CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART B
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LAWRENCE C. SULLIVAN,

Petitioner,

Index No. 6106/2019

- against -

DECISION/ORDER

THE BOARD OF MANAGERS OF THE CHELSEA BROWNSTONE CONDOMINIUM, et al.,

Respondents.
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Present: Hon. Jack Stoller
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion.

Papers	Numbered
Notice of Motion and Supplemental Affidavit Annexed.....	1, 2
Notice of Cross-Motion and Supplemental Affidavit Annexed	3, 4
Affirmation In Opposition	5
Affidavit In Reply	6

Upon the foregoing cited papers, the Decision and Order on this Motion are as follows:

Lawrence C. Sullivan, the petitioner in this proceeding ("Petitioner"), commenced this proceeding pursuant to New York City Civil Court Act §110, seeking an order directing The Board of Managers of the Chelsea Brownstone Condominium, et al., ("Respondents"), and the Department of Housing Preservation and Development of the City Of New York ("HPD"), seeking an order that Respondents correct violations of the New York City Housing Maintenance Code ("the Code") at 346 West 22nd Street, Unit 3, New York, New York ("the subject premises"). Respondents interposed an answer. Petitioner now moves for summary judgment. Respondents cross-move for summary judgment.

No party disputes that the subject premises is a part of a four-unit condominium building ("the Building"); that Petitioner owns the subject premises, which is one of the four units; that, up until February of 2018, the Building had an intercom system that allowed for direct voice communication between Petitioner and visitors to the subject premises ("the original intercom system"); that Respondents, who are the Board the Condominium Association governing the Building, disconnected that intercom system and installed in its place a new system ("the new intercom system") according to which pressing a doorbell at the entrance to the Building rings up a person at a remote location who then calls the apartment the visitors seek admission to, which results in the visitor being seen on a screen before the resident consents to the admission of the visitor; and that, on July 25, 2018, HPD placed a "B" violation on the subject premises pursuant to N.Y.C. Admin. Code §27-2005 for removal of the original intercom system.[1]

Petitioner further avers in support of his motion that he is disabled, to wit, that he suffers from allergies and asthma; that he has visitors to the subject premises who are deaf or hearing-impaired; and that emergency services coming to the subject premises were once unable to use the new intercom system to access the subject premises when Petitioner's disability caused a medical emergency. The treasurer for Respondent avers in support of Respondent's motion that the new intercom system permits Petitioner to provide advance information to the system's command center providing automatic entry for certain visitors, including emergency services,

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[1] A class "A" violation is "non-hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(1); class "B" violation is "hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(2); and a class "C" violation is "immediately hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(3). Notre Dame Leasing LLC v. Rosario, 2 N.Y.3d 459, 463 n.1 (2004).

without requiring the command center to contact Petitioner to admit such visitors. As no party, in opposition to various motions and cross-motions, has disputed any of this factual propositions, the Court deems these factual propositions to be admitted. Kuehne & Nagel, Inc. v. Baiden, 36 N.Y.2d 539, 543-544 (1975), Bank of Am., Nat'l Ass'n v. Brannon, 156 A.D.3d 1, 6 (1st Dept. 2017).

HPD's placement of a violation on the subject premises constitutes presumptive proof that Respondents' disconnection of the original intercom system violated the Code. MDL§328(3), Dep't of Hous. Pres. & Dev. v. Deka Realty Corp., 208 A.D.2d 37, 46 (2nd Dept. 1995), Mackof v. 407-413 Owners Corp., 19 Misc.3d 131(A)(App. Term 1st Dept. 2008). However, such a presumption is rebuttable, See D'Agostino v. Forty-Three E. Equities Corp., 12 Misc.3d 486, 489-90 (Civ. Ct. N.Y. Co. 2006), *aff'd on other grounds*, 16 Misc. 3d 59 (App. Term 1st Dept. 2007)(an assertion that conditions at a premises do not constitute code violations constitutes a defense to an HP proceeding). HPD placed the violation on the subject premises pursuant to N.Y.C. Admin. Code §27-2005, which states that landlords must maintain premises in good repair without specificity as to an individual condition. The New York City Housing Maintenance Code, N.Y.C. Admin. Code §27-2001 *et seq.*, does not actually contain specific requirements concerning intercom systems.

