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### Matias v. Yordi

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| <b>Matias v Yordi</b>   |
| 2021 NY Slip Op 51287(U)  |
| Decided on February 26, 2021  |
| Civil Court Of The City Of New York, Bronx County   |
| Bryan, J.   |
| Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431. |
| This opinion is uncorrected and will not be published in the printed Official Reports.            |

Decided on February 26, 2021

Civil Court of the City of New York, Bronx County

**Margarita Matias, Elsa Gomez, Yanelissa Tinero, Manuel Martinez, Kenny Juarbe, Elsa Rivera, Heroilda Vega, Roseanne Andrade, Eduardo Vazquez, Maria Reyes, Israel Valle, Barbara Velasquez, Jose Rodriguez, Barbara Nevels, Minda Mendez, Maria Mendoza, Petitioners,**

**against**

**Mateo Yordi, Respondent, Department of Housing Preservation and Development (DHPD), Respondent.**

Index No. 37066/2017

Petitioners are represented by: Urban Justice Center by Addrana Montgomery, Esq.

Respondent Mateo Yordi is represented by: Mark Cohen & Associates

Respondent DHPD is represented by: DHPD by Simone Sylvester, Esq.

David J. Bryan, J.

Petitioner tenants brought this Order to Show Cause on April 24, 2018. The relief requested was to restore the matter to the calendar, find the respondent Mateo Yordi in civil

contempt and impose civil penalties upon the respondent landlord for failure to comply with the [\*2] Consent Order of the Hon. Laurie Marin of October 20, 2017 (Consent Order). [\[FN1\]](#) In addition, the Order to Show Cause asks the court to Order the respondent to correct conditions not in the Consent Order but are in violation of the Housing Maintenance Code (HMC). Finally, petitioner asks for an award of attorney's fees. Respondent Mateo Yordi (Yordi) opposes the Order to Show Cause in all respects and cross moves for dismissal. For the reasons stated herein the cross motion is DENIED, the motion is GRANTED to the extent stated herein and the matter of attorney's fees to be decided in Part H upon proper papers.

### *Procedural Posture*

This matter was brought by Order to Show Cause on June 30, 2017 with a first appearance on August 10, 2017. The parties agreed to adjourn the matter until September 25, 2017. Respondent Yordi answered the petition on September 7, 2017. On September 25, 2017 the matter was again adjourned until October 20, 2017. On October 20, 2017 Petitioner, DHPD and Mark Cohen & Associates representing all other respondents signed a consent Order that was so Ordered by the Honorable Laurie Marin. In this Order Yordi agreed to correct the violations in the subject premises in the timeframe appropriate for the scale of the violation. As to Juareb's home, the parties agreed that violations 11983486 ("Repair the Broken or Defective Plastered Surfaces and Paint in a Uniform Color at West Wall in the 2nd Room from North at West . . .") and 11983499 (smoke detector) were corrected.

On April 24, 2018 petitioner brought the instant Order to Show Cause for Civil Contempt. This motion sought civil contempt and civil penalties for failure to comply with the October 20, 2017 consent Order. Additionally, the Order to Show Cause asks the Court to enter an Order to correct additional conditions in the subject premises. The motion was first heard on May 10, 2018, at which time the Court Ordered a briefing schedule and adjourned the matter to June 11, 2018. Respondent Yordi cross moved to dismiss the proceeding on June 13, 2018. On August 16, 2018 the Court resolved the Order to Show Cause and the Cross Motion by scheduling a hearing, as there were issues of fact to be determined. The Court's decision included a copy of the Court's rules along with the instruction that the parties should prepare as the Court's rules required. The parties were eventually notified that their hearing would be on October 31, 2018.

After several occasions where Yordi's attorneys were not prepared for the hearing or providing adequate explanations as to their failure to prepare, the Court scheduled a hearing

on October 15, 2018 to determine if sanctions were appropriate for their delays. The Court issued sanctions against the respondent landlord on October 19, 2019. The contempt hearing commenced on October 31, 2018 and continued on various dates. [\[FN2\]](#) On April 18, 2019 the Court issued a ruling denying Yordi's oral motion to recuse by a written decision.

