Appeal No. 2500395 **DEP v. 1365 Teller LLC** **September 25, 2025**

APPEAL DECISION

The appeal of Respondent, premises owner, is **granted**.

Respondent appeals from a hearing decision by Judicial Hearing Officer (JHO) M. Pocchia, dated February 4, 2025, sustaining charges of § 24-108(f) of the Administrative Code of the City of New York (Code), for failure to make the heating system area readily accessible for inspection, and Code § 24-109(a)(3), for causing or permitting the use or operation of a boiler without first obtaining registration. Having fully reviewed the record, the Board finds that the JHO's decision is not supported by the law and a preponderance of the evidence. Therefore, the Board finds as follows:

Summons	Law Charged	Hearing Determination	Appeal Determination	Penalty
00689515J	Code § 24-108(f)	In Violation	Reversed – Dismissed	$0
	Code § 24-109(a)(3)	In Violation	Reversed – Dismissed	$0

BACKGROUND

In the summons, the issuing officer (IO) affirmed on February 9, 2024, with respect to 1365 Teller Avenue, Bronx, the following:

> Respondent failed to apply and obtain a registration for the use or operation of fuel burning equipment. Previous summons # 000688369X was issued on 11/20/2023 for section 24-109(a)(3). Respondent also caused or permitted no ready access to the area where the heating equipment system is located on (2) occasions to conduct a lawful inspection. Attempted to gain access to the above-mentioned premises on 02/07/24 and 02/09/24 and left departmental calling cards with no response from superintendent or property management

At the hearing by telephone, held on January 15, 2025, representative for Petitioner, the Department of Environmental Protection (DEP), relied on the IO's affirmed statements in the summons and submitted a certificate of service and a photograph of a taped, printed calling card in the foreground and what appeared to be an enclosed vestibule in the background. Respondent's representative argued as follows. The IO did not list the attempts made to gain access, or describe efforts to call Respondent, prior to leaving a calling card. Although Respondent posted a sign in a conspicuous location stating that the key to the area where the heating system is located was with the property superintendent and listed the super's phone number, that number was not called. In support, Respondent's representative submitted two photographs that showed signage posted to the wall of the vestibule at the cited premises,[1] as

[1] One image showed a metal sign posted to the vestibule wall, the largest of those pictured, that contained the following language: "NAME OF SUPER: Oscar Gonzalez . . . NOTICE / THE KEY TO THE HEATING SYSTEM AREA LOCK & ELEVATOR CONTROL ROOM IS LOCATED AT / NAME: Oscar Gonzalez LOCATION: [Super's phone number]." The second image displayed a white, printed notice posted to the vestibule wall that read, "THERE'S NO BOILER OR WATER HEATER IN THE 1365 TELLER BUILDING. EACH TENANT HAS THEIR OWN ELECTRIC SPLIT UNIT[.]"

well as a letter from Respondent's managing agent.[2] As to the Code § 24-109(a)(3) charge, Respondent's representative argued as follows. Respondent's boiler did not need to be registered, as it had been capped and removed prior to the date of issuance. "[E]lectric split units," accessible by each tenant, had since replaced the boiler as the building's heating system. In support, Respondent's representative relied on the aforementioned letter from Respondent's managing agent stating that the cited boiler had been disconnected since May 2021 and provided a Department of Buildings (DOB) work permit issued in August 2023 to cap and remove the boiler;[3] a corresponding receipt of payment to DOB; and additional records from DOB's Buildings Information System and "DOB NOW."

