

OATH ARTICLE 78 APPEALS FILING ATTACHED

1. DOB EXCESSIVE FINES ARTICLE 78

OATH DOB EXCESSIVE FINES ARTICLE 78

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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Index No 2019

Article 78 Appeal

In the Matter of

ATTORNEY MEMO

Petitioner-

For an Appeal, Order Pursuant to

Article 78, 75 of the Civil Practice Laws and Rules

-against-

NEW YORK CITY DEPARTMENT OF BUILDINGS,
CITY OF NEW YORK,
OFFICE ADMINISTRATIVE TRIALS AND HEARINGS

Respondents

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State of N.Y.
County of N.Y.

MARTIN DRUYAN AS ATTORNEY FOR PETITIONER, CHEE FU KHYAN

affirms under the penalty of perjury :

Introduction

1. This Petition appeals the imposition of \$118,600. in fines and penalties against the Petitioner by Respondents for allegedly having 3 apartments without a certificate of occupancy (CO) added to 2 apartments with a CO; for a total 5 apartments: mandating the \$118,600 fines imposed herein.
2. Petitioner admitted (see his Petition) 2 unlawful non CO apartments, and denies the third unlawful non CO apartment.
3. Without the third unlawful non CO apartment the NYC statutory fine is about \$10,000.
4. Petitioner contends that at Respondent OATH hearing and appeal there was a lack of substantial or competent evidence proving the alleged third apartment, Petitioner was denied due process at the original OATH hearing, and at the subsequent OATH appeal, that the OATH hearing was ” irregular” that Petitioner was denied the right to testify and admit photo evidence and other evidence that there was no 5th apartment

5. That Petitioner was told by his ineffective attorney, with the NYC DOB attorney in the hallway, that the summons/case settled for \$10,000. (and again in the hearing with the hearing officer silent in agreement) off the record when the tape machine was not on “don’t worry we will do our best for you, the fine will be reduced to about \$10,000. ”, or words to that effect
6. So that Petitioner did not testify to deny the third apartment, and did not submit photographic evidence of 4 doorbells, and other affidavit proof of only 2 non CO apartments at the house.
7. That Petitioner was never told of a 118,000. penalty resulting from the third apartment so he did not submit all evidence, testimony and photographs at the original hearing to prove there was no unlawful third apartment. Hwe was told “ you are done, we will take care of it”
8. To date OATH has not provided a transcript of the original hearing although demanded/requested by my office in Nov. 2019.

Facts of the Original Oath Hearing and Decision

9. Petitioner received a NYC Dept. Buildings Summons for 3 unlawful apartments in his building, see his Petition herein.

10. Petitioner at all times had denied a third non CO apartment in the house, and brought photos and could testify at all times denying that third apartment in the building.
11. On Aug. 22, 2019 (after 2 adjournments) Petitioner had a hearing at OATH.
12. After that hearing in a written decision OATH found there were 3 partments without certificates of occupancy and 2 with certificates of occupany so that pursuant to statute the NYC statute the penalties would be in excess of \$186,000.
13. On Oct. 10, 2019 OATH in a non signed opinion denied Petitioners appeal that there were not 3 non certificate of occupancy apartments in the house, Petitioner argues then and now that there were only 2 non CO apartments and 2 CO apartments for a total of 4 apartments with the the proper correct statutory fine \$10,00sa.
14. Again, without the finding of the 3rd non CO apartment, there is not a total of 5 apartments in the house, so that the fine/penalty pursuant to statute would be about \$10,000 for 2 tax paid, admitted apartments
15. Petitioner admitted 2 non CO apartments for which the Petitioner paid NYC taxes for since the purchase about 13 years ago totaling tens of thousands of dollars to the City of New York (for which no credit against the fines imposed herein.)

16. The OATH decision finding there was a 3rd non CO apartment triggers the Class 1 violations 28-210.1 of the Administrative Code of the City of New York and multiplies the fines to \$118,000 for a total 5 apartments, 3 non CO apartments, and 2 lawful CO apartments.

