

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

BOARD MEETING

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

March 30, 2017

9:27 A.M. to 9:54 A.M.

March 30, 2017

MEMBERS PRESENT:

Fidel F. Del Valle, Esq. - Chair, OATH
Shamonda Graham - Department of Buildings
Joseph Gregory, Esq. - Fire Department
Elizabeth Knauer, Esq. - Appointed Member
Madelynn Liguori, Esq. - Department of Sanitation
Jorge Martinez, Esq. - Dept. of Health & Mental Hygiene
Russell Pecunies, Esq. - Dept. of Environmental Protection
Indi Savitala - Appointed Member
Thomas D. Shpetner - Appointed Member
Matthew Smith, Esq. - Police Department

ALSO PRESENT:

Frances Shine - Secretary to the Board, OATH

Rachel Amar - Special Assistant to the Commissioner, OATH
Vanessa Caughman - Computer Service Technician, OATH
**Kelly Corso, Esq. - Assist. Director of Adjudications,
OATH**
Fana Garrick - Creative Services Coordinator, OATH
David Goldin, Esq. - Administrative Justice Coordinator,
Mayor's Office
Diana Haines, Esq. - Assistant General Counsel, OATH
Susan Kassapian, Esq. - Deputy Commissioner/Hearings
Division, OATH
Mark Leeds, Esq. - Special Senior Counsel, OATH
Tynia Richard, Esq. - Deputy Commissioner/General Counsel,
OATH
Simone Salloum - Assistant General Counsel, OATH
Peter Schulman, Esq. - Assistant Director of
Adjudications, OATH
Carmena Schwecke, Esq. - Assistant Commissioner, Hearings
Division, OATH
Amy Slifka, Esq. - Deputy Commissioner/Hearings Division,
OATH

March 30, 2017

INDEX

	Page
Fidel F. Del Valle, Esq.	4
Thomas D. Shpetner	4
Simone Salloum, Esq.	4
Elizabeth Knauer, Esq.	5
Russell Pecunies, Esq.	13
Kelly Corso, Esq.	16

1 March 30, 2017

2 (The Board Meeting commenced at 9:27
3 A.M.)

4 MR. FIDEL F. DEL VALLE, ESQ.,
5 CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATIVE
6 LAW JUDGE, OATH: Good morning everyone. There was
7 a change that was distributed just before the
8 meeting to the minutes with a correction. I
9 assume you've had a chance to look at it. The
10 correction has to do with one member abstaining
11 from a vote last meeting that wasn't properly
12 recorded. With that change, is there a motion to
13 accept the minutes?

14 MR. TOM SHPETNER, APPOINTED MEMBER:
15 Abstention.

16 MR. DEL VALLE: The minutes are
17 unanimous with one abstention because you weren't
18 here. The minutes are adopted. The first item of
19 business has to do with a final rule proposal and
20 Assistant General Counsel, Simone Salloum, will
21 put it on the record.

22 MS. SIMONE SALLOUM, ASSISTANT GENERAL
23 COUNSEL: Good morning. Simone Salloum, Assistant
24 General Counsel. So, for your consideration today

1 March 30, 2017

2 is the final rule repeal of the Buildings penalty
3 schedule, which has the penalties found in
4 Section 3-103 of Subchapter G of Chapter 3 of
5 Title 48 of the Rules of the City of New York.

6 We published the proposed rule in the
7 City Record on February 27, 2017, and a public
8 hearing was held yesterday on March 29, 2017.

9 Three members of the public did attend the public
10 hearing and two provided testimony. We did not
11 receive any written comments on this rule repeal.
12 We didn't make any changes because there was
13 really not much to change. It's just repealing
14 the entire penalty schedule.

15 And the Department of Buildings also
16 held their public hearing yesterday as well. And
17 so we're going to be along the timeline to repeal
18 and promulgate the penalty schedule to the
19 Department of Buildings rules at the same time.
20 Does anyone have any -- yes?

21 MS. ELIZABETH KNAUER, APPOINTED MEMBER:
22 Elizabeth Knauer, Citizen Member. Can you
23 describe it? We didn't receive a transcript
24 obviously of the comments, since it was just

1 March 30, 2017

2 yesterday.

3 MS. SALLOUM: Yeah.

4 MS. KNAUER: So can you describe the
5 testimony?

6 MS. SALLOUM: It was two, I think,
7 attorneys who generally represent defendants --
8 or represent respondents for DOB violations. And
9 the bulk of the first comment was really about
10 DOB corrections and wasn't focused on the actual
11 transfer of the penalty schedule into DOB's rules
12 from OATH's rules. It was really focused on -
13 they need to focus on correction versus just
14 assessing penalties; you know, comments
15 concerning the AEU and it wasn't focused on the
16 switch. It was really just kind of a critique of
17 the Department of Buildings' ability to certify
18 correction.

19 The second comment was another attorney
20 who represents and he did say that he felt that
21 the repeal was removing a check on the ability of
22 the Department of Buildings to just increase
23 penalties.

24 MR. DEL VALLE: Just for clarification,

1 March 30, 2017

2 the corrections matter was the DOB procedure
3 where somebody corrects an alleged violation?

4 MS. SALLOUM: Right. Yeah, so when
5 there's a hearing and someone is found in
6 violation, oftentimes DOB requires correction.
7 And proof of correction has to be submitted to
8 DOB and then they certify correction. And that
9 information gets transmitted to OATH but OATH has
10 no involvement in the actual approval of any sort
11 of correction.

