

**Department of Hous. Preserv. & Dev. of the City of
N.Y. v 2647 Broadway Apts LLC**

2026 NY Slip Op 32077(U)

May 29, 2026

Civil Court of the City of New York, Bronx County

Docket Number: Index No. L&T 304358-25/NY

Judge: Alberto Gonzalez

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

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DEPARTMENT OF HOUSING PRESEVATION
AND DEVELOPMENT OF THE CITY OF NEW YORK,

PETITIONER

L&T: 304358-25/NY

-against-

DECISION/ORDER

2647 BROADWAY APTS LLC,
BZS2 CAPITAL LLC d/b/a AULDER CAPITAL LLC,
JONAH BAMBERGER,
ZPM MANAGEMENT LLC,
ALUDER PROPERTY MANAGEMENT LLC,
ANABEL MORALES,

RESPONDENT

-----X

Recitation of the papers considered in review of Movant's Motion, as required by CPLR 2219(A). NYSCEF Seq # 29-43, 49-55, 57, 58.

PROCEDURAL HISTORY

The instant proceeding was initiated on February 27, 2025 ordering the correction of all open violations, entering a judgment for civil penalties against the Respondents, finding that Respondents has committed harassment, finding that a Class C hazardous violation exists in each dwelling unit. *See NYSCEF # 1-7.*

The petition was first made returnable on April 4, 2025.

On April 4, 2025, the parties, now both represented by counsel, stipulated to adjourn the instant proceeding to May 6, 2026 at 9:30am for Respondents to file an answer. *See NYSCEF # 10.* The answer was to be filed by April 29, 2025. *See NYSCEF # 10.*

On May 6, 2025, Respondents had not filed an answer and the court entered an order to correct for Respondents to correct one-hundred-fifty-seven (157) violations. *See NYSCEF # 12.*

The proceeding was then adjourned for the remainder of Petitioner's claims to June 9, 2025.

On June 9, 2025, Respondents again did not file an answer and the matter was adjourned to June 25, 2025 for Respondents to file an answer by June 19, 2025.

On June 25, 2025, Respondents filed an answer asserting three (3) defenses: 1) The conditions alleged in the violation report have been corrected. The violations only remain on record because the time to self-certify has lapsed and HPD will not allow for a dismissal request, 2) The respondent has not harassed tenants. While the existence of violations of is proof of the allegation, it can be rebutted by evidence, 3) The Petitioner names several persons and/or or entities with no legal connection to the ownership. Those include BZS2 Capital LLC d/b/a Aulder Capital, ZPM Management LLC and Aulder Property Management LLC. *See NYSCEF # 15.*

Despite the filing of the answer past the court's deadline, the court accepted the answer, and adjourned the proceeding for trial. *See NYSCEF # 16.* The court's order states:

"The instant proceeding is adjourned to August 4, 2025 at 2:30pm; August 14, 2025 at 2:30pm; and August 15 at 9:30am in Part B, Room 583 for trial on Petitioner's civil penalties and harassment claims. The parties have been emailed exhibit and witness list forms and are directed to complete the forms, and file them on NYSCEF, by July 23, 2025. Further, the parties are to exchange the proposed exhibits by July 18, 2025, and make a good faith attempt to agree upon exhibits that will be offered into evidence without objection. At the trial all exhibits shall be pre-marked with at least three (3) hard copies; for the witness, opposing counsel and the court." *See NYSCEF # 16.*

On July 23, 2025, DHPD filed a proposed witness and exhibit list. *See NYSCEF # 17.*

Thereafter, Petitioner filed a letter with the court, dated July 24, 2025, stating that the Respondents never complied with the court's June 25, 2025 order, uploaded or sent copies of Respondent's proposed exhibit list or witness list. As such, Petitioner requested the entry of a default judgment against Respondents.

