

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

BOARD MEETING

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

May 25, 2017

9:20 a.m. to 10:08 a.m.

May 25, 2017

MEMBERS PRESENT:

Fidel F. Del Valle, Esq. - Chair, Chief Administrative Law
Judge, Commissioner, OATH
Shamonda Graham - Dept. of Buildings
Russell Pecunies, Esq. - Dept of Environmental Protection
Matthew Smith, Esq. - NYC Police Dept.
Jose Marquez - Fire Dept.
Monika Wysocki - Dept. of Sanitation
Jorge Martinez, Esq. - Dept. of Health and Mental Hygiene
Thomas Shpetner, Esq. - Appointed Member
Indi Savitala - Appointed Member
Debra Scotto - Appointed Member
Douglas Swann - Appointed Member

ALSO PRESENT:

John Burns, Esq. - First Deputy Commissioner, OATH
**Kelly Corso, Esq. - Assistant Director of Adjudications,
OATH**
Gerardo Flores - Computer Service Technician, OATH
Diana Haines, Esq. - Assistant General Counsel, OATH
Hani Kfoury - Office of Management and Budget, OMB
Vivienne Kahng, Esq. - Deputy Supervising Attorney, OATH
Mark Leeds, Esq. - Special Senior Counsel, OATH
Maria Marchiano, Esq. - Deputy Commissioner & Chief Clerk,
OATH
Tyler McComas, Esq. - Appeals Attorney, OATH
Ashford Morgan - Computer Service Technician, OATH
Simone Salloum, Esq. - Assistant General Counsel, OATH
Peter Schulman, Esq. - Assistant Director of
Adjudications, OATH
Carmena Schwecke, Esq. - Assistant Commissioner, OATH
Hearings Division
Frances Shine - Secretary to the Board, OATH
Thomas Southwick, Esq. - Supervising Attorney, Appeals,
OATH

May 25, 2017

INDEX

| | Page |
|--------------------------|------|
| Fidel F. Del Valle, Esq. | 4 |
| Russell Pecunies, Esq. | 4 |
| Kelly Corso, Esq. | 6 |
| Thomas Shpetner, Esq. | 10 |

1 May 25, 2017

2 (The Board Meeting commenced at 9:20
3 a.m.)

4 MR. FIDEL F. DEL VALLE, ESQ.,
5 CHAIRPERSON, COMMISSIONER AND CHIEF
6 ADMINISTRATIVE LAW JUDGE, OATH: Is there a
7 motion to approve the minutes of the previous
8 meeting? They're accepted. It's a busy day
9 today at the opposite end of the building. So
10 we've got the Mayor's office conducting hearings
11 on judicial nominees. So you -- we have about
12 nine wannabe judges and their families in, in
13 courtroom A hanging out for a hearing on their
14 appointments and taking cameras in. It looks
15 like a graduation commencement. First, first on
16 deck is DEP's request for a cease and desist
17 order. Are you ready?

18 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
19 OF ENVIRONMENTAL PROTECTION: Yep. Hey, good
20 morning, Russell Pecunies with the Bureau of
21 Legal Affairs at the Department of Environmental
22 Protection. This month, DEP is requesting one
23 cease and desist order be issued under the Sewer
24 Code. This is for Ja or maybe Ya, I'm not sure,

1 May 25, 2017

2 Restaurant Management LLC, which is at 550
3 Madison Avenue in Manhattan. The location was
4 inspected on May 2nd of last year and it was
5 determined that it needed to install a number of
6 grease interceptors and the -- a Commissioner's
7 Order was therefore issued to the establishment
8 directing them to install said grease
9 interceptors and a series of summonses were then
10 issued to the Respondent for not installing the
11 grease interceptors in compliance with the
12 Commissioner's Order, and the Respondent
13 continues not to be in compliance with the
14 Commissioner's Order and due to their continuing
15 failure to do so, the Department is requesting
16 the Board issue an Order to Cease and Desist.

17 MR. DEL VALLE: Any questions? Motion?
18 It's unanimous.

19 MR. PECUNIES: Okay? And the DEP also
20 has requests in 24 cases for cease and desist
21 orders where building owners have failed to
22 install backflow prevention devices. In each of
23 these cases the owner has been ordered to do so
24 after an inspection by the Department. In each

1 May 25, 2017

2 of these cases, the owner has been issued a
3 summons for failing to comply with the order.
4 That summons has been adjudicated in violation
5 and the owner is still not in compliance with the
6 requirement. So in each of these cases, the
7 Department is asking the Board to issue an Order
8 to Cease and Desist.

9 MR. DEL VALLE: Questions. Does
10 everybody know what a backflow preventer is?
11 Okay. Is there a motion? I guess since
12 everybody's putting their hands up, it's
13 unanimous.

14 MR. PECUNIES: Thank you.

15 MR. DEL VALLE: Kelly Corso, will you
16 please report on the pre-sealing reports?

17 MS. KELLY CORSO, ESQ., ASSISTANT
18 DIRECTOR OF ADJUDICATIONS, OATH: Good morning.
19 I'm Kelly Corso, Assistant Director of
20 Adjudications for the Hearings Division. Just
21 for the benefit of our new member, for a little
22 brief outline of what happens after the Cease and
23 Desist Orders are approved by the Board, the
24 Order will go out to the Respondent and it will

1 May 25, 2017

2 order the Respondent to appear for a special
3 hearing at the Hearings Division, and if the
4 Respondent comes in, there will be a hearing and
5 usually these go on for a period of time for the
6 Respondent to be able to come into compliance
7 with the Order.

8 And once there has been compliance or
9 maybe the Department of Environmental Protection
10 has determined that there's no need for the
11 equipment anymore or something like that, the
12 Hearing Officer will issue what is called a
13 presealing report. It's like a decision, but we
14 call it a presealing report, and that's what I'm
15 presenting on.

16 In some instances, in most instances,
17 the reports recommend no further action because
18 Respondents will come into compliance. With some
19 of them, it's that there should be some
20 monitoring that go on and in rare cases, they
21 will recommend a sealing if the Respondent has
22 not complied, continues not to comply or does not
23 show up for the hearings.

24 So for today, we have ten pre-sealing

1 May 25, 2017

2 reports. Four of them involve backflow
3 violations, one involves a Sewer Code violation,
4 one involves an Air Code violation and four
5 involve Noise Code violations. In all four of
6 the backflow cases, the Hearing Officer has
7 recommended no sealing or other action based on
8 the Respondent's evidence of compliance that was
9 presented at the hearings.

10 In the Sewer Code case, DEP has
11 requested discontinuance of the C&D proceedings
12 because the Respondent has gone out of business,
13 and the Hearing Officer has agreed with DEP's
14 recommendation and has recommended that the C&D
15 proceeding be discontinued and no further action
16 be taken.

17 In the Air Code case, the Hearing
18 Officer recommends no further action based on
19 evidence of the work done on the Respondent's
20 equipment to bring the equipment into compliance
21 with the Air Code.

22 And finally, the four Noise Code cases,
23 they involved Air Code -- I'm sorry, air
24 conditioning equipment, kitchen exhaust

1 May 25, 2017

2 equipment, sound system equipment and
3 refrigeration equipment, and in all the cases the
4 Respondents presented evidence that there was
5 work done on the cited equipment to bring the
6 equipment into compliance with the noise code.
7 The Hearing Officers in all the cases agreed with
8 DEP's recommendations that the equipment remain
9 unsealed, if DEP's initial reinspections and
10 further reinspections for a period of 180 days
11 show no further violations. And that's all I
12 have.

13 MR. DEL VALLE: Any questions? Is there
14 a motion to accept the recommendations? And it's
15 unanimous. Is there a motion to move into
16 executive session? We'll go into executive
17 session and I'll ask anyone who is not an OATH
18 employee or an agency employee to please wait
19 outside.

20 [OFF THE RECORD]

21 [ON THE RECORD]

22 MR. DEL VALLE: By the way, my -- the
23 GPS in my car put me back here from Staten Island
24 the other day by way of Bayone.

1 May 25, 2017

2 MR. THOMAS SHPETNER, APPOINTED MEMBER:

3 That could be faster.

4 MR. DEL VALLE: We are now back in
5 public session. Motion?

6 MR. THOMAS SHPETNER, APPOINTED MEMBER:

7 Sure. Thank you, Commissioner. Thomas Shpetner,
8 Citizen Member. While we were in executive
9 session, we were discussing 11 appeals that had
10 been brought to the May 27 -- excuse me, April
11 27th board for consideration regarding service of
12 process.

13 At the April 27th meeting, I had
14 suggested that we receive a briefing memo
15 discussing the legal issues regarding how to
16 handle these 11 summonses. While the memo that
17 we received for discussion dated May 22nd does
18 touch on some of those issues, it was not clear
19 to me from reading the memo whether the issues
20 discussed herein gave us enough background to
21 fully understand or adjudicate or provide advice
22 on the administrative status of the 11 memos that
23 were the sub judice at the April 27th meeting.

24 So what I would like to ask of not just

1 May 25, 2017

2 the GC's Office of OATH, but also of the
3 Appellate Unit and the city agencies is to
4 further develop the fact and -- facts and legal
5 analysis relating to these 11 summonses firstly,
6 but secondly help us understand better the
7 correct administrative posture for summonses
8 where there have been issues relating to defaults
9 with respect to and then subsequent questions
10 with respect to service of process.

11 So my request again is two-fold: one,
12 that we get a better understanding of how to go
13 forward in connection with the 11 cases and I'd
14 like those to be recirculated as part of our
15 board materials for our next meeting; but
16 secondly, to give us additional information to
17 enable us to understand if we need to develop new
18 methods of handling across city agencies
19 consistently the issues that are -- that roll up
20 to the service question more broadly.

21 MR. DEL VALLE: And I'll add to what
22 you're saying by saying that I had expected that
23 to be threshed out today. Unfortunately, the
24 people who prepared the memo in question could

1 May 25, 2017

2 not be here today. One of them had to respond to
3 a subpoena that was issued and had to be
4 returnable this morning in court, and that's
5 something that couldn't be avoided, the return
6 date.

7 I agree with the request to basically
8 put this on next month's agenda and, if there is
9 a second? I think it's unanimous. Thank you
10 very much. I appreciate your insight. I think
11 we're concluded. Is there a motion to adjourn?
12 Next time this month, by the way, the Criminal
13 Justice Reform Act will have clicked into effect
14 and we will be getting a whole bunch of business
15 probably six weeks after that from the Police
16 Department.

17 (The Board Meeting concluded at 10:08
18 a.m.)

19
20
21
22
23
24

1

May 25, 2017

2

Environmental Control Board, May 25, 2017

CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Environmental Control Board Meeting on May 25, 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", is written over a horizontal line.

Date: June 5, 2017

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018