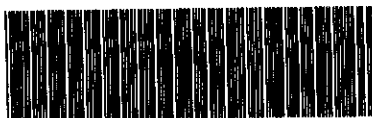




**THE CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD**

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



10188116130033C307F

Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 034854164R (1 NOV)
Hearing Date: May 16, 2011

To: Bradley J Green Esq
Cohen Hochman Allen
80 Maiden La., Ste. 507
New York, NY 10038

City of New York v. GEORGE TUT &
COMPANY

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: 034854164R
PLACE OF OCCURRENCE: 723 8 AVENUE BROOKLYN
DATE OF OCCURRENCE: 09/16/2010
ISSUING OFFICER/AGENCY: 2431 DOB
ECB CODE: B139
CHARGE: AC 28-301.1
DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034854164R AC 28-301.1

The Department of Buildings (DOB) issued a Notice of Violation (NOV) to George Tut & Company. The NOV charges a Class 1 "immediately hazardous" violation for failure to maintain a building in a code-compliant manner and specifically cites the removal of all firestopping from Apt. 3H while doing illegal work.

Sharon Brown, Esq., represented DOB at the hearing, and Wilson Garcia, the inspector who wrote the ticket, testified. Bradley J. Green, Esq., represented Tut.

Inspector Garcia said he went to the building to serve two Borough Commissioner letters and a Stop Work Order. While he was there, he said, he observed dust coming under the door of Apt. 3H. He said he knocked on the door and was there for less than a minute but was able to see that the walls and the ceiling had nothing but wood lathe. He said he charged a Class 1 violation because of the fire danger created in the building, which, he said, is a four-story multiple dwelling with some occupied apartments. He said he determined that no job application had been filed, and no permit had been issued, for renovation of Apt. 3H and then issued the NOV.

Mr. Green did not contest the facts. However, he argued that the provision of law charged applies to cases of neglect and not to construction. He also challenged the Class 1 designation.

I do not reach Mr. Green's broad argument that the violation charged is never supported when construction is at issue. NOV cross-references two specific code requirements, former Adm. Code Sec. 27-345 and BC Sec. 712.3. Sec. 27-345 states:

"Concealed spaces within partitions, walls, floors, roofs, stairs, furring, pipe spaces, column enclosures, etc. that would permit passage of flame, smoke, fumes, or hot gases from one floor to another floor or roof space, or from one concealed area to another, shall be firestopped to form an effective draft barrier, or shall be filled with noncombustible material in accordance with the requirements of this section."

BC Sec. 712.3 simply deals with technical requirements, and I can find no comparable guidance in the current Construction Codes. However, common sense dictates that firestopping cannot be required at all instances during construction.

It is clear from the Inspector's credible testimony that there were no concealed spaces in Apt. 3H. Therefore, although I agree with the Inspector's statements concerning Class 1, and DOB proved a case for a Class 1 violation of Adm. Code Sec. 28-105.1 (work without a permit), it did not prove a case for the violation charged here.

This NOV is dismissed.

TOTAL CIVIL PENALTY: \$0.00

Sharon Brown
Wed May 20 2011 09:12:43 Control 5
MAY 20 2011 05/18/2011

Sara Piovia, Administrative Law Judge

Date

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