

**Department of Hous. Preserv. & Dev. of the City of  
N.Y. v Singh**

2025 NY Slip Op 32606(U)

May 27, 2025

Civil Court of the City of New York, Bronx County

Docket Number: Index No. LT-316487-24/BX

Judge: Diane E. Lutwak

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

Index # LT-316487-24/BX

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

-against-

**DECISION/ORDER**

KARAN SINGH  
RAJMATTIE PERSAUD A/K/A RAJMATTIE PERSAUD SINGH  
SEAN CAMPBELL  
RAFAEL BAEZ  
FORDHAM FULTON REALTY, CORP  
Respondents.

*Premises:*

2410 Washington Avenue, Bronx, NY 10458  
A/K/A 480 East 188<sup>th</sup> Street, Bronx, NY 10458

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Hon. Diane E. Lutwak, HCJ:

Recitation, as required by CPLR Rule 2219(a), of the papers considered in the review of Petitioner’s motion by order to show cause (m seq #2) for an order finding Respondents in criminal and civil contempt of the court’s Order to Correct dated August 5, 2024 and the parties’ so-ordered Consent Order December 5, 2024, and Respondents’ cross-motion (m seq #3) for an order extending time to complete repairs<sup>1</sup>, consolidated herein for determination:

<u>Papers</u>	<u>NYSCEF Doc #</u>
Petitioner’s Order to Show Cause (OSC)	52/65/66
Affirmation in Support of OSC	53/66
Exhibits 1-11 in Support of OSC	54-64/66-68
Respondents’ Notice of Cross-Motion	70
Affirmations in Support of Cross-Motion & Opposition to OSC	71- 76
Exhibit A in Support of Cross-Motion & Opposition to OSC	77
Affirmation in Opposition to Cross-Motion	78
Exhibits 1-4 in Opposition to Cross-Motion	79-82

<sup>1</sup> The notice of cross-motion includes in its request for relief “additional time to submit an answer or opposition papers”. However, the court treats this as surplusage; as discussed in the body of this Decision/Order and as can be seen from the court’s recitation of the procedural history, *supra*, not only did Respondents miss their deadline for filing an answer (July 25, 2024), but Respondents entered into a Consent Order on December 5, 2024 resolving all claims remaining after the court issued an Order to Court on August 5, 2024. Further, the papers Respondents filed in support of their cross-motion do also contain their arguments in opposition to Petitioner’s motion.

## PROCEDURAL HISTORY

This is a proceeding to enforce the New York State Multiple Dwelling Law (MDL) and the New York City Housing Maintenance Code (HMC), commenced by the Department of Housing Preservation and Development of the City of New York (DHPD) against the owners of the residential 169-unit apartment building at 2410 Washington Avenue a/k/a 480 East 188<sup>th</sup> Street in the Bronx, New York (the subject premises). The proceeding was commenced by Order to Show Cause (OSC) and Verified Petition seeking remedies for four causes of action: (1) Order to Correct Violations of the MDL and HMC; (2) Civil Penalties for Failure to Timely Correct Violations; (3) Injunction Against Tenant Harassment; and (4) Tenant Harassment (Finding and Civil Penalties).

The case was calendared initially in Resolution Part H for June 3, 2024. No Respondents appeared and the case was adjourned to July 18, 2024 for inquest. Respondents appeared by counsel on July 18, 2024 and the case was adjourned to July 25, 2024, Respondents to file their answer by that date. Respondents failed to file an answer. On July 25, 2024 Petitioner filed a proposed Order to Correct addressing its first cause of action, which Housing Court Judge Arrindell signed and uploaded to NYSCEF on August 5, 2024. That Order to Correct required Respondents to correct the 548 existing violations listed in a Violation Summary Report dated July 25, 2024, with separate deadlines for correcting the three classes of violations (24 hours for 150 immediately hazardous "Class C" violations; 30 days for 281 hazardous "Class B" violations; 90 days for 117 non-hazardous "Class A" violations) and, in the event of non-compliance, subjected Respondents to daily civil penalties. The Order to Correct further required Respondents to provide heat, hot water and access to the boiler area for Petitioner's inspectors; post proper boiler access notices; and install smoke detectors in each dwelling unit that did not already contain approved, operational smoke detectors. Judge Arrindell's Order to Correct of August 5, 2024 transferred the remaining claims for trial and provided that service on Respondents and their attorneys of any papers including proceedings to enforce, uphold, monitor compliance and punish non-compliance including proceedings for civil and/or criminal contempt by filing on NYSCEF would be sufficient. The case was calendared in Trial Part T initially for August 27, 2024 and then adjourned to October 31, 2024.

