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-Within, 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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(The board meeting commenced at 9:30.)

MS. TYNIA RICHARD, DEPUTY

COMMISSIONER/GENERAL COUNSEL, OATH: Thank you.

Good morning. Today is April 26, 2018. My name is Tynia Richard. I’m Deputy Commissioner and General Counsel here at OATH and am appearing by designation of the chair, who is unable to be here today. So I’m calling the meeting to order, and I’ll ask if there’s a motion to adopt the minutes of the last meeting, which was on February 22nd. Motion and votes in favor? Okay. All votes, okay. Great. Thank you. Alright, so the next order of business, DEP’s request for cease and desist orders. Mr. Pecunies.

MR. RUSSELL PECUNIES, ESQ., DEPARTMENT OF ENVIRONMENTAL PROTECTION: Alright, thank you. Alright. Good morning. I’m Russell Pecunies, with the Bureau of Legal Affairs at the Department of Environmental Protection. DEP has built up some, some extra business over the last two months since we had the last board meeting. So instead of the usual number of cease and desist requests related to failure to install backflow prevention
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devices, for this meeting the department is requesting that the board approve 50 of these requests.

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

MS. RICHARD: Okay. And votes in favor?

Okay. None opposed.

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

MS. RICHARD: Okay. Thank you.

MR. PECUNIES: So the department also has several requests for cease and desist orders under the Air or Noise Codes. So the first thing that I should mention is that the request related to Congregation Yetev Lev, Incorporated at 427 Broadway in Brooklyn is being pulled for this
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board meeting, as per my commissioner’s instructions from yesterday. They have apparently hired an engineering firm to correct the odor problem from this matzoh processing location and they want to give them a month to see if they follow through on correcting it before they ask the board for a cease and desist order. So that request is being tabled, potentially to be brought back at the next meeting.

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

MS. RICHARD: Okay. And votes in favor?

Okay, all in favor, motion carries.

MR. PECUNIES: The next one is for a gym, CKO Kickboxing, located at 310 East 23rd
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Street. This location has been repeatedly cited for excessive noise from the sound system.

Apparently, they have classes where they play very loud music. They’ve been cited three times for this excessive music, still have not corrected it, although the first time they came in, they did submit evidence that they had corrected it, as a result of which the penalty was mitigated to zero. However, they were then re-inspected twice and have been found in violation two more times. So they did not in fact correct it. And based on the repeated violations and continuing failure to come into compliance, DEP is asking the board to issue an order to cease and desist.

MS. RICHARD: Okay. Votes in favor?

Alright, all in favor.

MR. PECUNIES: Okay. The third one under the Noise Code is Cheeseboat, Incorporated. I don’t know if that’s the name of the restaurant or not, but it’s located at 80 Berry Street in Brooklyn. This is another noisy kitchen exhaust. They have been cited five times for noise from
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this kitchen exhaust. And due to the repeated violations and continuing failure to come into compliance, the department is asking the board to issue an order to cease and desist.

MS. RICHARD: Okay. Votes in favor?

Okay, unanimously.

MR. PECUNIES: And finally, the Bureau of Wastewater Treatment is asking the board to issue an order to cease and desist to Tenzan New York Corp., which is located at 285 Columbus Avenue in Manhattan. This location was originally inspected in August of 2016 and was issued a summons for not having a properly operating grease interceptor. A second inspection observed that that condition had not been corrected and in addition, that a separate, different grease interceptor was full of excessive, hardened grease. So a second summons was issued. A third inspection showed that the one interceptor was still missing its baffle, and that two other grease interceptors were overloaded and a commissioner’s order was then issued, requiring them to have a waste hauler clean out the
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interceptors at a minimum, once every 30 days,
and to submit written proof of these cleanings to
the department upon request. On several occasions
in 2017, summonses were issued for failure to
comply with that order and finally, the
respondent, in addition to, in addition to
failing to appear for several of the hearings on
the summonses, did not appear for a mandatory
compliance meeting in December, and due to this
long history of non-compliance, which continues,
the department is asking the board to issue an
order to cease and desist.

