



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 #: 034817408L (1 NOV)  
Hearing Date: June 24, 2010

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

City of New York v. 99 MACDOUGAL 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: 034817408L  
PLACE OF OCCURRENCE: 99 MAC DOUGAL STREET MANHATTAN  
DATE OF OCCURRENCE: 12/13/2009  
ISSUING OFFICER/AGENCY: 1710 DOB  
ECB CODE: B102  
CHARGE: AC 28-301.1  
DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034817408L AC 28-301.1

Petitioner, New York City Department of Buildings (DOB) appeared by Amandus Derr; respondent, 99 MacDougal LLC, appeared by Bradley Green Esq. of Cohen Hochman and Allen, authorized representatives. Thomas Tsue, registered architect, appeared as a witness. Inspector Zurica, whose appearance was requested did not appear for hearing.

Petitioner charged respondent failed to maintain building in code compliant manner, in that "Cellar eating and drinking establishment...has no sprinklers and no fire protection for exposed wood floor joists and flooring for first floor." Petitioner relied on the factual contents of the NOV to establish its case.

Mr. Tsue testified that he has been the architect for this building for 32 years. He described 99 MacDougal Street as an old code building, which pre-dated the requirement for an automatic sprinkler system. It was built in 1888 and had no certificate of occupancy. Respondent's Exhibit A. The cellar has always been used for commercial purposes as evidenced by the I-card for the property. Resp. Ex. B. As shown in photographs, where he had the joists exposed, the wood described in the violation was entirely decorative. Resp. Exs. D, E, F. Beneath the decorative wood panel, was a layer of gypsum board, which had the required one-hour fire rating required by law; a layer of foam for soundproofing; and then the real joists. Although there has been work in the cellar, none of the construction warranted bringing the space up to the requirements of the new building code. Petitioner offered no evidence in rebuttal.

Based on the credible evidence before me, I find that respondent has demonstrated that it had maintained the property described in the NOV in a code compliance manner. Therefore, I dismiss the NOV.

TOTAL CIVIL PENALTY: \$0.00

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Laura Fieber, Administrative Law Judge

Date