HPD does bear responsibility for enforcement of the Multiple Dwelling Law ("MDL"), however, N.Y.C. Charter §1802(1), and the MDL does contain provisions specific to intercom systems. Petitioner argues that the new intercom system violates MDL §50-a(2), as the statute requires that intercom systems provide a device for voice communication between an occupant

and a visitor. However, MDL §50-a(2) only applies to buildings with eight or more units, and the Building has four units. MDL §50-a(3), by contrast, applies the requirements of MDL §50-a(2) to all buildings, regardless of the number of units in the building, so long as "tenants occupying a majority of all the apartments within the structure comprising the multiple dwelling affected request or consent in writing to the installation of such ... intercom system on forms which shall be prescribed by the department ...." The record on this motion practice does not contain any evidence that tenants occupying a majority of the apartments in the Building requested, in writing, an intercom system in compliance with MDL §50-a(2)("a statute-compliant intercom").

Petitioner argues that the maintenance of the original intercom system is tantamount to the written request for a statute-compliant intercom. However, the plain meaning of the text of the statute controls. Raynor v. Landmark Chrysler, 18 N.Y.3d 48, 56 (2011). The Court cannot conclude that the Legislature deliberately placed a phrase in the statute which was intended to serve no purpose. Rodriguez v. Perales, 86 N.Y.2d 361, 366 (1995). Petitioner's argument effectively deprives of effect the text of MDL §50-a(3) which requires a written request for a statute-compliant intercom. Petitioner essentially evokes the spirit, if not quite the letter, of MDL §50-a(3), to the extent that MDL §50-a(3) concerns evidence of the wishes of the majority of occupants of a multiple dwelling. However, a four-household condominium board, one household of which consists of Petitioner, intuitively requires the other three households, i.e., a majority of the occupants of the Building, to have switched from the original intercom system to the new intercom system, a switch more persuasively evincing the intent of the majority of the

occupants than the passive acceptance of a pre-existing intercom system.

HPD argues in opposition to Respondent's summary judgment motion that HPD has not approved the new intercom system as required by MDL §50-a(4). However, MDL §50-a(4) requires that all "such" intercom systems shall be of a type approved by the department. The word "such" when used in a statute generally refers to the last antecedent in the context. American Smelting & Refining Co. v. Stettenheim, 177 A.D. 392, 396 (1st Dept. 1917), In re Estate of Johnson, 18 Misc.3d 898, 900 (Sur. Ct. Kings Co. 2008), Kruger v. Page Management Co., 105 Misc.2d 14, 31 (S. Ct. N.Y. Co.1980), *appeal dismissed*, 80 A.D.2d 525 (1st Dept. 1981). The only conceivable antecedent to "such" as applied to intercom systems in MDL §50-a(4) is to intercom systems pursuant to MDL §50-a(2) and/or MDL §50-a(3), neither of which apply to the Building, as the Building has less than eight units and as a majority of occupants have not requested a statute-compliant intercom in writing. Accordingly, MDL §50-a(4) does not apply to the Building.

HPD similarly opposes Respondent's summary judgment motion on the ground that Respondent has not obtained approval for the new intercom system pursuant to 1 R.C.N.Y. §42-01(k). However, similar to MDL §50-a(4), 1 R.C.N.Y. §42-01(k) requires municipal approval for intercom systems "installed hereunder." Relative or qualifying words or clauses in a statute ordinarily apply to words or phrases immediately preceding them. Duane Reade, Inc. v. Cardtronics, LP, 54 A.D.3d 137, 141 (1st Dept. 2008). The word "hereunder" is such a relative or qualifying word. Id. at 141-142. The phrases in 1 R.C.N.Y. §42-01 that the word "hereunder" could conceivably refer to address buildings with eight or more units. 1 R.C.N.Y. §42-01(e).

Accordingly, neither MDL §50-a(4) nor 1 R.C.N.Y. §42-01(k) apply to the subject premises.