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

MR. PECUNIES: Thank you very much.

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

MS. EFTYHIA XIDIAS: Good morning,
everyone, I’m Eftyhia Xidias, I’m the managing
attorney for Manhattan live hearings for OATH and
I’ll do the presentation in lieu of Kelly Corso,
who was unable to attend today. We have 29 pre-
sealing reports, including a water shutoff and one post hearing report for today’s board. Twenty-eight of the reports involve backflow violations and one report involves a sewer violation and one report involves Noise Code violation.

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

With regards to the water shutoff, this is a backflow pre-sealing report, the hearing officer recommends that the water be shut off.
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The respondent in this case is Broadway 111 Street Condominium. The premises in this case is located at 2851 Broadway, New York, NY and it is a residential building with approximately 147 units.

In November 2013, DEP issued a commissioner’s order to the respondent ordering the installation of a backflow prevention device at its premises. The commissioner’s order warned the respondent that failure to comply could result in termination of the water supply to the premises. In March 2015, DEP issued a summons to the respondent for failure to comply with the commissioner’s order. The summons was sustained at a hearing in February 2017. In June 2017, DEP determined that the required backflow prevention devices had not been installed at the cited premises and requested that the board issue a cease and desist order. On July 2017, the board issued a cease and desist order directing the respondent to appear at a special hearing on August 15, 2017, to show why the water supply to the premises should not be shut off. At eight
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hearings between October 2017 and February 27, 2017, the respondent’s representative stated that there is a Department of Buildings stop work order on the premises that has not been resolved, preventing the respondent from complying with the commissioner’s order.

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

Okay. DEP recommended at the last hearing that the water services to the premises be terminated since no evidence of respondent’s
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progress or compliance was presented. Based on the lengthy history of the case, and respondent’s continued failure to comply with the order and to provide any specific information as to what is being done to resolve the stop work order on the premises, the hearing officer recommended the water supply to the premises be shut off.

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

At the pre-sealing hearing on January
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30, 2018, at which time, the sealing of the equipment was stayed pending an inspection by DEP. A subsequent inspection showed that the equipment was operating in violation of the Noise Code and the equipment was sealed by DEP on March 12, 2018. At a post-sealing hearing, held on March 27, 2018, DEP presented proof that the exhaust unit was now in compliance with the Noise Code upon inspection as of March 23, 2018. At that point, it was unsealed by DEP because respondent was in compliance. Based on that proof, the hearing officer recommended that the equipment remain unsealed only if an initial and subsequent re-inspection of the equipment for a period of 180 days showed no violations. That’s my report.

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

MS. ELIZABETH KNAUER, APPOINTED MEMBER:

Can I --

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

MS. RICHARD: Yes, okay.
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MS. AMY SLIFKA, DEPUTY COMMISSIONER, HEARINGS DIVISION, OATH: Why don’t you vote on the backflows first?

MS. SCOTTO: That’s a good idea.

MS. RICHARD: Okay. So we’ll go by groups, okay.

MS. SLIFKA: Right, there were --

MS. KNAUER: Well not all of the backflows.

MS. SLIFKA: Not all of them?

MS. XIDIAS: Not the shutoff.

MS. KNAUER: Not the shutoff.

MS. SLIFKA: Right.

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

MS. SLIFKA: The 27 backflows.

MS. RICHARD: Yes. Alright. So --

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

MS. XIDIAS: Twenty-eight including the sewer.

MS. SLIFKA: The one, okay.

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

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

MS. SLIFKA: And then what about the.

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

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

MS. XIDIAS: Correct.

MS. SLIFKA: The water shutoff.

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

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

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

MS. RICHARD: So --

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

MS. RICHARD: So, let's, so okay. Let's, let's address the question and I'm assuming you have a similar one? Do you want --
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MS. KNAUER: Well, I just -- can I just add to that?

