

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

HEARING  
BOARD MEETING

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

April 26, 2018

9:30 A.M. to 10:10 A.M.

April 26, 2018

MEMBERS PRESENT:

Andrea Ciccone, Esq. - Dept. of Sanitation (DSNY)  
Michele Defreitas-Withim, Esq. - Dept. of Health Mental  
Hygiene  
Elizabeth Knauer, Esq. - Appointed Member  
**Russell Pecunies, Esq. - Dept of Environmental Protection**  
**Debra Scotto - Appointed Member**  
Matthew Smith, Esq. - NYC Police Department (NYPD)  
Abayomi Whint, Esq. - NYC Fire Department (FDNY)

ALSO PRESENT:

Quiana Battle - Computer Service Technician  
Svetlana Goryacheva - Business Integrity Commission (BIC)  
Timothy Jones, Esq. - Assistant General Counsel, OATH  
Susan Kassapian, Esq. - Deputy Commissioner/Appeals, OATH  
Mark H. Leeds, Esq. - Special Senior Counsel, OATH  
Tynia Richard, Esq. - Deputy Commissioner/General Counsel,  
OATH  
Peter Schulman, Esq. - Assistant Director of  
Adjudications, OATH Hearings Division  
Frances Shine - Secretary to the Board, OATH  
Amy Slifka, Esq - Deputy Commissioner/Hearings Division,  
OATH  
**Olga Statz, Esq. - Deputy General Counsel, OATH**  
**Eftyhia Xidias - Managing Attorney, OATH**

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2 (The board meeting commenced at 9:30.)

3 MS. TYNIA RICHARD, DEPUTY

4 COMMISSIONER/GENERAL COUNSEL, OATH: Thank you.

5 Good morning. Today is April 26, 2018. My name is

6 Tynia Richard. I'm Deputy Commissioner and

7 General Counsel here at OATH and am appearing by

8 designation of the chair, who is unable to be

9 here today. So I'm calling the meeting to order,

10 and I'll ask if there's a motion to adopt the

11 minutes of the last meeting, which was on

12 February 22nd. Motion and votes in favor? Okay.

13 All votes, okay. Great. Thank you. Alright, so

14 the next order of business, DEP's request for

15 cease and desist orders. Mr. Pecunies.

16 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT

17 OF ENVIRONMENTAL PROTECTION: Alright, thank you.

18 Alright. Good morning. I'm Russell Pecunies, with

19 the Bureau of Legal Affairs at the Department of

20 Environmental Protection. DEP has built up some,

21 some extra business over the last two months

22 since we had the last board meeting. So instead

23 of the usual number of cease and desist requests

24 related to failure to install backflow prevention

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2 devices, for this meeting the department is  
3 requesting that the board approve 50 of these  
4 requests.

5 In each of these cases, the building  
6 owner has been served with a notice to install  
7 backflow prevention devices, has been issued a  
8 summons for failing to comply with that order.  
9 The summons has been adjudicated against the  
10 building owner, and the building owner continues  
11 to be in non-compliance. So in each of these 50  
12 cases, the department is requesting that the  
13 board order, issue an order to cease and desist.

14 MS. RICHARD: Okay. And votes in favor?  
15 Okay. None opposed.

16 MR. PECUNIES: In favor as well, I  
17 guess.

18 MS. RICHARD: Okay. Thank you.

19 MR. PECUNIES: So the department also  
20 has several requests for cease and desist orders  
21 under the Air or Noise Codes. So the first thing  
22 that I should mention is that the request related  
23 to Congregation Yetev Lev, Incorporated at 427  
24 Broadway in Brooklyn is being pulled for this

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2 board meeting, as per my commissioner's  
3 instructions from yesterday. They have apparently  
4 hired an engineering firm to correct the odor  
5 problem from this matzoh processing location and  
6 they want to give them a month to see if the, if  
7 they follow through on correcting it before they  
8 ask the board for a cease and desist order. So  
9 that request is being tabled, potentially to be  
10 brought back at the next meeting.

11 With regard to the other three, which  
12 are all related to the Noise Code, the first one  
13 relates to Tripti USA Inc., which is a restaurant  
14 located at 2588 Broadway, a restaurant called  
15 Awadh, A-W-A-D-H. They have been cited on three  
16 occasions at this point for excessive noise from  
17 the kitchen exhaust and based on their continuing  
18 failure to come into compliance, DEP is  
19 requesting that the board issue an order to cease  
20 and desist.

21 MS. RICHARD: Okay. And votes in favor?  
22 Okay, all in favor, motion carries.

23 MR. PECUNIES: The next one is for a  
24 gym, CKO Kickboxing, located at 310 East 23rd

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2 Street. This location has been repeatedly cited  
3 for excessive noise from the sound system.  
4 Apparently, they have classes where they play  
5 very loud music. They've been cited three times  
6 for this excessive music, still have not  
7 corrected it, although the first time they came  
8 in, they did submit evidence that they had  
9 corrected it, as a result of which the penalty  
10 was mitigated to zero. However, they were then  
11 re-inspected twice and have been found in  
12 violation two more times. So they did not in fact  
13 correct it. And based on the repeated violations  
14 and continuing failure to come into compliance,  
15 DEP is asking the board to issue an order to  
16 cease and desist.

