

Cody



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

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



964747913003BAAA2A

Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 034840877J et al. (3 NOVs)
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. RNR TRADING LLC

Total Civil Penalty: \$0.00

3 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: 034840877J

PLACE OF OCCURRENCE: 620 BEVERLY ROAD BROOKLYN

DATE OF OCCURRENCE: 05/28/2010

ISSUING OFFICER/AGENCY: 2380 DOB

ECB CODE: B200

CHARGE: AC 28-210.1

DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED: \$0.00

NOV: 034840878L

PLACE OF OCCURRENCE: 620 BEVERLY ROAD BROOKLYN

DATE OF OCCURRENCE: 05/28/2010

ISSUING OFFICER/AGENCY: 2374 DOB

ECB CODE: B101

CHARGE: 28-105.1

DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED: \$0.00

NOV: 034877976Y

PLACE OF OCCURRENCE: 620 BEVERLY ROAD BROOKLYN

DATE OF OCCURRENCE: 09/22/2010

ISSUING OFFICER/AGENCY: 2380 DOB

ECB CODE: B187

CHARGE: 28- 201.1

DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034840877J AC 28-210.1 NOV: 034840878L 28-105.1 NOV: 034877976Y 28- 201.1

The Department of Buildings (DOB) issued three Notices of Violation (NOVs) to RNR Trading LLC. NOV 348-408-77J charges a Class 2 "major" violation for altering a residence for occupancy as a dwelling by more than the legally approved number of families, citing a conversion from one to three Class A apartments via the addition of two basement apartments. NOV 348-408-78L charges a Class 1 "major" violation for doing the work for the alleged conversion without obtaining the necessary permits. NOV 348-779-76Y, issued four months after the other two NOVs, charges an automatic Class 1 violation for failure to correct the conditions cited in NOV 348-408-78L.

Sharon Brown, Esq., represented DOB at the hearing. Bradley J. Green, Esq., represented RNR. Benzakanim Badalov, the brother of RNR's owner, was present as a witness but did not testify.

NOV 348-408-77J

Ms. Brown introduced the following records: (1) a one-page printout from the Department of Housing Preservation and Development (HPD) website indicating that the RNR's building is a one-family house (Petitioner's Exhibit 1); (2) a print-out from DOB's website saying there is no certificate of occupancy (Petitioner's Exhibit 2); and (3) 48 photographs taken by the inspector (Petitioner's Exhibit 3).

Mr. Green did not dispute the current occupancy—i.e., the existence of three Class A units. But he questioned DOB's proof with regard to legal occupancy and noted that the HPD print-out gives an MDR (multiple dwelling registration) number, which is only required if a building has three or more dwelling units.

The Board has held that the type of evidence contained in Exhibit 1 cannot, by itself, be viewed as an official DOB record. (NYC v. Radoje Ladic (No. 48346, 1/21/10) and NYC v. Claudette Johns (No. 1000059, 5/27/10).) In Johns, the Board observed that the HPD printout at issue was "merely descriptive of the property." It is true that Ladic and Johns applied to cases under Adm. Code Sec. 28-118.3.2, not 28-210.1. However, if a document is "merely descriptive" and non-probative with regard to 28-118.3.2, it does not become magically probative with regard to 28-210.1, which states in relevant part: "It shall be unlawful, except in accordance with all

requirements of this code, to convert any dwelling for occupancy by more than the legally authorized number of families or to assist, take part in, maintain or permit the maintenance of such conversion." Therefore, I read Lazic and Johns as requiring some proof beyond Petitioner's Exhibit 1 to establish legal use of property. The credibility of Exhibit 1 is further diminished in this case by its reference to the MDR number (although an online check during the hearing did not locate an actual multiple dwelling registration).


I find that DOB did not establish legal occupancy. Therefore, DOB did not prove its case. This NOV is dismissed.

NOVs 348-408-78L and 348-779-76Y

Ms. Brown submitted the same evidence for NOV 348-408-78L that she had submitted for NOV 348-408-77L. Although Mr. Green did not dispute the existence of the work, he argued that it was done before RNR purchased the building. As proof, he submitted the following documents: (1) a registered deed indicating an arms'-length purchase on 4/1/05 (Respondent's Exhibit A); (2) excerpts from a 2/9/05 appraisal report showing two basement apartments (a one-bedroom and a two-bedroom, as indicated in the NOV) (Respondent's Exhibit B); (3) a sworn letter from the appraiser stating that he had re-inspected the property after this NOV was issued and that the basement apartments remained as they had been at the time of his appraisal report (Respondent's Exhibit C); and (4) three statements from neighbors affirming the pre-existence of the two basement apartments (Respondent's Exhibits D-F).

I credit the NOV and DOB's photographs (although not the other Exhibits, which I find neither relevant nor credible, as per above). I find that DOB has supported the Class 1 violation charged. However, I also credit RNR's Exhibits, particularly the appraisal and the appraiser's sworn letter, and I find that they establish that the cited work was done before RNR purchased the building. This is a defense to the violation charged in NOV 348-408-78L. NOV 348-408-78L is dismissed.

Consequently, RNR is not required to correct the conditions cited in NOV 348-779-76Y, and NOV 348-779-76Y is also dismissed.

TOTAL CIVIL PENALTY: \$0.00		
 <small>Wed May 2011 05/18/11 11:14 AM</small>	MAY 20 2011 <small>Control 5</small>	<small>05/18/2011</small>
Sara Piovio, Administrative Law Judge		Date

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