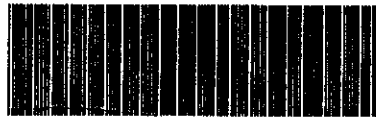




**THE CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD**

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



1169847213A46137888

Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 034896486P (1 NOV)
Hearing Date: October 4, 2012

To: COHEN HOCHMAN & ALLEN
80 Maiden Lane
Suite 507
New York, NY 10038

City of New York v. 235 HOTEL LLC

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: 034896486P
PLACE OF OCCURRENCE: 235 WEST 107 STREET MANHATTAN
DATE OF OCCURRENCE: 03/08/2012
ISSUING OFFICER/AGENCY: 2441 DOB
ECB CODE: B102
CHARGE: AC 28-301.1
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034896486P AC 28-301.1

Petitioner NYC Department of Buildings (DOB) appeared by its attorney, Joe Casciano, Esq. Respondent 235 Hotel LLC appeared by its attorney, Bradley J. Green Esq.

Mr. Cascaiano moved to amend the charge to a violation of AC 28-301.1, to which Mr. Green did not object and the NOV is so amended.

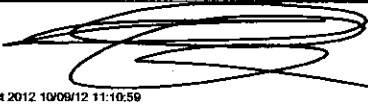
In support of respondent's case Mr. Green submitted into evidence a copy of respondent's certificate of occupancy #58759, dated 12/11/1963, and a DOB Job Overview printout with respect to the place of occurrence.

Mr. Green contended that respondent was in compliance with its existing certificate of occupancy, which indicated that the building was being occupied as an SRO and there was an "Interior Fire Alarm System" from 2/14/1949 and a "Sprinkler System" from 4/14/1942. He also contended that there has been no major alteration to the building since the certificate of occupancy was issued, pointing to the DOB Job Overview's list of permits approved indicating that none were type A1, or major Alteration 1. Mr. Green argued that NYC Charter section 645(e) provides that a certificate of occupancy shall be binding and conclusive on all city agencies unless and until the certificate is vacated, set aside or modified by an appropriate authority. Mr. Casciano argued that the issuing officer's use of the descriptive term "hotel" in the box on the NOV entitled "occupancy at time of inspection" establishes that respondent altered the occupancy of the building and that therefore the building should be subject to current fire codes.

I find that the evidence clearly establishes that respondent's building received a certificate of occupancy on 12/11/1963, and that at the time DOB approved the existing interior fire alarm and sprinkler systems that had been installed years before. I further find that no evidence has been presented that the building underwent any major alteration that would have brought the building under the jurisdiction of the fire codes issued subsequent to the certificate of occupancy. There was also no evidence provided by petitioner that the fire systems observed by the issuing officer were different than that which existed on 12/11/1963. Finally, I find Mr. Casciano's position as to the issuing officer's use of the term "hotel" unpersuasive, as that entry on the NOV is of no legal significance, the use of the term "hotel" is not necessarily inconsistent with the appearance of an SRO, and that petitioner issued no NOV to respondent for use contrary to its certificate of occupancy. Consequently I find that NYC Charter section 645(e) applies, that the existing certificate of occupancy is binding on petitioner, that petitioner has not established that the fire alarm system observed by the issuing officer is contrary to the system approved in the certificate of occupancy, and therefore that respondent was not in violation of AC 28-301.1.

Accordingly, this NOV, as amended, is dismissed.

TOTAL CIVIL PENALTY: \$0.00


Tue Oct 2012 10:09/12 11:10:59
OCT 15 2012
10/09/2012
Mitchell Regenbogen, Administrative Law Judge
Date

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

