

***Dep't of Housing Preservation & Development v.  
McFaddin, et. al.***

OATH Index No. 2327/13 (Nov. 8, 2013)

Certificate of no harassment for single room occupancy building  
should be denied.

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**NEW YORK CITY OFFICE OF  
ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT**

*Petitioner*

*- against -*

**WILLIE McFADDIN and REBECCA McFADDIN**

*Respondents*

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**REPORT AND RECOMMENDATION**

**FAYE LEWIS**, *Administrative Law Judge*

This is a proceeding commenced by petitioner, the Department of Housing Preservation and Development (“the Department”), pursuant to Local Law 19 of 1983, the Single Room Occupancy (“SRO”) anti-harassment statute. Admin. Code § 27-2093 (Lexis 2013). The Department referred this matter pursuant to title 28, section 10-06 of the Rules of the City of New York (RCNY) (Lexis 2013). Respondents, Willie McFaddin and Rebecca McFaddin, are the owners of the building located at 146 West 127<sup>th</sup> Street, in Manhattan, New York (“the building”). Petitioner alleges that respondents committed acts of harassment against the building’s tenants and seeks denial of respondents’ application for a certificate of no harassment (“CONH”) pursuant to section 28-107.4 of the Administrative Code.

Trial was held before me on September 20 and 30, 2013. Petitioner presented the testimony of Terrance Coffie, a tenant; Anthony Wycoff, an HPD investigator; Sandra Park, a tenant organizer with the Goddard Riverside Community Center, SRO Law Project; and Marti

Weithman, the project director of the SRO Law Project.<sup>1</sup> Respondents testified on their own behalf. For the reasons below, I find that the CONH should be denied.

### ANALYSIS

Respondents filed an application for a certificate of no harassment (“CONH”) on November 20, 2012 (Pet. Ex. 1). Before issuing a CONH, the Department must certify that there has been no harassment of the lawful occupants of the premises within the inquiry period, which runs from three years prior to submission of the owner’s application through the date that HPD issues a final determination on the application. Admin. Code § 27-2093(c); 28 RCNY § 10-01 (Lexis 2013). On May 10, 2013, HPD issued an “initial determination” that there was “reasonable cause” to believe that harassment of the lawful occupants of the premises occurred at the premises during the inquiry period (ALJ Ex. 1, Ex. A).

HPD then filed a petition on June 7, 2013, alleging that respondents committed various acts of harassment during the inquiry period, including: repeatedly telling a lawful occupant (Mr. Coffie) that he needed to vacate his unit within a month because they wanted to sell the building; telling Ms. Park, who contacted them on behalf of Mr. Coffie, that the new owner wanted an empty building and would get an empty building; failing to correct a mice infestation, broken plaster and paint, and recurring leaks, which caused a former lawful occupant, Stacey Buie, to vacate his unit; and failing to provide a smoke detector device and a carbon detecting device over a lengthy period of time (ALJ Ex. 1, petition, at ¶ 7).

Respondents filed an answer in which they denied committing harassment (ALJ Ex. 2, answer, at ¶ 2).

Section 27-2093(a) of the Administrative Code defines harassment as follows:

- (1) the use or threatened use of force which causes or is intended to cause [a lawful occupant] to vacate his or her unit or surrender or waive any rights therein;
- (2) the interruption or discontinuance of essential services which
  - (i) interferes with or disturbs or is intended to interfere with or disturb the comfort, repose, peace or quiet of [a lawful occupant]
  - and (ii) causes or is intended to cause such [lawful occupant] to

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<sup>1</sup> Ms. Weithman’s testimony was offered for the limited purpose of authenticating her signature on a document before its admission into evidence (Weithman: Tr. 70-76; Pet. Ex. 7).

vacate such unit or to surrender or waive any rights in relation to such occupancy;

. . . [or]

(4) any other conduct which prevents or is intended to prevent any person from the lawful occupancy of such dwelling unit or causes or is intended to cause such [lawful occupant] to vacate such unit or to surrender or waive any rights in relation to such occupancy ..

