

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

BOARD MEETING  
PUBLIC SESSION

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

July 27, 2017

9:17 A.M. to 9:43 A.M.

July 27, 2017

## MEMBERS PRESENT:

Fidel F. Del Valle, Esq. - Chair, Chief Administrative Law  
Judge, Commissioner, OATH  
Shamonda Graham - Department of Buildings (DOB)  
Joseph Gregory, Esq. - Fire Department (FDNY)  
Elizabeth Knauer, Esq. - Appointed Member  
Madelynn Liguori, Esq. - Department of Sanitation (DSNY)  
**Russell Pecunies, Esq. - Department of Environmental  
Protection (DEP)**  
Matthew Smith, Esq. - NYC Police Department (NYPD)  
Jorge Martinez, Esq. - Dept. of Health & Mental Hygiene  
(DOHMH)  
Indi Savitala - Appointed Member  
Debra Scotto - Appointed Member

## ALSO PRESENT:

Rachel Amar - Special Assistant to the Commissioner, OATH  
Sabrina Ball - Intern, OATH  
Quiana Battle - Intern, OATH  
Ralph Bernard - Fire Department (FDNY)  
**Kelly Corso, Esq. - Assist. Director of Adjudications,  
OATH**  
Jordan Dewbre - Intern, OATH  
Kelly Garson - Intern, OATH  
Ari Goldberg - Intern, OATH  
Lillian Grinnell - Intern, OATH  
Diana Haines, Esq. - Assistant General Counsel, OATH  
Julie Hong - Intern, OATH  
Susan Kassapian, Esq. - Deputy Commissioner, Hearings  
Division,  
OATH  
Kelsie Kelly - Fire Department (FDNY)  
Hani Kfoury - Office of Management and Budget, OMB  
Mark Leeds - Special Senior Counsel, OATH  
Mariko Matsuyoshi - OATH  
Christina McGinnis - Intern, OATH  
Ashford Morgan - Computer Service Technician, OATH  
Leemor Peled - Business Integrity Commission (BIC)  
Mimi Polubinski - Intern, OATH  
Reachelle Ramirez - Intern, OATH  
Tynia Richard - Deputy Commissioner/General Counsel, OATH

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Tom Salama - Intern, Oath  
Simone Salloum, Esq. - Senior Counsel, OATH  
Peter Schulman, Esq. - Assist. Director of  
Adjudications, OATH  
Carmena Schwecke, Esq. - Assistant Commissioner,  
Hearings Division, OATH  
Frances Shine - Secretary to the Board, OATH  
**Amy Slifka, Esq. - Deputy Commissioner, Hearings Division,  
OATH**  
Thomas Southwick, Esq. - Supervising Attorney, Appeals,  
OATH  
Olga Statz, Esq. - Assist. Commissioner/Deputy General  
Counsel, OATH  
Sierra Meehan Strassberg - Intern, OATH  
Rachel Walker - Fire Department (FDNY)  
Rong Yang - Intern, OATH

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(The Board Meeting commenced at 9:17  
A.M.)

MR. FIDEL F. DEL VALLE, ESQ.,  
CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATIVE  
LAW JUDGE, OATH: Is there a motion to accept the  
minutes of the last meeting?

MS. ELIZABETH KNAUER, ESQ. , APPOINTED  
MEMBER: I abstain.

MS. SHAMONDA GRAHAM, DEPARTMENT OF  
BUILDINGS: Motion. I was there.

MR. DEL VALLE: Alright. It's -- they're  
accepted with one abstention. I thought you were  
making a motion to amend them. Our first order of  
business is our quarterly presentation of stats  
by Deputy Commissioner Slifka. Oh, by the way, we  
normally have a backup recorder going at the same  
time that we are conducting a meeting. Somehow it  
managed to get locked into somebody's desk who is  
on vacation. So that if you speak, speak a little  
louder than you normally would do so so the mic  
on the camera can pick up your voice.