17. Petitioner appeals the finding of the existence third apartment which trigger the 5 apartment statutory \$118,000 penalties imposed upon Petitioner; a severe fine that is about ¼ of the total value of the house itself.

LACK OF SUBSTANTIAL EVIDENCE AND
DENIAL OF DUE PROCESS

18. At the hearing as the Petitioner states, the case was conferenced in the hall with the Petitioner, her ineffective attorney rep, and the attorney/rep. from NYC Department of buildings.

19. In the hallway Petitioner states he understood the summons to be settled for a total of \$10,000 from the \$148,000.

20. It was said to Petitioner words to the effect... “don’t worry we will do our best for you, we will reduce the fines to about \$10,000. down from the original amount of \$148,000.”

21. The hearing officer was silent during these DOB statements and the hearing tape recorder was turned on and off when these statements were made.

22. Petitioner believed this hearing was a settlement of the fine to be imposed of about \$10,000.

23. A hearing transcript was requested by my office about Nov. 2019, but OATH has not provided that transcript.

24. The Petitioner does not speak English as a first language and this was his absolute first time at OATH or in any Court.

25. In the hearing room the Dept. of Buildings Attorney ran the hearing, stating “this evidence is good, this is no good” rejecting Petitioner’s evidence of only 4 doorbells, no families living in the house, photos, that would have proved only 2 non CO apartments in the house, and affidavits that Petitioner bought the house “as is” with 4 apartments with kitchens therein, no alterations, .

26. Petitioner’s attorney rep was silent as during the hearing

- a. The hearing officer was mostly silent and conducted the hearing subservient to and at the direction of the Dept. of Buildings attorney representative.
- b. Petitioner testified in a limited manner, as the OATH decision and appeal reflect
- c. That Petitioner testified/admitted he corrected the violations (he thought 2 violations) and paid NYC taxes for a total of 4 apartments

for 13 years since purchase \$130,000 (including the 2 non CO apartments) all in settlement of a \$10,000. fine as was stated to Petitioner in the hallway for a total of 4 apartments.

d. Petitioner thought the house was a legal 4 family house that based upon the agreement stated in the hallway in in the hearing room .

27. Petitioner at the close of hearing was told by the Hearing Officer “you can go home now, we will do our best for you”, (words to that effect) so that he left thinking the agreement in the hall of the \$10,000. penalty would be imposed.

28. Petitioner was shocked and surprised that the fines imposed upon him by a mailed OATH decision was \$118,000. His appeal of that fine was denied

LEGAL ARGUMENT

29. Petitioner was denied due process, a fair and impartial hearing as the hearing officer was silent, abdicated her authority to conduct the hearing to the Dept. of Buildings attorney who told the Petitioner and her attorney the matter was settled for \$10,000, and selected the evidence to be admitted as the hearing officer looked on silent. H

30. The hearing office was silent when it was stated “we will do our best for you to reduce the fines” , and her statement at the end “you can go now.. we

will do our best for you” after the hallway conference created agreement and acquiescence in the Petitioner and his attorney’s minds that the fine would be reduced to \$10,000 as was stated to Petitioner in the hallway.

31. There was evidence of the third floor as having “an additional kitchen with a gas stove, etc.” This does not prove a 5th apartment, or a separate apartment on that floor as there is no door, no separate entrance. That the statute imposes fines for non CO apartments only, not for rooms or kitchens.

32. Petitioner was not given an opportunity to contest the proof of the third apartment, the OATH hearing was conducted so that the proof he was permitted to offer and did offer was not a good defense to the summons, and the fines of \$118,600 for the 3 alleged non CO apartments which Petitioner denied, see below. .

33. The Petitioner’s proof that there was no third apartment, no 5 total doorbells, no 5th door, the photos, Petitioner was told in the hearing room “that was no good” so that proof was not in evidence as the DOB attorney stated and the hearing officer agreed, either on or off the hearing record, which has not been provided to date although duly demanded by Petitioner’s attorney.

