HOUSING CODE ENFORCEMENT IN NEW YORK CITY—ANOTHER LOOK AT AN ADMINISTRATIVE TRIBUNAL

*ALBERT A. WALSH**

Like most early housing codes, the 1967 New York City Housing Maintenance Code was enforceable by criminal, not civil proceedings. An earlier version, which had included civil remedies and procedures as an alternative to criminal prosecution, was rejected by the City Council because it could not agree on parallel utilization of the existing civil and criminal court structures; creation of a new, consolidated housing court, with both civil and criminal jurisdiction; or creation of an administrative tribunal, with the power to impose civil penalties and grant other forms of relief, within the enforcement agency.

It soon became apparent that this critical decision could not be delayed. Housing code enforcement through criminal proceedings was an inefficient and ineffective process, a condition not peculiar to New York City but existent generally in municipalities throughout the nation.[1] For example in 1968, 31,425 code violation cases (out of a backlog of some 150,000 cases) were tried in the New York City criminal courts. After an average delay of more than seventeen months, these cases resulted in an average fine of only $11.47—demonstrably less than the average cost of removing the violations. Not only were these cases overloading the criminal court system, but the deterrent effect of such minimal, long-delayed punishment was negligible if not actually counter-productive. Although the penal law authorized prison sentences for

* Chairman, Housing and Urban Development Committee, The Association of the Bar of the City of New York.

1. *See* Note, *Enforcement of Municipal Housing Codes,* 78 HARV. L. REV. 801 (1965).

serious code violations, this harsh sanction was almost never imposed. Most criminal court judges felt that housing code violators were not true criminals and should not be prosecuted in the criminal courts. Many observers believed that the criminal nature of the proceeding actually hindered effective code enforcement by permitting dilatory tactics and trial delays typical of a criminal proceeding. Lengthy prosecutions considerably delayed correction of code violations.

After the consolidation of five city housing agencies into a single "super-agency," the Housing and Development Administration (HDA) and Mayor John V. Lindsay presented the New York State Legislature with a proposed bill. This proposal was designed to establish a comprehensive code enforcement program which would include the discovery of violations as well as the imposition of sanctions. The bill would authorize administrative as well as judicial proceedings to impose penalties, would provide for the establishment of a penalty schedule based on the nature and severity of the violation and the nature of the work necessary to correct it. The proposed bill also would grant the city power to enforce such administrative penalties as court judgments while providing for both administrative appeal and judicial review of all such determinations. In one of its potentially most effective provisions, the bill also would provide for the collection of landlord penalties directly from the rents of the building rather than by collection of a money judgment through supplementary proceedings.

Under the bill, HDA would have been authorized to serve either a "notice of finding of violation" or an "order to certify correction of violation." The former would have provided an immediate penalty according to the established schedule (up to a maximum of $100 for a single violation and $250 for multiple violations on a single building). The latter would have required specific corrective action and the filing of a certification of completion of such action within a specified period of time; failure to certify, or to provide a satisfactory reason for not certifying, would subject the responsible party to a separate schedule of penalties (up to a maximum of $500). Although a civil penalty and criminal prosecution against the same person could not be based upon the same "finding of violation" or "order to certify correction," the continued existence of the same unlawful condition could provide a basis for criminal action.

By switching the emphasis from punishment to the correction of violations and by coordinating code enforcement with other programs and resources available within HDA (*e.g.*, emergency repairs, problem building evaluation and treatment, rent restructuring, rehabilitation loans, tax

exemption), the Lindsay legislation represented a noteworthy attempt to integrate code enforcement as a primary ingredient in an overall, comprehensive effort to upgrade and maintain the quality of New York City's housing. Unfortunately, legislative suspicion, intense lobbying against the bill by tenant and landlord groups (both of which seemed to feel that the administrative agency would be biased in favor of the other), as well as opposition by large segments of the bar and the judiciary, led to the rejection of the Lindsay proposal and propelled the creation of the present housing court.[2] Significantly, the Association of the Bar of the City of New York supported the concept of an administrative procedure, but not the Lindsay bill. In 1971 it offered its own version of an administrative tribunal, which differed from the Lindsay bill in that the administrative review board, called the "Housing Maintenance Appeals Board," would be located outside of HDA. This approach was not seriously considered by the Legislature.

The 1972 Act did not create a separate, independent tribunal but rather grafted a housing part, with new, flexible powers of code enforcement and civil sanctions, onto the existing civil court structure. The Act decriminalized code enforcement (except in extreme cases), established a graduated civil penalty system; and consolidated into a single court all criminal and civil proceedings involving code violations and other landlord-tenant disputes. Initially, the court did not have full equity powers. However, the Act was amended in 1977 to give its hearing officers the power to "hear, determine and grant any relief within the powers of the housing part in any action or proceeding."[3] This power included the power to issue injunctions and restraining orders, to establish receiverships, and to punish for contempt. The 1977 amendment also expanded the jurisdiction of the court to include all residential codes enforced by municipal agencies. Thus, the court now has the authority to hear not only proceedings for violations of the housing maintenance code but also violations of the city's fire and health codes and portions of the building code.