17 MS. RICHARD: Okay. Votes in favor?

18 Alright, all in favor.

19 MR. PECUNIES: Okay. The third one under  
20 the Noise Code is Cheeseboat, Incorporated. I  
21 don't know if that's the name of the restaurant  
22 or not, but it's located at 80 Berry Street in  
23 Brooklyn. This is another noisy kitchen exhaust.  
24 They have been cited five times for noise from

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2 this kitchen exhaust. And due to the repeated  
3 violations and continuing failure to come into  
4 compliance, the department is asking the board to  
5 issue an order to cease and desist.

6 MS. RICHARD: Okay. Votes in favor?  
7 Okay, unanimously.

8 MR. PECUNIES: And finally, the Bureau  
9 of Wastewater Treatment is asking the board to  
10 issue an order to cease and desist to Tenzan New  
11 York Corp., which is located at 285 Columbus  
12 Avenue in Manhattan. This location was originally  
13 inspected in August of 2016 and was issued a  
14 summons for not having a properly operating  
15 grease interceptor. A second inspection observed  
16 that that condition had not been corrected and in  
17 addition, that a separate, different grease  
18 interceptor was full of excessive, hardened  
19 grease. So a second summons was issued. A third  
20 inspection showed that the one interceptor was  
21 still missing its baffle, and that two other  
22 grease interceptors were overloaded and a  
23 commissioner's order was then issued, requiring  
24 them to have a waste hauler clean out the

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2 interceptors at a minimum, once every 30 days,  
3 and to submit written proof of these cleanings to  
4 the department upon request. On several occasions  
5 in 2017, summonses were issued for failure to  
6 comply with that order and finally, the  
7 respondent, in addition to, in addition to  
8 failing to appear for several of the hearings on  
9 the summonses, did not appear for a mandatory  
10 compliance meeting in December, and due to this  
11 long history of non-compliance, which continues,  
12 the department is asking the board to issue an  
13 order to cease and desist.

14 MS. RICHARD: Okay. All votes in favor?  
15 Okay. And the motion carries, all unanimous.

16 MR. PECUNIES: Thank you very much.

17 MS. RICHARD: Okay. Thank you, Mr.  
18 Pecunies. Okay, next on the agenda are pre-  
19 sealing reports.

20 MS. EFTYHIA XIDIAS: Good morning,  
21 everyone, I'm Eftyhia Xidias, I'm the managing  
22 attorney for Manhattan live hearings for OATH and  
23 I'll do the presentation in lieu of Kelly Corso,  
24 who was unable to attend today. We have 29 pre-

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2 sealing reports, including a water shutoff and  
3 one post hearing report for today's board.  
4 Twenty-eight of the reports involve backflow  
5 violations and one report involves a sewer  
6 violation and one report involves Noise Code  
7 violation.

8 With regards to backflow sewer pre-  
9 sealing reports, there are 28 of them. In 17 of  
10 the backflow cases, the hearing officers  
11 recommended no sealing or other action, based on  
12 respondents' evidence of compliance presented at  
13 the hearing. In ten of the backflow cases, the  
14 hearing officer agrees with DEP's recommendation  
15 to discontinue the C&D proceedings because DEP  
16 has determined that the required devices have  
17 been installed and respondent is now in  
18 compliance. Likewise, in the sewer case, the  
19 hearing officer agreed with DEP's recommendation  
20 to discontinue the C&D proceeding because DEP has  
21 determined that respondent is now in compliance.

22 With regards to the water shutoff, this  
23 is a backflow pre-sealing report, the hearing  
24 officer recommends that the water be shut off.

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2 The respondent in this case is Broadway 111  
3 Street Condominium. The premises in this case is  
4 located at 2851 Broadway, New York, NY and it is  
5 a residential building with approximately 147  
6 units.

7 In November 2013, DEP issued a  
8 commissioner's order to the respondent ordering  
9 the installation of a backflow prevention device  
10 at its premises. The commissioner's order warned  
11 the respondent that failure to comply could  
12 result in termination of the water supply to the  
13 premises. In March 2015, DEP issued a summons to  
14 the respondent for failure to comply with the  
15 commissioner's order. The summons was sustained  
16 at a hearing in February 2017. In June 2017, DEP  
17 determined that the required backflow prevention  
18 devices had not been installed at the cited  
19 premises and requested that the board issue a  
20 cease and desist order. On July 2017, the board  
21 issued a cease and desist order directing the  
22 respondent to appear at a special hearing on  
23 August 15, 2017, to show why the water supply to  
24 the premises should not be shut off. At eight

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2 hearings between October 2017 and February 27,  
3 2017, the respondent's representative stated that  
4 there is a Department of Buildings stop work  
5 order on the premises that has not been resolved,  
6 preventing the respondent from complying with the  
7 commissioner's order.

8 The case was rescheduled twice and had  
9 been adjourned eight times since the first pre-  
10 sealing hearing on October 3, 2017, for the  
11 respondent to comply with the commissioner's  
12 order and to submit test reports. Respondent's  
13 representative was advised at the hearings that  
14 the water would be shut off if the respondent  
15 continued to ignore the order to comply. At the  
16 last hearing on February 27, 2018, the  
17 respondent's representative offered no evidence  
18 whatsoever of any progress toward achieving  
19 compliance or any specific information as to what  
20 is being done to resolve the stop work order on  
21 the premises.

