Dep't of Buildings v. Trombettas

OATH Index No. 2325/15 (Jan. 29, 2016), *adopted*, Comm'r Dec. (Feb. 11, 2016), **appended**

Petitioner established that respondent was negligent, incompetent, or lacked knowledge of or disregarded relevant laws; made material false or misleading statements on documents that he submitted to the Department; and endangered public safety and welfare. Revocation of respondent's master plumber's license recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF BUILDINGS
Petitioner
- against -
ANDREW TROMBETTAS
Respondent

REPORT AND RECOMMENDATION

ASTRID B. GLOADE, *Administrative Law Judge*

This proceeding was referred pursuant to section 28-401.19 of the New York City Administrative Code. Petitioner, the Department of Buildings ("Department" or "DOB") alleged that respondent, Andrew Trombettas, a licensed master plumber, is negligent, incompetent, lacks knowledge of or disregards applicable laws and rules; made a material false or misleading statement on a form or report filed with the Department; and endangered public safety and welfare in the performance of work at multiple locations. Petitioner charged that respondent violated sections 28-401.19(2), (6), and (11) of the Administrative Code and seeks revocation of his master plumber's license (ALJ Ex. 3).

During a four-day hearing before me, petitioner presented documentary evidence and the testimony of five witnesses. Respondent testified on his own behalf. The record was held open until September 18, 2015, for the submission of written briefs.

For the reasons set forth below, I find that petitioner established most of the charges and recommend that respondent's master plumber's license be revoked.

ANALYSIS

Respondent has been a licensed master plumber since 1998 (Tr. 403; Pet. Ex. 1). He is affiliated with S. K. Piping & Heating Corp. ("S. K. Piping") and Beta Plumbing & Heating Corp. ("Beta Plumbing"), both of which have performed work under permits issued to respondent. Petitioner undertook an audit of projects with which respondent was associated as the licensed master plumber after an explosion at a building where the Department had issued respondent a permit to perform plumbing work (Tr. 36). As a result of its audit of about 400 jobs on which respondent obtained permits, DOB issued multiple violations to respondent or his affiliated companies (Tr. 30-31, 40-41).

Background

Shawn Jones has worked for the Department for approximately eleven years, the last four of which have been Chief of Plumbing Enforcement. He oversees a staff of six, including five inspectors and an assistant chief inspector. His staff responds to public complaints and performs audits to check inspections (Tr. 15-16). Prior to working for DOB, Jones was a plumber (Tr. 33).

Jones testified that plumbing work entails installation, repair and replacement of gas, water, ventilation, sewage, storm drainage, and fire suppression systems. Nearly everyone seeking to undertake plumbing work must obtain a permit before commencing the work. Depending on the scope of work to be performed, a master plumber may work from a set of plans designed by an architect or professional engineer, or may act as the design professional (Tr. 16-18).

To obtain a permit, a master plumber typically files an application that includes information about the scope of work the plumbing contractor anticipates he or she will perform, the types of fixtures he or she intends to install, the type of piping, and the location of the work in the building. If a particular job involves a set of design plans that include plumbing work, the plumber is responsible for verifying that the plans comply with the applicable codes and for informing the design professional, an architect or engineer, of any changes that must be made to ensure compliance. The master plumber relies on the design plans, which Jones referred to as "the Bible," in performing plumbing work (Tr. 23). The Schedule B form, described as 'a fixture layout," provides information about the locations in the premises where the fixtures, pipes, and associated appliances are to be installed. The design professional files the Schedule B with

DOB. It is the master plumber's responsibility to make sure that the Schedule B is accurate, so that the fixture counts and locations reflected on that document correspond with the work that is actually performed. If there is a discrepancy between the Schedule B and the work that is performed, it is the plumber's responsibility to inform the design professional that the permit application must be modified (Tr. 22-24).

DOB's issuance of a plumbing permit triggers an inspection process. The required inspections are determined by the type of work the master plumber performs. A "roughing inspection" must be performed if the job involves work on pipes that will be enclosed behind a wall. A "finish inspection" must be conducted if the plumbing work involves installation of new piping. Testing is required if the master plumber performs gas or fire suppression work (Tr. 18).

If a project involves work on a gas system, the master plumber must obtain DOB authorization for gas to be sent to the premises. For work that involves only a gas system and no other systems, such as a fire suppression system, a roughing inspection, a gas finish inspection, and a gas test, are required for gas to be authorized. A gas load pressure test may also be required for some gas work. In the case of a DOB inspection, a DOB inspector witnesses all the inspections and, using a handheld device, can authorize the utility company to provide gas service. Information transmitted by the inspector to the utility company typically includes the number of gas meters and their locations, as well as the end usage for the gas, such as heat, cooking and hot water. The licensee can then contact the utility company to arrange for gas service. Gas authorization may not be required if the project is to repair or replace equipment; however, whenever the licensee is installing additional fixtures or equipment in a new location, gas authorization is required (Tr. 24-27).

Plumbing work may be inspected by a DOB inspector at the work site or be inspected and certified by a master plumber through the self-certification process. For self-certification, the master plumber must complete an OP-98 form in which he or she indicates the anticipated date and time of the inspection, as well as the address and the type of inspection he or she will be performing. The master plumber must submit the form to DOB, giving it 24 to 48 hours' notice of the planned inspection, depending on the nature of the work. At the appointed time, the master plumber is required to be present or have a representative on-site to meet DOB's inspector if one appears for the scheduled inspection. According to Jones, because of the volume of work that DOB must oversee, it does not send an inspector to every test or inspection that is

scheduled through submission of an OP-98 form. Therefore, if a DOB inspector does not appear, the master plumber is permitted to self-certify the inspection results (Tr. 19-20). A master plumber who has finished the work and has registered his inspections with DOB in its computerized database ("BIS") can then sign-off on the job (Tr. 27-28). By submission of the OP-98 form to DOB, which includes results of any tests or inspections that were performed, the master plumber assumes "full responsibility [for that particular job] . . . he's indicating that all work is performed as per New York City building codes" (Tr. 20).

A master plumber who is issued a permit may seek to withdraw that permit. The process for withdrawing a permit depends on the type of application that the plumber submitted. If it was a limited alteration application permit ("LAA"), which does not require design plans prepared by a professional engineer or architect, the master plumber submits a revised LAA for the application he or she is seeking to withdraw and DOB's LAA Division will request that the Plumbing Enforcement Division perform an inspection to determine whether any work listed on the application has been performed. If work has already started on the project, the master plumber cannot withdraw; the homeowner must hire a new contractor to supersede the application (Tr. 16-17, 28-29).

If work has not commenced on the project, the plumbing application can be withdrawn. If design plans were submitted with the application, the applicant must submit a request to DOB's Borough Commissioner's office to withdraw the application. The Borough Commissioner then sends out a ten-day notice informing the owner that if work has already started, he or she has ten days to hire a new plumbing contractor to supersede the application (Tr. 28-29).

Jones testified that there are significant safety hazards associated with plumbing work because gas creates a risk of explosion, while work on water and sanitary systems could cause contamination of potable water and sewage gas leaks. In addition, improperly installed fire suppression systems create a risk that the system will malfunction (Tr. 34).

Jones was ordered to audit respondent's jobs in the wake of an explosion at a building for which respondent had been issued a plumbing permit (Tr. 35-37). The initial scope of the audit was jobs that involved design plans that required gas work (Tr. 29-31). However, the audit expanded to include other types of jobs and encompassed respondent's jobs since 2010 (Tr. 30-32). The inspectors were told to scrutinize all systems associated with safety, such as gas and

fire suppression systems. DOB audited a total of approximately 400 jobs and issued approximately 82 violations to respondent's associated corporations (Tr. 31-32).

The Charges

The Department alleges that respondent was negligent, incompetent, lacked knowledge or disregarded Construction Codes (the "Code") and applicable laws and rules; made a material false or misleading statement on a form or report filed with the Department; and endangered public safety and welfare in the performance of work done at multiple locations (ALJ Ex. 3). The Department presented the testimony of four inspectors who issued violations to respondent after inspecting plumbing work performed at locations for which DOB had issued permits to respondent. These inspectors testified about those inspections, which took place in March and April 2015.

Petitioner bears the burden of establishing the charges by a preponderance of the credible evidence. Preponderance has been defined as "the burden of persuading the triers of fact that the existence of [a] fact is more probable than its non-existence." Prince, Richardson on Evidence § 3-206 (Lexis 2008) (citations omitted); *see also Bazemore v. Friday*, 478 U.S. 385, 400-01 (1986); *Dep't of Buildings v. Stallone Testing Laboratories, Inc.*, OATH Index No. 363/10 at 7 (Aug. 26, 2009). Petitioner met its burden as to many, but not all, of the charges.

Resolution of many of the charges requires consideration of credibility factors such as witness demeanor; consistency of a witness' testimony; supporting or corroborating evidence; witness motivation; bias or prejudice; and, the degree to which a witness' testimony comports with common sense and human experience. *See Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 4, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998). As discussed below, respondent's testimony throughout this proceeding was deliberately vague or forgetful, inconsistent, self-serving, and largely not credible. Petitioner's witnesses, on the other hand, were credible: overall, the inspectors were measured and consistent in their testimony, provided detailed accounts of their observations with supporting documents, and did not manifest bias or prejudice.

34 West 46th Street, New York, New York

On or about April 25, 2013, respondent applied for and was issued a permit to perform plumbing work at 34 West 46th Street. According to the approved construction documents,[1] all plumbing work was to be connected to existing roughing. The Department alleges that its inspection of the premises on March 30, 2015, revealed new gas piping connected from a gas meter in the cellar to appliances in the first floor, contrary to the approved construction documents. The Department charged that this was in violation of Administrative Code section 28-105.12.2.[2] Petitioner further charged that respondent failed to test the new or altered installation in violation of section 107 of the New York City Plumbing Code ("PC"),[3] and that gas was being supplied to the building without Department inspection, in violation of section 406.6.2 of the New York City Fuel and Gas Code ("FGC").[4] *See* charge 1, specifications 1, 2, and 3 (ALJ Ex. 3).

George Giannakopoulos has been an inspector in DOB's plumbing enforcement unit for a year. Prior to joining DOB, he was a plumber in New York City for 13 years (Tr. 59). Giannakopoulos conducted inspections as part of the audit of respondent's projects ("audit inspection") and issued a number of violations. As part of the audit, he: reviewed the Department's records regarding the projects to be inspected, including the Department's BIS database; performed a building information search; and reviewed copies of the permits issued to respondent (Tr. 60).

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[1] Construction documents are "[p]lans and specifications and other written, graphic and pictorial documents, prepared or assembled for describing the design, location, physical characteristics, and other elements of the project necessary for obtaining a building permit." Admin. Code § 28-101.5 (Lexis 2015).

[2] Section 28-105.12.2 provides that "All work shall conform to the approved construction and submittal documents, and any approved amendments thereto. Changes and revisions during the course of construction shall conform to the amendment requirements of this code." Admin. Code § 28-105.12.2 (Lexis 2015).

[3] PC section 107, entitled "Inspections and Testing," sets forth the order in which inspections and tests are to be performed. Section 107.4 provides that "[n]ew plumbing systems and parts or existing systems that have been altered, extended, or repaired shall be tested as prescribed herein to disclose leaks and defects," except under enumerated circumstances. PC § 107.4.1.

[4] The petition refers to section 4.6.6.2, which appears to be a typographical error, as there is no such FGC section. Instead, petitioner relies on FGC section 406.6.2 (Petitioner's Brief ("Pet. Br.") at 39). I find that respondent was adequately placed on notice of the nature of the proceedings against him and amendment of the petition to correct this typographical error would not prejudice respondent. *See Block v. Ambach*, 73 N.Y.2d 323, 333 (1989) ("in the administrative forum, the charges need only be reasonably specific, in light of all the relevant circumstances, to apprise the party whose rights are being determined of the charges against him"). Accordingly, the petition is hereby amended. FGC section 406.6.2 states that "During the process of turning gas on into a system of new gas piping, the entire system shall be inspected to determine that there are no open fittings or ends and that all valves at unused outlets are closed and plugged or capped." FGC § 406.6.2 (Lexis 2015)

On April 25, 2013, respondent obtained a permit to remove all the gas appliances and reinstall them on their existing roughing, meaning the gas piping that was already at the location (Tr. 63; Pet. Exs. 5C, 5D). The Schedule B associated with the job indicates that the planned plumbing work was to "disconnect all the affected water, soil, vent & gas lines [from kitchen equipment] & replace w/new ones as necessary & reconnect all on same roughing & location as needed [sic]" (Tr. 66; Pet. Ex. 5E).

