



Appeal No. 2501155

DOB v. 699 Rutland LLC

November 20, 2025

APPEAL DECISION

The appeal of Petitioner, the Department of Buildings (DOB), is **granted**.

Petitioner appeals from a master decision by Judicial Hearing Officer (JHO) P. Cardoso, dated July 28, 2025, dismissing a Class 1 charge of § 28-210.3 of the Administrative Code of the City of New York (Code) for illegally converting a permanent dwelling unit to transient use, a Class 1 charge of Code § 28-301.1 for failing to maintain the building in a code-compliant manner, and a Class 1 charge of § 907.2.8 of the Building Code (BC) for failing to provide a fire alarm system.¹ Having fully reviewed the records, the Board finds that the JHO’s master 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 |
|-----------------|-----------------|-----------------------|-------------------------|---------|
| 35679285Y (85Y) | Code § 28-210.3 | Dismissed | Reversed – In Violation | \$5,000 |
| | Code § 28-202.1 | Dismissed | Reversed – In Violation | \$0 |
| 35679286X (86X) | Code § 28-301.1 | Dismissed | Reversed – In Violation | \$3,125 |
| 35679287H (87H) | BC § 907.2.8 | Dismissed | Reversed – In Violation | \$6,250 |

BACKGROUND

In the summonses, the issuing officer (IO) affirmed observing at 11:00 a.m. on June 10, 2024, at 699 Rutland Rd. in Brooklyn:

- 85Y Permanent dwelling used/converted for other than permanent residential purposes. DOB records indicate premises to be legally approved as a Class “A” multiple dwelling. Noted 1st floor converted/occupied transiently. Having 6 guests staying at the 1st floor for less than 30 days. The IO noted this was a recurring condition based on summons no. 356673581L and Petitioner sought an Aggravated I (Agg I) and daily penalties per Code § 28-202.1.
- 86X Failure to maintain in a code-compliant manner. Lack of a system of automatic sprinklers where required as per BC 903.2 and 27-959 for transient use of 1st floor. Petitioner designated this a recurring condition for an Agg I penalty based on summons no. 35673586K.
- 87H Failure to provide the required class “J” fire alarm system for transient use of 1st floor. Petitioner designated this a recurring condition for an Agg I penalty based on summons no. 35673585Z.

At the consolidated telephonic hearing, held on June 28, 2025, the IO testified as follows. He went to the premises as part of an audit regarding the second floor. He rang the doorbell to serve a summons, and the man who answered the door said that he was one of six guests staying in the first floor apartment for less than thirty days. The occupant stated that he had paid a Mr. Wolf through Facebook and showed his booking profile. The IO inspected the first floor and found no sprinklers or fire alarm system that was required for transient use. Petitioner’s counsel argued that Respondent had illegally converted the first floor to transient use as the certificate of occupancy (C of O) authorizes one Class “A” unit for the first floor. She submitted in support a

¹ The BC is found in Title 28 of the Code.

copy of the C of O for the premises; the IO's photographs of the premises and the booking profile; and records from DOB's Business Information System (BIS) showing that two of the prior cited summonses, issued on September 11, 2023, were found in violation. She acknowledged that summons 85Y was not a recurring condition because the cited prior summons had been dismissed and that Petitioner was not seeking daily penalties for summons 85Y.

Respondent's representative moved to dismiss on the grounds that Respondent was an improper party as it had sold the property in an arm's-length transaction on the date of violation. He asserted that the new owner accepted responsibility for the violation from 12:01 a.m. on June 10, 2024, and DOB's not knowing about the transfer does not render Respondent liable. He argued on the merits as follows. The new owners had no knowledge of any transient use. The cited unit had been rented to one tenant, and Respondent should not be responsible for the actions of the tenant where it did not know of the transient use. He submitted in support: a copy of the deed, dated June 10, 2024; a letter from Respondent's attorney for the sale confirming that the seller had assumed responsibility for the violation; a letter from Respondent's principal indicating that it did not know about the transient use prior to receiving these summonses despite visiting the premises several times a month; a letter from the buyer's attorney confirming that the buyer had accepted responsibility for the violation; and a copy of *JNPJ Tenth Ave., LLC v. Department of Buildings*, 178 A.D.3d 636 (1st Dep't. 2019).

Petitioner's attorney replied as follows. Respondent was a proper party. DOB obtains ownership information from the Department of Finance (DOF), the Department of Housing Preservation and Development (HPD), and its own records. Any record the IO would have seen would have shown Respondent as the owner of record. DOB is entitled to rely on the information in those databases and the agency would have had no notice that the property had been sold. Also, Respondent had prior knowledge of transient use based on receiving prior violations. DOB need not wait to issue a summons to ensure the property had not been sold on the date of violation. Respondent is liable for its tenant's actions. In support, she submitted a DOF tax bill, dated June 1, 2024, and Board decisions.

In the decision dismissing the charges, the JHO found that Respondent was an improper party, concluding it did not own the property at the time the summons was issued.