### *Positions of the Parties*

#### *As to the Petitioner Juarbe*

It should be noted at the outset that the Order to Show Cause for violation of the Consent [\[\\*3\]](#) Order originally pertained to several apartments but the hearing pertained only to apartment 203 occupied by Kenny Juarbe (Juarbe) at 990 Bronx Park South, Bronx, NY 10460. [\[FN3\]](#) Juareb's complaints were addressed in the Consent Order by requiring repairs of the A and B violations found in his home on October 19, 2017. Petitioner's counsel indicates that the understanding of the parties was that initial access (and ongoing access if necessary), would be arranged between the attorneys. Petitioner indicated that respondent's counsel was uncooperative in scheduling access and the repairs were not timely completed. In addition, petitioner contends that new violations exist in the apartment and requests a new Order to Correct.

#### *As to the Respondent Yordi*

The non-DHPD Respondent affirms by Marlowe Boettcher, Esq. in opposition that the required work was performed in a timely fashion. The respondent's affidavit also indicates the work was performed in a timely manner. Respondent's reasoning is that since all repairs were timely performed, contempt cannot lie. However, review of the affirmation and affidavit indicates that while repairs for apartment 109, 402, 505 and B2 are mentioned, the affirmation is silent as to Apartment 203.

#### *As to the Respondent DHPD*

Respondent DHPD stands by its inspection reports that indicate when violations were placed and removed.

#### *Petitioner's Witnesses*

On December 12, 2018 the petitioner Kenny Juareb testified on his own behalf. Juareb

indicated that he had resided in the subject premises for thirty-four years, his entire life. Juareb indicated he brought the HP case because of the lack of maintenance in his home. Juareb's complaints were that his cabinets were falling apart, his appliances were outdated [\[FN4\]](#), his windows were not properly sealed, there were sloping floors throughout, there were leaks in the bathroom plumbing and interior walls as well as leaks from the upstairs bathroom and leaks in his bathroom going to the apartment downstairs. Juareb indicated the conditions complained of had been present for at least fifteen years.

Juareb indicated that he was present when the landlord was performing repairs in response to the HP action and testified extensively about the installation of his new kitchen cabinets as required by the Order to Correct. Juareb indicated that the first replacement kitchen cabinets were dysfunctional because the cabinets were not properly fitted to the space. Exhibit A1 through A5 illustrated the cabinets after the new installation. These photographs indicated that the cabinets were installed in a fashion where drawers and cabinets could not be accessed due to their placement. In short, the drawers and cabinets could not fully open because they were not properly configured for the space available.

Juareb indicates that subsequently a second set of cabinets were installed. Juareb's [\[\\*4\]](#) testimony was that Exhibits B1 through B7 illustrate the second set of cabinets. Juareb noted that these cabinets were also ill fitting. Among the obvious defects illustrated are exposed nails and screws, plywood inserts to seal the gap between the cabinets and the walls and ceiling and other indications that the second set of cabinets were ill fitted to the space required.

Juareb testified, "they came again in March 2018 and took measurements and then offered to explain how they were going to jury rig [\[FN5\]](#) the cabinet in a fashion that would reduce my cabinet space. They came again in May or June 2018 and imposed the jury rig. It's still an issue today."

As to flooring, evidence was presented which indicated that the hallway floors were damaged and in need of repair. Petitioner offered Exhibits E1-E13 to substantiate the claim that the floors were ill repaired. The testimony of Juareb that the floor was insufficiently repaired due to a lack of sealant or other membrane resulting in leaks to his downstairs neighbor to be believable. .

As to the bathroom, Juareb contended that the landlord's attempted repairs were ineffective. Juareb testified that the repair was comprised of painting over the wet wall.

Juareb contends that no attempt was made to diagnose and eradicate the leak above his apartment that caused the dampness in the wet wall. Juareb identified exhibit F1 as a depiction of the West Wall. In response to the respondent's objection as to relevance the petitioner cited to violation 11983496 and contended this repair was attempted on November 2, 2017. This timeline and violation number would have put the repair within the scope of the October 20, 2017 Order.

Juareb testified that the violation regarding the smoke detector 11983499 was not remedied. "They have failed to replace it. It's been defective for over a year. The landlord never came to fix the smoke detector."