34. Petitioner argues that the additional gas stove does not prove the existence of an additional third apartment : a single family, religious, may wish to have 2 stoves or kitchens.

35. Petitioner testified he admitted the 2 non CO apartments, that he paid a total of \$10,000 yearly for 13 years (\$130,000) that NYC Dept. Finance, and NYC Housing Urban Development knew of with forms filed, all as part of a settlement that he thought was the purpose of the hearing.

36. The necessary proof of a two families, 2 apartments on that third floor, the 3rd total apartment was lacking at the OATH hearing. There is only 4 doorbells, 4 door no proof of a total of 5 families residing there, or of any families residing therein.

37. Given the lack of substantial proof /evidence the finding of the 3rd apartment was an error, and thus the \$118,000. Fine wa also an error.

38. The lack of a hearing transcript is suspicious, especially in light of the enormous high amount of a \$118,000. penalty representing about ¼ of the total value of the 2 family house in Queens, the irregular and unusual nature of the hearing stated above.

39. A LACK OF REQUIRED IMPARTIAL HEARING, DUE PROCESS

40. The facts above in total violates Petitioners right to a lawful impartial hearing at OATH with the opportunity to present all evidence, photos and

testimony that there was no third apartment without a CO, no total of 5 apartments at the house, a lack of proof by the required standard of a preponderance of evidence.

41. This is especially true in light of the \$118,600 enormous amount of the penalty imposed against Petitioner: the hearing officer should have taken steps to conduct a fair impartial hearing with all evidence.

42. So the fine should have been imposed only of \$10,000 (as was agreed and stated to Petitioner in the hall, and apparently agreed in the hearing room by the hearing officer's silence and the reps and Petitioner during the hearing in the room).

43. Conclusion

Based upon the above, the Petition should be granted as there was not substantial evidence of the 3rd apartment triggering the \$118,000. fines, there was an apparent agreement that the fines would be about \$10,000, the hearing was conducted in an irregular manner, denying the Petitioner due process, with the NYC DOB conducting the hearing with the hearing officer's silent approval, no transcript of the hearing for this enormous \$118,000. which demands a hearing that is fair, impartial, based upon substantial evidence as the NYC and NYS law provides and to which Petitioner was entitled.

Where fore the Petition should be granted and the \$118,000. Penalty vacated as there only were 2 additional non CO apartments with 2 lawful apartments for a total of 4 apartments with the hallway agreed upon fine of \$10,000. As the petitioner states.

Dated:

New York, N.Y

Dec. 28, 2019

Affirmed under the penalty of perjury
Jan. 4, 2020.

MARTIN DRUYAN ESQ.
Attorney for Petitioner

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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Article 78 Appeal

In the Matter of

Petitioner-

Petition

For an Appeal, Order Pursuant to
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-against-

NEW YORK CITY DEPARTMENT OF BUILDINGS,
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, Petitioner, being duly sworn deposes and says:

Introduction

I wish to appeal the total \$118,000. in fines imposed upon me by Respondents NYC Dept. Of Buildings after a hearing and appeal decision at NYC Office Administrative Trials (OATH) because I did not have 3 additional unlawful apartments in my building as NYC DOB alleged and OATH decided I did.

1. Without the third apartment alleged by DOB my fines would total only 2 non certificate occupancy apartments at \$2,500. each totaling \$5,000.
2. With the third apartment pursuant to NYC statute my fines total \$118,600 OATH decided.
3. The OATH administrative hearing and decision lacked substantial evidence of the third apartment, violated my due process rights.

