024

Civil Court of the City of New York, Queens County

Docket Number: Index No. 307607/21

Judge: Kimon C. Thermos

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**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS HOUSING PART C**

-----X
**NYC DEPARTMENT OF HOUSING PRESERVATION &
DEVELOPMENT,**

Petitioner,

-against-

INDEX # 307607/21

NAPA PARTNERS LLC AND GUSTAVO SANTANA,

DECISION / ORDER

Respondents

-----X
Present: Kimon C. Thermos, JHC

Recitation, as required by CPLR 2219(a), of the papers considered in the review of the instant moving papers.

Papers

Numbered

- Order to Show Cause, Affidavits and exhibits (NYSCEF #15-61).....1
- Notice of Cross Motion, Affidavits and exhibits (NYSCEF #88-102).....2
- Affidavit or Affirmation in Reply, and exhibits (NYSCEF #110-120).....3

Appearing for the Petitioner: Michael Gdanski, Esq., NYC Department of Housing Preservation and Development

Appearing for the Respondents: Michael Nesheiwat, Esq., Adam Leitman Bailey, P.C.

Petitioner commenced this HP proceeding on November 10, 2021, seeking: 1) an order to correct multiple violations of the Housing Maintenance Code ("HMC"); and 2) civil penalties for failure to timely correct said violations. Case was initially heard on January 5, 2022. On February 6, 2022, the parties both appeared by counsel and entered into a stipulation¹ adjourning the proceeding to March 25, 2022 and providing that Respondent had until March 4, 2022 to file an answer. On March 25, 2022, the parties entered into a Consent Order to Correct² ("OTC") which was so-ordered by Judge Clinton Guthrie. On November 17, 2022, the parties entered into

¹ NYSCEF #7
² NYCEF #10

a new OTC³ which was also so-ordered by Judge Guthrie. The November 17, 2022 OTC expressly states that "This Order supersedes the Consent Order So-Ordered by Honorable Clinton J. Guthrie on March 25, 2022."

There is also a tenant-initiated proceeding brought by a number of tenants at the subject premises against, inter alia, Napa Partners LLC ("Napa"), Robin Ignico, Daniel Ohebshalom⁴ (the "Tenant HP Proceeding").

Petitioner filed the instant Order to Show Cause ("OSC")⁵ seeking: 1) to join non-parties Daniel Ohebshalom and Robin Ignico (the "Non-Parties") to the proceeding as party Respondents; and 2) a finding of civil contempt against Respondent Napa and the Non-Parties; 3) a finding of criminal contempt against Respondent Napa and the Non-Parties; 4) a judgment for civil penalties against Respondent Napa; 5) an order directing Respondent Napa and the Non-Parties to correct all outstanding HMC violations issued subsequent to the November 17, 2022 OTC. In the alternative, Petitioner requests that the relief sought above be held in abeyance with regard to the Non-Parties while the court grants discovery regarding whether the Non-Parties had knowledge of the OTC.

Respondents' counsel Harwood Reiff LLC filed an OSC⁶ seeking permission to withdraw as counsel. Petitioner then filed an OSC⁷ seeking to accelerate the return date of the first two OSCs. That 3rd OSC was withdrawn by Petitioner on November 22, 2023. Harwood Reiff LLC's OSC was withdrawn and a Consent to Change Attorney was entered into on December 7, 2023 with Adam Leitman Bailey, PC. Replacing Harwood Reiff LLC as counsel for Respondent Napa Partners LLC. Respondents then filed a cross-motion seeking an extension of time to comply with the November 17, 2022 OTC pursuant to CPLR 2004. The court will address the cross-motion first.

Extension of Time to Comply Pursuant to CPLR 2004

Respondents' cross-motion seeks an extension of the time to comply with the March 24, 2022 and November 17, 2022 Consent Orders. As an initial matter, the March 24, 2022 Consent

³ NYSCEF #13

⁴ LT-307795-23/qu

⁵ Motion Sequence 1 – NYSCEF 59

⁶ Motion Sequence 2 – NYSCEF 67

⁷ Motion Sequence 3- NYSCEF 85

Order was expressly superceded by the November 17, 2022 Consent Order. As a result, the March 24, 2022 is no longer in effect and thus there is no reason to consider extension of the time to comply with that Consent Order.

