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

BOARD MEETING

12th Floor Training Room
100 Church Street
New York, NY
July 28, 2016
9:40 a.m. - 10:24 a.m.
July 28, 2016

MEMBERS PRESENT:

Ellen Cooper, Esq. – Dept. of Sanitation
Fidel F. Del Valle, Esq. – Chair, OATH
Shamonda Graham – Dept. of Buildings
Elizabeth Knauer, Esq. – Appointed Member
Harminderpal Rana, Esq. – Dept of Health & Mental Hygiene
Elisabeth Prael, Esq. – Fire Department
Russell Pecunies, Esq. – Dept of Environmental Protection
Thomas D. Shpetner, Esq. – Appointed Member

ALSO PRESENT:

Simone Salloum – Assistant General Counsel, OATH
Frances Shine – Secretary to the Board, OATH
Helaine Balsam, Esq. – Deputy General Counsel, OATH
John Burns, Esq. – First Deputy Commissioner, Supervising ALJ, OATH
Heidi Chain – Finance Department
Kelly Corso, Esq. – Asst Director of Adjudications, OATH
Melek Dunn – General Counsel Intern, OATH
Fana Garrick – Creative Services Coordinator, OATH
David Goldin, Esq. – Administrative Justice Coordinator, Mayor’s Office
Diana Haines – Assistant General Counsel, OATH
Jonathan Jacobs – Business Integrity Commission
Dara Jaffee – Finance Department
Vivienne Kahng – Staff Attorney, Appeals, OATH
Mark H. Leeds, Esq. – Special Senior Counsel, OATH
Nancy Lin – Office of Management & Budget
Mariko Matsuyoshi – Data Analyst, OATH
Hassan Mirza – General Counsel Intern, OATH
Ashford Morgan – Computer Service Technician, OATH
Tynia Richards. Esq. – Deputy Commissioner, General Counsel, OATH
Peter Schulman, Esq. – Assistant Director of Adjudications, OATH
Amy Slifka, Esq. – Deputy Commissioner, OATH
Sydney Schein – General Counsel Intern, OATH
Thomas Southwick, Esq. – Supervising Attorney, Appeals, OATH
Doris Stewart – Department of Transportation
Ariel Yoo – General Counsel Intern, OATH
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(The board meeting commenced at 9:40 a.m.)

MR. FIDEL F. DEL VALLE, ESQ., CHAIR,

OATH: All systems go. Good morning. Welcome to another exciting meeting of the board of -- Environmental Control Board. Is there a motion to adopt the minutes of the June 30th meeting? One abstention. Oh, okay. So it’s unanimous. What the minutes say is what happened.

MS. ELIZABETH KNAUER, ESQ., APPOINTED MEMBER: One abstention.

MR. DEL VALLE: One abstention. One abstention. The first item on the agenda is a resolution to say that we concur with the Department of Finance’s efforts to collect debt that’s owed to the City of New York that’s a consequence of several years of, of ECB hearings. The outstanding debt right now I believe is in the neighborhood of $1.5 billion dollars. Some of it obviously will never be collected because some of those people are dead, if for no other reason, and there’s no estates and there’s a whole bunch of other reasons. But the, the
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feeling is that if they offer sort of an amnesty waiving of penalties and interests and stuff like that there, some folks will come in and take care of business, then the Department of Finance can clean its books and we can start fresh again until we get to another 1.5 billion dollars and we’ll do the whole thing over. The authorizing legislation, as will be explained in a second, calls for, asks for a resolution from us concurring that it’s a good idea for the city to offer a deal and to collect the debt. And it’ll be explained in a second.

MS. SIMONE SALLOUM, ESQ., ASSISTANT GENERAL COUNSEL, OATH: Simone Salloum, Assistant General Counsel with OATH, and as the Commissioner explained, the Local Law 45 requires that we pass this resolution in order for the Department of Finance to establish this program. I'll read the resolution and if anyone has questions about specifics of the program, I believe that our -- a representative from the Department of Finance is here and can answer kind of those more specific questions. So the
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resolution is that: Pursuant to local law 45, which establishes the temporary program to resolve outstanding judgments imposed by the Environmental Control Board, the Board hereby concurs the Commissioner of Finance establish a temporary program to resolve outstanding judgments for a 90-day period to be effective during the fiscal year that commenced on July 1, 2016. This temporary program will permit respondents who are subject to default judgments to resolve those judgments by payment of base penalties without payment of default penalties and accrued interest. It will also permit respondents subject to judgments entered after an adjudication and finding of violation to resolve those judgments by payment of 75 percent of imposed penalties without payment of accrued interest. Does anyone have any questions - yeah?

