Respondent, premises owner, appeals from a recommended decision finding a Class 1 violation of Section 28-210.1 of the Administrative Code of the City of New York (Code) for altering a residence for occupancy as a dwelling for more than the legally approved number of families and imposing daily penalties for the maximum 45 days under Code Section 28-202.1. In the summons, the issuing officer (IO) affirmed that, on October 17, 2016, he observed: "[r]esidence altered for occupancy as a dwelling from 1 or 2 families to 4 or more families. Noted: co [certificate of occupancy (CO)] #401054176 indicates a two (2) family. Residence has been altered and occupied as six (6) families." The IO further noted the following alterations: "at 2nd floor created 4 S.R.O's and at 1st floor created 2 S.R.O.'s. S.R.O.'s are consisted of 3 piece bathrooms, refrigerators, food items, electric cooking equipment, personal items and toiletries." The summons also informed Respondent that additional daily penalties per Code Section 28-202.1 applied.

The hearing

At the hearing, Respondent's representative, his wife, a Mandarin speaker, spoke through a Language Line interpreter who participated by phone. The representative asserted as follows. The property was not changed since she bought it in 2014. Only she and Respondent resided on the first floor and Respondent's relatives resided on the second floor. As evidence, she submitted a copy of the deed, first-floor demolition plans, and photographs. The hearing officer examined the photographs and noticed locking devices shown in some of them. Respondent's representative asserted that there were no locking devices and that, at the last inspection, she was informed that the door knobs shown were okay.

The representative for Petitioner, the Department of Buildings, introduced the CO to show that the premises is a legal two-family dwelling, with a dwelling on the first floor and a dwelling on the second floor. He also introduced 49 photographs of the first and second floors to support the allegation in the summons of two SROs on the first floor and four on the second floor.

In her recommended decision, the hearing officer did not credit Respondent's representative's assertions and found that Petitioner's photographs show that there are SROs because the doors have locking devices on them and show personal items, cooking devices, refrigerators, and toiletries. In making this finding she noted that the doorknobs in Respondent's photographs are a different color from those in Petitioner's photographs. Accordingly, she sustained the Code Section 28-210.1 violation and imposed the maximum 45-day daily penalties under Code Section 28-202.1, finding that no evidence was submitted of correction or legalization during the 45 days following the issue date of the summons.

Issue presented on appeal

The issue on appeal is whether Respondent's representative was provided sufficient language assistance services to allow her to meaningfully communicate at the hearing.

The law

Section 6-03 of Title 48 of the Rules of the City of New York (RCNY) provides that:

> Appropriate language assistance services will be afforded to respondents whose primary language is not English to assist such respondents in communicating meaningfully. Such language assistance services will include interpretation of hearings conducted by Hearing Officers, where interpretation is necessary to assist the respondent in communicating meaningfully with the Hearing Officer and others at the hearing.

The appeal

On appeal, Respondent is represented by an attorney, who argues that Respondent should be granted a new hearing because his representative was not able to communicate meaningfully during the hearing because of the Language Line interpreter's mistakes. The attorney submits a translation of portions of the hearing audio and the sworn statement of the translator that he is fluent in English and Mandarin and that his translation is a true and accurate version of the hearing audio recording and shows mistakes made by the Language Line interpreter. Respondent's attorney argues that the interpreter 1) failed to accurately communicate "the specific detail surrounding" Respondent's representative's firm assertion that there were no key-locking devices on the inside doors of the house and that there were not multiple families residing at the house, thus preventing the hearing officer from fairly assessing her credibility; and 2) confused the words "living room" and "hallway" and failed to convey Respondent's representative's testimony about the layout of the house, thus critically affecting the hearing officer's determination that daily penalties should be imposed. The attorney also argues that a new hearing is necessary because "it is not clear" whether Respondent was advised of his right to an attorney.

Petitioner's attorney, in its answer, refers to the hearing on a 2014 violation where Respondent's representative represented herself and argues that she was therefore familiar with OATH hearing procedure. He further notes that Respondent's attorney does not argue that the hearing officer's credibility findings were incorrect.

While Petitioner's attorney makes further factual assertions and submits documents related to the 2014 violation, the Board will not consider them. Per 48 RCNY Section 6-19(b), the Board will not consider any factual assertions or evidence not presented to the hearing officer.

The Board's determination

Having fully reviewed the record, the Board finds that the hearing officer's decision is supported by the law and a preponderance of the evidence and denies the appeal.

On this record, the Board finds that Respondent's representative was provided sufficient language assistance services so as to meaningfully communicate at the hearing. A new hearing is only granted for insufficient language assistance services if there is a clear error in those services that resulted in a substantial flaw in the hearing officer's decision. *See NYC v. Chi Tai Ng* (Appeal No. 1200371, August 30, 2012). Here, Respondent's attorney does not argue that the interpreter's purported deficiencies caused the hearing officer to err either in rejecting Respondent's representative's denials or in finding that there had been no correction of the violating condition. The Board likewise can locate no clear error resulting in a substantial flaw because of the language assistance services and so finds that a remand

for a new hearing is not warranted on that basis. Nor does Respondent's attorney's alternative basis support a remand. The record reflects that Respondent was advised of his right to an attorney. According to the order adjourning an earlier hearing in this matter, Respondent's representative requested and was given additional time in order to retain an attorney although at the new hearing she resumed his representation herself.

Accordingly, the Board affirms the hearing officer's recommended decision finding a violation of Code Sections 28-210.1 and imposing a civil penalty of $2,400, and imposing additional daily penalties, under Code Section 28-202.1, totaling $45,000, for a total penalty of $47,400.

Additional information from OATH records (not in original decision)

Master NOV #	Name of Respondent's counsel or other authorized representative (if any)
35198572J	Cohen & Hochman