

039163660P

This is a hearing by phone held August 7, 2026. Respondent, Popilevskiy Family Trust Dated, appeared by Frank Tamberino, Esq. Petitioner, DOB, appeared by Deanna Burbridge, Esq., who stated she will proceed without the Issuing Officer

This summons alleges a Class 1 violation of NYC Administrative Code 28-105.1. The first hearing date was 12/24/2025.

Petitioner's counsel relied on the summons.

Respondent's counsel moved to dismiss based on the pre-existing conditions defense. He submitted two affidavits of people unrelated to the property who were familiar with the property in 2004, which is when the Respondent's family purchased the property. See Respondent's Exhibits. He also submitted the deed. See Respondent's Exhibits.

Petitioner's counsel had nothing to add and stated she will leave the decision to me.

The summons includes the waste, water, and gas line for a 3-piece bathroom, a sink, tub, and kitchen sink, and a gas stove which created a Class A apartment.

The first affidavit from Ikor Baran references the 3-piece bathroom, bathtub, commode, and kitchen with gas stove in the cellar. Mr. Baran's affidavit states that the entire cellar was powered with electricity and that he helped the prior owner with repairs. Mr. Baran's affirms the layout and condition remain the same as when under the ownership of the prior owner. His affidavit is notarized January 21, 2026.

The second affidavit is from Michael Afanasyev, real estate agent, who sold the property to the Respondent in 2004. His affidavit states that the conditions (i.e., the bathroom, kitchen, tub, toilet, kitchen cabinets, and stove) existed under the prior owner.

I credit the affidavits and find they encompass all conditions mentioned in the summons. Thus, while I credit the summons as to the observations of the IO, I find that Respondent has established the pre-existing conditions defense.

Summons dismissed.

039163662Z

This is a hearing by phone held August 7, 2026. Respondent, Popilevskiy Family Trust Dated, appeared by Frank Tamberino, Esq. Petitioner, DOB, appeared by Deanna Burbridge, Esq., who stated she will proceed without the Issuing Officer.

This summons alleges a Class 1 violation of NYC Administrative Code 28-118.3.2.

Petitioner's counsel relied on the summons.

Respondent's attorney moved to dismiss the summons and denied the charge. He stated that when challenged, DOB has to present evidence of the occupancy of the premise in question. In support, he submitted Appeal 1700039 and stated that as Respondent is challenging the charge, DOB must come forward with additional information.

Petitioner's counsel stated that DOB does not have to submit documentation when the summons pertains to occupancy in the cellar. She stated that Respondent's appeal pertains to a basement, but the instant summons is about a cellar. In support of her position, she submitted three Appeals. See Petitioner's Exhibits.

Respondent's counsel stated that the Appeals submitted by Petitioner do not apply because in those appeals, there are specific concerns like, for example, of lighting. He stated at the subject premises in the instant summons, there are two means of egress in the cellar and no other unsafe or uninhabitable conditions. He stated DOB is thus not exempt from needing to submit additional documents.

Petitioner's counsel stated that lack of natural light, air, and ventilation are all assumed when a cellar is involved. She stated a cellar is more than 50% below ground and lacks ventilation.

Respondent's counsel stated the summons does not allege an absence of air.

Petitioner's counsel stated there were no windows. She stated the presence of the two means of egress is why there was no vacate order. She stated it is Respondent's burden to rebut lack of natural light and ventilation. She submitted photographs of the premise. See Petitioner's Exhibits.

Respondent's counsel stated that Petitioner's photographs are not a complete depiction of the cellar and that the photographs do not prove there is an absence of ventilation or natural light.

Neither party had anything further.

Code § 28-118.3.2 prohibits making any change to a building or portion thereof inconsistent with the last issued CO or which would bring it under some special provision of this code. Code § 27-2087 expressly prohibits occupying the cellar (defined by law as a space with more than 50 percent of its area below-ground), of a one-family dwelling for habitable purposes.

While Respondent denies the summons, Respondent did not raise arguments disputing the existence of a Class A apartment for the 1 adult male, but is arguing rather that DOB has not met its burden in establishing the occupancy. I credit the summons. I credit Petitioner's photographs. The two photographs show a living area, kitchen, and bathroom. No windows are present. While Respondent argues that DOB must come forward with additional evidence, I disagree. The summons is specific to the cellar. The Code requires light, ventilation and other requirements for cellar occupancy. That the summons does not raise specific concerns is not fatal to the summons. I find that DOB has established a violation for occupancy contrary by establishing that cellar occupancy brings it under a "special provision" of the Code, which has requirements for cellar occupancy.

Summons sustained. Standard penalty imposed.

	08/13/2026
Sarah Axtell, Hearing Officer	Date