

which told him they had been blocked off.

Mr. Vasilakos said the building is a six-apartment investment and that each floor has the same layout, with left- and right-side apartments mirroring each other. He said that all of the apartments are railway flats with doors at either end. He said that the new doors were installed as part of a renovation with a permit. (See Respondent's Exhibits A and B) He also said his tenants told him no one had inspected their apartments and submitted notarized letters to that effect. (Respondent's Exhibits C-E)

I find as follows:

- 1) NOV 348-228-08R states a case for the violation charged. However, I find the Inspector's testimony, although credible, too vague to be conclusive, and I find that Petitioner's Exhibits establish simply that each apartment has two doors, that there are bells for six apartments in the lobby (as Mr. Vasilakos testified—see Petitioner's 13), and that the building is a legal six-family (which is not disputed). I credit Mr. Vasilakos' testimony and his Exhibits, and I further find that they rebut the allegations of subdivision. This NOV is dismissed.
- 2) NOV 348-228-09Z by itself states a case for work without a permit but does not state anything that rises to the Class 1 level. Furthermore, although the Class 1 level might be proven by testimony, for the reasons discussed above, I find that Petitioner failed to establish any such proof in this case and furthermore that Respondent established what work was observed was done with permits. This NOV is also dismissed.
- 3) As NOV 348-465-15J charges a failure to comply with NOV 348-228-09Z, it is also dismissed.

NOV 348-846-16L

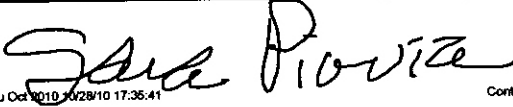
This NOV charges an automatic Class 1 violation for failure to provide an unobstructed exist at the second floor front apartment so that no second means of egress provided. It further explains that "apartment was once a 'floor through' apt. Has now been subdivided to two units (front & back). Wall obstructs access to fire escape from front apt." The NOV cites both BC 1020.2 and former Adm. Code 27-369; Mr. Burns proceeded under BC 1020.2.

Inspector Upkong said that when he was there, which was not on the date of violation, there were rear fire escapes on both sides of the building but not in front. Mr. Burns also submitted a sketch from the issuing officer (Petitioner's Exhibit 1/16L) and suggested a photograph that he said showed the layout (Petitioner's Exhibit 2/16L). Mr. Vasilakos pointed to another photograph and said that a tenant had placed a piece of furniture in front of the door but had now removed it. (See Respondent's Exhibit A/16C)

I credit the NOV and Petitioner's Exhibits only to the extent that they establish that a doorway was blocked, which Mr. Vasilakos did not dispute. I also credit Mr. Vasilakos' statement that the blockage was caused by a tenant but note that that would not be a defense.

However, the provision under which this violation is charged applies to "exit passageways." That term is defined as "(a)n exit component that is separated from all other interior spaces of a building or structure by fire-resistance-rated construction and opening protective, and provides for a protected path of egress travel in a horizontal direction to the exit discharge or the public way." (BC 1002.1) I agree with Ms. Garroway that this provision does not apply to the type of "internal blockage" alleged and proven here. Accordingly, I find that Petitioner did not prove a case for the particular violation charged. This NOV is also dismissed.

TOTAL CIVIL PENALTY: \$0.00

		NOV 05 2010
<small>Thu Oct 10 10:28:10 17:35:41</small>	<small>Control 5</small>	10/28/2010
Sara Piovia, Administrative Law Judge		Date

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