Dep't of Housing Preservation & Development v. Bezzant

OATH Index No. 1529/14 (Jan. 5, 2015)

Petitioner proved that respondent committed acts of harassment within the meaning of section 27-2093 of the Administrative Code. Thus, respondent's application for a certificate of no harassment should be denied.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
Petitioner
- against -
JOHN BEZZANT
Respondent

REPORT AND RECOMMENDATION

KEVIN F. CASEY, *Administrative Law Judge*

Petitioner, the Department of Housing Preservation and Development, commenced this proceeding under section 27-2093 of the Administrative Code. On June 3, 2013, respondent John Bezzant, an officer and representative of building owner Aimco, Inc., applied for a certificate of no harassment for a building located at 238-244 West 73rd Street, New York, New York. Petitioner seeks denial of respondent's application for a certificate of no harassment, alleging that respondent committed acts of harassment against the building's tenants from June 3, 2010 to date (ALJ Ex. 1, Second Amended Petition). Admin. Code § 27-2004(a)(48) (Lexis 2014). Respondent denies committing any harassment and insists that it took reasonable actions to remedy any conditions of which it was aware (ALJ Ex. 2, Answer to Second Amended Petition).

At a six-day hearing that ended on October 1, 2014, petitioner relied on documentary evidence and testimony of fifteen witnesses (thirteen current tenants, an investigator, and an elevator repairer). Respondent relied on documentary evidence and testimony from five current

or former Aimco employees. Following receipt of written summations, the record was closed on November 20, 2014.

For the reasons below, I find that petitioner proved that respondent harassed lawful tenants and recommend denial of the certificate of no harassment.

ANALYSIS

Background

The building, known as the Tempo, is a Class A hotel located at 238-244 West 73rd Street (Tr. 7, 762). When respondent applied for a certificate of no harassment on June 3, 2013, 150 units were occupied by permanent single room occupancy (SRO) rent-stabilized tenants and 75 other units were rented at market rate (Tr. 7-8; Pet. Ex. 1). Before issuing a certificate of no harassment, petitioner must certify that there has been no harassment of the lawful occupants of the premises within the 36 months preceding respondents' application. Admin. Code § 27-2093(c) (Lexis 2014). Thus, the relevant inquiry period is from June 3, 2010 to date. 28 RCNY § 10-01 (Lexis 2014) (inquiry period ends on the date of final determination).

Harassment includes "the interruption or discontinuance of essential services" that "interferes with or disturbs or is intended to interfere with or disturb the comfort, repose, peace or quiet of" a lawful occupant's use or occupancy of a dwelling unit; and "causes or intends to cause a [lawful occupant] to vacate such unit or to surrender or waive any rights in relation to such occupancy," or "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 [a lawful occupant] to vacate such unit or to surrender or waive any rights in relation to such occupancy." Admin. Code § 27-2093(a).

If an act of harassment is proved, it is presumed that such acts were "committed by and on behalf of the owner" and "such acts or omissions were committed with the intent to cause a [lawful occupant] to vacate such unit or to surrender or waive a right" to lawful occupancy. Admin. Code § 27-2093(b). Respondent may rebut the presumption of intent by showing that proven acts of harassment were not intended to cause lawful occupants to vacate their rooms, or surrender or waive their rights to their rooms. *See Dep't of Housing Preservation & Development v. 331 West 22nd Street LLC*, OATH Index No. 912/06 at 12 (Dec. 29, 2006).

Petitioner alleged that respondent committed a dozen different forms of harassment (ALJ Ex. 1 at ¶ 9). Respondent countered that the premises is a beautiful, old building with many amenities (Tr. 852-53). Though I did not credit all of the claims made by petitioner's witnesses, the evidence was sufficient to prove that respondent committed acts of harassment. Petitioner demonstrated that respondent repeatedly failed to repair broken plaster and paint, and make other repairs, in a timely fashion. The evidence also showed that respondent repeatedly posted rent demands, along with unlawful requests for legal fees, on the doors of SRO tenants when no rent was due.

