



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 035486419J et al. (1 Summons) DEPT OF BUILDINGS, -against- 1150 E 225 CORP Hearing Date: 01/31/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: **\$1,250.00**

Community Service(Hr): **Not Applicable**

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035486419J	Sustained	08/01/2023	1150 EAST 225 STREET Bronx

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B203	AC 28-118.3.2	Sustained	\$1,250.00

Findings of Fact & Conclusions of Law

This hearing was held via Court Call on January 31, 2025.

Respondent 1150 E. 225 Corp. was represented by Michael Sargo, Esq. of Nacmias Law.

Petitioner NYC DOB appeared by Mr. Dallas Mahan.

Respondent is charged with a Class 2 violation of NYC AC 28-118.3.2: occupancy contrary to the C of O or Dept. records.
Summons #035486419J was issued for an alleged violation on 8/1/23 at 11:15 AM at 1150 E. 225th St., Bronx, NY. The IO

stated: Occupancy contrary to that allowed by Building Dept. records. Illegal Class "A" apartment created at garage with full bathroom and kitchen. 2nd means of egress present. Vacate not recommended. Remedy: Discontinue the illegal use.

Mr. Mahan submitted evidence that included the C of O, the Inspection Order, HPD info and diagrams of the area. The C of O indicated it was for a boiler, storage and 1 garage accessory to dwelling.

Mr. Sargo submitted evidence which included the C of O, a Zoia property info document for Zones 1 & 2 and a Dept. of Finance record indicating the property was 2 family. He argued to amend the charge to a Class 3-the zoning was for 1 & 2 family properties and there was 1 family on the 2nd & 3rd floors and the IO stated there was a 2nd means of egress. When asked, Mr. Sargo stated that he was only making this class challenge argument and not presenting any other defenses.

Mr. Mahan stated that he would usually defer to the IO, but the IO who was with HPD, was not available for the hearing (as noted at the start of the Hearing). He did check with his supervisor, and then indicated Petitioner is maintaining the Class 2 as they already took into account the egress and habitation issues. He added that although Class 2 indicates there is no immediate threat, it still affects life, safety and health, and the C of O would still have to be amended. Since no vacate order was issued as the property could still be occupied and there was a 2nd means of egress, it was issued as a Class 2 and not issued as a Class 1.

Mr. Sargo had no rebuttal.

NYC Adm. Code § 28-118.3.2 provides, in part, that "no change shall be made to a building, open lot or portion thereof inconsistent with the last issued certificate of occupancy . . . unless and until the commissioner has issued a new or amended certificate of occupancy."

A Class 2 violation is defined as follows: MAJOR VIOLATION. Major violations are those specified as such by the New York City Construction Codes or those where the violating condition affects life, health, safety, property, or the public interest but does not require immediate corrective action..... Major violations shall be denominated as Class 2 violations.

A Class 3 violation is defined as follows: LESSER VIOLATION. Lesser violations are those where the violating condition has a lesser effect than an immediately hazardous (Class 1) or major violation (Class 2) on life, health, safety, property, or the public interest. Lesser violations shall be denominated as Class 3 violations.

I find that Petitioner has presented a prima facie case and Respondent has not presented sufficient defenses to refute the charge nor lower the Class from 2 to 3. The Oath Appeals Board has found that a Respondent's conversion of a cellar into a Class A apartment affected property and the public interest and so was properly charged as Class 2. See, e.g., *DOB v. 185-255 Park Hill Corp.*, Appeal No. 1801499 (January 24, 2019) (finding that unauthorized cellar occupancy, which included space unlawfully used for habitable purposes, warrants a Class 2 designation).

I credit Petitioner.

The Summons is sustained as a Class 2 violation and the standard penalty is assigned as noted.

Caryn S. Gartenberg

02/04/2025

02/04/2025

Caryn Gartenberg, Hearing Officer

Date