MS. KNAUER: Hi, Elizabeth Knauer, Citizen Member. I’m just wondering, I, I take it that there was a previous amnesty back in 2009, I think. So I just wondered what, you know, what the success rate of that was for -- was there a
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lot of collection as a result of that?

MS. DARA JAFFEE, FINANCE DEPARTMENT: My understanding, I don’t know the success rate but.

MS. SALLOUM: Can you identify yourself?

MS. JAFFEE: Hi, I’m Dara Jaffee from the Department of Finance from Legal Affairs.

It’s my understanding that we collected about $14 million but I can get a more exact number if you want.

MS. KNAUER: $14 million out, I mean, what, in comparison to what amount of debt.

MS. JAFFEE: Whatever the existing debt number was at the time. I don’t know.

MR. DEL VALLE: My understanding is that that was pretty dismal compared to the amount of money that was owed, but I believe DOF this time around is going to more aggressively advertise the, the program and hopefully they’ll collect a little bit more than that, but it, one way or another, at least it, it cleans up the books and they can, they can discharge a lot of uncollectible debt that, that it looks like, it looks like the city is in the hole for 1.5
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billion dollars, when in reality we know that
that’s not really true because a lot of that is
uncollectible stuff and it’s businesses that
don’t exist anymore and people that don’t exist
anymore and a lot of the stuff like that there.
But last time around, it was nothing to brag
about from what I understand, but it’s better
than nothing. It’s $14 million more in the piggy
bank than they had before.

MS. KNAUER: I, I’m just wondering if it
encourages people, you know, to wait it, after
this period ends and then there’s additional
judgments or default judgments, it would
encourage people to just sort of wait for the
next one of these instead of paying the judgments
in a timely fashion.

MR. DEL VALLE: That’s the same question
that always occurs to me when I hear about
amnesty programs, but --

MS. TYNIA RICHARD, ESQ., DEPUTY
COMMISSIONER, GENERAL COUNSEL, OATH: I think if
it were more used last time around, maybe there’d
be an argument, but since it seems that not a lot
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of people used it last time, I don’t think a lot of people are sitting around waiting for it to come around.

   MR. DEL VALLE: Well, this time, you know, yeah?

   MS. AMY SLIFKA, ESQ., DEPUTY COMMISSIONER, OATH: Yeah, I just want to add that it seems like the enforcement, Amy Slifka, the enforcement agencies are taking a more aggressive path also to see that these, these debts are paid, because they’re not going, the Buildings Department is going to start looking at this as far as issuing permits. So things are changing within the enforcement agencies to make sure that if you’re found in violation or you receive a violation and fail to show, you will pay that penalty.

   MR. DEL VALLE: Yeah, something, something that’s not part of this legislation which was legislation earlier this year that really didn’t come across our table because it was -- didn’t really relate to us directly is new legislation that says that certain people who --
certain categories of people who have licenses or need permits from the city who have not paid their fines to the city, and there’s a whole list of categories that they fit into, within an appropriate period of time cannot, will either have licenses suspended or revoked or they will be precluded from getting like a building permit until such time as they, they take care of whatever they -- was it they had to take care of. So I think this is part of that package, although it seems to be discrete, and hopefully that will encourage people to do the right thing. Preferably not do the violation in the first place. Silly concept.

MS. SHAMONDA GRAHAM, DEPARTMENT OF BUILDINGS: Language is on the front of the -- Shamonda Graham, Department of Buildings. The language is on the front of the violation that that was part of that. So the public is already aware of it. So that’s an effort of not just -- of many agencies to take.

MR. DEL VALLE: You're talking about the new summons forms?
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MS. GRAHAM: Mm-hmm.

MS. KNAUER: You’re right, I remember that.

MS. GRAHAM: Mm-hmm.

MS. KNAUER: And the Department of Finance is in favor of this?

MS. JAFFEE: Yes.

MR. DEL VALLE: It’s their idea.

MS. KNAUER: Their idea, okay.

MR. DEL VALLE: Any other questions? Is there a motion to tell the Department of Finance that we think this is a lovely idea and they should sally forth and do their thing? I think it’s unanimous. There is a proposed rule to repeal -- for the repeal of littering, sweep out, throw out charges from the sanitation penalty schedule. And where is it now is the question.