### *Cross Examination of Juareb*

The cross examination of Juareb by Yordi began with an inquiry as to the condition of the flooring since his family took possession. Juareb noted that he first moved into the premises when his mother brought him home after his birth, and he remembers after he turned eighteen that the previous management company performed some repairs. Respondent postulated that maintenance was the tenant's responsibility and Juareb noted that he bore a responsibility to keep the floor clean. Juareb noted that the repairs on the floor were outside of the October 20, 2017 Order and that there were ongoing disputes between the landlord and their flooring contractor.

Juareb complained about the competency of the repairs performed. He noted that he had some experience in plastering, painting and taping (presumably of sheet rock) "as a hobby, not proper professional training". In response to respondent's invitation to describe the deficiencies in the repair Juareb noted "They didn't take the sheet rock off beforehand". Respondent was able to elicit that Juareb did not remember the name of the person in respondent's office with whom he registered his complaints. Juareb further described the deficiency in the smoke detector by stating that "It still beeps continuously even though I changed the battery. I just took the battery out because they wouldn't repair it".

### *Redirect of Juareb.*

On redirect and using exhibits E1 and E2 Juareb noted that the deficiencies in repair of the flooring were found in the material used and from a lack of sealant. Juareb noted he was aware of the failure of the floor's seal because he would receive complaints from the tenant downstairs of leaks coming from Juareb's apartment.

*Recross of Juareb.*

On recross respondent was able to elicit that the complaints regarding the leaks into the apartment beneath him came from an employee. Juareb agreed but also noted he heard from "Claudia" the downstairs tenant. Juareb testified that the water causing the leak downstairs came from his mopping the floor.

*Direct testimony of Inspector Lik Wong.*

Lik Wong has been employed as a housing inspector for DHPD for approximately 18 months. He has inspected approximately 100 buildings. Wong indicated that he was able to review his records of the inspection and upon review of Exhibit G he noted that he inspected the premises on March 29, 2018.

Mr. Wong testified that an owner of a building can remove a violation by having the repair certified or dismissed. However, the reports from HPD indicating the dismissal of violations does not distinguish between violations removed because of the completion of repairs and or the self-certification of the landlord.

As to the cabinets, the testimony of the inspector was that it was a violation of the HMC if kitchen cabinets are not able to open and close. Upon viewing Exhibit A1, Wong indicated this did not depict a violation of the HMC. Wong's reasoning is that the ability to partially open the cabinet is sufficient. However, upon viewing Exhibit A3 and A4 which indicates cabinets that are obstructed from fully opening Wong indicated that he would not write a violation, but he might seek to consult with a supervisor.

The Court notes that Exhibit A1 depicts an overhead view of a kitchen cabinet, countertop and a stove with a human hand in front of the stove. The top drawer of the cabinet is situated so that it cannot be completely opened because the stove blocks free travel by the drawer. A2 is identical to A1 except the hand has moved so that it is positioned between the stove and drawer. A3 appears to be a wall cabinet with a sliding door and a hand positioned to push the cabinet door to the left. A4 and A5 depict the cabinet in A1 but the focus is on the bottom section of the cabinet. It appears that the lower cabinets cannot be fully opened either due to the spacing between the stove and cabinet.

Wong testified that the windows seemed ripe for violations. Wong noted that his standard for window complaints from tenants is to ask the tenant to open the window. If the tenant cannot open the window, he would write a violation.

*On cross examination by HPD*

Wong testified he takes his job seriously; that he writes a violation when he sees a violation and he removes a violation when he sees it has been fixed.

*On cross examination by Yordi*

Wong agreed that it is fair to summarize his testimony by saying that all the violations were corrected.

*On redirect by Petitioner*

Wong described his typical pattern of inspection in apartments. Wong uses a nine-point inspection when he enters an apartment. He checks the self-closing door, the smoke detector, [\*5]CO2 detector, peeling paint if a child under six lives in the residence, proper window guards if a child under 11 lives in the residence, whether there is an illegal gate in the fire escape window, whether a double sealing lock is in the front entrance, vermin (mice, roaches and rats) and mold. Wong was unable to recall whether the tenant pointed out other conditions to consider on his visit of March 28, 2019.

Petitioner rested his case at the end of Wong's testimony. Petitioner also withdrew claims on behalf of Castro and Burgos . The Court reserved decision on Yordi's motion to dismiss for failure to state a claim. DHPD moves to dismiss because the testimony of their inspector indicated that all repairs were timely performed. The Court denies Yordi's motion to dismiss as petitioner adequately supported their motion by testimony and evidence that the October 20, 2017 Order was properly issued but not timely obeyed. The Court denies DHPD's motion to dismiss as the inspector's testimony does not resolve the disputed facts.