22 Okay. DEP recommended at the last  
23 hearing that the water services to the premises  
24 be terminated since no evidence of respondent's

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2 progress or compliance was presented. Based on  
3 the lengthy history of the case, and respondent's  
4 continued failure to comply with the order and to  
5 provide any specific information as to what is  
6 being done to resolve the stop work order on the  
7 premises, the hearing officer recommended the  
8 water supply to the premises be shut off.

9 There is one noise post-sealing report.  
10 And that summons was issued on November 26th for  
11 noise above allowable levels for respondent  
12 Fairway Broadway LLC with regards to its kitchen  
13 exhaust equipment at its restaurant at 2127  
14 Broadway in Manhattan. Decisions were imposed  
15 with penalties imposed and ordering that the  
16 respondent comply with the Noise Code forthwith.  
17 Respondent failed to comply and on October 26,  
18 2017, DEP requested that the board issue a cease  
19 and desist order to the respondent. On October  
20 26, 2017, the board issued a cease and desist  
21 order to the respondent ordering that respondent  
22 to appear at a hearing to show why his equipment  
23 should not be sealed.

24 At the pre-sealing hearing on January

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2 30, 2018, at which time, the sealing of the  
3 equipment was stayed pending an inspection by  
4 DEP. A subsequent inspection showed that the  
5 equipment was operating in violation of the Noise  
6 Code and the equipment was sealed by DEP on March  
7 12, 2018. At a post-sealing hearing, held on  
8 March 27, 2018, DEP presented proof that the  
9 exhaust unit was now in compliance with the Noise  
10 Code upon inspection as of March 23, 2018. At  
11 that point, it was unsealed by DEP because  
12 respondent was in compliance. Based on that  
13 proof, the hearing officer recommended that the  
14 equipment remain unsealed only if an initial and  
15 subsequent re-inspection of the equipment for a  
16 period of 180 days showed no violations. That's  
17 my report.

18 MS. RICHARD: Okay. Thank you. Alright.  
19 Prepared to -- is there a vote on these?

20 MS. ELIZABETH KNAUER, APPOINTED MEMBER:  
21 Can I --

22 MS. DEBRA SCOTTO, APPOINTED MEMBER: I  
23 have a question.

24 MS. RICHARD: Yes, okay.

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2 MS. AMY SLIFKA, DEPUTY COMMISSIONER,  
3 HEARINGS DIVISION, OATH: Why don't you vote on  
4 the backflows first?

5 MS. SCOTTO: That's a good idea.

6 MS. RICHARD: Okay. So we'll go by  
7 groups, okay.

8 MS. SLIFKA: Right, there were --

9 MS. KNAUER: Well not all of the  
10 backflows.

11 MS. SLIFKA: Not all of them?

12 MS. XIDIAS: Not the shutoff.

13 MS. KNAUER: Not the shutoff.

14 MS. SLIFKA: Right.

15 MS. RICHARD: Right. The backflows,  
16 excluding --

17 MS. SLIFKA: The 27 backflows.

18 MS. RICHARD: Yes. Alright. So --

19 MS. SLIFKA: How many backflows where  
20 there? 27 or 28?

21 MS. XIDIAS: Twenty-eight including the  
22 sewer.

23 MS. SLIFKA: The one, okay.

24 MS. XIDIAS: Yeah.

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2 MS. SLIFKA: Okay. So there are 28, so  
3 we'll vote on the 28 backflows.

4 MS. RICHARD: Okay. The 28 backflows,  
5 that's what's pending, and those in favor? Okay.  
6 So all in favor, and so the motions carries as to  
7 those.

8 MS. SLIFKA: And then what about the.

9 MS. XIDIAS: That's one post-sealing,  
10 which is a Noise Code.

11 MS. RICHARD: The one post-sealing. All  
12 in favor? Okay. And that's a unanimous vote and  
13 now what's remaining is Broadway 111 Street  
14 Condominium.

15 MS. XIDIAS: Correct.

16 MS. SLIFKA: The water shutoff.

17 MS. RICHARD: Yes. Yes. Ms. Scotto?

18 MS. DEBRA SCOTTO, APPOINTED MEMBER:  
19 Yes, I have an issue with shutting water off for  
20 over 100 people who are living there, no matter  
21 what the circumstances, that seems a little  
22 draconian.

23 MS. RICHARD: Right. That concern does  
24 come up.

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2 MS. SCOTTO: I mean why is it that the,  
3 you know, some of the other regulatory agencies  
4 can correct or put on the tax bill or what have  
5 you, there are other methods to correct problems  
6 and/or fine entities, you know. I mean what are  
7 you doing with the potentially elderly person who  
8 was there and collapses from dehydration because  
9 her water is shut off, or his water is shut off.  
10 I just don't, you know, I mean I think we've come  
11 a little farther than --

12 MS. RICHARD: So --

13 MS. SCOTTO: -- you know on a commercial  
14 entity, I don't have an issue with that, but when  
15 you have a multifamily of some sort, I, I don't  
16 see this. Why is the city not putting a backflow  
17 preventer in and charging them, and if they're  
18 not paying, why don't we see that flow through  
19 onto their tax bills, and then if they don't pay  
20 them, then we put tax liens on them. What are we  
21 doing here? This is not --

22 MS. RICHARD: So, let's, so okay. Let's,  
23 let's address the question and I'm assuming you  
24 have a similar one? Do you want --

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2 MS. KNAUER: Well, I just -- can I just  
3 add to that?