MS. AMY SLIFKA, ESQ., DEPUTY  
COMMISSIONER/HEARINGS DIVISION, OATH: Okay, good

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2 morning everyone. A full house here today. Okay,  
3 most of the Board Members are aware of what the  
4 quarterly report is about. But for some of these  
5 -- the new Member, new people here, the quarterly  
6 report provides information for the tribunal for  
7 the quarter. And this is the second quarter of  
8 2017. So we look at summonses received. We look  
9 at a comparison of the second quarter 2016 to the  
10 second quarter 2017 of decisions rendered,  
11 summonses received, and summonses heard. We also  
12 look at the percentage of in violation versus  
13 dismissal rates for each agency and the most  
14 commonly issued summonses by each agency, and the  
15 number of appeals. So let's begin.

16 Okay. So, to begin with we see that for  
17 Sanitation, there's been a decrease of five  
18 percent. DOB has been active this quarter.  
19 There's an increase of 44 percent to 21,040. DOT,  
20 again, I guess this is a busy season for them: 45  
21 percent increase. FDNY, a 16 percent increase.  
22 DEP, a 16 percent increase. And Health, a 44  
23 percent increase. For Parks, well, it's  
24 summertime, so there's been 124 percent increase

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2 from 1,443 to 3,237. For NYPD, there's been a  
3 three percent decrease; although we expect to see  
4 an increase going forward because of the new CJRA  
5 cases we expect to be receiving. For DoITT,  
6 there's an 85 percent increase. For BIC, a five  
7 percent increase. And for Landmarks, a 15 percent  
8 increase from 13 to 15.

9 Now for the non-Board cases, because as  
10 you all know that the Tribunal now consists of  
11 Health violations, DCA violations and Vehicle for  
12 Hire, in addition to the Board cases, there was a  
13 five percent decrease. For DCA cases, a 14  
14 percent increase. And for Vehicle for Hire, an  
15 eight percent increase. Okay.

16 So for summons received comparing the  
17 second quarter of 2016 with the second quarter of  
18 2017, really overall with DSNY there's been a 20  
19 percent decrease. For DOB, a 40 percent increase.  
20 DOT, you can see a 22 percent decrease. FDNY, a  
21 seven percent increase. Health, a 35 percent  
22 increase. NYPD, a seven percent increase. DEP, a  
23 15 percent increase. Parks, a 31 percent  
24 increase. DoITT, five percent increase. BIC, 41

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2 percent decrease. Landmarks, 35 percent decrease.  
3 And overall, there's been a nine percent  
4 decrease.

5 For summonses heard, for DSNY,  
6 Sanitation, a two percent decrease. For DOB, a 19  
7 percent increase. For Health, a four percent  
8 increase. Fire, 22 percent increase. DOT, a 33  
9 percent decrease. DEP, 11 percent increase. NYPD,  
10 a 27 percent increase. Parks, an 18 percent  
11 increase. DoITT, a 42 percent decrease. And BIC,  
12 good for them, 100 percent increase. Look at  
13 that. Landmarks, a 56 percent decrease. And  
14 overall, again, there's been a five percent  
15 increase.

16 So for decisions rendered, decrease with  
17 Sanitation of two percent. Increase with DOB of  
18 19 percent. Health, a four percent increase.  
19 FDNY, a 22 percent increase. DOT, a 33 percent  
20 decrease. DEP, 11 percent increase. NYPD, a 27  
21 percent increase. Parks, an 18 percent increase.  
22 DoITT is a decrease of 42 percent. BIC, everybody  
23 showed up, 100 percent, and there were decisions  
24 for each. Landmarks, a 56 percent decrease. And

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2 overall it's a five percent increase.

3 Okay. So for the most part we're getting  
4 all the cases done; 71 percent done in less than  
5 ten days and 91 percent of the cases being heard  
6 and decided within 20 days. Okay. So comparing  
7 the dismissal rate with the second quarter 2016  
8 and the second quarter rate 2017, pretty much the  
9 same: 58.3 percent were found in violation in  
10 2016 and 55.6 percent were found in violation in  
11 2017.