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Admin. Code § 27-2093(a) (Lexis 2013). Section 27-2093(b) of the Administrative Code creates a presumption that any statutory act defined in 27-2093(a) was committed with the intent to cause a legal tenant to vacate the unit. An owner may rebut the presumption by a preponderance of the credible evidence. *Dep't of Housing Preservation and Development v. McClarty*, OATH Index No. 1602/00 at 3 (Dec. 7, 2000).

The building in question is a three-story brownstone in Harlem. The legal configuration of the building is 14 SRO units, which in 1964 were converted to 13 SRO units (Tr. 52). The respondents are an elderly married couple who resided in the building prior to Ms. McFaddin suffering a stroke in April 2012. It is undisputed that respondents seek to sell the building. Indeed, in their application for a CONH, respondents wrote that they wanted a CONH because they were selling their property “and need to expedite [sic] the certificate if possible” (Pet. Ex. 1). The parties stipulated that the contract for sale of the building, signed January 7, 2013, states that the building has to be delivered empty and that the contract is subject to obtaining a CONH (Tr. 224).

Investigator Wycoff, who is assigned to HPD's anti-harassment unit, visited the building on February 14, 2013,<sup>2</sup> which is protocol whenever an owner files an application for a CONH (Tr. 165), and subsequently interviewed Mr. Coffie and Mr. Buie by telephone. As set forth in his report, as well as the respondents' application, the building had four occupants when the application for a CONH was filed. The McFaddins lived on the first floor, Mr. Coffie lived on the third floor, and two other occupants, Steve Carel and Charles Roberts, also had rooms on the first floor (Pet. Ex. 1 at ¶¶ 8a, 17, Pet. Ex. 4 at ¶ 7). Mr. Buie surrendered his unit during the inquiry period (Pet. Ex. 1 at ¶ 18, Pet. Ex. 4 at ¶ 11). The applicants listed three other occupants

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<sup>2</sup> Although the report refers to February 14, 2012, Investigator Wycoff testified that that was a typographical error, and that he actually visited the building on February 14, 2013 (Tr. 165, 168, 227). This makes sense, because the application for a CONH was not filed until November 20, 2012 (Pet. Ex. 1).

who had left their units (Mr. Joyner, Steve, and Mr. Robinson) (Pet. Ex. 1 at ¶ 18), while the investigator listed four other occupants who had vacated (Mr. Joyner, Mr. Latter, Mr. Christian, and Mr. Aranda) (Pet. Ex. 4 at ¶ 11). The reason for the discrepancy is unclear.

Petitioner's proof rested largely upon the testimony of Mr. Coffie, and to a lesser degree, the testimony of Investigator Wycoff and Ms. Park, as well as HPD inspection reports showing a number of violations which had not been certified as having been corrected (Pet. Ex. 4b). As set forth below, I found Mr. Coffie to be a very credible witness, and credited his testimony that he had been repeatedly told that he had to move out of the building, even after Ms. Park intervened on his behalf. Mr. Coffie testified that he is employed as the computer lab manager for the Doe Fund, which is a transitional work program for troubled youths and adults. He also attends college classes in the evening. He was placed as a tenant in the building through the Doe Fund in 2010, signing a one-year lease with respondents for \$850 a month (Tr. 82, 83, 87-88; Pet. Ex. 7a). At the time he moved in, Mr. McFaddin told Mr. Coffie that he intended to sell the building (Tr. 83).

Mr. Coffie recalled having a "great relationship" with Mr. McFaddin (Tr. 108). He testified that he often visited the McFaddins in their apartment. They would sit and talk about the South, where they were all came from. He viewed Mr. McFaddin as a "father figure" (Tr. 108). Mr. McFaddin would say that he was proud of Mr. Coffie and Mr. Coffie was one of the best tenants he ever had (Tr. 108). Generally, they saw each other several times a week, at least in the hallway, since Mr. McFaddin tended to keep the same schedule as Mr. Coffie (Tr. 107). Mr. Coffie also recalled intervening when Mr. Buie and Mr. McFaddin had arguments in the hallway about housing conditions; he testified that he tried to calm Mr. Buie down (Tr. 129) and that he told Mr. Buie he should treat Mr. McFaddin with respect, particularly since Mr. McFaddin was elderly (Tr. 96). Ms. McFaddin corroborated this testimony to some degree, indicating that she used to see Mr. Coffie "all the time;" he would visit in their apartment and they would talk (Tr. 275).

