



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



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HEARING LOCATION:
Environmental Control Board
66 John Street
10th Floor
New York, NY 10038
(212) 361-1400

Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 000269076X (1 NOV)
Hearing Date: January 16, 2013

To: ARLINGTON CLUB- 1032 LEXINGTON ASSOCAITES
LLC
1032 LEXINGTON AVENUE
NY, NY 10021

City of New York v. 1032 LEXINGTON ASSOC
LLC aka Arlington Club

Total Civil Penalty: \$0.00

I 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: 000269076X
PLACE OF OCCURRENCE: 1032 LEXINGTON AVENUE MANHATTAN
DATE OF OCCURRENCE: 11/29/2012
ISSUING OFFICER/AGENCY: 1160 BAR
ECB CODE: BN29
CHARGE: A.C. 24-227(A)
DISPOSITION: DISMISSED

CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 000269076X A.C. 24-227(A)

Phil Licitra appeared on behalf of petitioner and submitted the issuing inspector's report (Exhibit 1) to charge that respondent had operated or permitted to be operated a circulation device in excess of 42dB(A) in violation of Section 24-227(a) of the NYC Noise Control Code.

Alan Fierstein, in-house acoustic consultant, and Paul Goldstein, managing partner, appeared on behalf of 1032 Lexington Associates LLC aka Arlington Club, the named respondent. Mr. Fierstein testified that: pursuant to the back of petitioner's (Exhibit 1) the noise meter used to take readings had last been calibrated on 12/23/11 and was due to be calibrated on 6/23/12; at the time of issuance, 11/29/12, the meter was more than five months out of calibration; also on the back of the issuing inspector's report states that the weather was clear, but does not state anything about wind conditions. Mr. Fierstein submitted: weather history for Central Park on 11/29/12, taken from the internet (Exhibit A) to show that at time of the readings the wind speed was 8.1 mph with gust speed of 20.7 mph; Meteorological Constraints on Noise Measurements (Exhibit B) stating that "wind speeds over 5 m/s (11 mph) may begin to contaminate noise measurements"; and Community Noise Enforcement for NYC DEP by Rutgers (Exhibit C) stating that "it is generally advised to not conduct sound level measurements when the wind speed exceeds 12 mph unless the manufacturer of the meter specifies otherwise."

Based on the foregoing, I find that the readings taken by petitioner at the time of issuance with the meter that had not been calibrated up to date were questionable and therefore, do not substantiate the charge. Accordingly, this NOV is dismissed.

TOTAL CIVIL PENALTY: \$0.00		
	JAN 22 2013	01/16/2013
Wed Jan 23 01/16/13 13:00:07	Control 5	
Robin Zupnick, Administrative Law Judge		Date

**PAYMENT DUE WITHIN TEN (10) DAYS
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