12 So comparing each agency, second quarter  
13 2016 with the second quarter of 2017, again for  
14 DSNY it was 40 percent in violation in 2016. It  
15 went down a bit in 2017 to 35 percent. DOB,  
16 pretty much the same: 78 percent in violation; 77  
17 percent in 2017. DOT, again for the small amount  
18 of change: 62 percent in violation in 2016; 58  
19 percent in violation in 2017. Fire Department,  
20 amazing, 88 percent in 2016 and 88 percent in  
21 2017 in violation. DEP, it's 84 percent again in  
22 2016 and 84 percent in 2017. NYPD, it was 46  
23 percent in violation in 2016. It is -- what is  
24 it? -- 33 percent I think. I don't have the

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2 number -- oh, there -- 33 percent. I couldn't see  
3 it. And Health, it's 58 percent 2016 and 54  
4 percent 2017 in violation. Parks, 54 percent in  
5 violation 2016 and 38 percent in 2017. DoITT, 36  
6 percent in '16 and 35 percent in '17. And BIC, 75  
7 percent in violation in 2016 and 75 percent  
8 dismissed in 2017. Landmarks, 75 percent in  
9 violation in 2016 and 67 percent in violation in  
10 2017.

11 So, the decisions rendered after the  
12 hearing for the non-Board cases: 60.5 percent in  
13 violation in 2017 and 39.5 dismissal rate. For  
14 the DCA cases, it was 86.9 percent in violation;  
15 13.1 dismissed. And for the Vehicle for Hire,  
16 66.6 in violation and 33.4 dismissed.

17 So the most commonly issued summonses  
18 for DOT, it's failure to permanently restore the  
19 cut and failure to comply with terms and  
20 conditions of the permit and opening the street  
21 without a permit. DOB, it's failure to comply  
22 with the Commissioner's Order and unlawful acts;  
23 failure to comply with an Order of the  
24 Commissioner -- failure to comply with

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2 Commissioner's Order by failing to file  
3 certificate of correction is the first one.

4 And then there are miscellaneous  
5 violations. NYPD, it's failure to yield and  
6 operation of a motorized scooter and vending in a  
7 bus stop. And Sanitation, it's failure to clean  
8 18 inches into the street or a dirty sidewalk or  
9 a dirty area. DEP, it's failure to file your  
10 annual backflow test report or your backflow  
11 preventer or a noise mitigation plan. And for  
12 DOHMH, it's failure to eliminate rodent  
13 infestation, first signs; failure to eliminate  
14 conditions conducive to rodent infestation and  
15 failure to eliminate conditions conducive in pest  
16 -- garbage can spillage.

17 At FDNY, it's inspections and testing  
18 and it's permits and it's unwarranted,  
19 unnecessary alarms. And Landmarks, it's failure  
20 to have the appropriate approval, work without a  
21 permit, and there's different types of  
22 architectural parts. For DoITT, it's failure to  
23 provide working public pay telephone and operator  
24 service; failure to clean, and required sign is

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2 missing. And BIC, it's your idling of your motor  
3 and vehicle engine idling for more than three  
4 minutes and failure to obtain ID cards or failure  
5 to register. And Parks, it's unlawful vending and  
6 unauthorized consumption and possession of  
7 alcoholic beverage and failure to comply with  
8 signs.

9 So overall for repeals, there have been  
10 644 appeals from the enforcement agencies. And  
11 you can see where it falls, with DOB filing the  
12 most appeals. And for the appeals for Health and  
13 DCA and Vehicle for Hire, you can see that  
14 Vehicle for Hire, their agency has filed the most  
15 appeals. Back -- okay --

16 MR. JOSEPH GREGORY, ESQ., FIRE  
17 DEPARTMENT (FDNY): I was just going to say,  
18 going back I just want to make sure that it says  
19 FVNY is when they --

20 MS. SLIFKA: Yeah, it's just a typo -- I  
21 missed it, sorry. It's FDNY.

22 MR. GREGORY: Okay.

23 MS. SLIFKA: Okay.

24 MS. SHAMONDA GRAHAM, DEPARTMENT OF

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2 BUILDINGS (DOB): I just -- Shamonda Graham,  
3 Department of Buildings. These are appeals just  
4 by the agency or respondent? I know that comes  
5 up. But they're combined, correct?