The prior relationship notwithstanding, Mr. Coffie testified that when he returned home from his college class on the evening of February 12, 2013, he saw a note under his door asking him to call Mr. McFaddin. When he did so, Mr. McFaddin told him that the building had been sold and he would need to move out by the end of the month, in two weeks (Tr. 98, 99, 144-45). Mr. McFaddin also said that Mr. Coffie did not have to pay rent any more, and that Mr. Coffie

should use the rent money for moving expenses (Tr. 88). Mr. Coffie testified that he probably responded, "Okay, I understand" (Tr. 100). He explained that he had not known of his rights under New York State law, and thought that if Mr. McFaddin told him he had to move, he had to move (Tr. 106).

Mr. Coffie was concerned about where he would live, and found it difficult to focus on work and school as well as his scheduled trip to Austria at the end of the month (Tr. 100-01, 116-17). The next day, he told the housing specialist at the Doe Fund, Ms. Gordon, that he had gotten notice that he needed to move by the end of the month (Tr. 100). Ms. Gordon was "kind of taken aback" and told Mr. Coffie that Mr. McFaddin could not force him to move out (Tr. 101). That evening, Mr. McFaddin saw Mr. Coffie and asked if he had made preparations to move. Mr. Coffie replied that he was doing what he could (Tr. 102).

Mr. Coffie testified that Ms. Gordon continued to advise him of his legal rights through that week, including that Mr. McFaddin should have provided him with a written notice of eviction (Tr. 102). When he asked Mr. McFaddin about the written notice, Mr. McFaddin said that the for-sale sign in the window of the building lobby was his notice (Tr. 103). The sign had been there since Mr. Coffie moved in (Tr. 103-04). A photograph of the for-sale sign, taken by Investigator Wycoff on February 14, 2013, is in evidence (Tr. 172; Pet. Ex. 8c).

Ms. Gordon referred Mr. Coffie to the SRO Law Project, where he met with Ms. Park, who told him he had rights as a tenant in a rent stabilized apartment, and that she would let him know if the SRO Law Project would take his case (Tr. 105). Over the next several days, Mr. Coffie continued to run into Mr. McFaddin in the hallways, as was customary. While they engaged in "chit chat" (Tr. 106), Mr. McFaddin also asked if Mr. Coffie had been able to make any arrangements and Mr. Coffie said he was trying to work on it (Tr. 106). They had this conversation "pretty much" every time they saw each other, perhaps two or three times a week (Tr. 107).

Once Mr. Coffie learned from Ms. Park that the SRO Law Project would represent him, he telephoned Mr. McFaddin and said that someone from the organization would be calling him. Mr. McFaddin replied that he did not give a "damn" who was going to call him and that nobody was going to tell him what to do with his property (Tr. 110). During the call, Mr. McFaddin gave the telephone to his wife, who commented that Mr. Coffie was a "dog," but immediately apologized when challenged by Mr. Coffie and said that she did not like the situation (Tr. 111).

Mr. Coffie reiterated to Mr. McFaddin that somebody would be calling him, and Mr. McFaddin repeated his statement he did not give a “damn” and nobody was going to tell him what to do with his property (Tr. 111-12).

When Mr. Coffie told Ms. Park about this call, Ms. Park said that she would call Mr. McFaddin on Mr. Coffie’s behalf (Tr. 112). Mr. Coffie felt that Ms. Park’s call had not gone well because she advised him after the call to try to limit his contact with the McFaddins (Tr. 113). About a week later, towards the end of February or the beginning of March, Mr. McFaddin brought Mr. Coffie a letter and said that he was not trying to force Mr. Coffie out of the building, “nothing of that nature” (Tr. 114). He also told Mr. Coffie not to worry about the 29<sup>th</sup> and that Mr. Coffie had until mid-March to move out (Tr. 114). Mr. Coffie said “okay,” trying to “keep the peace” (Tr. 114). This alleviated his concerns, but only to a limited degree, because he was still worried about where he would live. Further, he felt “insulted,” because he had previously built a relationship with the McFaddins and had trusted them (Tr. 114-15). Concerned that he would return from Austria to find that he was locked out of his apartment or that his belongings had been moved, Mr. Coffie asked some colleagues at work to check on the apartment, but nothing untoward occurred (Tr. 118-20).