*Yordi's Witnesses*

*Direct of Mateo Yordi*

The respondent called Mateo Yordi (M. Yordi) as its witness. M. Yordi testified that he works as the property manager for the landlord and that he "makes sure things work well". M. Yordi stated he visits the buildings that he manages approximately 3 to 4 times a week. He was familiar with the Juareb apartment located at 990 Bronx Park South Apartment 203. M. Yordi specifically stated that he visited the apartment in connection with this lawsuit. He contended that he supervised the repairs undertaken in Apartment 203 in response to the lawsuit including those required by Judge Marin's Order of October 20, 2017. Specifically,



M. Yordi indicated that in November 2017 he supervised the repair by his staff of the bathroom ceiling, cabinets and floors. He testified that he contracted the window work to an outside company and inspected the work to assure its completion.

M. Yordi offered testimony and exhibits to support the contention that the petitioner did not provide access to his apartment for repairs to be performed. Photographs with newspapers (Exhibits 1 & 2) showing the date and indicating a refusal or failure to provide access on February 11, 2017 and February 21, 2017. In addition, M. Yordi offered a letter to petitioner indicating a lack of access provided on May 1, 2018 (Exhibit 3).

M. Yordi provided an invoice from a flooring company indicating that work had been completed in the subject premises on November 3, 2017 (Exhibit 4).

*Cross examination of Mateo Yordi.*

M. Yordi noted that he was in charge of the building's repairs. He was aware of the HP actions brought regarding his buildings and was specifically aware of the October 20, 2017 consent Order at issue. He testified that Juareb often denied access to the apartment for repairs. Upon examination of Exhibits A1 to A5, M. Yordi admitted that he installed the cabinets as depicted. He was aware that Juareb was dissatisfied with the installation of the cabinetry and noted that Juareb lived with this cabinetry for three months. He also indicated that after this installation he installed a new properly functioning kitchen (the Court took this phrase to mean cabinetry). As to the upper cabinets as depicted in Exhibits B1 through B8, M. Yordi testified that he could not remember if these were accurate depictions of the cabinets.

There was an ongoing dispute between Juareb and M. Yordi as to the replacement cabinets. M. Yordi's testimony was that Juareb was demanding a particular model of cabinet, On rebuttal Juareb testified that his request was for the same model of cabinets that had previously been in the kitchen. Juareb's testimony was that M. Yordi represented to him that he [\*6] could not order new cabinets, that he had to find a way to make his current inventory of cabinets fit into Juareb's apartment.

M. Yordi testified as to the leak in the bathroom wall. He agreed with Juareb that plastering and painting was utilized to abate the wet wall, but he indicated that he failed to repair the upstairs leak.

*Rebuttal of Juareb*

In addition to the testimony mentioned above, Juareb testified that he was without proper cabinets for the three months between the timeframe noted in the Order and the installation of new cabinets in March. Juareb said that the absence of proper cabinetry had a significant impact on his life. "I couldn't store my pots, pans, crockery, I have a bad back and I couldn't get to my stuff". The second installation resulted in a "jury rigged set up" in the kitchen.

### *Discussion*

#### *Preliminary Matters*

After this motion was brought in April 2019, the parties engaged in preparation for the eventual hearing in this matter. Yordi brought dispositive motions that the Court denied for the reasons stated therein. The Court notes that Yordi became resistant to readying the case for trial according to the Court's rules. Much of the difficulty came from respondent Yordi's failure to comply with the rules necessary to hold a fair and expeditious hearing in the HP [\[FN6\]](#).

The HP is a unique part of the Civil Court. Since the enforcement of housing standards were removed from the criminal courts in 1962 by the New York City Civil Court Act the HP took over that enforcement as its exclusive purview. With the recognition of the warranty of habitability defense in 1975 by RPL 235-b and subsequently by the Court of Appeals in 1979 (*See, Park W. Mgt. Corp. v. Mitchell*, 47 NY2d 316, 329 [1979]) a mechanism to compel compliance with the Housing Maintenance Code was fully implemented in the HP of New York City.