By so-ordered Consent Order dated December 5, 2024, the parties through counsel settled Petitioners' remaining claims, with Respondents agreeing to (1) correct all violations within the same specified time frames as stated in the court's Order to Correct of August 5, 2024, with reference to a Violation Summary Report dated October 31, 2024 listing 505 open violations (124 immediately hazardous "Class C" violations, 279 hazardous "Class B" violations, 102 non-hazardous "Class A" violations); (2) not engage in tenant harassment; (3) request access from lawful occupants for the removal of violations in compliance with Title 28 RCNY § 25-101; (4) provide heat as required by law; (5) supply hot water as required by law; (6) provide Petitioner's inspectors access to the boiler area and post proper notices; (7) [crossed out]; (8)

install smoke detectors where still needed within 24 hours; (9) post notices informing occupants about the owners' and occupants' responsibilities regarding smoke detectors; (10) file and maintain a current registration statement with the Office of Code Enforcement; (11) ratify and waive any challenge to the validity or enforceability of the August 5, 2024 Order to Correct; (12) pay civil penalties of \$100,000 in three payments with specified deadlines; and (13) consent to entry of a judgment against them for \$1,000,000.00 in the event of failure to make any of the three civil penalties payments.

The December 5, 2024 Consent Order also provides for Petitioner's withdrawal of its tenant harassment claims; NYSCEF service of papers including any actions to enforce, uphold, monitor compliance, and/or punish for non-compliance including civil and/or criminal contempt of the Consent Order; and the court's continued jurisdiction over this matter.

On March 7, 2025 Petitioner filed a motion pursuant to Judiciary Law §§ 750, 773 and 774, Civil Court Act § 110(e), CPLR § 5104 and NYC Administrative Code/HMC § 27-2124 seeking an order finding Respondents to be in civil and criminal contempt for failure to comply with the August 5, 2024 and December 5, 2024 Orders and various relief including damages and/or fines, costs, expenses, attorneys' fees and incarceration of the individual Respondents. Petitioner also sought additional civil penalties for Respondents' failure to correct violations by the dates set in the December 5, 2024 Consent Order and an order to correct open violations issued since October 31, 2024. The motion was brought on by OSC which the court signed and calendared for April 7, 2025, with Respondents' opposition papers to be served at least seven days before the motion was to be heard and Petitioner permitted to serve reply papers.

After conference on April 7, 2025, the OSC was adjourned to May 8, 2025 with an extended briefing schedule: opposition by April 30, 2025 and reply by May 7, 2025. As the first page of the OSC lacked the bold-type warning required by Judiciary Law § 756, on April 8, 2025 Petitioner's attorney filed both a notice of withdrawal of that OSC without prejudice and a proposed new OSC seeking the same relief, with the required bold-type warning included on the first page, returnable on the May 8, 2025 adjourned date, which the court signed. Respondents filed a cross-motion and opposition to Petitioner's motion on the adjourned date of May 8, 2025. Also on May 8, 2025, Petitioner filed opposition to Respondents' cross-motion.

Petitioner asserts that Respondents have breached at least five material terms of the August 5, 2024 Order to Correct (OTC) and the December 5, 2024 Consent Order (CO) by (1) failing to correct 316 of the 548 violations they were ordered to correct in the OTC and failing to correct 331 of the 505 violations they agreed to correct in the CO; (2) failing to supply heat resulting in at least 19 violations for inadequate heat on 8 separate days since the CO was signed; (3) failing to maintain the required minimum water temperature resulting in at least 42 violations on 21 separate days since the CO was signed; (4) failing to provide access to the boiler room; and (5) failing to install operable smoke detectors in at least 26 apartments. Petitioner argues that incarceration of Respondents for 180 days or until all Class "C" and "B" violations are cured is warranted because of their extensive history of disobedience of the

court's mandates. A violation report generated on April 7, 2025 and filed as Exhibit 5/NYSCEF Doc #5 shows 641 open code violations: 188 immediately hazardous/"Class C" violations, 324 hazardous/"Class B" violations, and 129 non-hazardous/"Class A".

