

Huper v New York City Hous. Auth.
2026 NY Slip Op 30239(U)
January 21, 2026
Supreme Court, New York County
Docket Number: Index No. 154515/2020
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. HASA A. KINGO PART 65M

Justice

-----X

ANGELA HUPER,

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY, NEW YORK
CITY HOUSING DEVELOPMENT CORPORATION

Defendants.

-----X

INDEX NO. 154515/2020
MOTION DATE N/A
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 65, 66, 67, 68, 69, 70, 71, 72, 73, 75, 76, 77

were read on this motion for DISCOVERY.

Plaintiff Angela Huper ("plaintiff") moves, pursuant to CPLR § 3124, to compel defendant New York City Housing Authority ("NYCHA") to produce outstanding discovery by a date certain. Plaintiff further seeks sanctions for NYCHA's failure to comply, including striking NYCHA's answer and issue preclusion of any defenses. In support, plaintiff emphasizes that the requested materials – routine inspection and maintenance records, accident reports, work orders, codes, regulations and related documents – are "ordinary" and necessary in this case. For example, the motion notes plaintiff's combined demands include "inspection records, accident reports, complaints, requests for work, rules/regulations/guidelines, [and] photographs." Plaintiff asserts that discovery of such records is required because NYCHA had a statutory duty to maintain operable smoke detectors, and any knowledge of defective detectors is critical to issues of notice and causation. Plaintiff also notes that NYCHA has refused to produce relevant official materials, such as the NYCHA Standard Procedure Manual in effect at the time of the fire, despite that manual's relevance and plaintiff's repeated requests. Plaintiff contends that NYCHA's refusal is "willful and contumacious," warranting preclusion or striking of the answer if NYCHA does not comply.

NYCHA opposes the motion. It argues that plaintiff's 133-item discovery demand is grossly overbroad and unduly burdensome. NYCHA acknowledges producing records "related to the Premises" of the fire, but claims plaintiff's demands seek global, system-wide data beyond what is material to this accident. For example, NYCHA points out that plaintiff is asking for "affirmative audits of the condition of the safety items in NYCHA apartments including the subject apartment building" and inspection/repair records for every smoke, fire or CO detector in the building. NYCHA contends these and other categories (cited below) fall outside the narrow scope of this case. It asserts that plaintiff's reference to the 2016 DOI safety report is a "red herring" because that report is not specific to plaintiff's apartment or building. NYCHA explicitly denies

taking the position that FOIL excuses compliance, calling such assertions by plaintiff “fals[e].” Instead, NYCHA maintains it has produced all material it deems responsive to the accident. NYCHA likewise opposes any deposition of rank-and-file maintenance workers on the ground that it may designate a knowledgeable corporate designee (*see Colicchio v. City of New York*, 181 AD2d 528, 529 [1st Dept 1992]).

BACKGROUND AND PROCEDURAL HISTORY

This action arises from a fire on June 28, 2019, in Unit 3C of 344 East 28th Street (NYCHA development), in which plaintiff was asleep when the blaze ignited. Plaintiff alleges the fire occurred because NYCHA failed to install or maintain a working smoke detector in her apartment, in breach of its duty to provide operable smoke alarms. The fire caused plaintiff severe burns and permanent injuries. Plaintiff served a Notice of Claim on NYCHA on January 27, 2020, demanding preservation and production of records related to the incident. The complaint was later filed (Index No. 154515/2020) against NYCHA and NYCHA’s corporate parent (NYCHDC); the NYCHDC was subsequently dropped by stipulation (NYSCEF No. 49, filed June 30, 2021).

On August 12, 2021, plaintiff served combined CPLR Article 31 discovery demands (including document demands and demands for inspection) covering a wide range of materials. These demands were divided into sections, with many requests pertaining to: (D) “Incident Reports, Documents Referable to Incident, and Documents Referable to Prior Incidents Involving Defendant and Defendant’s Premises”; (J) “Defendant NYCHA and Defendant’s Premises”; and (K) “Municipal Records” (related to NYCHA’s municipal obligations). They included requests for all rules, regulations, policies and procedures regarding maintenance and safety of the accident site and building (Demand 10); all citations, violations, notices or complaints issued to NYCHA concerning the subject premises (Demand 14); all accident or fire reports and related records from similar incidents up to five years before and six months after the fire; all records for smoke, fire or CO detectors in the building (Demand 20); all maintenance logs for detectors and electrical systems (Demand 32); and all prior claims or lawsuits involving similar hazards at the premises or other NYCHA properties (Demands 18, 19, 33). Plaintiff also demanded NYCHA’s “Standard Procedure Manual” (the system-wide policy manual) and the City’s DOI report (2016, “Smoke Alarm and Other Safety Deficiencies in NYCHA Public Housing”).