MS. RICHARD: Mm-hmm.

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

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

MR. PECUNIES: Okay. So it's been five years that they've had to clear up the issue with the Buildings Department. This is a condominium,
so I don't think there's an issue with a landlord wanting to kick people out of the building. I just want to clarify that I don't think Commissioner Sapienza is going to actually sign off on turning off the water to a huge condominium building with 146 units, however many units there are.

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

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

MS. SCOTTO: Correct.
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MR. PECUNIES: -- that's necessary to show compliance without a Buildings Department permit, which they can't get. And I believe in this case, the stop work order is related to plumbing work without a permit. Sometimes, the Buildings Department, if it's a stop work order related to the elevators or something on the roof or something, they'll give them the permit to install the backflow device, even if there's a stop work order on the building. I believe in this case, the stop work order does relate to illegal plumbing work, and that they will not give a permit for until it's corrected.

Our hope and our experience, based in the past, is that when we send a crew to the building and they start painting the sidewalk and putting notices on the outside of the building that the water is going to be turned off, that the condominium owners will go shrieking to the managing agent, what is going on here, why haven't you taken care of this, and it will get taken care of, okay. If it's not, again, I seriously doubt that Commissioner Sapienza is at
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the end of the day, going to say turn off the water to this building, which of course makes it uninhabitable.

MS. SCOTTO: Correct.

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

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

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

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

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

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

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

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

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

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

MS. SCOTTO: This process needs to change.

MS. KNAUER: But are you, is there a way to, before going to the step of actually turning off the water, or potentially turning off the
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water, to try to contact the owners? I just, I
feel like to penalize --

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

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

MR. PECUNIES: I can't --

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

MS. KNAUER: And if they --

MS. MICHELE DEFREITAS-WITHIM, ESQ.,
DOHMH: I have a question. How much time passes
from the time you print the notices to the time
that an actual shutoff occurs?

MR. PECUNIES: Again, in this, in this
type of a residential situation, I think what the commissioner is going to authorize water and sewer to do is go paint the sidewalk and put up the notices on, on the entrance to the building, saying that because of the non-compliance with this order, that the water to the building is going to be turned off. I don't think he's going to authorize following up with actually doing it.

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

MR. PECUNIES: Well, it's not, it's not even, it's not -- there have been so few cases that have gotten to this point that I can't say that there's a typical scenario except that we have never turned off anybody's water for this. As soon as they see the, the guys out on the sidewalk and in the street with the spray paint cans and the notices on the front of the building, saying that the water supply is going to be terminated, we hear from somebody immediately, and usually -- I mean we had one, the last one the board approved was for a Jewish school in Brooklyn, same rep, same situation,
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stop work order from the Buildings Department. As soon as we went out to the building, we heard from them, they got that stop work order resolved, and they got the thing installed and as far as I know, they're now in compliance.

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

MR. PECUNIES: Well, we, we would, first of all, one of the things that we actually have to do because they do want to become much more aggressive with enforcing this, the ones that come to the board for shutoff are very, very rare. Okay. These cease and desist orders that the board issues includes a statement that says that if you fail to appear for the hearing, you're subject to shut off without further proceedings. We have at least 200 of those cases, where people have not showed up for the hearings and are still not in compliance. And they want to be much more aggressive about prosecuting those cases. So, one of the things that we need to do is speak to the other city agencies that might be
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concerned, like the Buildings Department and the Health Department and the Fire Department and set up a protocol for doing this.

MS. SCOTTO: And HPD.

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

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

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

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

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

MS. KNAUER: But if their -- if their counsel is effectively committing malpractice --
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MS. SCOTTO: That's another --

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

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

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

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

[CROSSTALK]

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

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

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

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

    MS. RICHARD: That's exactly right.