Petitioner argues that it has established the required elements of both criminal and civil contempt pursuant to Judiciary Law §§ 750 and 753; this contempt motion should be summarily determined based on the papers submitted and without a hearing; the court should hold Respondents in civil contempt for their failure to correct violations as required by the OTC and CO; and, because of Respondents' longstanding noncompliance with the OTC and CO – in particular, Respondents' repeated failure to provide heat and hot water to the subject premises and to install internet capable temperature reporting devices as required by the Heat Sensor Program - Petitioner has established Respondents' willfulness which, although not required for civil contempt, is an element of criminal contempt. As relief against Respondents for civil contempt, Petitioner asks the court to enter a judgment for civil penalties; provide Petitioner an opportunity to submit a proposed judgment that includes *per diem* penalties that accrued after the filing of its motion; enter a new order to correct to address violations placed after October 31, 2024; order the incarceration of the individual Respondents for a period of six months, or until such time as Respondents cure all open "C" and "B" violations; award Petitioner attorneys' fees; and issue a \$250 fine pursuant to Judiciary Law § 773. As relief against Respondents for criminal contempt, pursuant to Judiciary Law § 751 Petitioner asks the court to order the incarceration of the individual Respondents for 30 days, combined with any other sentence up to six months, and a \$1000 fine.

In their cross-motion, Respondents request "an Order to extend time to complete repairs and additional time to submit an answer or opposition papers". Respondents' attorney in his supporting affirmation states it was submitted both in support of the cross-motion and opposition to Petitioner's motion and makes the following arguments: First, that any requests for civil penalties or an Order to Correct are a nullity and must be dismissed because Petitioner offers no proof of service of the Notice of Violation on the owner and managing agent, as required by HMC §§ 27-2095(c) and 27-2115(b). Second, that "The only repairs that may not have been corrected are the ones where either Tenant did not give access and/or there was a need for a license or permit to do work, which were not readily available, although requested." Respondents' attorney points to an accompanying Exhibit A, which he describes as "copies of letters from different contractors to show that Respondents have not neglected completing repairs in the building, which includes one regarding the roof, elevator inspection and GMA Heating and Plumbing regarding the plumbing and boiler system." Third, that "many violations are repeats and although there can be civil penalties for those violations that are repeats, there are no such allowances for contempt." Fourth, that Respondents have made substantial progress and request additional time to complete the repairs and remove violations, asserting that whereas there were approximately 900 violations when this case commenced there are

approximately 300 violations remaining and a recent inspection “should show approximately 200 violations were corrected”. Fifth, that Respondents need more time to respond to Petitioner’s motion, which is comprised of approximately 532 pages. Sixth, that due to Respondents’ attorneys’ paralegal being out on jury duty after the April 7, 2025 court date, it was excusable law office error that caused Respondents to miss the due date for their papers.

Also submitted in support of the cross-motion and in opposition to Petitioner’s motion were the following:

- Identical affirmations dated May 7, 2025 from each of the four individual Respondents stating, “We have been making progress with the correction of the repairs and need additional time to complete the repairs,” Respondents’ Affirmations at ¶ 3; their attorney’s affirmation is true to their own knowledge except as to those matters therein stated to be alleged on information and belief, *id.* at ¶ 4; and they “never personally received a copy of the papers”, *id.* at ¶ 5.
- Affirmation of Respondents’ attorneys’ paralegal stating she was called for jury duty after the April 7, 2025 court appearance, “was out for some time”, and “it was law office error in that the due date for Respondent’s opposition papers went unnoticed.”
- Exhibit A, comprised of a letter dated March 17, 2025 from attorney Glenn Spiegel at Becker New York P.C. to Housing Court Judge Shahid, referencing a tenant-initiated case against Respondents under Index # LT-348112-23/BX, and four attachments: (1) letter report dated 3/13/25 from Rise Elevator Inspection; (2) letter report dated 3/17/25 from G.M.A. Plumbing and Heating Corp.; (3) invoices from Rags Fuel Corp. and Valley Oil Company for oil deliveries to the premises from January through March 2025; and (4) report dated 3/14/25 from Niche Waterproofing.