Proven Acts of Harassment

Failing to respond to tenants' complaints or repair broken plaster and paint in a timely fashion (ALJ Ex. 1 § 9 (b), (h))

When petitioner's investigator inspected the premises on November 12, 2013, he photographed at least ten SRO units with significant amounts of peeling paint and plaster (Tr. 762-63; Pet. Exs. 21, 29, 32, 48, 49, 52, 57, 65, 66, 67, 68). The investigator returned on March 17, 2014, and photographed four more SRO units with similar conditions (Pet. Exs. 43, 60, 69, 70).

At the hearing, tenants credibly testified that building management and employees either ignored or failed to make requested repairs in a timely fashion throughout the inquiry period. For example, tenant Arnone testified that it took months to repair a leaky bathroom sink and faucet in 2013 (Tr. 148-50; Pet. Ex. 30). Tenant Goldberg testified about recurring leaks in his bathroom ceiling which caused plaster and paint to drip down and bubble in multiple spots from 2010 to 2013 (Tr. 329-30). The building owner refused to repair the condition or only made temporary fixes until the summer of 2014 (Tr. 331, 341, 350-51). Tenant Meltzer testified about mold, cracked porcelain, and blistering paint in her apartment that building employees refused to repair (Tr. 630-34, 639; Pet. Ex. 57). Tenant Darrow described recurring leaks and flaking plaster that were in her bathroom for more than a year (Tr. 304, 321-22, 324; Pet. Ex 37). Despite repeated requests, the building owner repaired the condition only recently (Tr. 323-25). Tenant Harris described a peeling plaster condition that kept recurring from 2010 until the building owner finally repaired it in 2014 (Tr. 111-117, 122; Pet. Ex. 29). Tenant Winther testified about a recurring problem with leaks and peeling plaster which had been a problem for more than a year and was not repaired until 2014 (Tr. 61, 66, 72-73; Pet. Ex. 21). According to

tenant McIntyre, a 2014 ceiling leak caused his wall to disintegrate and his bookshelves to collapse (Tr. 469). It took three or four weeks for the superintendent to inspect the condition and a few more weeks for the building manager to look at it (Tr. 470). The condition has yet to be repaired and one-hundred square feet of concrete in his living room is still exposed (Tr. 470, 472).

Tenant Pinchefsky testified that her kitchen counter has been falling apart for years (Tr. 368-70). Though she exaggerated when she described her kitchen as "third world," Pinchefsky credibly maintained that she repeatedly asked building superintendents to repair bubbling plaster and the counter, which was attached to a rotting piece of wood (Tr. 368-70, 376-78, 380; Pet. Exs. 41, 42, 43).

Tenant Schiller testified that, despite repeated requests in 2012 and 2013, the building owner would not replace a frayed and tattered carpet that had been in his apartment when he moved in nearly 40 years ago (Tr. 524-28; Pet. Exs. 8, 50, 51). Tenant Slater testified about mold on bathroom tiles, which the building owner refused to have scraped or repainted for nearly two years, which was finally repaired in June 2014 (Tr. 216-18, 221, 226; Pet. Exs. 26, 33). Schiller described mold, flaking plaster, leaks "too numerous to count" in his bathroom (Tr. 533, 537-40; Pet. Ex 52). Despite years of complaints, the building owner only performed cosmetic maintenance work and did not repair the condition until 2014, while the application for a certificate of no harassment was pending (Tr. 535, 541-42, 544, 549-50).

Tenant Cunningham testified that her windows and window frames had cracks, which a maintenance worker refused to repair (Tr. 705-06, 710; Pet. Ex. 60). Cunningham, the president of the tenants' association, also described the mold and flaking plaster in other tenants' rooms. Despite Cunningham's protests, those conditions were not repaired (Tr. 714, 721; Pet. Exs. 64). *See Dep't of Housing Preservation & Development v. Domb*, OATH Index No. 586/09 (Apr. 17, 2009), *aff'd*, *Domb v. Cestero*, 89 A.D.3d 347 (1st Dep't 2011) (hearsay regarding failure to make repairs can be relied upon to prove harassment).