At some point after Mr. Coffie returned from Austria, Mr. McFaddin gave him a business card with the name and telephone number of Miriam, the real estate agent from One Way Rental Company, who had originally rented the apartment to Mr. Coffie. Mr. McFaddin said that Mr. Coffie should call Miriam if he needed any help in finding an apartment (Tr. 120-21). Mr. Coffie tried to call but Miriam did not pick up or return his message (Tr. 122). However, about a month before trial, Miriam knocked on his apartment door in the evening and gave him an address for a location, suggesting it might be suitable for him to move to (Tr. 123). Mr. Coffie thanked her and said it would be taken care of (Tr. 123). About two weeks prior to the trial date, a man called Daniel called Mr. Coffie and said he had gotten his number from Mr. McFaddin and that he was interested in the building. Mr. Coffie testified that he thanked Daniel and that was the extent of the conversation.

Ms. Park and, to a lesser degree, Investigator Wycoff, corroborated Mr. Coffie's testimony that he had been repeatedly told to move out of his unit. Ms. Park testified that in March 2013, Mr. Coffie came into her office and said that Mr. McFaddin had told him that he had to move out by the end of March. He was “frazzled” (Tr. 249) and did not know his rights.

He was busy with work and school and worried if he could still travel under the circumstances. Ms. Park explained his rights, and after doing some research, realized that the respondents had applied for a CONH (Tr. 248). On March 21, 2013, she wrote to Ms. McFaddin, explaining who she was, that Mr. Coffie was a rent-stabilized tenant, and inviting Ms. McFaddin to contact her to attempt to work out an amicable resolution (Pet. Ex. 9). In response, Ms. McFaddin called her, also in March 2013. Ms. Park recalled that Ms. McFaddin was “very aggressive” and said that she was going to sell the building and the new owner wanted the building vacant. When told that the sale of the building would not affect Mr. Coffie’s rights, Ms. McFaddin said that she was going to sell the building vacant (Tr. 251). Ms. Park advised Mr. Coffie of the conversation and suggested that he try to limit conversation with Ms. McFaddin (Tr. 251). Mr. Coffie was very fearful of being evicted or of negative interaction with the McFaddins (Tr. 255).

Investigator Wycoff testified that when he visited the building on February 14, 2013, he left his business card under each individual unit, and that Mr. Coffie called him back (Tr. 170, 174). Mr. Coffie did not report any problems with the building, but later, after the SRO Law Project became involved, Investigator Wycoff learned that Mr. Coffie had some issues and complaints that he had not disclosed, including that the owner had asked him to move (Tr. 176).

Mr. McFaddin did not testify about whether he had told Mr. Coffie that he needed to move out of the building. He recalled hearing Ms. Park’s name, but was not sure who she was. He also recalled discussing Mr. Coffie’s rent with him in 2013, but only in the context of Mr. Coffie saying that he could not meet his rent for January and would take care of it in February (Tr. 332-33).

Ms. McFaddin also did not address whether she had asked Mr. Coffie to move out. Both she and her husband testified that she had not returned to the building since her stroke on April 1, 2012, as she is in a wheelchair and the building does not have an elevator or a ramp (R. McFaddin: Tr. 273, 278; W. McFaddin: Tr. 318). Ms. McFaddin was hospitalized for three months and then spent approximately five months in a rehabilitation center (R. McFaddin: Tr. 271-73; W. McFaddin: Tr. 317). However, Ms. McFaddin did acknowledge speaking with Ms. Park by telephone, as well as Mr. Coffie, perhaps in March, 2013 (Tr. 280-81).