CPLR §2004 provides: "Except where otherwise expressly prescribed by law, the court may extend the time fixed by any statute, rule for order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed." Trial courts have discretion whether to grant an extension of time. *Tewari v. Tsoutsouras*, 75 N.Y.2d 1 (1989). "A Court may consider such factors as the length of the delay, the reason or excuse for the delay, and any prejudice to the opponent of the motion." *Blay v. Frost*, 126 A.D.3d 659, 660 (App. Div., 2nd Dept. 2015).

Petitioner argues that CPLR §2004 only applies in situations such as extensions of procedural deadlines within court proceedings and cannot be used to grant substantive rights. *Powers v. Foley*, 25 A.D.2d 525 (App. Div., 2nd Dept. 1966). Respondent only cites two cases in support of its motion seeking an extension. Both are cases involving extensions of procedural deadlines. In *Schlossberg v. Center in the Park Assocs.*, the Appellate Division, 2nd Department affirmed the trial court's decision to extend a discovery timeline. 256 A.D.2d 323 (App. Div., 2nd Dept. 1998). In *Bycomp, Inc. V. New York Racing Asso.*, the Appellate Division, 3rd Department affirmed a trial court decision to vacate a default judgment that was entered after one of the parties missed a discovery deadline in a consent order. 152 A.D.2d 848 (App. Div., 3rd Dept. 1989). These cases are completely inapposite to the situation presented in this case. Respondents are not asking the court to extend a procedural deadline. They are asking the court to, in effect, tear up the November 17, 2022 Consent Order that was heavily negotiated by counsel for the two parties and give Respondents a do-over. This is clearly not the purpose of CPLR §2004.

Even if CPLR §2004 applied in this situation, Respondents do not meet the criteria required to warrant an extension of time to comply. First, Respondents have not shown good cause why they were unable to comply with the November 17, 2022 Consent Order or why they waited a year to request an extension of the time to comply. A vague allegation that tenants failed to provide access on some unspecified occasions is patently insufficient to establish good cause.

Joinder of Non-Parties

Petitioners move pursuant to §110(d) of the Civil Court Act, seeking to join Daniel Ohebshalom a/k/a Daniel Shalom a/k/a Dan Shalom (will be referred to as “Daniel Ohebshalom” or “Mr. Shalom” for purposes of this decision) and Robin Ignico as necessary parties to this proceeding. NYC Civil Court Act §110(d) provides: “...any party, any city department or the court, on its own motion, may join any other person or city department as a party in order to effectuate proper housing maintenance standards and to promote the public interest.” The term owner is broadly defined in the HMC to include “the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation, directly or indirectly in control of the premises.” NYC Admin. Code §27-2004(a)(45).

Petitioner alleges that Daniel Ohebshalom is an owner as that term is defined in the HMC. Petitioner points out that Mr. Ohebshalom has identified himself as the “Manager” of Napa in tax certiorari proceedings against the New York City Commissioner of Finance for over fourteen years.⁸ The most recent MDR filed by Napa on October 12, 2023, lists “Dan Shalom” as the only individual who holds more than a 25% interest in Napa⁹. Petitioner also alleges that Robin Ignico also qualifies as an owner under the HMC. Ms. Ignico filed an affidavit in opposition to Petitioner’s motion that states that she is the “Tenant Relations Manager” for Napa¹⁰. Ms. Ignico states that she does not have any ownership interest in Napa, but explains in detail her role in managing the property. Adam Leitman Bailey, P.C. filed opposition to Petitioner’s OSC along with the cross-motion filed by Respondents. The Affirmation filed along with that opposition states that Adam Leitman Bailey, P.C. represents Napa along with Daniel Ohebshalom and Robin Ignico¹¹. While the Affirmation supports Respondents request for an extension of time pursuant to CPLR 2004 and opposes Petitioner’s motion for civil and criminal contempt, it does not present any arguments in opposition to that portion of Petitioner’s motion to join Daniel Ohebshalom and Robin Ignico as parties to this proceeding.