4 MS. RICHARD: Mm-hmm.

5 MS. KNAUER: My -- I have a specific  
6 concern, which is that given what seemed to be  
7 the situation here was that there was a stop work  
8 order. I guess my concern is that the landlord  
9 may be using this as an opportunity to get the  
10 building vacated because they have improvements  
11 they want to make to get a larger return on their  
12 investment. So I have a big concern about  
13 landlords using the city process actually to  
14 their advantage in terms of removing tenants that  
15 maybe are rent stabilized or something of that  
16 nature. So I mean if that could, if that concern  
17 could be addressed and Debra is at peace.

18 MS. RICHARD: Okay. Alright. So before  
19 Mr. Pecunies, I just want to note that the first  
20 commissioner's order in this matter was signed in  
21 November 2013. Okay.

22 MR. PECUNIES: Okay. So it's been five  
23 years that they've had to clear up the issue with  
24 the Buildings Department. This is a condominium,

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2 so I don't think there's an issue with a landlord  
3 wanting to kick people out of the building. I  
4 just want to clarify that I don't think  
5 Commissioner Sapienza is going to actually sign  
6 off on turning off the water to a huge  
7 condominium building with 146 units, however many  
8 units there are.

9 MS. SCOTTO: That's what we're being  
10 presented with. I believe it's 147.

11 MR. PECUNIES: This, these occasional  
12 backflow cases that get to the point where we  
13 recommend water shutoff to the hearing officer  
14 are almost all with the same high volume rep. He  
15 comes in over and over and over and over and over  
16 again with no information. They, there is no  
17 other recommendation that we can make. We cannot  
18 go into the building -- the issue here is that  
19 because of the stop work order, they cannot get a  
20 Buildings Department permit to do the work. Okay.  
21 They could go install a backflow prevention  
22 device on the pipe, but they can't generate the  
23 test report --

24 MS. SCOTTO: Correct.

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2 MR. PECUNIES: -- that's necessary to  
3 show compliance without a Buildings Department  
4 permit, which they can't get. And I believe in  
5 this case, the stop work order is related to  
6 plumbing work without a permit. Sometimes, the  
7 Buildings Department, if it's a stop work order  
8 related to the elevators or something on the roof  
9 or something, they'll give them the permit to  
10 install the backflow device, even if there's a  
11 stop work order on the building. I believe in  
12 this case, the stop work order does relate to  
13 illegal plumbing work, and that they will not  
14 give a permit for until it's corrected.

15 Our hope and our experience, based in  
16 the past, is that when we send a crew to the  
17 building and they start painting the sidewalk and  
18 putting notices on the outside of the building  
19 that the water is going to be turned off, that  
20 the condominium owners will go shrieking to the  
21 managing agent, what is going on here, why  
22 haven't you taken care of this, and it will get  
23 taken care of, okay. If it's not, again, I  
24 seriously doubt that Commissioner Sapienza is at

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2 the end of the day, going to say turn off the  
3 water to this building, which of course makes it  
4 uninhabitable.

5 MS. SCOTTO: Correct.

6 MR. PECUNIES: But there's nothing else  
7 -- at some point, there's nothing else that we  
8 can say, because in the, in the commissioner's  
9 order, in the law, and in the cease and desist  
10 order issued by the board, the remedy for non-  
11 compliance is terminating the service. So that's  
12 the only thing that we can recommend.

13 MS. SCOTTO: I understand that, but I  
14 think we need to change that.

15 MS. KNAUER: Well, is the situation here  
16 that, I mean is your belief the situation here is  
17 that this, the representative that's appearing,  
18 like is not, I mean that the people that live  
19 there, they have no idea that this is going on?

20 MR. PECUNIES: I don't know who he's  
21 talking to. He's a lawyer. He's, he comes in and  
22 says I have no information. My client hasn't  
23 responded. I'm assuming he's talking to the  
24 managing agent or the condo board, I don't know

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2 which. I'm not privy to that.

3 MS. SCOTTO: And since it's a condo with  
4 multiple owners, nobody has sent notices to all  
5 of the owners?

6 MR. PECUNIES: I mean our hope again is  
7 that when we post big, red notices on the front  
8 of the building, saying that the water is going  
9 to be turned off, that people will then go to the  
10 managing agent and the condo board.

11 MS. SCOTTO: Right, but how much time --

12 MR. PECUNIES: And they will, and they  
13 will get this resolved.

14 MS. SCOTTO: -- that's not done before  
15 the vote. That's, you want us to vote on this and  
16 then do that. I'm saying why --

17 MR. PECUNIES: Because we're not  
18 authorized to go turn off the water until the  
19 board --

20 MS. SCOTTO: This process needs to  
21 change.

22 MS. KNAUER: But are you, is there a way  
23 to, before going to the step of actually turning  
24 off the water, or potentially turning off the

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2 water, to try to contact the owners? I just, I  
3 feel like to penalize --

4 MR. PECUNIES: I mean they're  
5 represented by counsel. I mean I don't know --

6 MS. KNAUER: -- to penalize these, these  
7 residents because of the failings of their  
8 managing agent, and I know, it's just, it's -- I  
9 have no sympathy for the managing management  
10 company, but it's, I feel like it must be a  
11 situation where the people that live there, and I  
12 guess if it's really a condominium, they own  
13 their units. They just, they must not know.

