

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Matter of Panstar Realty LLC v. New York Teachers Hous. Corp.

2026 NY Slip Op 00622 · No. Index No. 816592/24; Appeal No. 5794; Case No. 2025-04283 · Decided
February 10, 2026

SUMMARY

The Appellate Division, First Department modified an RPAPL 881 access license granted to Panstar Realty LLC, limiting it to installation of overhead protection using needle beams rather than repairs to the respondent's retaining wall and parking lot. The court affirmed the monthly license fee and bond amount, but remanded the respondent's requests for engineering and attorneys' fees for reconsideration under the proper standard.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Scarpulla, J.; Gesmer, J.; Mendez, J.; Hagler, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	February 10, 2026
DOCKET	Index No. 816592/24; Appeal No. 5794; Case No. 2025-04283
DISPOSITION	other
PROCEDURAL POSTURE	Respondent appealed from an order granting petitioner a temporary RPAPL 881 access license, setting the license fee and bond, and declining respondent's requests for engineering and attorneys' fees.
STANDARD OF REVIEW	Review for errors of law and whether the exercise of discretion was supported by the record; the court reviewed the RPAPL 881 access-license determination and related fee and bond rulings.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	New York Teachers Housing Corp. v. Panstar Realty LLC

TOPICS

- real estate
- construction law
- equitable relief
- remedies
- appellate procedure

PRACTICE AREAS

Real estate

Construction law

Civil procedure

Appellate procedure

Remedies

QUESTIONS PRESENTED

1. Whether the RPAPL 881 access license should authorize repairs to the respondent's retaining wall and parking lot after the Department of Buildings rescinded the stop-work order and approved an alternative overhead-protection plan.
2. Whether the \$1,375 monthly license fee should be increased or the matter remanded for an evidentiary hearing concerning the fee.
3. Whether the \$250,000 bond was sufficient to address potential future damages arising from the access license.
4. Whether the respondent's requests for engineering and attorneys' fees required reconsideration under the proper standard.

HOLDINGS

1. An RPAPL 881 access license must be limited to access that the petitioner has a demonstrated need to use. Because the Department of Buildings approved an alternative overhead-protection plan that eliminated the need for repairs to the respondent's retaining wall and parking lot, the license could authorize only access to install overhead protection using needle beams.
2. The \$1,375 monthly license fee was properly imposed and did not require an increase or remand for a new evidentiary hearing.
3. The \$250,000 bond was sufficient to address potential future damages resulting from the access license.
4. The request for engineering and attorneys' fees had to be remanded for a ruling applying the proper standard and assessing factual disputes concerning the parties' conduct and the equities.

KEY QUOTATIONS

“Accordingly, there was no basis for finding that petitioner had the requisite need for an access license for making the repairs” ([*1])

“Accordingly, the issue of respondent's fee requests is remanded for a ruling on the assessment of the factual disputes concerning the conduct of the parties during negotiations for a license, their conduct during the pendency of this proceeding, and a balancing of the equities based on those factual determinations” ([*1])

FACTUAL BACKGROUND

Panstar was conducting a school construction project, and the Department of Buildings initially had a stop-work order requiring repairs to the respondent's retaining wall and parking lot before the next stage of work could proceed. Before the appellate decision, the Department fully rescinded the stop-work order and approved Panstar's alternative plan to install overhead protection using needle beams attached to a concrete slab on Panstar's property, eliminating the need to repair the respondent's retaining wall and parking lot before installing the overhead protection. The respondent sought a higher license fee and engineering and attorneys' fees, but did

not provide evidentiary support for the higher fee or adequately establish the basis for the requested bond-related relief.

PROCEDURAL HISTORY

Supreme Court, Bronx County, granted Panstar Realty LLC's application for a nine-month temporary license to access New York Teachers Housing Corp.'s property. The court imposed a monthly license fee of \$1,375 and required a \$250,000 bond, but declined to award engineering and attorneys' fees. The Appellate Division modified the order to limit the access license to installation of overhead protection using needle beams, remanded the fee requests for reconsideration, and otherwise affirmed.

DISPOSITION

other

REMAND INSTRUCTIONS

Remand for reconsideration and a ruling on respondent's requests for engineering and attorneys' fees, including assessment of factual disputes concerning the parties' conduct during license negotiations and during the proceeding and a balancing of the equities. Limit the RPAPL 881 license to access for installing overhead protection using needle beams; otherwise affirm the order.