6 MS. SLIFKA: Yeah, these are -- it's  
7 appeals, summonses by the enforcement agency.

8 MS. GRAHAM: So anything for the agency,  
9 including respondent?

10 MS. SLIFKA: I have to check on that  
11 because --

12 MS. GRAHAM: Okay.

13 MS. SLIFKA: Yes, the answer is yes.

14 MS. GRAHAM: The only reason I'm asking  
15 is because I don't want to present the picture  
16 that we --

17 MS. SLIFKA: I'm sorry, I didn't make it  
18 clear. It's by both parties.

19 MS. GRAHAM: Okay.

20 MS. SLIFKA: Both parties. Yeah, I  
21 didn't -- I didn't present it correctly. Okay.  
22 Any other questions? No, don't --

23 MS. GRAHAM: No, I don't have a  
24 question.

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2 MS. SLIFKA: No, that's okay.

3 MS. GRAHAM: Just before the --

4 MS. SLIFKA: Oh, we changed it.

5 MS. GRAHAM: No, before they're put  
6 online, just some of the slides, change the  
7 footers to reflect the actual quarter.

8 MS. SLIFKA: Oh, I thought --

9 MS. GRAHAM: Because the months are --

10 MS. SLIFKA: Okay, for sure, very good.  
11 Good point.

12 MS. GRAHAM: I get them offline.

13 MS. SLIFKA: Okay, very good. Okay,  
14 thank you.

15 MR. DEL VALLE: Thank you. DEP has some  
16 requests for cease and desist orders.

17 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT  
18 OF ENVIRONMENTAL PROTECTION (DEP): Okay. Good  
19 morning, Russell Pecunies with DEP Legal Affairs.  
20 This month DEP is requesting that the Board issue  
21 one Cease and Desist Order under the Sewer Code.  
22 This is for Ardian Corp. at 3307 Ditmars  
23 Boulevard in Queens. It is a restaurant. They  
24 were ordered to install grease traps on a wide

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2 variety of sinks and drains after DEP did an  
3 inspection in December of 2015. They were then  
4 issued over pretty much all of 2016 and early  
5 2017, a series of summonses for not complying  
6 with that order. They seem to have mostly been  
7 found in violation and paid all of those  
8 summonses but have still not complied with the  
9 requirements to install the necessary grease  
10 interceptors. And based on their continuing  
11 failure to do so, DEP is requesting that the  
12 Board issue an Order to Cease and Desist.

13 MR. DEL VALLE: Motion? Unanimous.

14 MR. PECUNIES: DEP also has 27 requests  
15 for Cease and Desist Orders for failure to  
16 install backflow prevention devices. In each of  
17 these cases, the building owner has been ordered  
18 to install the required device. They failed to do  
19 so and were then issued a summons for not doing  
20 so. The summons has been adjudicated in violation  
21 or they have defaulted on it. And they have still  
22 not complied with the Commissioner's Order to  
23 install the required devices. So in view of the  
24 continuing failure of the building owners to

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2 comply in each of these cases, DEP is asking that  
3 the Board issue Orders to Cease and Desist.

4 MR. DEL VALLE: Motion? Unanimous.

5 MR. PECUNIES: Okay, thank you.

6 MR. DEL VALLE: Thank you. Kelly Corso  
7 will present the requests for pre-sealing  
8 reports.

9 MS. KELLY CORSO, ESQ., ASSISTANT  
10 DIRECTOR FOR ADJUDICATIONS, OATH: Good morning.  
11 I'm Kelly Corso, Assistant Director for  
12 Adjudications at OATH's Hearing Division. And we  
13 have 13 pre-sealing reports for the Board today.  
14 Twelve of these reports involve backflow  
15 violations and one involves the Noise Code  
16 violation. We also have one post-sealing report  
17 involving a Noise Code violation.

18 I'll cover the pre-sealing reports  
19 first. For the 12 backflow pre-sealing reports,  
20 in all of those cases the hearing officers  
21 recommend no sealing or further action based on  
22 the respondent's compliance presented at the  
23 hearing. For the one Noise Code pre-sealing  
24 report, this case involved noise from the

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2 respondent's sound system. At the hearing the  
3 respondent presented evidence showing that the  
4 cited equipment had come into compliance after  
5 work done on it and it was now in compliance with  
6 the Noise Code. So the hearing office agreed with  
7 DEP's recommendation that the equipment remain  
8 unsealed after -- I'm sorry, remained unsealed if  
9 the initial re-inspection by DEP and further re-  
10 inspections by DEP for a period of 180 days show  
11 no violations.