On the August 4, 2025 the court issued the following decision:

"In the instant matter, Respondent has failed to comply with multiple court orders and directives. Respondents further fails to properly interpose a defense to harassment or civil penalties, instead simply alleging that the violations have been corrected, they have not harassed the tenants, and named are several persons with no legal connection to ownership. A review of the DHPD website however reflects one-hundred-forty-eight (148) violations for the subject premises, all of which are included in the Order To Correct. The information on the DHPD website is prima facie evidence of the violations continued existence. *See* MDL 328; DHPD v Living Waters Realty, Inc., 14 Misc 3d 484, 487 (Civ Ct., NY Cty 2006); DHPD v De Bona, 101 A.D.2d 875, 875 [2nd Dep't 1984]; see also NYC Admin Code § 27-2115 [f][7]); *Hercules v. Bethel Cap., LLC*, 70 Misc. 3d 1221(A), (Civ. Ct., Bronx Cty 2021). The DHPD website reflects 2647 Broadway Apts LLC, Jonah Bamberger, and Anabel Morales as Property Owners of the subject premises, who are named Respondents in this proceeding. Respondent fails to rebut the information reflected on the DHPD website, which persuades the court that the violations have not been corrected. Moreover, Respondent neither in their answer or at the hearing rebuts that Respondent has not harassed Petitioner or provides specifics sufficient to prevent the entry of judgment against the Respondents. As such, the court will enter a judgment, pursuant to CPLR 409 (b) and Civil Court 110 (c), for \$2,124, 845.00 as against 2647 Broadway Apts LLC, Jonah Bamberger and Anabel Morales."

Respondents now files a motion to vacate the August 4, 2025 Decision and Order, Pursuant to CPLR 2221 and CPLR 5015 (a)(3), and pursuant to Civil Court Act 110 (a)(4), (a) (7) compelling Petitioner to immediately reschedule and conduct an inspection of the subject building.

RESPONDENTS' MOTION

Respondents now writes: "[u]nder both the federal and state constitutions, the State may not deprive a person of property without due process of law. The requirements of due process are satisfied where notice is reasonable calculated, under all the circumstances, to apprise interested

parties of the pendency of the action *and afford them an opportunity to present their objections.*”

“Here, there is no dispute that Respondents filed an Answer explicitly claiming the DHPD violation report was inaccurate and that it intended to produce evidence reflecting the same. There is also no dispute that while Petitioner uploaded a “witness list” stating it would call no witnesses- that Respondent failed to timely comply with the June 2025 Order which did not put Respondents on notice that failure to comply would result in the striking of their Answer, the revocation of their rights to cross-examine or otherwise rebut Petitioner’s witnesses and/or documentary submissions. Finally, there is no dispute that this Court granted Petitioner’s Letter Application to strike Respondents answer and entered accelerated judgment pursuant to CPLR 409 (b) based entirely and exclusively on Petitioner’s proofs and submissions which were not subject to any cross examination.” *See* NYSCEF #30 ¶ 23, 27.

Respondents further writes, “[i]n sum, the Letter Application stated that as Petitioner has uploaded its own Witness List & Exhibits (recall the submission literally said they intended to call no witnesses and otherwise rely on the documents in the Court file) that no trial should be held, and a default judgment should be awarded to Petitioner pursuant to CPLR 409 (b) -- there is no basis in law for such an application-especially where Respondents answer explicitly states it intends to submit evidence to rebut the DHPD violation report.” *See* NYSCEF #30 ¶ 43.

“Even if, arguendo, a CPLR 3126 motion was filed (in place of the unauthorized “Letter Application”) and Respondents’ answer was stricken for the failure by a day to upload a witness and exhibit list – the Respondents still as a matter of due process have had the right to proceed to trial, cross examine Petitioner’s evidence, point out the duplicative violations or present rebuttal evidence to Petitioner’s proceeding.” *See* NYSCEF #30 ¶ 43.