Upon assignment to the HP (Part H) in February 2018 this Court established a set of rules to govern the behavior of litigants and their attorneys to operate within the part. The Court's objectives in establishing its rules was to clarify for all parties their obligations when appearing and conducting a proceeding in the part. To reduce the time period for the parties to agree to abate the violations cited by DHPD, the Court eliminated the practice of respondents obtaining an automatic adjournment on their first appearance. [\[FN7\]](#)

After having sat in the HP for some time, the Court noted that the parties often requested trial on early appearances, particularly when the respondent landlord could not settle on civil penalties or repairs with DHPD or the tenant. These cases overwhelmingly settled on the hearing date or an adjourned hearing date. In all too many cases, this delay of

weeks or months [\*7] meant that immediately hazardous conditions or violations would be unabated. To resolve these delays and abate the conditions or violations if necessary, the Court required a prompt answer to the petition. If asserted, resolution of jurisdictional disputes were addressed as quickly as possible so that the matter could be dismissed or move forward. If issue is joined but settlement is unavailable, the parties were required to write a brief statement as to the issues to be resolved at trial on the date when the trial was requested. The parties would then conference with the Court 10 days or sooner before the hearing and present a list of witnesses, exhibits and stipulated facts (if any).

Yordi failed to comply with the court's rules as well as its own agreements to prepare for the hearing and the Court was compelled to write an Order imposing sanctions on October 19, 2018. [FN8] Yordi has taken the position that the Court's insistence on compliance with its rules is indicative of some bias against the respondent and its attorney. Respondent has also indicated the Court was biased, for insistence on April 18, 2019 for the Court's refusal to grant an oral application to quash a subpoena from DHPD to respondent. [FN9] The Court denies the allegation of bias and notes that its rulings have been supported by its own detailed decisions and Orders.

This matter has culminated in an explicit threat against the Court by Yordi. In their post-trial brief, Yordi has threatened the Court with judicial complaints for its alleged misconduct and bias. *See*, Yordi's post trial brief at paragraph 20. Again, the Court disagrees as to any bias. Any actions alleged to be misconduct taken against the respondent by the Court were fully explained and documented on the record. However, what is improper is to threaten the Court with disciplinary action, particularly in a post-trial brief. A reasonable inference is to improperly influence the Court to render a favorable ruling or decision so as to moot the complaint. The Court declines to opine any further on the allegations of bias presented by Yordi in their post-trial memo, as this is not the proper legal channel for Yordi to make such allegations and threats.

*As to the scope of the hearing.*

Both respondents made frequent objections to the inclusion of testimony and evidence beyond the scope of the October 20, 2017 Order. This Court disagrees, the motion was not limited to contempt. The Order to Show Cause asks the court in item (iv) that an Order be entered "Directing the Respondent to correct additional conditions related to but not included in the aforementioned Consent Order by a date certain . . .". Therefore, the respondents were

on notice that this relief would be sought in this motion and subsequent hearing. The HP has a unique function as opposed to other parts of the Housing Court. The HP must adjudicate both [\*8]the past violations of the HMC as well as enforce and assure the ongoing compliance with the HMC. Therefore, ignoring violations or alleged violations would be improper. In this motion this Court has an obligation to limit the finding of contempt to those violations specifically mentioned in the October 20, 2017 Order. However, if the Court finds that Juareb's testimony is credible and present conditions constituting violations of the HMC, an Order to Correct would be appropriate.

Respondents both rest their defense primarily on the inspections from DHPD indicating that violations were removed from the apartment. It is true that the Court gives deference to the reports of DHPD, its inspectors and other personnel as DHPD's mission is to promote the quality and affordability of the city's housing stock.

However, DHPD is a respondent in this proceeding. DHPD is named as a respondent in HP matters due to their responsibility to oversee removal of and possibly correct violations of the HMC. [FN10] Given that DHPD has disagreed with Juareb's assertions as to the violations alleged, Juareb has a right to challenge the conclusions put forward and to put DHPD's evidence to the test. [FN11] In this case, petitioner has put forward evidence that the kitchen cabinets and their installation were unacceptable. The Court takes judicial notice that a kitchen cabinet has several obvious functions. First, the base unit of kitchen cabinets have a surface where items can be rested and a work surface for food preparation or other purposes. Second the base unit may have drawers where utensils, pots and other items are stored. Base units likely have voids where plumbing may be located, or items can be stored. Similarly, wall mounted cabinets typically act as a pantry or they may hold vessels, plates and bowls. Finally, the configuration and installation of the cabinetry should be devoid of gross errors such as fixtures that cannot function properly in the space designated or less than competent installation. If DHPD fails to write a violation despite the alleged presence of ill-fitting, incompetently installed fixtures, this omission cannot serve to immunize the respondents. Petitioner retains the right to present evidence and testimony that contradicts DHPD's assertions.