At an audit inspection at the premises on March 30, 2015, Giannakopoulos observed new gas piping, which required a roughing inspection, a gas pressure test, and a finish inspection (Tr. 63, 67). Giannakopoulos took photographs of what he described as the new gas valves and piping. He concluded that the piping was new because of its color and condition (Tr. 69-70, 79, 84-85; Pet. Ex. 5A). He testified that during the audit inspection the owner of the restaurant told him that all the gas piping had been changed when the plumbing permit was issued on April 25, 2013, and that there had been no further work after respondent signed off on the job on June 20, 2013 (Tr. 72-73; Pet. Ex. 5D). Giannakopoulos also stated that it would not make financial sense for the restaurant owner to have removed and replaced the piping respondent installed in 2013 (Tr. 79).

Giannakopoulos' review of the Department's plumbing inspection records revealed no evidence that the necessary tests and inspections of the new gas piping had been performed (Tr. 74-75). An OP-98 form respondent submitted to DOB, dated May 22, 2013, indicates that the plumbing work passed a gas finish inspection, but failed to indicate that any other gas test or inspection had been conducted (Tr. 73; Pet. Ex. 5F). Giannakopoulos noted that had the work performed been limited to removing the gas equipment and replacing them on the same piping, a finish inspection would have been sufficient; however, the audit inspection revealed that piping had been replaced, which required additional inspection and testing (Tr. 81-82). Giannakopoulos concluded that gas was being supplied to the building without appropriate inspection or certification. According to Giannakopoulos, respondent self-certified the job, meaning that he took full responsibility for the plumbing work, certifying that it was consistent with the construction documents (Tr. 83).

Giannakopoulos issued violations for: (1) failure to have a new or altered plumbing system tested; (2) gas supplied to building without inspection and certification; and (3) work that did not conform to approved construction documents and/or approved amendments (Tr. 63, 67;

Pet. Ex. 5). He described the violations he observed as "Class 1" violations, meaning that they presented an immediate danger because they involved installation of a gas delivery system that had not undergone required testing (Tr. 67, 76-77; Pet. Ex. 5).

Respondent acknowledged that he obtained a permit for plumbing work at the location and that S. K. Piping performed the work on his behalf (Tr. 88). He testified that his company replaced underground and water drainage piping, but vehemently denied having installed the gas piping that Giannakopoulos observed during his March 30, 2015 inspection (Tr. 89). According to respondent, his company disconnected gas appliances, which consisted of two grills and two fryers, then connected them to existing piping consistent with the Schedule B. They were asked to disconnect the appliances so that the users could clean the area behind those appliances (Tr. 90-93). Respondent did not recall discussing the scope of work with the owner of the restaurant; he was hired by and performed the work at the behest of the owner of the building (Tr. 90, 93-94). He maintained that he visited the premises before he signed off on the job in June 2013 and the newer pipes that the inspector observed were not present (Tr. 90, 95-97).

Petitioner failed to prove by a preponderance of the evidence that respondent installed the gas piping that gave rise to the charges. Petitioner's evidence that respondent installed the new gas piping and valves that were observed during the audit inspection consists of the inspector's belief that the pipes were new based on their condition and appearance, his surmise that an owner would not have undertaken the $20,000 project without changing the gas pipes at the same time, and hearsay statements from the restaurant owner. This evidence is an insufficient basis upon which to conclude that respondent installed the new gas pipes and valves that were observed at the inspection, which took place nearly two years after respondent signed off on the job. I credit Giannakopoulos' testimony that the pipes gave the appearance of having been installed recently; however, that evidence does not establish when they were installed or by whom. Furthermore, the length of time between the June 2013 sign off and the March 2015 audit inspection might support an inference that someone other than respondent may have installed the new pipes. Although Giannakopoulos believes that it is impractical for an owner to have paid $20,000 to only remove the appliances and reconnect them to existing roughing, petitioner presented no evidence to suggest that this did not in fact occur.

Finally, while restaurant owner's statement to the inspector that the gas piping had been changed under the permit issued in April 2013 and that there was no further work after that time

were admitted into evidence, they were afforded very little weight as they amount to double hearsay. *See Business Integrity Comm'n v. Liberty Water & Sewer, LLC,* OATH Index No. 983/13 at 5 (Jan. 25, 2013) ("While hearsay is admissible in this tribunal . . . hearsay upon hearsay has been held to have diminished reliability," *citing* 48 RCNY § 1-46 (Lexis 2015); *Matter of Rebo*, OATH Index Nos. 924/03 & 926/03 at 28 (Dec. 18, 2003), *adopted*, Loft Bd. Order No. 2840 (Jan. 15, 2003)). This is especially appropriate because the owner's statements go to the critical issue of whether respondent performed the work that is the basis for the charges. *See Health & Hospitals Corp. (Correctional Health Services) v. LaSane*, OATH Index No. 1165/02 at 2 (Aug. 8, 2002) ("double hearsay, when on a critical issue, has consistently been held to be unreliable" (citations omitted)).

In sum, petitioner failed to prove by a preponderance of the evidence that respondent installed the gas piping and valves that were observed by the inspector. Accordingly, charge 1, specifications 1, 2, and 3, should be dismissed.

280 West 115th Street New York, New York

Charge 1, specification 4, alleges that respondent was issued a permit to perform plumbing work at the premises on January 18, 2013, and a March 30, 2015 audit inspection determined that gas piping and risers had been installed in a shaft with no fire rating or ventilation system, in violation of section 404 of the FGC. Petitioner alleges that respondent was negligent, incompetent, lacked knowledge of, or disregarded the Code (ALJ Ex. 3).

It is undisputed that DOB issued a permit to respondent, under the auspices of Beta Plumbing, to perform plumbing work at the premises on January 18, 2013, and that respondent signed off on the plumbing work on July 9, 2013 (Pet. Exs. 6C, 6D). The Schedule B indicates that the scope of the work included installation of gas-fired equipment (stoves, hot water heaters, dryers) on the first through the fifth floors of the premises, with necessary gas piping (Tr. 310; Pet. Ex. 6E).

Giannakopoulos testified that his inspection determined that gas risers, vertical pipes that transport gas (Tr. 121-22), had been installed inside a shaft that lacked ventilation (Tr. 311). The gas piping ran through all five floors of the building. The shaft in which this piping was installed is located within apartments and is accessed through a steel door within one of the apartments. There was separation between some of the floors within the shaft (Tr. 306-09). According to the

inspector, because the gas piping was located in a shaft, there should have been ventilation at the top of the shaft, but none was evident at the inspection (Tr. 307, 311-312). This presented a dangerous condition because the lack of ventilation could lead to an explosion were gas to leak and remain trapped inside the shaft (Tr. 311). Photographs of the roof of the building depict pipes that vent the hot water heaters and a solid, silver colored pipe that appears to be made of metal. Giannakopoulos testified that although he did not know what that pipe was for, he knew it was not a vent for the shaft because the pipe was solid throughout the length of the shaft (Tr. 318-19; Pet. Ex. 6A).

Respondent acknowledged that he performed the plumbing work that the inspector observed at the premises and that the photographs taken during the inspection depict his work (Tr. 322-23; Pet. Ex. 6A). He later clarified that he supervised work at the premises that was performed by Jerry Ioannides, who owns a 49 percent interest in Beta Plumbing (Tr. 326, 467-68).[5] Respondent testified that he reviewed a set of plans for the job, which took three months to complete, and that he examined the work to ensure it complied with the plans prior to signing off on the job (Tr. 327). He visited the jobsite several times (Tr. 326-27).

According to respondent, the gas piping was located within a shaft that was constructed of fire-rated double-wall brick and sheetrock (Tr. 324). He maintained that although section 404 of the FGC requires that gas piping be installed within fire-rated material, it does not require ventilation (Tr. 325). When prompted by his attorney, however, respondent retracted his assertion that section 404 of the FGC requires that gas piping be installed within fire-rated material (Tr. 325-26).

Respondent admitted that his company performed the work the inspector observed under a permit that was issued to him and did not dispute that the shaft was unventilated. Instead, he contends that "section 404 of the Fuel and Gas Code makes no mention of ventilation" and therefore no violation was established (Respondent's Brief ("Resp. Br.") at 2). Respondent is mistaken.

Section 404.2 of the FGC provides that "[c]oncealed piping shall not be located in solid partitions and solid walls, unless installed in a ventilated chase or casing." FGC § 404.2 (Lexis 2015); (Pet. Br. at 40). The undisputed evidence establishes that respondent was responsible for

[5] Respondent testified that Mr. Ioannides has been a partner in Beta Plumbing since 2004. He acknowledged that although required to disclose all his business partners to DOB, he failed to do so with Mr. Ioannides (Tr. 467-68).

installing gas piping inside a shaft that was enclosed by brick walls, sheetrock, and steel doors. This evidence supports a finding that respondent's installation of the gas pipes in that location triggered section 404.2 of the FGC, which requires ventilation to minimize the risk of a gas explosion.

Respondent's alternate argument, while not clearly stated, appears to be that even if the area in which the gas risers were installed is not ventilated, the location is a shaft that is constructed of fire-rated material and therefore no violation was established (Tr. 323-26). The New York City Building Code ("BC") defines a "shaft" as "[a]n enclosed space extending through one or more stories of a building, connecting vertical openings in successive floors, or floors and roof." BC § 702 (Lexis 2015). A "shaft enclosure" is defined as "the walls or construction forming the boundaries of a shaft." *Id.* The Building Code requires that "shaft enclosures shall have a fire-resistance rating of not less than 2 hours where penetrating three stories or more and not less than 1 hour where penetrating fewer than three stories." BC § 708.4 (Lexis 2015).

To the extent that respondent contends that the gas pipes were located within a shaft that required fire-rating, not ventilation, and posits that the shaft must have been constructed of fire-rated material, he produced no evidence to show that the shaft was constructed of fire-rated material, nor did he direct this tribunal to any authority to show that even if the shaft was made of fire-rated material, ventilation was not required. Moreover, while petitioner did not prove that the shaft lacked appropriate fire rating under section 404 of the FGC as alleged in the petition, it established that respondent failed to install the gas piping in a ventilated system as required under section 404 of the FGC.

Respondent's contention that section 404 FGC does not mention ventilation demonstrates respondent's unfamiliarity with the Code. Accordingly, petitioner has established that respondent was negligent, and lacked knowledge of or disregarded the applicable laws as alleged in charge 1, specification 4.

2128 8th Avenue, New York, New York

On December 14, 2012, respondent obtained a permit to perform plumbing work at this address. Petitioner alleges that an inspection performed on March 30, 2015, revealed that gas risers and piping were installed in a shaft with no fire rating or ventilation system, in violation of

section 404 of the FGC. Petitioner charged that respondent was negligent, incompetent, and lacked of knowledge or disregarded the code and related laws and rules (ALJ Ex. 3, charge 1, specification 5).

Giannakopoulos testified that he observed gas risers and piping located within a shaft with no direct air. He recalled that the shaft had brick walls on two sides and a steel door on the third side, but could not remember what the fourth side was made of (Tr. 117; Pet. Ex. 7A2). Giannakopoulos described this installation as hazardous because gas could build up in the location, leading to an explosion (Tr. 105). In conducting the inspection, he relied on the Document Overview, Schedule B, and the Inspection History. These documents revealed that respondent, under the auspices of Beta Plumbing, requested and obtained a permit for work at the premises on December 14, 2012 (Pet. Ex. 7C). Schedule B indicates that the scope of work entailed installing gas piping from the cellar to the fifth floors of the building, water and sanitary work, and installing gas appliances (Pet. Ex. 7E). Respondent signed off on the job, which was self-certified, on October 21, 2013 (Tr. 115; Pet. Ex. 7D).

Respondent did not deny that he and his affiliated company, Beta Plumbing, installed the gas piping and acknowledged that the pipes were confined within a shaft that rose though residential areas of the building. According to respondent, this shaft was constructed of double-layer brick with steel doors on every floor. He did not recall what was at the top of the shaft and admitted that he was unfamiliar with section 404 of the FGC. Respondent testified that he "worked off the plans" and that they did not show anything relating to fire rating or ventilation of the area (Tr. 119-21).

In essence, respondent makes the same argument regarding this charge that he did regarding the violation issued for his work at 280 West 115th Street (Resp. Br. at 3) and the result is the same: petitioner established that respondent's work did not comply with the requirements of section 404 of the FGC.

Respondent testified that his work was consistent with the design plans, as if to suggest that he is not responsible for the violation. However, respondent failed to offer any proof that the work was performed according to the plans. Even if this were true, however, as the licensed master plumber to whom the permit was issued, respondent was responsible for making sure that the plans complied with the applicable laws (Jones: Tr. 23, 44).

Respondent's admitted ignorance of Section 404 of the FGC (Tr. 121), which sets forth requirements for installing gas piping, is troubling given the potentially deadly consequences of careless or improper work on gas systems, such as gas leaks or explosions.

