

CIVIL COURT OF THE CITY OF NEW YORK

Civil Court Directive

Subject: Access Orders

Class: DRP-105

Category: LT-10

Eff. Date: Oct. 17, 1989

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In recent weeks an issue has surfaced in reference to the propriety of beginning an action in the Housing Part (either by ex-parte application or by Order to Show Cause) for the purpose of access to a tenants apartment so as to correct an alleged violation when there is no other pending proceeding in Civil Court. The Appellate Term, Second and Eleventh Judicial Districts, has spoken on the matter in a recent case, Double A Property Associates v. Spears, NYLJ 10/2/89, p. 26, col. 4. In accordance with that opinion the following policy is established:

A) Any attempt by any party other than DHPD to begin a case by Order to Show Cause or ex-parte application seeking access to a respondent's apartment for the purpose of curing alleged violations is to be rejected in the Clerk's Office.

B) If a litigant other than DHPD insists on filing such OSC or ex-parte application, the Clerk is to accept the papers, charge the usual fee of \$25 to begin the action and follow the procedure specified by the Chief Clerk. Fees paid to issue an Index Number in such instances is non-refundable.

C) All Judges are directed to review any such OSC or ex-parte application in light of Double A Property Associates v. Spears, supra.

Dated: October 20, 1989

Jacqueline W. Silbermann
Administrative Judge

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NEW PROCEDURES

It is the determination of the Chief Clerk of the Civil Court that this Directive be implemented as follows:

A) The Clerk is to review any ex-parte application or Order to Show Cause seeking as relief access to a respondent's apartment, commonly called an "Access Order." When that application is made by a party other than DHPD, and when there is no other action or proceeding pending in the Housing Part, that application is to be rejected.

B) If the litigant insists on filing the application, the Clerk is to:

- 1) charge the usual fee of \$25 to begin the action, issue an Index Number and accept the papers;
- 2) inform the litigant that the filing fee will not be refunded, even if the OSC or ex-parte application is not signed;
- 3) submit the OSC or ex-parte application to the sitting Judge for consideration.

C) If the OSC or ex-parte application is denied, the papers are to be kept by the office and not returned to the Petitioner. The Petitioner may make copies of the denial if s/he so wishes.

D) If the OSC or ex-parte application is signed by the Judge, it is to be placed on the calendar for the assigned date.

E) A copy of this Directive is to be kept in the Housing Part Office and should be made available to any Petitioner who seeks to file an OSC or ex-parte application of this type. Anyone seeking further clarification should be referred to Double A Property Associates v. Spears, supra.

Dated: October 20, 1989

Jack Baer
Chief Clerk