

In the Matter of

**DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT OF THE CITY OF NEW YORK**

Petitioner,

-against-

MICHAEL GEYLIK, recipient of Certification of No Harassment.

**Premises: 109 East 9th Street
New York, New York 10003**

RESPONDENT'S POST-TRIAL CLOSING BRIEF

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PRELIMINARY STATEMENT AND SUMMARY OF ARGUMENT:

The instant proceeding involves a building, 109 East 9th Street, New York, New York (the “Building”), for which Petitioner New York City Department of Housing Preservation and Development (“Petitioner”) issued a Certification of No Harassment (“CONH”) more than a year and a half ago, which Petitioner now seeks to revoke based on specious claims of harassment by five (5) of the Building’s tenants of record, including allegations that predate Petitioner’s issuance of the CONH. Relevantly, the very tenants who now claim to have been harassed by Respondent Michael Geylik (“Respondent”) made no allegations of harassment when Petitioner’s investigator originally interviewed them in connection with the underlying application.

The question before this Tribunal is whether Respondent engaged in any act of harassment, as defined pursuant to § 27-2093(a) of the New York City Administrative Code (“NYCAC”) of any tenants of the building known as and located at the Premises, after CONH for the Premises.¹

It is axiomatic that, in a proceeding to revoke a CONH, Petitioner bears the burden of proof to establish the charges by a preponderance of the evidence. Even where there is evidence of any statutorily-defined acts of harassment, however, Petitioner bears the burden to show that such acts were intended to cause lawful occupants to vacate, surrender or waive their rights. *Dep’t of Hous. Pres. & Dev. v. 331 West 22nd Street LLC*, OATH Index No. 912/06 (Dec. 29, 2006); *Dep’t of Hous. Pres. & Dev. v. Rice*, OATH Index No. 1838/04 (Mar. 23, 2005); *Dep’t of Hous. Pres. & Dev. v. McClarty*, OATH Index No. 1602/00 (Dec. 7, 2000).

Petitioner has not met its burden. To wit, the Petition For Rescission alleges twelve (12) incidents of conduct that Petitioner asserts were “done or caused by [Respondent], [Respondent’s] agents, and by prior owners or their agents and employees, and occurred on or within between

¹ Respondent is a member of 109E9 LLC (“Owner”), the owner of the Building.

March 4, 2024 and [April 8, 2025].” As will be demonstrated and as Respondent showed over the course of a six-day trial before this Tribunal, these incidents were shown to be false or misleading, and/or not warranting a finding that Respondent engaged in any act constituting harassment as defined pursuant to NYCAC § 27-2093(a).

SALIENT BACKGROUND

The Owner purchased the Building from Charm Coffee LLC (“Prior Owner”) on June 28, 2021 (Pet. Ex. 1, Res. Ex. A). Respondent’s intention was to convert the ground floor, which had been used as a bar for at least twenty-five (25) years, into an office for Respondent’s company, MGNV Consulting (Tr. Vol. V, p. 851).

Because converting the Building’s ground floor into an office space required the issuance of a new certificate of occupancy for the Building by the New York City Department of Buildings (“DOB”), Respondent was required to certify correction of various DOB violations that had been issued to the Building decades earlier (Tr. Vol. V, p. 852), including violations for illegally creating a kitchen, bathroom and shower, installing an illegal gas and plumbing connection for the illegal kitchen and bathroom (Res. Ex. G4)², and reducing the number of dwelling units (Pet. Ex. 33)³. In order to certify correction of these DOB violations Respondent was required to remove the illegal connections cited in said DOB violations, which was completed in December 2022 (Tr. Vol. V, pp. 857-859).

In August 2023 Respondent filed the underlying application for CONH with Petitioner, the primary purpose of which was to legally install a new kitchen and bathroom, including full shower,

² DOB Summons No. 34166612M, issued on May 19, 1998.

³ DOB Summons No. 34206761J, issued on April 6, 1999.

where the previous illegal connections were installed (Pet. Ex. 4; Tr. Vol. V, pp. 865, 867-868; Tr. Vol. VI, p. 1031).

On March 4, 2024—following an extensive review that included interviews with tenants of the Building—Petitioner issued a Final Determination Upon Application For A Certification Of No Harassment granting the CONH (Pet. Ex. 5). Subsequently, Respondent executed and returned to Petitioner a Representation And Agreement Of No Future Harassment on or around March 13, 2024 (Pet. Ex. 6; Tr. Vol. VI, p. 1174).

Three (3) weeks later, before Respondent had an opportunity to commence any renovation work, New York City experienced a 4.8-magnitude earthquake.⁴ What followed with respect to the Building and Respondent’s CONH can only be described as Kafkaesque.

After the earthquake, Respondent attended a DOB “homeowner’s night” to report concerns about conditions in the Building (Tr. Vol. V, p. 921). In May 2024, Respondent had an engineer inspect the Building and was advised that “the conditions are such that there might be a sudden collapse” (Tr. Vol. V, p. 920). That same month Respondent and his engineer communicated their concerns to the DOB Forensic Engineering Unit (Res. Ex. E1). In August 2024, at Respondent’s own request, the DOB Forensic Engineering Unit conducted an inspection of the Building, which then resulted in the issuance of two (2) DOB “control” orders (Res. Ex’s. C):

- Control No. 341657, in relevant part, directing the Owner to “immediately retain [a professional engineer] and licensed [general contractor] to shore [the] building”; and
- Control No. 341658, in relevant part, directing the Owner to “retain [a professional engineer] to evaluate the entire building and file repair drawings with [the] DOB,” and effectuate “permanent repairs.”

⁴ <https://www.reuters.com/world/us/magnitude-55-earthquake-strikes-new-york-new-jersey-emsc-2024-04-05/>

In accordance with the DOB’s directives, shoring was completed by August 20, 2024. After shoring was installed, Respondent and his engineers proceeded to correspond with the Forensic Engineering Unit about effectuating compliance with the DOB’s other directives (Res. Ex. E1). Over the course of the next three (3) months Respondent’s engineers conducted several inspections per the DOB’s instructions, including probing vacant space in the Building (Tr. Vol. V, pp. 734, 775), and submitted three (3) letters to the DOB updating the Forensic Engineering Unit on their findings and proposed course of action (Res. Ex’s. D2, D3 and D4).