The photographs and credible testimony proved that respondent failed to make timely repairs of peeling paint, bubbling plaster, and other conditions in the units of SRO tenants. Relying on evidence that it had a full-time staff of maintenance workers who made repairs and kept detailed records, respondent argued that there was no intent to harass (Resp. Exs. A-H). Respondent also argued that tenants failed to substantiate that paint and plaster conditions were

brought to its attention (Resp. Mem. at 28). In respondent's view, the tenants' complaints were false, concocted, de minimis, vague, or uncorroborated (Resp. Mem. at 40). The evidence does not support respondent's claims.

Respondent performed routine repairs, such as replacing light fixtures and unclogging bathtubs (Resp. Ex. F). Occasionally, respondent also performed major repairs of SRO units, including the complete renovation of one bathroom to make it handicap accessible (Tr. 1167-68). However, the extensive evidence of peeling paint and bubbling plaster in multiple SRO units demonstrates that this was a serious, recurring condition that respondent failed to address for years.

The tenants credibly testified that their complaints were ignored. This was confirmed by evidence of at least twenty 311 complaints regarding peeling paint and plaster or mold (Tr. 1156; Pet. Ex. 20). Respondent's witnesses acknowledged that they received alerts from 311 (Tr. 1156). In several instances, respondent repaired long-standing conditions only after it filed the certificate of no harassment. This evidence supports a finding that respondent was aware of this ongoing problem and did not address it in a timely fashion.

Contrary to respondent's argument, there was no evidence that tenants prevented work from being performed. Though Schiller conceded that he did not want major repair work in his unit performed while he was finishing his dissertation in 2012, he credibly maintained that he wanted the work performed in 2013 or 2014 and was willing to relocate if necessary (Tr. 530-31, 550-51). Respondent's repair records show that Schiller complained about the decades-old tattered carpet in November 2013 (Resp. Ex. F). Yet that request was ignored.

In sum, the evidence showed that respondent committed acts of harassment by failing to make timely repairs, especially for peeling paint and broken plaster. The widespread nature of the conditions, confirmed by photographic evidence, demonstrated that this was a serious, recurring problem. Respondent failed to rebut the inference that this harassment was committed with the intent to cause lawful SRO occupants to vacate their units or surrender their rights. *See Dep't of Housing Preservation & Development v. Goldsmith*, OATH Index No. 2118/12 at 30 (Aug. 27, 2013) (failure to correct recurring leaks and defective floors, doors, and windows, deemed harassment); *Dep't of Housing Preservation & Development v. Tauber*, OATH Index No. 675/07 at 15, 21 (May 16, 2007) (persistently ignored deplorable conditions, including leaks, constitutes harassment).

Repeatedly failing to credit rent payments in a timely fashion, posting false demands for rent and legal fees on tenants' doors, and bringing court proceedings against tenants without legal foundation (ALJ Ex. 1 § 9 (c), (d))

SRO tenants claimed that baseless demands for rent, including threats of litigation of eviction, were posted to their apartment doors after they had already paid their rent. The evidence fully supported this claim. Respondent's actions constituted harassment.

Cunningham testified that, in October 2013, she received a rent demand, signed by the building's managing agent, after she had already paid her rent (Tr. 698-700; Pet. Ex. 58). She also received a five-day notice in November 2013, for that month's rent, a few days after she had already paid it (Tr. 701-02; Pet. Ex. 59). Goldberg received a rent demand in October 2013 after she had already paid her rent (Tr. 345; Pet. Ex. 38). Slater testified that he received a rent demand on his door in November 2013 five days after his monthly rent check had cleared (Tr. 256; Pet. Ex. 33). Silva received a similar notice after he had already paid his rent with a money order (Tr. 399, 421). Harris, another long-time SRO tenant, received a rent demand in September 2013 after respondent had failed to deposit several months' rent checks (Tr. 84, 87; Pet. Ex. 24).

McIntyre testified that respondent did not deposit his March 2013 rent payment because the check also had his wife's name on it and respondent insisted on seeing a copy of their marriage license (Tr. 451, 484). In late November 2013, McIntyre received a rent demand posted on his door when he returned from vacation (Tr. 449). He conceded that he had not yet paid his rent for that month (Tr. 449). After receiving the notice, McIntyre immediately paid his November and December 2013 rents (Tr. 449-50). Though respondent received McIntyre's December rent on November 26, he received a demand for rent on December 12, falsely claiming that he owed November and December's rent and legal fees, and suggesting that he faced eviction (Tr. 455-56; Pet. Ex. 6).

