

Matter of City of New York

2023 NY Slip Op 31772(U)

May 15, 2023

Supreme Court, Bronx County

Docket Number: Index No. 806711/2023E

Judge: Andrew Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 4**

In the Matter of the Application of

THE CITY OF NEW YORK,

Petitioner,

Decision and Order

Index No. 806711/2023E

**FOR A COURT ORDER TO CONDUCT AN
ADMINISTRATIVE SEARCH UPON A PROPERTY
LOCATED IN BRONX, NEW YORK**

The following papers, numbered 1-2 were considered on the Warrant of Inspection

PAPERS

NUMBERED

Warrant of Inspection, annexed Exhibits, Affidavits, and Supplemental Affirmation.....1, 2

Upon the foregoing papers, the relief sought is granted in part.

Petitioner moves for an Order to conduct an administrative inspection upon the entire premises known as 220 East 134th Street, Block 2319, Lot 98, Bronx, New York (the “Subject Premises”) for the purpose of determining whether conditions in the Subject Premises violate the terms of Title 7 Chapter 7, title 20 Chapter 5, and/or Title 28 of Chapter 1 of the New York Administrative Code (“Administrative Code”), the New York City Building Code, the New York City Housing and Maintenance Code, the New York City Fire Code, and/or New York City Zoning Resolution.

The application is granted only to the extent that: 1) an inspection may be made at the Subject Premises by Department of Building (“DOB”) inspectors and that the following persons are authorized to enter within and upon the Subject Premises to aid and assist at this inspection: any DOB employees or officers, any members of the New York City Fire Department or the New York City Department of Finance, and any members assigned to the Mayor’s Office of Special Enforcement (“OSE”); and 2) the refusal to grant entry or the denial of access for authorized persons to any of the areas within or upon the Subject Premises may be punishable by criminal contempt, or under both New York Penal Law § 215.50 and New York Judiciary Law § 750, subject to fine or imprisonment.)

With respect to the branches of the application seeking authority for the Sheriff, after having announced their presence and purpose, to break open and enter all outer doors and all interior doors, passageways, and obstructions to facilitate petitioner's inspection of the Subject Premises, and for any officers, employees or agents of the New York City Police Department may enter upon the Subject Premises to accompany, aid, or assist at the inspection and any other re-inspection to implement the terms of this Warrant, and to provide for the safety of the individuals authorized to effectuate the inspection at the Subject Premises, these portions of the application are denied, with leave to renew upon a showing of such necessity. The Court takes the situation and the potential dangers involved seriously, however, in the absence any evidence of the exigency of the situation or of the imminent harm to the occupants in the Subject Premises, this Court finds no basis to grant these branches of the petition at this time. Petitioner alleges that they gained access and inspected the premises on November 10, 2022. As a result of this inspection, violations were issued for the very same conditions that petitioner now claims evince the exigent circumstances that warrant the additional authority requested in the petition. However, petitioner's assertion of the exigent nature of the application is belied by the fact that the petitioner had actual knowledge of the conditions since November of 2022, and yet took no further action until four months after it received a 311 complaint on December 5, 2022. Moreover, there are no allegations of any criminal activity at the Subject Premises or that the inspectors' prior attempts to access the Subject Premises were met with threats or violence. Although the Court appreciates that the two attempts made to access the Subject Premises were unsuccessful, denial of access and judicial economy, without more, do not warrant the granting of these branches of the motion. Pursuant to Judiciary Law § 2-b(3), the Court is vested with jurisdiction over this petition and inherent plenary power to assist and support OSE's efforts by fashioning an order necessary for the proper administration of justice. Under the totality of the circumstances, the Court in its discretion finds that the additional relief is not warranted at this time.

Accordingly, it is hereby,

ORDERED, that an inspection be made at the Subject Premises by DOB inspectors and that the following persons are authorized to enter within and upon the Subject Premises to aid and assist at this inspection: any DOB employees or officers, any members of the New York City

Fire Department or the New York City Department of Finance, and any members assigned to OSE; and it is further

ORDERED, that the inspection shall apply to only the Subject Premises; and it is further

ORDERED, that the owner(s), lessee(s), and/or occupant(s) of the Subject Premises, are hereby directed to comply in all respects with this Order and to cooperate and assist with the inspection; and it is further

ORDERED, that the owner(s), lessee(s), and/or occupant(s) of the Subject Premises, and all persons who are their agents and servants or who are acting in concert with them, in no manner interfere with or obstruct access to the official performance of the inspection at the Subject Premises; and it is further

ORDERED, that the refusal to grant entry or the denial of access for authorized persons to any of the areas within or upon the Subject Premises may be punishable by criminal contempt, or under both New York Penal Law § 215.50 and New York Judiciary Law § 750, subject to fine or imprisonment; and it is further

ORDERED, that the inspection may be made between the hours of 7:00 AM and 7:00 PM; and it is further

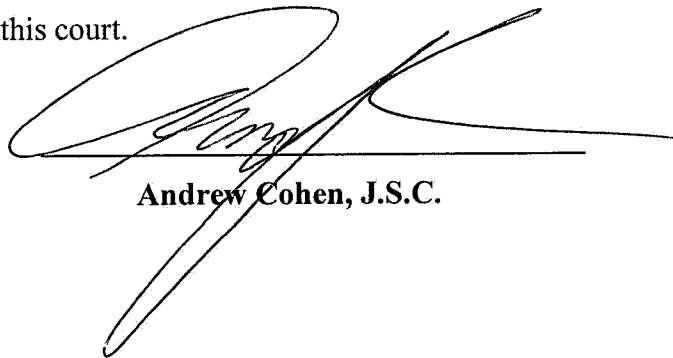
ORDERED, that the Warrant of Inspection must be executed forthwith and not more than thirty (30) days after the date of issuance, and the said right of access to the Subject Premises by the City as ordered by the Warrant shall commence forthwith and shall terminate upon the conclusion of the execution of the Warrant; and it is further

ORDERED, that the branches of the application seeking authorization for the Sheriff of the City of New York to break open and enter all outer doors and all interior doors, passageways, and obstructions to facilitate the City's inspection of the Subject Premises and for any officers, employees or agents of the New York City Police Department may enter upon the Subject Premises to accompany, aid, or assist at the inspection and any other re-inspection are denied with leave to renew; and it is further

ORDERED, that a copy of the Warrant be served personally upon an occupant of the Subject Premises of suitable age and discretion, or if none is available, by posting a copy of the Warrant in a conspicuous place on the premises at the time of the inspection and that either such service shall be deemed good and sufficient.

This constitutes the decision and order of this court.

Dated: May 15, 2023



Andrew Cohen, J.S.C.