



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



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Method of Appearance  
Live Hearing

**DECISION AND ORDER**  
Violation #: 034754450J (1 NOV)  
Hearing Date: July 22, 2010

To: BRADLEY GREEN ESQ  
80 MAIDEN LANE  
SUITE 507  
NEW YORK, NY 10038

City of New York v. GRAND IMPERIAL LLC

**Total Civil Penalty: \$0.00**

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: 034754450J  
PLACE OF OCCURRENCE: 307 WEST 79 STREET MANHATTAN  
DATE OF OCCURRENCE: 12/18/2009  
ISSUING OFFICER/AGENCY: 2218 DOB  
ECB CODE: B106  
CHARGE: AC 27MISCAC28MISCBCMI  
DISPOSITION: DISMISSED  
CIVIL PENALTY IMPOSED: \$0.00

**FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:**

NOV: 034754450J AC 27MISCAC28MISCBCMI

Lisa Minor appeared on behalf of Petitioner along with Inspector Pugach. She offered into evidence a hand-drawn rendering of the cited building and rear yard reflecting the details of the violation, drawn by and described by Inspector Pugach (Petitioner's Exhibit 1) as well as a photo of the alleged violating conditions (Petitioner's Exhibit 2).

Bradley Green, Esq. appeared on behalf of Respondent, Grand Imperial LLC, and cross-examined Inspector Pugach, who further testified that 1) The Code requirements under which he charged the NOV are based upon the 1968 Code and the new 2008 Code; 2) The most recent Certificate of Occupancy is prior to 1968 (see Respondent's Exhibit A), but it is improper to rely on the C of O, because the occupancy of the building has been changed; 3) He saw in the system that in addition to NOVs he has written regarding occupancy contrary to the C of O, which have not yet been adjudicated, others have been written and found in violation; 4) If a change in egress or occupancy occurs, an Alt 1 permit must be obtained, and a new C of O must be obtained.



Mr. Green argued that 1) As per NYC Charter, Section 645(3)(e), the Board of Standards and Appeals may set aside a legal C of O for a building; 2) The most recent C of O is from 1960; 3) The inspector is stating that the prior and current occupancy violations compel this tribunal (ECB) to set aside and attack the current C of O, but ECB does not have that authority; 4) The existing means of egress is consistent with the most recent C of O (that of 1960); 5) The corridor that people must go into (when they have to re-enter the building from the rear yard to exit the front of the building) is fire protected; 6) Respondent will stipulate to the fact that there has been a prior finding of violation for the same charge, but Respondent is currently appealing that finding; 7) He does not dispute that NOVs challenging occupancy have been sustained, but there is a difference between getting an NOV and being told to get a new C of O and the building going through a transformation where no C of O is issued; 8) None of the prior violations should require a new C of O, because they do not change use, egress or occupant loads; and 9) There is no significant work that would require a new C of O.

Inspector Pugach stated that there has been a change of occupancy by the conversion of a Class A apartment to a manager's office, which falls under a different use group, and the change of use is significant.

Ms. Minor stated that the ECB Court does not set aside a C of O, but does make a determination as to whether specific conditions violate an existing C of O. She further stated that the only issue herein is whether the cited conditions comply with the exit requirement.

I credit Mr. Green's argument and find that although Respondent has been found in violation of occupancy contrary to that allowed by the C of O, that does not invalidate the C of O. I further find that based upon all submitted evidence and testimony, the most recent C of O for the cited premises is dated November 7, 1960, nothing has been offered to show that it is no longer in effect, and Petitioner has not disputed Respondent's assertion that the existing means of egress is consistent with the most recent C of O (that of 1960).

Therefore, the Notice of Violation is DISMISSED.

<b>TOTAL CIVIL PENALTY: \$0.00</b>	
 <small>Fri Jul 2010 07/23/10 15:08:45</small>	 <small>Control 5</small>
<b>JUL 28 2010</b> <small>07/23/2010</small>	
Susan Brand, Administrative Law Judge	Date

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