“Here, vacatur of the August 2025 Decision and Order is warranted under CPLR 5015 (a)(3) because Petitioner's default judgment application was based on misrepresentations made to the Court as to the facially duplicative nature of the “marble tile” violations and the facially invalid amount sought for nine (9) years of civil penalties dating back to 2016 for painting of the ceiling in apartment 3N. Without even looking at any of the evidence attached to this motion, the documentary evidence submitted to the Court in support of its default judgment application fails on its fact. Whether intentional or unintentional, Petitioner sought to the same civil penalty for the same period of time – three times. Whether intentional or unintentional, the proposed judgment sought Civil Penalties dating back nine (9) years in violation of New York Law. Whether intentional or unintentional, the Court did not realize the above and entered judgment without trial.” *See* NYSCEF #30 ¶ 56.

Respondents also requests an inspection of the subject property to correct conditions and cure violations of record where proof have been demonstrated the violations have been addressed and completed. *See* NYSCEF #30 ¶ 50.

Petitioner then files a Notice of Cross Motion to resettle amend or modify the portion of the August 4, 2025 Decision/Order to “correct an error therein where two duplicative violations were mistakenly included in the calculations for the amount of civil penalties to be awarded.”

PETITIONER’S MOTION

“Though petitioner’s counsel endeavors to review its proposed judgments for potential duplicative violations, to avoid errors such as the one made here, the undersigned affiant failed to catch this error prior to filing its proposed judgment. As a result of the undersigned affiants’ mistake, the Court’s summary order contains a calculation error where the references to the amount of civil penalties being awarded reflected the incorrect amount of \$2,124, 845.00, when

it should reflect the amount of \$2,014, 115.00 after having excluded two of the duplicative violations 15951948 (the later C violation) and 15645021 (the B violation) and the corresponding civil penalties for the same. Further, the money judgment should reflect calculations for 15 violations, not including 15951948 or 15645021, for a total judgment of \$2,014,115.00.” See NYSCEF #50 ¶ 14-16.

Petitioner further writes, “[i]n HP proceedings, which are governed by article 4 of the CPLR, the court is *required* to make summary determinations upon the pleadings, papers, and admissions where no triable issues of fact exist, for which the court has authority to issue any order permitted on a motion for summary judgment (CPLR 409 [b]). In other words, “[t]here is no need, for example, for a motion for summary judgment, since, under new CPLR rule 409 (b), *the court must make a summary determination upon the pleadings and papers where it is possible to do so*. This is the equivalent of a motion for summary judgment in an action.” See NYSCEF #51 ¶ 77. “As discussed below, the Court did not violate respondents’ due process rights because respondents (1) received more than adequate notice of this proceeding and (2) received numerous opportunities to be heard and intentionally chose not to comply with a court order to gain a strategic advantage over petitioner at trial.” See NYSCEF #51 ¶ 79.

Petitioner further writes, “[a]s state above, the Court made a summary determination pursuant to CPLR 409 (b) and CCA 110 (c), so contrary to respondents’ claims, no advanced notice or motion was required. In the alternative, if the Court had issued the summary order and money judgment on default, then petitioner provided more notice than is required to seek a default judgment where the moving party must only provide “at least 5 days’ notice of the time and place of the application,” and even if the petitioner has not filed its letter to the Court, the Court still could have “dispense[d] with the requirement of notice when a defendant who has

appeared has failed to proceed to trial of an action reach and called for trial” (CPLR 3215 [g][1]).

Conversely, respondents have not met their burden to vacate a default judgment because, even setting aside their factual arguments, they failed to offer a reasonable excuse for not complying with the pre-trial order, not can they because already admitted on the record that they did not comply to gain a strategic advantage at trial.” *See* NYSCEF #51 ¶ 102.

Petitioner further writes that Respondents claim regarding CPLR 3126 lack merit, as “CPLR 3126 is in article 31 of the CPLR, which concerns discovery in plenary actions. It does not purport to prescribe remedies for failing to comply with a court’s pre-trial order, which necessarily means the case has advanced beyond pre-trial discovery, is set to proceed to trial, and involves substantially higher stakes, times, and resources by the Court and the parties’ attorneys.” “Additionally, CPLR 3216 has limited relevance in special proceedings, where the court must grant leave for discovery (CPLR 408), and no such leave was granted, let alone sought, by either party here.” “Therefore, the Court did not violate respondents’ due process rights because respondents received adequate notice of every aspect of this proceeding, including the August 4, 2025 trial date and petitioner’s to seek summary relief on that date.” *See* NYSCEF #51 ¶ 105, 109.