4. It was unusual and irregular as my testimony and photo evidence of only 4 doorbells /4apartments was not admitted into evidence along with other evidence I had.
5. There were breaks in the hearing when I was told “the case is settled, not to worry, I would be treated fairly, we will do our best for you, for about \$10,000 fine” : so the photos and my other evidence were not admitted into evidence at the hearing.
6. To date I have requested a transcript of the hearing which OATH has not provided me to date. There are other irregularities, see below.
7. At the hearing NYC Dept. Buildings did not prove by a preponderance of evidence that I had these 3 “additional apartments” exist in my building.
8. I had only 2 additional apartments in the building, not 3, as I admitted at the hearing, and paid tax at all times since my purchase in about 2006.
9. Again, without that third apartment I pay only a fine of \$10,000. (\$5000. times two non certificate of occupancy apartments) not the fine imposed of \$118,600.
10. That is the basis of my petition herein that I only pay \$10,000 in fines for 2 apartments without certificates of occupancy, that the OATH decisions that I had 3 non certificate occupancy apartments for a fine of \$118,600. be vacated as lacking substantial evidence.
11. FACTS AND ARGUMENT; LACK OF SUBSTANTIAL EVIDENCE OF THE THIRD APARTMENT, VIOLATION OF MY DUE PROCESS RIGHT TO A FAIR HEARING, MY RIGHT TO PRESENT EVIDENCE
12. I do not speak English well., it is my second language.
13. I appeared at the OATH “hearings” once alone (adjourned) then with an attorney representative who failed to effectively represent me. This summons was my first time at OATH or at any court for any hearing or court proceeding.

14. My first hearing was adjourned as the Hearing Officer requested the Inspecting Officer be present. The second hearing was adjourned as the Inspecting Officer left before my case was to be heard about noon.
15. At the third hearing Aug. 22, 2019 the NYC Dept. Buildings attorney/representative ran/conducted the hearing and the negotiations and settlement as the OATH hearing officer was mostly silent. There were at least 2 conferences when we went in and out of the hearing room with that NYC DOB representative/attorney, me and my attorney/representative negotiating and talking about the case “settling the fines to about \$10,000 “ as I understood, that was told to me in the hallway.
16. So the short hearing was done quickly I thought as part of the settlement.
17. In the hallway I understood it that it was agreed that the estimated \$100,000. original fines would be reduced to about \$10,000. as I had proof that there were only a total of 4 apartments in the house, 2 with proper certificates of occupancy and 2 without (although I did not know this violated NYC statutes at the times of this violation). There was no 5th apartment in this house ever.
18. My Evidence Was Not Admitted
19. I had photos that there were only 4 apartments: 4 doorbells. I admitted I paid NYC real estate taxes since I purchased the building for 4 apartments in 2006 which I thought was legal and proper for 4 apartments: which I tried to explain at the hearing but was denied the right to do so by the DOB/attorney who ran conducted the hearing, with the hearing officers silent agreement.

20. My proof of 4 apartment doors, 4 door bells, 4 electric meters, 13 years of property NYC tax paid for a total of 4 apartments; no substantial proof of 5 apartments at all .
21. I was told in the hallway by the DOB representative and my representative that I ” did not have to worry, everyone was doing their best to help me, we will do what we can to reduce the fines, ...that we did not have to use the photos, or my explanations”, or words to that effect, that the “fines would be reduced to about \$10,000.”
22. In the hearing room when we returned to the hearing room, the hearing officer was silent and looked on with the tape recorder off as I recall. The NYC DOB rep/attorney was in charge repeating the words “ everyone was trying to be fair to me as they could, that the summons would be worked out as best as possible, the fines would be reduced ” .
23. My understanding is that the fines would be reduced to about \$10,000.
24. In response to those words told to me by the hearing officer, my representative and the DOB representative I relied and trusted the OATH hearing to be fair to me to reduce the fine to about \$10,000 as was agreed in the hallway.
25. The NYC/DOB attorney rep proceeded to go through my photos and evidence in the hearing room, saying “ this is good, this is no good “ to my proof. He limited my proof and evidence and the hearing officer was silent as he spoke without the tape recorder running.
26. My Attorney Representation Was Ineffective
27. My attorney /rep. was very pregnant and told me she wished to go home, and that she wanted to leave, we would not adjourn again. So I thought in total the fine was settled for \$10,000 so she/we could go home. She told me representing clients at OATH was easier for her than past criminal practice.