Respondent did not dispute that in nearly every instance the SRO tenant had already tendered the monthly rent before the demand for rent and legal fees had been posted on the apartment door. However, respondent explained that it had referred each matter to its attorney because the tenants had failed to pay the monthly rent on the first of the month as required or within a ten-day grace period. Because its corporate offices and the bank used for rent deposits were located out-of-state, payments received after the tenth of the month were not always

processed in time before the rent demands were posted by respondent's attorney (Tr. 258, 955). Thus, respondent argued that there was no intentional harassment because the tenants' payments were untimely and it was not responsible for errors committed by its attorney (Resp. Mem. at 36, 39).

Respondent is mistaken. Except for the November rent demand to McIntyre, all of the other rent demands were baseless because the rents had already been paid before the demands were posted. The repeated nature of these demands supports the inference that they were intended to harass SRO occupants. And respondent cannot excuse its conduct by blaming its attorney. In each case, respondent referred the rent demand to its attorney without bothering to follow up and notify the attorney when the payments were received and the attorney posted the rent demands at respondent's behest.

A finding of harassment is further supported by the fact that some of the notices included unlawful requests for late fees or attorney fees (Pet. Ex. 59). Respondent did not dispute that rents for rent stabilized tenants cannot include extra charges for late fees or attorney fees. *See* 9 NYCRR § 2525.1 (Lexis 2014); *London Terrace Gardens v. Stevens,* 159 Misc.2d 542 (N.Y. Civ. Ct. N.Y. Co. 1993) (legal fees and late fees may not be collected from rent stabilized tenants). Indeed, before the November and December 2013 rent demands were posted, tenants, a local elected official, and the SRO Law Project had put respondent on notice that it was improper to include such fees in rent demands (Tr. 451, 577-79; Pet. Ex. 7). Despite such notice, respondent repeatedly made unlawful demands for legal fees and late fees.

Respondent now argues that there was no harm because in most cases the rent demands were withdrawn after it was notified that the rent had been paid and none of the SRO tenants actually paid any late fees or attorney expenses (Tr. 666). That argument ignores the tenants' credible testimony that they felt embarrassed, annoyed, or harassed by receiving a notice prominently posted on their door demanding rent that had already been paid. For example, Cunningham, an elderly tenant who has been living in the building for more than 30 years, described how she walked to respondent's offices on Madison Avenue each month to pay her rent and receive a receipt (Tr. 686, 703-04). She credibly maintained that receiving a rent demand after she had already paid her rent was quite upsetting (Tr. 702). Other tenants described similar feelings of embarrassment, anger, humiliation, and fright (Tr. 105, 347, 401, 454). Based on this evidence, petitioner proved that respondent engaged in harassment. *See*

Dep't of Housing Preservation & Development v. Bernardi, OATH 416/09 at 6, 13 (Mar. 19, 2009) (harassment shown by evidence that landlord posted embarrassing notice to SRO tenant).

In at least two instances, tenants protested that they were required to make needless court appearances. However, the evidence failed to show that those appearances constituted additional acts of harassment.

McIntyre testified that he went to court to defend against the non-payment action for the November and December 2013 rent demands, and the court dismissed the action on mutual consent. However, McIntyre acknowledged he could have avoided the court appearances but he could not agree on proposed language when respondent's counsel offered a stipulation withdrawing the action (Tr. 461-62).

Tenant Meltzer was the subject of a non-residency action that was dismissed on procedural grounds (Tr. 1170-71; Pet. Exs. 4, 8). Respondent began the action after Meltzer asked to have her mail sent to a post office box; employees reported that they had not seen her in the building for a few months; and an internet search indicated that she may have lived in the Philadelphia area (Tr. 1170). An unsuccessful lawsuit, alone, is not proof of harassment.

Unproven Acts of Harassment

Intimidation, threats, and dismissive treatment (ALJ Ex. 1 § 9 (a))

Petitioner alleged the following acts of verbal and physical harassment: building manager Richardson loudly yelled and raised her fist in an intimidating manner at tenant Cunningham; building superintendent Cappelli demanded, in an angry and menacing fashion, that tenant Arena not call 311; and building management and agents treated tenants in a dismissive, contemptuous manner. The evidence failed to prove that respondent's employees verbally or physically harassed tenants. Many of the allegations are based on the tenants' subjective interpretations of ambiguous words or actions. To the extent that some of respondent's employees made isolated, inappropriate remarks, they were not intended to harass.

