



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Phoebe Dossett, Esq. - Nacmias Law Firm, PLLC
592 Pacific Street, 1st Floor
Brooklyn, NY 11217

Summons# : 039091026H et al. (9 summonses)

DEPT OF BUILDINGS,

-against-

KINGDOM FAMILY LLC

Hearing Date : 11/20/2024

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 2,500.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039091026H	Disr	07/26/2023	750 59 STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B1E8	28-210.1	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039091027J	Dismissed	07/26/2023	750 59 STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B1E8	28-210.1	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039091028L	Dismissed	07/26/2023	750 59 STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
	B1E8	28-210.1	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039091029N	Sustained	07/26/2023	750 59 STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B101	28-105.1	Sustained	2,500.00

Total Penalty for Summons: 2,500.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039091030K	Dismissed	07/26/2023	750 59 STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B1E8	28-210.1	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039091031M	Dismissed	07/26/2023	750 59 STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B1E8	28-210.1	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039091032Y	Dismissed	07/26/2023	750 59 STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B1E8	28-210.1	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039091033X	Dismissed	07/26/2023	750 59 STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B1E8	28-210.1	Dismissed	0.00

Total Penalty for Summons: 0.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039091034H	Dismissed	07/26/2023	750 59 STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY

1	B1E8	28-210.1	Dismissed	0.00
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Total Penalty for Summons: 0.00

Findings of Facts & Conclusions of Law

The Department of Buildings (DOB) issued these Summonses to Kingdom Family LLC. The Summonses charge Class 1 or "immediately" hazardous violations on the date and at the location indicated above):

1) seven Summonses allege illegal conversions pursuant to AC 28-210.1 for adding three or more additional dwelling units consisting of rooms with personal effects and a locking device (each of which also requests a daily \$1,000 penalty for up to 45 days) : one in the cellar (039091027J); two on the second floor (039091026H and 039091031M); two on the third floor (039091032Y and 039091033X), and two on the fourth floor (039091030K and 039091034H);

2) one Summons (039091028L) alleges a violation of 28-210.1 for an illegal cellar apartment (requesting an Aggravated Penalty of the 2nd Order aka Agg. 2 penalty) instead of the daily penalties, and

3) one Summons (039091029N) charges work without a permit in the cellar.

Henrietta Asiedu Baidoo, Esq., represented DOB at the remote hearing, and Phoebe Dossett, Esq., represented the LLC.

The matter had been adjourned for the testimony of the inspector who issued the Summons, but he was not present, and Ms. Baidoo requested another adjournment, noting that the Inspector, a member of the night emergency response team (ERT), had left when his shift ended at 9:30 a.m. and saying she needed him to properly present her case. That motion was denied because Ms. Dossett opposed it and for the following additional reasons:

1) Adjournments for night ERT inspectors are supposed to be set for 9:30 a.m., which means that the inspector is expected to be available for at least two hours thereafter. Furthermore, although this hearing was mistakenly set for 8:30 a.m., Ms. Dossett timely called in for such a hearing, requiring the Inspector to wait.

2) Such an adjournment would have been a fourth adjournment, which is two more than OATH Hearings Rules permit (see 48 RCNY 6-15(c)), and there was no guarantee, given the history, that he would have shown up even at a fifth adjournment.

I further note that most of the factual issues that arose at the hearing were not noted in the Summonses, and therefore any testimony from the inspector would have been beyond the scope, effectively amending the Summonses, and inadmissible (see CITE).

Consequently, the hearing proceeded and, in addition to relying on the Summonses, Ms. Baidoo submitted two overlapping sets of photographs obtained from the issuing inspector and the certificate of occupancy (C of O) for the building.

The C of O designates the cellar as for a garage/accessory use and boiler room and gives the legal number of apartments as two on the second floor and one on each of the fourth. Consequently, Ms. Dossett conceded that 039091027J and 039091028L do in fact cite occupancies that are illegal, although, as discussed below, she did not concede the daily penalties or Agg. 2 request. She also denied the work without permit (039091029N) without offering a defense.

With regard to the second, third, and fourth floors, she raised various defenses, and she again challenged the daily penalty requests, submitting with regard to all of them—including the 039091027J cellar occupancy—that even if they were all additional units (which, to be clear, she disputed), all seven were vacated and restored to the pre-violation condition within 24 hours after service of the Summonses. In support, she submitted an owner's affidavit and a DOB vacate inspection report.