In sum, charge 1, specification 5, should be sustained.

2126 8th Avenue, New York, New York

Charge 1, specification 6, alleges that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable law in performing plumbing work at 2126 8th Avenue. Petitioner contends that respondent installed gas risers and pipes in a shaft that lacked ventilation or fire rating, in violation of the section 404 of the FGC (ALJ Ex. 3).

Giannakopoulos testified that during an audit inspection on March 30, 2015, he noted that gas risers and pipes had been installed within a shaft that ran throughout all the floors on the building and was located inside residential apartments (Tr. 126). He further testified that photographs taken at the inspection show that there is no ventilation for the shafts in which the pipes are located (Tr. 126; Pet. Exs. 8A1, 8A2). A photograph of the roof showed that piping for the water heaters aired out to the roof, but did not depict ventilation for the shaft (Tr. 126; Pet. Ex. 8A1). According to Giannakopoulos, installing gas pipes and risers in an unventilated shaft is dangerous because if there is a gas leak, the gas would have nowhere to disperse and could cause an explosion (Tr. 126, 139).

Respondent, who obtained a permit for work on December 14, 2012, and signed off on the plumbing work on July 9, 2013, did not dispute that he installed the risers in the shaft (Tr. 132; Pet. Exs. 8D, 8E). He recalled having worked at the premises under a permit issued to him and having installed the pipes in the manner depicted in the inspector's photographs (Tr. 131-33, 136; Pet. Ex. 8A1-2). According to respondent, solid wood flooring intersected the shaft, which was constructed of solid, double brick walls and steel doors (Tr. 131-33). He maintained that he performed the work pursuant to plans approved by DOB that showed the installation was to be in the shaft (Tr. 133).

Respondent again contended that petitioner did not meet its burden of establishing that he violated the FGC (Resp. Br. at 3). However, as previously discussed, this argument fails. Accordingly, charge 1, specification 6, should be sustained.

223 West 115th Street, New York, New York

Charge 1, specification 7, alleges that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable laws in his performance of plumbing work at the premises because audit inspection determined that gas piping and risers were installed in a shaft that lacked fire rating or a ventilation system, in violation of FGC section 404 (ALJ Ex. 3).

Giannakopoulos testified that he inspected the premises on March 30, 3015, and determined that gas risers had been installed inside a shaft that was located within apartments at the address. Photographs taken during the inspection show gas piping in a shaft, the ceiling within the shaft and the roof of the building with pipes, but no ventilation (Tr. 139-40; Pet. Exs. 9B1-9B6). A permit had been issued to respondent in July 2010 for work at the premises that included replacing and installing fixtures and gas appliances and gas risers from the first to the fifth floors of the building (Tr. 140-41; Pet. Ex. 9E).

Respondent, who signed off on the work at the premises on December 2, 2010, again did not dispute that the work for which the violation was issued was performed under his license by Beta Plumbing (Tr. 143-44). He maintained that the work they performed was based on plans that were approved by DOB. Those plans showed the shaft in which the risers were installed, which shaft was made of double wall brick and sheet rock that respondent maintained was fire rated (Tr. 144-46). According to respondent, section 404 of the FGC does not require that the shaft be ventilated or be fire rated (Tr. 146).

Respondent's testimony regarding his knowledge of the FGC was markedly inconsistent. When initially asked whether he was familiar with section 404 of the FGC, he responded "No" (Tr. 121). However, during testimony later that same day, regarding a different job, respondent claimed to be "very familiar" with the FGC and that he was familiar with it before the course of the trial (Tr. 146).

Respondent claimed familiarity with the FGC provision that prohibits installation of gas piping within fire-rated assemblies, stating that it meant gas piping could not be installed in elevator shafts, garbage chutes, wooden walls, or sheet rock that was 3/8 or half inch thick (Tr. 147). He asserted that the material depicted in the photographs from the inspection "looked" fire rated (Tr. 147-48). However, he presented no evidence to establish that this was indeed the case.

Respondent conceded that "this specification is the same as 280 West 115th Street and the testimony was basically the same" (Resp. Br. at 3). Accordingly, as with the charge regarding respondent's work at that address, this charge should be sustained.

106 Suffolk Street, New York, New York

Charge 1, specification 8, alleges that respondent was negligent, incompetent, lacked knowledge of or disregarded the Code in his performance of plumbing work at 106 Suffolk Street, New York, New York because inspection determined that gas boilers and piping had been installed in a prohibited location in violation of FGC section 404.1.[6] Respondent had applied for and been issued a permit to perform plumbing and boiler work at that location between November 2007 and December 2013 (ALJ Ex. 3).

Giannakopoulos testified that during an audit inspection on April 4, 2015, he observed gas piping and a meter that had been installed in a common hallway outside an apartment. He also observed a gas boiler in an unventilated room in the hallway near the apartment (Tr. 180-81). Photographs taken at the inspection depict a gas meter and piping located in a cut-out area behind a wall. They are visible and accessible from a public hallway (Tr. 151, 181; Pet. Exs. 10A1, 10A2). The photographs also show a future connection, which Giannakopoulos testified was included in the violation as pipes placed in a prohibited location, but was not otherwise charged (Tr. 152-54; Pet. Ex.10). He described a future connection as a gas pipe connection that is not connected to an appliance but to which someone could connect an appliance in the future, without proper experience and inspection (Tr. 152-53).

The inspector testified that in November 2007, respondent obtained a permit for plumbing work at the premises, which he renewed four times. Respondent also obtained a permit to perform boiler work at the premises (Tr. 154-55; Pet. Ex. 10C). The scope of the work called for respondent to install a new gas boiler to service an apartment on the fifth floor of the premises and Schedule B specified that the boiler was to be installed in a designated boiler room

[6] During the trial, petitioner sought leave to amend the petition to allege violation of section 404 of the FGC, instead of section 303.1. Respondent objected to the amendment. I reserved decision on that request, which I now grant (Tr. 166-167). The petition sets forth a narrative summary of the charge and at the trial respondent examined petitioner's witness regarding the alleged violation of section 404 of the FGC (Tr. 168, 178). Therefore, respondent was adequately placed on notice of the nature of the proceedings against him and there is no prejudice to respondent. *See Block*, 73 N.Y.2d at 333.

on the same floor, but outside of the apartment (Tr. 155, 158-59; Pet. Ex. 10E). Respondent, who was the only licensed master plumber of record on the job, self-certified the job in April 2013 which meant that DOB did not inspect the job and, according to Giannakopoulos, respondent "could have put that pipe anywhere he wanted" (Tr. 164-165).

Respondent did not dispute that Beta Plumbing installed a gas boiler and gas piping from an existing meter under his permit (Tr. 191). He testified that the work was done according to the design plans that had been professionally certified by the architect (Tr. 192, 194). Respondent acknowledged that the gas meter was located in a box in the corridor outside the apartment, stating "That's how they put it in in those days" (Tr. 196). He insisted that the piping and boiler that he installed were located in a boiler room outside the apartment, but could not recall whether that room was ventilated (Tr. 197).

Petitioner contends that respondent violated section 404 of the FGC. Section 404.1, which governs "prohibited locations," provides at subsection 5 that "Gas piping shall not be installed in public corridors and exit enclosures."[7] The evidence demonstrates that respondent installed gas piping in a public hallway near a public staircase at the premises.

Respondent's defense is that he relied on plans that DOB approved in 2007. However, he offered no corroborating evidence. Similarly, although respondent testified that the gas pipes, meter, and boiler were located in a boiler room, he offered no evidence to refute the inspector's credible testimony that the area was nothing more than an unventilated room in a hallway that did not qualify as a boiler room (Tr. 179-81).

In addition, respondent maintained that his work reflected the manner in which gas maters were installed "in those days," yet presented no evidence to support this contention, or to demonstrate that such an installation was in accordance with applicable laws. Moreover, Giannakopoulos persuasively testified that when respondent undertook to work on the pipes, he became responsible for making sure they complied with the applicable law (Tr. 188-89). *See* FGC § 102.4 (Lexis 2015) ("Additions, alterations, renovations, or repairs to installations shall conform to that required for new installations without requiring the existing installation to comply with all of the requirements of this code. Additions, alterations or repairs shall not cause an existing installation to become unsafe, hazardous or overloaded."). Finally, the undisputed

[7] Section 404.1(5) permits installation of gas piping in public corridors of residential buildings under limited circumstances; however, respondent did not contend that his work fell within any of the exceptions, nor is it evident from the record that respondent's work would qualify for the exceptions. *See* FGC § 404.1(5).

evidence establishes that respondent left future connections, which pose a danger to public safety.

Accordingly, petitioner has established that respondent was negligent, incompetent, and lacked knowledge of or disregarded the applicable laws as alleged in charge 1, specification 8.

3605 East Tremont Avenue, Bronx, New York

Charge 1, specification 9, alleges that respondent was negligent, incompetent, lacked knowledge or disregarded the Code in his performance of work at 3605 East Tremont Avenue, Bronx, New York because inspection determined that gas piping had been installed in the staircase of a restaurant at that address, in violation of FGC section 404 (ALJ Ex. 3). Respondent had applied for and been issued a permit to perform plumbing, mechanical, and HVAC work at that location on November 2014 (ALJ Ex. 3).

Before conducting the audit inspection, Giannakopoulos reviewed the Department's BIS database and found that on November 3, 2014, respondent was issued a permit to install an HVAC system and to replace a hot water heater, dryer, and gas meter on the first floor of the premises (Tr. 202, 205; Pet. Ex. 11E). During an inspection on March 30, 2015, Giannakopoulos observed that a new gas line had been installed in the staircase of the ground floor restaurant/bar. Giannakopoulos described photographs taken during his inspection, which depict a gas pipe above a staircase leading to the basement of the building, a gas pipe going through a wall, and the gas meter (Tr. 203-04; Pet. Exs. 11A1-11A4). The stairs are surrounded by walls (Pet. Ex. 11A2). He testified that installation of a gas pipe in a staircase is prohibited by the FGC and presents a hazard because if there is a gas leak and a fire, there would be no means of escape (Tr. 205).

Respondent testified that he and S. K. Piping performed the work depicted in the photographs (Tr. 208-10). According to respondent, his work was based on plans prepared by an architect and approved by the DOB. Those plans, respondent maintained, showed that the piping was to be installed in the staircase (Tr. 210). Respondent subsequently admitted on cross-examination that did not personally perform any of the work at the premises, but claimed to have visited the premises during the job (Tr. 211).

Respondent challenged Giannakopoulos's testimony that the gas pipe was located in a staircase, claiming that it was located in an open area (Tr. 212). This challenge is without merit.

I credit the inspector's testimony, supported by photographs, as to the location of the pipe (Tr. 203-04, 206-07; Pet. Exs. 11A2, 11A4). Moreover, respondent testified that he performed the work according to plans which showed that the pipe was to be installed in a staircase (Tr. 210). Having acknowledged that the gas pipe was installed in a staircase, respondent cannot credibly claim that the area was not, in fact, a staircase.

Section 404.1(1) of the FGC prohibits installation of gas piping in stair enclosures. *See* FGC § 404.1(1) (Lexis 2015) ("Stair enclosures. Gas piping shall not be installed within a stair enclosure or required exit or exit way."). Respondent's contention that he installed the pipe in the staircase because it was on the approved plan does not excuse his failure to install the gas piping according to the FGC. Rather, as Mr. Jones testified, it was respondent's obligation as a master plumber to bring the noncompliance to the design professional's attention rather than to proceed with an installation that he should have known violated the applicable laws.

Accordingly, charge 1, specification 9, should be sustained.

1829 Haight Avenue, Bronx, New York

Respondent was issued a permit to perform plumbing work at the premises between June 10, 2010 and September 19, 2012. The Department inspected the building on March 31, 2015, and found that a new gas line had been installed, which was beyond the scope of respondent's permit. Petitioner alleges that this work violated section 28-105.1 of the Administrative Code, which prohibits alteration, repair, removal, conversion, or replacement of a gas system without a permit. Petitioner charges that respondent was negligent, incompetent, lacked knowledge of or disregarded the Code in his performance of work at the premises (ALJ Ex. 3, charge 1, specification 10).

Giannakopoulos testified that prior to the audit inspection, he reviewed the Department's records relating to the building (Tr. 215). The records indicate that in June 2010, respondent obtained a permit to replace a kitchen sink, range, dishwasher, bathroom fixtures, and drainage in several units in the building (Tr. 218; Pet. Exs. 12C, 12E). The scope of work specified replacing a sink and range on second floor (Tr. 217; Pet. Ex. 12E). The plumbing work was signed off in July 2012 (Tr. 218; Pet. Ex. 12D). In March 2015, the inspector observed that new gas piping had been installed from a gas meter in the basement to a stove on the second floor (Pet. Ex. 12). He determined that the piping was new because it appeared new when compared

to the other piping and because the compound around the pipe threads was new (Tr. 217). He further testified that the owner of the building told him that the plumber had changed the piping from the basement to the stove, but was unclear as to whether the owner identified respondent or his company as the plumber (Tr. 217, 227, 228-31, 233-35). Giannakopoulos testified that he believed the work in issue was performed in 2011, but he offered no basis for that belief other than the fact that respondent renewed the permit that year (Tr. 222-23).

