



NOV 348-829-75J

This NOV, written six weeks after NOV 348-545-10K, charges that the inspector observed renovation of the first-floor commercial space continuing without permits and in violation of an SWO.

As a preliminary matter, Mr. Green requested an adjournment to 8/1/11 for further proof of issues of notice of the work and of the SWO. This motion was denied because of the age of the case and the severity of the charge, and the hearing proceeded.

Mr. Currie and Mr. Green both referred to the same evidence as they referred to with regard to NOV 348-545-10K. In addition, Mr. Currie submitted proof from DOB's Buildings Information System (BIS) that a full SWO was issued on 10/19/2010. (Petitioner's Exhibit 4)

Mr. Green argued that Les-Lev's lack of knowledge was a defense to this violation, relying on Appeal No. 1000758, NYC v. J & C Restoration Corp., 2/24/11. Mr. Currie said that it was not, relying after on Estafanaous, supra, and on Appeal No. 46187, NYC v. 16 E. 96 Apt. Corp., 10/25/07.

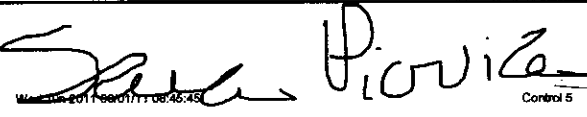
J & C Restoration, like the instant case, involves a situation where the only evidence of the SWO was a print-out from BIS and the Respondent claimed lack of knowledge or notice. The Board pointed out that that applicable language states that "(n)o person shall with knowledge or notice of a stop work order allow, authorize, promote, continue or cause to be continued any work covered by the stop work order, except such work that may be required by order of the commissioner." It goes on to find "that Petitioner failed to prove that Respondent acted with knowledge or notice of the partial SWO in effect at

the place and time of occurrence. Petitioner did not offer a copy of the partial SWO, or evidence of its mailing. Petitioner offered no evidence other than the BIS records to rebut Respondent's testimony that it had no knowledge or notice of the partial SWO. Nothing in the record indicates to whom the SWO was issued, how it was served and, if it was mailed, to whom. It was incumbent upon Petitioner to demonstrate that Respondent in fact had notice of the existence of the SWO. As knowledge or notice of the SWO is an element of the charge, the Board concludes that Petitioner failed to establish that Respondent knowingly continued work in violation of an SWO." This is one of the situations where Estafanaous and its predecessors do not apply because the statute, and the Board, explicitly require notice or knowledge. 16 E. 96 Apt. Corp. is also inapplicable because it determines the law under former Adm. Code Sec. 16-118, which does not include the same language about knowledge or notice.

Additionally, in J & C Restoration, the Board pointed out that the ALJ had not credited Respondent's testimony about ignorance, but it stated: "However, the Board finds that

the burden never shifted to Respondent to refute the charge that it had knowledge of the SWO because Petitioner did not, in the first instance, establish by any credible evidence that Respondent knew of the SWO or establish any facts by which such knowledge could be inferred." Here I credit Les-Lev's Exhibit A, but it appears to be irrelevant. What I have before me as the only relevant document from DOB is Exhibit 4, the BIS printout concerning the SWO. While I credit it as showing that an SWO was issued, it does not substitute as a copy of the SWO, and it does not establish to whom the SWO was issued, how it was served, or any facts from which knowledge or notice by Les-Lev can be inferred.

This NOV is dismissed.

<b>TOTAL CIVIL PENALTY: \$1,600.00</b>	
 <small>Control 5</small>	<b>JUN 02 2011</b> 06/01/2011
Sara Piovica, Administrative Law Judge	Date

**PAYMENT DUE WITHIN TEN (10) DAYS  
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