



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

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



892910612AD309E189

Method of Appearance  
Live Hearing

**DECISION AND ORDER**  
Violation #: 034815544R (1 NOV)  
Hearing Date: July 28, 2010

To: Cohen, Hochman, & Allen  
80 Maiden Lane - suite 507  
New York, NY 10038

City of New York v. TIVOLI TOWERS  
HOUSING CO 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: 034815544R  
PLACE OF OCCURRENCE: 49 CROWN STREET BROOKLYN  
DATE OF OCCURRENCE: 12/29/2009  
ISSUING OFFICER/AGENCY: 2341 DOB  
ECB CODE: B150  
CHARGE: BC3314.4.3.1 AC27-1045.B  
DISPOSITION: DISMISSED  
CIVIL PENALTY IMPOSED: \$0.00

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

NOV: 034815544R BC3314.4.3.1 AC27-1045.B

Bradley Green, Esq. appeared for the Respondent, Tivoli Towers Housing Co Inc, in response to a Notice of Violation ("NOV") alleging a violation of the Building Code Section 3314.4.3.1 for no record on daily inspection for sidewalk shed. Joe Casciano, Esq. appeared for the Petitioner Department of Buildings. Issuing Officer Joseph Cobian Hurley also appeared and testified.

Mr. Cobian testified he has been an inspector for the Department of Buildings and is currently assigned to the Scaffold Safety Team; he went to the premises on a complaint of a collapsed sidewalk shed and found that there was no active work being done on the site; he asked the building manager for the record of daily inspections of the shed which he was unable to provide. He also stated that a sidewalk shed contains an elevated platform which is considered a scaffold. I credit Mr. Cobian's testimony.

Mr. Casciano recommended that an Aggravated Penalty of the Second order ("Agg. II") be imposed because of Respondent's history of non-compliance and the fact that the cited elevator is in a 33-story building affecting the quality of life of over 1000 people. He presented ECB Violation Details for the following NOV's: 38207797L (issued November 24, 2009); 38207795H (issued November 24, 2009); 38307794X (issued November 24, 2009); 34574431X (issued April 27, 2007); 38199825M (issued November 12, 2008); and 38002652L (issued December 1, 1990; each of the above violations is active and all indicate overdue compliance. I credit Mr. Casciano's documentary evidence.

Mr. Green presented a copy of the Work Permit Details for a sidewalk shed at the cited premises. I credit Mr. Green's documentary evidence. He then moved to dismiss on the grounds that the statute cited refers to scaffolds and not to sidewalk sheds.

The Building Code Section 3314.3.1 requires ready availability to Department of Buildings personnel of daily inspection records specifically for suspended scaffolds. Mr. Cobian credibly testified that he had requested records for a sidewalk shed and that an elevated platform is a scaffold. However, even through an elevated platform component of a sidewalk shed may be considered a scaffold, there has been no evidence presented in this case that the shed was suspended so as to be classified as a suspended scaffold.

I therefore find that the Petitioner has failed to establish a credible prima facie case that the above violation occurred. Accordingly the violation is dismissed.

**TOTAL CIVIL PENALTY: \$0.00**

09/02/2010

Thu Sep 2010 09/02/10 11:22:19

Control 5

SEP 08 2010