A permit was first issued in 2008 to someone other than respondent (Pet. Ex. 12C). Respondent testified that he superseded another plumber on the job, which entailed replacing a sink and drains, but did not include work on a stove (Tr. 239-42). On cross-examination, respondent stated that he did not personally perform any work at the location. He initially denied ever having visited the location and then admitted that he visited the location once, before he obtained the permit, to determine the scope of work (Tr. 243-44). He maintained that when he took over the job, the stove was already connected and all that remained to be done was to replace the bathroom fixtures (Tr. 244). Respondent further contended that he only performed work in the first floor apartments, not on the second floor (Tr. 245). However, he acknowledged that as the superseding plumber he was obligated to review the work performed by the prior plumber and maintained that he did so, including the work on the second floor (Tr. 246-47). Respondent denied having met with the owner of the premises or having communicated with him (Tr. 241-42).

Respondent's testimony was problematic. However, it is petitioner's burden to establish that respondent engaged in the charged misconduct. I find that petitioner did not satisfy its burden. Petitioner failed to establish that respondent performed the work at issue; indeed, the inspector was not clear as to when the work was performed, and the job was signed off on July 23, 2012, nearly three years before the audit inspection. Moreover, while respondent is responsible for reviewing the work of the plumber he superseded on the job, petitioner failed to establish that he was negligent in doing so because it did not establish that the improper work was performed prior to July 2012.

Accordingly, I find that petitioner failed to meet its burden with respect to this specification.

35-49 11th Street, Queens, New York

Charge 1, specification 11, alleges that respondent was negligent, incompetent, lacked knowledge of or disregarded the Code in his performance of work at 35-49 11th Street, Queens, New York because an inspection determined that while respondent was issued a permit to install eight gas furnaces, only three gas fired space heaters had been installed and future connections remained for five units. Petitioner contends that the work observed was contrary to the approved construction documents, a violation of Administrative Code section 28-105.12.2, which requires that all work conform to the approved construction documents, including amendments thereto (ALJ Ex. 3).

Respondent obtained a permit to perform plumbing work at the location on May 20, 2014 and signed off on the plumbing work on June 16, 2014 (Tr. 252-53; Pet. Exs. 13C, 13D, 13G). According to the Schedule B, respondent was to install a total of eight gas furnaces, or space heaters, on the first floor, together with gas piping, a gas meter, and a gas water heater (Tr. 261; Pet. Ex. 13E).

Giannakopoulos testified that during an audit inspection on April 9, 2015, he observed that three gas furnaces, with new piping, had been installed (Tr. 251). He testified that this was inconsistent with the permit and with the Schedule B because fewer furnaces were installed than specified on the Schedule B and one unit was installed in the cellar, not on the first floor (Tr. 252-53, 260-62; Pet. Ex. 13E). In addition, Giannakopoulos observed five future connections at the premises. He believed they were installed when the piping was installed because the pipes were consistent and there are no unions or left to right couplings, which are used to connect pipes (Tr. 253-55; Pet. Ex. 13A).

Respondent self-certified the plumbing work. He submitted an OP-98, dated June 3, 2014, confirming compliance with the Building Code and with the approved construction documents (Tr. 275-76; Pet. Ex. 13G). The OP-98 certified that plumbing roughing for gas, a finish test, and a gas test were performed, and the DOB inspection results show that gas was authorized at the location (Tr. 257-58; Pet. Exs. 13F, 13G).

Respondent maintained that his affiliated company, S & K Piping, installed eight gas furnaces on the first floor of the premises (Tr. 265-67). Respondent's partner and his employees installed the pipes and heaters, but respondent inspected the premises before he signed off on the job (Tr. 266-67). He testified that he went to the premises many times, including when the utility

company turned on the gas (Tr. 267). He denied that his employees left any future connections (Tr. 270).

Respondent suggested that the furnaces could have been easily removed after installation by disconnecting the union between the gas valve and the space heater and capping off the hanging valve, which would leave a future connection (Tr. 265-66, 272). He asserted that he and his workers were on the jobsite for about a month and when he submitted the OP-98 self-certification form all the plumbing work had been completed (Tr. 272, 274-75; Pet. Exs. 13E, 13F).

Respondent's testimony as to the actual installation of the gas furnaces was vague and unpersuasive. His suggestion that less than ten months after his company installed eight furnaces someone else removed five of them and installed one in a cellar is not credible. The furnaces were large and not easily moved (Tr. 263). Moreover, respondent's testimony was suspect: he was notably evasive and made obvious efforts to deflect attention from his failure to supervise the work performed at the location. Thus, his testimony did not refute Giannakopoulos' testimony that respondent's workers installed only two of the gas furnaces on the first floor and installed a third one in the cellar, contrary to the documents filed with DOB. Further, I credit Giannakopoulos' testimony that future connections were left where the other furnaces were to be installed and that the future connections were consistent in appearance and condition to the gas pipes that respondent's company recently installed. This creates a strong inference that respondent's employees left the future connections when they completed the work at the premises.

Respondent was charged with making a material false or misleading statement on forms he submitted to DOB relating to work at the premises. It is undisputed that the approved construction documents provide that respondent was to install eight gas furnaces. The plumbing work was performed under a permit issued to respondent and he submitted an OP-98 to DOB and the job was signed off in June 2014. Respondent acknowledged that by submitting the OP-98 to DOB he certified to DOB that his work was Code-compliant and in accordance with the approved construction documents (Tr. 276). Yet, an April 2015 inspection determined that only three furnaces had been installed, one in a location not provided for in the construction documents, and five future connections were left at the premises. Respondent knew or should have known that the OP-98 was inaccurate. Therefore, respondent's submission of the OP-98

form to DOB in June 2014 constitutes the making of material false or misleading statements to DOB in violation of sections 28-105.12.2 and 28-211.1 of the Administrative Code.[8]

The evidence also establishes that the work performed at the premises under respondent's permit left future connections, which pose a risk to public safety as alleged in charge 3, specification 1.

18-26 21st Drive, Queens, New York

Charge 1, specification 12, alleges that respondent was negligent, incompetent, lacked knowledge of or disregarded the Code in his performance of work at 18-26 21st Drive, Queens, New York. An inspection at the premises determined that gas was being supplied to the building without DOB inspection and certification in violation of section 406.6.2 of the FGC (ALJ Ex. 3).

DOB documents indicate that respondent obtained a permit to perform plumbing work at the premises on June 20, 2013, and the permit was renewed in January 2015 (Pet. Ex 14C; Tr. 285-87). Under the Schedule B, the plumbing work to be performed entailed relocation of a stove, kitchen fixtures, and a lavatory on the first floor and relocation of similar items, as well as a dryer, in the cellar (Tr. 279-80; Pet Ex 14E). The job description on the Schedule B indicates that respondent was responsible for installing a dryer and a new gas meter (Tr. 288; Pet. Ex. 14E).

When Giannakopoulos inspected the premises on April 6, 2015, he found that gas was being supplied to a dryer that had been installed at the premises without DOB inspection and certification (Pet. Ex. 4; Tr. 279). Giannakopoulos testified that the inspection showed that there were three existing, or old, gas meters and a new gas meter. The gas dryer was connected to one of the existing meters and the gas valve was in the "on" position (Tr. 281-84; Pet. Ex. 14A).

Giannakopoulos testified that before gas can be authorized for a building, the system must pass a roughing inspection, a gas test and a finish inspection. In addition, new gas appliances must receive DOB authorization for gas to be provided to that appliance (Tr. 284-85). He reviewed DOB records for the location and determined that the tests were performed, but there were unresolved DOB comments relating to the inspections (Tr. 284). The DOB comments

[8] Section 28-211.1 provides that "It shall be unlawful for any person to make a material false statement in any certificate, professional certification, form, signed statement, application, report or certification of the correction of a violation required under the provisions of this code or any rule of any agency promulgated thereunder that such person knew or should have known to be false."

on the first inspection, which occurred on June 16, 2014, indicate "cellar thru 2nd floor: gas not authorized. Why new gas meter? . . . Not ready for s/o review" (Pet. Ex. 14F; Tr. 284). The comments on the second inspection, dated December 10, 2014, state "gas not authorized/not ready for signoff review – cannot authorize meter for cooking. Permit expired" (Pet. Ex. 14F; Tr. 285). Giannakopoulos testified that the notes reflect DOB's questions as to why there was a new gas meter and why the gas dryer was operating on an existing meter without DOB authorization (Tr. 285). Because DOB had not authorized gas to be issued to the new meter, the gas dryer was connected to an existing meter (Tr. 288-89, 291-92).

According to respondent, although he recalled some aspects of the job, his partner did most of the work because it was the partner's customer (Tr. 297). He testified that either DOB or the utility company refused to authorize gas to the new meter, but was uncertain why. He surmised that it was probably because there were already too many meters in the house (Tr. 295, 297). He acknowledged that gas service cannot be authorized without DOB approval, which he did not obtain, but disclaimed knowledge as to how the dryer became connected to an old meter (Tr. 295, 301). Respondent insisted that his work on the job was in compliance with the architect's plan, which called for installation of a new gas meter (Tr. 296-97). Respondent maintained that he is responsible for doing the work on the plans and has no involvement in determining the number of meters that are permitted at a particular location. He ascribed that responsibility to the utility company and DOB (Tr. 298). Respondent self-certified the plumbing work when he signed an OP-98 dated June 13, 2014, but DOB rejected that self-certification because it would not authorize the gas meter (Tr. 298-99; Pet. Ex. 14F).

Respondent recalled little about the job, assigning primary responsibility for the work to his partner and to the architect on the project. However, even by respondent's account, he was negligent. He exercised little, if any, oversight on this project, failed to take responsibility for ensuring that DOB concerns about the plumbing work were addressed so that the gas could be authorized, and left the project without resolving the outstanding issues that prevented gas from being authorized to equipment installed under his permit. His suggestion that it was the architect's responsibility to resolve the issue regarding the gas meter is unpersuasive; as the licensed master plumber of record on this job, respondent was responsible for ensuring compliance with all relevant Code provisions. Instead of doing so, he abdicated responsibility for completing the work once DOB rejected his efforts to self-certify the work.

Moreover, while respondent was equivocal as to whether the dryer was connected to existing meter prior to his company's work on the project, it is evident that respondent was aware that gas would not be authorized to the new meter. It reasonable to conclude that, having failed to get gas authorized to the new meter, respondent's workers connected the dryer to an existing meter without complying with DOB's inspection and testing requirements.

In sum, I find that respondent was negligent in his oversight of work performed by his partner and employees under a permit issued to respondent. As a result of his lax oversight of work at the premises, gas was supplied without required inspection, testing, and authorization. Charge 1, specification 12, therefore, should be sustained.

1421 Broadway, Queens, New York

Respondent obtained a permit to perform plumbing work at the premises on September 14, 2012. Charge 1, specification 16, alleges that an audit inspection on April 17, 2015, revealed that a non-Code compliant flexible gas fitting had been installed at that location in violation section 403 of the FGC (ALJ Ex. 3).

Inspector Richard Lakatos participated in the audit of respondent's work. He testified that he has been an assistant chief in the plumbing enforcement unit for three years. In that capacity he conducts audits, spot check inspections, and handles complaints (Tr. 567). Prior to serving as assistant chief, he was a supervising inspector for five years and before that he was a licensed plumber in the private sector (Tr. 568).

Lakatos reviewed DOB's database and determined that respondent had been issued a permit to perform plumbing work relating to installation of equipment in a commercial kitchen (Tr. 574; Pet. Ex. 15E). Respondent, who superseded a prior plumber, first obtained the permit on September 14, 2012. It was renewed twice, most recently on March 30, 2015 (Tr. 578-79; Pet. Ex. 15C). The scope of the work called for respondent to install two nonresidential sinks, nonresidential cooking equipment, and a fire suppression shut-off valve (Pet. Ex. 15E).

During an inspection on April 17, 2015, Lakatos observed that stationary commercial cooking equipment, a deep fryer, was connected to the gas source with a flexible gas connector. The inspector explained that the deep fryer was stationary since it had legs rather than wheels or casters. According to Lakatos, the Code indicates that equipment is movable if it has casters (Tr. 580). He deemed this to be a violation because stationary gas equipment must be connected with

hard pipe because flexible connectors are more easily dislodged or loosened, and could cause a gas leak (Tr. 574-75). The violation was deemed a Class 1 violation because it involved gas and presented an immediate risk of danger (Tr. 575). According to Lakatos, as the last plumber who inspected the work and signed off on the job, respondent is responsible for ensuring that the work complies with the Code (Tr. 582-83).

