

**Department of Hous. Preserv. & Dev. of the City of
N.Y. v Highpoint Assoc. X, LLC**

2025 NY Slip Op 30921(U)

January 30, 2025

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

Docket Number: Index No. L&T 309369-23

Judge: Evon M. Asforis

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**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART B**

-----X
**DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT OF THE CITY OF NEW YORK,**

L&T Index No. 309369-23

Petitioner,

-against-

DECISION/ORDER

**HIGHPOINT ASSOCIATES X, LLC,
KEYSTONE MANAGEMENT, INC. D/B/A
KEYSTONE PROPERTIES,
DANIEL OHEBSHALOM A/K/A DAN SHALOM,
ROBIN IGNICO and JOHNATHAN SANTANA,**

Respondents,
-----X

HON. EVON M. ASFORIS, J.H.C.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner's motion seeking, a finding of civil contempt pursuant to Judiciary Law § 753, among other things, and respondents' cross-motion seeking to extend their time to comply with the Court's July 27, 2023 Order:

<u>Papers</u>	<u>NYSCEF Doc #</u>
Order to Show Cause, Affirmation & Exhibits.....	72-77 (seq. 3)
Notice of Cross-Motion, Affirmations & Exhibits.....	78-86 (seq. 4)
Opposition, Reply & Exhibits.....	89-103
Affirmation in Reply.....	104

Upon the foregoing cited papers, the Decision/Order on these Motions is as follows:

Relevant Procedural History

On May 4, 2023, HPD commenced this proceeding against respondents Highpoint Associates X, LLC, Keystone Management, Inc. d/b/a Keystone Properties, Daniel Ohebshalom a/k/a Dan Shalom, and Robin Ignico ("respondents") as well as former respondent Johnathan Santana. On July 27, 2023, the parties appeared in court, and the court issued a Decision/Order (hereinafter the "Order to Correct") ordering respondents to correct all violations of record at 190 East 3rd Street, New York, New York 10009 ("subject premises"). There were 128 open violations listed for the subject building on the Open Violation Summary Report ("VSR") dated July 11, 2023 (25 Class "C", 71 Class "B", and 32 Class "A" violations).

HPD moves by order to show cause dated January 2, 2024, for an order finding respondents in civil contempt, for an award of civil penalties against respondents for their failure

to timely correct the violations pursuant to the court's July 27, 2023 Order to Correct, and for a new order to correct any violations occurring after the court's order, among other things. HPD argues that respondents should be found in civil contempt for failing to correct seventy-seven (77) of the 128 violations subject to the Order to Correct. HPD argues the Order to Correct is an unequivocal mandate of the court which respondents disobeyed, and this disobedience of the court's order impedes and prejudices HPD's right to enforce housing standards. HPD argues that the continued existence of the violations constitutes prejudice as a matter of law, and that respondents alleged defenses are insufficient to rebut a finding of contempt where clear and convincing supporting evidence is not provided.

HPD seeks a finding of civil contempt, the statutory fine of \$250.00 for contempt, as well as HPD's actual costs and expenses, including attorneys' fees, in addition to a \$500.00 daily fine and/or incarceration for a term not to exceed six months until respondents' purge their contempt.

HPD also argues that they are entitled to an assessment of civil penalties against respondents based upon respondents' failure to correct all of the open violations stated in the court's Order to Correct. HPD argues there is no need for a hearing, as respondents have failed to introduce evidence demonstrating the completion of repairs or establish their alleged defense to the imposition of civil penalties. Additionally, HPD requests and seeks a new order to correct directing respondents to correct all open violations that occurred since the Order to Correct and that respondents' time to correct not be extended.

In opposition to HPD's motion, respondents moved by notice of cross-motion dated February 9, 2024, for an order extending respondents' time to comply with the court's July 27, 2023 Order to Correct. Respondents argue that the court should extend respondents' time to correct the remaining violations under the Order to Correct pursuant to CPLR § 2004 because respondents have been working diligently to complete specific and routine repair work throughout the subject building. Respondents represent that the superintendent Krzysvtof ("Chris") Mertens has corrected as many as 33 of the open violations and of the remaining 45 violations, eight violations are duplicative, or relating to a violation for scraping and removing rust scales and painting fire escapes, which is work the superintendent cannot perform during the winter months.

Respondents also argue that HPD's motion for contempt and civil penalties should be denied because respondents have substantially complied with the Order to Correct, that respondents' actions were not calculated to defeat, impair, or impede petitioner's rights or remedies, and that it should be noted that several of the recorded violations are decades old (24 of the 78 recorded violations predate 2010, and eight of which predate 1990) which should entitle respondents to a mitigation of civil penalties.