### *As to the Hearing*

The Court found Juareb entirely credible. As a lifelong resident of this property Juareb's

testimony was that he pursued an HP case to obtain needed repairs. The advocacy of Juareb and his attorneys resulted in an Order to Correct on October 20, 2017. As stated, the Order to Correct resulted in repairs of varying quality and efficacy. As it pertained to the kitchen cabinets, Juareb's testimony as to the operations of the two sets of newly installed cabinets resulted in cabinets that were poor substitutes for fully functioning cabinets. Juareb's testimony as to his less than fully functional flooring and windows were believable. This was not a "cosmetic" issue, as stated above, there are certain functions that are to be expected by kitchen cabinets, the ability to have them open and close without obstruction is not cosmetic, it is functional. Juareb's testimony as to a dysfunctional smoke detector was undisputed and the Court finds this a violation to be corrected within one week of the date of this Decision . The combination of Juareb and Inspector Wong's testimony as to the violation of ill-fitting windows [\*9] was entirely believable notwithstanding Wong's testimony that all violations were corrected. Finally, although Yordi made references as to occasions when Juareb denied access this was not meaningfully supported by impeachment of Juareb's testimony.

The Court found the testimony of Inspector Wong's inconsistent. For example, Wong's testimony was that while A1 definitely did not constitute a violation, A3 and A4 would require his supervisor's review to validate his judgment that no violation occurred. The nature of this testimony cannot be resolved by DHPD or Yordi's conclusory assurances of Wong's commitment to his position or the simple clearance of the violation. Petitioner impeached Wong's testimony on several matters and DHPD or Yordi's conclusory statements did not rehabilitate that impeachment. Further, Wong's testimony was that he was relatively inexperienced and as his testimony proceeded, he relied more upon the opinion of supervisors instead of his own conclusions. Confronted with the exhibits depicting the complaints, Wong was unable to consistently defend his position.

M. Yordi's testimony was inconsistent. While M. Yordi complained of access difficulties, access was eventually provided as the parties are in agreement that repairs were attempted and most repairs concerning the Order to Correct were completed to Yordi's satisfaction. While M. Yordi contends that his work was exemplary, he acknowledges that the initial cabinetry was improperly installed. In his direct testimony M. Yordi seemed confused as to dates but if he is to be believed he finally indicated that when he arrived to perform work on November 3, 2019, he knew the cabinet that had been previously installed did not fit. M. Yordi does not dispute that the second installation was "jury rigged". Despite being present for Juareb's testimony as a party, M. Yordi did not dispute Juareb's assertion that the cabinetry was ill fitting because the cabinets were improper for the space. M. Yordi's testimony was also that he was prohibited from Ordering new cabinets that might have

properly fit the space.

### *As to Legal Fees*

Juareb and Yordi parties make a request for legal fees. Yordi makes their request in paragraph 5 of their post-trial brief stating that they are entitled to legal fees as the prevailing party on index number 37067/2017 because petitioner withdrew their order to show cause for civil contempt and civil penalties following Yordi's oral application that petitioner's order to show cause be denied due to a lack of proof. Yordi requests a hearing for legal fees and a date certain. As the decision at bar concerns a different index number, the Court declines to opine on the issue of legal fees concerning index number 37067/2017. Therefore, Yordi may make a motion on notice to the sitting HP judge for legal fees concerning index number 37067/2017. Petitioner fails to cite any legal authority to support their position for finding of legal fees. Additionally, petitioner has failed to include any information concerning the skill level and hourly billing incurring during this proceeding that would provide the Court any guidance to reach a decision concerning an award of legal fees. Therefore, petitioner's request for legal fees is denied without prejudice to renew upon proper proof by a motion on notice to the sitting judge of the HP.