For example, Cunningham recalled an incident in 2012 when she was unable to get her walker through the front door which was undergoing repairs. When she tried to use the service entrance, she asked a porter to remove trash bags that blocked her way (Tr. 690). According to Cunningham, building manager Richardson ran after her, yelled at her, raised her fist in an intimidating manner, and told her to stop abusing employees (Tr. 690-91). Cunningham, who has a cardiac condition, claimed that she was frightened (Tr. 690). Though she felt palpitations

and wanted to go to a doctor, she went to pay her rent instead (Tr. 691). Richardson recalled that she once asked a porter to remove some construction debris and assist Cunningham in using the service entrance (Tr. 1086-87).

This evidence was too vague to support a harassment claim. There was no contemporaneous report of the incident. There was no evidence of how much distance there was between Richardson and Cunningham or what they said to each other. And Cunningham's claim – two years after the incident – that she wanted to go to a doctor but decided to pay her rent instead, seemed embellished.

Similarly, Arnone recalled that she once complained to Richardson about a young man playing a musical instrument in the building's fitness center (Tr. 176). According to Arnone, Richardson replied that rent stabilized tenants did not belong in the fitness room (Tr. 176). It is unclear when this incident supposedly occurred and there was no contemporaneous report of it. It is unlikely that Richardson uttered the alleged remark and, even if she did, it may have been made in jest. Arnone conceded that she and other tenants routinely use the fitness center and they had never been prevented from doing so during the inquiry period (Tr. 178).

Tenant Arena testified that she once called 311 to complain about a lack of hot water and building superintendent Cappelli later asked if she had first reported the matter to building management. When Arena said "No," Cappelli allegedly became very aggressive and in an angry and menacing tone ordered her not to complain to 311 (Tr. 489-91). Cappelli credibly testified that he did not recall making such a remark and explained that, when he received a report of a 311 call regarding the lack of hot water, it would have been standard procedure for him to contact the tenant and inquire about the reported condition (Tr. 1202, 1216).

It is unclear what exactly Cappelli told Arena or what she meant by an "angry" or "aggressive tone." In the absence of any allegation of similar behavior by Cappelli, I find it unlikely that he would have suddenly ordered Arena not to call 311. Tenants routinely made such complaints. There was no reason for Cappelli to single out Arena for unfair attention. It is likely that he may have asked her to notify building management the next time that she had a complaint about hot water. Depending on what was said or how he said it, Arena may have misconstrued Cappelli's remarks as an "order" not to call 311. Other evidence suggested that Arena tended to exaggerate. When the superintendent banged on her door to investigate a plumbing problem, she said that it sounded like "the Gestapo" was at her door (Tr. 494-95).

The remaining allegations of verbal abuse were vague and subjective. Slater claimed that Richardson's "general attitude" was "cold, aloof, a little bit belligerent" when he asked her to repair some tiles (Tr. 219). Meltzer described Richardson's tone and "body language" as "hostile" and "filled with contempt" when they had a disagreement about a fee for a mailbox key (Tr. 579-81).

Individually and collectively, this evidence of alleged physical and verbal abuse fell short of proving any intent to harass.

Elevator service (ALJ Ex. 1 § 9(e))

Petitioner alleged that respondent's failure to maintain the building's elevators caused a decrease in service due to chronic shutdowns. Though there were problems with the elevators, petitioner failed to prove that it was due to a lack of maintenance.