MS. HELAINE BALSAM, ESQ., DEPUTY GENERAL COUNSEL, OATH: Good morning. Helaine Balsam, Deputy General Counsel for OATH. This proposed rule is part of the Criminal Justice Reform Act that was passed earlier this year. There are several pieces of the Act. One of those pieces,
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Local Law 75 of 2016, made changes to the Administrative Code regarding some of the sanitation provisions. Section 16-118(1) which covers littering, throw, sweep out, and throw out, was split into two sections. So there’s now a section 16-118(a), which covers littering, sweeping, and throw out, and there’s a 16-118(1)(b) which covers spitting. In addition, there was a carve out made to noxious liquids which is section 16-118(6), for public urination which is a subset of noxious liquids. So these new charges, the new ones and the littering, sweep out, and throw out charges are going to have new penalties. The first offense penalty is a flat penalty of $75. The second offense penalty is a range from $250 to $350 and the third offense penalty is $350 to $450. The default penalties are capped at 150 percent of the base fine. Without a rule setting the default penalties, that would make the default penalties the 150 percent of the higher end of those ranges, because New York City Charter 1049(a) says that upon default, the Board will impose the
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maximum penalty under the law. Because the current charges for littering, sweep out, and throw out in the penalty schedule do not reflect these new penalties, we are asking to repeal those charges and that’s what this rule does. I gave you a new copy this morning. The Law Department will be certifying this rule. It’s just had a couple of grammatical changes and the addition of a chart concerning what accessibility options are available at the site of the public hearing. Questions?

MS. KNAUER: Elizabeth Knauer, Citizen Member, and, I’m sorry, I got a little bit lost in what you were saying, but these penalties are now in some other book code or --

MS. BALSAM: They are in the Administrative Code.

MS. KNAUER: They’re just in the Administrative Code?

MS. BALSAM: That’s correct.

MS. KNAUER: Okay.

MR. DEL VALLE: They pre-empted us.

MS. BALSAM: And I should actually say
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that 150 percent of $75 is $112.50, but we can't program change, so the default is going to be $112. So --

MR. DEL VALLE: Oh well.

MS. BALSAM: Oh well.

MR. DEL VALLE: Got to get ConEdison to figure out how to program our computers. I’m sure they can do it to the tenth of a penny. Any other questions? Discussion? Is there a motion? Well considering everybody’s making the motion, I guess it’s unanimous.

MS. BALSAM: Thank you.

MR. DEL VALLE: Thank you. Now, DEP will present Cease and Desist Order motions.

MR. RUSSELL PECUNIES, ESQ., DEPARTMENT OF ENVIRONMENTAL PROTECTION: Okay, thank you. Good morning. I’m Russell Pecunies, Assistant Counsel with the Department of Environmental Protection. This month, DEP is requesting that the Board issue Cease and Desist Orders in 28 cases involving failure to install backflow prevention devices. In each of these cases, the building owner has been ordered to install the
device, and has also been issued a Notice of
Violation for failing to install the device,
which has been adjudicated in violation. They
have still failed to install the required device.
So in each of these cases, the Department is
asking the Board to issue an Order to Cease and
Desist. These should all have been dated for
today instead of June 30th. Because the batch for
the May meeting didn’t get approved and had to be
moved over to the June meeting, these didn’t get
re-dated so they have last month’s date on them.
They should have today’s date on them. So the
Department is asking the Board to approve these
28 requests collectively.

MR. DEL VALLE: Any questions? Motion?

It’s unanimous with one ex- --

MR. PECUNIES: Okay, next.

MR. DEL VALLE: -- abstention.

Abstention.

MR. PECUNIES: Next, DEP is asking the
Board to approve a Cease and Desist Order in the
matter of Zion Farm LLC, which is the owner of a
restaurant located at 55 East 59th Street. This
restauant has some grease traps; however, upon
inspection, it was determined that the existing
grease traps are not properly equipped with the
required baffles and vents. In addition, it was
determined that a number of items of equipment in
the kitchen: three floor drains, a three-
compartment sink, two woks, and a one-compartment
sink all lacked required grease interceptors. A
series of orders and violations have been issued
to the respondent to correct these conditions.
There has still been no compliance. And in view
of the series of enforcement actions that have
been taken and the continuing failure of the
respondent to comply, the Department is asking
the Board to issue an Order to Cease and Desist.

