



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Andre Autz, Esq. - Nacmias Law
592 Pacific Street, 1st Floor
Brooklyn, NY 11217

Summons# : 035673379H et al. (1 summonses)

DEPT OF BUILDINGS,

-against-

AZ 175TH LLC

Hearing Date : 2/11/2025

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 1,250.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
035673379H	Sustained	08/17/2023	91-10 175 St. , Queens

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	B2F3	BC 28-210.3	Sustained	1,250.00

Total Penalty for Summons: 1,250.00

Findings of Facts & Conclusions of Law

Laura Slavin, Esq. appeared as counsel for the New York City Department of Buildings. She submits a series of photographs in support and a copy of the certificate of occupancy, marked collectively as petitioner's exhibit '1'. She stated that the DOB records show timely correction and recommended the mitigated class 2 penalty.

Andre Autz, Esq. appeared as counsel for the respondent. He made a motion to dismiss because the cited lease is to Samin Ershad, and the issuing inspector's photographs show that the lease holder leased out the apartment without the owners knowledge or approval. He submits a copy of a 2 year lease dated 9/26/22, marked as respondent's exhibit "A".

Respondent is charged with having a permanent dwelling used or converted for other than permanent dwelling residential purposes by allowing apartment #6B to be used for short term transient use through Air B-N-B, under Code 28-210.3, a class 2 charge.

The issuing inspector A. Nakhla, appeared under oath and testified that he was called to the property on a complaint, and he observed 2 occupants in Apartment 6B. He spoke with the guests who occupied Apt. #6B, and told him that they were visiting from Pittsburgh and did not meet the host, and obtained the key from a lockbox in the lobby. He also took photographs of the lobby and the interior of the apartment. He then issued a vacate order for the bedroom in #4N due to the lack of natural lighting dated 3/26/24, which was posted on 3/27/24.

I find that this is properly classified as a class 2 charge.

I find that petitioner through the sworn testimony of the issuing inspector Nakhla, has credibly established that the respondent did have a permanent dwelling used or converted for other than permanent dwelling residential purposes by allowing apartment #6B to be used for short term transient use.

Code § 28-210.3 makes it unlawful for the owner of a Class "A" multiple dwelling to use or occupy, or offer or permit the use or occupancy of, such dwelling for other than permanent residence purposes. However, there is an exception, if occupancy of the cited Class "A" apartment by a tourist for less than 30 consecutive days while a permanent occupant was present in the apartment is demonstrated. See, NYC v. Abe Carrey ,Appeal Nos. 1300602 & 1300736 (September 26, 2013); and DOB v. 336 East 81st St. LLC Appeal No. 1800769 (September 6, 2018).

I find that the Respondent has not established a defense to the charge, and failed to establish that the owner was present at the time of the short term rental.

Based upon the above I sustain this summons and I impose the statutory approved class 2 mitigated penalty on the Code 28-210.3 charge.



02/11/2025

02/11/2025

Keith J. Ludwiczak, Hearing Officer

Date