The building has two passenger elevators and one freight elevator (Tr. 766). Tenants claimed that one or more elevators were frequently out of service or malfunctioning. For example, Cunningham testified that elevators were "constantly" breaking down (Tr. 692). Pinchefsky testified that they were inoperable "at least monthly" and she has been stuck in an elevator twice since 2010 (Tr. 365-66). McIntyre testified that "when available" the elevator ride could be "spooky" and he was stuck in once for 45 minutes (Tr. 443). Meltzer testified that in December 2013, one elevator was out of service for two weeks (Tr. 560; Pet. Ex. 53). The Department of Buildings had issued a violation on November 29, 2013 (Pet. Ex. 16; Tr. 561-62). Petitioner's investigator noted that one elevator was out of service when he inspected the premises in March 2014 (Tr. 763). Some of the tenants suggested that the elevators broke down more frequently a few years ago when many apartments in the building were being used by a company named WooGoo as a short-term or overnight hotel (Tr. 247-48, 497).[1]

However, one of petitioner's witnesses, supervisor Mayer from KONE Elevators and Escalators, credibly testified that none of the interruptions of elevator service were due to a lack of maintenance (Tr. 749). Mayer, who has been servicing the building since 2011, described respondent's concerted efforts to maintain the elevators and keep them in working order (Tr. 727-28). He stated that respondent has an all-inclusive contract with KONE to maintain all the elevators in the building (Tr. 726, 748; Pet. Exs. 62, 63). The contract also provides for 24-hour

[1] Petitioner did not allege that respondent committed harassment by allowing WooGoo to operate an illegal hotel. Respondent took legal action against WooGoo to compel it to stop such activity (Tr. 656).

emergency repairs (Tr. 749-50). After reviewing service records, Mayer testified that there was one occasion when both passenger elevators were not working for approximately 75 minutes (Tr. 740-41). At no point were all three elevators out (Pet. Exs. 62, 63). Mayer's testimony, supported by maintenance and repair records, successfully rebutted the claim that respondent harassed SRO tenants by causing a lack of elevator service.

Interrupting and discontinuing longstanding services (ALJ Ex. 1 § 9(f), (k))

Petitioner alleged that respondent interrupted or discontinued longstanding services. However, the evidence failed to support this claim.

For example, two witnesses recalled seeing roaches or mice in the building (Tr. 52-53, 342-43). There was no indication that those observations were reported to respondent. Moreover, respondent presented credible evidence that it has a contract for regular monthly extermination service (Tr. 934). Tenants could also request additional extermination services (Tr. 342-43, 934, 1065).

Some tenants complained that there were occasions when there was no security person at the building entrance and there were a few months in 2013 when the building did not have a superintendent (Tr. 54-56, 74, 498, 515). However, respondents presented credible evidence that the building's lobby is located next to the entrance and there is a doorman there 24 hours per day (Tr. 855, 1064). Respondent also showed that there were at least three or four employees on duty at all times (Tr. 1088, 1201). When the doorman takes a break, one of the other employees fills in (Tr. 416, 498, 856, 1063-64). A superintendent once quit on short notice and it took three months to hire a replacement, but respondent continued to provide porters, maintenance workers, and interim superintendents without interruption (Tr. 56, 855, 962, 1063).

One tenant claimed that, in the past, a tenant could request a repair by going to the front desk and now the only way to make such a request was on-line (Tr. 432). Respondent rebutted that claim with ample evidence that repair requests could be made in person at the front desk, by phone, or on-line (Tr. 1063-64).

Until recently, there were trash receptacles on each floor near the stairwell landings. However, that practice ended when it resulted in violations issued by the Fire Department. After meeting with tenants and local elected officials, respondent obtained permission from the Department of Buildings to install a trash room in the basement near the freight elevator. Now tenants take their trash down on the freight elevator to the trash room. Respondent offered to

provide assistance to those tenants who were unable to bring their trash to the trash room (Tr. 1153-54). Petitioner argued that, according to the State Division of Housing and Community Renewal and section 1213 of New York City's Building Code, respondent should have installed a trash compactor, but respondent presented evidence that, due to the age of the building it was not required to do so. *See* Admin. Code § 24-119 (Lexis 2014) (multiple dwellings built prior to May 20, 1968, are exempt from trash compactor requirement).

It is inconvenient to take a freight elevator to the trash room. But the evidence showed that respondent only created the trash room after the Fire Department found the previous trash collection system to be unsafe. Though unpleasant, the trash room is probably more sanitary and safer than having separate trash receptacles on each residential floor of the building. Respondent also presented evidence that installing trash chutes on each floor would have taken space away from some tenants' apartments. Under these circumstances, installation of a trash room was not an act of harassment.

