



**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



948769912B78437F28

DECISION AND ORDER

Violation #: 034819893N et al. (2 NOVs)
Hearing Date: September 22, 2010

City of New York v. ADAR HOMES CORP

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

Total Civil Penalty: \$0.00

2 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: 034819893N
PLACE OF OCCURRENCE: 706-732 E 100 ST BROOKLYN
DATE OF OCCURRENCE: 04/21/2010
ISSUING OFFICER/AGENCY: 2397 DOB
ECB CODE: B210
CHARGE: AC 28-104.2.2
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

NOV: 034819894P
PLACE OF OCCURRENCE: 706-732 E 100 ST BROOKLYN
DATE OF OCCURRENCE: 04/21/2010
ISSUING OFFICER/AGENCY: 2397 DOB
ECB CODE: B206
CHARGE: AC 27MISCAC28MISCBCMI
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034819894P AC 27MISCAC28MISCBCMI

Joseph Casciano, Esq., appeared for Petitioner Department of Buildings (DOB); Inspector Allen Steffen was also present. Bradley J. Green, Esq., represented Respondent Adar Homes Corp.

DOB's Notice of Violation (NOV) 348-198-93P charges Adar with a Class 2 violation (the only chargeable level) for inadequate detail on approved plans for design of fire division at masonry walls. The NOV cites both Adm. Code 28-104.2.2 and former Adm. Code 27-146. As the permits for the building in question were issued under the 1968 Building Code, it was decided that Adm. Code 27-146 applies.

Specifically, the NOV cites joists that left inadequate room for fire stopping (as required by former Adm. Code-27-340(g)) and were not in approved plans. The inspector said that the lack of adequate detail on the plans was the issue. Petitioner also submitted pictures of the joists and the plan (Petitioner's Exhibits 1-3/93N).

Mr. Green moved to dismiss on the grounds that the section cited applies to failure to conform to approved plans where here the testimony was that the joists were not on the plans at all. While I credit the NOV and the inspector's testimony, I agree with Mr. Green's reading of the law. Therefore, I find that Petitioner failed to establish its case for the violation it charged (and note that it did not move to amend the provision charged). The NOV is dismissed.

NOV 348-198-94P charges Adar with a Class 2 "major" violation for failure to file required special inspection statement of responsibility (TR-1) prior to permit issuance and prior to start of work under "under special (controlled) inspection requirement for progress inspections of footings/foundations and framing." It charged both BC 1704.1.1 and former Adm. Code 27-132. Again, as the permits for the building in question were issued under the 1968 Building Code, it was decided that Adm. Code 27-132 applies. Petitioner relied on the NOV, and the inspector stated that inspections and TR-1s were required under the 1968 Code. Petitioner submitted photographs of the plans and the work in question (Petitioner's Exhibits 1-2/94P).

Mr. Green argued that no progress reports were required under the 1968 Code, and he submitted a letter from Douglas Pulaski, R.A., stating that special inspections/progress inspections were not required under the 1968 Code (Respondent's Exhibit A/94P).

I agree with Mr. Green's and Mr. Pulaski's reading of the law (noting that BC 1704.1 is substantially different from Adm. Code 27-132 and clearly would require these reports). Accordingly, I find that Petitioner failed to establish that Respondent violated the applicable provision of law, and this NOV is also dismissed.

TOTAL CIVIL PENALTY: \$0.00

Sara Piovio
Control 5

OCT 07 2010

10/04/2010

Sara Piovio, Administrative Law Judge

Date

PAYMENT DUE WITHIN TEN (10) DAYS
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