Plaintiff’s counsel followed up with letters and conferences. As of August 2025, NYCHA had produced only a portion of the requested material (principally building-specific documents). In a deficiency letter dated February 19, 2025 (Ex. A to Affirmation), plaintiff narrowed certain demands by requesting, for example, a table of contents of the Standard Procedure Manual so plaintiff could select relevant sections. However, NYCHA did not supplement its responses. On August 8, 2025, plaintiff filed the instant Motion to Compel (NYSCEF Doc No. 67), seeking an order (i) compelling production of the outstanding categories of documents by date certain and (ii) striking NYCHA’s answer and precluding its defenses if NYCHA fails to comply. NYCHA opposed on August 22, 2025 (NYSCEF Doc No. 73), and plaintiff filed a reply on September 18, 2025 (NYSCEF Doc No. 76).

ARGUMENTS

Plaintiff argues all requested discovery is “material and necessary” to prove NYCHA’s notice of the hazardous condition (non-working smoke detector) and to establish causation. She contends that NYCHA owed a non-delegable duty to equip each apartment with working smoke detectors, and thus “the plaintiff is entitled to know not only how NYCHA learned of missing and non-working detectors, but the means of how it came into that knowledge”. In her view, the DOI report and NYCHA policy manual go directly to notice and systemic failure: the DOI report documented NYCHA-wide neglect of smoke-alarm rules, and the policy manual dictates how and when detectors must be tested. All such records “go to the issue of why there wasn’t a properly working smoke detector in the NYCHA-owned... apartment” and reveal “knowledge of the defendant of missing or non-working smoke detectors in this or other apartments”. Plaintiff emphasizes that the items sought are routine: for instance, “inspection records, accident reports, complaints, requests for work, rules/regulations/guidelines” – nothing extraordinary – and that NYCHA’s continued refusal to supply them is unjustified. Plaintiff also rebuts NYCHA’s FOIL argument: she notes that the CPLR permits discovery of records “required to be created and kept pursuant to statute” regardless of FOIL, and that, as the First Department recently held, “FOIL does not replace the concomitant right to disclosure under the CPLR”. In sum, plaintiff argues the breadth of her demands is warranted given the public interest in building safety, and she warns that NYCHA’s “willful, ongoing, and contumacious” noncompliance should lead to sanctions, including striking the answer.

NYCHA contends many of plaintiff’s demands exceed the scope of relevant discovery. NYCHA notes that only records “related to the Premises” have actually been produced so far, and it argues that plaintiff improperly seeks system-wide or complex-wide data. For example, NYCHA points out that plaintiff is requesting “affirmative audits of the condition of the safety items in NYCHA apartments including the subject apartment building” and broad lists of maintenance activities on all detectors in the building. NYCHA argues these categories sweep in hundreds of irrelevant units and records, imposing an “extreme burden” on the agency. Counsel emphasizes that plaintiff’s 133-item demand (including subparts) is “grossly overbroad in scope and number”.

NYCHA also disputes plaintiff’s FOIL accusations. It maintains it has never taken the position that FOIL excuses discovery obligations, and thus plaintiff’s FOIL arguments are “fals[e]” and “distracting”. Instead, NYCHA asserts it has produced all material it believes responsive (e.g. records of the apartment, work orders for Unit 3C, etc.) and that the rest of plaintiff’s requests pertain to off-site events. NYCHA argues that plaintiff’s reliance on the 2016 DOI report is misplaced, since that report did not involve Unit 3C or plaintiff’s building; NYCHA notes (with citations to its production and plaintiff’s testimony) that smoke-detector inspections were in fact performed at 3C before the fire. Thus, NYCHA urges denial of the motion: it claims plaintiff has not “defend[ed]” her demands one-by-one in her papers (contrary to CPLR 3124 requirements) and it faulted plaintiff’s moving papers for including arguments (e.g. about what has been produced) that should not appear in a reply.

NYCHA also contends that at least some of plaintiff’s discovery could be obtained through deposition of NYCHA’s corporate designee, rather than requiring travel-related or voluminous document searches. Finally, NYCHA implicitly asserts that production would be unduly

burdensome: the affirmation calls the demand “unlimited” and warns that locating and reviewing all of NYCHA’s records for unrelated apartments “imposes an undue burden”. However, NYCHA has not identified any specific privilege or legal protection that would justify withholding documents (indeed, it has not served any privilege log).