On appeal, Petitioner's counsel repeats and elaborates on her hearing arguments as follows. Petitioner established its case based on the summonses, the IO's testimony, and supplemental evidence. Per *NYC v. Brenda Mezrahi*, Appeal No. 1400658 (October 30, 2014), "unless credibly challenged, the identification of a respondent on an NOV as the premises owner must be considered as fact." Further, according to Code § 28-101.5, an owner is "[a]ny person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the premises." Respondent is a proper party because at the time when the IO wrote the summonses, Respondent was the owner of record according to DOF, HPD, and Petitioner's own records. Petitioner was allowed to rely on those records. See *DOB v. Julia Brill*, Appeal No. 2000291 (April 23, 2020). Respondent presented no evidence showing the property closed before 11:00 a.m. Even if Respondent was not the title holder, it showed it still had control over the premises by going to the property later on June 10, 2024, to ensure that there was no continued transient use at the property. Here, Respondent did not deny that there was transient

use in the first floor apartment. A landlord will be liable for its tenant's actions where it had prior knowledge of transient use or had the opportunity to acquire knowledge of the transient use through the exercise of reasonable diligence. See *JNPJ Tenth Ave., LLC*, 178 A.D.3d at 636. Respondent had previously received several summonses for the same conditions, giving Respondent knowledge of transient use on its property and responsibility for the cited conditions. See *NYC v. Mosco Holding LLC*, Appeal No. 1500169 (April 10, 2015). Such transient use triggers higher fire protection requirements including a "J" type fire alarm system and sprinklers. Petitioner cited to *DOB v. Mohammed Chowdhury*, Appeal No. 1901237 (September 26, 2019), and *NYC v. Mige Associates II, L.P.*, Appeal No. 1200383 (August 30, 2012), in support.²

In his answer, Respondent's representative repeats his hearing assertions and arguments. He further replies that Petitioner's reliance on *Julia Brill*, 2000291, is misplaced because here the property had been sold within twenty-four hours of the issuance of the summonses and HPD and DOF databases would not have been updated to reflect the change in ownership. Once he presented the deed, it became Petitioner's burden to show that Respondent was still paying the property tax. Nor did Respondent's letter state that it had direct or indirect control over the property; Respondent merely went to the premises in response to getting the summonses. Respondent did not have knowledge of any transient use in the cited apartment as the prior violations pertained to a different apartment. He also asserts that Petitioner's citation to *Mosco Holding LLC*, Appeal No. 1500169, is not controlling as the case was superseded by *JNPJ Tenth Ave., LLC*, 178 A.D.3d 636.³ He also repeats that no per day penalties should be imposed because the violating conditions were corrected on the day of violation.

ISSUES ON APPEAL

The issues on appeal are (1) whether Respondent was a proper party to the charges despite having sold the property on the date of violation; and if so (2) whether Respondent had the opportunity to know of the transient use at the property through the exercise of reasonable diligence, and (3) whether daily penalties should be imposed.

APPLICABLE LAW

Code § 28-210.3 provides, in pertinent part:

It shall be unlawful for any person or entity who owns or occupies a multiple dwelling or dwelling unit classified for permanent residence purposes to use or occupy, offer or permit the use or occupancy or convert for use or occupancy such multiple dwelling or dwelling unit for other than permanent residence purposes.

The Multiple Dwelling Law § 4(8)(a) defines a "class A" multiple dwelling as a multiple dwelling that shall only be used for permanent residence purposes. "Permanent residence

² On appeal, Petitioner also submits a copy of the HPD registration and mentions submitting it and Airbnb reservations at the hearing. However, there is no indication in the hearing record that such evidence was submitted. Therefore, per § 6-19(f) of Title 48 of the Rules of the City of New York, the Board will not consider new evidence or factual assertions that were not presented to the JHO.

³ Respondent also argues that Petitioner's citations to *DOB v. 218 Bedford Realty*, Appeal No. 2300685 (August 31, 2023), submitted at the hearing, and *NYC v. John Scalia*, Appeal No. 1300289 (June 27, 2013), mentioned on appeal, are irrelevant.

purposes shall consist of occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more.”

Code § 28-301.1 provides, in pertinent part:

All buildings and all parts thereof and all other structures shall be maintained in a safe condition. The owner shall be responsible at all times to maintain the building and all other structures regulated by this code in a safe and code-compliant manner and shall comply with the inspection and maintenance requirements of this chapter.

BC § 903.2.8 provides, in pertinent part, that “[a]n automatic sprinkler system shall be installed throughout buildings with a main use or dominant occupancy of Group R.”

BC § 907.2.8 provides that a fire alarm system must be installed in Group R-1 occupancies that complies with the requirements of this section.

ANALYSIS

For the following reasons, the Board reverses the JHO’s master decision.