Petitioner also argues that the new intercom system violates federal, New York State, and New York City laws against discrimination against the disabled. Petitioner provides evidence that he suffers from asthma, environmental allergies, and blood clots. In order to prove a disability according to the federal fair housing law, Petitioner must prove that he has a physical or mental impairment that substantially limits a major life activity. 42 U.S.C.S. §3602(h)(1). The asthma attack that Petitioner described is insufficient to demonstrate a physical impairment that substantially limits a major life activity. Mutts v. S. Conn. State Univ., 242 F. App'x 725, 727-28 (2nd Cir. 2007).[2] New York State and New York City law define "disability" more liberally, however, to encompass a physical impairment resulting from an anatomical or physiological condition which prevents the exercise of a normal bodily function, Executive Law §292(21), or any impairment of any system of the body, including respiratory organs, N.Y.C. Admin. Code §8-102(1)(a), which Petitioner has proven applies to him.

Whether federal, New York State, or New York City law apply, all the statutes would require that Respondent give a disabled occupant of the subject premises a reasonable modification thereof to afford the occupant a full enjoyment of the premises. 42 U.S.C.S. § 3604(f)(3)(A), Executive Law §296(18)(1). Petitioner argues that the difficulty that emergency services had accessing the subject premises implicates his full enjoyment of the subject premises.

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[2] This case analyzed a claimant under a statute other than the Fair Housing Law, but the definition of "disability" according to that statute is identical to the definition according to the ADA, Weixel v. Bd. of Educ. of N.Y., 287 F.3d 138, 147 (2nd Cir. 2002), and the same standard pursuant to 42 U.S.C.S. §3602(h)(1).

However, as noted above, Petitioner does not rebut that the new intercom system permits Petitioner to give advance blanket admission privileges to any emergency services worker, a prerogative that the record indicates Petitioner has not availed himself of.

Petitioner does not otherwise demonstrate how the distinction between an intercom system allowing communication between emergency services and Petitioner himself and an intercom system with an intermediary who can afford emergency services blanket admissions implicates his full enjoyment of the subject premises. Rather, in opposition to Respondent's summary judgment motion, Petitioner avers that the new intercom system required a waiver of privacy that he refused to sign, a non sequitur as regards Petitioner's purported entitlement to a reasonable accommodation. Moreover, the privacy issues Petitioner raises lie beyond the scope of an HP enforcement proceeding. Kirby v. JHB Hous. Inc., 23 Misc.3d 145(A)(App. Term 1st Dept. 2009).

Nor do the disabilities of Petitioner's visitors invoke either federal or New York statutes, which only apply to "occupants" of the housing in question. 42 U.S.C.S. § 3604(f)(3)(A), Executive Law §296(18)(1). Even assuming *arguendo* that they did, Petitioner does not explain how the original intercom system he demands, which required voice communication between Petitioner and his visitors, would accommodate deaf visitors.

Petitioner also moves for summary judgment on the ground that Respondent's removal of the original intercom system adversely affected a common element of the Building as defined by RPL §339-e(3). However, the mandate of the Housing Court is to promote housing standards, New York City Civil Court Act §110, and in the absence of such a dimunition of standards, as

noted above, Petitioner does not state a cause of action with regard to the maintenance of common elements of a condominium building.

Accordingly, the Court denies Petitioner's summary judgment motion and grants Respondent's summary judgment motion. The Court dismisses this proceeding with regard to any issue concerning the intercom system at the Building, dismisses violation #12491747 placed on the Building by HPD, and directs HPD to remove said violation. The Court directs Respondent to correct the remainder of the violations, which include "A", "B", and "C" violations. The Court directs Respondents to correct the "C" violations on or before August 30, 2019; the "B" violations on or before September 27, 2019, and the "A" violations on or before November 26, 2019. To the extent that access is required, the parties may arrange access between themselves. On default, any party may move for appropriate relief.

This constitutes the decision and order of this Court.

Dated: New York, New York
August 28, 2019

HON. JACK STOLLER
J.H.C.