In February 2025, Respondent filed an application with the DOB for a permit to perform additional shoring in connection with the directives set forth in Control No. 341658, which was necessary as a precursor to effectuate the “permanent repairs” (Tr. Vol. V, pp. 819-823). On March 19, 2025 the DOB issued Permit No. M01181265 for the additional shoring, which was scheduled to expire on May 9, 2025 (Res. Ex. F2). Unbeknownst to Respondent, however, as Respondent was working to address the structural conditions, Petitioner had begun investigating allegations of harassment based on a letter received a month earlier (Pet. Ex. 20) from an attorney representing five (5) tenants—one of whom Respondent verily believes does not even reside in the Building—requesting that Petitioner revoke the CONH. (Respondent did not become aware of this letter until receiving Petitioner’s response to Respondent’s demand for discovery in this proceeding.)

On April 8, 2025, as Respondent was working with the DOB to safely effectuate necessary repairs at the Building, Petitioner served Respondent with a document titled Initial Determination Upon Application By The Department Of Housing Preservation And Development To Suspend [the CONH] (Pet. Ex. 7). A week later Petitioner served Respondent with a Notice of Hearing For Rescission, notifying Respondent that “conference upon suspension of the [CONH]...will be held on May 7, 2025,” and that a “trial will be held on May 8, 2025.” Relevantly, Petitioner chose to

schedule the conference twenty-nine (29) days after serving the April 8, 2025 notice of suspension, and the trial thirty (30) days from serving the notice.

Consequently, since the CONH had been suspended, the DOB administratively suspended Permit No. M01181265, foreclosing Respondent's ability to install the additional shoring that the DOB has confirmed as being necessary.

As will be shown, NYCAC § 27-2093(f)(3) prohibits Petitioner from rescinding the CONH more than thirty (30) days after Petitioner's suspension of same. Thus, Respondent's CONH must be reinstated as a matter of law. Even if it is determined that NYCAC § 27-2093(f)(3) does not require Petitioner to reinstate the CONH, however, Petitioner has failed to show that Respondent has engaged in the conduct set forth in NYCAC § 27-2093(a), much less in conduct intended to preclude any tenant from physical enjoyment of their room or the Building, or cause any tenant to vacate, surrender or waive their right to their room.

Accordingly, for all the reasons stated herein, the Petition For Rescission must be denied and Respondent's CONH must be reinstated.

ARGUMENTS:

Point I: Revocation of the CONH Is Impermissible More Than Thirty (30) Days After The CONH Has Been Suspended.

As stated above, NYCAC § 27-2093(f)(3) prohibits the revocation of a certification of no harassment more than thirty (30) days after the certification has been suspended. To wit, NYCAC § 27-2093(f)(3) provides the following, in relevant part:

As soon as reasonably possible, but no later than thirty days after such suspension, the commissioner shall hold a hearing in the manner provided in section 27-2092 of this article upon appropriate notice and shall determine whether to rescind such certification...

(Emphasis added)

It cannot be reasonably disputed that the word “and” in this section serves as a coordinating conjunction to connect two articles: 1) to hold a hearing; and 2) to make a determination. Where a statute uses the term “and” to connect two or more articles, compliance requires that all articles be satisfied. *Pulsifer v. United States*, 601 U.S. 124 (2024) (“‘And,’ ...is of course a conjunction—a word whose function is to connect specified items.”). Additionally, the First Department has held that the word “shall” undeniably reflects “the mandatory nature of the statutory language.” *Rubin v. Della Salla*, 107 A.D.3d 60, 67 (1st Dept. 2013).

Where there is an express limit on the authority to act after a specified time period, limits with regard to the time in which an agency must act are generally not considered as being merely discretionary. *Grossman v. Rankin*, 43 N.Y.2d 493, 501 (1977); *People ex. Rel. Huff v. Graves*, 277 N.Y. 115 (1938). Here, the inclusion of a specific period of time within which revocation must occur in relation to the rescission undeniably creates a mandatory, not directory, time limit. Indeed, NYCAC § 27-2093(f)(3) does not merely state that the Commissioner must act “within” a specific period of time; rather, the statute expressly requires that the Commissioner must act “no later than thirty days after such suspension.”

Accordingly, the requirement set forth in NYCAC § 27-2093(f)(3), for the Commissioner to “determine whether to rescind,” is mandatory insofar as it plainly states that the Commissioner “shall” hold a hearing “and” issue a determination “no later than thirty (30) days after” rescission of a CONH. *Bowden v. Tingling*, 205 A.D.3d 604 (1st Dept. 2022); *Liu v. Ruiz*, 200 A.D.3d 68, 73-74 (1st Dept. 2021). To this end, because the Commissioner failed to determine whether to rescind the CONH within thirty (30) days of Petitioner suspending the CONH, Petitioner is simply without statutory authority to revoke the CONH and an attempt to do so now would be *ultra vires*, arbitrary, capricious and contrary to law.

Point II: Petitioner Has Not Met Its Burden To Demonstrate By A Preponderance Of The Evidence That Respondent Engaged In Harassment.

Petitioner bears the burden of establishing the charges by a preponderance of the evidence, which has been defined as “the burden of persuading the triers of fact that the existence of [a] fact is more probable than its non-existence.” Prince, Richardson on Evidence § 3-206; see also, *Bazemore v. Friday*, 478 U.S. 385, 400-01 (1986); *Dep’t of Buildings v. Trombetta*, OATH Index No. 2325/15 at 5 (Jan. 29, 2016); *Dep’t of Buildings v. Caliendo*, OATH Index No. 733/18 (Sep. 25, 2019). In a proceeding seeking rescission of a CONH, it is Petitioner’s burden to demonstrate that the recipient of the CONH engaged in harassment as that term is defined pursuant to NYCAC § 27-2093(a). *Id.*, OATH Index No. 912/06 at 28 (Dec. 29, 2006); *Dep’t of Hous. Pres. & Dev. v. Pascal*, OATH Index No. 626/06 (Apr. 5, 2006).