On this record, the Board finds that Respondent is a proper party to the charges despite having sold the property on the date of violation. Per Code § 28-301.1, “[t]he owner shall be responsible at all times to maintain the building and all other structures regulated by this code in a safe and code-compliant manner.” Respondent disputed that it was the owner by submitting a deed indicating that it sold the property on the same day as the violation was issued. However, Respondent failed to present any evidence that the sale had been completed prior to 11:00 a.m., the time of violation. Nor did Respondent cite to any legal authority showing that ownership would be considered transferred before the actual transaction was completed. To the contrary, § 244 of the NYS Real Property Law provides, “A grant takes effect, so as to vest the estate or interest intended to be conveyed, only from its delivery.” The Board finds Respondent’s assertion on appeal that Petitioner needed to show that Respondent had paid the property taxes to show it still retained ownership on the morning of the cited date to be without merit. Therefore, Respondent failed to show that it was not the owner at the time of violation. As such, it is a proper party to the charges. Further, an owner cannot shift responsibility onto a third party via private contract, even if that party caused the violating condition. *See DOB v. PVM Acquisition Owner LLC*, Appeal No. 2000427 (June 18, 2020). A new owner’s willingness to take responsibility for the violation before actual closing does not mean that Respondent cannot be charged. Nor would the attorney’s letter stating that the buyer accepted responsibility mean that the buyer had been formally substituted for the named respondent. *See NYC v. Gillen Brewer School*, Appeal No. 1400246 (May 29, 2014); *NYC v. Green Mercer Holdings LLC*, Appeal No. 1200710 (November 29, 2012).

As to the merits of the summonses, the Board finds that Respondent failed to establish a defense to the violations by showing it did not have the opportunity to know of the transient use at the property through the exercise of reasonable diligence. Petitioner established that the C of O only authorized the first floor as one Class “A” apartment. Respondent did not dispute that the apartment was occupied transiently. Per *JNPJ Tenth Ave., LLC*, 178 A.D.3d 636, “an owner may be found to have permitted tenants to use their apartments for transient occupancy upon evidence

that it either had knowledge of such transient occupancy or had the opportunity to acquire knowledge of the transient occupancy through the exercise of reasonable diligence.” Here, Respondent asserted that it had no knowledge that the first floor apartment was occupied for transient use and residents did not complain. However, Respondent was issued prior summonses for transient use in a different apartment on September 11, 2023. The Board finds that Respondent, having been alerted to illegal transient occupancy in one apartment at the building, should have verified that other apartments were not being similarly used. *See DOB v. Acropolis Gardens Realty Corporation*, Appeal No. 2000922 (November 12, 2020); *DOB v. Wai Realty Corp.*, Appeal No. 2400791 (August 29, 2024). Furthermore, Respondent offered no evidence of monitoring DOB complaints or short-term listing web platforms to check for transient offerings. Consequently, the Board finds that Respondent had the opportunity to acquire knowledge of the transient use at the premises through the exercise of reasonable diligence but failed to do so. *See DOB v. Forest Park Flats LLC*, Appeal No. 2000672 (August 13, 2020).

The Board has previously held that partial transient occupancy of a building requires an owner to comply with the fire protection law. *See Mohammed Chowdhury*, 1901237; *Mige Associates II, L.P.*, 1200383. The finding of transient use established the additional requirements for a sprinkler system and a fire alarm system under Code § 28-301.1 and BC § 907.2.8. Respondent did not dispute that the extra fire protection systems were not present. Under Title 1 of the Rules of the City of New York § 102-01(f), Agg I penalties are appropriate where the evidence establishes the same condition or the same Code charge in a prior enforcement action against the same owner during the previous three years. Here, Petitioner’s undisputed evidence established that on January 27, 2025, Respondent had been found in violation of Code § 28-301.1 and BC § 907.2.8. Consequently, Agg I penalties are warranted for summonses 86X and 87H.

Finally, the Board finds that daily penalties are unwarranted. Under Code § 28-202.1, daily penalties may be imposed for an immediately hazardous violation “for each day that the violation is not corrected,” and “will accrue at the rate of \$1,000 per day for a total of forty-five days running from the date of the Commissioner’s order to correct set forth in the [summons],” unless the respondent proves that the violating condition has been corrected prior to the end of the 45-day period, in which case daily penalties will accrue for every day up to the date of correction. *See* 1 RCNY § 102-01(g). Since Petitioner stated at the hearing that it was not pursuing daily penalties and Respondent’s evidence indicates that it ensured that the transient occupants were no longer present later on the day of violation, no daily penalties are imposed for summons 85Y.

Accordingly, the Board reverses the JHO’s dismissals, sustains a Class 1 violation of Code § 28-210.3, and imposes a civil penalty of \$5,000 for that violation; sustains a Class 1, Agg I violation of Code § 28-301.1, and imposes a civil penalty of \$3,125; and sustains a Class 1, Agg I violation of BC § 907.2.8, and imposes a civil penalty of \$6,250; for a total penalty amount of \$ 14,375.

By: OATH Appeals Division