In an attorney’s affirmation filed in opposition to Respondents’ cross-motion and on reply Petitioner argues: First, that Respondents’ attorneys recently have made and successfully argued motions to be relieved as counsel for Respondents in other cases based on allegations of being out of contact with Respondents, who nevertheless signed affirmations in support of the cross-motion dated May 7, 2025. Second, that Respondents’ cross-motion should be denied as it was short-served in violation of CPLR Rules 2214 and 2215, due process and the court’s deadline for opposition to Petitioner’s motion, and prejudicial to Petitioner given that Respondents not only have failed to correct violations but also failed to pay the agreed-upon civil penalties. Third, that Petitioner’s counsel’s conclusory assertion of law office error based on its employee’s jury duty is not a legitimate excuse for the failure to file timely opposition papers to Petitioner’s contempt motion. Fourth, that Respondents’ counsel misstates the number of open violations as approximately 300: Petitioner’s Violation Summary Report shows 628 open violations as of May 8, 2025. Fifth, that Respondents’ argument about the lack of

service of Notices of Violation is irrelevant, given that they signed a consent order agreeing that violations existed. Sixth, with regard to Respondents' claim that their proof of repairs justifies their request for an extension, Respondents failed to authenticate any of its purported evidence of repairs, and the boiler fuel receipts and elevator repair records are, respectively, inadequate and irrelevant.

#### DISCUSSION

As an initial matter, Respondents' cross-motion for "an Order to extend time to complete repairs and additional time to submit an answer or opposition papers" is denied. No basis for such relief has been stated. As can be seen from the timeline of this case described above, Respondents long ago missed their deadline of July 25, 2024 for filing an answer to the petition. Housing Court Judge Arrindell issued a default Order to Correct on August 5, 2024 (OTC) which Respondents neither sought to vacate nor appealed. Moreover, on December 5, 2024 Respondents entered into a Consent Order (CO) that resolved all remaining issues and incorporated the terms of Judge Arrindell's OTC. As for an extension of time to file further opposition to Petitioner's contempt motion, that Respondents' attorneys' paralegal was on jury duty for some undisclosed period of time following the adjournment of Petitioner's motion on April 7, 2025 does not excuse Respondents' failure to use the time they had between March 18, 2025 - when they were served with the original version of Petitioner's contempt motion - and April 30, 2025, the deadline set under an extended briefing schedule agreed to at a conference on April 7, 2025. As for time to complete repairs, certainly Respondents should continue to make repairs and remove violations as expeditiously as they can. However, this is not a reason to delay a resolution of Petitioner's contempt motion.

Turning to Petitioner's motion for contempt, under Judiciary Law § 753(A)(3), a party that disobeys a court's lawful, clear mandate may be punished for civil contempt, by fine and/or imprisonment, where "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, e.g., *Various Tenants of 446-448 W 167th St v NYC Dep't of Hous Pres & Dev* (153 Misc2d 221, 588 NYS2d 840 [App Term 1992], *aff'd*, 194 AD2d 311, 603 NYS2d 718 [1<sup>st</sup> Dep't 1993]). To prevail, the moving party must establish by clear and convincing evidence that a lawful order was in effect with an unequivocal mandate, that the order was disobeyed, that the party who allegedly disobeyed the order knew about it and that the moving party was prejudiced by the other party's failure to comply with the order. *El-Dehdan v El-Dehdan* (26 NY3d 19, 41 NE3d 340, 19 NYS3d 475 [2015]); *McCormick v Axelrod* (59 NY2d 574, 583, 453 NE2d 508, 512-13, 466 NYS2d 279, 283 [1983]).

The standard for criminal contempt under Judiciary Law § 750(A)(3) parallels that of civil contempt except the movant need not prove prejudice and, "A key distinguishing element between civil and criminal contempt is the degree of willfulness of the subject conduct. To be found guilty of criminal contempt, the contemnor usually must be shown to have violated the order with a higher degree of willfulness than is required in a civil contempt proceeding." *Dep't*

of *Env'tl Prot v Dep't of Env'tl Conservation* (70 NY2d 233, 240, 519 NYS2d 539, 542, 513 NE2d 706, 709 [1987]). The party moving to hold someone in criminal contempt must prove beyond a reasonable doubt that the alleged contemnor willfully violated a clear court order. *Matter of Koepfel* (166 AD3d 473, 474, 89 NYS3d 15 [1<sup>st</sup> Dep't 2018]).

Housing Court judges have the power to punish for contempt, New York City Civil Court Act § 110(e), *Dep't of Hous Pres & Dev v 24 W 132 Equities, Inc* (137 Misc2d 459, 462, 524 NYS2d 324, 327 [App Term 1987], *aff'd*, 150 AD2d 181, 540 NYS2d 711 [1<sup>st</sup> Dep't 1989]), and a so-ordered settlement agreement may properly be the subject of a contempt motion, *Axin v Delibab Corp* (24 AD2d 974, 265 NYS2d 591 [1<sup>st</sup> Dep't 1965]); *Ross v Congregation B'nai Abraham Mordechai* (8 Misc3d 136[A], 803 NYS2d 20 [App Term 1<sup>st</sup> Dep't 2005]).