In rebuttal, Petitioner's representative asserted that as a courtesy offered by Petitioner an IO will leave a calling card upon first not gaining access, and thereafter attempt another inspection. Petitioner's representative also questioned whether the signage was posted in the vestibule and stated that "if the [IO] does not gain access to the vestibule where those postings are listed" behind a "locked" front door, the IO would be unable to see it, making it not readily available. Respondent's representative reasserted that the signage was posted in accordance with applicable law. As to the Code § 24-109(a)(3) charge, Petitioner's representative countered as follows. On the date of issuance, Respondent's boiler was designated as "active" in Petitioner's records since Respondent had not taken the steps necessary to cancel the registration. Months after the summons was issued, Petitioner rejected Respondent's request to cancel the registration because Respondent did not specify the heating system that was to replace the boiler. In support, Petitioner's representative submitted an email and an internal DEP record, both dated June 24, 2024, which indicated that Petitioner had disapproved Respondent's cancellation request as stated.[4]

In the decision sustaining the violations, the JHO credited that an unsuccessful attempt to gain access was made, citing the "affidavit of service," and that a calling card was left thereafter. The JHO found that Respondent presented "no evidence" that the relevant signage was visible to the IO, "who did not gain access." The JHO stated that Respondent's evidence about the boiler's removal was insufficient "as far as [Petitioner] is con[ce]rned," noting that Petitioner rejected Respondent's cancellation request for lack of information about the boiler's replacement, and for that reason deemed the cited boiler to still be in use. The JHO therefore found that Respondent failed to refute the charges.

On appeal, Respondent's representative argues that Respondent posted a sign "visibly informing that the key is with the super and providing" the super's phone number, and that the IO did not list attempts made to gain access before leaving calling cards. Respondent's representative

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[2] Respondent's managing agent wrote, "We did not receive any phone calls or notices from the [IO], and we are not sure where the supposed calling cards mentioned in the violation were left. No employee or agent was asked if there was a boiler room or if an inspection can be made to show this."

[3] Permit X00918329-I1-LA was issued on August 11, 2023, for work pertaining to Respondent's premises. The permit contained the following description: "Cap and remove Peerless boiler #827374-01 located in cellar. building is being heated by HVAC system installed under job No.220673386."

[4] The internal DEP record titled "CANCELLATION REQUEST" shows that Respondent provided the following representation: "Equipment is no longer needed and/or has been disconnected, Date: 05/20/2021 / Other: boiler has been capped and remove done in accordance with code LAA on dob / X00918329-I1-LA."

further argues that Respondent was not required to register the boiler, as it had been capped, voided, and made inoperable for several years.

Petitioner, DEP, did not answer the appeal.

APPLICABLE LAW

Code § 24-108(f) provides:

> The owner of every building, other than a one- or two-family dwelling, shall make the area where the heating system is located readily accessible to members of the department pursuant to the requirements of [Code §] 27-2033[.]

Code § 27-2033(a) provides:

> The owner of every multiple dwelling shall have the area, where the building's heating system is located, readily accessible to members of the department to make inspection pursuant to this chapter. In the event such area is kept under lock, a key shall be kept on the premises at all times with such person as the owner shall designate; however, if there is a person residing on the premises who performs janitorial services, such person shall hold the key. The owner shall post a notice in a form approved by the department naming such designated person and his or her location.

Code § 24-109(a)(3) provides, in pertinent part:

> (a) No person shall cause or permit the following unless he or she has first registered with the department:
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> * * * * * * * *
>
> (3) The installation, alteration, use or operation of an individual boiler or water heater that has a heat input equal to or greater than three hundred fifty thousand Btu per hour but less than four million two hundred thousand Btu per hour.

ANALYSIS

For the following reasons, the Board reverses the JHO's decision.

First, the Board finds that Respondent's evidence was sufficient to refute the Code § 24-108(f) charge. Code § 24-108(f) requires that specified premises owners make the area where the heating system is located readily accessible to DEP in accordance with Code § 27-2033. Where the heating system area is kept under lock, a key shall be kept at the premises with a designated person, and the premises owner shall post a notice naming such person and that person's location. *See* Code § 27-2033(a). The heating system area is not readily accessible where the IO is barred because the building is locked, and either the required sign is not posted properly, or the person designated to provide access is absent contrary to the directions of Code § 27-2033. *See NYC v. 232 E 50th Street LLC*, Appeal No. 1200066 (April 26, 2012). In the summons, the IO affirmed that on two occasions, the IO attempted to gain access to the "premises" but that Respondent "permitted no ready access to the area where the heating equipment systems is located." The IO further affirmed that the IO left calling cards to which neither Respondent's

