

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

2025 NY Slip Op 35239(U)

September 12, 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 188th Street, Bronx, NY 10458

-----X
 Hon. Diane E. Lutwak, HCJ:

Recitation, as required by CPLR Rule 2219(a), of the papers considered in the review of Petitioner’s motion (seq #9) by order to show cause (OSC) returnable September 8, 2025 to vacate temporary restraining order (TRO) dated August 26, 2025, accelerate the return date of all pending motions to September 8, 2025, enter a proposed TRO to stop Respondents from concealing their assets and to grant such other and relief as may be deemed just and proper:

<u>Papers</u>	<u>NYSCEF Doc #</u>
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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 (Petitioner or DHPD) against the owners of a residential apartment building (Respondents) located at 2410 Washington Avenue a/k/a 480 East 188th Street in the Bronx, New York (the subject premises or building). The procedural history up until this court's Decision/Order of May 27, 2025 granting Petitioner's motion for contempt due to Respondents' failure to comply with the court's August 5, 2024 Order to Correct (OTC) and the parties' December 5, 2024 Consent Order (OC) and denying Respondents' cross-motion for an extension of their time to complete repairs is recited in that Decision/Order. After issuing that Decision/Order, the court entered three judgments against Respondents:

- (1) for \$1,000,000, upon Respondents' default of the parties' CO which provides, *inter alia*, for "entry of judgment against [Respondents] without further notice in the amount of \$1,000,000.00 after service of an eight-day notice" in the event of default in timely payment of the stipulated judgment for \$100,000 by payments of \$33,000 by 12/31/24; \$33,000 by 2/28/25; and \$34,000 by 4/30/25;
- (2) for \$10,114,700, for civil penalties pursuant to the May 27, 2025 Decision/Order granting Petitioner's motion for contempt of the OTC and CO;
- (3) for \$5,450 in attorneys' fees.

Respondents then filed two motions and Petitioner filed a cross-motion, as follows:

- Respondents' motion for a stay of enforcement/execution of the judgments pending appeal (filed 8/11/25)
- Petitioner's cross-motion for an undertaking (filed 8/15/25)
- Respondents' motion to vacate the judgments under CPLR RR 5015(a)(3) and (a)(1) (filed 8/18/25)

These motions were adjourned on August 20, 2025 to September 29, 2025, on consent.

Respondents then filed an order to show cause (OSC) seeking a stay of execution on the judgments pending disposition of all outstanding motions; after hearing argument from both sides on August 26, 2025, the court signed this OSC and calendared it for the same date as the three other pending motions, September 29, 2025. The OSC includes a temporary restraining order (TRO) that "barred [Petitioner] from taking any steps to execute on the judgment" pending its determination.

Now before the court is Petitioner's OSC seeking an order vacating the August 26, 2025 TRO; accelerating the return date of all motions to the September 8, 2025 return date of this OSC; and requiring Respondents to post an undertaking. Upon signing this OSC on August 29, 2025, the court entered a requested TRO prohibiting Respondents from concealing their assets pending determination and, for the August 26, 2025 TRO to be preserved, requiring Respondents to post an undertaking in the amount of \$11,120,150 (the aggregate amount of the three judgments entered against them), and file proof of the filing of such undertaking with the Clerk of the Court no later than 5:00 p.m. on September 5, 2025.

By the time of oral argument on the afternoon of September 8, 2025 Respondents had not filed proof that it had secured the required undertaking. Respondents also filed no papers in opposition to Petitioner's OSC and, instead, requested an adjournment and an extension of their time to file an undertaking and opposition. Respondents' attorney stated that Respondents had offered the building as collateral and were in the process of trying to secure the undertaking ordered by the court. Petitioner's counsel rejected the offer of the building as collateral, pointing out that "Fannie Mae" (FNMA: Federal National Mortgage Association) holds a mortgage for \$61,545,000 on the subject premises and another building owned by Respondents [NYSCEF Doc # 132] and there is no indication that the lender has consented to the building being posted as collateral by Respondents.

DISCUSSION

Vacatur of the August 26, 2025 TRO

It is undisputed that Respondents failed to comply with this court's order to post an undertaking in the amount of \$11,120,150, either by September 5, 2025 or by the time of completion of this Decision/Order. Their offer to put the building up as collateral as an alternative to filing an undertaking – with no indication that such an offer has been approved by the entity that holds a mortgage on this and another building in the amount of over \$61 million - is rejected as inadequate under the facts and circumstances presented. Accordingly, Petitioner's request for vacatur of the TRO issued upon the signing of Respondents' OSC on August 26, 2025 and leave to move forward with execution of the judgments is granted.

