



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

66 John St., 10th Floor
New York, NY 10038
Telephone: (212) 436-0624
Fax: (212) 436-0714

To: Appellant

Date Mailed:
Violation Nos: 35074794K (94K), 35074795M (95M)
City of New York v. Mana Masih
Premises: 94-36 114 Street, Queens
Date of Occurrence: 11/17/15
Agency: Buildings Department (DOB)
Appeal No.: 1600576 Appellant: Respondent

Appeal Decision and Order

- 1. On 5/17/16, Respondent, premises owner, filed an appeal from the following recommended master decision and order by Hearing Officer #664 (Queens), as set forth below, sustaining Class 1 violations of Sections 28-210.1 and 28-105.1 of the Administrative Code of the City of New York (Code) for alteration of a residence for occupancy by more than the legally approved number of families (notice of violation (NOV) 94K), and work without a permit (NOV 95M). In NOV 94K, the issuing officer (IO) affirmed: the building’s certificate of occupancy (C/O) authorized a two-family residence with dwelling units on the first and second floors; however, an additional apartment had been created in the cellar, with a three-piece bathroom, a kitchen with a residential sink and gas stove, and three beds in the hall. In NOV 95M the IO charged the following work without a permit in the cellar: “created a 3 piece bathroom and installed water and waste lines for toilet, sink & shower in the bathroom and residential sink at kitchen and a gas line for gas stove at kitchen.” The hearing officer found that Respondent had offered insufficient evidence to refute the violations established by the IO’s sworn statements.

Mail date	NOV	Law charged	Recommendation	Penalty
5/02/2016	94K	Code Section 28-210.1	Violation	\$1,200
	95M	Code Section 28-105.1	Violation	\$1,600

- 2. After consideration of the entire record before it, the Board now makes the following findings of fact and conclusions of law: On appeal as at her hearing, Respondent does not dispute the facts. She asserts that the cellar was being used by the family, and they had promptly removed the beds after receiving the violation. They were in the process of applying for a permit to legalize the space, but were delayed due to a mistake by their contractor on the original application. Petitioner, DOB, did not answer the appeal.

On this record, the Board finds no error of fact or law in the hearing officer’s recommended master decision and order. The IO’s undisputed statements establish that work was done without a permit, resulting in the arrangement of the cellar as a Class A apartment, an occupancy contrary to the building’s C/O. It is irrelevant that the illegal apartment was occupied only by family members; it is the arrangement of the cellar as a Class A apartment on the date of offense, and not its actual use, that determines occupancy. See NYC v. Tommy B. Gee (ECB Appeal No. 1401215, January 29, 2015). The efforts that Respondent claims that she took toward correction of the cited conditions after the date of offense provide no grounds for dismissal of the violations or the reduction of any penalties. See NYC v. Theodore Roosevelt (ECB Appeal No. 1500846, October 29, 2015). The Board notes that Class 1 charges of Code Sections 28-210.1 and 28-105.1 are not subject to mitigation under the Building Penalty Schedule. See Title 48 of the Rules of the City of New York at Section 3-103. Accordingly, even if Respondent had timely completed correction of the cited conditions, it would not warrant a reduction in penalties.

- 3. Accordingly, the Board denies the appeal and orders that the recommended master decision and order be: affirmed.

Total penalty already paid \$0- (waiver allowed while appeal pending)
Total penalty now imposed \$2,800.00

Amount due OATH/ECB \$2,800.00

Board decision date: July 28, 2016 Fidel F. Del Valle /
072116/JK/941 Chair, Environmental Control Board

cc: Shamonda Graham, Executive Director
Administrative Enforcement Unit, Department of Buildings
280 Broadway, 5th Floor, New York, NY 10007