### *Discussion*

To impose civil contempt, the Court must find to a reasonable certainty that the respondent knew about the order to correct or other unequivocal court mandate requiring the owner to make repairs; that the order to correct or other unequivocal court mandate was disobeyed and that the petitioner's rights were prejudiced, impeded or defeated.

The petitioner or DHPD may move the Court for a finding of civil or criminal contempt [\*10] for disobedience of a lawful, unequivocal order to correct requiring contempt. The distinction between civil and criminal contempt is the element of willfulness associated with the conduct. [FN12] However, the First Department has held that a petitioner seeking civil contempt may prevail if they can show that respondents actions was calculated or did defeat, impair, impede or prejudice the party's rights. [FN13] The record indicates that the Order of October 20, 2017 was known to Yordi, that Yordi's actions were calculated or did defeat, impair, impede or prejudice Juareb's rights to be free of violations of the Housing

Maintenance Code. The Court also finds that Yordi has not put forward a valid defense to contempt.

As to DHPD, the Court finds that contrary to the agency's position, the failure of their inspector to find violations is not dispositive. The testimony indicated that the inspector viewed the same condition from differing angles and reached different conclusions as to whether a violation was present. The inspector also called into question whether an inspector with more experience might find the cabinetry and installation to be a violation of the Housing Maintenance Code.

In the instant case, petitioner has chosen to seek civil contempt. The question is whether the testimony and evidence presented indicate that Yordi's actions defeated, impaired, impeded or prejudiced Juareb's rights. The Court finds that those rights were so affected by Yordi's disobedience of the October 20, 2017 Order and that contempt is the proper remedy for this disobedience. [\[EN14\]](#) The Court finds Yordi in civil contempt for the failure to acquire and install kitchen cabinetry appropriate for the kitchen. To purge this contempt, Yordi must install cabinetry appropriate for the space in Juareb's kitchen.

### *Contempt and Penalty*

The petitioner has adequately proven its case that respondent failed to comply with Judge Marin's Order to Correct and that failure meets the elements of contempt. The Court must determine the penalty for this contempt. Judicial Law 773 allows for statutory damages of \$250. "Where it is not shown that such an actual loss or injury has been caused, a fine may be imposed, not exceeding the amount of the complainant's costs and expenses, and two hundred and fifty dollars in addition thereto, and must be collected and paid, in like manner." (Judiciary Law 773) Actual damages may be awarded in addition to statutory damages if proven after hearing. "Actual loss or injury [must be] sufficient to indemnify the aggrieved party." (Judiciary Law 773) Multiple violations do not allow the statutory fine to be multiplied accordingly. (See *DHPD v Deka Realty Corp* 208 AD 37, 620 NYS2d 837 (NY App Div 2d Dept 1995)). Thus, [\*11]\$250 is the maximum statutory penalty. [\[EN15\]](#)

Actual damages may include attorney's fees, the economic value of petitioner's leasehold, damage to property, loss of time from work, out of pocket expenses, pain and suffering, and loss of quality of life. Damages may also include damages for owner's breach of the warranty of habitability under RPL 235-b. (See *Soho Alliance v World Farm Inc* 300

AD2d 22 [1st Dept 2002]; *Gregori v Ace 318 Corp* 134 Misc 2d 871 [Civ Ct NY County 1987]; modified on other grounds [142 Misc 2d 1028 App Term 1st Dept 1989]) Damages are calculated starting from the deadline for completion of repairs in the court's order or parties' stipulation.

Even if petitioner is unable to prove actual damages, he or she may recover attorney's fees for the costs of bringing the contempt motion. (*Jamie v Jamie*, 19 AD3d 330 [App Div 1st Dept 2005]) However, petitioner may waive their right to seek attorney's fees if not raised at the contempt hearing. (*Randolph v NYCHA E. Riv. Houses* 47 Misc 3d 918 [Civ. Ct. NY County 2015]).

The hearing did not establish a specific amount of the "complainant's costs and expenses" so the Court Orders the statutory damages of \$250.00 payable to the complainant within 30 days of this decision. The Court notes further that the complainant did raise the issue of attorney's fees and while this decision cannot encompass those fees due to a failure of supporting documentation, complainant may move the HP Part for this relief.