Acceleration of Adjourned Date of Four Prior Pending Motions

Further, this court grants that prong of Petitioner's OSC seeking to accelerate the four prior pending motions to be determined at this time and addresses those motions as follows.

Respondents' Motion for a Stay Pending Appeal

Respondents' motion for a stay pending appeal of execution or enforcement of the court's judgments entered on July 22, 2025 is denied. The only support for this motion is Respondents' attorney's affirmation, in which he objects to the judgments having been entered "without the Court conducting a factual hearing to correctly determine the amounts of said

judgments” and asserts in a conclusory manner that a stay is necessary “to prevent substantial injury” to Respondents. No citation to CPLR § 5519 (“Stay of enforcement”) is included in Respondents’ motion papers.

Petitioner opposes for various reasons, which they summarize as follows: “Respondents are not entitled to a discretionary stay because they fail to show they cannot obtain an automatic stay by posting an undertaking. Additionally, Respondents’ appeal has no merit because they presented no evidence of repairs, and no appeal lies from the \$1,000,000 judgment entered on default and on consent. Moreover, HPD and the tenants of the Premises would be prejudiced by a stay pending appeal because there are still 536 open violations at the building.” Attorney’s Affirm in Opposition Dated August 18, 2025 at ¶ 32 [NYSCEF Doc #123].

It is undisputed that Respondents have not filed the undertaking required by CPLR § 5519(a)(2), and, as noted above, the court rejects Respondents’ offer that “the building itself will serve as collateral against the judgments” as a viable substitute for the requisite undertaking.

To the extent Respondents are seeking a discretionary stay pending appeal under CPLR § 5519(c), they have not asserted any facts or legal authority demonstrating a likelihood of success on the merits of such appeal, *Herbert v New York* (126 AD2d 404, 407, 510 NYS2d 112, 114 [1st Dep’t 1987]); *Deutsche Bank Nat’l Tr Co v Royal Blue Realty Holdings, Inc* [2016 NY Slip Op 31509[U][Sup Ct NY Co 2016]]; *Zarate v A&E Tiebout Realty LLC* (79 Misc 3d 1207[A], 189 NYS3d 919 [Civ Ct Bx Co 2023]), or that the prejudice to Respondents outweighs the prejudice to Petitioner and the tenants living in the building whom Petitioner is mandated to protect, *Various Tenants of 446-448 W 167th St v NYC Dep’t of Hous Pres & Dev* (153 Misc2d 221, 222, 588 NYS2d 840, 841 [App Term 1st Dep’t 1992]). While Respondents assert through counsel that the court’s entry of judgments without conducting a factual hearing was error, given their failure to timely offer any opposition or proposed counter-judgment there was no basis for the court to conduct a factual hearing prior to approving the proposed judgments Petitioner offered based on its calculations.

Respondents’ CPLR R 5015 (a)(3) and (a)(1) Motion to Vacate Judgments

Respondents’ motion to vacate the judgments under CPLR Rule 5015(a)(3) based upon alleged fraud, misrepresentation and/or other misconduct of Petitioner and/or Petitioner’s counsel and/or CPLR Rule 5015(a)(1) based upon excusable default and a meritorious defense also is denied.

No basis has been stated under either CPLR R 5015(a)(3) or (a)(1) to vacate the \$1,000,000 stipulated judgment entered upon Respondents’ default in timely payment of the significantly lesser \$100,000 judgment the parties agreed to in their December 5, 2024 CO. To the extent Respondents claim that Petitioner somehow fraudulently interfered with their payment attempts, or that they have a reasonable excuse for their default and a meritorious defense, they failed to show they even attempted to comply timely with the unequivocal terms

of the December 5, 2024 agreement, were denied a request for an extension, or have an excuse for their non-compliance; even if the three checks Respondents provided copies of had been timely tendered to DHPD (which the faces of those checks show they were not), they do not add up to the \$200,000 total required to comply with the parallel settlement agreements resolving both this case and LT-315261-24/BX, also brought by Petitioner to address violations in another of Respondents' buildings, on the same terms and payment schedule.¹