Pursuant to NYCAC § 27-2093(a), the term “harassment” means any of the following:

- (1) the use or threatened use of force which causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit in such multiple dwelling to vacate such unit or to surrender or waive any rights in relation to such occupancy;
- (2) the interruption or discontinuance of essential services which (i) interferes with or disturbs or is intended to interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of a dwelling unit in the use or occupancy of such dwelling unit and (ii) causes or is intended to cause such person lawfully entitled to occupancy of such dwelling unit to vacate such unit or to surrender or waive any rights in relation to such occupancy;
- (3) the failure to comply with the provisions of subdivision c of section 27-2140 of article seven of subchapter five of this code which causes or is intended to cause such person lawfully entitled to occupancy of such dwelling unit to vacate such unit or to waive any rights in relation to such occupancy; or
- (4) any other conduct which prevents or is intended to prevent any person from the lawful occupancy of such dwelling unit or causes or is intended to cause such person lawfully entitled to occupancy of such dwelling unit to vacate such unit or to surrender or waive any rights in relation to such occupancy including but not limited to removing the possessions of any occupant from the dwelling unit; removing the door at the entrance to the dwelling unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying the occupant with a key.

“The particular classes of things enumerated under section 27-2093(a)(4) are affirmative, physical acts calculated to preclude the occupant of an SRO room from the physical enjoyment of the premises.” *Dep’t of Hous. Pres. & Dev. v. Domb*, OATH Index No. 586/09 at 51 (Apr. 17, 2009).

Petitioner also alleges that Respondent engaged in acts of harassment set forth in NYCAC § 27-2004(48)(a-1), (a-2), (b), (d-1) and (g). Those sections define harassment as the following:

- (a-1) “knowingly providing to any person lawfully entitled to occupancy of a dwelling unit false or misleading information relating to the occupancy of such unit”;
- (a-2) “making a false statement or misrepresentation as to a material fact regarding the current occupancy or the rent stabilization status of a building or dwelling unit on any application or construction documents for a permit for work which is to be performed in the building containing the dwelling unit of any person lawfully entitled to occupancy of such dwelling unit if such building is governed by the New York city construction codes”;
- (b) “repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit”;
- (d-1) “commencing a baseless or frivolous court proceeding against a person lawfully entitled to occupancy of such dwelling unit if repeated baseless or frivolous court proceedings have been commenced against other persons lawfully entitled to occupancy in the building containing such dwelling unit”; and
- (g) “other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause or are intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, including improperly requiring such person to seek, receive or refrain from submitting to medical treatment in violation of subdivision b of section 26-1201.”

Even where sufficient evidence exists to form the presumption of harassment, however, an applicant may rebut the presumption by a preponderance of the credible evidence. *Dep’t of Hous.*

Pres. & Dev. v. Avid, OATH Index No. 801/08 (Apr. 4, 2008). The presumption is rebutted where the applicant shows that although an act falls within the statutory definition of harassment, it was not intended to cause a lawful occupant to vacate, surrender or waive any right to their room. *Id.*, OATH Index No. 912/06 at 12 (Dec. 29, 2006); *Id.*, OATH Index No. 1838/04 at 11 (Mar. 23, 2005); *Id.*, OATH Index No. 1602/00 at 2-3 (Dec. 7, 2000).

Additionally, where there is conflicting testimony by trial witnesses, the trier of fact must evaluate the witnesses' relative credibility, including giving consideration to the following factors: "witness demeanor, consistency of a witness' testimony, supporting and corroborating evidence witness motivation, bias or prejudice, and the degree to which a witness' testimony comports with common sense and human experience." *Dep't of Hous. Pres. & Dev. v. Barbanel*, OATH Index No. 2652/19 at 21-22 (Mar. 5, 2021), quoting *Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 4, 1998), *aff'd* N.Y.C. Civ. Serv. Comm'n Item No. CD 98-101-A (Sep. 9, 1998).

Here, Petitioner failed to meet its burden to show that Respondent engaged in any conduct or act that falls within the definition of harassment under NYCAC § 27-2093(a). Even assuming *arguendo* that the burden shifted to Respondent, testimony taken at trial rebutted such presumption and raised questions as to the credibility of several of Petitioner's witnesses.

A. Petitioner's Allegation That Respondent Failed To Restore A Bathroom And Kitchen On The Fourth Floor, And Failed To Restore A Bathroom On The Third Floor

Petitioner alleges that Respondent removed and/or caused to be removed "a toilet, shower and kitchen...from the 4th floor," and "a toilet...from the 3rd floor," and that Respondent's failure to restore these facilities constitutes harassment and violation of NYCAC § 27-2067.

At the outset, Petitioner presented no evidence nor proved at trial that Respondent removed and failed to restore a toilet on the Building's third (3rd) floor.

Respondent acknowledged that the toilet, shower and kitchen that were illegally installed on the Building's fourth (4th) floor—the third (3rd) residential floor—more than 20 years ago, were removed in 2022, outside of the inquiry period for the instant proceeding. Respondent also testified that the primary purpose for applying for the CONH was to restore these facilities; Respondent arranged for architectural drawings to be prepared for the legal installation of these facilities, which were then filed with the DOB in anticipation of the CONH being granted (Tr. Vol. V, p. 865). However, Respondent has been unable to effectuate the installation due to conditions that were created and/or exacerbated by a 4.8-magnitude earthquake that occurred only three weeks after the CONH was issued, causing the Building to become structurally unsound and making it infeasible to perform major construction (Res. Ex. D1, D2, D3, D4; Tr. Vol. VI, p. 869-870).

Indeed, Respondent has never refused to restore these facilities, never advised tenants that these facilities would not be restored—to the contrary, Respondent advised tenants that the CONH was needed in order to restore these facilities—and still desires to restore them. By no reasonable measure can Respondent's current inability to restore the toilet, shower and kitchen (due to a *force majeure* event) be found to be an act of harassment that intended to cause any tenant to surrender or waive their rights, or vacate their room.

Additionally, Petitioner's assertion that Respondent is in violation of NYCAC § 27-2067 is both inaccurate and ignores the fact that Petitioner has issued no violation to Respondent under this section.