12 For the post-sealing report, this  
13 involves a case, the respondent is Wise Espresso  
14 Bar Corporation and it's located at 3120 Coney  
15 Island Avenue in Brooklyn. This restaurant  
16 received summonses in 2014 and in 2016 for noise  
17 for its kitchen exhaust system at its restaurant.  
18 Decisions were issued following the hearings for  
19 those violations, which imposed penalties and  
20 ordered that the respondent comply with the Noise  
21 Code forthwith.

22 The respondent failed to comply and on  
23 June 30, 2016, DEP requested that the Board issue  
24 a Cease and Desist Order to the respondent. The

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2 Board did issue the Cease and Desist Order and  
3 the respondent appeared at the first pre-sealing  
4 hearing on July 26, 2016. At that hearing, the  
5 hearing officer adjourned the case to September  
6 for a progress report for the respondent to come  
7 in and show what work it had done on its  
8 equipment to bring it into compliance. Respondent  
9 did not appear at that September hearing, so DEP  
10 sealed their equipment.

11 Respondent then appeared for a post-  
12 sealing hearing on November 1st. And at that  
13 time, the hearing officer adjourned the case for  
14 DEP to inspect the equipment. DEP unsealed and  
15 inspected the equipment on December 5th and  
16 determined that it still did not comply with the  
17 Noise Code. The equipment was resealed at that  
18 time. From December 6, 2016 to July 18, 2016  
19 [sic], the case was adjourned seven times for the  
20 respondent to show that it had complied with the  
21 Noise Code.

22 Finally, on July 18, 2017 at the final  
23 post-sealing hearing, the DEP representative  
24 stated that a recent inspection had showed that

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2 the respondent had finally complied with the  
3 Noise Code and that the equipment should remain  
4 unsealed. The hearing officer agreed with DEP's  
5 recommendation and recommends that the equipment  
6 be unsealed -- remain unsealed as long as DEP's  
7 initial re-inspection and further re-inspections  
8 for a period of 180 days show no violations. Yes?

9 MR. JORGE MARTINEZ, ESQ., DEPARTMENT OF  
10 HEALTH AND MENTAL HYGIENE (DOHMH): Jorge  
11 Martinez, Department of Health. Why was the case  
12 adjourned so many times, seven times you said?

13 MS. CORSO: It was adjourned so many  
14 times because the respondent was coming in to  
15 show compliance and the work done in order to get  
16 it into compliance and for DEP to go out and  
17 inspect each time to see whether or not it had  
18 come into compliance.

19 MR. DEL VALLE: Is that because prior  
20 inspections to see if they were in compliance  
21 somehow didn't happen? Or they failed and then  
22 they again asked to have it re-inspected?

23 MS. CORSO: I believe they failed a  
24 couple of times. But I also believe that there

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2 were some issues with DEP and the respondent  
3 coordinating in terms of getting DEP out there to  
4 inspect the equipment, and that may have taken a  
5 few months' time to get that -- the inspections  
6 set up.

7 MR. DEL VALLE: Okay. Is that it?

8 MS. CORSO: Mm-hmm.

9 MR. DEL VALLE: Any other questions? Is  
10 there a motion? It's unanimous. Thank you. Is  
11 there a motion to go into Executive Session for a  
12 review of judicial cases? We will go into  
13 Executive Session. And I'll ask anyone who is not  
14 with OATH to kindly leave until we are out of  
15 Executive Session.

16 [OFF THE RECORD]

17 [ON THE RECORD]

18 MR. DEL VALLE: Before I ask for a  
19 motion to adjourn, I want to acknowledge and  
20 thank Appointed Member Savitala, whose -- today's  
21 his last meeting here with us. We unfortunately  
22 had him for a very short time. But he found us so  
23 fascinating that he's running off to California.  
24 And thank you very much. The Mayor's Office of

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Appointments will now have to start trying to dig up somebody else to draft. Is there a motion to adjourn? We are adjourned. Thank you. By the way, there's some goodies over here.

(The Board Meeting concluded at approximately 9:43 A.M.)

CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Environmental Control Board on July 27, 2017 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", written over a horizontal line.

Date: August 3, 2017

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