Respondent's recollection of the job was limited. He testified that he did not personally perform the work and was not regularly at the jobsite. His partner in S. K. Piping, Stavros Kalogeropoulos, oversaw the job, including the plumbing work (Tr. 586-87). Kalogeropoulos, who is not a licensed master plumber, has been respondent's partner since 2009 and owns 49 percent of S. K. Piping (Tr. 466-67). According to respondent, his employees probably used a flexible connector because the fryer was movable when it was installed. He speculated that someone must have removed its wheels because his employees would have used flexible connectors only if the equipment was movable (Tr. 585-86).

Respondent testified that the plumbing work was completed in 2012, although he renewed the permit in 2014 and 2015 for reasons that remain unclear (Tr. 585, 588; Pet. Ex. 15C). He described the job as a small one and said he went to the jobsite only once or twice. Respondent could not recall which inspections he performed at the premises (Tr. 589). Overall, Respondent's testimony regarding work at the premises was vague, characterized by convenient memory lapses, and was generally not credible. Indeed, his description of the job as a small one is at odds with him having renewed the permit twice.

The evidence establishes that on April 17, 2015, less than three weeks after respondent's permit had been renewed, an inspection revealed that equipment was improperly connected to the gas source. As the license master plumber who had an open permit to install the cooking equipment, respondent should have detected the improper connection. His failure to detect and correct such an evident violation, coupled with his testimony that he delegated supervision of the project to his partner, establishes that respondent was negligent in carrying out his duties as the permitted licensed master plumber. *See Dep't of Buildings v. LaMarca*, OATH Index No. 1464/03 at 3 (July 15, 2003) (a master plumber "is responsible for the conduct of those people who operated under his business name and master plumber's license. He is also accountable for any dereliction of his responsibilities to supervise the work of those affiliated with his company. Inasmuch as the evidence indicates that he was in fact derelict in his responsibilities, this

constitutes incompetence and negligence in the manifestation of his responsibilities as a master plumber.").

120-11 14th Road, Queens, New York

Charge 1, specification 17, alleges that respondent obtained a permit on November 19, 2009, to install four gas boilers and four hot water heaters at the premises. An April 17, 2015, audit inspection determined that only three boilers and two hot water heaters had been installed, and that future gas connections were installed. Petitioner asserted that this is contrary to the construction documents that had been approved by DOB and in violation of section 28.105.12.2 of the Administrative Code (ALJ Ex. 3).

On November 19, 2009, respondent obtained a permit to legalize four boilers, install four hot water heaters, and install an additional gas meter (Tr. 594; Pet. Ex. 16C). During an inspection on April 17, 2015, Lakatos observed that a storage tank was installed that was not listed on the application, and only three boilers and two hot water heaters had been installed (Pet. Ex. 16). He also observed that future connections were installed where the boilers should have been located (Tr. 595). The violation presented an immediate hazard because the gas supply was left open and someone could tap into the future connection to install additional equipment without proper inspection to ensure its safety (Tr. 595-96; Pet. Ex. 16).

The permit history for the premises reveals that a permit was issued in March 2000 to another master plumber (Tr. 598-600; Pet. Ex. 16C). In November 2009, respondent obtained a permit to legalize improper work (Tr. 600; Pet. Ex. 16C). According to Lakatos, as the by obtaining the second permit, respondent assumed responsibility for the job, which meant that he was required to correct an improper installation (Tr. 600-01). Thus, as the last permit holder, and having never withdrawn from the job, respondent was held responsible for the entire job (Tr. 600).

Respondent denied having performed work at the premises. He testified that an architect hired S. K. Piping to legalize work that had already been done at the location (Tr. 606-07). Before obtaining the permit, respondent visited the location and determined that one of the boilers and two hot water heaters were not installed, contrary to the architect's plans (Tr. 606-07). Yet, he obtained a permit to legalize four boilers and four hot water heaters knowing that the work that had been performed was contrary to the approved plans. Respondent maintained

that he and the architect discussed amending the plans, but this was not done. He took no steps to ensure that the work at the premises complied with the approved plans and he never performed work at the premises (Tr. 607-08). Respondent did not sign off on the job and did not renew his permit, which expired in 2010 (Tr. 608; Pet. Ex. 16C).

Nevertheless, petitioner failed to prove that respondent is responsible for the noncompliant work observed at the April 2015 inspection. It is petitioner's burden to establish by a preponderance of the credible evidence that respondent is responsible for the work that petitioner contends constitutes a violation of the Code. Petitioner presented no evidence to refute respondent's contention that he did not work on the premises. Moreover, the over five years that elapsed between issuance of the permit and the audit inspection makes it difficult for petitioner to establish a nexus between the observed violations and respondent.

Charge 3, specification 3, alleges that instead of installing four boilers and four hot water heaters as specified in the permit issued to him, respondent installed three boilers, two hot water heaters, and left future gas connections, which pose a danger to public safety. Because petitioner failed to establish that respondent performed the work giving rise to the violation, this specification should be dismissed.

2505 166th Street, Queens, New York

In March 2015, respondent obtained a permit to perform plumbing work at the premises. Charge 1, specification 18, alleges that a March 30, 2015, audit inspection revealed that gas dryers were in operation prior to testing and inspection/certification, in violation of section 406.6.2 of the FGC. Charge 1, specification 19, alleges that the inspector also observed new gas piping that was not consistent with the approved construction documents, in violation of section 28-105.12.2 of the Administrative Code (ALJ Ex. 3).

On March 6, 2015, respondent obtained a permit for plumbing work at the premises that entailed relocating a washer and a gas dryer to the cellar, as well as relocating a residential sink, two bathtubs, a lavatory, a water closet, and a cooking range on the first floor (Tr. 621-22; Pet. Ex. 17D). During an inspection on March 30, 2015, Lakatos observed that the washer, and dryer, as well as the water, drainage, and gas piping had been relocated. The plans approved by DOB did not indicate that these items were to be relocated or the location to which they were to

be moved (Tr. 622-23). Lakatos deemed this a Class 1 violation and issued a stop work order (Tr. 623, 634).

Lakatos issued a second violation at this location because the relocated gas dryer was in operation and gas service was in use without necessary testing (Tr. 623; Pet. Ex. 16). A search of DOB's records revealed that no plumbing inspections had been performed (Tr. 624-25; Pet. Ex. 17E). Moreover, gas was in use at the premises but had not been authorized by DOB (Tr. 626). Lakatos deemed this a Class 1 violation because it involved the unauthorized use of gas without inspections to determine whether there were improper or loose connections (Tr. 627).

Respondent testified that his partner in S. K. Piping, Kalogeropoulos, performed work at the location under respondent's license (Tr. 644). The work entailed capping and removing some fixtures, and relocating a washer and dryer (Tr. 639). Respondent visited the location a week before he obtained the permit. After he noticed that the architect's plans did not reflect where the fixtures were to be located, he or his expediter told the owner of the premises that the plans did not conform to the scope of work (Tr. 641-42). Respondent's expediter informed him that the plans would be amended. Respondent obtained the permit on March 6, 2015, and started working on the job a week or two later (Tr. 640). He maintained that it was unnecessary to have the plans amended before performing work that was not reflected on the plans (Tr. 643-44). Amended plans were not filed with DOB until after the inspector issued a stop work order on March 30, 2015 (Tr. 640-41).

Respondent testified that he intended to call for a DOB inspection after all the work was completed. However, he undercut his testimony by stating that he could not have requested an inspection because the plans had not been amended (Tr. 642). In essence, respondent contends that the violations were issued prematurely because there was insufficient time to amend the plans and, besides, his employees had capped the gas valve leading to the dryer so that it was not connected to the dryer (Tr. 641; Resp. Br. at 7). These arguments are without merit.

Respondent admitted that he performed work knowing that it did not conform to the architect's plans that were submitted to DOB. Furthermore, respondent failed to follow proper inspection procedures. As a result, the inspector observed a gas dryer in operation without required safety inspection and testing from the Department. Therefore, charge 1, specifications 18 and 19, should be sustained.

30-76 35th Street, New York, New York

Charge 1, specification 20, alleges that respondent obtained a permit to perform plumbing work at the premises on September 9, 2010, and that an April 4, 2015 inspection revealed that a boiler and burner had been replaced without inspection in violation of section 107 of the Plumbing Code (ALJ Ex. 3).

During an inspection on April 4, 2015, Lakatos observed that a gas/oil boiler and burner had been replaced, but there was no record of an inspection (Tr. 649, 651; Pet. Ex. 18). According to Lakatos, the gas valve was in the open position, indicating that it was in operation (Tr. 655).

Respondent obtained a permit to perform plumbing work on the gas portion of a burner in September 2010 (Tr. 652; Pet. Ex. 18C). Because the burner uses oil and gas, permits were issued to a licensed oil installer for work on the oil portion of the burner on the same date (Tr. 654; Pet. Ex. 18C). Respondent was to connect the gas portion of the burner (Tr. 654). The licensed oil installer signed off on the oil portion of the job in February 2011 (Tr. 657; Pet. Ex. 18D). Lakatos testified that respondent was the last plumber of record and that he never signed off on or withdrew from the job (Tr. 651, 656-57; Pet. Ex. 18C).

Respondent admitted that he performed work at the location and that he did not inspect that work (Tr. 658). Respondent testified that his partner, Ioannides, performed the work under the mantle of Beta Plumbing. Nathaniel Perry, a licensed oil burner installer, hired respondent and his partner to run a gas line to the boiler to supply gas to the gas burner (Tr. 659). Respondent's involvement in this job was limited: his role was to obtain the permit and to supervise the job, which he maintains he did during a single visit to the worksite (Tr. 659-60). Respondent testified that he was prepared to request an inspection of the work after it was completed, but he never did so because a dispute arose between his partner and the oil burner installer. Respondent did not withdraw from the job because he and his partner were waiting to get paid (Tr. 660-61).

It is clear from respondent's testimony that he neglected his obligations as a master licensed plumber. Respondent submitted an application to DOB and assumed responsibility for the matters encompassed by that permit. Yet, he did not conduct a critical safety inspection because of a fee dispute. Respondent's conduct was irresponsible and negligent. Accordingly, charge 1, specification 20, should be sustained.

2160 33rd Street, Queens, New York

Petitioner alleges that respondent was issued a permit to perform plumbing work at the premises on June 17, 2010, through June 15, 2013. An April 4, 2015 inspection found gas dryers with flexible connectors in violation of section 403 of the FGC (ALJ Ex. 3, charge 1, specification 21).

On April 4, 2015, Lakatos inspected the location and issued a violation because he observed coin-operated dryers in a commercial laundry room that were connected to gas piping with residential grade flexible hose (Tr. 667-68). Lakatos testified that the dryers were stationary dryers because they were not on wheels or casters (Tr. 666-67; Pet. Exs. 19, 19A3). According to Lakatos, stationary dryers require a hard pipe connection; the Code permits flexible connectors only if the equipment is on wheels (Tr. 668). He deemed the violation a Class 1 violation because it involved gas and had the potential to be dangerous (Tr. 669). He explained that the potential danger was increased because residential grade connectors were used instead of commercial grade connectors, which are coated with rubber to prevent them from flexing (Tr. 669).

Respondent acknowledged that he performed work at the premises under his affiliated company, Beta Plumbing, but maintained that his role was limited to installing the gas lines and making sure the valves were in place. His partner, Ioannides, personally performed the work at the location (Tr. 677). When respondent inspected the work, only the roughing was present. He testified that the company that provided the dryers was responsible for their installation and that the Schedule B, which shows the scope of work, did not include installation or connection of gas dryers (Tr. 675; Pet. Ex. 19E). On cross examination, however, respondent acknowledged that the Schedule B did provide for him to install the gas dryers (Tr. 678). He continued to maintain that an appliance company installed the dryers, even though it was done under his permit (Tr. 678). According to respondent, the owner of the premises or the architect on the job should have amended the plans to remove the dryers from the Schedule B. Respondent signed off on the job on December 28, 2012 (Tr. 679; Pet. Ex. 19D).