By granting plenary jurisdiction over all housing related matters to a single court and combining non-monetary remedies with damages and civil penalties, the goal of the 1972 Act and its 1977 amendments was to drastically improve the condition of existing housing. The legislation intended to create a single forum where all parties, landlord, tenant and the city, could resolve all problems involving a particular building in a single,

2. N.Y. CIV CT ACT § 110 (McKinney 1978), enacted by 1972 N.Y. Sess. Laws ch. 982.

3. 1977 N.Y. Sess. Laws ch. 849, amending N.Y. CIV. CT. ACT § 110 (McKinney 1978).

consolidated proceeding. As the Chief Administrative Judge of the civil court stated, "Rehabilitation was to be the new order of the day."[4]

While the creation of a single-purpose forum clearly improves upon the prior system and results in a more equitable resolution of individual housing disputes, the court has almost totally failed to achieve its primary objective of reducing code violations. As Civil Court Judge Leonard N. Cohen said, "the primary function of the new court is the same as the old; rent collection and eviction or court deposits of rent pending final judgments—code enforcement is a secondary consideration."[5] For example, in 1977 there were 425,196 petitions filed in the housing court; 418,236 of which were summary proceedings for non-payment of rent. In fact, even New York City landlord and tenant groups agree that the housing court has not fulfilled its mandate. "Unfortunately, the housing court has been neither an efficient mechanism for the swift collection of rents nor an effective deterrent to housing deterioration."[6]

In a management audit released on February 3, 1979, City Comptroller Harrison J. Goldin said that the housing court was continuing to fight the city's housing problem "in a manner analogous to trying to fill thousands of potholes with eyedroppers... We have found that it views itself as a traditional judicial forum with narrow responsibility and authority, [and] as a result, conditions in a single apartment are argued in court, while scores of violations in the same building are ignored."[7]

Other major assertions of the comptroller's study include:

1. The city does not use the housing court to recover money spent on emergency repairs, for which landlords are billed for work done by contractors hired by the city, or to collect past-due property taxes.[8] Mr. Goldin said that $34.7 million a year was owed the city from these two sources and that nearly one-fourth of the landlords who went into housing court to sue tenants owed money to the city for emergency repairs.

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4. E. THOMPSON, CIVIL JUSTICE IN A DYNAMIC CITY (1974).

5. ABA SPECIAL COMM. ON HOUSING AND URBAN DEVELOPMENT LAW, URBAN HOUSING COURTS AND LANDLORD-TENANT JUSTICE: NATIONAL MODELS AND EXPERIENCE (1977).

6. Gallet & Littlefield, *New York City Housing Court: Revisited,* 9 VERITAS (1978). *See also* Goodman, *Housing Court: The New York Tenant Experience,* 17 URBAN L. ANN. 57 (1979).

7. OFFICE OF THE CITY COMPTROLLER, NEW YORK CITY HOUSING COURT: MANAGEMENT AUDIT (1979).

8. Unfortunately, the housing court does not presently have jurisdiction over the collection of property taxes.

2. Landlords violating the city's housing code are rarely penalized by the court, undermining its potential to deter owners who intentionally allow their buildings to deteriorate.
3. Conditions in the court are "confused and crowded," with lawyers and litigants forced into noisy corridors to try to settle their disputes.
4. Cases often do not get into housing court for several years, forcing tenants to put up with harsh conditions during the interim.[9]

Perhaps now, after six years' experience with the housing court, it is time to stop viewing the problem from the ambitious expectations of 1972 and look afresh at the administrative approach proposed by Mayor Lindsay in 1970, especially given the degree of housing deterioration and abandonment faced by New York City in 1979. I am not suggesting abolition of the housing court, but rather utilizing the court for what it is—a specialized judicial tribunal admirably suited for the resolution of complicated housing disputes. The court is not an efficient mechanism for the processing of thousands of routine code violation cases, nor is it the "one-stop" building treatment center envisioned by its original advocates. However, I am suggesting the obvious and time-tested middle ground: an administrative procedure (similar to the present rent control hearing procedure) within the agency for handling the vast majority of code enforcement cases, and judicial review of administrative determinations and other proceedings, *e.g.*, summary proceedings, receivership, injunction, criminal prosecutions, in the housing court. This would require amendment of Chapter 26 of the Administrative Code of the City of New York to authorize the *Department of Housing Preservation and Development,* to conduct hearings and impose civil penalties for code enforcement violations, as well as amendment of the New York Civil Practice Act and Rules to provide for judicial review of HPD administrative determinations by the housing court and not by the supreme court of the state.

Admittedly, this is a two-step procedure; not the one-stop miracle that we have been seeking for the past ten years. But perhaps it's time to admit that miracles don't happen — at least not in New York City landlord-tenant relations — and an apparently complicated two-step approach may actually be simpler and more workable than the much vaunted comprehensive, consolidated housing court.

This is not to say that another change in just one element of the com-

9. *Id.*

plex housing machinery — code enforcement — will significantly abate the problem of housing deterioration in New York City, or that it will solve all of the endemic problems of the housing court, but it should result in a number of distinct improvements:

1. to the extent that cases can be finally disposed of at the administrative level, it should reduce the present congestion and confusion in the housing court;
2. it should stimulate HPD to "try harder" and to improve coordination and cooperation between code enforcement staff and agency hearing officers;
3. it should increase the utilization and efficiency of HPD's computer system to diagnose problem buildings and identify necessary corrective action; and
4. it should enable, and even encourage, the HPD hearing officer to consider each case in the light of all of the programs and resources available to him.

Administrative determination of code violation cases within HPD would be particularly helpful in the many thousands of cases which involve both rent control and code enforcement issues. Since rent control disputes are presently decided (subject to judicial review) by an administrative procedure within HPD, the related issues could be decided in a single proceeding by a hearing officer who also had the power to order emergency repairs or make rehabilitation financing and/or tax abatement available for the building.

If the primary goal of code enforcement is the correction of hazardous or unhealthy building conditions, then perhaps it's time we learn from our experience and combine the best features of the housing court with the advantages to be gained from an administrative procedure. The least we should strive for is the fair and expeditious resolution of housing conflicts by coordination of the housing court with the city's other housing programs and resources.