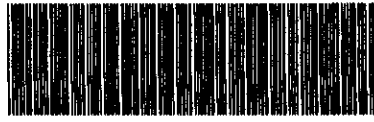




**THE CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD**

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



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Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 034883939X et al. (2 NOVs)
Hearing Date: April 18, 2011

City of New York v. 3985 SHORE PKWY

To: Bradley J Green Esq
Cohen Hochman Allen
80 Maiden La., Ste. 507
Brooklyn, NY 10028

Total Civil Penalty: \$0.00

2 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: 034883939X
PLACE OF OCCURRENCE: 3685 SHORE PARKWAY BROOKLYN
DATE OF OCCURRENCE: 10/13/2010
ISSUING OFFICER/AGENCY: 1987 DOB
ECB CODE: B263
CHARGE: AC 28-204.4
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

NOV: 034883942R
PLACE OF OCCURRENCE: 3685 SHORE PARKWAY BROOKLYN
DATE OF OCCURRENCE: 10/13/2010
ISSUING OFFICER/AGENCY: 1987 DOB
ECB CODE: B102
CHARGE: AC 28-301.1
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034883939X AC 28-204.4 NOV: 034883942R AC 28-301.1

The Department of Buildings (DOB) issued two Notices of Violation (NOVs) to 3985 Shore Parkway. NOV 348-839-39X charges it with an automatic Class 2 violation for failure to file a certificate of correction for NOV 348-614-70K. NOV 348-839-42R charges a Class 1 "immediately hazardous" violation for failing to maintain the front of its building, particularly the balconies.

At the hearing, Vivian Currie, Esq., represented DOB. Bradley J. Green, Esq., represented 3685 Shore Parkway LLC, which he said was the actual owner of the building.

NOV 348-839-39X

Mr. Green and Mr. Currie agreed that this NOV should be dismissed because NOV 348-614-70K (which had just been heard) was issued to a different party, Leonard Schwartz, whom Mr. Green identified as the managing agent. (See Court Exhibit 1, which I have added to the record for clarification). Therefore I am dismissing this NOV without reaching the issues discussed below.

NOV 348-839-42R

The NOV states that the "balconies constructed at front of building have defects—with cracks and missing pieces of concrete. Rebars exposed to elements." Mr. Currie also submitted a series of photographs (Petitioner's Exhibit 1) He also moved to amend the charging provision from Adm. Code Sec. 28-302.1 to Adm. Code Sec. 28-301.1, a motion that was granted without objection.

Mr. Green argued that the owner was misnamed, submitting a deed showing his client is the owner of the property in question (Respondent's Exhibit A), a registration with the Department of Housing Preservation and Development (HPD) showing the owner as 3685 Shore Parkway LLC (Respondent's Exhibit B), a New York State Department of State Registration for 3685 Shore Parkway LLC (Respondent's Exhibit C), another Department of State document showing no business entity registration for 3985 Shore Parkway (Respondent's Exhibit D), and a prior decision by another ALJ dismissing an NOV on the basis of the wrong name (Respondent's Exhibit E).

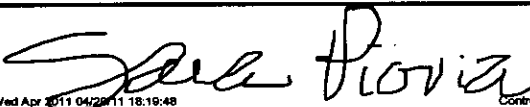
Mr. Currie responded that Mr. Green had failed to show prejudice, especially as 3985 Shore Parkway does not exist and because DOB's records of ownership are caused by a typographical error in the Department of Finance ownership records (Petitioner's Exhibit 2). He said that prejudice is the ECB standard, citing the Board decisions in NYC v. 1169 Coney Island Avenue LLC (No. 46529, 5/1/08) and NYC v. 304 Flatbush Avenue LLC (No. 0900282, 12/3/09)

Crediting all of the official records before me as establishing what is stated, I find that 3685 Shore Parkway LLC is the owner of the property. I do not find that the error falls within the cases Mr. Currie cited. 1169 Coney Island Avenue says a typographical in the error is not enough to dismiss without a showing of prejudice nor is the use of "Inc." instead of "LLC" (the correct designation). 304 Flatbush Avenue LLC says omitting the "LLC" from an address qua name that is not otherwise incorrect is also not enough to dismiss without a showing of prejudice. However, in the 304 Flatbush Avenue case, the Board distinguishes the situation from that in NYC v. New York City Environmental Control Board

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2765 Kingsbridge Terrace (No. 19116, 9/29/94) explaining that in the Kingsbridge Terrace case, "the NOV named as the respondent a street address that was not part of the actual owner's name and omitted the necessary phrase "Owner of." Here, on the other hand, Respondent's corporate name is the street address listed as the respondent on the NOV, with the addition of the omitted 'LLC.'"

In the case before me, there is no "LLC" (or even incorrect "Inc."), no "Owner of," and the street address used in the name is incorrect. I find that Kingsbridge Terrace governs, and the NOV is dismissed.

TOTAL CIVIL PENALTY: \$0.00	
 <small>Wed Apr 20 11 04/20/11 18:19:48 Control 5</small>	APR 25 2011 <small>04/20/2011</small>
Sara Piovio, Administrative Law Judge	Date

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