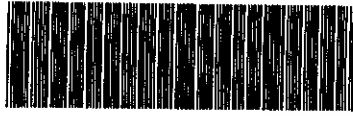




**THE CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD**

HEARING LOCATION:
Environmental Control Board
233 Schermerhorn Street
11th Floor
Brooklyn, NY 11201
(718) 875-7428



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Method of Appearance
Live Hearing

DECISION AND ORDER

Violation #: 034684533Y et al. (3 NOV's)
Hearing Date: December 13, 2010

To: Cohen Hochman & Allen
80 Maiden Lane, Ste 507
New York, NY 10038

City of New York v. GOLAM MOHAMMED

Total Civil Penalty: \$0.00

3 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: 034684533Y
PLACE OF OCCURRENCE: 5412 6 AVENUE BROOKLYN
DATE OF OCCURRENCE: 09/12/2008
ISSUING OFFICER/AGENCY: 2392 DOB
ECB CODE: B144
CHARGE: AC IRCNY9-01
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

NOV: 034684534X
PLACE OF OCCURRENCE: 5412 6 AVENUE BROOKLYN
DATE OF OCCURRENCE: 07/12/2008
ISSUING OFFICER/AGENCY: 2392 DOB
ECB CODE: B145
CHARGE: AC IRCNY9-03
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

NOV: 034684540M
PLACE OF OCCURRENCE: 5412 6 AVENUE BROOKLYN
DATE OF OCCURRENCE: 07/12/2008
ISSUING OFFICER/AGENCY: 2392 DOB
ECB CODE: B106
CHARGE: AC BC 3314.10.10.4
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034684533Y AC IRCNY9-01

The Department of Buildings (Petitioner) appeared by its representative, Joseph Casciano. Respondent (the party that was charged), Mohammed Golan, appeared by his attorney, Bradley Green.

The Notice of Violation issued for there being no licensed rigger on site.

The matter had been adjourned for the process server, and Mr. Casciano stated that the process server would not be appearing. It was noted that the Notice of Violation issued on 9/12/08, over 2 years ago.

Mr. Green moved to dismiss the violation based on the fact that, while the affidavit of service recited that service was given to a person of suitable age and discretion (Mohammed Maniruzzaman for whom a physical description was given), it did not state the relationship of the person or what proof of identification (such as driver's license) was used. Mr. Green cited to NYC v. Allana Galletta, Appeal No. 42243, 11/17/08 that Petitioner must present evidence as to how the Notice of Violation was actually served.

Mr. Golan stated that no one of the name or of the description recited in the affidavit of service had ever worked in his office (though the location where the Notice of Violation was served was his office address) and that he did not know anyone named Mohammed Maniruzzaman. Mr. Golan stated that only he and his son worked in the office. Mr. Golan did not remember if he had been present when the Notice of Violation was served.

Mr. Green stated that there was a general denial of the allegations in the Notice of Violation.

I find Mr. Golan's testimony to be credible. While there is no requirement that the relationship of the person served to the Respondent be described or that identification be cited, it is part of the determination as to whether the affidavit of service is credible. Under these circumstances, I do not find the affidavit of service to be credible.

The Notice of Violation is therefore dismissed.

NOV: 034684534X AC IRCNY9-03

The Department of Buildings (Petitioner) appeared by its representative, Joseph Casciano. Respondent (the party that was charged), Mohammed Golam, appeared by his attorney, Bradley Green.

The Notice of Violation issued for the man on the scaffold not having a Certificate of Fitness.

The matter had been adjourned for the process server, and Mr. Casciano stated that the process server would not be appearing. It was noted that the Notice of Violation issued on 9/12/08, over 2 years ago.

Mr. Green moved to dismiss the violation based on the fact that, while the affidavit of service recited that service was given to a person of suitable age and discretion (Mohammed Maniruzzaman for whom a physical description was given), it did not state the relationship of the person or what proof of identification (such as driver's license) was used. Mr. Green cited to NYC v. Allana Galletta, Appeal No. 42243, 11/17/08 that Petitioner must present evidence as to how the Notice of Violation was actually served.

Mr. Golam stated that no one of the name or of the description recited in the affidavit of service had ever worked in his office (though the location where the Notice of Violation was served was his office address) and that he did not know anyone named Mohammed Maniruzzaman. Mr. Golan stated that only he and his son worked in the office. Mr. Golan did not remember if he had been present when the Notice of Violation was served.

Mr. Green stated that there was a general denial of the allegations in the Notice of Violation.

I find Mr. Golan's testimony to be credible. While there is no requirement that the relationship of the person served to the Respondent be described or that identification be cited, it is part of the determination as to whether the affidavit of service is credible. Under these circumstances, I do not find the affidavit of service to be credible.

The Notice of Violation is therefore dismissed.

NOV: 034684540M BC 3314.10.10.4

The Department of Buildings (Petitioner) appeared by its representative, Joseph Casciano. Respondent (the party that was charged), Mohammed Golam, appeared by his attorney, Bradley Green.

The Notice of Violation issued for the tiebacks not being equivalent in strength to the holding rope.

The matter had been adjourned for the process server, and Mr. Casciano stated that the process server would not be appearing. It was noted that the Notice of Violation issued on 9/12/08, over 2 years ago.

Mr. Green moved to dismiss the violation based on the fact that, while the affidavit of service recited that service was given to a person of suitable age and discretion (Mohammed Maniruzzaman for whom a physical description was given), it did not state the relationship of the person or what proof of identification (such as driver's license) was used. Mr. Green cited to NYC v. Allana Galletta, Appeal No. 42243, 11/17/08 that Petitioner must present evidence as to how the Notice of Violation was actually served.


Mr. Golam stated that no one of the name or of the description recited in the affidavit of service had ever worked in his office (though the location where the Notice of Violation was served was his office address) and that he did not know anyone named Mohammed Maniruzzaman. Mr. Golan stated that only he and his son worked in the office. Mr. Golan did not remember if he had been present when the Notice of Violation was served.

Mr. Green stated that there was a general denial of the allegations in the Notice of Violation.

I find Mr. Golan's testimony to be credible. While there is no requirement that the relationship of the person served to the Respondent be described or that identification be cited, it is part of the determination as to whether the affidavit of service is credible. Under these circumstances, I do not find the affidavit of service to be credible.

The Notice of Violation is therefore dismissed.

TOTAL CIVIL PENALTY: \$0.00

		
Wed Dec 2010 12/16/10 17:00:00	Control 5	12/15/2010
Stanley Weinberg, Administrative Law Judge		Date

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

DEC 23 2010