MR. DEL VALLE: Questions? Motion?
It’s unanimous with one abstention. A wok has a,
a grease interceptor?

MR. PECUNIES: Yeah, I have seen it
before. Apparently, it’s a separate station
where they use the woks and the grease from that
separate wok station goes into a drain for that
section of the kitchen.
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MR. DEL VALLE: Hmm.

MR. PECUNIES: So --

MR. DEL VALLE: Must be one serious wok.

MR. PECUNIES: Yeah, I actually don’t know what this does business as. I don’t know what the restaurant’s name is. I don’t know if it -- Okay, next, we have a request for a Cease and Desist Order under the Noise Code for Fasta NYC LLC, at 36 Saint Marks Place. This location has been cited for noise from the kitchen exhaust three times this year. They have not complied by correcting the condition. In view of the repeated violations and continuing failure to correct, the Department is asking the Board to issue an Order to Cease and Desist.

MS. KNAUER: I actually had a question about this one. How many violations were there? It seems, I think the, the affidavit only described two, so I --

MR. PECUNIES: Normally, and in going way back, the required number of violations that need to be issued before we ask for a Cease and Desist, was, is three. So for, for noise and air
MS. KNAUER: Right.

MR. PECUNIES: -- conditions. That’s what we’ve been going with for a long time.

MS. KNAUER: Okay. Just, it, I think that the, the affidavit in support only mentioned two violations.

MR. PECUNIES: Well, the affidavit in support only mentions the original violation --

MS. KNAUER: Right, right.

MR. PECUNIES: -- and the most recent inspection that resulted in the violation. It doesn’t --

MS. KNAUER: Okay. So it doesn’t reflect all the different violations?

MR. PECUNIES: Yeah, it doesn’t refer to all of them.

MS. KNAUER: Okay, okay.

MR. PECUNIES: Mm-hmm.

MR. DEL VALLE: Any other questions? Is there a motion? Again, it’s unanimous with one abstention.

MR. PECUNIES: Okay. The next one is a
little bit of an unusual one because it involves
music from a commercial establishment. We usually
do not ask the Board for Cease and Desist Orders
for music from commercial establishments, because
it is so easy for them to replace the equipment,
and since these are equipment specific, one of
the ways that you can correct the condition is to
just replace the equipment. In the case of
music, all you have to do is unplug the amplifier
and put a different one in or take down the
speakers and put up different speakers, and
technically you’ve removed the offending
equipment. So we usually don’t ask the board for
cease and desist orders for music. However, in
the case of Lucky Seven Restaurant and Bar at
1447-1457 Saint Nicholas Avenue, we have cited
them for excessively loud music from this
location four times in the last two years,
including three times this year. There are also
two violations that are more than two years old.
So they have a total of six violations. They have
not paid any of the penalties so they have nearly
$20,000 in unpaid penalties. And at this point,
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instead of just continuing to issue summonses,
this one has gotten to the point where we felt it
was worth a try to at least have the Board issue
a Cease and Desist Order to try and get some kind
of response from this business to the fact that
they are continuing to plague their neighbors
with excessively loud music. So although we
usually don’t request cease and desist orders in
this -- for this type of violation, in this case,
due to the long history of repeated violations
and the continuing failure to comply, we are
asking the board to issue a cease and desist
order.

MR. DEL VALLE: Any questions? Motion?

MR. PECUNIES: Okay. And finally, we
have a request under the Air Code for Acropolis
Gardens Realty at 2105 33rd Street in Queens.
The situation here is that they have a
Certificate of Operation for their boiler, which
has been expired for six years. They are, they do
have a certificate to use number four oil, which
is currently permitted. This is not one of the
ones that relates to the use of number six oil.
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However, we have cited them for having this expired certificate four times. One of the reasons that we’ve done that is that this is -- this particular building has been the subject of repeated complaints regarding smoke from the chimney. We have not yet been able to actually catch the chimney smoking, but we’ve been doing inspections in response to complaints, and so when we go, we, we haven't been able to see the smoke, but we issue them a violation because they still haven't renewed the Certificate of Operation for the boiler. And since we are still getting complaints and they still have not renewed the Certificate that has been expired for, for over six years at this point, seven years actually, it’s from 2009, the Department is asking the Board to issue an Order to Cease and Desist, in the hope that that will provoke them to renew the Certificate and by -- in order to renew the Certificate, they will have to pass certain emissions tests, so they would have to fix the smoke problem that the neighborhood is complaining about. So we are asking the Board to
issue an Order to Cease and Desist.