“Respondent were likewise not deprived of due process because they were provided with numerous opportunities to be heard where the Court granted them four extensions of time to file a late answer even though respondents did not comply with two court-ordered deadlines, scheduled the matter for trial on petitioner’s remaining claims, and on the August 4, 2025 trial date, the Court gave respondents multiple opportunities to explain why they did not comply with the Court’s pre-trial order, why they were not prepared to proceed to trial, to try to settle the matter and to otherwise oppose petitioner’s application for a default judgment. However, despite

receiving a plethora of opportunities to be heard, respondents repeatedly failed to avail themselves of those opportunities.” *See* NYSCEF #51 ¶ 110.

“Therefore, the Court should deny respondents’ motion because they failed to meet their burden of showing that their due process rights were violated when, in actuality, respondents were afforded adequate notice and numerous opportunities to be heard. That respondents failed to exercise diligence with the opportunities provided to them by the Court, falls on them, not the Court or Petitioner.” *See* NYSCEF #51 ¶ 134.

Petitioner then claims that violations on the VSR are presumed to continue to exist until an owner certified them, that Respondents never filed a notice of appeal of the court’s order to correct, or any motion seeking relief concerning the order to correct, and that records predating the order to correct are irrelevant because the order to correct and finding therein constitute the law of the case. *See* NYSCEF #51 ¶ 140-144. In addition, Petitioner contends that “respondent were not entitled to any further trial or opportunity to present evidence because their right to a trial on civil penalties is not unlimited and upon defaulting, they conceded liability for civil penalties, thereby waiving their ability to present evidence in mitigation, such that the Court is not required to consider any such evidence.” *See* NYSCEF #51 ¶ 161.

Petitioner writes that Respondents does not identify their motion as one to reargue or renew, and that the court did not enter the order based on Petitioner’s letter application but on its own powers to make summary determinations in respondent to Petitioner’s oral application. Petitioner also writes that the Respondent fails to establish fraud pursuant to CPLR 5015 (a)(3), as Respondents cannot show that HPD did not “induce them” not to show up or concealed any fact. *See* NYSCEF #51 ¶ 182. Further, Petitioner writes that no state or local law gives respondents a cause of action to seek injunctive relief against HPD in Housing Court.

In reply, Respondents write that “[t]he granting of the “letter application” without necessitating an inquest, or a CPLR 3126 motion, is the precise reason why the August 2025 Judgment: (i) granted judgment for the same exact fine three (3) times; and (ii) granted nine (9) years of violations totaling \$410,000.00 + to the Petitioner. Granting a monetary judgment in the HP Part is not the same as a Court ordering correction of Civil Penalties under CPLR 409 (b) where the Court can take judicial notice of active violations and order them corrected. Here, the petition did not seek a “sum certain” and sought sums that were duplicative, in violation of the applicable statutes of limitations, and should have been provided to be due and owing by the Petitioner before judgment granted.” *See* NYSCEF #57 ¶ 26.

Petitioner then opposes Respondents motion, writing it is in an improper “sur-reply” to their motion to vacate because “instead of addressing [the] narrow legal issue on which petitioner seeks relief, respondents spend the majority of their “opposition” belatedly making arguments in further support of their motion to vacate and directly responding to petitioner arguments in opposition to the same.” *See* NYSCEF #57 ¶ 22. Petitioner further writes that granting their motion would not substantively affect the rights of respondents, but would benefit them by lowering the judgment amount by \$110,730.00.” *See* NYSCEF #57 ¶ 37.

DISCUSSION

When the judgment at issue was entered by this court, it was not upon Petitioner’s “letter” application, as Respondents allege, but by Civil Court Act 110 (c).