14 MR. PECUNIES: I can't --

15 MS. SCOTTO: Right. And what you're  
16 saying is the notice won't be given until we vote  
17 on this and already say we're shutting off their  
18 water. I have an issue with that.

19 MS. KNAUER: And if they --

20 MS. MICHELE DEFREITAS-WITHIM, ESQ.,

21 DOHMH: I have a question. How much time passes  
22 from the time you print the notices to the time  
23 that an actual shutoff occurs?

24 MR. PECUNIES: Again, in this, in this

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2 type of a residential situation, I think what the  
3 commissioner is going to authorize water and  
4 sewer to do is go paint the sidewalk and put up  
5 the notices on, on the entrance to the building,  
6 saying that because of the non-compliance with  
7 this order, that the water to the building is  
8 going to be turned off. I don't think he's going  
9 to authorize following up with actually doing it.

10 MS. SCOTTO: But usually a follow up  
11 will be within a week, two weeks?

12 MR. PECUNIES: Well, it's not, it's not  
13 even, it's not -- there have been so few cases  
14 that have gotten to this point that I can't say  
15 that there's a typical scenario except that we  
16 have never turned off anybody's water for this.  
17 As soon as they see the, the guys out on the  
18 sidewalk and in the street with the spray paint  
19 cans and the notices on the front of the  
20 building, saying that the water supply is going  
21 to be terminated, we hear from somebody  
22 immediately, and usually -- I mean we had one,  
23 the last one the board approved was for a Jewish  
24 school in Brooklyn, same rep, same situation,

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2 stop work order from the Buildings Department. As  
3 soon as we went out to the building, we heard  
4 from them, they got that stop work order  
5 resolved, and they got the thing installed and as  
6 far as I know, they're now in compliance.

7 MS. KNAUER: But how did that, how was  
8 that effectuated? There was some stay of the  
9 sealing then, to do that.

10 MR. PECUNIES: Well, we, we would, first  
11 of all, one of the things that we actually have  
12 to do because they do want to become much more  
13 aggressive with enforcing this, the ones that  
14 come to the board for shutoff are very, very  
15 rare. Okay. These cease and desist orders that  
16 the board issues includes a statement that says  
17 that if you fail to appear for the hearing,  
18 you're subject to shut off without further  
19 proceedings. We have at least 200 of those cases,  
20 where people have not showed up for the hearings  
21 and are still not in compliance. And they want to  
22 be much more aggressive about prosecuting those  
23 cases. So, one of the things that we need to do  
24 is speak to the other city agencies that might be

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2 concerned, like the Buildings Department and the  
3 Health Department and the Fire Department and set  
4 up a protocol for doing this.

5 MS. SCOTTO: And HPD.

6 MR. PECUNIES: And HPD, which is not a  
7 member of the board, but yes, and HPD.

8 MS. SCOTTO: Okay. So, but is that  
9 enough?

10 MR. PECUNIES: I mean if you, if you  
11 want to table this and, and say we'll go out and  
12 proceed to paint the sidewalk and post the  
13 notices, and then if there's still nothing by the  
14 next board meeting, I mean we can do that.

15 MS. SCOTTO: I would like to use this as  
16 an impetus to get them to deal with this  
17 situation.

18 MR. PECUNIES: But I mean the problem  
19 from our point of view is, especially where  
20 they've chosen to be represented by counsel and  
21 they're coming in over and over again saying  
22 nothing.

23 MS. KNAUER: But if their -- if their  
24 counsel is effectively committing malpractice --

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2 MS. SCOTTO: That's another --

3 MR. PECUNIES: Well, that's another  
4 issue that I can't speak to.

5 MS. KNAUER: Well, I mean it seems to be  
6 what, what may be the case, but then we're --

7 MS. SLIFKA: That's, that's -- we don't  
8 know.

9 MS. KNAUER: We don't, I'm not -- okay,  
10 I'm not, and I'm not saying that's --

11 [CROSSTALK]

12 MS. KNAUER: Yeah. I'm not saying that's  
13 necessarily the case, but I think there, there is  
14 -- if this is happening repeatedly with the same  
15 representative, where they're coming forward with  
16 no --

17 MR. PECUNIES: Again, again, the last  
18 one was also the same rep.

19 MS. KNAUER: And there are provisions in  
20 the rules about representatives that are not, you  
21 know, that can be banned from the --

22 MS. SLIFKA: Yes, but again, we don't  
23 really don't know. We don't know what management  
24 -- management could be telling him to stall, we

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2 don't know. We haven't heard any --

3 MS. RICHARD: That's exactly right.

4 MS. SLIFKA: -- complaint from the  
5 respondent, so --

6 MS. RICHARD: That's it. They're running  
7 out --

8 [CROSSTALK]

9 MS. RICHARD: -- it's, it's highly  
10 impossible that he's running out the clock, and  
11 guess what? He's highly successful, because for  
12 five years they haven't had to pay.

13 [CROSSTALK]

14 MS. SLIFKA: But the question I have,  
15 Russ, you made, you made kind of that compromise  
16 about painting the sidewalk and putting up signs.  
17 Now, if the board doesn't order that, how are you  
18 putting up signs? You can't put up signs until  
19 you have the board order it.