In relevant part, NYCAC §27-2067(a) provides the following:

Every building containing rooming units, and each individual apartment used for single room occupancy, shall contain at least one water closet, washbasin and bath or shower for each six persons lawfully occupying rooming units therein.

(Emphasis added.)

There are only six (6) lawful occupants in the Building, two (2) of whom Respondent verily believes do not reside in the Building and against whom Respondent has commenced “non-primary residence” holdover cases.⁵ Additionally, the number of water closets, washbasins and showers in the Building conforms to the Building’s I-cards (Res. Ex. B1).

Moreover, several of the tenants testified to having their own toilets, sinks, showers and/or bathtubs in their individual rooms (Tr. Vol. I, pp. 107, 108, 110, 129, 132, 133, 189, 193; Tr. Vol. II, p. 222; Tr. Vol. III, pp. 379, 469) and that there is a water closet and “shared shower” on the second floor (Tr. Vol. II, pp. 226, 313, 316). Therefore, even Petitioner has proven that the total number of communal facilities is somehow inadequate under NYCAC § 27-2067(a), the fact that at least three (3) tenants have their own showers and/or bathtubs, toilets and sinks in their rooms clearly discredits Petitioner’s assertion that Respondent’s current inability to restore these facilities constitutes harassment.

B. Petitioner’s Allegation That Respondent Provided Lawful Occupants False And Misleading Information Regarding The Occupancy

Petitioner alleges that Respondent engaged in harassment by “[p]roviding lawful occupants false and misleading information regarding the occupancy of their units, including common facilities serving their units, by telling lawful occupants not to complain to HPD about the removal of common facilities, deceiving the occupants into believing that those facilities will be restored after the [CONH] is issued, and failing to restore such facilities as of March 4, 2024 to present.”

Petitioner has not demonstrated that Respondent ever provided any tenant with “misleading information regarding their tenancy,” much less that Respondent told any tenant “not to complain

⁵ *109E9 LLC v. Beckwith*, Index No. LT 306106/25, against Petitioner’s witness Shiras Patterson Beckwith, the tenant of record for Unit 2E; and *109E9 LLC v. Hicks*, Index No. LT 306109/25, against James T. Hicks, the tenant of record for Unit 4B, who was not a witness and has not accused Respondent of harassment.

to HPD about removal of common facilities,” or “deceiv[ed] the occupants into believing that [the common facilities serving their units] will be restored” (Tr. Vol. VI, pp. 1063-1064). To the contrary, at trial Respondent testified at length that the only reason why the facilities have not been restored yet is due to the Building’s structural instability, which was caused and/or exacerbated by the earthquake (Tr. Vol. VI, p. 1176)—to be clear, it remains Respondent’s intention to restore the facilities as soon as the structural conditions can be addressed.

It is respectfully submitted that any testimony by any of Petitioner’s witnesses that conflicts with Respondent’s testimony on this issue must be evaluated with due consideration given to these witnesses’ motivations and demeanor, as well as to the fact that their testimony as to other issues conflicts with or is contradicted by evidence, *e.g.*, testimony by Zachary Hall claiming that he did not recall asking Respondent for money to vacate his unit, despite later testifying that he had sought out and discussed “buyouts” with an attorney⁶ after the Owner purchased the Building (Tr. Vol. II, p. 289-290); Mr. Hall’s claims of not requesting money or other consideration from Respondent in exchange for vacating his unit, conflicting with an e-mail from Mr. Hall to Respondent on March 4, 2025 (Res. Ex. O1), when Mr. Hall already knew that Petitioner was in the process of suspending the CONH; testimony by Judy Sabin alleging that Respondent harassed her by offering his company’s services to assist her with finding an “affordable housing” unit (*i.e.*, income-restricted), contradicted by Ms. Sabin subsequent testimony and her own text messages with Respondent (Tr. Vol. I, pp. 59-60, 63, 90, 136, 168, 176-182; Res. Ex. K4); Ms. Sabin’s testimony that Respondent

⁶ Mr. Hall testified to reaching out and speaking with Adam Leitman Bailey, Esq. (misspelled as “Adam Lightman Bailey in Volume II of the Transcript) to “discuss buyouts” (p. 287, l. 25; p. 288, l. 1) “around the time that [Respondent] bought the building in 2021” (p. 290, l. 6-7). Notably, Mr. Leitman Bailey was suspended from the practice of law for a period of four (4) months, effective as of May 3, 2019 pursuant to an order of the Appellate Division, First Department which also noted Mr. Bailey’s professional misconduct in the State of New Jersey. See *Matter of Bailey*, 177 A.D.3d 1079 (1st Dept. 2019).

restricted her access to the garbage bins and/or removed a garbage bin in the courtyard that the Building shares with two adjoining buildings (Tr. Vol. I, pp. 207-212), contradicted by video evidence showing the garbage bins and Ms. Sabin and another tenant-witness freely entering the courtyard (Res. Ex. J7, K6); Ms. Sabin's generally evasive demeanor while providing testimony; testimony by Thomas Dukleth stating that the Building's front entrance door lock "was fine" after it was broken by another tenant-witness, Remigiusz Chlapek (Tr. Vol. I, p. 65), and Mr. Chlapek refusing to answer whether he broke the front door by invoking his Fifth Amendment right against self-incrimination (Tr. Vol. III, pp. 442-443); Mr. Chlapek's general demeanor while providing testimony, his conflicting testimony, his and his guests' past and ongoing criminal conduct within the Building, the ongoing criminal investigations into the same, and the fact that there is an Order Of Protection in favor of Respondent against Mr. Chlapek; testimony by Mr. Beckwith claiming that Respondent has engaged in harassment by commencing a "non-primary residence" holdover proceeding against him, despite the fact that documentary evidence supports Respondent's good faith belief that Mr. Beckwith resides elsewhere with his wife, Amy-Beth C. Gartrell (misspelled as "Amy Beth Cartrell in Volume II of the Transcript) (Res. Ex. L8, L10, L11). (Additionally, after conclusion of trial, Mr. Chlapek has twice refused access to DOB inspectors, and Ms. Sabin has been recorded twice ripping a DOB notice regarding inspections from the Building's vestibule.⁷)

Further, as advised above, Respondent's current inability to legally and safely restore the facilities that were illegally installed more than 20 years ago—for which the DOB issued violations and required removal of—does not constitute harassment under NYCAC § 27-2093(a).