As noted above, I found Mr. Coffie to be a credible witness. His lack of animosity toward both Mr. and Ms. McFaddin was striking. Indeed, he acknowledged spending time in the McFaddin’s apartment, thinking of Mr. McFaddin as a father figure, and telling Mr. Buie to be

more respectful toward Mr. McFaddin. It was undisputed that Mr. Coffie did not report any problems with his unit when questioned by Investigator Wycoff. Similarly, the 311 activity log (Pet. Ex. 3a) shows that he did not make any 311 complaints about the building. Mr. Coffie sought outside intervention from the SRO Law Project only when he was repeatedly told that he needed to move out of the building within several weeks.

Mr. Coffie's lack of rancor toward respondents was apparent when he was asked about conditions in his apartment. Far from taking the opportunity to embellish his testimony, Mr. Coffie noted when Mr. McFaddin had promptly attended to the problems and he even downplayed some of the conditions. For example, he indicated that there were sometimes problems with mice, but he did not consider it that serious and that Mr. McFaddin had come to his apartment and put down traps whenever he reported the issue (Tr. 97, 136). Similarly, he testified that when he told Mr. McFaddin that he had a leak in his ceiling (his apartment was on the top floor, below the roof), Mr. McFaddin came within a day or so, and fixed the leak, repainting the ceiling, albeit leaving a paint "bubble" and not repainting a section of the wall that should have been repainted (Tr. 136, 138, 153, 160).

Likewise, while Mr. Coffie testified that it was often cold in his apartment, because the boiler took some time to start up in the morning, he stressed that Mr. McFaddin would come by his apartment and explain that the boiler was slow. He acknowledged that he and Mr. McFaddin "made a joke" about his turning on the stove to keep the apartment warm until the boiler kicked in (Tr. 162). In a similar vein, rather than complain about the McFaddins not painting a section of his wall, he simply hung up some pictures to cover up the area (Tr. 160). When the rug in his apartment became stained from a water leak, Mr. Coffie followed Mr. McFaddin's advice to use rug freshener to keep odor away (Tr. 156-59).

It was clear from Mr. Coffie's testimony that he liked and respected respondents. It is incredible that he would falsely claim that Mr. McFaddin told him that he needed to move out within several weeks. Moreover, Mr. Coffie provided detailed testimony about his conversation with Mr. McFaddin, in which Mr. McFaddin emphasized that it was his building and that no one would tell him what to do with it. This was strikingly similar to Ms. McFaddin's comment to Ms. Park that she was going to sell the building vacant, because that was what the buyer wanted.

Neither Mr. nor Ms. McFaddin specifically rebutted either Mr. Coffie's or Ms. Park's testimony. Indeed, Ms. McFaddin acknowledged speaking to Ms. Park and to Mr. Coffie over

the telephone, which is consistent with their testimony that they spoke to her about Mr. Coffie being told that he had to move out.

In sum, the record established that Mr. McFaddin told Mr. Coffie on February 12, 2012 that he had to move out of his apartment in two weeks, and repeated this demand several times before modifying it to give Mr. Coffie an extension until mid-March to vacate. Although Mr. Coffie initially said “okay” and that he “understood,” he testified that he did not know his rights initially and wanted to “keep the peace.” He specifically recalled that Mr. McFaddin said that nobody was going to tell him what to do with his property. He was concerned about losing his apartment, to the point that he was fearful that something might happen to it while he was abroad. Moreover, it does not appear that the McFaddins had a good-faith (albeit wrong) belief that they could evict Mr. Coffie, as they maintained their demand that Mr. Coffie vacate the unit even when contacted by Ms. Park, insisting that it was their property to run as they pleased.