I do not credit respondent's testimony that he did not install the gas dryers. As with much of his testimony, respondent was simply not believable. However, petitioner bears the burden of establishing, by a preponderance of the credible evidence, that respondent's use of residential grade flexible connectors to install commercial gas dryers did not adhere to applicable

Code requirements. Petitioner contends that the relevant provision is section 403.3 of the FGC, which governs the type of piping materials that can be used for piping systems (Pet. Br. at 55-56). Section 403.3 states that "[m]aterials not covered by the standards specifications listed herein shall be investigated and tested to determine that it is safe and suitable for the proposed service, and, in addition, shall be recommended for that service by the manufacturer subject to approval by the commissioner." FGC § 403.3 (Lexis 2015). Petitioner contends that the type of installation that the inspector observed "would not be recommended by the manufacturer or approved by the commissioner" (Pet. Br. at 56). Yet, the cited provision makes no reference to flexible or hard pipe connectors. Moreover, petitioner failed to establish that the materials used on the job were not "covered by the standards specifications" and did not direct this tribunal to evidence in support of its contention that the installation would not be recommended or approved. While there is logical appeal to petitioner's assertion that flexible connectors can be dangerous because they are more easily dislodged, which could lead to an explosion (Pet. Br. at 56), petitioner did not prove that use of such connectors was negligent or incompetent, or that it demonstrated a lack of knowledge or disregard of applicable laws and rules. According, this charge should be dismissed.

159 Madison Avenue, New York, New York

On March 24, 2015, respondent obtained a permit to perform plumbing work at the premises. Charge 1, specification 22, alleges that on April 6, 2015, an inspector determined that an old cooking valve had been replaced with a new one, which compromised the existing gas branch. Petitioner charges that the work observed during the inspection was contrary to the approved construction documents, in violation of section 28-105.12.2 of the Administrative Code (ALJ Ex. 3).

Oleh Fedchenko has served as an inspector for DOB since 2007 and is currently a supervising inspector in the Plumbing Department (Tr. 419). He received extensive training from DOB relating to his duties as an inspector (Tr. 420). Fedchenko participated in the audit of respondent's work, issued several violations to respondent, and inspected this location, as well as several others (Tr. 423-24).

On March 24, 2015, respondent obtained a permit to replace a water closet, lavatory, and tub on existing roughing (Tr. 431; Pet. Exs. 20C, 20E). During an audit inspection on April 6,

2015, Fedchenko determined that a gas valve had been replaced, which work was beyond the scope of work described in the approved construction documents (Tr. 432; Pet. Ex. 20). Fedchenko testified that he concluded the valve had been recently replaced because it appeared shiny and new and because the compound used to attach the valve to the pipe appeared fresh (Tr. 432-33; Pet. Ex. 20A8). He explained that the body of the valve had a shiny brass appearance, which he captured in color photographs taken during the inspection (Tr. 434; Pet. Ex 20A8). Fedchenko concluded that replacing the gas valve exceeded the scope of the work for which a permit was issued and required that the master plumber perform testing to make sure the gas delivery system was safe (Tr. 434-35).

Fedchenko conceded that issuance of the violation may have been premature. He acknowledged that the work on the job had not been completed and had not been signed off when he inspected the premises (Tr. 435-36).

Petitioner offered into evidence proof that S. K. Piping was found in violation at proceedings before the Environmental Control Board ("ECB") relating to the violation Fedchenko issued for this address, and paid a fine of $250 (Tr. 433-39; Pet. Ex. 20F).

Respondent's workers and his partner, Kalogeropoulos, performed the work at this location (Tr. 445). Respondent acknowledged that his workers "might have" replaced the original gas valve because it was leaking, and that installation of a gas valve was not reflected on the construction plans (Tr. 443-44). He maintained that it was "absolutely" his intent to have the plans amended and that he "absolutely" brought the need to do so to the architect's attention when they changed the valve (Tr. 443-44, 447). While someone appeared before ECB on his behalf relating to the violation issued to S. K. Piping for this address and pleaded guilty to the charge, respondent declaimed knowledge as to why that person pleaded guilty (Tr. 444; Pet. Exs. 20, 20F).

Respondent exercised minimal supervision over this job. He was unsure when his company started working on the project and, although he testified that he supervised the job by going to the premises to "spot-check" the work, he admitted that he only went there once, on the day the work started (Tr. 448). He initially testified that he told the architect that the plans should be amended, then retreated from that claim and stated that his partner, who is not a master plumber, "probably" told the architect of the need to amend the plans (Tr. 447). While Fedchenko testified that the violation may have been premature, the evidence at the audit

inspection warranted its issuance since the observed work did not conform to the approved construction plans.

The credible evidence proves that respondent's employees installed the gas valve, which was outside the scope of the approved construction plans; accordingly, charge 1, specification 22, should be sustained.

200 Avenue A, New York, New York

Respondent was issued a permit to perform plumbing work at the premises on April 30, 2013. Charge 1, specification 23, alleges that on April 8, 2015, an inspection of the premises found a new or altered plumbing system in use before tests or required inspections had been performed, in violation of PC section 107.4 (ALJ Ex. 3).

Fedchenko inspected work at the premises on April 8, 2015, and observed newly installed half bathrooms on the first floor and in the cellar (Tr. 451; Pet. Ex. 21). He issued a violation because his review of DOB records revealed that this work had not been inspected (Tr. 451; Pet. Ex 21F). Fedchenko testified that a roughing inspection is required when pipes are installed and the wall is still open so that it can be determined whether the pipes are connected properly. The work must also undergo a finish inspection once the wall is closed and the fixtures are attached (Tr. 453-54). Inspection of a plumbing system is important because of the danger posed by an improper connection, such as connecting potable water to sewer water (Tr. 455).

According to Fedchenko, installation of water sanitary fixtures, the type of work performed on this project, requires a minimum of two inspections: a water sanitary roughing piping inspection and a water sanitary finish inspection (Tr. 457). There was no record that either of these inspections was performed. Absent a record of inspections, DOB is unable to determine whether the work was performed properly without breaking through the wall to inspect the pipes (Tr. 457-58, 461). Respondent's permit for work at that location, issued in April 2013, had expired on April 30, 2014 (Tr. 451; Pet. Ex. 21C). There was no sign-off on the job (Tr. 455). The fixtures that were installed without inspection were in use at the time of the inspection (Tr. 455). Fedchenko designated the violation as a "Class 1" violation, meaning that it presented a hazardous condition (Tr. 459).

Respondent conceded that he and S. K. Piping installed a washing machine, floor drains, toilet, lavatories, and water and sewer piping at the location (Tr. 464). He maintained that

although he inspected the work, there is no record of his inspection because he, Kalogeropoulos, and their workers walked off the job after the roughing was completed due to a fee dispute with the owner. They abandoned the job before scheduling a roughing inspection with DOB (Tr. 465-66, 468). Although respondent could have sought to withdraw his permit for work at the premises, he claims that he did not do so because the owner of the premises kept promising to pay (Tr. 468-69).

Respondent admitted that he failed to document with DOB inspections of work performed under a permit that had been issued to him, as required by PC section 107.4. Respondent's assertion that he stopped work due to a fee dispute is no defense. *Cf. LaMarca*, OATH 1464/03 at 2 (master plumber's conduct constituted gross negligence, incompetence, or misconduct where his company accepted money for job but left the job mid-stream, forcing customer to find another plumber to finish the work). DOB issued the permit to respondent and he was charged with ensuring compliance with the Code and relevant regulations, which protect public safety. Respondent's abandonment of the job and failure to withdraw the permit is indicative of his lackadaisical attitude towards the obligations that are imposed upon him as a licensee. Accordingly, charge 1, specification 23, should sustained.

25 Beaver Street, New York, New York

Respondent obtained a permit to perform plumbing work at the premises on April 9, 2013. Charge 1, specification 24, alleges that on April 8, 2015, an inspection of the premises found a new/altered plumbing system in use prior to it being tested, in violation of section 107 of the Plumbing Code (ALJ Ex. 3).

Respondent obtained a permit to cap and remove a urinal and water closet, and to relocate a water closet and sink at the premises (Tr. 474; Pet. Ex. 22E). According to Fedchenko, roughing and finish inspections were necessary on the job, and performing a cap and remove inspection would have been good practice because the nature of the job (Tr. 477-78). As of the April 8, 2015 inspection, the plumbing work was complete, yet DOB had no record of any inspections of that work (Tr. 476, 479). Fedchenko issued a violation because the piping system had not been tested after the urinal was removed. Fedchenko explained that it is important to properly cap the water line that supplies flushing water to the urinal, in order to protect potable water from contamination (Tr. 479-80).

Respondent admitted that S. K. Piping performed plumbing work at the premises under his license. His partner and S. K. Piping employees performed the work and dealt with the contractor (Tr. 489-90). Respondent maintained that he visited the premises while they were working, but he could not recall when (Tr. 492). His partner never asked him to call DOB to schedule an inspection because "they were not ready" (Tr. 490-92). When asked to explain why the job was not ready for inspection, respondent stated, "I don't know. I wasn't dealing with the contractor. You would have to ask my partner" (Tr. 490). Respondent never withdrew his permit for the location (Tr. 492).

Petitioner established that plumbing work was performed under respondent's permit, that the work required inspection, and that respondent failed to inspect that work prior to it being used. Respondent claimed that he was superseded on the job by another licensed plumber and suggested that DOB could not determine whether the issues observed at inspection were caused by respondent or the superseding plumber (Resp. Br. at 6). However, DOB records indicate that a plumber did not supersede respondent on the job until June 2015, two months after DOB's audit of respondent's work at the premises (Tr. 474-76; Pet. Exs. 22C, 22F). Indeed, respondent admitted that the work was performed under his license and that he did not perform an inspection or call DOB to perform one. In short, respondent's efforts to blame the superseding plumber fail and charge 1, specification 24, should be sustained.

233 5th Avenue, New York, New York

On March 18, 2013, respondent obtained a permit to perform plumbing work at the premises, including installation of two gas furnaces on the roof of the building. Charge 1, specification 25, alleges that the gas furnaces were not observed on the roof during an April 9, 2015 audit inspection. Petitioner charges that the work observed at the inspection was contrary to the approved construction documents and constitutes a false statement by respondent, in violation of sections 28-211.1 and 28-105.12.2 of the Administrative Code. Specification 26 alleges that the inspector observed non-Code-compliant plumbing materials or equipment, specifically cast iron fitting, in use at the location, in violation of section 102.3 of the PC.[9]

[9] PC Section 102.3 provides: "**Maintenance.** Installations, both existing and new, and parts thereof shall be maintained in proper operating condition in accordance with the original design and in a safe and sanitary condition. Devices or safeguards that are required by this code shall be maintained in compliance with the applicable provisions under which they were installed." PC § 102.3 (Lexis 2015). Section 403 of the FGC requires that

Specification 27 alleges that the inspector determined that a mechanical room was not properly maintained as it had an insufficient air supply and fire stops were compromised, in violation of section 28-301.1 of the Administrative Code.[10]

Gas Furnaces

Fedchenko issued a violation because he did not observe gas furnaces, gas piping, or gas valves on the roof, although they were within the scope of work for the project (Tr. 505-06; Pet. Exs. 23, 23A15–23A22, 23E). Respondent obtained a permit for work at the premises on March 18, 2013 (Tr. 494-95; Pet. Exs. 23C, 23E). The Schedule B for the project indicates that two HVAC units, also referred to as gas furnaces, were to be installed on the roof of the premises (Tr. 506; Pet. Ex. 23E). DOB records show that respondent self-certified gas roughing and gas finish inspections, as well as a gas test, on April 3, 2013 (Pet. Ex. 23F). On the same date, a self-certified gas authorization inspection was conducted and gas was authorized for end uses that included HVAC units (Tr. 506; Pet. Ex. 23F). After respondent submitted two OP-98 forms, the plumbing work was signed off on July 29, 2013, without a DOB inspection (Tr. 509-10; Pet. Ex. 23G). One of the OP-98s, signed by respondent and dated July 16, 2013, indicates that gas authorization was requested for water heater and HVAC fixtures (Tr. 511; Pet. Ex. 23G). Fedchenko testified that job documents respondent filed with DOB contained false statements because they indicated that gas heaters were installed on the roof and gas was authorized for the heaters, but the fixtures were not in place at the inspection (Tr. 524-27; Pet. Ex. 23E).

Cast Iron Fittings

Fedchenko issued a second violation for use of a prohibited cast iron fitting on a gas line (Tr. 501-02; Pet. Ex. 23). He testified that cast iron fittings are inappropriate for gas pipe installations because that can easily crack and cause a gas leak (Tr. 502). In addition, Fedchenko issued a violation because the gas valve was located on the line after the drip valve. According to Fedchenko, the valve should have been installed on a vertical riser before the "T" fitting. Locating the valve after the "T" on the horizontal line created a future connection because even if the valve is closed, the line will remain in service once the cap at the end of the vertical riser is opened and anyone, even someone lacking the qualifications to do so, could connect a gas

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materials used for gas piping systems comply with the requirements of the chapter, including its prohibition on the use of cast iron pipes. FGC §§ 403.1, 403.4.1 (Lexis 2015).

