

welsh



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

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



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Method of Appearance  
Live Hearing

**DECISION AND ORDER**  
Violation #: 034830185J (1 NOV)  
Hearing Date: November 15, 2010

To: COHEN HOCHMAN & ALLEN  
80 MAIDEN LANE  
SUITE 507  
NEW YORK, NY 10038

City of New York v. SANI PROPERTIES CORP

**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: 034830185J  
PLACE OF OCCURRENCE: 170 WALWORTH STREET BROOKLYN  
DATE OF OCCURRENCE: 01/19/2010  
ISSUING OFFICER/AGENCY: 1987 DOB  
ECB CODE: B263  
CHARGE: AC 28-204.4  
DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED: \$0.00

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

NOV: 034830185J AC 28-204.4

Respondent Sani Properties Corp. is charged with a per se class 2 violation of section 28-404.1 of the NYC Administrative Code (AC) for "failure to file a certificate of correction with the Department of Buildings (DOB) pursuant to 29-204.2 for violation 34688170M".

Respondent appeared by its attorney Lindsey Garroway, Esq. Petitioner Department of Buildings (DOB) appeared by Chris Oliver.

In support of its case, Petitioner submitted a Buildings Information System (BIS) printout which indicates that Respondent was found in violation of the underlying violation, which was issued for work without a permit, after a hearing held on 3/20/09 (hereinafter referred to as the Predicate Violation) (Exhibit 1).

Respondent moved to dismiss the NOV on the basis that it is duplicative of Nov # 34830184H which was issued under AC section 28-201.1 for failure to correct the Predicate Violation. She stated that that NOV, which was issued on the same day as the within NOV, was in default (Exhibit A) which is tantamount to a finding of violation. She argued that Respondent cannot be found in violation of both section 28-201.1 and section 28-404.1 because they overlap and section 28-201.1 encompasses section 28-404.1.

Code Sections 28-201.1 and 28-204.4 both involve violations for failure to comply with orders of the commissioner. Code Section 28-201.1 provides that "[it] shall be unlawful to fail to comply with an order of the commissioner or to violate any order of the commissioner issued pursuant to this code, the 1968 building code, the zoning resolution or any law or rule enforced by the department." Code Section 28-204.4 provides that "[failure] to comply with an order of the commissioner issued pursuant to section 28-204.2 to correct and to certify correction of a violation within the applicable time period shall be a violation of this code for which penalties may be imposed. . . ."

In a recent Board decision, see NYC v. Jeanine Guirando, Appeal No. 1000495 (October 28, 2010), the Board wrote that for NOV's issued after July 2008, "the IO has the option of charging either a Class 1 Code Section 28-201.1 violation (failure to comply with commissioner's order) or a Class 2 Code Section 28-204.4 violation (failure to comply with the commissioner's order to file a certificate of correction with the Department of Buildings".

Thus, I find that since Respondent has already been found in violation of section 28-201.1 for NOV # 34830184H for failure to correct the Predicate Violation, Petitioner cannot maintain this proceeding under section 28-404.4. Accordingly, I grant Respondent's motion and dismiss the NOV.

**TOTAL CIVIL PENALTY: \$0.00**

<i>Doc 5/</i>		
Tue Nov 2010 11/23/10 16:12:15	Control 5	NOV 30 2010 11/23/2010
Didi Skaff, Administrative Law Judge		Date

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