

ISSUING OFFICER/AGENCY: 1790 DOB

ECB CODE: B187

CHARGE: 28- 201.1

DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED:

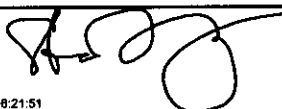
\$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034818810Y AC 28-105.1 NOV: 034835370Y 28- 201.1 NOV: 034835371X AC 28-204.4
 NOV: 034864310P AC 28-210.1 NOV: 034871623L 28- 201.1 NOV: 034893843K 28- 201.1 NOV:
 034906620N 28- 201.1

Respondent appeared by counsel Lindsay Garroway and representative Tony De Sola and witness Ms. Kaplan. Inspector Diep and Attorney Bender appeared for Petitioner the Department of Buildings. Inspector Diep credibly testified that the basement level had a 3 piece bathroom for which he could not locate a permit in DOB records. He also observed washers and dryers and water lines and gas lines for washers and dryers. He further testified he observed a fire escape installed in the rear and an opening in the fire separation wall between buildings 14-25 and 14-27. He further testified he observed capped water and gas lines on the first and second floors. He saw no kitchens on the first and second floors. Ms Bender established the legal occupancy of the building by HPD records which were admitted into evidence without objection as Petitioner's 1. She also introduced photographs taken by Inspector Diep in support of his testimony as Petitioner's 2 through 4. Ms. Kaplan testified for the Respondent that the subject premiss was built by Vito Racanelli in 1971 and there was a three piece bathroom in the basement pursuant to the original approved plans which she produced as Respondent's exhibit 1 and in 1978 she testified that a quasi State Agency Facilities Development Corporation came and did all the conversion work in the two buildings 14-25 and 14-27 breaking down the fire separation wall between the buildings, installing the fire escape removing the kitchens on the first and second floors of both buildings, and putting in a kitchen in the above ground basement of 14-27 to serve the two combined houses which were converted in to a group home for the physically and mentally challenged. Ms Garroway introduced a deed labeled as Respondent's 2 showing the property belonged to Vito Racanello until the year 2000 when Vito Racanelli conveyed the subject property to his son Frank Racanelli, the named Respondent. Based on the testimony I find that the basement bathroom was put in as part of the original plans by the builder Vito Racanelli, the fire escape the basement kitchen, and the removal of the first and second floor kitchens, and the removal of the fire separation wall between 14-25 and 14-27 were done by the Facilities Development Corp. while Vito Racanelli owned the subject premises, and therefore as to all that work I find it was done by a previous owner. The only remaining items were the washers and dryers in the basement of 14-25. Ms. Kaplan testified that when facilities Development Corp did the conversion to the group home washers and dryers were put in, however she could not recall whether it was one washer and one dryer or two washers and two dryers. She further testified that she believed they were electric dryers and that there was no gas in the house. Mr Tony DeSola testified for the Respondent stating he has represented the Respondent and is fully familiar with the subject premises and that there is no gas in the house and the dryers and washers are run by electricity. Inspector Diep testified that he observed a gas line for the dryers, however the photo he took while it shows that there are new washers and dryers clearly installed while the current owner Frank Racanelli had title, the photo does not show the gas line. Inspector Diep also conceded during questioning by Respondent's counsel that the kitchen stove was electric and not a gas stove which was stated by another Inspector (Vasta) in his NOV which further supports the testimony of Ms. Kaplan and Tony DeSola that there is no gas in the building. Ms. Bender argued that the conveyance of the property from Vito Racanelli to his son Frank Racanelli was not an arms length transaction as no transfer tax was paid and therefore the work done during Vito Racanellis ownership should be imputed to the son Frank Racanelli. I reject this argument and based on a careful review of all the evidence presented I find the testimony of Ms. Kaplan and Tony De Sola to be credible that there is no gas in the building and that all work which required a permit was done while Vito Racanelli owned the subject premises and accordingly NOV # 34818810Y is dismissed based on pre-existing condition. As this violation is dismissed all the following violations for failure to correct NOV # 34818810Y must also be dismissed. NOV # 34835370Y, NOV # 34835371X, NOV # 34871623L, NOV # 34893843K, and NOV # 34906620N. As to NOV # 34864310P based on the credible testimony of Ms. Kaplan and Tony De Sola that the kitchen was built in the basement of 14-27 not 14-25, I find that the NOV cites the wrong address of the premises with the kitchen and therefore that violation is dismissed.

TOTAL CIVIL PENALTY: \$0.00



JUN 14 2011

06/10/2011

Fit Jun 2011 06/10/11 10:21:51

Control 5

Steven Jackson, Administrative Law Judge

Date

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