MR. DEL VALLE: Any questions? Motion?

Unanimous with one abstention.

MR. PECUNIES: Thank you very much.

MR. DEL VALLE: I have a question.

MR. PECUNIES: Yeah?

MR. DEL VALLE: Relating to Lucky Seven, can't the city take advantage of the nuisance, nuisance abatement law for some, after a chronic problem like that to simply padlock a premises?

MR. PECUNIES: I don’t know that we would have the authority to do that. The police department might have the authority to do that. I don’t know since this is not generally the type of noise complaint that NYPD responds to --

MR. DEL VALLE: I was thinking like --

MR. PECUNIES: -- whether they have done any inspections here.

MR. DEL VALLE: I was thinking like the, the Office of Special Enforcement getting into that.

MR. PECUNIES: Yeah, I mean, we, we do participate with them in, in the March details.
which focus on the night life heavy areas, but I don’t know if this is located in one of those areas.

MR. DEL VALLE: It’s kind of frustrating for an outfit like that to be basically torturing their neighbors like that consistently, that’s what --

MR. PECUNIES: Yeah, I also don’t know how they --

MR. DEL VALLE: That’s broken windows. MR. PECUNIES: -- how they renew the liquor license with these noise violations either, but --

MR. DEL VALLE: Hm, okay, yeah, just wondering. Is there a motion to adjourn for executive session so we can --

MS. SLIFKA: Wait, wait, wait.

MR. DEL VALLE: Whoop, I miss something?

MS. SLIFKA: Presealing reports.

MR. DEL VALLE: Oh, presealing reports. I’m so eager for the executive session. My favorite stuff.

MS. KELLY CORSO, ESQ., ASSISTANT
DIRECTOR OF ADJUDICATIONS, ECB:  Good morning,
I’m Kelly Corso, Assistant Director for
Adjudications for OATH. We have ten pre-sealing
reports today and one post-sealing report. The
ten sealing reports consist of cases involving
one Sewer Code violation, five backflow
violations and four Air Code violations. The
sewer case, DEP recommended that the proceedings
be discontinued, because the record has -- the
records have shown that the respondent has come
into compliance with the Sewer Code. On the
backflow and Air Code cases, the DEP recommended
and the hearing officers agreed that there would
be no sealing or other action based on the
evidence of the respondent’s compliance that was
presented at the hearings. So that’s the ten
presealing cases. The one post-sealing case we
have is -- pertains to a Noise Code violation and
the respondent in this case is New York Mart Mott
Street Inc., and the premises involved is located
at 128 Mott Street in Manhattan. This respondent
received a summons in October of 2014 for
operating a kitchen exhaust system in excess of
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42 dba. This summons resulted in a stipulation and an order of compliance forthwith. An inspection report following the issuance of the summons showed that in August 2015 respondent had not complied. The Board approved a Cease and Desist Order for this in October of 2015, and the respondent did not appear for the October pre-sealing hearing and subsequently DEP sealed the equipment. Since that time, there was a post-sealing hearing on July 5th of this year, and at the hearing DEP submitted an inspection report from June showing that the old kitchen exhaust equipment had been removed and new equipment was installed and DEP’s inspection also showed that there was a noise reading taken and it showed the new equipment was in compliance with the Noise Code. And DEP is recommending and the hearing officer agrees with that recommendation that there be no further action and that the equipment remain unsealed.

MR. DEL VALLE: Motion? Can I get a motion? Unanimous with one abstention.

MS. CORSO: Okay.
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MR. DEL VALLE: Okay, thank you.

MS. CORSO: Thanks.

MR. DEL VALLE: Now we’ll go into executive session if we concur.

[OFF THE RECORD]

[ON THE RECORD]

MR. DEL VALLE: We are now back in public session. Is there a motion or discussion, is there any discussion on the appeals? Is there a motion to accept the appeals? It’s unanimous. Is there a motion to go out and enjoy the weather?

MR. DEL VALLE: Yes, I think we’re adjourned. Thank you.

(The board meeting concluded at 10:24 a.m.)
CERTIFICATE OF ACCURACY

I, Lea Simmons, certify that the foregoing transcript of Environmental Control Board Meeting on July 28, 2016 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

Date: July 29, 2016

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