Hot water (ALJ Ex. 1 § 9(g))

Petitioner alleged that respondent repeatedly failed to provide hot water. A few tenants testified about incidents where there was a lack of hot water. For example, Darrow testified that there were violations for lack of hot water issued on May 6 and June 16, 2011 (Tr. 316-17). In 2013, she complained that there was scalding hot water when her upstairs neighbor flushed the toilet as she took a shower (Tr. 316). Arena and Harris also said that there were problems with a recurring lack of hot water (Tr. 79, 141, 489-91).

Respondent countered with evidence that it installed new hot water heaters and had a service contract for maintenance or repairs (Tr. 988-89, 1131; Resp. Ex. L). The problems with Darrow's hot water were due to a connection valve that respondent repaired (Tr. 1161-12). Other problems were related to the installation of a new hot water system (Tr. 1158-59). Petitioner failed to prove that there were chronic, recurring problems with hot water caused by respondent.

Unsafe or unlawful construction work (ALJ Ex. 1 § 9(j))

Some tenants complained about disturbances caused by construction work in and around the building. For example, Darrow recalled that workers repairing the building's façade dropped a brick and hit the window frame on her balcony, causing a table to break. She also described an incident where workers' sparks set fire to a topiary. Goldberg described falling debris that

knocked her air-conditioner out of a window (Tr. 342). Workers also dropped bricks that broke the skylight of a chiropractor's office in the building (Tr. 311, 325-26).

Meltzer, Arena, and Cunningham noted that there was noise and debris from renovations of units and common areas. According to Meltzer, construction workers made banging noises before 9:00 a.m. and there was an interruption of the water supply due to construction (Tr. 568-570, 575). Cunningham recalled an incident where she tripped over materials left out by a contractor (Tr. 696). Arena estimated that the scaffolding work took two years (Tr. 507).

Another tenant, Alvarez, gave construction workers permission to go through his upper floor apartment to work on the roof (Tr. 793, 805). But he later complained that the work took too long, many of his plants died due to the dust, and there was another door that the construction workers could have used (Tr. 793-94, 806-08).

Respondent offered proof that it had permits for all the work and it took corrective action when it learned of problems caused by the contractors (Tr. 1182). The evidence also showed that any interruptions of water due to construction were temporary and limited in scope (Tr. 1099-1101).

Though accidents occurred, construction work took longer than expected, and there may have been some inconvenience, petitioner failed to prove that respondent did anything improper. On the contrary, the evidence showed that respondent made necessary repairs to the building's exterior and common areas.

Generally interrupting or decreasing services (ALJ Ex. 1 § 9(l))

Petitioner failed to prove its catch-all claim that other essential services were interrupted or discontinued. As petitioner's investigator acknowledged, the building seemed well-maintained (Pet. Ex. 64). Among other things, respondent installed a new hot water system and new laundry machines (Tr. 938-39, 1064-65). At the end of the hearing, petitioner withdrew allegations that respondent failed to provide linen and maid service, light bulbs, fuses, toilet paper, long-distance phone service, or smoke and carbon-monoxide detectors (Tr. 1219-1223). With the exception of the proven acts of harassment discussed above, petitioner failed to prove the general claim that occupants of SRO units received less service than the occupants of market-rate apartments.

FINDINGS AND CONCLUSIONS

1. Petitioner proved that respondent failed to respond to tenants' complaints or repair broken plaster and peeling paint in a timely fashion.

2. Petitioner proved that respondent repeatedly failed to credit rent payments in a timely fashion and posted false demands for rent on tenants' doors.

3. Petitioner's remaining contentions were either unproved or did not constitute intentional harassment.

RECOMMENDATION

I recommend that respondent's application for a certificate of no harassment be denied.

Kevin F. Casey
Administrative Law Judge

January 5, 2015

SUBMITTED TO:

VICKI BEEN
Commissioner

APPEARANCES:

RONIT JOSEPH, ESQ.
Attorney for Petitioner

BELKIN BURDEN WENIG & GOLDMAN, LLP
Attorneys for Respondent
BY: KARA I. SCHECTHER-RAKOWSKI, ESQ.
S. STEWART SMITH, ESQ.