



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

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

Method of Appearance
Live Hearing



856276112A66AD5C0D

DECISION AND ORDER

Violation #: 034811321L (1 NOV)
Hearing Date: August 2, 2010

City of New York v. 408 ASSOCIATES LLC

To: Bradley J Green Esq
Cohen Hochman Allen
80 Maiden La., Ste. 507
New York, NY 10038

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: 034811321L
PLACE OF OCCURRENCE: 408 77 STREET BROOKLYN
DATE OF OCCURRENCE: 10/20/2009
ISSUING OFFICER/AGENCY: 2338 DOB
ECB CODE: B201
CHARGE: AC 28-105.1
DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034811321L AC 28-105.1

Althea Bender, Esq., represented the Department of Buildings (DOB); Building Inspector Azer Athansios was also present and testified. Bradley J. Green, Esq., represented Respondent 408 Associates; John Ingravallo, an officer of the Respondent, was also present and testified.

The Notice of Violation (NOV) charges Respondent with a Class 2 "major" violation for work without a permit, specifically charging: "At front of property, 77 Street side, an approx. 10 ft section of curb (has) been cut and lowered for vehicle access to side yard + at same side of property an approx. 4' x 5' area modified to (accommodate) an handicap elevator + installation of the elevator for the handicap." The inspector he had gone to the site, which he described as a mixed use building with a doctor's office, with a packet which did not show any permits for this work and also called his supervisor and was told there were no permits. He submitted six photographs showing the cited curb cut and elevator, as well the doctor's office, which he said he had taken at the time of his inspection. (Petitioner's Exhibits 1-6) He said that he had charged a Class 2 violation because the installation of the elevator required electrical and mechanical work and he could not be sure who did this work or how it was done.

Mr. Ingravallo said that he is a licensed general contractor, master electrician and construction superintendent and that he was involved when Respondent, which owns the building, made the alterations in question pursuant to permits. He and Mr. Green submitted a 1997 permit for an Alteration-1 interior modification (Respondent's Exhibit A), approved plans including the cited elevator installation (Respondent's Exhibit B, stipulated at the hearing to be from approved plans with the same job number as the permit in Exhibit A), copies of his credentials (Respondent's Exhibit C), a Certificate of Occupancy dated 11/4/98 (Respondent's Exhibit D), and work permit data and a work permit for a curb cut in 1995 (Respondent's Exhibits E and F, respectively).

The NOV, Petitioner's Exhibits, and the inspector's testimony state a case for the violation charged. However, although I find that the inspector genuinely believed that there were no permits, I also believe Mr. Ingravallo's testimony and his Exhibits, and I find that there were permits for all of the work involved. Respondent's Exhibits A-D clearly establish that there was a permit for the elevator, which Ms. Bender essentially conceded at the hearing by requesting to reduce the charge to a Class 3 violation for the curb cut. The curb cut issue is a little murkier, because Exhibits E and F refer to a curb cut on 78th Street. However, Respondent's job application also specifically includes a request that the location of the requested curb cut be corrected from 78th Street to 77th Street (Respondent's Exhibit E, p. 5), the Certificate of Occupancy refers to a zoning lot at the corner of 77th Street and 4th Avenue (Respondent's Exhibit D, p. 2), which is where Mr. Ingravallo said the building in question is located. DOB and City Planning records pulled during the hearing indicate that the building in question has a range address of 402-412 and show that this building is at the corner of 77th Street, not 78th Street (Court Exhibit 1). Clearly Petitioner, although catching Respondent's original application error, failed to correct its own records accordingly. Equally clearly, Respondent had a permit for the curb cut.

For these reasons, the NOV is dismissed.

TOTAL CIVIL PENALTY: \$0.00

Sara Provia
Thu Aug 20 10:22:46
Control 5

AUG 20 2010

08/12/2010

Sara Piovra, Administrative Law Judge

Date

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