Discussion: As noted above, Ms. Dossett conceded that both cellar occupancies were illegal. However, she did raise challenges to these as well as in regard to the other six Summonses.

Each of Summonses 039091026H, 039091027J, 039091030K, 039091031M, 039091032Y, 039091033X, and 039091034H simply states: "Dwelling converted, maintained, or occupied with 3 or more additional units. At time of inspection observed [unit specified by location on floor 2, 3, or 4] set up with bed, personal belongings, Hygiene products, keyed locking barrier device on door. Shared 3 piece bathroom & kitchen."

First, she noted that the C of O indicates two legal second floor apartments, arguing that neither of the alleged apartments had been established as illegal. With regard to the others, she said, DOB has to prove each unit illegal, noting that none of the Summonses ever alleges legal occupancy or states any facts that clearly establish, if found accurate, that the particular unit is illegal. Therefore, she said, although she was not disputing that there were three or more illegal units, DOB had failed

to establish either that all eight cited units were illegal or which ones other than those in the cellar were. For example, she said, although it is clear that at least one of the units cited in 039091032Y and 039091033X is illegal, there is no evidence that both are or, alternatively, that one particular unit is illegal and the other is not.

Ms. Baidoo responded that there are supposed to be five Class A apartments and the IO is charging that there are eight single room occupancies (SROs), all of which are illegal and all of which can therefore be counted—even both units on the second floor, and that the Summonses all refer to “3 or more additional units.” She also referred repeatedly to the issuing inspector’s photographs, arguing that they supported eight illegal occupancies and making many factual arguments that beyond the issues of which the Summonses themselves give notice.

In making her argument, Ms. Dossett relied on DOB v. 62-86 60TH Place LLC (Appeal No. 2000241, 5/21/20). That case involved charges of illegal conversion to transient occupancy, and portions of its discussion are irrelevant. However, as that decision points out, AC § 28-210.1 provides that “[i]t shall be unlawful, except in accordance with all requirements of this code, to convert any dwelling for occupancy by more than the legally authorized number of families or to assist, take part in, maintain or permit the maintenance of such conversion.” Therefore, the question is how many additional units have been established, not whether units that may not have been added have nonetheless become illegal for some other reason, such as having become part of a subdivision forming SROs.

This building, according to the C of O, had five legal apartments. As 63-86 60TH Place LLC makes clear, the number of total units established must be reduced by the number of units allowed in the legal occupancy. These Summonses establish four additional units: two in the cellar and one on each of the third and fourth floors. Those four, by themselves, might constitute a Class 1 violation of 28-210.1. But still remaining is the question 63-86 60TH Place LLC does not address: how do I determine which of the third and fourth units were illegal additions and which, although illegal SROs, are not additional violations—i.e., which one of Summonses 039091032Y and 039091033X and of 039091030K and 039091034H should I sustain and which one should I dismiss. There is no notice in these Summonses which address this question, assuming it is one that is possible to address in the context of an illegal conversion charge under 28-210.1 as opposed to one of occupancy contrary under AC 28-118.2.3.

Therefore, only two illegal occupancies have been proven. As three or more have not been clearly proven and identified, I find that DOB failed to establish any cases for the illegal conversions by the addition of three or more additional units that it attempted to charge.

Because of this conclusion, I do not reach the questions of whether (1) the Agg. 2 request for 039091028L has been justified or (2) Ms. Dossett adequately established that the daily penalties should not apply because the violating conditions were addressed within 24 hours after service. With regard to the later, the evidence Ms. Dossett submitted is preserved in the record and I note that Ms. Baidoo provided copies of three decisions that would have been carefully considered had I reached that issue (DOB v. Quiles Wilson, Appeal No. 2400595, 8/29/24; NYC v. Jian Wen Zhang, 1100468, 1027.11; DOB v. Ahmed Salim (Appeal No. 1900032, 4/14/19).

Decision and Order: Accordingly, Summonses 039091029N is sustained, and the standard Class 1 penalty of \$2,500 is imposed.

Summonses 039091026H, 039091027J, 039091028L, 039091030K, 039091031M, 039091032Y, 039091033X, and 039091034H are dismissed because although they do establish illegal occupancies in the form of cellar units and/or SROs, DOB has failed to establish specifically which three or more of them are additional units. Accordingly, it has failed to establish a case for the requisite illegal conversion.

Sara Piov

11/26/2024

11/26/2024

Sara Piov, Hearing Officer

Date

