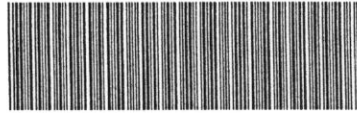


mobile



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

HEARING LOCATION:
Environmental Control Board
66 John Street
10th Floor
New York, NY 10038
(212) 361-1400



924653012AF75FAF8F

Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 034839617P (1 NOV)
Hearing Date: August 19, 2010

To: Robert Hochman
80 Maiden Lane
#506
NY, NY 10038

City of New York v. FORSYTH ST

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: 034839617P
PLACE OF OCCURRENCE: 104 FORSYTH STREET MANHATTAN
DATE OF OCCURRENCE: 03/09/2010
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: 034839617P 28- 201.1

Respondent, Forsyth Street, appeared by Robert Hochman, Esq. Petitioner appeared by Althea Bender, Esq. Steven Cheung testified on behalf of Respondent. Respondent was cited with violating §28-201.1 of the NYC Administrative Code. Specifically, Petitioner alleges Respondent failed to comply with an Order of the Commissioner. The predicate NOV's listed by the IO are NOV #34816704L and 34816648X. The predicate NOV's were issued on 10/20/09 and 10/22/09.

Petitioner moved to amend the violation to remove the Aggravated 1 classification. Petitioner submitted printouts of the predicate NOV's. Both predicate NOV's were issued for work without a permit and both NOV's were found in violation at a hearing. Affidavits of Correction were submitted and accepted by Petitioner on 7/1/10. Respondent argued that it was legally impossible for them to comply with the Commissioners Order. Respondent submitted an unsigned lease dated 5/28/2008 between Respondent as landlord and Xiao-Ting Luo as tenant for the "basement rear and rear yard" at the premises to be used as an "Art Workshop only". Respondent also submitted an Affidavit of Service dated 4/24/2009 which states "THIS AFFIDAVIT IS MADE FOR PURPOSE OF OBTAINING A WARRANT TO REMOVE SAID TENANT AND UNDERTENANT FROM POSSESSION OF THE ABOVE PREMISES", a Holdover Petition filed 6/2/09 and 8/28/09. Both Holdover Petitions request the issuance of a warrant to remove Respondents/Tenant from possession of the premises. Finally, Respondent submitted two Orders that the tenant had filed for failing to supply electricity and gas. Petitioner relied on appeals cases and argued that the owner is ultimately responsible for the alleged violation. Respondent argued that they had not created the violating condition and had done everything possible to comply with the Commissioners Order.

On this record, I find that Respondent has shown that it was impossible to correct the violating conditions alleged on the predicate NOV's prior to the issuance of the instant NOV. I note that Respondent brought eviction proceedings prior to the issuance of the predicate NOV. Furthermore, I note that the remedy for the predicate condition required the Respondent to either get permits or restore the premises to the prior condition. In order to restore the premises to the prior condition, Respondent would need the tenant to vacate the premises. The timeline of events indicate that Respondent was pursuing the eviction and correction expeditiously. Also, I note that the predicate offense is not a condition or defect that Respondent may have sought court authority to enter the premises and repair. In order for Respondent to comply with the Commissioners Order on the predicate offense, Respondent needed the tenant to vacate in order to restore the prior lawful condition. On this record, it appears Respondent did everything legally possible to get the illegal premises vacated. Accordingly, Notice of Violation dismissed.

TOTAL CIVIL PENALTY: \$0.00

SEP 10 2010

09/09/2010

Thu Sep 2010 09/09/10 12:42:06

Control 5

Alan Bronfeld, Administrative Law Judge

Date

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

Phillip Weitzman, Administrative Law Judge

Date

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

SEP 08 2010