20 MR. PECUNIES: Well, that, that's why  
21 normally, we don't do it until there's a board  
22 order to do it.

23 MS. DEFREITAS-WITHIM: And this attorney  
24 is just representative of the management agent?

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2 [CROSSTALK]

3 MR. PECUNIES: Well, it's a condominium,  
4 so a condominium will either, I'm assuming he was  
5 hired either by the condo board or the managing  
6 agent, I don't know which.

7 MS. DEFREITAS-WITHIM: Because then if  
8 we're going to go off and think that the members,  
9 the condo members don't know about this, if he's  
10 just representing the management agent, maybe the  
11 condo members don't know.

12 MR. PECUNIES: We don't know. We don't  
13 know what they do or do not know.

14 MS. DEFREITAS-WIHIM: Whereas, if you  
15 have an attorney, you can then go through them,  
16 you say let me give notice to the condo president  
17 and the other board members --

18 MS. KNAUER: Could we --

19 MR. PECUNIES: Well, but they've been  
20 noticed for five years that this needed to be  
21 taken care of, because --

22 MS. DEFRETIAS-WITHIM: Oh, the owners?

23 MR. PECUNIES: Because the original  
24 order from 2013 was not served on the attorney,

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2 it was served on the condominium.

3 MS. SLIFKA: Can I suggest a compromise  
4 here? And I'm just pitching this, I don't -- has  
5 Mr. Poltorak come with a respondent? With a, a  
6 respondent, with anybody at the management  
7 company? Do we know if he comes to the hearing  
8 with anyone or without?

9 MS. XIDIAS: That, I don't know off the  
10 top of my head.

11 MS. SLIFKA: Because we could have one  
12 more hearing forcing him to come with his client,  
13 so we know that the client is informed of this  
14 and is not --

15 MS. XIDIAS: Right.

16 MS. SLIFKA: -- taking care of it, and  
17 have him bring this back to the board next time.

18 MR. PECUNIES: We can do that.

19 MS. SLIFKA: Because I think the general  
20 concern here is that some people feel the client  
21 not know what the attorney is --

22 MR. PECUNIES: Right.

23 MS. SLIFKA: -- or is not doing. I don't  
24 know, I don't know the history of this Russ, I

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2 really don't. I didn't study it. But it's just a  
3 suggested compromise.

4 MR. PECUNIES: We can, we can do that.

5 MS. KNAUER: Well, I mean could I  
6 suggest one other thing that could happen at the  
7 same time? I mean, could a form letter be sent to  
8 the occupants of each of these units concurrently  
9 with that so that they are act- they're actually  
10 told your water is going -- is likely to be shut  
11 off, like this is the last chance.

12 MR. PECUNIES: How many units are there  
13 in the building?

14 MS. XIDIAS: I believe there's 147.

15 MR. PECUNIES: I mean somebody is going  
16 to have to look up 147 names and --

17 [CROSSTALK]

18 MS. KNAUER: No, just address it to  
19 owner or occupant of --

20 MS. SCOTTO: Resident, yeah.

21 MR. PECUNIES: Yeah, but do you mean  
22 just put them in the mailboxes at the building?

23 MS. SCOTTO: Yes.

24 MR. PECUNIES: Well, we'd have to get

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2 into the building to do that, but.

3 MS. SCOTTO: Or, you could just mail  
4 them.

5 MS. DEFREITAS-WITHIM: Maybe it would be  
6 easy just to contact the co-op board president,  
7 because we don't know if this person is just  
8 representative of the management agent, or given  
9 notice to the other co-op members.

10 MR. PECUNIES: I mean all we can do is  
11 send a -- we could send an inspector to the  
12 building and see who the inspector can locate at  
13 the building to talk to. I don't know whether  
14 there's an office in the building or, we don't  
15 know who the managing agent is. I mean, I'm  
16 assuming they have one if it's such a big  
17 building. I mean we can send an inspector to the  
18 building but again, I mean the fact that we have  
19 to go through all these gyrations for something  
20 that they were ordered to do five years ago and  
21 hire an attorney to han- and hired an attorney to  
22 handle --

23 MS. RICHARD: Right.

24 MR. PECUNIES: -- seems a bit, you know.

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2 MS. RICHARD: Right. I mean what we,  
3 what we are somehow presuming --

4 MS. SCOTTO: Sending letters to all the  
5 residents, same address, so.

6 MS. RICHARD: -- we are somehow  
7 presuming is that there is a legal, a legal  
8 structure that requires the managing company to  
9 then go to the condo board and make them avail-  
10 like all of those things are already in place  
11 structurally in the law, right. If they're not  
12 complying with their respon-, there's nothing we  
13 can do about that. And, but --

14 MS. SCOTTO: Well, actually, we were --  
15 [CROSSTALK]

16 MS. RICHARD: But to the extent that,  
17 but to the extent that, that Russ is willing to  
18 take an additional step, I mean I think that  
19 that, that may work out.

20 MR. PECUNIES: We can try sending  
21 someone over --

22 MS. RICHARD: But there's nothing --

23 MR. PECUNIES: -- there and see what  
24 happens.

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2 MS. RICHARD: -- onerous about this five  
3 year process. I cannot imagine that it's not been  
4 put before a board in five years.

