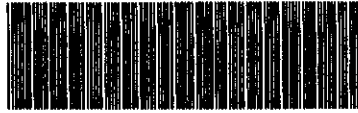




THE CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD

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 #: 034803986X (1 NOV) Hearing Date: October 28, 2010

To: Cohen Hochman & Allen 80 Maiden Lane, Suite 507 Attn: Bradley Green, Esq. New York, NY 10038

City of New York v. PRATT CONSTRUCTION INC.

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: 034803986X PLACE OF OCCURRENCE: 40 BROAD STREET MANHATTAN DATE OF OCCURRENCE: 09/29/2009 ISSUING OFFICER/AGENCY: 2382 DOB ECB CODE: B142 CHARGE: BC 33162&33191&AC2710 DISPOSITION: DISMISSED CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034803986X BC 33162&33191&AC2710

Respondent, Pratt Construction Inc., was charged with failing to have a "pull test" for the brackets attached to the scaffold available. The matter had been adjourned previously, but it was noted at the last hearing that the issuing officer would not be available to testify on the adjourned date. I declined to adjourn the matter sua sponte.

Respondent's attorney Bradley Green provided evidence that pull test results had been submitted to the Department of Buildings in April 2010, and again in May 2010, and that another test was performed on September 30, 2010, the date after the notice of violation. Mr. Green stated that his client informed him that it conducts this test regularly, though he could not say how often it was performed, and that to his knowledge all inspection and test records are kept onsite. Mr. Green further argued that the cited section of the Building Code was an improper section of law based on the allegations.

DOB attorney Chris Oliver responded that 3316.2 is a general charging section which requires contractors to ensure their equipment does not pose a risk to the public. Mr. Oliver asserted that failure to conduct the pull test, or to make the results available for inspection, would fall under this section.

The Building Code contains provisions requiring the inspection of load-bearing capabilities for scaffolding equipment (see, e.g., BC 3314.10.2), and contains other provisions requiring that inspection records be maintained on site for review on demand. The cited section refers to the operation of equipment in an unsafe manner. I find Respondent's evidence has rebutted any allegation that it failed to test the live load capacity of the supports. Assuming the violation was issued for failing to keep records onsite, as Mr. Oliver suggested, the issuing officer should have referred to a different section of law.

The notice of violation accordingly is dismissed.

Form with signature of James Moore, Administrative Law Judge, dated 10/29/2010, and TOTAL CIVIL PENALTY: \$0.00.

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