DISCUSSION

Under CPLR § 3101(a), a party is entitled to “full disclosure of all matter material and necessary in the prosecution or defense of an action.” The Court of Appeals has repeatedly emphasized that the phrase “material and necessary” must be interpreted broadly: it allows discovery of “any facts bearing on the controversy” to assist trial preparation (*Allen v. Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). The test is not overly restrictive – it is one of “usefulness and reason” in narrowing the issues for trial (*id.*). Indeed, New York law favors open and far-reaching discovery (*DiMichel v. South Buffalo Ry. Co.*, 80 NY2d 184, 197, [1992]). The Court does not demand that every requested item be ultimately admissible at trial, but only that it reasonably could lead to admissible evidence. As the Appellate Division, First Department, explained in *Matter of Steam Pipe Explosion at 41st St. & Lexington Ave.*, even records of other incidents are discoverable so long as they bear on notice, causation or other issues here: “the words ‘material and necessary’... are to be interpreted liberally to require disclosure... of any facts bearing on the controversy” (127 AD3d 554, 555 [1st Dept 2015]). Likewise, the Court of Appeals in *Forman v. Henkin* held that disclosure of information that “sharpen[s] the issues and reduc[es] delay” serves the liberally construed CPLR § 3101(a) (30 NY3d 656, 661 [2018]). In short, plaintiff’s requests must be considered under the liberal discovery standard, not under a standard of ultimate admissibility

At the same time, CPLR § 3101 is not unlimited. The court must balance discovery against any specific burden on the responding party. In accordance with CPLR § 3103(a), the court must perform a delicate balancing of competing interests, weighing the genuine necessity of the requested discovery against the specific hardships or special burdens it may impose upon the opposing party. Discovery orders will be upheld unless the court abused its discretion in striking that balance (*see Kavanaugh v. Ogden Allied Maintenance Corp.*, 92 NY2d 952 [1998]; *see also Noy v. Noy*, 160 AD3d 887 [2d Dept 2018]).

Here, NYCHA argues the burden of compliance is too great given the breadth of the demands. However, NYCHA has not made a particularized showing of undue hardship. NYCHA does not assert any privilege or statutory protection for the requested records, and it has not explained why production of the materials listed by plaintiff would be disproportionately onerous. In fact, plaintiff has offered to limit the requests (for example, by asking NYCHA to provide the Table of Contents of its manual and then selecting relevant sections). The mere fact that the requests cover multiple apartments and years – without more – does not alone render them unduly burdensome under CPLR § 3101. NYCHA’s general objections to scope and number (133 demands) and its claim of an “undue burden” to locate all possible records are not supported by evidence. Absent a concrete showing (e.g. by affidavit of a recordkeeper) that the search would destroy documents or be impossibly expensive, those arguments fail. To the contrary, NYCHA is a public agency obligated by law to keep many of these records, and plaintiff’s requests largely seek documents that should exist in the normal course of NYCHA’s business. As such, the court

concludes NYCHA has not met its burden of showing an extraordinary burden warranting denial or narrowing of these demands.

Turning to the specific categories, many of plaintiff's demands appear reasonably calculated to lead to admissible evidence of notice, systemic failure, and causation, as she argues. For example, records concerning smoke detectors (inspection logs, maintenance records, work orders for repairs or battery changes, and related correspondence) are directly relevant to whether NYCHA knew of non-working alarms in Unit 3C and how it responded. Similarly, records of complaints, notices of violations, or lawsuits about smoke detectors or fire safety in the building (or other NYCHA buildings) can bear on NYCHA's actual or constructive notice of a hazard. As the Appellate Division, First Department, noted in *Mendelowitz v. Xerox Corp.*, 169 AD2d 300, 301 (1st Dept 1991), evidence of similar prior incidents is discoverable because "the weight to be given evidence of other [incidents] on the issues of notice and causation... are not of concern in the context of disclosure." In *Matter of Steam Pipe Explosion at 41st St. & Lexington Ave.*, 127 AD3d 554 (1st Dept 2015), the Appellate Division, First Department, affirmed the discovery of records of a prior explosion at a different site, finding that discovery under CPLR § 3101(a) is broad even if admissibility might later be challenged. Here, plaintiff has plausibly shown that system-wide policies and prior incidents are at least relevant to prove that NYCHA had notice of unsafe smoke-alarm conditions and failed to address them.

NYCHA's arguments that the DOI report or global audits are too remote are unpersuasive. If, as plaintiff contends, NYCHA had a pattern of failing to test or replace smoke alarms system-wide (as found by DOI), then those records are "material and necessary" to her *Monell* claims. Courts have recognized that knowledge of a hazard in one part of a housing complex can serve as constructive notice of the same hazard elsewhere. For example, in *Z.D. v. MP Mgt., LLC*, 150 AD3d 550, 552 (1st Dept 2017), the Appellate Division, First Department, held that knowledge of a dangerous condition in one part of a property may put all residents on notice. Thus, NYCHA's systemic procedures, fire safety policies, and investigative reports could reasonably lead to evidence about NYCHA's notice of missing detectors in plaintiff's building. Likewise, NYCHA's standard procedures manual – which NYCHA admittedly has not produced – is plainly relevant because it dictates how NYCHA maintenance staff should inspect or replace alarms. That manual is not privileged; NYCHA has no basis to withhold it.