⁸ Exhibit 16 (NYSCEF #31)

⁹ The court takes judicial notice of the HPD website which list Dan Shalom as shareholder on the current MDR. The full MDR was filed to NYSCEF in the Tenant HP Proceeding (LT-307795-23/qu) as Exhibit 1 to OSC (NYSCEF #23)

¹⁰ Affidavit of R. Ignico, ¶1 (NYSCEF #90)

¹¹ Affirmation of M. Nesheiwat, ¶1 (NYSCEF #89)

Given that: 1) Daniel Ohebshalom and Robin Ignico have not opposed joinder in this or the companion HPD proceeding (with regard to Mr. Ohebshalom); 2) both Mr. Ohebshalom and Ms. Ignico fall clearly within the definition of “owner” under NYC Admin. Code 27-2004(a)(45); and 3) both Mr. Ohebshalom and Ms. Ignico are necessary to this proceeding to provide complete relief given that they appear to be the individuals responsible for managing and directing the subject building on behalf of Napa, Petitioner’s motion is granted to the extent of joining both Mr. Ohebshalom and Robin Ignico as parties to this proceeding.

Civil Contempt

Under Judiciary Law § 753, a court of record has the power to punish, by fine and imprisonment, or either, “a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced.” *See generally El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19, 28-29 (2015). A civil contempt is “one where the rights of an individual have been harmed by the contemnor’s failure to obey a court order.” *Dept. of Env’tl. Protection v. Dept. of Env’tl. Conservation*, 70 NY2d 233, 239 (1987). For civil contempt to lie, the moving party must establish: 1) that a lawful order of the court clearly expressing an unequivocal mandate was in effect; 2) that it appear with reasonable certainty that the order has been disobeyed; 3) that the party charged must have had knowledge of the court’s order; and 4) that the rights of a party to the litigation have been prejudiced. *Id.* The elements of civil contempt must be demonstrated by clear and convincing evidence. *See El-Dehdan*, 26 NY3d at 29.

First, it is undisputed that the November 17, 2022 OTC was a lawful order of the court which expressed an unequivocal mandate that Respondents correct the violations by set deadlines based on the severity of the violation. As previously noted, the March 4, 2022 OTC was expressly superseded by the November 17, 2022 OTC, so the court will only consider contempt regarding the November 17, 2022 OTC.

With regard to whether the order was disobeyed, Petitioner notes that the HPD Open Violation Summary Report (“VSR”) dated November 17, 2022¹² which was attached to the November 17, 2022 OTC (and made a part thereof) listed 379 open violations including 103 “C”

¹² NYSCEF #14

violations for the subject building. Petitioner then cites to the VSR dated October 10, 2023¹³ which shows that at the time of filing of the contempt motion 215 of the 379 violations listed on the November 17, 2022 VSR remain open, including 51 “C” violations. Petitioner further notes that HPD conducted reinspections on several occasions in April – June of 2023 and 128 of the violations listed in the November 17, 2022 were marked as “not complied.”¹⁴ HPD violations that have not been certified as corrected constitute prima facie evidence that the underlying conditions still exist. See *Department of Hous. Preserv. & Dev. of the City of N.Y v. Ohebshalom*, 2023 N.Y.Misc.LEXIS 22736 (Civ. Ct., Qns. Cty. 2023); *Fiondella v. 345 W. 70th Tenants Corp.*, 217 A.D.3d 495 (App. Div., 1st Dept. 2023); *Dept. of Hous. Preserv. & Dev. v. Knoll*, 120 Misc.2d 813 (App. Term, 2nd Dept 1983).