### *Conclusion*

The Court finds that respondent Yordi willfully chose to disobey the Order of Judge Marin of February 21, 2017 by failing to install properly fitting kitchen cabinets. Yordi chose to force ill-fitting fixtures in the premises instead of obtaining properly fitted cabinets. The Court finds that the delays in compliance in the October 20, 2017 consent Order follow directly the failure to obtain properly fitted cabinets. The Court finds that the kitchen cabinets are still a violation of the Housing Maintenance Code and respondent Yordi is Ordered to correct the violation by installing properly fitted cabinetry within 30 days of the date of this Order. The Court finds that petitioner failed to demonstrate that Yordi failed to properly repair the flooring. The Court finds contempt against Yordi in the amount of \$250.00 payable to the petitioner within 30 days of the date of this decision. The Court finds that petitioner may move the HP for attorney's fees consistent with this decision within 60 days of the date of this decision. If petitioner is unable to move within 60 days of this decision due to complications of the pandemic, petitioner may move for an extension of time. This is the decision of the Court and copies shall be distributed by mail to the attorneys for petitioner and both respondents.



Date: February 26, 2021  
David J. Bryan,  
Housing Judge, Civil Court

## Footnotes

**Footnote 1:** Inasmuch as the Hon. Laurie Marin is no longer a New York State judge this Court is hearing the motion as it was the HP Judge at the time of the motion.

**Footnote 2:** This hearing was calendared on 10/31/18; 12/12/18; 2/6/19; 4/16/19; 4/23/19; 5/7/19; 6/4/19; 9/10/19; 11/14/19; 11/26/19 and 12/17/19. The Court reserved decision on 12/17/19.

**Footnote 3:** Petitioner states in their post-trial brief that the two movants from 984 Bronx Park South residing in Apartments 202 and 209 "claims were withdrawn mid-way through the contempt hearing due to one tenant's illness and the other's relinquished tenancy." See Petitioner's Post Trial Memorandum of Law.

**Footnote 4:** The Court takes judicial notice that typically, HPD will not cite a violation of the HMC for appliances.

**Footnote 5:** to assemble quickly or from whatever is at hand, especially for temporary use: *to jury-rig stage lights using automobile headlights.*

*Nautical.* to replace (a rudder, mast, etc.) with a jury-rig: *We jury-rigged a fore-topmast after the storm had snapped ours off.* See <https://www.dictionary.com/browse/jury-rig>

**Footnote 6:** Note that the Court refers to the "HP" not the "HP Part". As the acronym HP stands for Housing Part, "HP Part" would connote "Housing Part Part".

**Footnote 7:** "This part is an essential resource to address urgent repairs. Therefore, immediately hazardous conditions including but not limited to loss of heat, lack of hot water, lead, mold MUST be immediately addressed on the FIRST appearance. Counsel or respondents must be prepared to indicate their plan to abate the condition as a prerequisite for obtaining an adjournment." From the Part H rules circa August 2018.

**Footnote 8:** "The Court finds respondent's counsel has shown a disregard for the Court's rules and its own agreements as to motion practice that were intended to frustrate the adjudication of this matter."

**Footnote 9:** "The Court refused to immediately quash the subpoena because there was not a properly noticed motion before it. The respondent is free to bring a motion or seek expedited review before this matter is back on the calendar on April 23, 2019 at 9:30 am for the continued hearing. Respondent objects because they allege an oral application was made in December 2018. The Court's requirement that the motion should be properly noticed would

have been applicable at that time as well but the Court has no recollection of this oral application." April 18, 2019 decision.

**Footnote 10:** *See*, HMC 27-2004.

**Footnote 11:** The inverse is true as well. Every day in the HP, landlords contest whether the violations cited by DHPD are accurate despite DHPD's presumption of accuracy.

**Footnote 12:** *McCain v Dinkins*, 84 NY2d 216, 226 [1994]

**Footnote 13:** (*Various Tenants of 446-448 W. 167th St. v NY City Dept. of Hous. Preserv. & Dev.*, 153 Misc 2d 221 [App Term 1992])

**Footnote 14:** The Court takes judicial notice that the use of a dwelling is significantly impaired if it cannot be used to store food, hold food or utensils. This impairment constitutes the causes for the contempt found.

**Footnote 15:** *See generally*, HP Proceedings: A Primer, Gerald Lebovits May 15, 2007 pg. 99 *Contempt Hearings, Sanctions and Orders*

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