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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 #: 034796052J (1 NOV)
Hearing Date: September 17, 2010

To: Cohen and Hochman
80 Maiden Lane
suite 506
NY, NY 10038

City of New York v. 400 WEST 22ND STREET
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: 034796052J
PLACE OF OCCURRENCE: 195 9 AVENUE MANHATTAN
DATE OF OCCURRENCE: 04/16/2009
ISSUING OFFICER/AGENCY: 2389 DOB
ECB CODE: B160
CHARGE: AC 28-105.1
DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034796052J AC 28-105.1

Mr. R. Hochman appeared for the Respondent, 400 West 22nd Street, LLC. Mr. Alex Berger appeared for the Petitioner. Mr. Berger submitted a photograph of signs on a building wall, with the numbers 195 in the photograph. This ALJ only accepted the photo of the signs, not the handwritten portion of a photograph of a lined piece of paper, above the photo of the signs. The writing on the back of the photo was not offered into evidence. Mr. Berger rested on the notice of violation and the photo as his case.

Respondent was charged with violating section 28-105.1 of the Building Code, 'Work without a Permit' as a class one violation. The details of the violation as written: "Outdoor Advertising Company Sign on display without a permit." I find that Petitioner failed to present a prima facie case that Respondent was in violation of 28-105.1 as a class one violation. The details of the NOV refer to the sign as an 'outdoor advertising sign,' it does not refer to the status of the Respondent, which Petitioner listed as a LLC. There is nothing on the face of the NOV that states Respondent is an OAC and is thus properly cited for 28-105.1 as a class one. Petitioner has argued that the designation of the class 1 is sufficient as the reference to Respondent's status as an OAC. It does not. 28-105.1 is a generic section for work without a permit and the Building Department in various cases has charged various types of work without a permit as a class one violation. For example, electrical and plumbing work without a permit may be charged as a class one. Petitioner failed to present the I.O. Thus there was no testimony from any witness in Petitioner's case, that Respondent acted as an OAC and therefore his (the I.O.) designating the NOV with a class one designation as an element of the notice of violation was proper. I find that since the Petitioner failed to make out a class one designation and the classification is an element of the offense I therefore dismiss the NOV.

TOTAL CIVIL PENALTY: \$0.00

	SEP 24 2010	09/20/2010
Marc Weiner, Administrative Law Judge	Control 5	Date

**PAYMENT DUE WITHIN TEN (10) DAYS
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