Regarding the order and judgments for civil penalties and attorneys' fees, the 5015(a)(1) claim will be addressed first. This section of the CPLR permits a party to seek relief from a judgment or order entered on default upon a showing of a reasonable excuse for the default and a meritorious defense. *Gray v B R Trucking Co* (59 NY2d 649, 463 NYS2d 192, 449 NE2d 1270 [1983]). It is evident from the court's Decision/Order of May 27, 2025 that it was not entered on default. That Decision/Order included a provision for Petitioner to file a proposed judgment for civil penalties and attorneys' fees, which Petitioner did on June 2, 2025. That same day, even though Respondents had made no application for it, the court issued an order [NYSCEF Doc #96] – and both filed and emailed it to counsel - giving Respondents until June 20, 2025 to file any opposition they might have to Petitioner's calculations and/or a proposed Counter Civil Penalties Judgment. Respondents did not file any such opposition or proposed counter-judgment by June 20, 2025. Shortly thereafter, this court signed Petitioner's proposed judgments and turned them over to the Clerk's Office to be processed and entered along with the other judgments included in the May 27, 2025 Decision/Order.

Thereafter, on July 18, 2025, Respondents' counsel filed opposition to the proposed judgments. However, these untimely papers were not considered by the court. As noted in the court's July 7, 2025 response to Petitioner's counsel's June 26, 2025 email request for entry of its proposed judgments [NYSCEF Doc #133], the court had signed the judgments by that point and turned them over to the Clerk's Office for processing.

Respondents now assert law office failure as their excuse for failing to file timely opposition to the proposed judgments, claiming that the attorney with primary responsibility for this case frequently was out of the office due to medical issues and his assistant "only belatedly realized papers had to be filed" and then relayed this information to other counsel in the office. Even if the court finds this excuse reasonable and sufficient, as discussed in greater detail below, Respondents' claim that the amount of the civil penalties judgment is excessive because it incorporates penalties for violations that were corrected and certified by Respondent Sean Campbell, who also asserts that he never received notice from DHPD that the violations were not corrected, lacks merit. Accordingly, Respondents have failed to establish

¹ The index numbers for both cases are printed on the three checks Respondents provided copies of [NYSCEF Doc #100], and the settlement agreements in both cases contain identical stipulated judgments for \$100,000 each with the same payment schedule.

grounds for this court to grant its motion to vacate the court's judgments for civil penalties and attorneys' fees under CPLR R 5015(a)(1).

Turning to Respondents' allegations of fraud as a basis for vacating the judgment for civil penalties pursuant to CPLR R 5015(a)(3), Respondent Sean Campbell asserts that he filed certifications for correction of violations "far more than 70 days ago prior to the motion seeking judgments", he never received mailings from DHPD notifying him that the violations were not corrected, "The numbers submitted by DHPD were totally fraudulent", "the numbers could not possibly be as high as requested by DHPD", and DHPD "knowingly withheld proof that the violations were previously corrected as a matter of law". Sean Campbell Affirm dated August 18, 2025 [NYSCEF Doc #138]. Accompanying Mr. Campbell's Affirmation as Exhibits 1A, 1B, 1C, 1D and 1E [NYSCEF Doc ##139-143] are copies of his certifications, uploaded in five batches.

Respondents' attorney cites to Housing Maintenance Code § 27-2115(f)(3), under which violations "shall be deemed corrected seventy days from the receipt of such certification by the department unless the department ... has notified the person who executed the certification by registered or certified mail ... and the reasons therefore." Respondents' attorney argues that DHPD committed fraud as they "submitted absolutely nothing in support of the motion regarding certifications of corrections having been filed, or claimed invalidation thereof" and "knowingly withheld proof that the violations that are the subject of the within proceeding were previously corrected as a matter of law." Attorney's Affirm in Support of Motion to Vacate Judgments at ¶¶ 11 and 12 [NYSCEF Doc #137].

Respondents' attorney asserts that the omission of this material information constitutes "intrinsic fraud or false information" warranting vacatur of the judgments, citing, *inter alia*, *HSBC Bank USA, Nat'l Ass'n v Walker* (201 AD3d 795, 797, 162 NYS3d 82, 85 [2nd Dep't 2022]), a case in which the court stated, "a court may relieve a party from a judgment or order upon the ground of fraud, misrepresentation, or other misconduct of an adverse party." The court in that case, however, went on to deny the motion, noting that, "The defendant's contention that the allegations in the complaint are false amounts to an allegation of intrinsic fraud, which requires the defendant to establish a reasonable excuse for the default and a potentially meritorious defense to the action". As the defendant in that case had failed to present an excuse for his default, the court found it therefore "was unnecessary to consider whether he presented a potentially meritorious defense".

