



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

HEARING LOCATION:
Environmental Control Board
350 St. Marks Place
Main Floor
Staten Island, NY 10301
(212) 361-1400



904261112AA0932473

Method of Appearance
Live Hearing

DECISION AND ORDER

Violation #: 034821300L (1 NOV)
Hearing Date: August 11, 2010

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

City of New York v. FRANK PERKOVIC

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: 034821300L
PLACE OF OCCURRENCE: 90 3 STREET STATEN ISLAND
DATE OF OCCURRENCE: 01/16/2010
ISSUING OFFICER/AGENCY: 2258 DOB
ECB CODE: B112
CHARGE: AC 28-207.2.2
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034821300L AC 28-207.2.2

Petitioner by Lisa Minor, Esq.-DOB and DOB Inspector John Filingeri.

Respondent appeared by Attorney Bradley Green of Cohen Hochman & Allen, who was accompanied by Mr. Luis Lavarca, an employee of B&H Restoration, which also employs Respondent Frank Perkovic.

Inspector Filingeri began this hearing with a narrative description of how he came to issue the violation at issue. It was also mentioned and not rebutted, that DOB Administrative Chief of Scaffold Safety, Edward Curtis, was present on 9/04/09, with Inspector Filingeri. Mr. Filingeri explained how he had previously visited this site on 9/04/09, and found it necessary at that time to issue 3 NOV's. Two of the three NOV's were upheld at a hearing on 1/13/2010, the third was dismissed on a technicality regarding the place of occurrence. Inspector Filingeri testified that on two of the ECB violations issued on 9/04/09 he ordered the Respondent to "stop all work on the suspended scaffolding", and he also at that time issued SWO #2373. He further testified that to the best of his recollection, in addition to ordering work to stop at this site, he also ordered the scaffolding not to be removed. Inspector Filingeri explained that in checking his records of overdue SWO compliance, he again visited 90 3rd Street, and observed that the work was now finished and the scaffolding was gone.

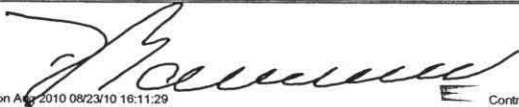
At this point Mr. Green began his defense, and was able to produce an actual copy of SWO #2073. He pointed out to Inspector Filingeri that nowhere on the SWO does it order that the scaffolding not be removed. He stated that it is therefore likely that the Respondent removed the scaffolding in an effort to make the site safe to the general public. Mr. Green began questioning Luis Lavarca, who was the rigging foreman on this job. Mr. Lavarca testified that upon being made aware of the SWO, he, Mr. Perkovic, and the pastor of Our Lady Queen of Peace parish contacted Mr. Curtis who had been present at the time the SWO was issued, and explained to him that the place of occurrence is a grammar school, and that they were just days from opening. He testified that the three of them went to Mr. Curtis' office on Tuesday, September 8th, where they were verbally instructed to provide information on the cables used on the scaffolding, and were told at that time that they could return to work. Mr. Lavarca additionally testified that Inspector Filingeri was also present at this meeting at Mr. Curtis' office. Inspector Filingeri denies any recollection of such a meeting.

While it was apparently not an issue in this case, it is noted that on NOV's 348-039-02J and 348-039-03L, where the SWO at issue was imposed, in neither instance did Inspector Filingeri check the "Stop Work Order" box, in order to make his intentions clear.

At the hearing, an effort was made to obtain photos taken by Inspector Filingeri for the prior violations issued 9/04/09. A check of the NYSERV records of those hearings shows that no photos were taken into evidence by the judge, at that time. However, the decision on NOV 348-038-49J, contains the finding: "Regarding the SWO, IO Filingeri stated that it was lifted only to the extent of allowing the

school to open."

Based on the totality of the evidence provided, I am convinced that neither side here has an accurate recollection of what happened in this case, and who said what to whom. A/C 28-207.2.2, Unlawful Continuance, requires the Respondent to have knowledge or notice of the stop work order, and 28-207.2.3, Rescission, contains no requirement that the lifting of the order be in writing. I find that Respondent here reasonably believed that the SWO had been lifted, and that no violation of 28-207.2.2 therefore took place in this instance. This NOV is therefore dismissed.

TOTAL CIVIL PENALTY: \$0.00	
 <small>Mon Aug 23 2010 08/23/10 16:11:29</small>	<small>Control</small> AUG 26 2010
Douglas Baumann, Administrative Law Judge	08/23/2010 Date

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