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Department of Hous. Preserv. & Dev. of the City of N.Y. (DHPD) v. Mustafa

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[*1]

Department of Hous. Preserv. & Dev. of the City of N.Y. (DHPD) v Mustafa
2022 NY Slip Op 50094(U)
Decided on February 8, 2022
Civil Court Of The City Of New York, Queens County
Sanchez, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on February 8, 2022

Civil Court of the City of New York, Queens County

<p>Department of Housing Preservation and Development of the City of New York, (DHPD), Petitioner,</p> <p>against</p> <p>Mina Mustafa, 182-26 Grand Central, Jamaica Estates NY 11432 LLC, Respondents.</p>
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Index No. HP 307986/21

Helen Lai, Esq.
Attorney for Petitioner DHPD
laih@hpd.nyc.gov

Sharon E. Cook, Esq.
Attorney for Respondents
sharon@secooklaw.com

Enedina Pilar Sanchez, J.

This DHPD initiated case seeks an Order to Correct and civil penalties against the named respondents as owners of the subject premises located at 85-32 168th Place, Jamaica,

New York 11432. The violations are for lack of hot water.

Procedural History

This matter first appeared on the calendar on January 12, 2022. Respondents' counsel appeared in court and petitioner's counsel appeared via Microsoft Teams as permitted pursuant to the Administrative Orders in place during the COVID-19 pandemic. Respondents' counsel interposed an oral answer stating that respondents are not required to provide such services; that the subject premises are a two-family house and that the occupants are "squatters." Given the nature of the emergency, the matter was adjourned to January 19, 2022 for respondents to appear and provide testimony.

On January 19, 2022, the matter could not be resolved. Respondents' counsel informed the court that a Bengali interpreter would be needed. The case was adjourned for an emergency hearing on January 27, 2022. A substitution of counsel form was uploaded to NYSCEF on January 24, 2022. [NYSCEF Document No.7] On January 27, 2022, the requested interpreter was not available to hold the hearing.

The case was adjourned to January 31, 2022. In the interim, two tenant/occupant initiated emergency heat and hot water cases concerning the subject premises were on the court's [*2]calendar. In the interest of judicial economy, and with the consent of the unrepresented litigants, the three cases were adjourned to the same date and time.

The other two cases are, *Mushana Owens v. Golam Mustafa, Mina Mustafa* Index No. HP 17/22Q and *Narendra Somwaru v. Golam Mustafa, Mina Mustafa* Index No. HP 18/22Q. On January 31, 2022, all three cases were heard.

January 31, 2022 Hearing

Petitioner presented its case in support of the Order to Correct and for civil penalties. The evidence shows that on from September 16, 2022 through November 13, 2021, the dates when hot water violations were issued, hot water was not provided.

Petitioner seeks civil penalties for 34 days, from October 27, 2021 to November 13, 2021. Petitioner asked the court to take judicial notice of the recorded deed to the subject premises. The court took notice of the deed. Petitioner presented certified documents which

were entered into evidence except for page 4 of P's Exhibit 7. The documents confirmed that DHPD attempted to correct the condition and to restore gas to the premises. Further, the documents established that after the violations were issued, subsequent violations issued for lack of heat and hot water. The essential services were not restored.

Respondents appeared by counsel. Respondents did not testify in this case.

Discussion and Order

Petitioner's evidence supports the finding that the lack of hot water condition was not corrected. It is undisputed that the lack of water violations were entered on numerous occasions.

Indeed, after the petition was filed, additional violations for lack of hot water, lack of heat and lack of gas were found to exist and entered. Between September 16, 2021 and January 31, 2022, twenty-nine (29) "C" violations were issued to the subject premises. Petitioner seeks penalties of \$1,000.00 per day because of the number of heat and hot water violations that were entered during the same heating season. The civil penalties sought are pursuant to *NYC Administrative Code §27-2115 et al.*, (*Chapter 2, NYC Housing Maintenance Code*).

The *NYC Administrative Code* specifies what should be the penalty for the 1st heat or hot water violation; it is to be assessed at \$250-\$500 per day. The 2nd heat violation is to be assessed a fine/penalty at \$500-\$1000 per day. It is in the Court's discretion to determine the total sum of the civil fines/penalties to be imposed upon credible facts presented. Respondents did not present credible facts or defenses.

