

Respondent, premises owner, appeals from a recommended decision and order finding it in violation of Section 28-302.1 of the New York City Administrative Code (Code), for failure to maintain the exterior walls of her building in a safe condition. On the notice of violation (NOV) dated February 5, 2010, the issuing officer (IO) affirmed that Respondent had failed to maintain her building walls, creating a Class 2 hazardous condition which he described as: “Building is leaning out of plumb towards the East (right) approx. 6” at 2<sup>nd</sup> and 3<sup>rd</sup> floors.” The IO described the remedy for the violation as to: “Maintain exterior building wall, obtain permit if feasible, obtain engineer’s structural stability assessment.”

At the hearing, Petitioner, the Department of Buildings (DOB), presented a photograph of the cited building, showing the building leaning to the right in a pronounced fashion. Respondent did not dispute that the building was leaning to the east, but contended that this leaning did not constitute an unsafe condition. She testified that the building’s condition had not changed in the twenty years since she purchased it, and offered two photographs of the leaning building, one taken recently and one she testified was taken in 1989. She also offered an engineer’s report dated June 25, 2010, which, in pertinent part, reported:

At the time of our inspection there was enough redundancy within the existing wood frame and its exterior sheathing to provide stability to the overall building structure. But we recommend that a Professional Land Surveyor (PLS) be engaged immediately to monitor the existing shift in the building and if it is continuing to move. Such monitoring should continue for a three-month period, and based on the information provided, we will determine whether the additional exploration is required and subsequently if stabilization measures are necessary.

Respondent stated that she had not taken any further action after receiving the engineer’s report. The administrative law judge (ALJ) credited Respondent’s evidence, but found that Respondent had not refuted the charge in the NOV that the shift in the building constituted a hazardous condition, nor had she corrected the violation. The ALJ found that the engineer’s report, while ruling out the likelihood of imminent collapse, did not rule out underlying problems that required monitoring and might require intensive diagnostic and remedial work. The issue on appeal is whether Respondent had, by sufficient credible evidence, refuted the charge that she had failed to maintain the exterior walls of her building in a safe condition.

Code Section 28-302.1 provides that: “A building’s exterior walls and appurtenances thereof shall be maintained in a safe condition.”

On appeal, as at the hearing, Respondent argues that the mere fact that the building was leaning out-of-plumb does not constitute an unsafe condition. She observes that the engineer's report established that there was no likelihood of imminent collapse, and argues that further monitoring would be insignificant, since her evidence showed that the building was stable for twenty-one years.

Petitioner did not respond to the appeal.

On this record, the Board denies the appeal. The Board agrees with the ALJ that Respondent's evidence did not suffice to refute the violation. It is obvious from both Petitioner's and Respondent's photographs that the cited building is leaning significantly out-of-plumb, away from its supporting masonry wall. While the engineer's report does not find imminent collapse likely, the report is very clear that the underlying cause of the defect could not be determined without further monitoring and examination. The Board notes that Respondent was charged with a Class 2 "major violation," which is defined under 48 RCNY Section 3-103 as including a violating condition that "affects life, health, safety, property, or the public interest but does not require immediate corrective action." The Board finds the leaning exterior of the cited building gives rise to a reasonable inference of an unsafe condition, which was refuted neither by Respondent's testimony that the condition was longstanding, nor by her engineer's inconclusive report.

Accordingly, the Board affirms the recommended decision and order.