CASES CITED

- Matter of Thomas Anthony Holdings LLC v Goodbody, 216 AD3d 538, 539 (1st Dept 2023)
- Matter of Lincoln Spencer Apts., Inc. v Zeckendorf-68th St. Assoc., 88 AD3d 606 (1st Dept 2011)
- Matter of 18 W. 55th St. LLC v Pleiades House LLC, 230 AD3d 990, 991 (1st Dept 2024)
- Matter of 1643 First LLC v 1645 1st Ave. LLC, 224 AD3d 623, 624-625 (1st Dept 2024)

OPINION

PER CURIAM.

Matter of Panstar Realty LLC v New York Teachers Hous. Corp. (2026 NY Slip Op 00622)
Matter of Panstar Realty LLC v New York Teachers Hous. Corp. 2026 NY Slip Op 00622 Decided on February 10, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: February 10, 2026 Before: Kennedy, J.P., Scarpulla, Gesmer, Mendez, Hagler, JJ. Index No. 816592/24|Appeal No. 5794|Case No. 2025-04283| [*1]In the Matter of Panstar Realty LLC, Petitioner-Respondent, v New York Teachers Housing Corp., Respondent-Appellant. Jagiani Law Office, PLLC, New York (Michael N. Jagiani of counsel), for appellant.

Zetlin & De Chiara LLP, New York (Raymond T. Mellon of counsel), for respondent. Order, Supreme Court, Bronx County (Bianka Perez, J.), entered on or about July 8, 2025, which granted petitioner's application pursuant to RPAPL 881 for a temporary license to access respondent's property for a period of nine months; directed a license fee of \$1375.00 per month to be paid to respondent; directed petitioner procure a \$250,000 bond; and declined respondent's request for engineering and attorneys' fees, unanimously modified, on the law, to limit the license to access to respondent's property for the purpose of installing an overhead protection using needle beams, remand for reconsideration of respondent's request for engineering and attorneys' fees, and otherwise affirmed, without costs.

The court erred to the extent it granted the RPAPL 881 license allowing, and issued a directive requiring, petitioner to perform repairs to the retaining wall and parking lot on respondent's property. At the time petitioner commenced this special proceeding, the Department of Buildings (DOB) had a stop-work order in place that required the completion of those repairs prior to any authorization of the next stage of work on petitioner's school construction project.

However, DOB fully rescinded the stop-work order, and it granted approval to petitioner's alternative plan to install overhead protection that used needle beams attached to a concrete slab on petitioner's property, obviating the need for repair of respondent's retaining wall and parking lot prior to the installation of overhead protections.

Accordingly, there was no basis for finding that petitioner had the requisite need for an access license for making the repairs (see *Matter of Thomas Anthony Holdings LLC v Goodbody*, 216 AD3d 538, 539 [1st Dept 2023]; *Matter of Lincoln Spencer Apts., Inc. v Zeckendorf-68th St. Assoc.*, 88 AD3d 606 [1st Dept 2011]), and the license should have been limited to access for the purpose of installing the needle beam overhead protection.

The court properly set a \$1,375.00 monthly license fee (retroactive from March 2023 and continuing for the nine-month access period) based on the \$125.00 monthly fee respondent charges its tenants for the parking spaces. Respondent does not provide evidentiary support for the higher monthly amount it asks this Court to impose, nor does it show that the issue should be remanded for an evidentiary hearing to allow it to offer evidence that it could have previously submitted (see *Matter of 18 W. 55th St. LLC v Pleiades House LLC*, 230 AD3d 990, 991 [1st Dept 2024]).

The court also reasonably concluded that the \$250,000 bond was sufficient to address the potential future damages that might result in connection with the access license, especially in light of respondent's failure to present evidence on this issue.

As to respondent's request for engineering and attorneys' fees, the court did not specifically address the request but implicitly denied the request when it found the parties' remaining

contentions unavailing. In implicitly denying the request, it is unclear whether the court applied the proper standard.

Accordingly, the issue of respondent's fee requests is remanded for a ruling on the assessment of the factual disputes concerning the conduct of the parties during negotiations for a license, their conduct during the pendency of this proceeding, and a balancing of the equities based on those factual determinations (see Matter of 1643 First LLC v 1645 1st Ave. LLC, 224 AD3d 623, 624-625 [1st Dept 2024]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT,
APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: February 10, 2026

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