28. I realize now she was thought the case was settled for \$10,000. in the hallway.
29. When I protested the \$118,000 fine that surprised me weeks later, that was supposed to be \$10,000, she stated “ it was a better fine than about \$146,000. ”
30. At OATH in the hallway, she told me and led me to believe the case was settled for \$10,000
31. She did not realize and failed to understand that there was no settlement, that the violation and evidence of the third apartment was essential to my truthful defense of the charges herein; that if the third apartment was proved at OATH rules (by the NYC DOB primie facie summons/DOB Issuing Officer (I/O)) the fine was a mandatory \$118,000 pursuant to the NYC Administrative Code and rules of OATH.
32. So she did not apparently understand or argue that I had the evidence that there was no third apartment, so that my proper lawful fine was only \$10,000 for a total of 4 apartments, not the total of 5 alleged.
33. For the reasons stated herein her representation was ineffective.
34. Other Evidence Was Not Admitted to Help Me
35. I had corrected the violations as to all alleged apartments with NYC DOB prior to the hearing but this did not reduce my fines as I thought it would, nor did it settle the case.
36. Since 2006 I had paid NYC property taxes on what I thought was legal 4 apartments/families 2006, about \$10,000. yearly for 13 years, which was not admitted into evidence at the hearing for proof of no 3rd apartment, or mitigation/credit against any fines imposed upon me, about \$130,000 in excess taxes; in 2019/2020 NYC Dept. Finance is still billing me for 4 apartments, even after I eliminated and cured and NYC DOB inspected I have only 2 apartments at present. .

37. I had 7 affidavits that I purchased the house with the 4 apartments one with 2 kitchens “as is”, that I made no alterations with the non certificate apartments/or kitchens.
38. That proof was also not admitted at the hearing as evidence to reduce the number of apartments to 4 : 2 with CO, 2 without CO as the hearing officer should have ruled with a proper total fine of about \$10,000, not about \$118,600.
39. Note the statute/summons and \$118,000 is for a total of 3 non certificate occupancy /with 2 lawful apartments, not for the number of rooms or kitchens.
40. Again, There was no substantial proof there were 5 families or any families living in these apartments, especially given all issues raised at the hearing as discussed in the hallway.
41. Again, I thought that my short testimony as the NYC DOB directed and the hearing office agreed, that my proof was good at the hearing to settle and reduce the fine from the original about \$148,000. to about \$10,000 which we agreed in the hallway to for the 4 apartments (2 with certificates of occupancy, 2 without, no third apartment; again 4 doors, 4 electric meters, 4 doorbells, etc., as stated herein).
42. Again, there which my evidence which proved no third apartment, and which I could explain but was denied the opportunity at the OATH hearing .
43. My attorney rep and the Hearing Officer/Judge looked on in silence as the NYC/Dob rep talked and ran the hearing. I testified/talked a little bit in response to questions. No transcript of the hearing was provided to me to date.
44. Again, At the OATH hearing I was not allowed to testify that there was no 3rd apartment without a certificate of occupancy, that I purchased the house in 2006 and listed it with NYC HPD and NYC Dept. Finance as a 4 family house, paying a total of \$130,000. In

taxes for the 2 non certificate occupancy apartments which was never refunded to me, nor credited against the fines herein. Dept. Finance is still billing me for 4 apartments in 2019, 2020.

45. The hearing ended and I left thinking my fine would be reduced from about \$145,000 to about \$10,000 settlement as was told to me in the hallway, and to which I understood and agreed as the settlement I would pay, and to which I, my rep., and the Hearing Officer/Judge was silent so that I thought and it appeared she agreed to this when we had re-entered the hearing room.
46. When the Hearing Officer /Judge said “anything else,you can go home now “ I was silent as I understood and all present had agreed the total penalty would be reduced to \$10,000 so I was quiet, as I was happy to have this settlement.
47. At the end the Hearing Officer/Judge stated “ok you can go home, we will take care of this”.
48. Again, at the hearing I was never told, and I was shocked when I received in the mail penalties of \$118,000 a great deal of money, a lifetime of money about 1/10 of the total value of this house when I did not have a total of 5 apartments in the house.
49. In 2019 my present attorney Martin Druyan asked me questions and I told him how this happened to me at the OATH hearing.
50. The appeal decision at OATH Oct. 10, 2019 p.1 states this “Respondents representative did not dispute the IO (investigating Officer) allegations on the summons and offered proof of correction. ”
51. Again, based upon the statements of the Hearing Officer, and DOB and my representative I trusted and relied that there was a settlement, ... “I would be treated

