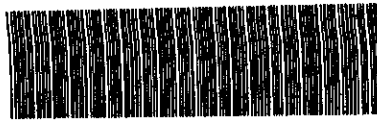




**THE CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD**

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



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Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 034858251N et al. (4 NOVs)
Hearing Date: March 31, 2011

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

City of New York v. PAUL J PERRINA

Total Civil Penalty: \$0.00

4 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: 034858251N
PLACE OF OCCURRENCE: 161 VARICK STREET MANHATTAN
DATE OF OCCURRENCE: 08/17/2010
ISSUING OFFICER/AGENCY: 2461 DOB
ECB CODE: B142
CHARGE: BC 33162&33191&AC2710
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

NOV: 034858252P
PLACE OF OCCURRENCE: 161 VARICK STREET MANHATTAN
DATE OF OCCURRENCE: 08/17/2010
ISSUING OFFICER/AGENCY: 2461 DOB
ECB CODE: B149
CHARGE: BC 3314.4.3.1AC271045
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

NOV: 034858253R
PLACE OF OCCURRENCE: 161 VARICK STREET MANHATTAN
DATE OF OCCURRENCE: 08/17/2010
ISSUING OFFICER/AGENCY: 2461 DOB
ECB CODE: B150
CHARGE: BC3314.4.3.1 AC27-1045.B
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

NOV: 034858254Z
PLACE OF OCCURRENCE: 161 VARICK STREET MANHATTAN
DATE OF OCCURRENCE: 08/17/2010
ISSUING OFFICER/AGENCY: 2461 DOB
ECB CODE: B261
CHARGE: BC 3314.1.1AC271050.1
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034858251N BC 33162&33191&AC2710 NOV: 034858252P BC 3314.4.3.1AC271045 NOV:
034858253R BC3314.4.3.1 AC27-1045.B NOV: 034858254Z BC 3314.1.1AC271050.1

Petitioner DOB was represented by Mr. Vivian Curry. Respondent Paul J. Perrina appeared by attorney Bradley Green, and also appeared personally, along with witness Mr. Peter Perrina. The four (4) NOVs allege violations of the NYC Building Code (as enumerated above) with respect to the use of hoisting equipment and a suspended scaffold at 161 Varick St. ("the subject premises"). The hearing was previously adjourned for the testimony of issuing Inspector DeMarco, but he is no longer employed by DOB and was unavailable.

Mr. Curry submitted eight photographs taken by the issuing inspector as petitioner's exhibits 1-8.

Mr. Green moved to dismiss all four (4) NOVs based on improper service. In support of the motion, respondent Paul Perrina testified that he was in the building during the inspection and identified himself, but the inspector never attempted to serve him with the NOVs. Mr. Peter Perrina testified that he was the foreman for the job and was with the inspector on the roof of the subject premises the day the NOVs were issued. Mr. Peter Perrina testified that the inspector handed the NOVs to him, but then took them back and posted them. Mr. Green argued that respondent Paul Perrina identified himself to the inspector as being present at the subject premises, but personal service was not attempted on him by the inspector. Mr. Green also argued that Mr. Peter Perrina's testimony that the inspector served him but then took back the NOVs to post them contradicts the statement in the affidavit of service that the alternate method of service pursuant to the NYC Charter was made "after a reasonable attempt to effectuate service upon the respondent or upon other person."

New York City Environmental Control Board

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whom service may be made was unsuccessful" and that "V.P. didn't want service." Mr. Curry opposed the motion, noting that respondent failed to establish that the inspector was ready to serve the NOV's at the time the respondent identified himself, and that the affidavit of service, along with petitioner's exhibit 8, which shows the posting of the NOV's, is sufficient to establish proper service. I find the testimony of both respondent Paul Perrina and Mr. Peter Perrina credible.

NYC Charter § 1049-a(d)(2)(b) provides: "Such notice may only be affixed or delivered pursuant to items (i) and (ii) of subparagraph (a) of this paragraph where a reasonable attempt has been made to deliver such notice to a person in such premises upon whom service may be made as provided for by article three of the civil practice law and rules or article three of the business corporation law." I find that the respondent Paul J. Perrina, a natural person, identified himself to the inspector as being present at the subject premises on the date of inspection, but that Inspector DeMarco never made any attempt to serve him before resorting to "affix and mail" service under the NYC Charter. Even if the NOV's were not yet ready for service at the time respondent identified himself to the inspector, I find that the inspector should have, at a minimum, made an inquiry as to whether respondent was still present at the subject premises when the NOV's were ready for service before resorting to the alternate method of service under the NYC Charter. The affidavit of service does not contain any allegation that Inspector DeMarco made any attempt to serve respondent personally, or even inquire as to whether respondent was still in the building after having identified himself to Inspector DeMarco, before resorting to "affix and mail" service.

I further find that the statement "V.P. didn't want service" in the NOV is insufficient to establish a "reasonable attempt" had been made to deliver the NOV's to a person at the subject premises upon whom service could have been made, because the respondent is a natural person, not a corporation or other entity. Pursuant to CPLR § 308(2), delivery to a person or suitable age and discretion may only be attempted at the respondent's actual place of business, dwelling place, or usual place of abode. The subject premises does not qualify as any of these locations.

Morover, I find that Mr. Peter Perrina did not refuse service, but that he accepted the NOV's when they were handed to him by Inspector DeMarco, but that the inspector took the NOV's back from Mr. Peter Perrina and then posted them at the subject premises.

As I find that the respondent Paul J. Perrina identified himself as being present at the subject premises immediately prior to service of the NOV's, and that the inspector did not make the minimally reasonable inquiry of ascertaining if respondent was still present in the subject premises when he was ready to serve the NOV's before resorting to the alternative method of service under the NYC Charter, I find such service to be improper. Accordingly the motion to dismiss the NOV's for improper service is granted, and the four (4) NOV's are hereby dismissed.

TOTAL CIVIL PENALTY: 30.00 APR 20 2011	
 <small>Mon Apr 18 11 09:50:54 Control 5</small>	APR 20 2011 <small>04/18/2011</small>
Philip Sturges, Administrative Law Judge	Date

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