



**THE CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD**

HEARING LOCATION:
Environmental Control Board
66 John Street
10th Floor
New York, NY 10038
(212) 361-1400



976178012A67C8960A

Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 000261210L (1 NOV)
Hearing Date: August 11, 2010

To: COHEN, HOCHMAN, & ALLEN
80 MAIDEN LANE
SUITE 507
NEW YORK, NY 10038

City of New York v. TOUCHSTONE HOMES
LLC

Total Civil Penalty: \$440.00

I Notice(s) of Violation (NOV(s)) was/were issued to the Respondent. On the record before me, and upon the Further Findings of Fact/Conclusions of Law stated below, I find as follows and, where applicable, order payment and compliance.

NOV: 000261210L
PLACE OF OCCURRENCE: 706-732 E 100TH ST BROOKLYN
DATE OF OCCURRENCE: 06/28/2010
ISSUING OFFICER/AGENCY: GREGORY SHIRLEY 000138 DEP-AIR AND NOISE PERMITTING

ECB CODE: BN14		
CHARGE: A.C. 24-220(A)		
DISPOSITION: DISMISSED	CIVIL PENALTY IMPOSED:	\$0.00
ECB CODE: BN17		
CHARGE: A.C. 24-220(C)		
DISPOSITION: IN VIOLATION	CIVIL PENALTY IMPOSED:	\$440.00

TOTAL CIVIL PENALTY FOR NOV 000261210L: \$440.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 000261210L A.C. 24-220(A), A.C. 24-220(C)

Inspector McCoy appeared for DEP. The issuing officer Foot testified credibly as to the details of the violation. The inspector's notes were admitted into evidence and a copy was given to respondent's representative. I credit the details of the violation and the issuing officer's notes and find that there were 5 workers at the site, an excavator and various hand and power tools were in use, and there was no noise mitigation plan.

Paul Volodarsky, Esq. appeared for respondent Touchstone Homes LLC, submitted an affidavit (exhibit a) and a noise mitigation plan (exhibit b) that was notarized on the date the violation issued, and acknowledged that the noise mitigation plan was not available for inspection.

I credit that portion of respondent's affidavit that states the plan had been adapted on 2008 prior to the issuance of the violation and that the plan was not notarized until after the violation issued. I find that since there is no requirement that the plan be notarized, that respondent did have a noise mitigation plan.

Based on the foregoing, I find that respondent did have a noise mitigation plan in effect on the day the violation issued. Therefore the charge of 24-220(a) is dismissed. I further find that respondent failed to have the noise mitigation plan available at the time of inspection. Therefore the charge of Ad Code 24-220(c) is sustained and the Board approved penalty is imposed.

Respondent is directed to comply with the Ad Code 24-220(c) forthwith.

TOTAL CIVIL PENALTY: \$440.00

Control 5

AUG 17 2010

08/12/2010

Thu Aug 2010 08/12/10 15:31:17

Marilyn D Piken, Administrative Law Judge

Date

**PAYMENT DUE WITHIN TEN (10) DAYS
READ BACK OF THIS ORDER – PROTECT YOUR RIGHTS**