

NEW YORK CITY
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
ENVIRONMENTAL CONTROL BOARD

BOARD MEETING
PUBLIC SESSION

Training Room 143, 12th Floor
100 Church Street, New York, New York

April 27, 2017

9:20 A.M. to 11:21 A.M.

April 27, 2017

MEMBERS PRESENT:

Fidel F. Del Valle, Esq. - Chair, OATH
Shamonda Graham - Department of Buildings
Joseph Gregory, Esq. - Fire Department
Elizabeth Knauer - Appointed Member
Madelynn Liguori, Esq. - Department of Sanitation
Jorge Martinez, Esq. - Dept. of Health & Mental Hygiene
Russell Pecunies, Esq. - Dept. of Environmental Protection
Indi Savitala - Appointed Member
Thomas D. Shpetner - Appointed Member
Mathew Smith - Police Department

ALSO PRESENT:

Rachel Amar - Special Assistant to the Commissioner, OATH
John Burns, Esq. - First Deputy Commissioner, OATH
Vanessa Caughman - Computer Service Technician, OATH
Kelly Corso, Esq. - Assist. Director of Adjudications, OATH
Fana Garrick - Creative Services Coordinator, OATH
David Goldin, Esq. - Administrative Justice Coordinator, Mayor's Office
Diana Haines, Esq. - Assistant General Counsel, OATH
Vivienne Kahng - Staff Attorney, Appeals, OATH
Susan Kassapian, Esq. - Deputy Commissioner/Hearings Division, OATH
Mark Leeds, Esq. - Special Senior Counsel, OATH
Mariko Matsuyoshi - Data Analyst, OATH
Joycelyn McGeachy-Kuls, Esq. - Administrative Law Judge, OATH
Leemor Peled - Business Integrity Commission
Joanne Rattansingh, Esq. - Assist. Director of Adjudications, OATH
Tynia Richard, Esq. - Deputy Commissioner/General Counsel, OATH
Simone Salloum, Esq. - Assistant General Counsel, OATH
Peter Schulman, Esq. - Assist. Director of Adjudications, OATH
Frances Shine - Secretary to the Board, OATH
Amy Slifka, Esq. - Deputy Commissioner/Hearings Division, OATH
Thomas Southwick, Esq. - Supervising Attorney, Appeals, OATH

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2 (The Board Meeting commenced at 9:20
3 A.M.)

4 MR. FIDEL F. DEL VALLE, ESQ.,
5 CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATIVE
6 LAW JUDGE, OATH: Is there a motion to adopt the
7 minutes of the previous meeting? Before I ask
8 that: Are there any changes, alterations,
9 suggestions, remedies, whatever? Is there a
10 motion then? It's unanimous. They're adopted.
11 I'll ask Deputy Commissioner Slifka to give us
12 her quarterly report on how exciting things have
13 been going at the Hearings Division.

14 MS. AMY SLIFKA, ESQ., DEPUTY
15 COMMISSIONER/HEARINGS DIVISION, OATH: Alright,
16 all of you -- I think most of you are familiar
17 with the report but I see some new faces, so I'll
18 just give you a general idea.

19 So the quarterly review sets forth the
20 number of violations received at OATH, summonses
21 broken down by issuing agency; a quarterly
22 comparison of the summonses received, summonses
23 heard and decisions rendered; a look at the
24 elapsed time from hearing to decision date and a

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2 look at the decision results for each of the
3 issuing agencies; and lastly we look at the most
4 commonly issued violations by agencies. And
5 because we're the Hearings Division, we have
6 included in this report numbers of the health
7 cases that we receive, formerly received at the
8 Health Tribunal, and the DCA cases formerly
9 received at the DCA, Tribunal and the taxi cases.
10 So these are not cases heard by the Board. They
11 don't go to the Board. But we are the Hearings
12 Division, so we thought the report should include
13 everyone. Okay.

14 MR. DEL VALLE: So nobody feels left
15 out.

16 MS. SLIFKA: So let's start. Okay. So
17 summonses received. So for DSNY, you can see that
18 there's a six percent decrease from 119,537 to
19 112,534. For DOB, it's a three percent increase:
20 14,133 to 14,587. DOT had a 38 percent decrease:
21 13,381 to 8,262. Maybe that has to do with
22 weather. Maybe they weren't doing as much with
23 the streets during the wintertime. At FDNY, there
24 was a nine percent increase from 11,083 to

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2 12,061. DEP, an eight percent decrease: 4,025 to
3 3,716. And DOHMH cases that appear before the
4 Board, so those are the types of pest control
5 cases, vendor type cases, etc.; and there was a
6 12 percent decrease. For Parks, there was a 26
7 percent decrease: 1,955 to 1,443. Again, it could
8 be weather related. NYPD, five percent increase:
9 5,264 to --

10 MR. DEL VALLE: The slide didn't pop up.

11 MS. SLIFKA: Oh, I didn't -- that's
12 because I didn't do it. Thank you.

13 MR. DEL VALLE: Oh.

14 MS. SLIFKA: -- 5,264 to 5,520. DoITT, a
15 41 percent decrease: 58 to 34. And BIC, 110
16 percent increase from ten to 21. We always have
17 the biggest increase in BIC -- or decrease.
18 Landmarks, a 30 percent increase: ten to 13.
19 Okay.