super nor its property management responded. The IO's affirmed statements in the summons were sufficient to establish Petitioner's initial case as to the Code § 24-108(f) charge. *See* § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY). Petitioner's representative also provided an image of the IO's taped calling card with the vestibule of Respondent's premises in the background. The burden then shifted to Respondent to refute the charge or establish a defense. *See* 48 RCNY § 6-12(a). The Board finds that Respondent's evidence refuted the Code § 24-108(f) charge.

Here, Respondent's representative indicated that electrical heating units were located within the individual dwelling units of the building's tenants. Respondent's representative nonetheless asserted that Respondent had posted a conspicuous sign notifying that the super had the key to the heating area, or areas, and listing the super's phone number. The representative further asserted that the IO, who did not appear at the hearing to testify, did not call the phone number listed, and submitted a letter from Respondent's managing agent asserting the same and that the IO's "supposed calling cards" had not been located. Additionally, Respondent's images showed a metal sign posted in a vestibule that contained the information described by the representative. *Cf. DEP v. Hong Ji Ted Hu*, Appeal No. 2401673 (January 30, 2025) (finding violation where no dispute that "front door was locked and no one was present to give [the] IO access"); *DEP v. Terrero Realty*, Appeal No. 2301855 (January 25, 2024) (finding violation where, despite testimony about required notice posted above mailboxes and boiler room door, no dispute that the signage would not have been visible to the IO if the IO was "unable [to] gain access to the building"). Therefore, the Board finds that Respondent's evidence, and its representative's testimony, were sufficient to refute the Code § 24-108(f) charge by establishing that Respondent posted a notice bearing the name and location, or phone number, of the person designated to keep the key to the heating system area, that Respondent was not contacted at that listed number, and that Respondent did not find the cards giving notice of the IO's attempt to gain access and requesting Respondent to phone.

Next, the Board finds that Respondent established a valid defense to the Code § 24-109(a)(3) charge. Code § 24-109(a)(3) provides that no person shall cause or permit the use or operation of a specified boiler without first registering the boiler with Petitioner. The IO's affirmed statements in the summons pertaining to the Code § 24-109(a)(3) charge were sufficient to establish Petitioner's initial case. *See* 48 RCNY § 6-12(b). In addition, Petitioner's representative submitted two records postdating the date of issuance of the summons, which indicated that Petitioner had rejected Respondent's request to cancel registration of the cited boiler. The burden then shifted to Respondent to refute the charge or establish a defense. *See* 48 RCNY § 6-12(a). The Board finds that Respondent did so here. Any boiler capable of being used at a premises must be registered. To establish that a boiler is incapable of being used, a respondent must show that the relevant equipment was either removed from the premises or mechanically and permanently disconnected in accordance with Petitioner's established requirements for rendering equipment incapable of use. *See DEP v. Chon Property Corp*, Appeal No. 2200882 (September 29, 2022); *NYC v. 151 E. 26th St. Assoc., LP*, Appeal No. 1001037 (April 28, 2011).

Here, Respondent's representative argued that the cited boiler did not need to be registered, as it had been capped and removed prior to the date of issuance. Respondent's evidence, taken together with its representations contained in the cancellation request, established that the boiler

had been disconnected in May 2021, removed around August 2023 pursuant to a DOB permit, and replaced with an electric system accessible to each unit. *Cf. DEP v. HAG Realty LLC*, Appeal No. 2201539 (March 23, 2023) (sustaining where boiler remained installed and connected when summons was issued). Notwithstanding the JHO's statements to the contrary in the hearing decision, Petitioner's disapproval of Respondent's request to cancel the boiler's registration does not affect the Board's analysis here. Therefore, the Board finds that Respondent established a valid defense to the Code § 24-109(a)(3) charge.

Accordingly, the Board reverses the JHO's decision and dismisses the summons.

By: OATH Appeals Division