Respondents present two defenses in opposition to the contention that they disobeyed the November 17, 2022 OTC. First, Respondents argue that they were unable to comply with the OTC because the tenants in the building failed to provide access. In support of this alleged defense, Respondent Robin Ignico broadly states: “Although we are trying our best to expedite repairs in the Building and address the violations, lack of access to tenants’ apartments delay the process.”¹⁵ Ms. Ignico does not cite a single instance when access was scheduled, but not provided by a tenant. Nor does she cite a single instance where access was requested by Respondents and denied by a tenant. Instead, she cites to reports by a pest control company that visits the building monthly to exterminate.¹⁶ Those reports indicate that when the exterminator has come to the building, some of the tenants have refused access. However, Respondents fail to show that any violations were placed (or even any complaints made) for bed bugs, roaches, etc. for those apartments that refused access. Moreover, this evidence of a lack of access would only apply to violations that could be corrected by this exterminator. It would not apply to any of the hundreds of violations for heat, hot water, electrical service, etc. that have not been addressed throughout the building.

Respondents’ second defense to contempt is that Respondent made a good-faith effort to comply with the OTC by hiring a new superintendent and empowering that superintendent to address the violations.¹⁷ The superintendent was not hired until March 1, 2023. This was well

¹³ NYSCEF #19

¹⁴ Affirmation in Support, ¶76 (NYSCEF #16)

¹⁵ Affidavit of R. Ignico, ¶11 (NYSCEF #90)

¹⁶ Exhibit 5 to cross-motion (NYSCEF #95)

¹⁷ Affidavit of R. Ignico, ¶15-10 (NYSCEF #90)

after the “B” and “C” violations were to be corrected under the OTC. Moreover, Ms. Ignico states that from March 1, 2023 to November 27, 2023, the new superintendent cured over 100 violations. However, this barely represents 25% of the total violations for the building. While it is certainly better than Respondents having done nothing, “neither substantial compliance nor good-faith effort at compliance are defenses to civil contempt.” *Brown v. 315 E. 69st. Owners Corp.*, 11 Misc.3d 1069(A)(Civ. Ct., NY Cty. 2006); *see also McCain v. Dinkins*, 84 N.Y.2d 216 (1994).

Given that: 1) a substantial number of the violations contained in the November 17, 2022 VSR remain outstanding; 2) open HPD violations are prima facie evidence of non-compliance; 3) Respondents fails to support their lack of access defense; and 4) substantial compliance or a good faith effort are not defenses to contempt, Petitioner has established that Respondents disobeyed the November 17, 2022 OTC.

Regarding whether Respondents had knowledge of the OTC, it is undisputed that Respondent Napa had knowledge of the OTC. Napa’s original counsel in this proceeding signed the OTC on behalf of Napa. Petitioner also seeks civil contempt against Respondents Daniel Ohebshalom and Robin Ignico even though they were not parties to the case at the time the OTC was signed.

Non-parties to a litigation can be adjudged guilty of contempt even if they were not parties to the litigation at the time the order was issued provided they “act under or in connection with a party, as attorneys, agents or employees.” *People ex rel. Stearns v. Marr*, 181 N.Y. 463 (1905); *see also McCormick v. Axelrod*, 59 NY.2d 574 (1983). An officer or shareholder of a corporate entity who is not a party to a litigation can also be found in contempt for the corporate entities failure to comply with a court’s order provided that such individual was personally served and had knowledge of the terms of the order. *Citibank, N.A. v. Anthony Lincoln-Mercury, Inc.*, 86 A.D.2d 828 (App. Div., 1st Dept. 1982). Respondents Daniel Ohebshalom and Robin Ignico have appeared in this case by counsel but have not: 1) objected to being added as parties to the proceeding; 2) argued that they did not have knowledge of the November 17, 2022 OTC; nor 3) presented any arguments contesting Petitioner’s inclusion of them as individuals in this motion seeking contempt. Based on the above, the court finds that Respondents Napa, Daniel Ohebshalom, and Robin Ignico all had knowledge of the November 17, 2022 OTC.

Finally, regarding prejudice, it is the tenants of the subject premises, not HPD who may be prejudiced by Respondents' failure to correct the violations. Nevertheless, courts have consistently found that "the continued existence of HPD violation constitutes prejudice as a matter of law." *Department of Hous., Preserv. & Dev. of the City of N.Y. v. Jones*, 2022 N.Y. Misc. LEXIS 10591 (Civ. Ct., Kings Cty. 2022); *see also Various Tenants of 446-448 W. 167 St. v. NYC Dep't of Hous. Pres. & Dev.*, 153 Misc. 2d 221 (App. Term, 1st Dept. 1992).

Based on the above, Respondents Napa, Daniel Ohebshalom, and Robin Ignico are clearly in contempt of the November 17, 2022 OTC. Having determined that Respondents are in civil contempt of the November 17, 2022 OTC, an appropriate civil contempt penalty must be imposed. *See* Judiciary Law § 753. A civil contempt penalty must be "designed not to punish but, rather, to compensate the injured private party or to coerce compliance with the court's mandate or both." *Dept. of Env'tl. Protection*, 70 NY2d at 239. Pursuant to Judiciary Law § 753(a)(1), the court has the power to penalize disobedience to a lawful mandate of the court by fine, imprisonment or both.

Upon the facts and circumstances before the court, it is ORDERED AND ADJUDGED that both a fine and incarceration will be imposed against Respondents Daniel Ohebshalom and Robin Ignico. Only a fine will be imposed against Napa as a limited liability company cannot be incarcerated.

Judiciary Law § 773 sets out the fines to be imposed upon a contempt finding. If "actual loss or injury" is proven, the fine will be in the amount of said loss or injury. "Where it is not shown that an actual loss or injury has been caused, a fine may be imposed, not exceeding the amount of the complainant's costs and expenses, and two hundred fifty dollars in addition thereto, and must be collected and paid, in like manner." Judiciary Law § 773. Petitioner has not presented any evidence regarding any actual damages but seeks attorney fees. The Court will hold a hearing on March 26, 2023 at 9:30am to determining the amount of Petitioner's costs and expenses, including attorneys fees incurred as a result of Respondent's contempt.

Respondents Daniel Ohebshalom and Robin Ignico shall have fourteen (14) days from service of this Decision/Order to correct the 215 violations that remain open from the VSR dated November 17, 2022. If the violations are corrected before the fourteen (14) days expire, Respondent shall be purged of civil contempt. If Respondent fails to purge civil contempt within

the fourteen (14) day period after service of this Decision/Order, the court shall issue an arrest warrant directing the Sheriff of the City of New York to detain Daniel Ohebshalom and Robin Ignico and deliver them to the NYC Department of Corrections for commitment to civil jail. Respondents must make an application to the court to purge civil contempt. The failure to do so in a timely manner shall not be a defense to the arrest warrant being issued and/or executed following the fourteen (14) day stay to permit a purge of contempt.

If Respondents are incarcerated as a result of this Decision/Order and the execution of an arrest warrant, they shall continue to have the opportunity to purge civil contempt and be released from custody upon correction of the violations. *See Matter of Rubackin v. Rubackin*, 62 A.D.3d 11,16 (App. Div., 2nd Dept. 2009)(“[T]he civil contemnor is said to hold the keys to the prison.”); *New York City Tr. Auth. V. Transport Workers Union of Am., AFL-CIO*, 35 A.D.3d 73, 76 (App. Div., 2nd Dept. 2006)(“Imprisonment...during which the contemnor may ‘purge’ the contempt and obtain early release by committing an affirmative act, is a coercive, civil penalty.”). As noted above, the Court will be holding a hearing on April 11, 2024 at 9:30am to determine the amount of attorneys fees incurred by Petitioner as a result of Respondent’s contempt. If no application is made to purge civil contempt by the date of that hearing, the court shall also hold a hearing on that date to determine whether a purge of contempt has occurred. *See Midarsky v. D’Urso*, 133 A.D.2d 616, 617 (App. Div., 2nd Dept. 1987)(“The court is vested with broad discretion in determining appropriate conditions upon which a contemnor may purge the contempt.”).

Criminal Contempt

Under Judiciary Law §750(a)(3), a “court of record has power to punish for a criminal contempt, a person guilty of ...wilful disobedience to its lawful mandate.” Unlike civil contempt. “the aim in a criminal contempt proceeding is solely to punish the contemnor for disobeying a court order, the penalty imposed being punitive rather than compensatory.” *Dept. of Env'tl. Protection v. Dept. of Env'tl. Conservation*, 70 N.Y.2d 233, 239 (1987). To sustain a finding of criminal contempt, “there must be proof beyond a reasonable doubt that contemnor willfully failed to obey an order of the court.” *Matter of Rubackin v. Rubackin*, 62 A.D.3d 11, 16 (App. Div., 2nd Dept 2009). The first three elements required to establish criminal contempt are the same as for civil contempt (1. lawful order, 2. order disobeyed, and 3. knowledge of the

order). No showing of prejudice is required for criminal contempt, but willful disobedience of the court's order is required. *Savel v. Savel*, 153 A.D.3d 872, 874 (App. Div., 2nd Dept. 2017). "Knowingly failing to comply with a court order gives rise to an inference of willfulness which may be rebutted with evidence of good cause for noncompliance." *Matter of Figueroa-Rolon v Torres*, 121 A.D.3d 684 (App. Div., 2nd Dept. 2014). In order to seek criminal contempt, the OSC must be served pursuant to CPLR 308. See *Gouiran Holdings, Inc. v. McCormick*, 163 A.D.2d 44 (App. Div., 1st Dept. 1990). As per the affidavits of service filed by Petitioner¹⁸, Respondents were served pursuant to CPLR 308.

Petitioner has already established the first three elements of criminal contempt as noted above in the section of this decision discussing civil contempt. The only remaining question is whether Respondents "willfully disobeyed" the OTC. Respondents acknowledge that they failed to comply with the OTC. Respondent Robin Ignico acknowledges this in her affidavit¹⁹ as does Respondents' request for an extension of time to comply with the OTC. As stated above in the civil contempt section of this decision, the limited defenses presented by Respondents don't present any good cause to either extend the time to comply or to rebut the presumption that Respondents' knowing failure to comply constitutes willfulness. As a result, the court finds that Respondents are also in criminal contempt of the November 17, 2022 OTC.

Pursuant to Judiciary Law §751, the "...punishment for a contempt, specified in section seven hundred fifty, may be by fine, not exceeding one thousand dollars, or by imprisonment, not exceeding thirty days,...or both, in the discretion of the court." Given that the court has already opted to impose incarceration for the civil contempt, punishment for the criminal contempt will be limited to the statutory fine of \$1,000.00.

Civil Penalties

Petitioner also seeks civil penalties against Napa for all of the violations that were listed on the November 17, 2022 VSR and were not timely corrected pursuant to the OTC. Respondents argue that Petitioner elected its remedy by settling the civil penalties claim in the November 17, 2022 OTC. The OTC provides that the parties settled the civil penalties portion of the case for \$20,000.00 with payment due by November 17, 2023. The OTC further provided

¹⁸ NYSCEF #64

¹⁹ See Affidavit of R. Ignico, ¶22 (NYSCEF #89)

that if Respondents failed to pay the \$20,000.00 by November 17, 2023, Respondent consented to Petitioner entering a judgment against the property in the amount of \$200,000.00 without further notice. Petitioner filed an application for the \$200,000.00 judgment on December 14, 2023²⁰ and that judgment was issued on December 22, 2023. Respondents argue that they should not be subject to any further civil penalties because the OTC settled that issue and Petitioner elected its remedy. However, the OTC expressly states: “Notwithstanding what has been consented to in the within Order, all other claims for civil penalties that petitioner may have pursuant to the Housing Maintenance Code/Multiple Dwelling Code or other laws are not settled by this Order and petitioner reserves the right to seek such relief for those claims and/or to seek subsequent per diem civil penalties on all violations listed in the Violation Summary Report dated November 17, 2022, if there is any default in performance of any of the terms hereunder.”

The OTC settled any civil penalty claims Petitioner had through November 17, 2022. Respondents defaulted in compliance with the OTC. Therefore, Petitioner is entitled to civil penalties for the period of November 17, 2022 through the date of this decision for all violations that were not timely corrected. Petitioner has submitted to the court a calculation of the civil penalties for this period and the court shall issue a judgment by separate order.

New OTC

Petitioner also seeks a new OTC for those violations that have been placed after November 17, 2022. Respondents did not present any arguments in opposition to this portion of Petitioner’s motion. Petitioner is directed to prepare a new OTC with a VSR that only contains those violations that were issued subsequent to the November 17, 2022 OTC.

Discontinuance as to Gustavo Santana

Petitioner initially brought this case against Respondents Napa and Gustavo Santana. Mr. Santana was included as a party to this case because he was listed as an officer of NAPA and managing agent for the subject building on a prior MDR. Petitioner has learned through other litigation with Respondents and related entities that Mr. Santana never served as an officer or

²⁰ Respondents filed an Affidavit in Opposition to HPD’s Judgment Application (NYSCEF #107), but the application was made pursuant to the terms of the OTC entered into by the parties. If Respondents wish to challenge the entry of the judgment, they should do so by motion.

managing agent for the subject building but signed the MDR as a favor to Mr. Ohebshalom and Napa. Given that it appears that Mr. Santana never exerted any control over the subject building, he is not properly an owner as that term is defined in the HMC and there is no prejudice to discontinuing the proceeding as to him. Respondents have not opposed this portion of Petitioner’s motion.

Based on the foregoing, Petitioner’s motion is granted to the extent of: 1) joining Daniel Ohebshalom a/k/a Daniel Shalom a/k/a Dan Shalom and Robin Ignico as parties to this proceeding pursuant to §110(d) of the Civil Court Act and accepting the Proposed Supplemental Verified Petition²¹ as filed nunc pro tunc; 2) discontinuing the proceeding as to Respondent Gustavo Santana; 3) finding that all Respondents are in civil contempt of this court’s November 17, 2022 Order; 3) finding that all Respondents are in criminal contempt of this court’s November 17, 2022 Order and awarding judgments in the amount of \$1,000.00 against Respondents Napa Partners, LLC, Daniel Ohebshalom a/k/a Daniel Shalom a/k/a Dan Shalom, and Robin Ignico in favor of HPD; 4) Finding that HPD is entitled to civil penalties; and 5) finding that HPD is entitled to a new OTC. The civil penalties and new OTC will be issued by the court by separate order upon submission of the requested calculations and preparation of the OTC by Petitioner. Respondent’s cross-motion is denied in its entirety.

Petitioner shall serve a copy of this order by first class mail with certificate of mailing on Respondents within five (5) days of receipt of this Decision/Order. Respondents Daniel Ohebshalom and Robin Ignico shall then have fourteen (14) days from service of this Decision/Order by Petitioner to purge civil contempt. This case is restored to the court’s calendar and adjourned to April 11, 2024 at 9:30am for a hearing on: 1) the amount of attorneys fees Petitioner should be awarded as part of the civil contempt fine; and 2) whether Respondents Daniel Ohebshalom and Robin Ignico have purged civil contempt.

This constitutes the Decision and Order of the Court.

Dated: March 15, 2024
Queens, NY



Hon. Kimon C. Thermos, JHC

Civil Court
of the
City of New York

MAR 15 2024

ENTERED
QUEENS COUNTY 12

²¹ Exhibit 41 (NYSCEF #56)