

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

1 April 26, 2018

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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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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