

The summonses allege the respondent violated NYC Administrative Code 28-118.3.2 by having occupancy contrary to that allowed by the Department of Buildings records (#035655824H), NYC Administrative Code 28-301.1, by failing in two instances to maintain building in a code compliant manner (#035656000J, #035656001L), Class 1 violations, and BC 907.2.8 by failing to provide a fire alarm system (#035656002N), a Class 2 violation at 36-20 29th Street Queens on August 11, 2022.

Phoebe Dossett, Esq., Nacmias Law Firm, PLLC, appeared for the respondent Jules Rosen. Daniel Rosen, an owner of the premises and the son of the named respondent, was present but did not testify. Jose Gerardo Rodriguez Hernandez, appeared for the respondent, through a Spanish Language Line Interpreter (#365740). Deanna Lamberti, Esq., appeared for the petitioner DOB. Inspector G. Portelli, #3402MT, the issuing officer, appeared for the petitioner DOB.

Preliminarily, the parties stipulated that petitioner's claims that the building was not maintained in a code compliant manner and that there was no fire alarm system provided, would rise or fall based on a finding of whether there was occupancy contrary to Department of Buildings records.

The petitioner first relied on the issuing officer's sworn statement in the summons. The issuing officer stated that building records indicated premises to be approved as a 2-family dwelling, illegal occupancy noted at 1 floor had been converted/used as transient use having guests staying for less than 30 days with no host or owner staying with guests. Guests booked stay on AirBnB.com

The issuing officer testified that he had an independent recollection of the inspection. He also had notes he wrote at the time of inspection. He testified that he knocked on the door of the dwelling on the first floor and interacted with a couple. There were 2 adults with 4 foster children. They were from Ukraine and spoke English well. They were staying at the apartment from August 8th through the 12th. They told the inspector that Daniel Rosen was the host, but they did not meet him. There was a key box at the entrance of the building. They told the inspector that they did not feel comfortable letting him in, so the inspector took photos from the entry way looking into the apartment. The petitioner provided a copy of the Inspector's contemporaneous notes made at the time of inspection, a NYC Department of Housing Preservation and Development Building Overview, and a PW1 dated June 20, 2010 for work in the premises (Pet. Exh). The petitioner also provided photos taken at the time of inspection, including photos of the AirB&B confirmation provided by the guests (Pet. Exh).

The respondent denied the charges. Jose Gerardo Rodriguez Hernandez testified that he has been living in the 1st floor apartment for the past 5 ½ years. He was present at the time of inspection. Mr. Rodriguez said that he opened the door for the inspectors and asked if they had authorization to be there. He told them he was the primary resident at the building but they gave him the summonses anyway. They did not go into the apartment or the basement. He said that he communicated with the Inspector in Spanish and a little English. Mr. Rodriguez testified that there were some guests in the apartment at the time. There were some adults and two children; he did not interact with them much.

The respondent challenged the Class 1 designation of the charges. The respondent argued that the apartment as a 2 story duplex, had a means of egress on the first floor, and from the basement floor. With two means of egress, there was no immediately hazardous condition. People could find their way out. Since the class designation is an element of the charge, the summonses should be dismissed. The respondent provided photos of the exterior of the property at the rear and side, and a copy of the building floor plan showing a 1st floor internal staircase to the basement (Resp. Exh).

The issuing officer then testified, that he observed 6 people in a Class A apartment with only the main door for access. The door on the first floor of the apartment leading to the basement laundry area was locked. The guests told the inspector that they accessed the basement through a door on the outside.

I credit the issuing officer's sworn statements in the summonses. I credit the issuing officer's testimony. I credit the petitioner's documentary and photographic evidence. I do not credit Mr. Rodriguez's testimony. I find the respondent had occupancy contrary to that allowed by the Department of Buildings records as described. I find the respondent failed to maintain the building in a code compliant manner by having a lack of means of egress, and by not having a sprinkler system as described. I find the respondent failed to provide a fire alarm system as described. I find that Mr. Rodriguez's testimony was vague and inconsistent. I find it was not sufficient to rebut the petitioner's charges. The respondent provided no documentary evidence in support of Mr. Rodriguez's claim that he was a tenant at the time the summonses were issued, despite the testimony and documentary evidence presented by the petitioner. Accordingly, I find the petitioner proved its Class 1 charges ((#035655824H, #035656000J, #035656001L), and Class 2 charge (#035656002N), by a preponderance of the evidence. I find the respondent is in violation. I impose the standard penalty for each.



06/08/2026

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Anthony Feldmesser, Hearing Officer

Date