In opposition to Respondents' motion to vacate the judgments Petitioner counters that it did address Respondents' certifications in various places in its contempt motion papers, pointing to references to "four wide-ranging reinspections of violations regardless of certification status"; additional "reinspections that happened whenever Respondents certified that a violation was corrected"; 153 violations that were given a "false cert" status when a DHPD inspector found the condition still existed after Respondents certified that they were corrected; and, in summarizing the existence of 331 uncorrected violations under the prior orders, noting, "Combined, the 274 failures to certify, 47 not complied markings, and 10 false

cert markings account for all 331 of the still open violations covered by the OTC or CO.” Attorney’s Affirm in Support of Contempt Motion dated April 8, 2025 at ¶¶ 33, 34 and 36 and Exhibit 8). Rather than raising its certifications in opposition to that motion, Respondents merely stated in their affirmations, as noted in this court’s Decision/Order of May 27, 2025, that they “have been making progress with the correction of the repairs and need additional time to complete the repairs”.

Further, numerous of the items in Respondents’ non-chronological, haphazard collection of certifications accompanying Mr. Campbell’s Affirmation clearly are irrelevant to the civil penalties judgment at issue herein. As noted by Petitioner’s counsel, “**approximately 217 of Respondents’ 342 pages of exhibits (63%) include scores of alleged certifications for violations post-dating October 31, 2024, which the judgment stated were not included**, heat and hot water violations, which the judgment stated were not included, and most obviously of all, **violations that were not even alleged to exist in the Contempt Motion, because they were closed out and not included on the violation reports annexed thereto**, which the judgment again stated were not included.” Attorney’s Affirm in Opposition to Motion to Vacate Judgments dated August 28, 2025 at ¶ 7 [footnotes omitted].

Even a cursory review of a random selection of Mr. Campbell’s assortment of certifications reveals that many of them refer to violations not included in the judgment because they were placed after October 31, 2024, including the certifications provided on the first page of each of Respondents’ Exhibits 1A through 1E as well as many others. Examples of irrelevant heat and hot water violations included in Mr. Campbell’s certifications include pages 21 and 22 of Exhibit 1A for hot water and heat violations issued on November 24, 2024; page 16 of Exhibit 1B for a hot water violation issued on March 12, 2024; page 20 of Exhibit 1C for a hot water violation issued on April 2, 2025; page 7 of Exhibit 1D for a hot water violation issued on April 6, 2025; and page 1 of Exhibit 1E for a heat violation issued on January 21, 2025.

Needless to say, Mr. Campbell does not identify which certifications in Exhibits 1A through 1E were the basis for the civil penalties Respondents argue are excessive, provides no explanation for why he included numerous irrelevant certifications in support of his claim of fraud by DHPD, offers no methodology for the court to discern which if any of the violations he certified were the basis for an improper penalty, and provides no proof of any repairs. Respondents’ conclusory claim of fraud by DHPD is unsupported by the record in this proceeding and does not constitute a basis to vacate this court’s prior orders and judgments.

Respondents’ OSC for Stay/Petitioner’s Cross-Motion for Undertaking

Respondents’ OSC seeking a stay of execution on the judgments pending a determination on the outstanding motions is denied as moot, as all motions that were outstanding at the time the court signed this OSC on August 29, 2025 are being determined herein. Also denied as moot is Petitioner’s cross-motion for an undertaking: the court already granted this relief upon the signing of Petitioner’s OSC on August 29, 2025.

CONCLUSION

For the reasons set forth above, Petitioner's OSC is GRANTED to the extent that it is hereby ORDERED as follows:

- The TRO issued by this court upon the signing of Respondents' OSC on August 26, 2025 is VACATED; AND
- Respondents' OSC seeking a stay of execution on the judgments is DENIED; AND
- Respondents' motion and OSC for a stay pending appeal are DENIED; AND
- Respondents' motion to vacate the judgments is DENIED.

This constitutes the court's Decision and Order, which is being uploaded to NYSCEF.



Diane E. Lutwak, HCJ

Dated: Bronx, New York
September 12, 2025

APPROVED
DLUTWAK , 9/12/2025, 11:20:38 AM