5 MR. PECUNIES: Well, I'm assuming  
6 somebody had to approve hiring the lawyer. So.

7 MS. CICCONE: It was the board president  
8 because the relationship between the management  
9 company and the actual condo board, the agent is  
10 acting just strictly as an agent, so ultimately  
11 the condo board and the president would be  
12 responsible. In terms of the notices, I think  
13 that's a great idea, but I know it's onerous on  
14 the agency. Maybe as a compromise, if there are  
15 notices, perhaps they can just go inside the  
16 building and post them in the hallways near the  
17 elevators. This way, all the residents use the  
18 elevators, they will be on notice.

19 MS. KNAUER: That, that's, yeah, that,  
20 yeah, something like that would even be --

21 MS. CICCONE: Instead of mailing, you  
22 know because the block and lot is really...

23 [CROSSTALK]

24 MS. KNAUER: You know, but this is --

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2 MS. SCOTTO: They can be torn down if  
3 they're bad actors.

4 MS. CICCONE: But they'll throw out the  
5 mail too. I mean it's at least everyone is  
6 noticed.

7 MR. PECUNIES: We can, I can commit to  
8 sending an inspector over there. Without knowing  
9 what the situation is at the building, I don't  
10 know what the result of that is necessarily going  
11 to be. I can commit to them posting notices. I  
12 cannot commit to them putting 147 notices in  
13 mailboxes.

14 MS. KNAUER: Okay. That's a good idea,  
15 posting notices is a good idea.

16 MS. CICCONE: At the same time that they  
17 paint the sidewalk and they put the big signs  
18 outside, just put them by the elevators.

19 [CROSSTALK]

20 MS. DEFREITAS-WITHIM: They can't paint  
21 the sidewalk.

22 MS. SCOTTO: They can't do that unless -  
23 -

24 MS. RICHARD: But that's the bottom --

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2 that's what he's essentially saying is that --

3 MR. PECUNIES: Well, we can -- I mean  
4 painting the sidewalk just means there's paint on  
5 the sidewalk. It doesn't mean that we're going to  
6 do anything. If that helps to focus people's  
7 attention then we could send a crew over there to  
8 do that. Whether it, you know, we've never done  
9 it before without the board telling us to do it,  
10 but --

11 MS. KNAUER: Well, we could, I mean we  
12 could approve -- another option is we could  
13 approve the sealing to occur a certain amount of  
14 time after those steps are taken to allow time to  
15 --

16 MR. PECUNIES: Well, I mean what we  
17 could do is we could send the crew there with the  
18 paint and the notices, but not take any other  
19 action until the next board meetings.

20 MS. KNAUER: Okay.

21 MR. PECUNIES: And then we'll report  
22 back on whether that has had any effect, and  
23 we'll try to get in touch with somebody other  
24 than the lawyer, either at the managing agent or

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2 the condo board.

3 MS. KNAUER: I mean I also would just  
4 say that it seems, it might seem appropriate if,  
5 if this has been an issue with this particular  
6 attorney, that some investigation by OATH --

7 MS. SLIFKA: We wouldn't know it's an  
8 issue unless it was reported. I mean again, we  
9 don't know what the instructions are. Nobody's  
10 had, we haven't had any report from management  
11 that we're not -- he hasn't been represented.  
12 Well, we haven't had any complaints about --

13 MS. KNAUER: Well, no, but he might be,  
14 he might be pursuing a strategy which he tells,  
15 and they might, his clients might be approving of  
16 it which he sees as effective, which is, as you  
17 said, running out the clock. But is --

18 MS. SLIFKA: I feel as a lawyer, you do  
19 as you --

20 [CROSSTALK]

21 MS. CICCONE: He is running out the  
22 clock.

23 MS. KNAUER: But ultimately, he's  
24 putting, but ultimately is it effective if he's

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2 putting in peril the water service to a  
3 residential building. Is that really being  
4 effective? It might be effective in the short  
5 term, but ultimately is that --

6 MR. PECUNIES: It'd be speculation on my  
7 part, they may just figure, well the city will  
8 never turn off the water to this building, so.

9 MS. CICCONE: And, and the attorney is  
10 representing the condo board and the president,  
11 and he's not representing all the individual unit  
12 holders, so the unit holders will probably have  
13 to get their own legal representation.

14 MR. PECUNIES: I think so.

15 MS. OLGA STATZ, ESQ., DEPUTY GENERAL  
16 COUNSEL, OATH: I just have to suggest, I'm  
17 sorry. I just have one suggestion. When you, when  
18 you have someone from DEP actually making that  
19 call to the building, make sure it's not an  
20 attorney, because they're represented by counsel.  
21 We, someone is represented by counsel.

22 MR. PECUNIES: Mm-hmm.

23 MS. STATZ: So we can't have another  
24 attorney speaking to someone --

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2 MR. PECUNIES: Right. Well, that's why,  
3 yeah, that's why we --

4 MS. STATZ: -- at the building. So it  
5 has to be a non-attorney, so it may be some  
6 inspect-, so okay --

7 MR. PECUNIES: Well I mean we would send  
8 an inspector who would speak to the super or  
9 whoever is at the building and try and get  
10 contact information because right now, we don't  
11 have anything but the, the mailing address.

12 MS. STATZ: So it has to be client to  
13 client and not counsel to client.

14 MR. PECUNIES: Yeah, mm-hmm. That's  
15 fine.

16 MS. STATZ: Okay.

17 MS. RICHARD: Alright. So, resolution?

18 MR. PECUNIES: So we'll report back at  
19 the next board meeting as to what happens when we  
20 go over there I guess. But just to make clear,  
21 there will be no, no termination of the service  
22 until we report back to the board.