[10] Section 28-301.1 of the Administrative Code imposes upon owners the responsibility to maintain their buildings in a safe condition.

appliance to the line without proper inspection (Tr. 501-05; Pet. Exs. 23A7, 23A8). He further testified that the section 403.4.1 of the FGC prohibits the use of cast iron fittings on a gas piping system (Tr. 520, 530).

Mechanical Room

Fedchenko issued a third violation because the mechanical room in the cellar of the premises lacked sufficient air supply, an opening in the ceiling of that room contravened fire protection requirements, and a properly installed fresh air metal duct was not apparent at the inspection (Tr. 499-501; Pet. Ex. 23).

The mechanical room houses heating and gas equipment. Due to the risk of fire associated with such equipment, the room must meet certain requirements for fire-rated construction (Tr. 515). Fedchenko testified that the mechanical room must be ventilated with a supply of fresh air that travels through a metal duct and that the hole in the ceiling presented a risk that in the event of a fire, the fire could easily travel through the opening (Tr. 498, 515). The master plumber, he testified, is responsible for ensuring that the mechanical room complies with all Code requirements (Tr. 536).

In addition, Fedchenko noted on the violation that the door to the mechanical room was improperly installed as it should swing away from the room rather than into the room, to minimize the risk of someone getting locked inside the room (Tr. 513, 536-37; Pet. Ex. 23). However, he acknowledged that it is not the plumber's responsibility to install doors to the maintenance rooms (Tr. 537).

Respondent did not dispute that he performed work at the premises and acknowledged that Ioannides, his partner in Beta Plumbing, performed all the work. Respondent was, however, present for three inspections (Tr. 544-45). He described his role as the supervisor on the job, but his recollection about the extent of his involvement in this project was less than clear. He was uncertain as to the number of inspections he conducted, the number of times he went to the site, and how many people worked on the site (Tr. 551-53). However, respondent unequivocally denied responsibility for the violations observed at the audit inspection.

With respect to the missing gas furnaces, respondent insisted that his employees installed new furnaces on the roof and claimed to have no idea what happened to them (Tr. 543-44, 551). He maintained that he observed the new furnaces, which typically last for 20 to 40 years, when

he performed the gas test and authorized gas for the furnaces (Tr. 551-52). He further testified that the furnaces were connected to gas at the final inspection (Tr. 553).

Respondent denied responsibility for the improperly located cast iron fitting and valve that were observed at the inspection. He insisted that his workers always install valves on the vertical pipes because of prior issues with DOB inspectors, and that they did not install the "T" fitting observed in the photographs (Tr. 542-43, 546-47).

As for the mechanical room, respondent maintained that when he signed off on the job in 2013, there was a fresh air duct behind an opening in the ceiling, which was covered by a metal grate (Tr. 541-42). According to respondent, he visited the room during a final inspection and observed ductwork in the location on the ceiling depicted in the inspector's photograph (Tr. 547; Pet. Ex. 23A3). He maintained that the ductwork is visible in the photograph Fedchenko took during the inspection (Tr. 546; Pet. Ex. 23A3).

The evidence here is equivocal, at best. On balance, I find that petitioner has failed to established by a preponderance of the credible evidence that respondent is responsible for the conditions that gave rise to the violations. Petitioner failed to establish a causal link between respondent's work at the premises in 2013 and the conditions that were observed nearly two years later. For example, while the gas furnaces were not present at the 2015 audit inspection, respondent testified that they had been installed when he signed off on the job by self-certification in July 2013. Petitioner contends that the presence of metal beams on the roof (Tr. 507; Pet. Exs. 23A18) demonstrates that "the infrastructure for the units was installed on the roof but never used" (Pet. Br. at 60). However, the opposite inference is also reasonable: that the presence of the infrastructure supports a conclusion that the furnaces were installed as respondent testified. Petitioner also argues that the estimated cost of the job, $25,000, makes it illogical that the owner of the premises would install the furnaces, only to remove them a short time later (Pet. Br. at 60). However, without direct evidence, such a conclusion would be speculative.

Similarly, petitioner failed to meet its burden regarding the mechanical room and cast iron fittings. Respondent contends that petitioner's photograph of the duct in the mechanical room shows metal within the hole in the ceiling. However, is, difficult to discern from the photograph whether what is shown in that photograph is part of a metal air duct. Neither party submitted evidence to clarify this point. As for the cast iron fittings, the nearly two years that

have elapsed between respondent's sign-off on the job and the audit inspection make it difficult for petitioner to establish a causal link between respondent and the observed violations.

Petitioner further charged that respondent made a material false or misleading statement on a form filed with DOB because he filed documents with DOB that were inconsistent with the work observed at the audit inspection (ALJ Ex. 3, charge 2, specification 3). However, having failed to establish that respondent is responsible for the work observed at the audit inspection, petitioner did not establish that respondent's DOB filings were false or materially misleading.

121 West 72nd Street, New York, New York

Desmond Graham, a supervising inspector for the plumbing department at DOB, has been a DOB plumbing inspector since 2008 and has been a supervising inspector since December 2014. He has 40 years of experience in the plumbing industry (Tr. 331-33). Graham inspected several of respondent's jobs as part of the audit, including one at 121 West 72nd Street.

DOB issued a permit to respondent on June 20, 2013, to perform plumbing work in an apartment at the premises. The scope of work described in the Schedule B entailed relocating and replacing a sink and dishwasher in the kitchen, and replacing a tub, toilet, and lavatory in their existing location (Pet. Ex 24E). Respondent submitted an OP-98 and the plumbing work was signed off in February 2014 (Pet Exs. 24D, 24G). DOB alleges that an April 9, 2015 inspection determined that plumbing fixtures had been relocated and that the work observed was contrary to the DOB-approved construction documents. DOB charges that this constitutes a false statement in violation of sections 28-211.1 and 28-105.12.2 of the Administrative Code (ALJ Ex. 3, charge 1, specification 28; charge 2, specification 2).[11]

Graham testified he observed new piping and valves at the audit inspection. He also noted recently installed fixture traps, which are devices installed to prevent foul odors from escaping the pipes (Tr. 336, 343). He concluded that the pipes had been recently installed based on his experience and his observation of their shiny, new appearance (Tr. 339, 344-45; Pet. Ex. 24A). According to Graham, the permit application should have reflected that new piping would be installed. He testified that if piping is installed without a permit and inspection, DOB does not know whether the work is Code-compliant, and work that does not comply with the Code

[11] The petition repeats, verbatim, the allegations in charge 2, specification 2. The charges are duplicative and will not be considered separately for purposes of penalty, should the charge be sustained. *See Savello v. Frank*, 48 A.D.2d 699 (2d Dep't 1975).

may prove hazardous to property and the inhabitants of the premises (Tr. 355). Graham testified that all installations of new piping require a permit (Tr. 355).

Respondent did not dispute that he installed the piping observed at the audit inspection. He obtained a license for work at the location and S. K. Piping employees performed work there (Tr. 359). However, he only visited the location three to five times and his employees did the actual work (Tr. 365). He admitted that they replaced a valve, a flexible tank connector, and a fixture trap. He explained that his workers replaced the valve because it was not working. They replaced the flexible tank connector because he did not know how long the old one would last and he did not want to "risk a flood in a brand new bathroom" (Tr. 360). They replaced the trap because "we always change the traps," it was not lining up with the sink, it was old and rusty, and it was leaking (Tr. 361-62). Respondent maintained that the bathroom fixtures were returned to their original positions, and that his company replaced and relocated the kitchen sink, moving it a few feet, but connecting it to the existing roughing (Tr. 363). His workers also removed the waste bags located under the sink after the trap, which is connected from the strainer to the trap (Tr. 364). Respondent testified that they always change the trap and water supplies from the valve to the faucet (Tr. 363). Respondent denied removing any roughing, but admitted that they replaced piping that was exposed, describing it as "proper procedure" and insisting that "you don't leave old pipes in a brand new kitchen" (Tr. 365).

By his own admission, respondent's work did not conform to the documents he submitted to DOB. The Schedule B represented the scope of respondent's work as replacing and relocating a sink and dishwasher in the kitchen and replacing a tub, toilet and lavatory in their existing location. Yet the work respondent performed went beyond what was described in the Schedule B. Moreover, respondent submitted an OP-98, thus assuming responsibility for the job and certifying to DOB that his work was Code-compliant and in accordance with the approved construction documents (Tr. 276; Pet. Ex. 24G). Accordingly, petitioner has established that respondent performed work that was contrary to the approved construction documents and that his representations to DOB that his work was consistent with the documents he submitted constitutes a material false statement in violation of sections 28-105.12.2 and 28-211.1 of the Administrative Code.

790 Lydig Avenue, Bronx, New York

Petitioner alleges that respondent endangered public safety when he installed three fire sprinkler heads at the premises as specified in the approved construction documents, but left the locks on the automatic sprinkler heads. Petitioner contends that because of those locks, the system would not have activated had there been a fire (ALJ Ex. 3, charge 3, specification 4).

Graham inspected respondent's work at a restaurant located at 790 Lydig Avenue on April 8, 2015. During the inspection, he observed that three automatic fire suppression sprinklers had been installed, but their safety latches, also referred to as locks, had not been removed (Tr. 367-68; Pet. Ex. 25). Graham testified that he determined that the latches were locked in place as shown when they are shipped, indicating to him that they had never been removed (Tr. 380). The sprinkler heads were attached to the ceiling, which was about ten to twelve feet high. The sprinklers were brass and the latches, which are about two to two-and-a-half inches long, were bright orange (Tr. 393, 397).

Graham testified that latches are attached to the sprinkler heads to protect the devices during shipping and installation, but are to be immediately removed once the devices are installed (Tr. 368-69). Graham testified that the sprinklers are designed with glass sensors that are activated when they detect heat. The latches are plastic devices that are used to immobilize the sprinkler head, thereby protecting the heat sensors from damage during shipment and installation (Tr. 375). According to Graham, it is the master plumber's responsibility to remove the latches (Tr. 373). They should have been removed upon installation because the system cannot be activated until the safety latches are removed. Had there been a fire in the restaurant, the sprinklers would not have been functional (Tr. 372-73). He characterized this as a "Class 1" violation because lives and property would have been jeopardized had a fire occurred (Tr. 374).

DOB's records indicate that respondent obtained a permit to perform plumbing and fire suppression work at the premises on December 31, 2013 (Tr. 378; Pet. Ex. 25D). Respondent self-certified plumbing inspections and signed off on the job on June 2, 2014 (Tr. 393-94; Pet. Exs. 25F, 25G). According to Graham, when a master plumber signs off on a job, he is representing that the work is complete and the equipment is ready for use (Tr. 373).

Respondent did not dispute that he and his affiliated company, S. K. Piping, installed three sprinklers (Tr. 400). He testified that he has installed hundreds of sprinklers during his 17-year career as a master plumber, and that he has always removed the latches. Respondent was

"absolutely" certain that he did so at this location, but subsequently acknowledged that it was his partner and their workers, not himself, who actually removed the latches (Tr. 401-02). Respondent was equivocal as to whether he was present when the latches were removed and could not remember many details about when the sprinklers were installed (Tr. 401-06).

Respondent speculated that someone could have been replaced the latches between June 2014, when he signed off on the job, and April 2015, when Graham inspected his work (Tr. 403-04). However, I find this implausible. Instead, I credit Graham's testimony that once the latches are removed, it is highly unlikely that they would fit into their original position (Tr. 392). Graham's testimony, based on his experience, comports with common sense. There is little discernible reason for re-installation of the latches once the sprinklers were installed, and respondent pointed to none that made sense. The most likely explanation is that respondent's workers installed the sprinklers but failed to remove the latches. Moreover, respondent's vague, equivocal testimony is not credible.

It is troubling that respondent self-certified his inspection of the sprinklers at the premises and signed off on the job (Pet. Ex. 25G). Graham described the latches as bright orange in color, which should have made them visible against the brass sprinkler heads during an inspection, especially given respondent's experience as a master plumber. Therefore, respondent's claim that he performed the necessary inspection is dubious: had he performed a cursory inspection, he should have noticed that the latches remained in place, thus disabling the system. The risk posed by respondent's failure to remove the latches from the sprinkler heads is heightened because the establishment is a restaurant where there is an increased risk of fire and greater use by the public. Accordingly, petitioner established that respondent endangered public safety when he left latches on the sprinkler heads after installation and charge 3, specification 4, should be sustained.

