

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

June 20, 2019

9:45 A.M. - 11:05 A.M.

June 20, 2019

## MEMBERS PRESENT:

**Shamonda Graham - Department of Buildings (DOB)**

Joseph Gregory, Esq. - NYC Fire Department (FDNY)

**Elizabeth Knauer, Esq. - Appointed Member**

Madelynn Liguori, Esq. - Department of Sanitation (DSNY)

Jorge Martinez, Esq. - Department of Health & Mental  
Hygiene (DOHMH)**Russell Pecunies, Esq. - Department of Environmental  
Protection (DEP)**

Tom Shpetner, Esq. - Appointed Member

Matthew Smith, Esq. - New York City Police Department  
(NYPD)

Douglas Swann - Appointed Member

## ALSO PRESENT:

Rachel Amar - Special Assistant to Commissioner, OATH

Alex Babcock - OATH Intern

Quiana Battle - Computer Service Technician, OATH

Dorothy Caccioppoli - OATH Intern

**Kelly Corso, Esq. - Assistant Commissioner for Hearings  
Division Adjudications, OATH**

Svetlana Goryacheva - Business Integrity Commission (BIC)

Nicholas Dietz, Esq. - Assistant General Counsel, OATH

Timothy Jones, Esq. - Assistant General Counsel, OATH

Susan Kassapian, Esq. - Deputy Commissioner/Appeals, OATH

Nathalie Kupfer - OATH Intern

Carole Ann Liscio - OATH Intern

**Tynia Richard, Esq. - Deputy Commissioner/General Counsel,  
OATH**

Simone Salloum, Esq. - Senior Counsel, OATH

Peter Schulman, Esq. - Asst. Director for Appeals, OATH

Davydov Semyon - OATH Intern

Frances Shine - Secretary to the Board, OATH

Amy Slifka, Esq. - Deputy Commissioner/Hearings Division,  
OATHThomas Southwick, Esq. - Supervising Attorney/Appeals,  
OATH

Olga Statz - Deputy General Counsel, OATH

Andrew Windror - OATH Intern

Barry Zhang - OATH Intern

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(The board meeting commenced at 9:45 a.m.)

TYNIA RICHARD, ESQ., CHAIR, DEPUTY COMMISSIONER/GENERAL COUNSEL, OATH: Is there a motion to adopt the minutes for the April 18th meeting? Okay. And, and all in favor?

JOSEPH GREGORY, ESQ., NYC FIRE DEPARTMENT (FDNY): One abstention.

MS. RICHARD: One abstention?

SHAMONDA GRAHAM, DEPARTMENT OF BUILDINGS (DOB): In favor.

ELIZABETH KNAUER, ESQ., APPOINTED MEMBER: In favor.

MS. RICHARD: Okay. Alright. Any corrections to the minutes? No? Okay. Alright, so we will introduce DEP's request for cease and desist orders. Russell Pecunies.

RUSSELL PECUNIES, ESQ., DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP): Good morning. Russell Pecunies with DEP Legal. This month, the Department is asking the Board to approve, I believe it's 29 requests for cease and desist orders.

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2 In each of these cases, the property  
3 owner has been directed by a Commissioner's order  
4 to install backflow prevention devices at the  
5 property. After the owner's failure to do so,  
6 the owner has been issued a summons, which has  
7 been adjudicated in violation. And in each of  
8 these cases, the building owner still has not  
9 complied with the Commissioner's order to  
10 install.

11 Based on that, the Department is asking  
12 the Board to issue an order to cease and desist  
13 in each of these cases.

14 MS. RICHARD: Alright. Are there any  
15 questions? Alright. So is there a motion to  
16 approve? Alright, motion. All in favor? Okay,  
17 it's unanimous.

18 MR. PECUNIES: Okay. That's it for this  
19 month.

20 MS. RICHARD: Alright. Thank you.  
21 Alright. And we have an objection for DEP's  
22 request for pre-sealing reports by Kelly Corso.

23 KELLY CORSO, ESQ., ASSISTANT  
24 COMMISSIONER FOR HEARINGS DIVISION ADJUDICATIONS,

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2 OATH: Good morning. Kelly Corso, Assistant  
3 Commissioner for Adjudications for the Hearings  
4 Division. We have twenty-five pre-sealing  
5 reports for the Board today. Twenty-one of those  
6 reports involve backflow cases. In all of those  
7 cases, the hearing officers have recommended that  
8 there be no sealing or further action taken,  
9 based on the evidence of compliance that the  
10 respondents presented at the hearings.

11 The remaining four reports are for Noise  
12 Code cases. These cases involve air  
13 conditioning, kitchen exhaust and water/plumbing  
14 equipment. And, in all of those cases, the  
15 respondents presented evidence at the hearings of  
16 work that was taken to bring the cited equipment  
17 into compliance with the Noise Code.

18 Based on the respondents' evidence of  
19 compliance, the hearing officers agree with DEP's  
20 recommendation that the equipment remain  
21 unsealed, provided that DEP's initial re-  
22 inspection and re-inspections for a period,  
23 period of 180 days show no violations.

24 And that's it.

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2 MS. RICHARD: Alright. Are there any  
3 questions? Okay. Is there a motion to approve?  
4 All in favor? Alright, that's a unanimous vote.  
5 Okay, thank you.

6 Alright. Is there a motion to go in  
7 Executive Session to discuss new cases, judicial  
8 report and full Board appeals?

9 MS. KNAUER: Motion.

10 MS. RICHARD: Okay, there's a motion.  
11 And all in favor? Okay. Thank you.

12 [OFF THE RECORD]

13 [ON THE RECORD]

14 MS. RICHARD: Alright. So we're back in  
15 open session, having discussed the judicial  
16 report and three full Board appeals. And so we'd  
17 like to take now a vote so that we can close out  
18 the meeting.

19 Let's take a vote on *DOB v. Owen Foster*.  
20 Alternative One: all those in favor of affirming  
21 the hearing officer decision, dismissing the two  
22 summonses, finding that respondent did not  
23 unlawfully advertise in violation of the Code.  
24 All in favor of affirming the hearing officer

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2 dismissing, please raise your hands. Okay. We  
3 have a vote of four.

4 Alternative decision Two: all those in  
5 favor of reversing the hearing officer decision  
6 and finding that respondent violated the Code  
7 provision for unlawful advertisement, all those  
8 in favor? One, two, three, four, five. Okay.  
9 Any abstentions?

10 MS. GRAHAM: Abstain.

11 MS. RICHARD: There is one. Okay.  
12 Alright, thank you. We have had a significant  
13 amount of discussions of the issue of our  
14 requirement to have seven voting members in favor  
15 of any particular proposal in order to act, and  
16 we will continue to try to resolve that issue so  
17 that we can resolve, you know, close decisions  
18 like this one. For now, I think the plan is to  
19 measure from a hu-, hundred eighty (180) days  
20 from the filing of this appeal and to, at that  
21 point, if we don't have a seven-vote decision, to  
22 then issue the hearing officer decision, send a  
23 notice to the parties that that decision will be  
24 the final one.

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2 Okay. Moving on to *DOB v. Panagios MEP*  
3 *Corp.* The alternative one, we're going to vote  
4 on. It's going to be the split decision  
5 affirming [part], and reversing part, of the  
6 hearing officer decision. So, all those in favor  
7 of affirming that part of the hearing officer  
8 decision that found respondent violated the Code  
9 Provision 27-3017, and reversing that part of the  
10 hearing officer decision that found that  
11 responded violated Code Provision 28-408. One,  
12 please raise your hand. Okay. That's one.

13 And all of those in favor of alternative  
14 two, reversing the hearing officer decision and  
15 dismissing both summonses, please raise your  
16 hand. Okay, that's eight.

17 MS. GRAHAM: And one --

18 MS. RICHARD: And one abstention.

19 MS. GRAHAM: -- one abstention.

20 MS. RICHARD: Okay. Moving on to *Nua*.

21 This is --

22 [CROSSTALK]

23 MS. RICHARD: Withdrawn? Okay, we're --  
24 withdrawn. We're, we're not voting. Okay.

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There, there will be no vote on that particular case.

Alright. Are there any other matters?  
Okay. All attendees sign the attendance sheet?

UNIDENTIFIED MALE 1: Yes.

MS. RICHARD: Okay, thank you. Is there a motion to adjourn?

UNIDENTIFIED MALE 2: Please.

MS. RICHARD: Okay. Carried.

(The board meeting concluded at [11:05 a.m.]

Environmental Control Board, 6/20/2019

CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on June 20, 2019, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



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Date: August 5, 2019

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