Respondents’ repeated demands that Mr. Coffie vacate his apartment, which continued even after the intervention of the SRO Law Project, constituted harassment under the Administrative Code, which defines harassment as including “any conduct by an owner which is intended to cause a lawful occupant . . . to vacate such unit or to surrender or waive any rights in relation to such occupancy.” Admin. Code § 27-2093(a) (4). Harassment has been found where a building manager angrily threatened to evict a tenant, *see Dep’t of Housing Preservation & Development v. Edelstein*, OATH Index No. 490/12 at 11-13 (Dec. 7, 2012), and where an owner repeatedly told tenants that he was “sick” of the tenants being there, asked when they were moving, and said that she wanted the building for her family, *Dep’t of Housing Preservation & Development v. Nyameke*, OATH Index No. 1796/04 (May 2, 2005). On the other hand, harassment has not been found where where tenants were “happy to receive upgrades from SRO units to apartments.” *Dep’t of Housing Preservation & Development v. Pascal*, OATH Index No. 626/06 at 5 (Apr. 5, 2006), or where tenants were offered the option of moving to apartments in different neighborhoods in order to effectuate appropriate repairs, so long as they were not deceived about the extent of the repairs and the amount of time they would have to be relocated, *Edelstein*, 490/12 at 15-16, 21-22. Here, neither Mr. McFaddin nor Ms. McFaddin asked respondent if he wanted to leave; instead, they demanded that he leave and reiterated that it was their property and nobody would tell them what to do with it. The logical inference to be drawn

is that they intended, by these statements, to intimidate Mr. Coffie and cause him to leave the building. This was harassment.

Although Mr. Coffie testified as to particular conditions in his unit, including a leak in the ceiling, mice, and the lack of sufficient heat until the boiler cranked up, petitioner is not alleging that these conditions constituted harassment (Tr. 372), and thus I need not make a specific finding as to them. I note, however, that Mr. Coffie testified that Mr. McFaddin was prompt to make certain repairs (the ceiling leak and the mice), he never made 311 calls or otherwise complained about the conditions, and he did not provide any documentation, such as a log, of the interior and exterior temperatures. *See Dep't of Housing Preservation & Development v. Porres*, OATH Index No. 627/06 at 16 (June 16, 2006).

The remaining issues involve the conditions inside Mr. Buie's apartment. Although Mr. Buie did not testify at trial, Mr. Coffie testified about conversations with Mr. Buie, as well as conditions he observed inside Mr. Buie's unit. Hearsay is admissible in administrative proceedings and has been found sufficient to establish harassment, particularly when corroborated by other testimony or the violation history for the building. *See Dep't of Housing Preservation & Development v. Re*, OATH Index No. 632/05 (May 3, 2005) (hearsay statements of two tenants as to lack of heat and hot water, illegal construction work, and verbal coercion, together with history of housing code violations, established that tenants had been harassed by the owners). Here, Mr. Coffie testified that Mr. Buie was a fellow tenant who had moved into the building in late 2011 or early 2012, and moved out some time in the spring or summer of 2012 (Tr. 94, 138). Mr. Buie often complained that there were problems in his apartment and that Mr. McFaddin was slow in responding to them (Tr. 150). More specifically, Mr. Coffie testified that Mr. Buie told him that there was a "mice infestation" in his apartment and that his bathroom ceiling had collapsed (Tr. 95). Mr. Buie also told him that he had filed many complaints with HPD and would be leaving the building because of these problems and because of arguments with Mr. McFaddin about his unit (Tr. 92, 93). Mr. Coffie further testified that Mr. Buie took him inside his apartment and showed him the collapsed ceiling and the rodent droppings (Tr. 126, 250). Mr. Coffie thought Mr. McFaddin had dealt with the mouse problem, but did not believe he did so promptly. Indeed, he testified that Mr. Buie had asked him for a loan of money so Mr. Buie could buy some mouse traps until Mr. McFaddin remedied the situation (Tr. 138).

Moreover, Mr. Coffie testified that he heard and saw many arguments between Mr. Buie and Mr. McFaddin, occurring in the hallways of the building (Tr. 93, 126-27). He never saw Ms. McFaddin arguing with Mr. Buie (Tr. 139), and was aware that she had suffered in a stroke on April 1, 2012 (Tr. 138).

Investigator Wycoff also testified about a conversation with Mr. Buie. Mr. Buie had telephoned Investigator Wycoff after having been given his contact information by Mr. Coffie. In that call, Mr. Buie related that he had had problems in his unit, including rodents, a malfunctioning stove with a gas leak, heat and hot water issues, and a leaking ceiling. Mr. Buie said he had told Mr. McFaddin about the leaking ceiling but that Mr. McFaddin did not fix it until it collapsed. Mr. Buie told Investigator Wycoff that these problems caused him to move out of the building (Tr. 180).