Here, Housing Court Judge Arrindell's OTC dated August 5, 2024 and the so-ordered CO dated December 5, 2024 are lawful court orders with clear and unequivocal mandates requiring Respondents to correct all violations listed on annexed Violation Summary Reports dated, respectively, July 25, 2024 and October 31, 2024, within specified timeframes.

Respondents are on notice of these orders: The CO of December 5, 2024 – paragraph 11 of which references the OTC of August 5, 2024, notes that the OTC remains in full force and effect and includes Respondents' agreement not to challenge that OTC – was signed by Respondents' counsel, as well as by three of the four individual Respondents. Paragraph 10 of the OTC and paragraph 15 of the CO establish the sufficiency of NYSCEF filing, and both the OTC and the CO are filed on NYSCEF.

Under Multiple Dwelling Law § 328(3), Petitioner's Violation Summary Reports are *prima facie* evidence of the existence of the stated violations on the dates listed in those reports. The record on this motion practice leaves no dispute that Respondents willfully failed to obey both the OTC and the CO. Respondents have presented no proof of filing of certifications of compliance as to any of the violations, and Respondents' failure to do so constitutes *prima facie* evidence that the violations have not been corrected. NYC Administrative Code § 27-2115(f)(7). The conclusory statements in the affirmations dated May 7, 2025 of Respondents Singh, Persaud, Campbell and Baez that they "have been making progress with the correction of the repairs", the fuel invoices dated in January through March 2025, and the summary reports of waterproofing, plumbing/heating, and elevator inspection companies fail to establish that the 548 open violations as of July 25, 2024 and the 505 open violations as of October 31, 2024 were corrected timely. Respondents failed to even pay the agreed-upon civil penalties settlement amount of \$100,000, see OTC at ¶ 12, resulting in the entry of a judgment against them for \$1,000,000 under that agreement, see OTC at ¶ 13. Further, Respondents' own cross-motion seeks to extend their time to comply with the Orders, thereby conceding that the violations have not yet been corrected.

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". *Dep't of Hous Pres v Highpoint Assocs X, LLC* (2025 NY Misc LEXIS 1709, at \*7 [Civ Ct NY Co Jan. 30, 2025]), citing, *inter alia*, *Various Tenants of 446-448 W 167th St v NYC Dep't of Hous Pres & Dev, supra* (153 Misc2d at 222, 588 NYS2d at 841).

Based on the foregoing, Petitioner has established beyond a reasonable doubt all elements necessary for a finding of both civil and criminal contempt.

#### CONCLUSION

Accordingly, it is hereby:

- ORDERED that Respondents' cross-motion is DENIED; and
- ORDERED that Petitioner's motion is GRANTED to the following extent:
  - ORDERED that Respondents are found to be in civil and criminal contempt for disobeying the Order to Correct of August 5, 2024 and the Consent Order of December 5, 2024; and
  - ORDERED that Respondents shall correct any new violations listed on the April 7, 2025 Violation Summary Report within the following timeframes: 14 days for "Class C" violations; 30 days for "Class B" violations and 90 days for "Class A" violations, with all timeframes to run from the date of Petitioner's filing of a copy of this Decision/Order on NYSCEF with notice of entry; and
  - ORDERED that a judgment for \$250 as a fine for civil contempt pursuant to Judiciary Law § 773 shall be entered against Respondents, payable to Petitioner; and
  - ORDERED that a judgment for \$1000 as a fine for criminal contempt pursuant to Judiciary Law § 751(1) shall be entered against Respondents, payable to the New City Department of Finance pursuant to Judiciary Law § 791; and
  - ORDERED that Petitioner shall submit a proposed judgment for civil penalties and attorneys' fees, to be filed on NYSCEF with email notice to Part T ([BX-HOUSING-410@nycourts.gov](mailto:BX-HOUSING-410@nycourts.gov)).

This constitutes the Decision and Order of this Court, a copy of which is being uploaded to NYSCEF.



Diane E. Lutwak, HCJ

Dated: Bronx, New York  
May 27, 2025