20 And then you see the non-Board health
21 cases. So the health cases are restaurant cases,
22 radiation cases, daycare type cases. And there
23 was a decrease from 5,853 to 5,062. And we just
24 took on DCA cases in the third quarter. And you

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2 can see the numbers. It's gone down. It went down
3 in the fourth quarter and it went back up in the
4 first quarter to 23 percent to 4,142. And Vehicle
5 for Hire cases, again you could see the different
6 various -- how it's gone up and down. And then
7 from the fourth quarter of 2016 to the first
8 quarter of 2017, there's been a 2.1 decrease. And
9 these numbers are reporting by summonses. It says
10 summonses received. Okay.

11 Okay. So, the summonses received, we
12 just went over the first quarter, the quarterly
13 comparisons, the first quarter. So, well,
14 summonses received: 109,000 to 112,534. It's a
15 two percent increase. You'll see DOT was a 36
16 percent decrease from 12,989 to 8,262. I'm
17 pointing out the big ones. DoITT, there was a 75
18 percent decrease: 137 to 34. And overall there's
19 been a 1.9 percent increase.

20 So total summonses heard. DSNY, there's
21 been a 64 percent increase: 13,553 to 22,188.
22 DOB, there's been a 38 percent increase: 11,836
23 to 16,343. So, for DOHMH and FDNY: DOHMH is a
24 seven percent increase; FDNY, an eight percent

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2 increase. NYPD for summonses heard, there's been
3 a major decrease: 5,387 to 3,342. DoITT, a major
4 decrease: 730 to 87. And overall in the total
5 number of summonses heard, there's been an
6 increase of 22.59 percent. Okay.

7 And decisions rendered. Well, DSNY,
8 again there's been an increase from 14,672 to
9 19,840. That's a 35 percent increase. DOB,
10 there's been an increase: 7,412 to 11,515; a 55
11 percent increase. Health, there's been an 11
12 percent increase. NYPD, decisions rendered,
13 there's been an increase of 51 percent: 2,171 to
14 3,273. DoITT, a decrease of 85 percent: 399 to
15 61.

16 MR. THOMAS D. SHPETNER, APPOINTED
17 MEMBER: Can you repeat your stats on --

18 MR. DEL VALLE: Which one?

19 MR. SHPETNER: -- you made for the Fire
20 Department? Did they --

21 MS. SLIFKA: For the Fire Department
22 there was a 13 percent increase: 4,123 to 4,676.

23 MR. SHPETNER: Oh, then maybe I misheard
24 you. Excuse me.

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2 MS. SLIFKA: Yeah. And Health, it was an
3 11 percent increase. Okay? And NYPD, a 51 percent
4 increase. And DoITT, an 85 percent decrease: 391
5 to 61. Yeah?

6 MS. ELIZABETH KNAUER, APPOINTED MEMBER:
7 Elizabeth Knauer, Citizen Member. Do you have a
8 sense of why? I mean, it seems like it plays a
9 significant increase both in the cases heard and
10 the decisions rendered overall. Do you have any
11 idea why that is?

12 MS. SLIFKA: Well, there could be some
13 -- the reason could be that our rules have
14 changed; so you get -- your default will be
15 vacated within 60 days without any reason. It
16 used to be 45 days. The 60 days could be causing
17 more cases to be vacated, so more hearings could
18 be one of the reasons or more people are just
19 showing up for hearings, so.

20 MR. DEL VALLE: Or the quality of the
21 summonses is increasing.

22 MS. SLIFKA: Right. So the summonses
23 could be better, better served, things like that.
24 People could be getting the summonses.

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2 MS. KNAUER: That's good news I think.

3 MS. SLIFKA: Yeah. So overall decisions
4 rendered has increased 29.7 percent. Okay. And
5 we're getting 69 percent of the cases are getting
6 out less than ten days and 85 percent are getting
7 out in less than 20 days. Okay. And Tom, you're
8 finally here to see this because you asked for us
9 to give the comparison between last year and this
10 year and I've done it. And you haven't been here
11 for the last two.

12 MR. SHPETNER: I'm sorry.

13 MS. SLIFKA: That's okay. So, overall
14 decisions rendered: In 2016, we had 58.5 percent
15 in violation and 40.7 percent dismissed. So in
16 2017, we've had 53.3 percent in violation and
17 46.2 percent dismissed overall. Okay. And the
18 comparisons for DSNY, we've had 42 percent in
19 violation, 58 percent dismissed in '16. And in
20 '17 it's 34 percent in violation and 66 percent
21 dismissed. DOB, it was 77 percent in violation,
22 23 percent dismissed. In 2017 -- pretty close: 72
23 percent in violation, 28 percent dismissed. DOT,
24 it was 57 percent in violation, 43 percent

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2 dismissed. And 2017, 48 percent in violation, 52
3 percent dismissed.

4 Okay. For FDNY, it was 89 percent in
5 violation, ten percent dismissed. 2017, 90
6 percent in violation, nine percent dismissed;
7 again, pretty close. DEP, 78 percent in violation
8 and then 11 percent dismissed and there were
9 stipulations of 11 percent. And in 2017, 82
10 percent in violation, 12 percent dismissed and
11 six percent stips. NYPD, it was 46 percent in
12 violation, 54 dismissed. 2017, 34 percent in
13 violation, 66 percent dismissed. DOHMH, it was 48
14 percent in violation in '16; 52 percent
15 dismissed. And in '17, it's 60 percent in
16 violation, 40 percent dismissed.

17 For Parks, it was 58 percent in
18 violation, 42 percent dismissed. 2017, 38 percent
19 in violation, 62 percent dismissed. And for
20 DoITT, it was 34 percent in violation, 66 percent
21 dismissed. And in 2017, it was 28 in violation,
22 72 dismissed. And BIC, it was 78 percent in
23 violation, 52 dismissed. And in 2017, there were
24 only four violations. It split 50-50. Landmarks,

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2 a hundred percent in violation for the four
3 violations in '16. In '17, it went to 67-33 for
4 their three violations.

5 So for the non-Board decisions and these
6 are done by charges and not by summons; because
7 most of their summonses have more than one charge
8 on it. They can have three, four, five, six,
9 which is atypical for most of the Board type
10 decisions. So overall, for Health cases, it was
11 60.1 percent in violation, 39.9 percent dismissed
12 in '16. And in '17, it was 60.4 percent in
13 violation, 39.6 percent --

14 MR. DEL VALLE: I just want to clarify,
15 that's per charge or per summons?

16 MS. SLIFKA: Per charge.

17 MR. DEL VALLE: Okay.

18 MS. SLIFKA: Per charge, yeah.

19 MR. DEL VALLE: Alright.

20 MS. SLIFKA: Okay. And for DCA cases,
21 which are also looked at per charge, not per
22 summons: it's been 68.5 percent in violation and
23 31.5 percent dismissed. Okay. And for the taxi
24 cases, which we did per summons and not per

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2 charge, it's 74.1 percent in violation, 25.9
3 percent dismissed. In 2017, it was 62.1 percent
4 in violation, 37.9 percent dismissed. Okay.

5 And your most commonly issued summons,
6 for DOT, it's failure to comply with the terms
7 and conditions of DOT permits, construction
8 materials and equipment stored on the street
9 without permits and failed to raise your plow for
10 plates. NYPD, it's the right of way, failure to
11 yield and it's vending in a bus stop and
12 operation of a motorized scooter within the City
13 of New York. There have been a lot of those
14 recently. For DOB, it's failure to comply with
15 the Commissioner's Order, unlawful acts, again,
16 failure to comply with an Order of the
17 Commissioner and failure to maintain an elevator.

18 For DSNY, it's failure to clean 18
19 inches into the street, dirty sidewalk area and
20 dirty area. Okay. For DEP, it's backflow, failure
21 to have the test, failure to install and then
22 it's operating emission source with an expired
23 registration. For Fire, it's inspections and
24 testing, failure to prevent an unnecessary,

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2 unwanted alarm and failure to have affidavits for
3 the installation of equipment. For DOHMH, it's
4 failure to eliminate rodent infestation, failure
5 to eliminate conditions conducive to rodent
6 infestation and failure to eliminate again
7 conditions, garbage can spillage. And for
8 Landmarks, it's work without a permit, basically
9 for each one, different types.

10 And for DoITT, it's failure to provide a
11 working public pay telephone, required signs are
12 missing, failure to clean. For Parks, it's
13 failure to comply with the directions and
14 prohibitions on signs, unleashed or uncontrolled
15 animals in the park, unauthorized vending. And
16 for BIC, it's idling of motor vehicle engine for
17 more than three minutes, failure to obtain your
18 identification card per the subsection.

19 And our appeals, our appeals are up in
20 Sanitation and 811, down the list. For the first
21 quarter, we've had 1,438 appeals. Okay. For the
22 non-Board cases, we've had a total of 429
23 appeals, 45 for Health, 92 for DCA; and Vehicle
24 for Hire, 292. Okay. And the total number of

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2 defaults for the Board cases has been 75,028 for
3 the first quarter. And for the non-Board cases,
4 it's been -- the total is 8,906.

5 MS. KNAUER: Do you know what percentage
6 of the total summonses are defaulted?

7 MS. SLIFKA: I don't have that number
8 with me now. But that's an easy number --

9 MR. DEL VALLE: It usually hovers
10 somewhere in the neighborhood of 40 percent.

11 MS. KNAUER: Forty percent?

12 MS. SLIFKA: Yeah. Okay. Anything else?

13 MR. DEL VALLE: And by the way, that's
14 historically been roughly the same since the
15 earliest numbers I saw, which was like 1987. It's
16 kind of weird.

17 MS. KNAUER: Okay, hmm.

18 MS. SLIFKA: Okay, thank you.

19 MR. DEL VALLE: It'd be a great
20 sociological PhD dissertation to figure that out.
21 Is anybody working on a PhD that needs a topic?
22 Thank you very much. We have some rule proposals.

23 MS. SIMONE SALLOUM, ASSISTANT GENERAL
24 COUNSEL, OATH: Simone Salloum, Assistant General

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2 Counsel. And we have one new rule proposal for
3 you and one final rule. The first one is new rule
4 proposal repeal of the Fire penalty schedule. So
5 this is part of the initiative we are taking to
6 repeal the penalty schedules from OATH's rules
7 and transfer them to enforcing agencies' rules.
8 So this proposed rule repeals the schedule
9 currently found in section 3-106 of Subchapter G
10 of Chapter 3 of Title 48 of the Rules of the City
11 of New York and contains penalties for summonses
12 issued by the Fire Department for violations of
13 Titles 15, 28 and 29 of the Ad. Code and Title 3
14 of the RCNY.

15 And we're working with FDNY to propose
16 the rules simultaneously. The draft that I gave
17 you says that the hearing will be at John Street.
18 But we're actually going to coordinate with the
19 Fire Department and have a public hearing
20 together at their facilities. Does anyone have
21 any questions on this proposed rule?

22 MR. DEL VALLE: Is there a motion? We
23 need a body count I think. One, two, three, four,
24 five, six, seven, eight in favor. And all those

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2 opposed? And two opposed. And obviously no
3 abstentions.

4 MS. SALLOUM: Okay. The second rule we
5 have for you today is a final rule. And it is the
6 repeal of Section 16-118 of the Administrative
7 Code from the Sanitation Penalty Schedule, which
8 is found in Section 3-122 of Subchapter G of
9 Chapter 3 of Title 48 of the RCNY. So we
10 published this rule in the City Record on March
11 8, 2017. We held a public hearing on April 10,
12 2017. No one attended the public hearing. We
13 didn't receive any written comments. DSNY held
14 their public hearing. And so now it's up for the
15 Board to vote for the adoption of this final
16 rule. This isn't a total repeal of the Sanitation
17 Penalty Schedule, just the violations of 16-118.
18 Are there any questions?

19 MR. DEL VALLE: Is there a motion? Is it
20 the same number: eight in favor, two opposed?
21 Okay.

22 MS. SALLOUM: Thank you.

23 MR. DEL VALLE: Why can't the U.S.
24 Senate do it like this?

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2 MR. SHPETNER: I'm curious.

3 MR. DEL VALLE: Maybe we should move
4 them over. DEP has requests for cease and desist
5 orders.

6 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
7 OF ENVIRONMENTAL PROTECTION: Okay. Good morning.
8 My name is Russell Pecunies. I am with the Bureau
9 of Legal Affairs in the Department of
10 Environmental Protection. This month the
11 Department is asking the Board to issue one cease
12 and desist order under the Sewer Code. This is
13 for corporate respondent, International
14 Management Café LLC. I believe the DBA is Prime
15 Grill, located at 550 Madison Avenue. An
16 inspection in July of last year determined that
17 they require a grease interceptor on a sink. And
18 a Commissioner's Order was issued requiring them
19 to install that grease interceptor. After a
20 series of summonses, where they were cited for
21 failing to install that grease interceptor and
22 after their failure to attend a mandatory
23 compliance meeting that was scheduled for March
24 23rd and given that they still have not installed

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2 the required grease interceptor, the Department
3 is asking the Board to issue an order to cease
4 and desist.

5 MR. DEL VALLE: Any questions? Motion?
6 It's unanimous.

7 MR. PECUNIES: Okay. And then on the
8 other 28, these are all situations where the
9 building owner has been ordered to install
10 backflow prevention devices and have been cited
11 by summons for not doing so. The summons has been
12 adjudicated in violation. And in each of these
13 cases, the building owner has still failed to
14 install the required devices. Based on those
15 failures, DEP is asking that the Board issue
16 orders to cease and desist in these cases.

17 MR. DEL VALLE: Again, any questions?
18 Motion? Unanimous.

19 MR. PECUNIES: Okay, thank you.

20 MR. DEL VALLE: Thank you. And Kelly
21 Corso will review our pre-sealing reports.

22 MS. CORSO: Good morning. I'm Kelly
23 Corso, Assistant Director of Adjudications for
24 the Hearings Division. We have 18 pre-sealing

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2 reports for today's Board. One of these cases
3 involves a Noise Code violation, two involve
4 Sewer Code violations and the remaining 15
5 involve backflow violations. One of the backflow
6 violation cases, the hearing officer and DEP are
7 recommending that the water services be sealed.
8 So, I'm going to do the backflow cases last.

9 So first, starting with the Noise Code
10 case: the respondent presented evidence at the
11 hearing of work done to bring the kitchen exhaust
12 equipment into compliance with the Noise Code.
13 The hearing officer in this case agreed with
14 DEP's recommendation that the equipment remain
15 unsealed, as long as DEP's initial inspection and
16 further re-inspections for a period of 180 days
17 show no violation.

18 We have two Sewer Code cases. In each
19 case, DEP had stated at the hearings that the
20 respondents have come into compliance with the
21 Sewer Code and that no further actions were
22 required. The hearing officers in both cases
23 agreed with DEP's recommendation and recommend
24 that the C&D proceedings against the respondents

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2 be discontinued and no further action be taken.

3 We have as I said 15 backflow cases. In
4 14 of these, the hearing officers recommended no
5 sealing or other action based on the respondent's
6 evidence of compliance presented at the hearings.
7 And in the final case, it's a backflow case, the
8 hearing officer agrees with DEP's recommendation
9 that the water supply to the cited premises be
10 shut off. The respondent in this case is 615 West
11 142nd Street. The premises in the case is located
12 at 2794 Broadway in Manhattan. It is an apartment
13 building that has two domestic water service
14 lines and a large boiler.

15 The history of this case started January
16 of 2013, when DEP issued a Commissioner's Order
17 for the respondent to install a backflow device
18 at the premises. The Commissioner's Order warned
19 the respondent if they failed to install the
20 device that this could result in the termination
21 of their water supply to the premises.

22 In 2014 -- in June of 2014, DEP issued a
23 summons to the respondent for failure to install
24 the backflow prevention device and failure to

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2 comply with the Commissioner's Order. The
3 respondent did not appear for the hearing on the
4 summons and a default decision was issued in July
5 of 2014. In October of 2015, DEP determined that
6 the required backflow prevention device had still
7 not been installed at the cited premises and DEP
8 requested that the Board order a cease and desist
9 order. And in October of 2015, the Board did
10 issue the cease and desist order, directing the
11 respondent to appear at a special hearing on
12 December 1, 2015, to show why the water supply to
13 the building should not be shut off.

14 Since that time there have been 13
15 hearings and the matter was adjourned each time
16 at the request of the respondent for the
17 respondent to hire a plumber and file the plans
18 and permits to install the required devices.
19 Respondent's representative was advised at the
20 hearings that the water would be shut off if the
21 respondent did not continue to -- if the
22 respondent continued to ignore the order to
23 comply.

24 At the last hearing, which was on April

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2 4th, the respondent's representative offered no
3 evidence of compliance or any progress towards
4 achieving compliance nor any reason for
5 respondent's lack of compliance. DEP recommended
6 at the last hearing that the water service to the
7 cited premises be terminated, since there's no
8 evidence of respondent's progress or any
9 compliance presented. And based on that lengthy
10 history of the case and the respondent's
11 continued failure to comply or to provide any
12 reason for its failure to comply for not shutting
13 off the water, the hearing officer recommends
14 that the water services to the premises be shut
15 off.

16 MR. DEL VALLE: Any questions?

17 MS. KNAUER: How many units are in the
18 building?

19 MR. PECUNIES: I'm not sure, it's an
20 apartment building. I, I wasn't at the last --

21 MS. KNAUER: It was just --

22 MR. PECUNIES: I wasn't at the last
23 hearing, so I don't know the exact number of
24 units.

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2 MR. SHPETNER: Tom Shpetner, Citizen
3 Member. So what -- I, I know this has come up in
4 the past. Can you just take us through what the
5 actual next steps would be so we can understand,
6 because I know it doesn't just happen on a dime.
7 There's a little bit of process that still would
8 need to --

9 MR. PECUNIES: Right. So the process for
10 shutting off the water would be: first, we would
11 have to brief our Commissioner on this. And he
12 would -- we would then -- what we do first is we
13 send a crew out to the building that marks the
14 sidewalk and that goes and finds the
15 superintendent or some other person in a
16 responsible position at the building and informs
17 them that, here's a copy of the, you know, the
18 letter and from the Board and the Board has
19 authorized us to turn your water off. And
20 presumably, you know, this -- assuming that this
21 is a managed apartment building and that there is
22 either a super or a management company or
23 somebody that runs this thing, they are going to
24 take some actions to prevent us or so that we

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2 will not have to turn the water off.

3 MS. KNAUER: What actions can they take,
4 I mean, on an immediate basis, given the facts
5 that they clearly haven't, you know, gotten any
6 approval to install a device?

7 MR. PECUNIES: I believe that in this --
8 I believe that in this case, they have had
9 approved plans for a long time and that this is a
10 matter of having a plumber pull a DOB permit and
11 go in and actually do the work.

12 MS. KNAUER: And how soon -- and how
13 quickly can that happen?

14 MR. PECUNIES: The DOB permit is usually
15 sort of issued in a very brief period of time
16 because another agency has already approved the
17 plans. So, it's an LAA permit. It's usually
18 issued pretty quickly. I mean, when we've done
19 this in the past, we have never had to actually
20 turn the water off because people come out in a
21 panic, and obviously once people in the building
22 find out that they're going to have their water
23 turned off, they will presumably go to the
24 management or the ownership and tell them, you

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2 know, this needs to be done immediately. I mean,
3 we, with a case like this, it becomes pointless
4 to continue to adjourn the hearing after a while
5 because this is one of the professional reps and
6 he just comes in over and over and over and over
7 again with no new information.

8 MR. DEL VALLE: They're just gaming the
9 system then.

10 MR. PECUNIES: Yeah, it's just --

11 MS. KNAUER: But there would be time in
12 between DEP actually appearing on the site, you
13 know, to indicate the impending shutting off of
14 service, between that and the actual shutting
15 off, for the owner to get the permit and install
16 the device to avoid vacating the building?

17 MR. PECUNIES: Yeah, there is an interim
18 step, right. We don't just go to the building and
19 turn off the water. There is an interim step,
20 where the crew goes. They spray paint the
21 sidewalk outside the building and they will talk
22 to somebody at the building. And in the few past
23 cases that have gone this far, that has always
24 resulted in the building taking the required

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2 actions.

3 MR. DEL VALLE: Do they post a notice in
4 the building?

5 MR. PECUNIES: We do have a notice that
6 is what -- part of what gets handed to whoever
7 they can find at the building. And they will put
8 one up at the entrance, so that people coming in
9 and out of the building, the residents, can see
10 that there is an order pending to turn the water
11 off.

12 MS. KNAUER: I mean, I guess -- and so
13 you've never actually turned the water off? I
14 guess my concern is and particularly given this
15 address, that there could be a landlord that, you
16 know, may not be adverse to having their building
17 vacated. And, you know, the -- it's really in
18 their -- it's really in their control if they
19 don't comply, then the water will be turned off
20 and the tenants will be vacated.

21 MR. PECUNIES: I wouldn't think that
22 anybody who was temporarily vacated because the
23 water was turned off would be excluded from, I
24 mean, it -- I don't think it could be used as a

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2 way to get one set of tenants out of the building
3 and then re-rent to a different, better paying
4 set of tenants. I don't think it could be used
5 that way.

6 MS. KNAUER: If the building is vacated
7 and long -- and time passes for long enough, I
8 mean, they then -- I mean, it's --

9 MR. JORGE MARTINEZ, DEPARTMENT OF HEALTH
10 AND MENTAL HYGIENE: They take other apartments
11 and just --

12 MS. KNAUER: If the people are gone and
13 --

14 MR. PECUNIES: Well, I mean, that's a
15 theoretical possibility I suppose.

16 MS. KNAUER: It's never happened?

17 MR. PECUNIES: I don't think that
18 Commissioner Sapienza would be a party to that
19 kind of situation. I think if we saw that that
20 was something that they were just willfully
21 disregarding this and didn't care if nobody lived
22 in the building anymore, you know, I don't think
23 we would necessarily agree to be a party to that.
24 I don't know, we'd probably restore the service.

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2 Although it's a theoretical situation that, you
3 know, has never happened and I think is extremely
4 unlikely to happen. But, I mean, I guess we'd
5 have to cross that bridge when we got to it.

6 MR. DEL VALLE: If something like that
7 happened, the building would have to be put in
8 receivership I would imagine.

9 MS. KNAUER: I mean, is there any
10 involvement of HPD in -- when you -- before you
11 do this to a residential building?

12 MR. PECUNIES: If the building needed to
13 be evacuated, I believe that, yes, we would have
14 to bring in HPD.

15 MS. KNAUER: Prior to -- prior to
16 actually shutting off service, they would be
17 alerted?

18 MR. PECUNIES: Yeah, mm-hmm. Yeah,
19 because with no water service, a residential
20 building would have to be evacuated within --
21 either immediately or within a short period of
22 time. That's why I would say -- I mean, I'd say
23 except in the scenario that you're presenting, I
24 can't imagine there would be any other scenario

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2 in which we would actually turn off the water
3 because any building owner that actually is
4 trying in good faith to run the building, will
5 when confronted with the imminent turning off of
6 the water take the necessary action.

7 MS. KNAUER: And the -- I guess the
8 belief that the Department has is that just
9 adjourning these hearings just gives the
10 impression to the owner that they'll get away
11 with this for, you know --

12 MR. PECUNIES: Well, I mean, this is a
13 building owner who's --

14 MR. DEL VALLE: They have been getting
15 away with it.

16 MS. KNAUER: They have been, yes. So,
17 they're -- I guess they just pay somebody a
18 couple hundred bucks to go to the hearing on it.

19 MR. DEL VALLE: Yup.

20 MR. PECUNIES: Yeah. I mean, they were
21 ordered to do this four years ago. And it's not
22 a, you know --

23 MR. MARTINEZ: Okay, somewhat as before,
24 do you think the owner is really in good faith

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2 trying to run the building?

3 MR. PECUNIES: I don't know because I
4 think that a lot of these owners do just hire
5 these reps to appear and, you know, these reps
6 handle a million cases. And, you know, before the
7 hearing they make a minimal effort to reach out
8 and find out what's going on. And if that doesn't
9 work, they just come in and say: I don't know
10 what's going on.

11 MR. DEL VALLE: To be frank -- alright,
12 and this is one of the reasons I have great
13 reservations about these non-attorney reps; a
14 rep, it's not unusual for a rep to say don't
15 worry about these summonses. I'll make sure
16 nothing happens and I'll take care of it. Just
17 pay me what my appearance fee, like you said, a
18 couple hundred bucks and I can continue to jerk
19 the City around and you won't have to bother with
20 or worry about the summonses or bother doing the
21 work.

22 A good example of that and this one
23 drives me absolutely nuts is when the City a few
24 years ago started changing penalty structures

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2 that go along the lines of -- I'll give you an
3 example. The penalty for violation X is if you've
4 found guilty or if you plead guilty is \$300.
5 Obviously if you appear and it's dismissed, it's
6 zero. But if you default, and this is the way it
7 appears on a lot of these summonses, if you
8 default the penalty is \$1,200, period. Fine. On
9 Open Source Data, where the City has all of this
10 information online, including pending summonses:
11 You have these individuals who do data-mining on
12 them. They have their own algorithm where they
13 download the data and then they sift through it.
14 And people -- and I've seen these, these letters,
15 people get either a letter or a phone call
16 saying: ooh, you have this ECB violation pending
17 and we are in the business of representing folks
18 and monitoring stuff on behalf of our clients.
19 And this particular fine that you have has a
20 maximum penalty of \$1,200. And we can represent
21 you and we can't guarantee that we'll get it
22 dismissed but since we know the system and we
23 know the hearing officers, wink, wink, wink, we
24 guarantee we can at least get it reduced for you.

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2 And what's more, to show good faith, we'll
3 represent you for free on this one. And then
4 we'll show you the results and if you like it,
5 you can retain us to represent you on all your
6 future summonses and what not. And of course you
7 say: for free? Oh, what the heck, what have I got
8 to lose?

9 So they go back to their basement or
10 wherever it is that they hang -- cave or wherever
11 they hang out. And they go online and they plead
12 them guilty. And then they show up and say: Look,
13 I got it reduced to \$300. I saved you \$900. So
14 for \$150 each, I'll represent you on all your
15 future summonses. And that's the kind of games
16 that they play. And there's not a damn thing I
17 can do about it. And then you have -- then they
18 give feedback to their clients that: oh, it's a
19 kangaroo court. Oh, that's the best I can do,
20 yada yada yada. And that's the game -- that's the
21 type of game these people play. And some of them
22 are very large operations, multimillion dollar
23 operations. And the only way I can describe it is
24 that it's despicable and they play -- that's the

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2 games that they play.

3 Now with respect to this particular
4 case, I would think that if push came to shove
5 and they have to shut off the water, the City
6 would be taking a really, really, really hard
7 look at what the landlord is doing. But probably
8 I would say -- I would recommend -- I can't speak
9 for Corp Counsel on this obviously, like that
10 they would move to put the building into
11 receivership so that water can stay on and the
12 repairs done by the City and bill the landlord,
13 which is what they do when you have a situation
14 like that, whether it's the heating system in the
15 winter and the City comes in and repairs the
16 boiler or the hot water system, and then it
17 becomes a lien on the building and all kinds of
18 fun stuff like that.

19 MS. KNAUER: Mm-hmm. So there's a way to
20 address it if it really looks like the landlord's
21 just going to be intransigent, that HPD can --

22 MR. DEL VALLE: Ultimately -- ultimately
23 the remedy would be for the City to come in and
24 do the work --

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2 MS. KNAUER: Right.

3 MR. DEL VALLE: -- and put the building
4 in receivership and put a lien on the building.
5 And the tenants would be paying their rent to the
6 City. That's the ultimate you think you're a wise
7 guy remedy to a landlord who would be that
8 nefarious. For all we know, the landlord is dead.
9 It could be a single person who's dead, you know.
10 Anyhow, any other thoughts, questions or
11 cogitations? Those are my thoughts, questions and
12 cogitations. I agree with Elizabeth's concern.

13 MR. PECUNIES: I mean, one thing that we
14 can do is obviously report back to the Board on
15 this next month. This will be something where we
16 won't be doing anything until we get the Board
17 letter. And then as I said, there is an interim
18 step before any water would be turned off where
19 notices would be posted, somebody at the building
20 would be spoken to, and painting would be done on
21 the sidewalks. And so we can report back in four
22 weeks on what happens with all that.

23 MR. DEL VALLE: Yeah, and flag whatever
24 other City agencies might have to step in if the

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2 landlord is playing games.

3 MR. PECUNIES: Yup. Well, we'll brief
4 the Commissioner on it first and then we'll bring
5 in the other agencies.

6 MR. DEL VALLE: Sure.

7 MS. KNAUER: Do you know long of a time
8 period it is between the painting -- the spray
9 painting and the shutting off --

10 MR. PECUNIES: As long as we want it to
11 be. There isn't a specified --

12 MS. KNAUER: So, if you get an appeal
13 for the situation, you can --

14 MR. PECUNIES: Yeah.

15 MS. KNAUER: Okay.

16 MR. PECUNIES: Yeah.

17 MR. DEL VALLE: Are we going to get a
18 motion? Is there a motion? It's unanimous. Thank
19 you. Is there a motion to go into Executive
20 Session? We'll go into Executive Session. I'll
21 ask anyone who is not an OATH employee to step
22 outside while we're in Executive Session. I don't
23 think there is anybody who isn't, right?

24 MR. DEL VALLE: Or is there? You're welcome to

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2 come back in after we are out of Executive
3 Session.

4 MR. DEL VALLE: Push the button. But we
5 are slaves to technology. Mr. Shpetner, you have
6 a motion?

7 MR. SHPETNER: Yes. Based on the
8 considerable debate engendered by the questions
9 raised in connection with service issues for the
10 group of Fire Department cases in consideration
11 at this Board Meeting, my motion is that we have
12 the OATH ECB staff create a memorandum
13 summarizing the points of law, working in
14 connection with the Appeals Unit, to help us
15 understand the legal and practical ramifications
16 of, you know, the considerations pointed out in
17 the decisions, the superseding appeal and the New
18 York State of Appeals recent appellate decision.
19 And having received that memorandum, the Board
20 can then continue its debate and move these cases
21 forward.

22 MR. DEL VALLE: Is there a second?
23 Judging from how many seconds there are, I take
24 it it's unanimous.

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MR. SHPETNER: I don't know if I can
vote on my own motion?

MR. DEL VALLE: Why not?

MS. SLIFKA: Yeah, it's unanimous.

MR. SHPETNER: My hand wasn't down on
purpose. Okay.

MR. DEL VALLE: It's not nepotism. It's
not incest. It's okay.

MR. SHPETNER: Are we adjourned?

MR. DEL VALLE: Oh, is there a motion to
adjourn?

MS. SHAMONDA GRAHAM, DEPARTMENT OF
BUILDINGS: Yes.

MR. DEL VALLE: We are adjourned.

(The Board Meeting public session
concluded at approximately 11:21 A.M.)

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CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Environmental Control Board on April 27, 2017 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

A handwritten signature in black ink, appearing to read "Fei Deng", written over a horizontal line.

Date: May 1, 2017

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