Investigator Wycoff wrote a supplemental report dated March 15, 2013, memorializing this conversation, including the conditions that Mr. Buie had complained about. He noted that Mr. Buie said that the owner told him that he complained too much and should file 311 complaints, Investigator Wycoff also related that Mr. Buie said that he was not willing to testify and did not want to get involved because he no longer lived in the building (Tr. 233; Pet. Ex. 4 at 15).

Petitioner introduced records of 311 calls made about the building, as well as a violation summary report. The 311 records (Pet. Ex. 4a) show that Mr. Buie made repeated complaints about the building in 2011 and 2012, including complaints about mice, heat, his ceiling leaking and collapsing, and peeling plaster. The 311 records do not indicate whether any action was taken on the complaints, or if the complaints were substantiated. However, the violation summary report reveals that six violations were issued in 2011, all for Mr. Buie's unit, and that the violations have not been certified as corrected. Three notices of violation were issued on September 26, 2011, for broken and defective plaster in the bathroom walls, broken and defective plaster on the ceiling, and an illegal conversion of two class B rooms into one class A apartment.<sup>3</sup> The three remaining notices of violation were issued on December 27, 2011, for mice, a defective smoke detector, and a defective carbon monoxide detector. The certification

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<sup>3</sup> Petitioner submitted a copy of a notice of violation issued by the Department of Buildings relating to the conversion (Pet. Ex. 5). However, petitioner did not allege that the purported illegal conversion constituted harassment of the SRO tenants.

due dates for the six violations have all passed, without any certifications being filed (Wycoff: Tr. 235; Pet. Ex. 4b).

Ms. McFaddin did not testify about conditions in Mr. Buie's apartment. However, Mr. McFaddin testified that he ensured that any problems in Mr. Buie's unit were promptly corrected (Tr. 285, 294). He does the maintenance for the building and whenever a tenant tells him about a problem, he fixes it right away, by "the next day" (Tr. 294). Although Mr. McFaddin did not recall the date, he remembered that, after a big rain storm, Mr. Buie told him that plaster had fallen from the wall and bathroom ceiling (Tr. 293). He had a worker "come right in," and scrape, sand, and paint the area (Tr. 294). Similarly, he recalled Mr. Buie telling him about mice in the unit. He testified, indeed in some detail, as to how he and Mr. Carel (another tenant who sometimes did some work for him) got down on their knees and crawled around the entire room, lifting up carpeting and putting down steel wool and mouse poison around the sink and walls (Tr. 297-98, 348, 354). He recalled that an inspector was present at the time. The inspector told him what to do and said that Mr. McFaddin should call him when the work was completed, so he could come back to inspect it (Tr. 348). While the inspector was there, Mr. Buie also said that his stove was not working. Mr. McFaddin said he would put in another stove, because the old stove was "caked up" (Tr. 300). Further, Mr. Buie complained about smoke and carbon monoxide detectors; in response, Mr. McFaddin put in new batteries (Tr. 303, 304, 305, 307).

Mr. McFaddin testified that the inspector returned a week or two later, and said everything was fine (Tr. 305). In response to repeated questioning, he testified that he did not recall ever getting written notices of violation (Tr. 353, 357, 358, 359, 360). Similarly, although he repeatedly asserted that he had remedied the problems, Mr. McFaddin testified that he did not recall putting anything in writing to the inspector, indicating that the problems were fixed (Tr. 359). Rather, he did what the inspector asked him to do by calling the inspector and saying that the problems were fixed (Tr. 359). Further, Mr. McFaddin testified that he no longer has receipts for the steel wool, mouse poison, and batteries, that he replaced the stove with a stove from an adjoining apartment that was vacant, and that he painted and plastered with materials that he had in storage (Tr. 341-43).