⁷ Whereas these events occurred after trial, Respondent respectfully requests permission to submit evidence of these events pursuant to §§ 1-46(c) and § 1-52 of Title 48 of the Rules of the City of New York ("RCNY"). Notably, Mr. Chlapek's refusal to allow DOB inspectors access into his room on October 14, 2025 and 21, 2025 is a matter of public record.

Respondent was required to remove these illegal facilities by the DOB in order to certify correction of the 1998 and 1999 violations; and Respondent had plans prepared and filed with the DOB to reinstall these facilities legally prior to even applying for the CONH; yet Respondent has been unable to reinstall these facilities due to the Building's structural instability—for which temporary shoring was required to be installed at the ground and first floors in order to stabilize the Building, and for which temporary showring needs to also be installed at the Building's upper floors in order to effectuate “permanent repairs” (Tr. Vol. V, p. 809).

Accordingly, Petitioner fails to prove by a preponderance of the evidence that Respondent deceived or mislead any lawful occupants, as alleged in the Petition.

C. Petitioner's Allegation That Respondent Conducted Work Without A Permit

Petitioner alleges that Respondent engaged in “work without a permit, demolishing the floor and ceiling to the beams in non-occupied units, causing gutted areas to be open and exposed to units below or above it or on that floor affecting the safety of tenants; [s]tripping such areas of fire-retardant material creating a fire hazard affecting the occupants' safety.”

As a threshold matter, Respondent's witness, Sebastian Sztukowski, P.E., testified at length refuting the claim that a “work permit” was required to perform the probing in question—which was done under the direction and supervision of the DOB Forensic Engineering Unit (Tr. Vol. V). Additionally, on April 7, 2025 Respondent's architect, Shiming Tam, R.A., submitted a letter to the DOB explaining that “no fire-rated or structural assemblies were disturbed,” and demonstrating that the removal of materials from the ceiling did not require a permit (Res. Ex. F6). Respondent also showed that, after initially issuing violations for “work without a permit,” the DOB withdrew said violations, expressly stating that “no work permit was required for the probes of the non-fire-rated assemblies, as long as the probes remained within the limits of RCNY 101-14 (Res. Ex. G9).

As to the violations that Petitioner issued to the Building on July 3, 2025, for “broken or defective” floor, wall and ceiling surfaces, and “missing firestopping material,” in five (5) vacant rooms, not only were these violations issued four (4) months after the instant proceeding was commenced and are, therefore outside of the inquiry period, they also do not involve any lawful occupants nor space occupied or used by any lawful occupant. See *Dep’t of Hous. Pres. & Dev. v. Havriliak*, OATH Index No. 1135/05 (Jan. 1, 2007) (finding that Petitioner failed to meet its burden to demonstrate intentional harassment where HPD violations were not for space occupied by lawful occupants). Of primary relevance is the fact that no HPD violations were issued to the Building at all between the time that the Owner purchased the Building and July 3, 2025—a fact that must be considered in evaluating Petitioner’s arguments.

Most relevantly, however, even if the emergency probing required a permit—despite the DOB’s withdrawal of the violations for “work without a permit”—this does not warrant a finding of harassment since the probing was not performed with any intent to harass, cause tenants to vacate their units, or surrender or waive their rights, or disturb their enjoyment of their units. As demonstrated, the probing was performed to because the DOB required Respondent to stabilize and evaluate the Building in order to establish a plan for and effectuate permanent repairs.

D. Petitioner’s Allegation That Respondent Conducted Demolition Work Without A Permit Causing Dust And Debris To Penetrate Public Areas And Occupants’ Units

Petitioner alleges that Respondent conducted “demolition work without a permit causing dust and debris to penetrate public areas and occupants’ units which affected lawful occupants’ air quality, and informing an occupant who inquired how long he should leave the building during the demolition work which caused the dust that ‘I don’t care if you stay out a year.’”

This allegation is based on the same probing work that Petitioner claims required a DOB permit (which is refuted above). Respondent respectfully reasserts and incorporates the above in response to this allegation.

As to the claim that “dust and debris...penetrate[d] public areas and occupants’ units, while Respondent acknowledges that the workers performing the probing may have allowed dust and/or debris to enter the hallways, Petitioner has presented no evidence of any dust and/or debris having penetrated into any tenant’s room. In fact, it was not disputed that the workers did hang protective sheets outside of the rooms that were being probed. Indeed, upon information and belief, no tenant ever complained to HPD of debris or dust entering their room when the probing was performed. Nor has there been any violation issued for dust or debris. Relevantly, this Tribunal has found that similar allegations of dust and debris entering common areas—or even inhabited areas—as a result of construction work do not constitute harassment without evidence that the owner’s intent was to cause tenants to vacate, surrender or waive their rights. *Dep’t of Hous. Pres. & Dev. v. Scharf*, OATH Index No. 2062/07 at 30-32 (Mar. 31, 2008) (dust and debris in common and inhabited areas, and staircase full of construction debris did not warrant a finding of harassment).

Furthermore, in cases involving similar circumstances, where HPD violations were issued well after the CONH application had been filed, or on the eve of trial, and where the applicant showed that it made efforts to address the conditions, this Tribunal has held that Petitioner failed to meet its burden. See *Dep’t of Hous. Pres. & Dev. v. Haddad*, OATH Index No. 1312/07 (Aug. 9, 2007); *Dep’t of Hous. Pres. & Dev. v. Porres*, OATH Index No. 627/06 (Jun. 16, 2006); *Dep’t of Hous. Pres. & Dev. v. Pascal*, OATH Index No. 626/06 (Apr. 5, 2006). Indeed, in *Haddad*, although the Tribunal credited tenants’ testimony about inadequate janitorial services, violating conditions and general lack of cleanliness in the building, it recommended that the CONH be

granted because the owner-applicant showed efforts to remedy the conditions. See also, *Dep't of Hous. Pres. & Dev. v. Wulliger*, OATH Index No. 782/06 at 12 (May 5, 2006) (applicant rebutted presumption of intentional harassment with evidence of responding to tenant complaints); *Dep't of Hous. Pres. & Dev. v. Weall*, OATH Index No. 457/05 at 12 (Feb. 28, 2005) (even where statutory acts of harassment may have been shown, applicant rebutted the presumption of intent to harass through evidence of repair efforts).

