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**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 #: 034755688Y (1 NOV)
Hearing Date: September 16, 2010

To: Bradley Green Esq
80 Maiden Lane
Suite 507
New York, NY 10038

City of New York v. EMBANKMENT REALTY
LLC

Total Civil Penalty: \$0.00

1 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: 034755688Y
PLACE OF OCCURRENCE: 655 2 AVENUE MANHATTAN
DATE OF OCCURRENCE: 03/24/2009
ISSUING OFFICER/AGENCY: 0103 DOB
ECB CODE: B103
CHARGE: AC 28-118.3.2
DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034755688Y AC 28-118.3.2

Kelly Kamen appeared on behalf of Petitioner and presented a copy of the Certificate of Occupancy (the C of O) dated 1982, a print-out of Petitioner's Violation Summary for #34400309m issued to a prior owner, a copy of #34400309m and the decision for #34400309m. The case had been adjourned for the issuing officer but he did not appear.

Bradley Green, Esq. appeared for Respondent, Embankment Realty LLC, with Joseph Travisanno, who testified that he was an architect-consultant and had previously been employed by Petitioner for 27 years, including the period during which the C of O was issued. One detail of the C of O that struck him was the fact that it includes "recreation rooms [plural]" among the uses in the cellar. In his experience, if there is a facility made available to all of the occupants of the building, it would use a singular form.

Mr. Travisanno further testified that a search had been made of Petitioner's records to find the plans that had been submitted to obtain the C of O, but it was unsuccessful. He therefore attempted to find similar buildings having recreation rooms in the cellar. He was able to find 2 other buildings in the same general area as the Place of Occurrence with similar C of Os. Their plans show four duplex apartments on the first floor, with internal staircases going down to recreation rooms in the cellar. This was a common arrangement beginning around the mid-70s to make apartments larger. However, the cellar portions could not be used for bedrooms or kitchens.

Mr. Kamen objected to the presentation of evidence from unrelated buildings. I find that the best evidence would have been the plans for this building, but since these are not available, Respondent should have the opportunity to make the argument that these plans would be similar to those submitted to obtain the C of O for this building. Objection overruled. Mr. Kamen summarized that the issuing officer had charged that the cellar portion was being used as a living space. This situation was cited on a prior Notice of Violation and was found in violation. No filings have been made since to correct the situation.

As Petitioner knows, a prior decision by another administrative law judge is not binding in a subsequent hearing. In this case, the decision was issued to a different Respondent and I note that that Respondent did not contest the charge. This Respondent is certainly entitled to his day in court.

The details of the violation state: "Apt. 1D is a duplex apartment, which has dwelling space on 1st floor and cellar. The Standing C of O does not represent any apt. or living space on cellar level." It does not make any assertion that the space in the cellar was being used as a bedroom or kitchen. Petitioner has failed to present credible evidence that the space is being used for any purpose other than recreation rooms. I find Respondent's evidence that the use of a recreation room in the cellar by one apartment is consistent with the C of O to be credible. Notice of Violation dismissed.

TOTAL CIVIL PENALTY: \$0.00

BJ



SEP 24 2010

Fri Sep 2010 09/17/10 09:59:20

Control 5

09/17/2010

Rosalind K Berlow, Administrative Law Judge

Date

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