23 MS. RICHARD: Okay.

24 MR. PECUNIES: Okay.

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2 MS. RICHARD: Alright. So then, we will,  
3 we're not taking a vote on that. We'll sort of  
4 withdraw it for vote on this particular, on this  
5 particular case, right?

6 MR. PECUNIES: I guess.

7 MS. SLIFKA: Right. We'll table it for  
8 now and --

9 MR. PECUNIES: Table it?

10 MS. RICHARD: We're tabling the vote  
11 for, for this particular one.

12 MS. KNAUER: One more month after five  
13 years, hopefully there won't be an adjourn.

14 MS. RICHARD: Thank you.

15 MS. XIDIAS: Thank you.

16 MS. CICCONE: Can I just -- what are  
17 building of [unintelligible] [00:35:54] the board  
18 when they did this plumbing and it's illegal,  
19 what kind of plans did they submit to the  
20 buildings department, or did they just never  
21 submit any plans?

22 MR. PECUNIES: Well, the process is a  
23 two stop process. You have to submit plans to DEP  
24 to be approved, and then you have to -- the

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2 plumber has to get the buildings department  
3 permit.

4 MS. CICCONE: To do the work?

5 MR. PECNUNIES: So I, I think that they  
6 did -- that the, the hang up is with the  
7 Buildings Department permit, not with the DEP  
8 approved plans. It, because of the stop work  
9 order, and that it's plumbing related stop work  
10 order that they cannot complete the process.

11 [CROSSTALK]

12 MS. SCOTTO: Yeah, I don't really  
13 understand that on one level though. Believe me,  
14 I follow, I understand exactly what you're  
15 saying, but the city -- the DOB also has the  
16 ability to come in the middle of the night, slap  
17 an emergency work order on a building and throw  
18 scaffolding up and bill the owner a gazillion  
19 dollars. They can do what they want when they  
20 want to. So this could be treated as an emergency  
21 situation and they could go in there and they  
22 could back bill the owner. So why that process  
23 can't be followed in this kind of instance --

24 MR. PECUNIES: Well, I don't know if

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2 it's a matter of just -- I don't know if it's a  
3 matter of just a penalty.

4 MS. SCOTTO: -- I mean it can in others.  
5 Is it not acceptable?

6 MR. PECUNIES: I think it's a matter of  
7 whatever they did to the plumbing system that's  
8 illegal.

9 MS. SCOTTO: That's not the point. The  
10 city comes in. They go under their own emergency  
11 order. They have, they bypass the owner. If you  
12 have, if you have like structural instability or  
13 facade issues or whatever that could be harmful  
14 to the public, DOB can come literally in the  
15 middle of the night with an emergency work order,  
16 put scaffolding up in front of your building, and  
17 back bill the owner. So why is this not --

18 MR. PECUNIES: Well, this is one of the  
19 reasons why because they do want to become much  
20 more aggressive about doing this, that we want to  
21 set up a protocol with the other agencies --

22 MS. SCOTTO: Exactly.

23 MR. PECUNIES: -- where we will have a  
24 contact person at each agency that will be

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2 notified that there is a pending shutoff and each  
3 of those agencies, then depending on sometimes,  
4 it may be a fire service that needs to be shut  
5 down, so the fire department would need to know.  
6 Sometimes, there may be health department related  
7 issues if water was being turned off to a  
8 restaurant or something of that nature, so that -  
9 -

10 MS. SCOTTO: No, but I'm not, I'm saying  
11 you circumvent it. You have, you actually have  
12 the ability to go in and correct and back bill  
13 the owner.

14 MR. PECUNIES: We, we don't -- maybe the  
15 Buildings Department does, but we don't.

16 MS. SCOTTO: Yes. DOB should be able to  
17 go in there.

18 MR. PECUNIES: Well, that's up to the  
19 Buildings Department.

20 MS. SCOTTO: Well that, but that needs  
21 to be dealt with and, and if this has to be the  
22 case that turns that, so to speak fine, but I  
23 will never vote to shut off water for multiple  
24 residents like that. That's insanity.

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2 MR. PECUNIES: Well, and again. I get  
3 that the first thing that I said back at the  
4 beginning of this is I don't think our  
5 commissioner would ever tell us that we could go  
6 ahead and shut off the water to this building,  
7 but we have to menace them and threaten them into  
8 compliance because what's happened to date over  
9 the last five years has not gotten them into  
10 compliance.

11 MS. SCOTTO: I agree with you. And  
12 because the process is so --

13 MS. RICHARD: Okay. We have to move on.

14 MS. SCOTTO: -- ineffective, it needs to  
15 be dealt with.

16 MS. RICHARD: We have to move on.  
17 Alright. So is there a motion to go into  
18 executive session to discuss judicial report?

19 MR. PECUNIES: Mm-hmm.

20 MS. RICHARD: Okay. Alright. Thank you  
21 for the motion.

22 [OFF THE RECORD]

23 [ON THE RECORD]

24 MS. RICHARD: Alright. So we're back on

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14

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the record. No further matters pending before the board today. We will adjourn.

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

Environmental Control Board, 4/26/2018

CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of the Environmental Control Board on April 26, 2018 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: May 10, 2018

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