As to the allegation that Respondent told Mr. Hall that he did not “care how long you’re gone” (Tr. Vol. II, 253), based on the reasons set forth above, it is respectfully submitted that Mr. Hall is not a credible witness and has an interest in Respondent’s CONH being revoked (*i.e.*, his belief that Respondent will be willing to pay money for his vacancy).

Finally, Respondent respectfully reiterates Petitioner’s failure to show that any dust and/or debris that was caused by emergency probing work constituted harassment that was intended to cause tenants to vacate, surrender or waive their rights.

E. Petitioner’s Allegation That Respondent Failed To Provide Janitorial Services

Petitioner alleges that Respondent failed “to provide janitorial services...resulting in the occupants having to clean and maintain common areas, community, and sanitary facilities themselves, and failing to clean and remove dust and debris due to unpermitted demolition from common areas requiring occupants to perform the cleaning themselves.”

As a preliminary matter, Petitioner presented no evidence of any complaints made to HPD, much less violations issued for inadequate janitorial service, and Respondent testified that after purchasing the Building he has performed janitorial duties himself, has had a cleaning person routinely service the Building, including the residential common areas, and did not know that the Building requires a full-time janitor (Tr. Vol. VI, pp. 1120-1123). Respondent further testified that

there was no janitor for the Building when he purchased the Building (Tr. Vol. V, p. 860), which was corroborated by a sworn affidavit by one of the owners of the bar that occupied the Building's ground floor (Res. Ex. U) and operated the Building for the former owner.

As stated above, in cases before this Tribunal where it was found that the applicant failed to provide adequate janitorial services, the Tribunal has found that the absence of janitorial services alone, without a showing of intentional harassment by a preponderance of the evidence, does not warrant either denial or revocation of a CONH—especially where the applicant presents evidence of efforts to remedy the conditions.

To be clear, Respondent has never refused to perform janitorial services nor did Petitioner's witnesses allege as much. Moreover, since becoming aware of the requirement to maintain a janitor for the Building, Respondent has retained one. Thus, it cannot be reasonably found that the absence of a janitor for the Building, which precedes the Owner's purchase of the Building, constitutes an act of harassment. Thus, the assertion that Respondent failed to provide a janitor for the Building and, therefore, should be found guilty of harassment warranting revocation of the CONH—without a showing by a preponderance of the evidence that Respondent intended to cause tenants to vacate, surrender or waive their rights—contradicts this Tribunal's precedent. See *Id.*, OATH Index No. 801/08 at 11-13 (Apr. 4, 2008).

F. Petitioner's Allegation That Respondent Sent A Frivolous Notice To A Lawful Tenant Stating That A Holdover Case Will Be Filed Against Him

Petitioner alleges that Respondent served Mr. Beckwith with a “frivolous notice...stating that a holdover court case will be filed against him due to a trumped up non-primary residence claim...causing distress and harassment by serving the lawful occupant's elderly mother at her address, and serving his employer...”

This Tribunal has held that where an applicant is advised by counsel that a lawsuit is based on a “legitimate legal theory that could be pursued,” such a lawsuit is not frivolous and does not rise to the level of harassment. *Dep’t of Hous. Pres. & Dev. v. Kaplan*, OATH Index No. 1246/19 at 17 (Mar. 18, 2021); *Dep’t of Hous. Pres. & Dev. v. Mendoza*, OATH Index No. 556/05 at 5 (Feb. 17, 2005) (“prosecution of a well-founded proceeding would not constitute harassment”).

As advised above, Respondent has commenced a “non-primary residence” holdover case against Mr. Beckwith based on Respondent’s good faith belief that Mr. Beckwith does not reside in or utilize his room as his primary residence, and actually resides elsewhere with his wife, Ms. Gartrell. The reasons for Respondent’s good faith belief were set forth in the notice referenced by Petitioner, including the fact that Mr. Beckwith and Ms. Gartrell own two (2) adjoining properties in Allegheny County, PA (Res. Ex. L11, L12). It cannot be reasonably disputed that Respondent has legitimate grounds to form this belief, and that this litigation is grounded in a legitimate legal theory.

The fact that service of process for the holdover case was made to all addresses that are associated with Mr. Beckwith is neither indicative of harassment nor was intended to harass Mr. Beckwith. Rather, serving Mr. Beckwith at all addresses where he may receive mail was done for the purpose of ensuring that Mr. Beckwith received notice of the holdover petition—as well as to guard against Mr. Beckwith later arguing improper or inadequate service.

Thus, again, Petitioner’s allegation of harassment is without merit.

G. Petitioner’s Allegation That Respondent Told A Lawful Occupant That She Need Not Pay Rent And Refused To Accept Her Rent Payments While Inducing Her To Move Out Of The Building

Petitioner alleges that Respondent told Ms. Sabin that she did not need to pay rent, refused to accept rent from Ms. Sabin, and attempted to induce Ms. Sabin to vacate by “offering assistance

and assisting her to file documents for building lotteries elsewhere, and influencing her to move elsewhere by telling her that a woman should not live in such conditions as are present in the subject building.”

This allegation is misleading at best, and was rebutted by Respondent’s testimony at trial (Tr. Vol. V, pp. 914-917). To wit, Respondent testified that Ms. Sabin had offered to prepay rent at a rate of \$500.00 for ten (10) months, which Respondent advised her he could not accept based on advice from counsel that this would constitute an overcharge under the rent stabilization laws. Respondent also testified that he told Ms. Sabin that he could not accept Ms. Sabin’s offer to pay \$500.00 per month at that time because he did not know what the legal regulated rent for her room was—again based on advice from counsel. Respectfully, it strains credulity to believe Ms. Sabin’s apparent version, that Respondent offered to allow her to reside in the room rent free only to turn around and sue her for non-payment, as this claim simply does not comport with common sense.

