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2021-08-31

### Dinsay v. Akelius Real Estate Management LLC

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NY: HOUSING PART S

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**GENEVIEVE DINSAY, ET AL.**

Petitioners,

Index No. HP **302889/21**<sup>1</sup>

- against -

**AKELIUS REAL ESTATE MANAGEMENT LLC,  
ET AL.**

Respondent -Owners,

**AMENDED  
ORDER TO CORRECT**

-and-

**DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT (DHPD) &  
DEPARTMENT OF BUILDINGS (DOB)**

Respondent-Agencies.

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Present: Hon. Daniele Chinea  
Judge, Housing Court

All parties appeared by counsel on July 19, 2021. On July 8, 2021, DOB placed violations at the Premises<sup>2</sup> finding “work does not conform to approved construction documents and/or approved amendments. App #140881160 Drawing #A-601.01 – referenced app is currently under audit: notice to revoke 1/8/21 skylights (4) insta”. Each violation has an OATH/ECB hearing for August 26, 2021.

The petition is amended to include these DOB violations (copies attached). Resp-Owner has 10 business days of the date of this order to assert an amended answer addressing these DOB violations. Petitioner may move to amend this Order to Correct (OTC) to include these DOB violations by Order to Show Cause upon entry of answer or failure to file timely.

Petitioners move the court for an order directing Respondent-Owners to correct DHPD violations; to repair or replace the floor to ceiling windows as lacking proper ventilation and fall protection; and to repair or replace the entrance doors as unreasonably cumbersome and heavy. The application is granted despite Respondent-Owners’ answer, filed July 12, 2021 (NYSCEF #15). In it, Respondent-Owners deny certain allegations and raise affirmative defenses for failure to state a cause of action, impossibility, and laches.

Other than failure to state a cause of action, the asserted defenses are not defenses to an OTC but serve to mitigate the assessment of civil penalties, if sought, for failure to timely correct. *NYC Admin Code §27-2115(3)*. Petitioner does not deny the existence of the violations but claims the work was done with the

<sup>1</sup> Original Order to Correct amended to include a direction to Respondent-Owner to correct the DOB violations and to assess claims of ventilation issues in Lot 27. The new provisions are in **BLUE**. The date of notice for purposes of compliance with the new provisions is the date of this Amended Order to Correct. Respondent-Owner’s request for an extension of time to comply with the Original Order to Correct shall apply equally to these new provisions, if awarded.

<sup>2</sup> 220 West 24<sup>th</sup> Street, New York, NY 10011 – Blk 773, Lot 56 (“Lot 56”); and 225 West 23<sup>rd</sup> Street, New York, NY 10011 – Blk 773, Lot 27 (“Lot 27” or, collectively with Lot 56, the “Premises”).

permission of DOB and, therefore, in good faith. The DOB violations placed July 8, 2021 belie this claim. Nevertheless, even without the placement of DOB violations, HPD and DOB are separate agencies with different jurisdictions. That they may disagree is not a defense to an OTC.

Respondent-Owners' claim of impossibility is not persuasive. They do not claim the necessary repairs are financially infeasible, only that correcting them in the timeframe required by HPD is "impossible" because Respondent-Owners are beholden to DOB. DOB needs to approve plans before they can even begin correcting the violations. This dependency is a basis to request an extension of time to correct but not a defense to issuance of an OTC. Furthermore, DOB represented to the court that Respondent-Owners have not provided it with all the documentation needed to approve plans. Thus, it is not DOB that is stalling progress at this time.

The court strikes Respondent-Owners defense of failure to state a cause of action, as HPD violations constitute prima facie evidence of a condition in need of repair and alone are sufficient to state a cause of action.

**Based upon the foregoing, Respondent-Owners are ordered to correct outstanding DHPD violations<sup>3</sup> within the statutory timeframe as set forth in NYC Admin Code §27-2115(c)(1). Respondent-Owners are ordered to correct the DOB violations 39044084Y and 39044068Y within the time frame required by the Building Code. The notice date shall be the date of this order for purposes of calculating civil penalties.**

Additionally, Respondent-Owner is directed to inspect the entry doors to the Premises to assess Petitioners' claims that they are unreasonable heavy and cumbersome. **Additionally, Respondent-Owner is directed to inspect claims of ventilation issues at Lot 27.** No HPD violations have been placed for these alleged conditions. If Respondent-Owners find the condition alleged, they shall repair same within 90 days of the date of this order. Upon a failure to timely correct, Petitioners may restore this proceeding for a trial on the **alleged conditions**.

Either party may restore this proceeding to the calendar by OSC via NYSCEF. A copy of this order will be uploaded to NYSCEF and emailed to the parties.

DATED: August 31, 2021

SO ORDERED



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Hon. Daniele Chinaea, JHC

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<sup>3</sup> **Excepting:** violation # 11977944 at Lot 56 and violations #s 12425367, 12425371, & 12425375 at Lot 27; as outside the scope of this proceeding.