Mr. Mustafa was provided with a Bengali interpreter and sworn in when he testified in the two other HP cases. (*Mushana Owens v. Golam Mustafa, Mina Mustafa* Index No. HP 17/22Q and *Narendra Somwaru v. Golam Mustafa, Mina Mustafa* Index No. HP 18/22Q.). Golam Mustafa is the owner of respondent 182-26 Grand Central, Jamaica Estates NY 11432 LLC. He testified that he has an ownership interest in the named LLC. Mr. Mustafa testified that he has yet to retain the services of a master plumber to restore the gas service and hot water to the subject premises. Mr. Mustafa's testimony was not clear as to what is the problem with the gas line to the first-floor apartment. There appears to be no difficulties with heat and hot water for the apartments on the second and third floors. In addition to the lack of hot water in the first-floor apartment, there have been recurring violations for lack of heat

and gas service. While the lack of heat and gas are not the violations for which civil penalties are sought in this case, the extent that the lack of other essential services are persistent, these facts weigh upon the imposition and computation of civil penalties.

The Court takes judicial notice of the DHPD website and it shows that the subject [*3] property is registered as a building with 2 stories and two units. The deed describes building(s) on the parcel, two lots on one deed, as having two 3-family dwellings. Google maps shows the property to be two attached buildings (Lot 52 and Lot 53). Each building has three stories, and each building appears to be a 3-family dwelling. The court may take judicial notice of reliable data maintained on internet websites, under common law principles as well as CPLR Rules 4511 and 4539 and *New York State Technology Law § 306*. See, *Siu Yat Chau v Marquez*, 2018 NY Misc. LEXIS 690 (Civ. Ct. Bronx Co. 2018).

Based upon the evidence, petitioner is granted an order to correct and civil penalties.

It is ORDERED that Mina Mustafa and 182-26 Grand Central, Jamaica Estates NY 11432 LLC, and their agents and employees shall forthwith maintain the following essential services as required by law:

Supply every bath, shower, washbasin and sink in every dwelling unit with hot water at a constant minimum temperature of 120 degrees Fahrenheit, twenty-four hours per day.

Provide access to the boiler area for the petitioner's inspectors and/or contractors, and post proper notices relating to access to the boiler area pursuant to the Multiple Dwelling Law and the Housing Maintenance Code.

Remove any device on the heating system which can cause the system to become inoperable or to provide less than the minimum legal requirements of heat and/or hot water and maintain the system free of any such device; and it is:

ORDERED, that the civil penalties for failure to provide hot water in a multiple dwelling are calculated as follows and based upon the violations entered from September 2021 through January 22, 2022 and pursuant the January 10, 2022 Order directing that essential services be restored. See *Mushana Owens v. Golam Mustafa, Mina Mustafa* Index No. HP 17/22Q and *Narendra Somwaru v. Golam Mustafa, Mina Mustafa* Index No. HP 18/22Q.

The first violations for lack of hot water were entered on 9/16/21(violation no.

14557639) and 9/27/21(violation no.14584109). The second violations for lack hot water were entered 10/27/21(violation no. 14642026) and 11/13/21 (violation no. 14671343). The second violations began on October 27, 2022 and continued through November 29, 2022, a period of 34 days. These violations are assessed fine/penalties at \$1,000 per day,

34 days at \$1,000.00 per day = \$34,000.00; and it is;

ORDERED that the civil fines and penalties sought in the petition are granted in the sum of **\$34,000.00**, which is to be paid by certified check, an attorney's check, or a money order payable to "DHPD," on or before **April 15, 2022**; and it is:

ORDERED that the Clerk of this Court enter judgment in favor of petitioner Department of Housing Preservation and Development (DHPD) of the City of New York jointly and severally against the respondents: Mina Mustafa and 182-26 Grand Central, Jamaica Estates NY 11432 LLC in the sum of \$34,000.00 and that petitioner shall have execution therefore and shall have judgment against, 85-32 168 Place, Queens, New York 11432, Block, 09851 Lot52 and 53; and it is:

ORDERED that respondents shall mail the payment showing the address of the subject premises and the HP Index Number 307986/21 Queens on the payment instrument. The payment is to be mailed to: **DHPD at 100 Gold St., 6th Fl., New York, New York 10038, Attn: Tasonia Ragin.**

This Decision and Order is being emailed to the attorneys of record.

This constitutes the Decision and Order of the Court.

So Ordered,
Dated: February 8, 2022
Queens, New York
Enedina Pilar Sanchez
Judge, Housing Court

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