In fact, upon advice from counsel, Respondent reduced Ms. Sabin’s monthly rent—from \$500.00 to \$155.56—and registered her tenancy and legal rent with the New York State Division of Housing and Community Renewal (“DHCR”). In other words, had Respondent accepted Ms. Sabin’s proposal to prepay rent for ten (10) months, at \$500.00 per month, Respondent would have been required to refund to Ms. Sabin all of the overcharge, plus statutory interest at 9% per annum, and possibly treble damages. See § 2526.7 of the Rent Stabilization Code (“RSC”).

As to Petitioner’s allegation that Respondent attempted to influence Ms. Sabin to move out of the Building by offering assistance “to file documents for building lotteries,” as advised above, this claim is contradicted by Ms. Sabin’s own text messages to Respondent requesting assistance with “housing lotteries,” and asking if Respondent would be able to help obtain an apartment at The Domino Sugar Factory building.

Accordingly, Petitioner fails to present evidence demonstrating that Respondent harassed Ms. Sabin by not accepting rent that could potentially expose Respondent to overcharge penalties, or assisting her with “housing lotteries” at her own request.

H. Petitioner’s Allegation That Respondent Sent An Occupant A Notice Frivolously Demanding Arrears After Refusing Rent Payments, And Commenced A Non-Payment Seeking Possession Of The Unit Based On Said Arrears

Petitioner alleges that after refusing rent from Ms. Sabin, Respondent sought possession of her room by “frivolously demanding arrears from July 2021 through December 2024...and filing a non-payment court action...”

As discussed above, Respondent vehemently refutes the allegation that he refused to accept rent from Ms. Sabin for the purpose of causing her to vacate, surrender or waive any of her rights. To wit, after Ms. Sabin’s rent was reduced by nearly \$350.00 per month and her tenancy and legal rent registered with DHCR for the first time—both on Respondent’s own initiative--Respondent’s attorneys served Ms. Sabin with a “rent demand” affording her fourteen (14) days to pay the arrears (Pet. Ex. 15). Despite having paid no rent at all for several years, Ms. Sabin never paid the arrears, but rather utilized a “one shot deal” (rent assistance from the City) (Tr. Vol. I, p. 140). Upon the receipt of payment, the nonpayment proceeding was discontinued.

Notably, Ms. Sabin does not dispute owing rent, does not dispute having paid no rent for several years, does not dispute having paid the wrong rent (\$500.00) to the Building’s prior owner and/or operator, and does not dispute that the proceeding was immediately discontinued once the “one shot deal” payment was received (Pet. Ex. 15A). Based on these facts, it cannot be reasonably found that Respondent intended to harass Ms. Sabin within the meaning of NYCAC § 27-2093(a) by seeking arrears from Ms. Sabin. Indeed, this Tribunal has held that similar facts did not rise to the level of a “frivolous” proceeding. See *Dep’t of Hous. Pres. & Dev. v. Bernardi*, OATH Index

No. 416/09 at 33 (Mar. 19, 2009) (nonpayment proceeding was not frivolous where there was a dispute as to the unit's legal rent and sum of arrears).

Based on the foregoing, Petitioner has not established by a preponderance of the evidence that Respondent filing a nonpayment case against Ms. Sabin constituted intentional harassment.

I. Petitioner's Allegation That Respondent Removed A Dumpster Used By Occupants And Failed To Replace Or Provide Ready Access To A Trash Disposal Container

Petitioner alleges that Respondent removed "a dumpster used by occupants for their trash disposal and [failed] to replace and/or provide ready access to a trash disposal – telling lawful occupants that they need to dispose of their trash in the public trash cans on the sidewalk resulting in a summons issued to tenants for using public trash cans."

At the outset, Petitioner has presented no evidence of any "summons" having been issued to any tenant "for using public trash cans." However, even if there were such a summons, the claim that Respondent removed or restricted tenants' access to "a trash disposal" is belied by the video evidence submitted at trial showing two of the tenants, Ms. Sabin and Mr. Chlapek, freely entering the alleyway outside of the Building where the garbage bins are located, and throwing their trash away (Res. Ex. J7, K6).

Accordingly, the allegation of a removed dumpster and/or restriction of the tenants' ability to access the courtyard where the garbage bins are located is without merit and factually baseless.

J. Petitioner's Allegation That Respondent Failed To Provide A Lawful Occupant A Replacement Key To The Building

Petitioner alleges that Respondent failed to provide Mr. Chlapek with "a replacement key to the building front entrance door, causing [Mr. Chlapek] to have to ask occupants for assistance in order to access his unit...or having to climb the fire escape to enter his unit..." As demonstrated at trial, this allegation is simply untrue.

Respondent testified at trial that Mr. Chlapek's and his guests' history of conducting illegal activities within the Building caused grave concern for Respondent—namely that the purpose behind Mr. Chlapek's multiple claims of having lost his key, despite the fact that Respondent saw Mr. Chlapek with a key during this time, was to obtain extra keys that Mr. Chlapek would be able to distribute to individuals who are not lawful occupants, and who would also engage in illicit and illegal activities in the Building (Res. Ex. J20, J21; Tr. Vol. VI, pp. 987, 1134-1135, 1141-1142). In fact, video evidence that was permitted to be admitted at trial demonstrates that Mr. Chlapek did have a key to the Building's front entrance door at the time that Petitioner alleges he had none.

Notwithstanding Respondent's serious and credible concerns, however, he did provide Mr. Chlapek with multiple replacement keys for the Building's front entrance door.

Moreover, further undercutting Petitioner's claim that Respondent intended to cause Mr. Chlapek to vacate, surrender or waive his rights, is the fact that both Mr. Chlapek and Respondent testified that Respondent graciously hired Mr. Chlapek for various odd jobs, agreeing to pay Mr. Chlapek for his work and/or partially waive his arrears (Tr. Vol. III, p. 430; Tr. Vol. VI, pp. 1132-1133). At a minimum this fact casts doubt on and rebuts any presumption of harassment.