fairly, the hearing would be worked out as best as possible for me, not to worry, the fines would be reduced “, so I did not testify much, or talk/ state there were only 2 additional apartments for a total of 4 apartments, no third apartment in the building, only 4 doorbells, 4 gas meters, 4 doors, that I had photographic proof of only a total of four apartments there, not 5.

52. There was no testimony anyone at all was living or present in any of these apartments, no proof of 5 apartments with families or even 4 families living there or of 5 doorbells or mailboxes.

53. The additional kitchen/stove in one apartment was preexisting when I bought the house as my affidavits stated, they were not admitted into evidence as I describe in this Petition. Note that some religious families have an extra kitchen/stove in their apartment.

54. The statutory penalties are for apartments, the statute does not impose fines for rooms, kitchens, families etc.

55. The OATH appeal decision reflects my lack of proof at the hearing (Appeal Decision p. 3 3rd paragraph) “respondent did not dispute the IO allegations, asserting merely he had been paying taxes on the property as a 4 family dwelling” , and the lack of substantial proof to find there were 5 apartments in the house. .

56. I did not contest the IO allegations as I was not permitted by the hearing officer to

57. This was true since about 2006 all times the City knew by way of the NYC Property taxes that I thought this was a legal 4 family house, and those were the taxes I paid and the City accepted. I never paid taxes for a 5 family house.

58. It was my understanding that N.Y. City including the Dept. of Buildings accepted the taxes and knew for about 10 years, and approved the house as a legal 4 family house, that was one reason the fine was reduced to \$10,000 in the hallway and at the hearing
59. Again , it was never told to me at hearing, that the law mandated statutory penalties that I had to pay for a total of 5 apartments would be imposed upon me would total \$118,000.
60. Again, I had corrected the 2 violative apartments as the hearing/appeal reflect.
61. I never knew at the hearing that it was important and essential to me to contest that 3rd apartment DOB alleged to avoid \$118,000 in penalties which the Oct. 10, '19 OATH decision states are mandatory once that third apartment is proved by the IO and the summons presented at OATH
62. After asking me questions, these are all facts as I recall them now.
63. But for the statement of the DOB rep., and my non attorney rep. that I would be treated “fairly, not to worry, etc..., the fines would be reduced.. to about \$10,000. ” I would have presented proof of the alleged unlawful 3rd apartment: again, “sufficient to refute the IO’s affirmed statement ”. See Oath Appeal p. 3, 4th paragraph. s
64. My attorney has written for Hearing transcript from OATH to file with this appeal, but OATH has not provided the transcript of my hearing in response to our requests. My attorney tells me that is unusual/ and irregular also.
65. WHEREFORE, For the reasons stated herein, and as my attorney argues I request the appeal/Petition be granted, that the penalties at OATH of \$ 118,000 be vacated the fine reduced to \$10,000. and this Petition be granted as there is a lack of substantial evidence to support the OATH findings, I was denied due process at the hearing as it was as conducted, my counsel was ineffective, and my testimony, photos, and other evidence of

no third apartment was not admitted, the case was not settled for \$10,000 as was told to me in the hallway, there was a lack of substantial evidence of the alleged, non existing third apartment, I have not been provided with a hearing transcript to date all as stated

66. above.

Dated :
Dec. 26, 2019
New York, N.Y.

VERIFICATION

State of NY, County of NY

being duly sworn deposes and says : I have read the Petition above,
It is true and correct based upon facts of my personal knowledge, or upon facts in my papers I
verify its contents and true and correct, all facts therein are true or upon information and belief.

X