Additionally, Mr. McFaddin testified that he spent day and night with his wife in the hospital after her stroke (Tr. 316) and his attorney contended that, therefore, he could not have

spent much time in the building arguing with Mr. Buie over conditions in Mr. Buie's unit (Tr. 366).

On balance, I was persuaded by Mr. Coffie's credible testimony, as corroborated by Inspector Wycoff and the documentary evidence, that Mr. Buie repeatedly complained of problems in his apartment, including rodents, and a leaking ceiling that was not fixed until it collapsed. I credited Mr. Coffie's testimony that Mr. McFaddin was sometimes attentive to Mr. Buie but on other occasions told him that he complained too much. I also credited Mr. Coffie's testimony that Mr. Buie said he moved out because of the problems with his apartment and the arguments with Mr. McFaddin. Thus, I did not credit Mr. McFaddin's testimony that he promptly fixed the problems in Mr. Buie's unit, nor the statement in his application for a CONH that Mr. Buie moved out because he wanted a bigger apartment (Pet. Ex. 1 at ¶18). Although Mr. McFaddin seemed somewhat confused when asked if he had ever gotten written violations, and ultimately said he did not recall ever getting them, the evidence established that written violations were indeed issued. Respondents failed to submit written certifications of compliance, as required.

I was not persuaded by Mr. McFaddin's testimony that he would not have argued with Mr. Buie over doing repairs because he was hardly in the building after his wife's stroke. While I do not doubt Mr. McFaddin's attentiveness to his spouse, Mr. Coffie testified that he recalled Mr. McFaddin coming to the building after the stroke, to check on the building. Indeed, he specifically recalled Mr. McFaddin coming by his apartment and telling him how Ms. McFaddin was doing (Tr. 142). Moreover, the building violations were issued in 2011, prior to Ms. McFaddin's stroke.

Petitioner asserts that under the Administrative Code, the failure to file certifications of compliance establishes a *prima facie* case that the violation has not been corrected. Admin. Code. § 27-2115(f)(7) (Lexis 2013). However, I was convinced, largely because of Mr. Coffie's testimony, that Mr. McFaddin attended to at least some of these problems, albeit in a belated fashion. Mr. McFaddin took steps to get rid of the mouse problem and he also fixed the ceiling, unfortunately waiting to do so until it collapsed. However, his persistent failure to promptly attend to problems in Mr. Buie's unit, including the mouse infestation and recurring leaks, was an interruption in essential services that interfered with Mr. Buie's comfort, repose, or quiet, and was intended to cause Mr. Buie to vacate. This constituted harassment. *See Dep't of Housing*

*Preservation & Development v. Goldsmith*, OATH Index No. 2118/12 at 30 (Aug. 27, 2013) (failure to repair recurring leaks and correct other housing conditions basis for finding of harassment); *Dep't of Housing Preservation & Development v. Tauber*, OATH Index No. 675/07 at 20 (May 16, 2007) (delay in making repairs and removing violations basis for finding of harassment); *Nyameke*, OATH 1796/04 at 7 (failure to fix non-working stove and bathroom indicative of intent to cause tenants to vacate).

### **FINDINGS AND CONCLUSIONS**

1. During the inquiry period, respondents repeatedly told Mr. Coffie, a lawful occupant of the building, that he had to move out of the building within a short period of time and asked if he had made arrangements to move. Respondent Willie McFaddin told Mr. Coffie that it was his building and that nobody would tell him what to do with it. Respondent Rebecca McFaddin told Ms. Park, a representative of the SRO Law Project, that she would sell the building vacant because that was what the buyer wanted. These statements constituted harassment within the meaning of Administrative Code section 27-2093(a).
2. During the inquiry period, respondents failed to make prompt repairs to the unit occupied by Mr. Buie, a lawful occupant, with intent to cause him to vacate his unit. This constituted harassment within the meaning of Administrative Code section 27-2093(a).

### **RECOMMENDATION**

Accordingly, the application for a certificate of no harassment should be denied.

Faye Lewis  
Administrative Law Judge

November 8, 2013

SUBMITTED TO:

**MATTHEW M. WAMBUA**

*Commissioner*

APPEARANCES:

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