Based on the foregoing, Petitioner has not met its burden to demonstrate by preponderance of the evidence that Respondent's conduct toward Mr. Chlapek was intended to harass and/or cause Mr. Chlapek to vacate, surrender or waive his rights to his room.

K. Petitioner's Allegation That Respondent Made Misleading Statements On The Application For The CONH

Petitioner alleges that Respondent made "misleading statements on the application for [the CONH] to support the [CONH], stating that [Respondent] filed an application with the [DOB] for work at the property which would require a CONH, and attaching plans to his CONH application of DOB application No. M00865697-I1 which demonstrates the planned restoration of a kitchen,

a bathroom and shower – failing to finalize the submitted DOB application after obtaining the CONH and failing to restore the specified facilities as represented.”

At the outset, Petitioner’s allegation is grounded in an inaccuracy and/or misunderstanding of the law, and deleteriously omits the fact that the proposed work could not be performed because of the earthquake that occurred three weeks after the CONH was issued. Moreover, even assuming that Petitioner’s allegation is remotely true, Petitioner fails demonstrate that this would constitute harassment under NYCAC § 27-2093(a).

Frist and foremost, Petitioner incorrectly claims—and presents no evidence in support of the claim—that the work that was proposed in Respondent’s application to the DOB, assigned Job No. M00865697, did not require a CONH. In fact, the type of work that was proposed falls squarely into types of alteration work set forth in 28 RCNY § 10-02(b)(2)(iii). Even if Petitioner is correct and a CONH is not required to perform the proposed work, Petitioner fails to demonstrate how the fact that Respondent applied for a CONH constituted harassment and intended to cause any tenant to vacate, surrender or waive their rights to occupy their rooms.

Secondly, it is inconceivable how Petitioner can possibly allege that Respondent’s failure to “finalize the submitted DOB application after obtaining the CONH” constitutes a misleading statement on the CONH application, since Respondent could not have possibly known in advance that he would be unable to finalize the proposed installation of the kitchen, bathroom and shower when he filed the application.

This Tribunal has held that a misrepresentation is material within the meaning of the rule “if it is material to the Department’s determination whether to issue or deny a [CONH].” *Dep’t of Hous. Pres. & Dev. v. Fenelon*, OATH Index No. 1525/04 (Oct. 6, 2004) at 4, *aff’d*, Sup. Ct., Kings Co., Index No. 5111/05 (Kramer, J.). Here, Petitioner has not shown that the issuance of the

CONH was somehow dependent on whether the CONH was required for Respondent to perform the proposed work. And Respondent has shown that its inability to effectuate the proposed work is due to the Building's structural instability, either caused or exacerbated by the earthquake—not because Respondent never intended to perform the work.

L. Petitioner's Allegation That Respondent Made False Statements To The DOB On Application No. M01181265-I1

Petitioner alleges that in filing the application with the DOB to install additional temporary shoring on the upper floors of the Building, which was assigned Job No. M01181265, Respondent falsely reported the “number of occupied units at the building,” and “falsely demonstrate[ed] that common facilities and sanitary facilities which were previously removed and not restored as still ‘existing’...”

As a preliminary matter, Petitioner's allegation that a misrepresentation was made in that the plans filed for Job No. M01181265 showed “common facilities and sanitary facilities which were previously removed and not restored as still ‘existing’,” does not constitute harassment under any section of law cited in the Petition, including NYCAC § 27-2004(48)(a-2). In relevant part, NYCAC § 27-2004(48)(a-2) defines the following conduct as harassment:

making a false statement or misrepresentation as to a material fact regarding the current occupancy or the rent stabilization status of a building or dwelling unit on any application or construction documents for a permit for work which is to be performed in the building containing the dwelling unit of any person lawfully entitled to occupancy of such dwelling unit if such building is governed by the New York city construction codes.

(Emphasis added.)

The allegation that the plans for Job No. M01181265 listed facilities that had been removed on the “existing” drawings is neither a material fact regarding “the current occupancy” or the “rent stabilization status” of any unit. Even if this error is found to be within the definition of harassment,

however, the application and plans for Job No. M01181265 (Pet. Ex. 25B) were prepared by Respondent's engineers, not Respondent (Tr. Vol. VI, p. 1030), and these allegations were directly addressed by Mr. Sztukowski at trial (Tr. Vol. V, p. 818-820). Thus, Petitioner's attempts to ascribe malicious intent to Respondent based on drawings that were prepared by his engineers is not only deleterious, but also simply inaccurate.

It was also not a material misrepresentation for the application for Job No. M01181265 to list the number of occupied units in the Building as four (4) as opposed to six (6). While there were six (6) tenants of record, as Respondent has testified, he believes in good faith that two (2) of the tenants (Messrs. Hicks and Beckwith) do not reside in the Building (Tr. Vol. V, pp. 873, 875). To this end, listing the total number of occupied units as four is accurate—and certainly not a material misrepresentation. Even if the number of occupied units should have been listed as six, however, such a misstatement would be nothing more than a harmless error, not a willful, intentional and knowing misrepresentation of a material fact.

Based on the foregoing, neither the fact that the drawings filed by Respondent's engineers for Job No. M01181265 showed "existing" conditions with facilities that had been removed, nor the fact that the application listed the total number of occupied dwelling units as four, constitutes a material misrepresentation that warrants a finding of intentional harassment.

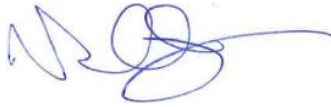
To be abundantly clear, Respondent refutes Petitioner's claim that Respondent engaged in any harassment and/or conduct intended to cause tenants to vacate, surrender or waive their rights, either during the relevant inquiry period or at any time prior thereto, and Petitioner has failed in meeting its burden to demonstrate that Respondent committed any act or engaged in any conduct with that intent.

CONCLUSION:

Based upon the foregoing and for all the reasons presented at the hearing, it is respectfully requested that this Tribunal recommend that:

- (a) this Petition For Rescission to be denied;
- (b) Petitioner's suspension of the CONH be rescinded;
- (c) Respondent's CONH be reinstated; and
- (d) such other, further relief as this Tribunal may deem just, proper and equitable.

Dated: New York, New York
November 6, 2025



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