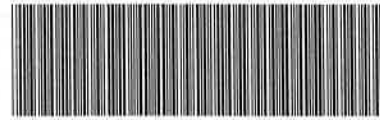




**THE CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD**

HEARING LOCATION:
Environmental Control Board
66 John Street
10th Floor
New York, NY 10038
(212) 560-6270



12510366147219F6C81

Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 035091007R (1 NOV)
Hearing Date: July 10, 2014

To: GREY FAMILY PROPERTIES L.P.
740 ST NICHOLAS AVENUE
NY, NY 10031

City of New York v. GREY FAMILY
PROPERTIES L.P.

Total Civil Penalty: \$0.00

1 Notice(s) of Violation (NOV(s)) was/were issued to the Respondent. On the record before me, and upon the Further Findings of Fact/Conclusions of Law stated below, I find as follows and, where applicable, order payment and compliance.

NOV: 035091007R
PLACE OF OCCURRENCE: 738 ST NICHOLAS AVENUE MANHATTAN
DATE OF OCCURRENCE: 03/13/2014
ISSUING OFFICER/AGENCY: 1807 DOB
ECB CODE: B102
CHARGE: AC 28-301.1
DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 035091007R AC 28-301.1

The Issuing Officer cited the Respondent for a failure to maintain building in code-compliant manner. Representing the New York City Department of Buildings was Mr. Michael Burns. Inspector Cirillo, the Issuing Officer, was also present.

Mr. Christian Hylton, Esq. and Mr. Jeffery Seiden, Esq., the authorized representative for the Respondent Grey Family Properties LP, appeared before me and were joined by Ms. Ramona Grey-Harries and Mr. Maurice Grey, the managers of the property.

Inspector Cirillo testified that he arrived at the cited location at night and needed a flashlight to see what had happened. Apparently part of a retaining wall collapsed onto a lower grade property. Inspector Cirillo was not there for the collapse but did see the aftermath. Inspector Cirillo testified that he did not know where the property boundary line was. Furthermore, I find that he speculated as to where the debris fell from.

Ms. Grey-Harries and Mr. Grey both credibly testified that the retaining wall that fell was wholly on the lower grade premise's property. A survey in evidence confirmed this testimony.

Mr. Burns argued that (1) if the Respondent receives a benefit from the wall then they are responsible, and (2) dirt and land from the Respondent's property had fallen onto the lower grade premise's property.


Mr. Hylton and Mr. Seiden presented credible evidence that the cited retaining wall was built for the lower grade property's benefit and built after the Respondent's property was built; and that the retaining wall lies entirely on the lower grade premise's property.

Mr. Hylton and Mr. Seiden cited NYC Administrative Code §28-305.1.2 which reads, "Structures located entirely on one property. Where such retaining walls, partition fences or other site structures, or portions thereof, are located entirely on one property, the owner of such property shall be wholly responsible for the proper maintenance and repair of the retaining wall, partition fence or other site structure. If, however, the proper maintenance and/or repair of such retaining wall, partition fence or other site structures requires access to the adjoining property, the owner of such adjoining property shall allow such access." Mr. Hylton and Mr. Seiden argued that the Respondent, as a neighbor, was only obligated to allow access to the owner of the property with the retaining wall.

Furthermore, Mr. Hylton and Mr. Seiden cited NYC Administrative Code §28-305.2, which reads in relevant part, "when an owner elects to set his or her grade either higher or lower than the grade of an adjoining property at the property line, such owner shall erect, maintain and repair a retaining wall of sufficient height, structure and foundation to support such grade differential, and with proper drainage, in accordance with this code, such that the adjacent property is not impacted, and shall do so at the sole expense of such

owner and entirely on the property of such owner without access to the adjoining property.”

I find that the retaining wall lies entirely on the lower grade premise's property and not on the Respondent's property. I find that the developer of the lower grade adjoining property built the retaining wall for their own benefit. I find that the Department of Buildings failed to identify any benefit to the Respondent's property of that retaining wall. I find that speculation on behalf of the Issuing Officer is insufficient to counter credible evidence. Accordingly, this violation is dismissed.

TOTAL CIVIL PENALTY: \$0.00	
	JUL 18 2014
<small>Thu Jul 2014 07/10/14 14:53:34</small>	<small>Control 2</small>
Peter Hort, Administrative Law Judge	07/10/2014 Date

**PAYMENT DUE WITHIN TEN (10) DAYS
READ BACK OF THIS ORDER – PROTECT YOUR RIGHTS**