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

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

    [CROSSTALK]

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

    [CROSSTALK]

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

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

    MS. DEFREITAS-WITHIM: And this attorney is just representative of the management agent?
MR. PECUNIES: Well, it's a condominium, so a condominium will either, I'm assuming he was hired either by the condo board or the managing agent, I don't know which.

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

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

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

MS. KNAUER: Could we --

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

MS. DEFREITAS-WITHIM: Oh, the owners?

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

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

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

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

MS. XIDIAS: Right.

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

MR. PECUNIES: We can do that.

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

MR. PECUNIES: Right.

MS. SLIFKA: -- or is not doing. I don’t know, I don’t know the history of this Russ, I
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really don't. I didn't study it. But it's just a suggested compromise.

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

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

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

MS. XIDIAS: I believe there's 147.

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

[CROSSTALK]

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

MS. SCOTTO: Resident, yeah.

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

MS. SCOTTO: Yes.

MR. PECUNIES: Well, we'd have to get
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into the building to do that, but.

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

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

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

MS. RICHARD: Right.

MR. PECUNIES: -- seems a bit, you know.
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MS. RICHARD: Right. I mean what we, what we are somehow presuming --

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

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

MS. SCOTTO: Well, actually, we were --

[CROSSTALK]

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

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

MS. RICHARD: But there's nothing --

MR. PECUNIES: -- there and see what happens.
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MS. RICHARD: -- onerous about this five year process. I cannot imagine that it's not been put before a board in five years.

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

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

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

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

[CROSSTALK]

MS. KNAUER: You know, but this is --
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MS. SCOTTO: They can be torn down if they're bad actors.

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

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

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

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

[CROSSTALK]

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

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

MS. RICHARD: But that's the bottom --
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that's what he's essentially saying is that --

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

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

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

MS. KNAUER: Okay.

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

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

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

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

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

    [CROSSTALK]

    MS. CICCONE: He is running out the
clock.

    MS. KNAUER: But ultimately, he's
putting, but ultimately is it effective if he's
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putting in peril the water service to a
residential building. Is that really being
effective? It might be effective in the short
term, but ultimately is that --

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

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

MR. PECUNIES: I think so.

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

MR. PECUNIES: Mm-hmm.

MS. STATZ: So we can't have another
attorney speaking to someone --
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MR. PECUNIES: Right. Well, that's why, yeah, that's why we --

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

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

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

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

MS. STATZ: Okay.

MS. RICHARD: Alright. So, resolution?

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

MS. RICHARD: Okay.

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

MR. PECUNIES: I guess.

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

MR. PECUNIES: Table it?

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

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

MS. RICHARD: Thank you.

MS. XIDIAS: Thank you.

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

MR. PECUNIES: Well, the process is a two stop process. You have to submit plans to DEP to be approved, and then you have to -- the
plumber has to get the buildings department permit.

MS. CICCONE: To do the work?

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

[CROSSTALK]

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

MR. PECUNIES: Well, I don't know if
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it's a matter of just -- I don’t know if it's a
matter of just a penalty.

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

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

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

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

MS. SCOTTO: Exactly.

MR. PECUNIES: -- where we will have a
contact person at each agency that will be
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notified that there is a pending shutoff and each of those agencies, then depending on sometimes, it may be a fire service that needs to be shut down, so the fire department would need to know. Sometimes, there may be health department related issues if water was being turned off to a restaurant or something of that nature, so that - -

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

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

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

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

MS. SCOTTO: Well that, but that needs to be dealt with and, and if this has to be the case that turns that, so to speak fine, but I will never vote to shut off water for multiple residents like that. That's insanity.
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MR. PECUNIES: Well, and again. I get that the first thing that I said back at the beginning of this is I don't think our commissioner would ever tell us that we could go ahead and shut off the water to this building, but we have to menace them and threaten them into compliance because what's happened to date over the last five years has not gotten them into compliance.

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

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

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

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

MR. PECUNIES: Mm-hmm.

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

[OFF THE RECORD]

[ON THE RECORD]

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

Date: May 10, 2018

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