

Respondent, premises owner, appeals from a recommended decision and order sustaining a Class 1 violation of Section 28-201.1 of the Administrative Code of the City of New York (Code) for failure to comply with a Commissioner's order. In a notice of violation (NOV), the issuing officer affirmed on September 10, 2013, that Respondent failed to comply with the Commissioner's order contained in NOV 35013601X (NOV 01X) for work without a permit.

At the hearing, the representative for Petitioner, Department of Buildings (DOB), stated that Respondent had filed a job application for the work cited in NOV 01X, but that to date Respondent had not obtained a permit. Respondent's representative admitted to Respondent not having the permit. She stated that the premises is a landmark, and Respondent was waiting for a permit from the Landmarks Preservation Commission (LPC) that was required before she could get the DOB permit.<sup>1</sup> She argued that Respondent was not in violation because DOB and LPC delays prevented Respondent from complying. The administrative law judge (ALJ) credited Respondent's claims, but found that they were not a defense. The issue on appeal is whether Respondent has established a defense to the charge that she failed to comply with the Commissioner's order to obtain a permit and file a certificate of correction.

### The appeal

On appeal, Respondent's representative argues that Respondent is in compliance because she hired an architect, an engineer, and a Building Code consultant to correct the violation cited in NOV 01X, has filed a DOB job application, and is working diligently to obtain approval. She again asserts that the time required to obtain LPC approval is lengthy and Respondent must obtain that approval before she can get a DOB permit. She submits, for the first time on appeal, letters from Respondent's architect enumerating the steps taken to obtain approval of the DOB permit application. The Board declines to consider that new evidence but notes that, nonetheless, it would not establish a defense to the violation.

In answer to the appeal, Petitioner argues that Respondent was in violation because she did not comply with the Commissioner's order. Petitioner states that as of January 14, 2014 Respondent had not filed a certificate of correction. Petitioner argues that DOB delay is not a recognized defense to failure to comply.

On this record, the Board finds that Respondent has not established a defense to the charge that she failed to comply with the Commissioner's order. NOV 01X required Respondent to obtain a permit for the cited construction in order to correct the violation. On appeal, as at the hearing, Respondent, through her representative, admits that she did not obtain the permit. Contrary to Respondent's arguments, a DOB job filing and hiring of an architect, an engineer and a Building Code consultant are not compliance with the Commissioner's order here, and delay by DOB or LPC is not a defense. *See NYC v. Sion Palacci* (ECB Appeal No. 1100277, August 18, 2011).

Accordingly, the Board affirms the recommended decision and order.

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<sup>1</sup> Respondent did not file LPC plans until September 27, 2013.