Civil Court Act 110 (c), states:

Regardless of the relief originally sought by a party the court may recommend or employ any remedy, program, procedure or sanction authorized by law for the enforcement of housing standards, if it believes they will be more effective to accomplish compliance or to protect and promote the public interest; provided in the event any such proposed remedy, program or procedure entails the expenditure of monies appropriated by the city, other than for the utilization and deployment of personnel and services incidental thereto,

the court shall give notice of such proposed remedy, program or procedure to the city department charged with the enforcement of local laws relating to housing maintenance and shall not employ such proposed remedy, program or procedure, as the case may be, if such department shall advise the court in writing within the time fixed by the court, which shall not be less than fifteen days after such notice has been given, of the reasons such order should not be issued, which advice shall become part of the record. The court may retain continuing jurisdiction of any action or proceeding relating to a building until all violations of law have been removed.

The authority and powers of the Housing Part of the Civil Court, pursuant to Civil Court Act 110 (c), have been deemed broad and extensive.

“[A]s this Court has previously observed, CCA 110 “grants the Civil Court broad powers in landlord-tenant proceedings” (*Missionary Sisters of Sacred Heart v. Meer*, 131 A.D.2d 393, 396, 517 N.Y.S.2d 504 [1987]). By authorizing the Housing Part to enforce local as well as state laws, “including, but not limited to, the multiple dwelling law and the housing maintenance code, building code and health code” (CCA 110[a] [emphasis added]), the Legislature was granting broad authority in regard to the enforcement of “housing standards.” ” *Prometheus Realty Corp. vs. City of New York*, 80 A.D.3d 206, 911 N.Y.S.2d 299 (App. Div. 1st. Dep’t. 2010).

“Indeed, it is well-settled that the Housing Part has the power and jurisdiction to enforce correction of conditions found by agencies other than DHPD. (see *Various Tenants of 515 East 12th Street v 515 East 12th Street, Inc.*, 128 Misc 2d at 236; see also *Robertson v Jones*, 66 Misc 3d 1219(A), *3, 120 NYS3d 724 [Civ Ct, New York County 2020]; *Schanzer v Vendome*, 7 Misc 3d 1018(A), *5-6, 801 NYS2d 242 [Civ Ct, New York County 2005] [“The Civil Court Act further gives this court the jurisdiction to issue ‘an injunction, restraining orders or other orders’ to enforce Building Code violations the court must exercise its authority so that it can fulfill its mission: to protect and preserve housing stock.”] [internal

citations omitted]).” *Morales vs. 1160 Cromwell Crown LLC*, 72 Misc.3d 1215 (A), 150 N.Y.S.3d 570 (Table) (Civ. Ct. Bronx. Cty. 2021).

“An HP proceeding transcends an individual landlord-tenant dispute, and is part of a broad statutory enforcement mechanism where both the Housing Part of the Civil Court (CCA 110[a]) and the New York City Department of Housing Preservation and Development (HPD) (*see* N.Y. City Charter § 1802[1]; CCA 110 [c]) are charged with the responsibility of enforcing the broad public interest in maintaining housing standards under the Multiple Dwelling Law and the Housing Maintenance Code (*see* Multiple Dwelling Law § 2; N.Y. City Housing Maintenance Code [Administrative Code of City of N.Y.] § 27–2115; *see also* CCA 110[a]).” *D’Agostino vs. Forty-Three East Equities Corp.*, 16 Misc.3d 59, 842 N.Y.S.2d 122 (App. Term. 1st. Dep’t. 2007).

Civil Court Act 110 (c) clearly allows the court extraordinary powers to ensure the maintenance of housing standards. By the authority and powers of Civil Court Act 110 (c), the court entered the Order To Correct in this proceeding – granting part of the relief sought in the petition, directing the Respondents to correct the pending violations in the subject premises.

The Order To Correct specifically directed the Respondents to correct one-hundred-fifty-seven (157) violations, including fifty-six (56) C violations: lack of heat, lack of hot water, inadequate supply of cooking gas, and the presence of lead paint, among others. The Order To Correct further provides the civil penalty ranges: \$50-\$150, \$75-\$500, \$150-\$1,200.