In opposition to respondents' cross-motion, HPD argues that respondents cannot use CPLR § 2004 to extend their time to correct violations, as it is only available to provide extensions of time to procedural actions in court, that extending time to comply would violate the law of the case, and that the deadlines given for correction of HPD violations are expressly prescribed by law. HPD argues that in any event, the court must find respondents in contempt, assess civil penalties, and order the correction of any new violations because respondents fail to

establish sufficient good cause to warrant an extension of their time to comply with the Order to Correct. Lastly, HPD argues in support of its own motion that respondents' submission of an affidavit from Robin Ignico, who lives in California, and the presentation of receipts, invoices, and a proposal for work is insufficient to rebut HPD's prima facie showing of respondents' noncompliance with the court's order and insufficient to establish respondents' defenses and their failure to comply with the Order to Correct.

Motion for Contempt

Under Judiciary Law § 753, this court 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 NY3d 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]).

In a civil contempt proceeding pursuant to Judiciary Law § 753(A)(3), the movant must demonstrate: (1) that a lawful order of the court was in effect that expressed a clear unequivocal mandate; (2) that the respondent had knowledge of the order; (3) that there is proof to a reasonable certainty that the order has been disobeyed; and (4) that the rights of a party were prejudiced. (McCormick v Axelrod, 59 NY2d 574,583 [1983], amended, 60 NY2d 652 [1983]; El-Dehdan v El-Dehdan, 26 NY3d 19]).

First, it is undisputed that the Order to Correct in effect was an unequivocal mandate. The order clearly required respondents to correct the open violations listed in the VSR by dates certain. Second, there is likewise no dispute that the respondents had knowledge of the Order to Correct: respondents counsel appeared in court on the date of the Order to Correct, a copy of the Order was uploaded to the New York State Courts Electronic Filing system ("NYSCEF"), and respondents do not dispute receipt of the order.

Third, it is also undisputed that all of the violations have not been corrected as respondents seek an extension of time to comply with the court's order. Violations that have not been certified as corrected constitute prima facie evidence that the underlying conditions still exist. (See NYC Admin. Code § 27-2115[f][7]; Fiondella v 345 W. 70th Tenants Corp., 217 AD3d495 [App Div, 1st Dep't 2023]; Dept. of Hous. Preserv. & Dev. v Knoll, 120 Misc.2d 813 [App Term, 2d Dep't 1983]).

Finally, regarding prejudice, courts have consistently found that the continued existence of HPD violations constitutes prejudice as a matter of law, as outstanding repair issues violate the Housing Maintenance Code and fall short of the housing standards HPD is directed to enforce. (See Various Tenants of 446-448 W. 167th St. v New York City Dept. of Hous. Preserv. & Dev., 153 Misc 2d 221, 222 [App Term, 1st Dep't 1992], aff'd 194 AD2d 311 [1st Dep't 1993]; Dept. of Hous. Preserv. & Dev. of the City of N.Y. v Jones, 2022 NY Slip Op 33589[U], [Civ Ct, Kings Cty. 2022]; see also Judiciary Law § 753[A][3]).

Based on the foregoing, respondents are in civil contempt of the July 27, 2023 Order to Correct. Having determined that respondents are in contempt of the court's order, 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).

The court's authority to punish for civil contempt includes the power to impose fines designed to coerce compliance with the court's order, so long as the contemnor is given an opportunity to purge the contempt and fines. (See Castillo v Banner Group LLC, 62 Misc.3d 1235[A], 2019 NY Slip Op 50897[U] [Civ. Ct., N.Y. Cty. 2019]; Anumudu v Bennett, 72 Misc.3d 1219(A) [Civ. Ct., N.Y. Cty. 2021]. Respondents may seek to purge their contempt pursuant to Judiciary Law § 773 by correcting all outstanding violations at the subject premises. Respondents must demonstrate either that the violations have been removed by HPD, or that the conditions have been corrected through admissible evidence.

Motion for Compliance and Civil Penalties

Pursuant to HMC § 27-2115(a), a party who violates the law regarding housing standards shall be subject to the assessment of civil penalties. (See NYC Admin. Code § 27-2115[h][1] [a court that finds a violation of the Housing Maintenance Code exists "*shall* impose a penalty in accordance with subdivision (a) of this section"]). Herein, the continued existence of violations is prima facie evidence of the continued existence of the conditions underlying the violations. (NYC Admin Code § 27-2115[f][7]). Although HPD's records are considered prima facie evidence that a violation has not been corrected, owners are permitted to raise defenses to civil penalties and can seek to mitigate them.