Conclusion[12]

In sum, petitioner established that respondent was negligent in performing work and in supervising others who worked on numerous projects for which he obtained permits. As the licensed master plumber, respondent was required to exercise direct and continuing supervision

[12] The Department contends that the issuance of 40 ECB violations since March 3, 3015, in the course of its audit of respondent's jobs demonstrates that respondent is negligent, incompetent, lacks knowledge of, or disregards the code and related laws and rules (ALJ Ex. 3, charge 1, specification 29). This specification appears to summarize the previous specifications; therefore, separate discussion of this specification is unnecessary.

over plumbing and gas work performed under his license. *See Dep't of Buildings v. Ward,* OATH Index No. 1746/11 at 15 (Sept. 1, 2011), *adopted*, Comm'r Dec. (Sept. 13, 2011), *modified*, 111 A.D. 3d 498 (1st Dep't 2013), *rev'd*, 23 N.Y.3d 1046 (2014) (the Building Code forbids plumbing and gas piping work unless it is done by a licensed master plumber or under his or her direct and continuing supervision); *see also* Admin. Code § 28-408.6 (Lexis 2015). In the course of this proceeding, it became evident that respondent was detached from the work performed under his license, making rare visits to the job sites and delegating much of the direct responsibility for the work to his business partners.

Moreover, the multiplicity and similarity of the violations that are attributable to respondent demonstrate that he is negligent or lacks the competence to fulfill his duties as a licensed master plumber. *See Dep't of Buildings v. Velasquez,* OATH Index No. 1557/10 at 9 (Nov. 24, 2010), *modified on penalty*, Comm'r Dec. (Dec. 2, 2010) ("Repeated, similar, and serious errors demonstrate neglect or lack of competence." *citing Dep't of Buildings v. Pettit,* OATH Index No. 190/02 at 9 (July 30, 2002)). Intertwined with respondent's negligence and lack of competence is his lack of knowledge of or disregard of the applicable laws.

Petitioner further established that respondent was responsible for plumbing work that endangered public safety by creating risks of gas explosions, contamination of potable water, and non-functioning sprinklers at a restaurant, and that he submitted documents to DOB that contained materially false or misleading statements.

FINDINGS AND CONCLUSIONS

1. Petitioner failed to establish that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable laws in performing plumbing work at 34 West 46th Street, New York, New York. Accordingly, charge 1, specifications 1, 2, and 3, should be dismissed.

2. Petitioner established that respondent was negligent, incompetent, and lacked knowledge of or disregarded applicable laws in performing plumbing work at 280 West 115th Street, New York, New York, as alleged in charge 1, specification 4.

3. Petitioner established that respondent was negligent, incompetent, and lacked knowledge of or disregarded applicable laws in performing plumbing work at 2128 8th

Avenue, New York, New York, as alleged in charge 1, specification 5.

4. Petitioner established that respondent was negligent, incompetent, and lacked knowledge of or disregarded applicable laws in performing plumbing work at 2126 8th Avenue, New York, New York, as alleged in charge 1, specification 6.

5. Petitioner established that respondent was negligent, incompetent, and lacked knowledge of or disregarded applicable laws in performing plumbing work at 223 West 115th Street, New York, New York, as alleged in charge 1, specification 7.

6. Petitioner established that respondent was negligent, incompetent, and lacked knowledge of or disregarded applicable laws in performing plumbing work at 106 Suffolk Street, New York, New York, as alleged in charge 1, specification 8.

7. Petitioner established that respondent was negligent, incompetent, and lacked knowledge of or disregarded applicable laws in performing plumbing work at 3605 East Tremont Avenue, Bronx, New York, as alleged in charge 1, specification 9.

8. Petitioner failed to establish that respondent was negligent, incompetent, and lacked knowledge of or disregarded applicable laws in performing plumbing work at 1829 Haight Avenue, Bronx, New York, New York. Accordingly, charge 1, specification 10 should be dismissed.

9. Petitioner established that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable laws in performing plumbing work at 34-49 11th Street, Queens, New York, as alleged in charge 1, specification 11.

10. Petitioner established that respondent filed a false or misleading statement to DOB when he submitted a form to DOB and signed off on documents certifying that the work he performed at 34-49 11th Street, Queens, New York was in accordance with approved construction documents, as alleged in charge 2, specification 1.

11. Petitioner established that plumbing work performed at 34-49 11th Street, Queens, New York under a permit issued to

respondent endangered public safety and welfare as alleged in charge 3, specification 1.

12. Petitioner established that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable laws in performing plumbing work at 18-26 21st Drive, Queens, New York, as alleged in charge 1, specification 12.

13. Petitioner established that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable laws in performing plumbing work at 1421 Broadway, Queens, New York, as alleged in charge 1, specification 16.

14. Petitioner failed to establish that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable laws in performing plumbing work at 120-11 14th Road, Queens, New York. Accordingly, charge 1, specification 17 should be dismissed.

15. Petitioner failed to prove that respondent performed work at 120-11 14th Road, Queens, New York that posed a danger to public safety and welfare. Accordingly, charge 3, specification 3 should be dismissed.

16. Petitioner established that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable laws in performing plumbing work 2505 166th Street, Queens, New York, as alleged in charge 1, specifications 18 and 19.

17. Petitioner established that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable laws in performing plumbing work at 30-76 35th Street, Queens, New York, as alleged in charge 1, specification 20.

18. Petitioner failed to establish that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable laws in performing plumbing work at 2160 33rd Street, Queens, New York. Accordingly, charge 1, specification 21 should be dismissed.

19. Petitioner established that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable laws in performing plumbing work at 159 Madison Avenue, New York, New York, as alleged in charge 1, specification 22.

20. Petitioner established that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable

laws in performing plumbing work at 200 Avenue A, New York, New York, as alleged in charge 1, specification 23.

21. Petitioner established that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable laws in performing plumbing work at 25 Beaver Street, New York, New York, as alleged in charge 1, specification 24.

22. Petitioner failed to establish that respondent was negligent, incompetent, lacked knowledge of or disregarded applicable laws in performing plumbing work at 233 5th Avenue, New York, New York. Accordingly, charge 1, specifications 25, 26, and 27, should be dismissed.

23. Petitioner failed to establish that respondent made a material false or misleading statement on a form filed with DOB because he filed documents with DOB that were inconsistent with the work observed during an inspection at 233 5th Avenue, New York, New York, as alleged in charge 2, specification 3.

24. Petitioner established that respondent made a material false or misleading statement when he filed documents with DOB that were inconsistent with the work observed during an inspection at 121 West 72nd Street, New York, New York, as alleged in charge 1, specification 28, and charge 2, specification 2.

25. Petitioner established that plumbing work performed at 790 Lydig Avenue, Bronx, New York under a permit issued to respondent endangered public safety and welfare as alleged in charge 3, specification 4.

RECOMMENDATION

Petitioner seeks revocation of respondent's master plumber's license, which is appropriate.[13]

[13] At the start of the trial, the parties stipulated to the admission into evidence of a stipulation of settlement between respondent and DOB and other documents regarding matters that were not charged in this proceeding. Counsel for petitioner indicated that the documents referenced the Department's prior enforcement proceedings against respondent. Out of an abundance of caution, I determined that the offered documents should not be made part of the record at that time as it appeared to be in the nature of a personnel disciplinary record or other analogous file. *See* 48 RCNY § 1-47(b) (Lexis 2015) ("In the event that a personnel file, abstract of a personnel file, driver record, owner record, or other similar or analogous file is not admitted into evidence at the trial on the merits, the administrative law judge, upon determining that the petition shall be sustained in whole or in part, may request that the petitioner forward such file or record to the administrative law judge for consideration relative to penalty or relief."). I advised the parties that should I find it necessary to do so, I would request submission of the documents for consideration in making a penalty recommendation (Tr. 9-10, 52-55). I have not requested or considered those documents for purposes of this recommendation.

Section 28-401.19 of the Building Code provides that the Commissioner may suspend or revoke a license or certificate of competence, and/or impose a fine up to $25,000 for each finding of violation for, among other things, "[t]he making of a material false or misleading statement on any form or report filed with the department or other governmental entity," "negligence, incompetence, lack of knowledge, or disregard of this code and related laws and rules," and "[e]ngaging or assisting in any act that endangers public safety and welfare." Admin. Code §§ 28-401.19(2), (6), and (11). Petitioner established that respondent violated these provisions multiple times.

The proven charges are that respondent was negligent, incompetent, and lacked knowledge of or disregarded applicable laws and rules on at least 14 occasions, and that he made materially false or misleading statements and endangered public safety on multiple occasions. The evidence shows a pattern of intentional and negligent conduct over the span of several years that warrant revocation of respondent's master plumber's license.

The Department is charged with protecting public safety and depends on licensees to follow relevant laws and to exercise care in performing their duties. Licensed master plumbers are entrusted with responsibility for work on critical, safety-sensitive systems and their negligence or incompetence could result in gas leaks or explosions, failure to suppress fires, and contaminated potable water. The self-certification process relies upon the master plumber's knowledge of the relevant laws and care in performing plumbing work and necessary inspections and tests. Moreover, because the process allows the master plumber to carry out safety-sensitive inspections and tests with limited DOB review, it is of utmost importance that DOB can rely on the master plumber to be careful and honest in its dealings with the agency. *See Dep't of Buildings v. Pettit,* OATH Index No. 190/02 at 23 (July 30, 2002) ("[t]he self-certification process relies on the integrity of professionals."). The Department cannot rely upon respondent.

Respondent presented himself as largely removed from the operations of his associated companies, which performed work under permits that were issued to him as the licensed master plumber. In several instances he abdicated responsibility for work that was being performed under his license to his business partners and was markedly ignorant of the actual work performed under permits he obtained. *See Dep't of Buildings v. Geer*, OATH Index No. 1288/13 at 25 (Dec. 18, 2013), *adopted*, Comm'r Dec. (Dec. 20, 2013) (license revocation imposed for hoist machine operator who failed to comply with applicable law and rules and abdicated important responsibilities assigned to him as a licensee).

In sum, respondent was repeatedly negligent in performing his duties, endangered public safety, and violated the trust the Department placed in him when it issued him a master plumber's license. Such conduct warrants revocation of his license. *See Dep't of Buildings v. Ward*, OATH Index No. 1746/11 at 19-20 (Sept. 1, 2011), *adopted*, Comm'r Dec. (Sept. 13, 2011), *modified*, 111 A.D. 3d 498 (1st Dep't 2013), *rev'd*, 23 N.Y.3d 1046 (2014) (single instance of "covering" by a licensed master plumber was a sufficiently egregious violation of the Department's trust to warrant revocation when the plumber obtained a license for plumbing work knowing that neither she nor someone in her direct employ would be performing work); *Dep't of Buildings v. LaMarca*, OATH Index No. 1464/03 at 7 (July 15, 2003) (revocation recommended where license master plumber was negligent and engaged in fraudulent dealings in the conduct of his plumbing business).

Accordingly, I recommend that respondent's master plumber's license be revoked.

Astrid B. Gloade
Administrative Law Judge

January 29, 2016

SUBMITTED TO:

RICK D. CHANDLER, P.E.
Commissioner

APPEARANCES:

PATRICIA PENA, ESQ.
MARC ASSA, ESQ.
Attorneys for the Petitioner

CASELLA & CASELLA, LLP
Attorneys for Respondent
BY: RALPH P. CASELLA, ESQ.

Commissioner’s Decision (Feb. 11, 2016)

I have completed my review of Administrative Law Judge Astrid B. Gloade's Report and Recommendation in this matter (OATH Index No. 2325/15, January 29, 2016), along with the record of the proceedings.

The four day hearing at OATH began on June 29, 2015 and continued intermittently until August 7, 2015. The Department presented five witnesses in support of the Charges and Specifications.

In her January 29, 2016, Report and Recommendation, Judge Gloade found that the evidence established that you were negligent, incompetent, lacked knowledge of or disregarded applicable laws and rules, made materially false or misleading statements on documents filed with the Department and endangered public safety and welfare. Judge Gloade stated, "[t]he evidence shows a pattern of intentional and negligent conduct over the span of several years that warrant revocation of respondent's master plumber's license."

Additionally, Judge Gloade stated in her Report and Recommendation:

In the course of this proceeding, it became evident that respondent was detached from the work performed under his license, making rare visits to the job sites and delegating much of the direct responsibility for the work to his business partners. Moreover, the multiplicity and similarity of the violations that are attributable to respondent demonstrate that he is negligent or lacks the competence to fulfill his duties as a licensed master plumber.

Pursuant to the New York City Charter, Section 1046, I may adopt, reject or modify any such Report and Recommendation. I hereby adopt Judge Gloade's January 29, 2016 Report and Recommendation as to her findings of fact and recommendation to revoke your Master Plumber's license and find you in violation of the provisions of law cited in the Report and Recommendation.

THEREFORE, effective immediately, the sanction imposed upon you is revocation of your Master Plumber's license. You must surrender your license immediately to the Department.

SO ORDERED:

Rick D. Chandler, P.E.
Commissioner