Importantly, the availability of FOIL is irrelevant to this dispute. NYCHA cannot transform plaintiff's CPLR demands into FOIL requests and thereby limit disclosure. As the Appellate Division, First Department, reiterated in *Badia v. City of New York*, a litigant's FOIL rights do not replace his or her right to discovery under CPLR § 3101 (214 AD3d 551, 553 [1st Dept 2023]). "When a public agency is one of the litigants," it must afford "two routes into its records" – FOIL requests and court-ordered disclosure (*id.*). NYCHA's opposition itself concedes it has never argued FOIL as an excuse, and the court will not permit plaintiff's discovery to be shifted to FOIL alone. NYCHA, as a party, is obligated to produce responsive, non-privileged records under CPLR rules, regardless of FOIL.

The court must also consider CPLR § 3124, which allows a party to move for an order compelling disclosure if a party "fails to respond or comply with any request" under Article 31. Plaintiff's submissions (NYSCEF 67 and Reply) detail her multiple demands and NYCHA's non-

response. The uncontroverted fact is that NYCHA has not provided large swaths of the requested material by affidavit or privilege log. NYCHA has not suggested any provision of Article 31 barring disclosure here. In fact, plaintiff notes that NYCHA has not even disputed that it possesses much of the demanded material. Where a party has failed to justify non-compliance, a 3124 motion should be granted (*see Cynthia B. v. New Rochelle Hosp. Med. Ctr.*, 60 NY2d 452, 461 [1983] [holding that, absent any showing of detriment or privilege, full disclosure of relevant records was properly ordered]). Here, plaintiff has demonstrated that the discovery she seeks – building maintenance and safety records – is material to her claims. NYCHA has not shown any legal basis to withhold them, nor has it shown any undue prejudice. Accordingly, the court finds that NYCHA must comply with the outstanding demands.

As to plaintiff's request for sanctions, CPLR § 3126 grants the court discretion to impose penalties, including striking pleadings, if a party "refuses to obey an order" or "fail[s] to comply with a lawful disclosure request." Plaintiff argues that NYCHA's conduct has been willful and in bad faith, and that an immediate strike is warranted. Given NYCHA's status as a public agency and the fundamental nature of the information sought, the court agrees that a strong remedy is justified if NYCHA continues to defy discovery obligations. However, rather than strike now, the court will give NYCHA one more chance to comply with this order. Plaintiff's remedy of striking the answer may be revisited if NYCHA fails to act promptly.

For the foregoing reasons, plaintiff's motion is granted in part. Accordingly, it is hereby

ORDERED that defendant NYCHA is directed to produce all non-privileged documents responsive to plaintiff's Combined Demands, specifically Sections D, J, and K, within forty-five (45) days from the date of this order (and no later than Friday March 6, 2026), which production shall include, but not be limited to, the following categories of records identified in plaintiff's moving papers and the accompanying decision: (i) NYCHA's Standard Procedure Manual, inclusive of all sections concerning smoke detectors, carbon monoxide detectors, fire detection, safety inspections, and related maintenance protocols; (ii) all NYCHA communications and internal or external reports concerning the installation, maintenance, inspection, testing, repair or replacement of smoke, fire, and carbon monoxide detectors in Apartment 3C and throughout the subject building; (iii) all notices of violation, complaints, or correspondence referencing non-functioning or missing detectors at the subject building; (iv) all prior incident or accident reports concerning smoke detector- or fire-related events within the subject building or NYCHA complex for the relevant period; and (v) any NYCHA-generated or City of New York investigative or audit reports concerning detector-related safety issues, including but not limited to the October 2016 Department of Investigation report, to the extent such documents reflect NYCHA's actual or constructive notice of hazards and are not otherwise protected by a valid claim of privilege; and it is further

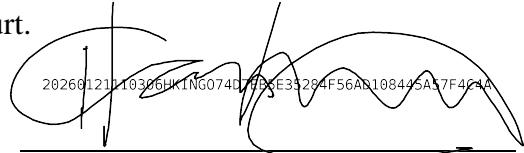
ORDERED that NYCHA shall serve upon plaintiff a written certification of compliance, duly executed by a person with knowledge, on or before the aforementioned compliance deadline; and it is further

ORDERED that, in the event NYCHA fails to fully comply with this order by the specified deadline, plaintiff may renew her application for sanctions, including but not limited to an order

pursuant to CPLR § 3126 striking NYCHA’s Answer, precluding the assertion of certain defenses, or such other relief as may be warranted; and it is further

ORDERED that a compliance conference shall be held in Part 65, Supreme Court, New York County, located at 80 Centre Street, Room 308, New York, New York 10013, on Tuesday March 31, 2026 at 2:15 PM.

This constitutes the decision and order of the court.



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HASA A. KINGO, J.S.C.

1/21/2026

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE