

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

April 18, 2019

9:35 A.M. - 10:41 A.M.

April 18, 2019

MEMBERS PRESENT:

Shamonda Graham - Department of Buildings

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

Elizabeth Knauer, Esq. - Appointed Member

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

Connor Martinez -- Mayor's Office of Appointments (MOA)

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)

ALSO PRESENT:

Rachel Amar - Special Assistant to Commissioner, OATH

Quiana Battle - Computer Service Technician, OATH

Nicholas Dietz, Esq. - Assistant General Counsel, OATH

Diana Haines, Esq. - Senior Counsel for Legislative Affairs, OATH

Timothy Jones, Esq. - Assistant General Counsel, OATH

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

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

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

Frances Shine - Secretary to the Board, OATH

Amy Slifka, Esq. - Deputy Commissioner/Hearings Division, OATH

Thomas Southwick, Esq. - Supervising Attorney/Appeals, OATH

Olga Statz - Deputy General Counsel, OATH

April 18, 2019

INDEX

Tynia Richard, Esq.	4
Simone Salloum, Esq.	4
Thomas Shpetner, Esq.	7
Elizabeth Knauer, Esq.	8
Shamonda Graham, Esq.	9
Nicholas Dietz, Esq.	10
Russell Pecunies, Esq.	13
Jorge Martinez, Esq.	16
Amy Slifka, Esq.	20

1 April 18, 2019

2 (The board meeting commenced at 9:35
3 a.m.)

4 TYNIA RICHARD, ESQ., CHAIR, DEPUTY
5 COMMISSIONER/GENERAL COUNSEL, OATH: Good
6 morning, everyone. I'd like to call to order the
7 meeting of the Environmental Control Board.
8 Today is April 18, 2019. And the first question,
9 is there a motion to adopt the minutes for the
10 February 28, 2019, meeting?

11 TOM SHPETNER
12 Jorge Martinez

13
14 SHAMONDA GRAHAM, DEPARTMENT OF BUILDINGS
15 : I abstain.

16 TOM SHPETNER, ESQ., APPOINTED MEMBER:
17 Abstain.

18 JORGE MARTINEZ, ESQ., DEPARTMENT OF
19 HEALTH & MENTAL HYGIENE : Abstain.

20 MS. RICHARD: Okay. Abstain because you
21 were absent. Okay. So let me see. Alright. So
22 there's a motion, and all in favor? Okay. One,
23 two, three, four, five -- six in favor. Okay,
24 with three abstentions.

1 April 18, 2019

2 Okay. So, next, we will move onto the
3 second thing on the meeting agenda, which is
4 introduction of a number of repeals of both ECB
5 rules.

6 SIMONE SALLOUM, ESQ., SENIOR COUNSEL,
7 OATH: Good morning. Simone Salloum, Senior
8 Counsel with OATH. And today we have for you a
9 rule proposal to repeal several penalty schedules
10 related to the Sanitation Department. The
11 Sanitation Department is working on promulgating
12 one penalty schedule with all most of the
13 violations from the following penalty schedules:
14 the Recycling and Sanitation Collection Rules
15 Penalty Schedule, which is found, found in
16 Section 3-120; the Sanitation Asbestos Rules
17 Penalty Schedule, which is found in Section 3-
18 121; the Sanitation Penalty Schedule, it's
19 general one that's found in Section 3-122; the
20 Vehicle and Traffic Law Penalty Schedule, which
21 is found in Section 3-125. That relates to the
22 abandonment of vehicles and the illegal placement
23 of handbills on windshields or under windshield
24 wipers. Any then we're also proposing to repeal

1 April 18, 2019

2 one provision from the Public Safety Graffiti
3 Penalty Schedule, which DSNY enforces. That's
4 the failure to remove graffiti. And then also
5 proposing to repeal one provision from the
6 Environmental Conservation Law Penalty Schedule
7 for the improper disposal of a lead acid battery.

8 So, like I mentioned, DSNY is proposing
9 a related rule with a penalty schedule that
10 incorporates most of the violations from the
11 above-referenced penalty schedules, except for
12 the violations that already have fixed penalties
13 in the Administrative Code. They are not going
14 to incorporate those ones, since the penalties
15 are already fixed in the Administrative Code.
16 They're only going to incorporate violations in
17 which there are a range of penalties in the
18 Administrative Code.

19 Does anyone have any questions?

20 MS. RICHARD: Okay. Alright. There
21 being no questions, is there a motion to approve?
22 Okay, there's a motion. And all in favor? One,
23 two, three, four, five, six -- seven. And those
24 opposed? Okay. Alright, thank you very kindly.

1 April 18, 2019

2 MS. SALLOUM: Thank you.

3 MS. RICHARD: Alright. Next on the
4 agenda, yes, the continued discussion regarding
5 the Board Panel composition.

6 So, as you all will recall, this has
7 been a matter on our agenda for a number of
8 meetings. The matter arose because of the fact
9 that we are missing a number of appointed members
10 on the Board, so that the composition of the
11 Board having three members, with two appointed
12 members on each panel, was becoming a bit
13 difficult to manage, because the panel members
14 were being used constantly, and -- the appointed
15 members, that is, on the panels.

16 And so there was a vote to temporarily
17 reduce the number of panel members to two from
18 three. And we've done that, consistently re-
19 voting each month. And I think the desire was to
20 have all of the appointed members weigh in, and
21 Mr. Shpetner hasn't been here for a while. So --

22 MR. SHPETNER: Right. I had conflicts,
23 so I apologize for not being available. I think
24 the process is working fine, but I would

1 April 18, 2019

2 appreciate an update on what we're doing with the
3 three vacancies, because I think that's really
4 kind of, you know, the, the elephant in the room.

5 MS. RICHARD: I know there is an update.
6 I don't have one, specifically. Except that I
7 know that the Appointments Committee is moving
8 forward. I knew that -- I know that they're
9 moving forward with, with candidates. I cannot
10 tell you what stage they're in right now.

11 MR. SHPETNER: Alright. So I don't know
12 -- so is there a question pending for me? I mean
13 I, I'm not sure I understand what you need.

14 MS. RICHARD: Well, the question is, do
15 we continue with the two panel, a two-member
16 panel?

17 MR. SHPETNER: I don't think we have an
18 alternative until we have --

19 MS. RICHARD: Until you have additional
20 members.

21 MR. SHPETNER: -- more appointees, which
22 was the basis of my prior questions.

23 ELIZABETH KNAUER, ESQ., APPOINTED
24 MEMBER: So I, I'll make a motion that we

1 April 18, 2019

2 continue with the two-member panel, at least
3 until the new appointees are appointed.

4 MS. RICHARD: Yes.

5 MS. KNAUER: The new candidates are
6 appointed.

7 MS. RICHARD: Yes. Alright. Yes?

8 NICHOLAS DIETZ, ESQ. ASSISTANT GENERAL
9 COUNSEL, OATH : Should she state her, shouldn't
10 she state her name?

11 MS. RICHARD: Elizabeth Knauer. If you
12 could just state your name.

13 MS. KNAUER: Oh, I'm sorry. I'm
14 Elizabeth Knauer, Appointed Member.

15 MS. RICHARD: Okay. Alright, so all in
16 favor of maintaining the two-member panels? And
17 this is, again, a temporary vote going forward.
18 Is that something that we'll take up at the next
19 meeting?

20 MS. KNAUER: I was -- my motion was to
21 continue it until the, until --

22 MS. RICHARD: The next meeting?

23 MS. KNAUER: -- we have three -- no.
24 Until we have --

1 April 18, 2019

2 MS. RICHARD: Oh, until.

3 MS. KNAUER: -- three new appointments.

4 MS. RICHARD: Okay. So, everybody,
5 alright, is that, is that understood? Until we
6 have three new panel -- until we have three mew-
7 new members on the Board, appointed members on
8 the Board. Is that what you're saying?
9 Elizabeth?

10 MS. KNAUER: That was my suggestion.

11 MS. RICHARD: Okay.

12 MS. KNAUER: That was my motion.

13 MS. GRAHAM: I have a question.

14 Shamonda Graham, Department of Buildings. Is the
15 Com-, the Appointment Committee, are they moving
16 forward with three members, or do we if they have
17 all three? Or is it two, one?

18 MS. RICHARD: I cannot tell you if they
19 -- I can't. But let me --

20 MS. GRAHAM: Okay.

21 MS. RICHARD: -- let me promise to do
22 this. Let me promise to send you an update --

23 MS. GRAHAM: No problem.

24 MS. RICHARD: -- after the meeting.

1 April 18, 2019

2 MR. DIETZ : It was three. Nicholas
3 Dietz, Assistant General Counsel, OATH. I'm not
4 sure if it's in the minutes, but I read somewhere
5 that there were three candidates, approximate
6 three candidates are currently under review.

7 MS. RICHARD: Right. I can't promise
8 you that there are still three.

9 MR. DIETZ : Under review.

10 MS. RICHARD: Because things happen
11 during the process.

12 MR. DIETZ: Oh, I see.

13 MS. RICHARD: And sometimes people do
14 drop out. Right? One of the issues has been
15 that there are lots of -- there's investigatory
16 stuff, there's a lot of stuff involved in being a
17 Board member, and sometimes people do drop out.
18 So I can't --

19 MS. KNAUER: Well, I mean I'm making
20 that motion. We can always revisit it if we get
21 two more members and we feel like, at that point.

22 MS. RICHARD: Mm-hmm.

23 MS. KNAUER: I mean, so I, I'm just
24 making, I'm making the motion that, at least for

1 April 18, 2019

2 the time being, until we have three new members,
3 that we continue with the one appointed member
4 per panel. And, obviously, we can revisit it at
5 some future point in time and go back to what it
6 was, based on the changed circumstances.

7 MS. RICHARD: Okay.

8 MS. GRAHAM: So, Shamonda Graham,
9 Department of Buildings. I would imagine that
10 it may be better for us to just make the motion
11 until we have new panel members, rather than
12 saying the term "three." So then, that way, we
13 don't have to wait until there's three in
14 totality. We just do, until there's someone new,
15 then we revisit.

16 MS. KNAUER: That's fine, too.

17 [CROSSTALK]

18 MR. SHPETNER: Oh, yeah, that's perfect.

19 MS. GRAHAM: It's the same thing.

20 MS. KNAUER: Yeah, it should amount to
21 the same thing, yes.

22 MR. SHPETNER: No, it's -- no, it's a
23 little, a little more flexible.

24 MS. GRAHAM : Yeah.Okay.-

1 April 18, 2019

2
3 MS. RICHARD: Okay, sure. Okay, that's
4 the motion. All in favor of that motion? Okay.
5 That's a unanimous vote. Alright, thank you.

6 Okay. Next on the agenda, Mr. Pecunies,
7 DEP's requests for cease and desist orders.

8 RUSSELL PECUNIES, ESQ., DEPARTMENT OF
9 ENVIRONMENTAL PROTECTION: Yes, thank you. Good
10 morning. Russell Pecunies with DEP Legal. So,
11 for this Board meeting, DEP is making one request
12 for a cease and desist order under the Sewer
13 Code.

14 This pertains to the Brooklyn Bridge
15 Marriott Hotel at 333 Adams Street in Brooklyn.
16 DEP Inspectors visited the hotel and issued an
17 order to Marriott Hotel Services, Inc., on May
18 2nd of 2017, requiring them to install a large
19 number of grease interceptors on various drains,
20 all of them located specifically in the hotel's
21 kosher kitchen. And when that was not complied
22 with, another inspection was done and another
23 order was issued. And, eventually, after a
24 series of Commissioner's orders were issued,

1 April 18, 2019

2 summonses began to be issued in October of 2017.

3 Summonses were issued again in November
4 of '17, January of '18. And then, in between
5 January of April of '18, there was some response
6 from Marriott, but they had still not complied
7 with a number of the orders. And, so, additional
8 summonses were issued in April of '18. And, as
9 of September, there was still not full
10 compliance, so an additional summons was issued
11 in September. And, as of now, they still are not
12 in compliance with five of the Commissioner's
13 orders.

14 And based on that, the Department is
15 requesting that the Board issue an order to cease
16 and desist, requiring them to come into full
17 compliance with all of the Commissioner's orders
18 requiring the installation of grease interceptors
19 on all of the drains and equipment in the kosher
20 kitchen.

21 MS. KNAUER: I have a --

22 MR. PECUNIES: Yeah.

23 MS. KNAUER: Elizabeth Knauer, Appointed
24 Member. So what is Marriott's position here? Do

1 April 18, 2019

2 they have a position as to --

3 MR. PECUNIES: I, I am not -- because we
4 have a separate Legal Unit in the Bureau of
5 Wastewater Treatment that deals with enforcement
6 of the Sewer Code issues, I have not been privy
7 to whatever discussions there have been with the
8 Marriott.

9 Obviously, this has been going on for a
10 couple of years and they're still not in full
11 compliance. And it would seem like the Marriott
12 Hotel Group would have the resources to comply
13 with whatever they need to comply with.

14 MS. KNAUER: Well, that, that's why I'm
15 asking. It's not like some --

16 MR. PECUNIES: Yeah. I'm not, I'm not
17 sure --

18 MS. KNAUER: -- fly-by-night operation
19 that you might think --

20 MR. PECUNIES: -- exactly what the, what
21 the discussions --

22 MS. KNAUER: -- just because they can't
23 afford it.

24 MR. PECUNIES: -- have been. And it

1 April 18, 2019

2 does appear like they have done some work, but
3 not everything that's required.

4 JORGE MARTINEZ, ESQ., DEPARTMENT OF
5 HEALTH & MENTAL HYGIENE: Jorge Martinez,
6 Department of Health. It looks like they don't
7 have any, or the, the appropriate number of
8 grease interceptors. Just a general question.
9 Is it an expensive piece of equipment to install?
10 I'm, I'm not sure why they wouldn't have this.

11 MR. PECUNIES: I mean it depends on the
12 sizing. And I mean, but grease interceptors are
13 required basically in all restaurants. Anything
14 where they have cooking going on that involves
15 frying or anything like that. Every mom and pop
16 restaurant basically has to have a grease
17 interceptor. So for a place like the Marriott
18 not to be in full compliance, it does seem rather
19 odd. But we have been issuing them paperwork
20 and, apparently, have had some discussions with
21 them and, and response from them. But after two
22 years of trying to get them into full compliance,
23 they're still not into full compliance.

24 MS. KNAUER: And, and --

1 April 18, 2019

2 MR. PECUNIES: This would certainly not
3 be an expense that would be more than a, you
4 know, rounding error on the Marriott's balance
5 sheet.

6 MS. KNAUER: Does the Appeals Unit have
7 any insight? Have they appealed any of these
8 summons -- any of the --

9 UNIDENTIFIED MALE: No, not that I'm
10 aware of.

11 MS. KNAUER: -- violation, any of the
12 violations?

13 PETER SCHULMAN, ESQ. ASST. DIRECTOR FOR
14 APPEALS, OATH: No, they haven't.

15 MS. KNAUER: Hmm.

16 MR. PECUNIES: No, not to my knowledge.

17 MR. SHPETNER: Dirty.

18 MR. PECUNIES: that's this request.

19 MS. RICHARD: Okay. Is there a motion?
20 Alright. And all in favor? Okay. Alright. So
21 that's all in favor of the Sewer Code request.
22 The next one?

23 MR. PECUNIES: Okay. The next one is
24 under the Noise Code and the premises is 1285

1 April 18, 2019

2 East 23rd Street in Brooklyn. The owner of the
3 building is an individual, Henry Steinmetz. This
4 is a, a situation where there are, I believe, two
5 air conditioning units on the roof of the
6 building that are impacting a nearby apartment.

7 We issued three summonses last year.

8 One of them was defaulted and the other two were
9 found in violation after a hearing. We are
10 receiving persistent complaints since the winter
11 has ended from the complainant that the equipment
12 is back in use. Apparently, it's used
13 seasonally. It's back in use. We have been
14 unable to arrange a inspection with the
15 complainant that would have allowed us to issue
16 another summons this year, so far. Although I
17 believe I was told that there is a, an
18 appointment with the complainant for next week.
19 But because the Board only meets now every two
20 months, we wanted to bring this request before
21 the Board at this meeting, because, that way, we
22 can get them hopefully into compliance before
23 June, when the Board meets again. And, so, it's
24 -- it would be two months sooner of getting it

1 April 18, 2019

2 into compliance.

3 Ideally, we would have inspected this
4 again since it was brought back into operation in
5 the spring, but we just haven't been able to make
6 the appointment in time for this meeting. So we
7 are requesting that the Board approve a, a cease
8 and desist order for it at this, at this
9 juncture.

10 MS. RICHARD: Okay. Alright. Is there
11 a motion? Okay. And all in favor? Okay, that's
12 a unanimous vote.

13 MR. PECUNIES: And, finally, we have for
14 this meeting 49 requests for cease and desist
15 orders for failure to comply with backflow
16 prevention requirements. In each of these cases,
17 the building owner has been -- it has been
18 determined that the premises requires the
19 installation of backflow preventers. The
20 building owner has been ordered to install them.
21 A summons has been issued for failing to install
22 them. And that summons has been adjudicated in
23 violation. So, in each of these cases, the
24 Department is requesting that the Board issue an

1 April 18, 2019

2 order to cease and desist.