The Order To Correct was issued on May 6, 2025, and served with Notice of Entry on May 6, 2026. Neither Respondents, or their counsel, moved to reargue, appeal or challenge the Order To Correct, which is a finding that hazardous and immediately hazardous conditions exist in the apartment.

Respondents cannot, almost one year after the entering of the Order To Correct, now move to vacate the judgments entered under CPLR 5015, alleging fraud and misrepresentation. The judgment, upon which the court partly imposed the civil penalties, is the Order To Correct, which Respondents, despite being able to contest, chose not to.

Despite Respondents' claims of due process, or the lack thereof, it is noted that Respondents did have the opportunity put forth a defense to the Order To Correct, yet they did not. They chose not to, and by so doing subjected themselves to the Order To Correct and its terms. As such, any claims of lack of due process are unfounded. Any complaints from the judgments issued cannot be directed to the court. Respondents should instead seek redress from their attorneys – who themselves, recognizing the situation created, demanded to be sanctioned before the imposition of civil penalties. As such, the court's judgment, after summary determination, was correctly made to remedy the substandard housing in the subject premises, as is its mission under Civil Court Act 110 (c).

Respondents' motion further fails to properly label itself as one to reargue or renew. Further, the court did not strike Respondents' answer but instead made its decision relying on all the facts presented on the 1st day of trial.

Respondents' motion to vacate the judgment is thus denied, but granted solely to extent of directing DHPD to reinspect the premises.

Petitioner's cross motion is however granted.

CPLR 5019 states:

“(a) Validity and correction of judgment or order. A judgment or order shall not be stayed, impaired or affected by any mistake, defect or irregularity in the papers or procedures in the action not affecting a substantial right of a party. A trial or an appellate court may require the mistake, defect or irregularity to be cured.”

Parties may move the court for resettlement under the above-mentioned provision of the CPLR.

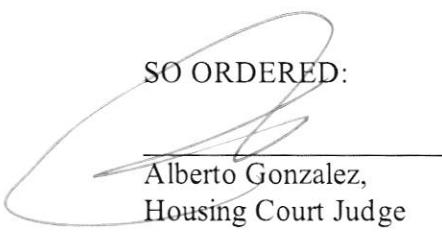
“Resettlement is generally intended to remedy clerical errors or clear mistakes in an order or judgment when there is no dispute about the substance of what that order or judgment should contain” (*Joseph v. Baksh*, 137 A.D.3d 1220, 1221, 28 N.Y.S.3d 697; *see Salvati v. Salvati*, 208 A.D.2d 516, 516, 627 N.Y.S.2d 928). “It may be used where the order improperly reflects the decision or fails to include necessary recitals, but [it] cannot be used to obtain a ruling not adjudicated on the original motion or to modify the decision which has been made” (*Joseph v. Baksh*, 137 A.D.3d at 1221, 28 N.Y.S.3d 697; *see CPLR 5019[a]; Simon v. Mehryari*, 16 A.D.3d 664, 666, 792 N.Y.S.2d 543).” *Renaud vs. Renaud*, 197 A.D.3d 515, 148 N.Y.S.3d 901 (Mem) (App. Div. 2nd. Dep’t. 2021).

Petitioner’s motion seeks to reduce the judgment entered against Respondent, based on duplicative violations entered. The prejudice to Respondent is minimal, as Respondents would pay a lower sum than what is currently due. The cross motion is thus granted in its entirety.

CONCLUSION

Respondents’ Motion (Motion Sequence # 2) is GRANTED to the extent of directing DHPD to schedule an inspection of the subject premises within 30 days of this order; Petitioner’s Cross Motion (Motion Sequence # 3) is GRANTED and the judgment sum is corrected from \$2,124,845.00 to \$2,014,115.00; within 30 days of this order the Clerk in New York County is to enter a new judgment reflecting the corrected sum of \$2,014,115.00. The proceeding is thus further adjourned to July 20, 2026 at 9:30am in Part B.

SO ORDERED:


Alberto Gonzalez,
Housing Court Judge

**ALBERTO GONZALEZ
JUDGE, HOUSING COURT**

Dated: May 29, 2026

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