Pursuant to the Housing Maintenance Code, a respondent-owner "may in defense or mitigation of such owner's liability for civil penalties show" by competent proof that the violation did not exist; that the owner began to correct the violation promptly but that it could not be repaired expeditiously due to lack of access, funds, or labor; that the owner was unable to obtain a permit or license necessary to correct the violation; or that the violation was caused by another not employed by the owner. (See NYC Admin. Code §§ 27-2115[k][3], 27-2116).

Respondents' opposition to HPD's order to show cause fails to raise a defense sufficient to mitigate the assessment of civil penalties for open violations that were subject to the July 27, 2023 Order to Correct. While respondents allege a lack of access to tenant's apartments delayed the repairs, this statement is conclusory and unsubstantiated and does not account for the remaining apartment units at the subject premises and common areas. Respondents fail to submit any affidavits based on personal knowledge to contradict petitioner's allegations. (See, York v York, 250 AD2d 838 [App Div, 2d Dep't 1998]; Guiliano v Carlisle, 236 AD2d 364 [App Div, 2d Dep't 1997]; Muller v Muller, 233 AD2d 486 [App Div, 2d Dep't 1996]). HMC § 27-2115(k)(3)(v) provides that an owner seeking the mitigation of civil penalties must show by "competent proof, pertinent financial data, and efforts made to obtain necessary materials, funds or labor....and such other evidence as the court may require." Respondents fail to show any competent proof sufficient for the court to mitigate respondents' liability.

Respondents do not allege an inability to obtain material, funds, labor, or permits; instead, respondents allege a defense that amounts to substantial compliance, which is not available as a defense to mitigate civil penalties. Therefore, the portion of HPD's motion seeking the assessment of civil penalties is granted to the extent that this proceeding shall be restored to the court's calendar for the calculation of civil penalties for the open violations pursuant to the Order to Correct.

HPD also seeks a new order to correct for those violations that have been placed after July 27, 2023. Respondents did not present any arguments in opposition to this portion of HPD's motion. Therefore, the matter shall also be restored to the court's calendar for a new order to correct for those violations that were issued after the July 27, 2023 Order to Correct.

Motion for Extension of Time to Comply

CPLR § 2004 provides that "[e]xcept 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." HPD argues that CPLR § 2004 is not applicable to the type of extension requested by respondents. However, the housing court has discretion over whether to grant a respondent-owner an extension of time to comply with an order on good cause shown. (See Vargas v 112 Suffolk St. Apt. Corp., 66 Misc 3d 1214(A) [Civ. Ct., N.Y. Cty. 2020]; Tewari v Tsoutsouras, 75 NY2d 1 [1989]; accord NYC Admin. Code § 27-2115[c][1], [k][3][ii]).

Herein, the court finds that respondents have not established sufficient good cause to warrant an extension of time to comply. Respondents have not provided an explanation for why they have not fully complied with the July 27, 2023 Order to Correct, but instead have argued that their partial compliance to date warrants an extension. Respondents' conclusory and vague allegations of lack of access, without corroborating proof, does not constitute good cause and does not account for respondents' lack of compliance in the public areas of the subject building or the remaining apartment units.

Decision

Therefore, it is Hereby Ordered,

HPD's motion for an order for civil contempt is granted. Respondents' failure to comply with the court's July 27, 2023 Order to Correct defeats, impairs, impedes, and prejudices the rights of petitioner. Such failure constitutes civil contempt pursuant to New York State Judiciary Law Section 773, and respondent is therefore found in civil contempt.

Respondents shall pay a daily fine of \$250.00, payable to HPD, for every day from the date of this Decision/Order that they remain in contempt of the July 27, 2023 Order to Correct. Respondents may purge their civil contempt by correcting the outstanding violations contained in the July 27, 2023 VSR, incorporated by reference in the Order to Correct.

The portion of HPD’s motion seeking the assessment of civil penalties is granted to the extent that the matter shall be restored to the court’s calendar on **March 4, 2025, Part B, Room 583 at 10:30 a.m.** for a status conference as to the remaining repairs, for the calculation of civil penalties, and for entry of a new order to correct. All other portions of HPD’s motion are denied.

Respondents’ cross-motion for an extension of respondents’ time to comply with the Order to Correct is denied.

This constitutes the decision and order of the court.

Dated: New York, New York
January 30, 2025


EVON M. ASFORIS
JUDGE HOUSING COURT

To: Matthew Chenoweth, Esq.
Department of Housing Preservation & Development
Housing Litigation Division
Attorneys for Petitioner
100 Gold Street, 6th Floor
New York, New York 10038
(212) 863-7325
chenowem@hpd.nyc.gov

Vladimir Mironenko, Esq.
Adam Leitman Bailey, P.C.
Attorneys for Respondent
One Battery Park Plaza
Eighteenth Floor
New York, New York 10004
(212) 825-0365
vmironenko@alblawfirm.com