3 MS. RICHARD: Okay. Any questions?

4 Okay. Is there a motion? All in favor?

5 Alright. It's a unanimous vote.

6 MR. PECUNIES: Alright, thank you.

7 MS. RICHARD: Thank you. Alright. Next
8 on the agenda are DEP's requests for pre-sealing
9 reports. And Amy Slifka will come before the
10 Board. Thank you.

11 AMY SLIFKA, ESQ., DEPUTY

12 COMMISSIONER/HEARINGS DIVISION, OATH: Okay, good
13 morning. We have 16 pre-sealing reports for
14 today's Board. Twelve of the reports involve
15 backflow cases, four of the reports involve Noise
16 Code cases.

17 So, for the backflow, in 11 of the
18 backflow cases the hearing officers recommended
19 no sealing or other action, based on Respondent's
20 evidence of compliance presented at the hearings.
21 In one of the backflow cases, the hearing officer
22 rec- recommends that the C&D proceeding be
23 discontinued because the Respondent established
24 that it sold the cited premises.

1 April 18, 2019

2 Okay. Any questions? None.

3 MS. RICHARD: Okay.

4 MS. SLIFKA: You want to take a vote on
5 that?

6 MS. RICHARD: Alright. So is there a
7 motion to approve the pre-sealing reports? And
8 all in favor? Okay. Alright, it's unanimous.

9 MS. SLIFKA: Okay. For the noise cases,
10 there are four Noise Code cases. The four Noise
11 Code cases involve noise from refrigeration,
12 kitchen exhaust and boiler/burner equipment. In
13 all of the cases, the Respondents presented
14 evidence of work done on the site of the
15 equipment to bring the equipment into compliance
16 with the Noise Code. So, based on Respondent's
17 evidence of compliance, the hearing officers
18 agree with DEP's recommendation that the
19 equipment remain unsealed if DEP's initial ins-,
20 re-inspections and further inspections for a
21 period of 180 days show no violations.

22 MS. RICHARD: Okay. Any question on
23 those? _Okay? None? Okay. Is there a motion?
24 And all in favor? Okay, another unanimous vote.

1 April 18, 2019

2 Thank you.

3 MS. RICHARD: Alright. So I think that
4 we've gotten through the on record items. So is
5 there a motion to go into the Executive Session
6 to discuss the judicial report? Alright. All in
7 favor of the motion? Alright.

8 [OFF THE RECORD]

9 [ON THE RECORD]

10 MS. RICHARD: Okay. And as to --
11 well, we've had a motion to return to Public
12 Session. Okay. So we'll have a Board vote,
13 then, on the alternative decisions for the full
14 Board appeal.

15 All those in favor of denying the, the
16 appeal, thus affirming the decision below that
17 dismisses the two summonses and finds that
18 Respondent, Owen Foster, did not unlawfully
19 advertise occupancy of a dwelling unit that would
20 violate New York State Multiple Dwelling Law,
21 Section 4(8). All those in favor, please raise
22 your hand. denying the appeal, affirming. Okay.
23 So that's three votes in favor. And all those in
24 favor of granting the appeal, thus reversing the

1 April 18, 2019
2 decision below, sustaining the two summonses and
3 finding that Respondent Owen Foster did
4 unlawfully advertise occupancy of a dwelling unit
5 that would violate New York State Multiple
6 Dwelling Law Section 4(8), please vote in favor.
7 One, two, three, four. Can I see? Okay. Okay,
8 that's five --

9 MS. RICHARD: -- in favor.

10 MR. DIETZ: And one abstention.

11 MS. GRAHAM: One abstention.

12 MS. RICHARD: And one abstention. Thank
13 you.

14 MS. GRAHAM: Sure.

15 MS. RICHARD: Alright. Have, have all
16 attendees signed the attendance sheet? Okay.
17 Alright. Any further matters? Alright, then.
18 Is there a motion --

19 MR. SHPETNER: Well, excuse me. I do
20 have one.

21 MS. RICHARD: Yeah.

22 MR. SHPETNER: Do we have an update on
23 what's happening with the head of the Agency?

24 MS. RICHARD: We do not. Okay? Is

1 April 18, 2019

2 there a motion to adjourn? Okay. Alright, thank
3 you, everyone. And our next meeting will be --
4 what's the date?

5 MR. SHPETNER? June.

6 MR. PECUNIES: June something.

7 (The board meeting concluded at 10:41
8 a.m.)

Environmental Control Board, 4/18/2019

CERTIFICATE OF ACCURACY

I, Gregory Woltman, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on April 18, 2019, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: April 26, 2019

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