12 MR. DEL VALLE: Okay.

13 MS. SALLOUM: Yeah.

14 MR. DEL VALLE: Any other questions?
15 Comments? Is there a motion to adopt? Opposed?
16 One opposed. One abstention. Okay. You've got the
17 count?

18 MS. SALLOUM: Yeah, thank you.

19 MR. DEL VALLE: Okay, it's adopted.
20 Before we go on, I wanted to give all of you a
21 heads up on something that's going on. We've got
22 some collateral inquiries by way of the press on
23 what's going on with ICE and immigration and the
24 whole business that's occurring in Washington.

1 March 30, 2017

2 And it's basically along the lines of: What would
3 we do if ICE shows up at an OATH hearing or an
4 ECB hearing or something like that?

5 I think what precipitated the question
6 is that there were some press reports in the last
7 week that ICE agents were hanging out in
8 courthouses. And after somebody had to make an
9 appearance at the courthouse, after their
10 appearance, they got a tap on the shoulder and
11 were escorted to Iceland or wherever they take
12 them. Very simply, so in case you get any
13 inquires in any fashion, you know what our basic
14 policy is: All our hearings are open to the
15 public, just like the court is. And when people
16 show up at the door, we don't inquire as to what
17 their business is there because that would have a
18 chilling effect on the whole concept of an open
19 system. Even if they show up with a black suit,
20 black tie and Wayfarer sunglasses, we don't stop
21 them. And we're not going to put a sign on the
22 door: Check your guns and badges at the door
23 either.

24 But as a serious matter, if someone

1 March 30, 2017
2 identifies themselves as an ICE agent or if
3 whether it's in-person or by phone or
4 correspondence or whatever, we get a
5 communication requesting information from us,
6 from ICE, the drill for all City agencies is that
7 they will be referred to the Corporation
8 Counsel's Office. And the Corporation Counsel's
9 Office will become the point person, as it were,
10 for dealing with whatever their inquiry is. If
11 there's issues about whether something is a
12 judicial warrant, an administrative warrant or
13 inquiry, whatever, that will be dealt with by the
14 Law Department.

15 Clearly, if somebody just shows up and
16 is sitting there, they have a right to do that
17 like anybody else does. We will not supply any
18 information to anybody that requests it from ICE
19 without going through the Law Department. That
20 doesn't mean people can't do a FOIL request like
21 anybody else can. I don't know what good that
22 would do them because there's no way to identify
23 the nationality of a respondent just from a
24 summons.

1 March 30, 2017

2 Somebody pointed out however that they
3 may have an individual in mind and that they're
4 doing further investigation on that individual.
5 That is again something for the Law Department to
6 worry about. They have basically set up a flying
7 squad to deal with anything like that that might
8 come up. So, they're basically locked and loaded.
9 In the immortal words of José Jiménez, "Ain't my
10 job."

11 So succinctly, any inquiries from ICE or
12 ICE-related stuff is shifted to the Law
13 Department and the Law Department deals with it.
14 And we take our direction in that matter from the
15 Law Department as to where to go. And I think
16 that's a matter of reviewing a bunch of technical
17 stuff that we shouldn't be playing with and it
18 should be consistent across all City agencies.
19 I'm sorry, Elizabeth?

20 MS. KNAUER: I just wanted to ask a
21 question about sort of as a practical matter how
22 it works. The hearings are open to the public.
23 But, you know, back in my earlier life as a
24 lawyer, I occasionally appeared at ECB on behalf

1 March 30, 2017

2 of respondents. I just remember being, you know,
3 called for the matter and then we would go into a
4 small room with the ALJ. I guess if a member of
5 the public was sitting in the waiting area and
6 heard that matter called, they can just --

7 MR. DEL VALLE: Walk into the room too.

8 MS. KNAUER: They can walk into the room
9 along with the respondent and their
10 representative I guess?

11 MR. DEL VALLE: Yeah. Yes, they can.

12 There was an incident before the Taxi Tribunal
13 was transferred over to OATH and eventually
14 absorbed into the Hearings Division. I can't
15 remember exactly what year. But for some strange
16 and bizarre reason, one of my successors banned
17 the public from hearings on summonses at TLC,
18 which resulted in a journalism student from
19 Columbia University, who also happened to be a
20 lawyer suing the TLC on that matter and
21 fortunately he won; also collected a lot of money
22 in the process. And as a consequence of course
23 the Court ordered that all of those hearings --
24 all hearings that we conduct -- they conducted

1 March 30, 2017

2 and by inheritance of course us and we would do
3 it anyway, are totally open to any member of the
4 public who wants to come in without question.

5 We do ask members of the press as a
6 matter of courtesy to let us know, so we can
7 provide them with any backup and background
8 material. But even they don't have to tell us who
9 they are. It's the same thing as you are walking
10 into a courtroom at 100 Centre Street and that's
11 the way it should be. And I don't understand the
12 logic of going into Star Chamber type proceedings
13 when somebody's issued a summons or something
14 like that, unless it's like a family court thing.
15 So, the short answer is: Yeah, they can walk in.

16 And I was only being slightly sarcastic
17 when I said: "You know, unless you're wearing a
18 black suit, black tie, Wayfarer sunglasses and a
19 white shirt," we probably wouldn't imagine that
20 they had anything to do with Feds or just
21 somebody with maybe a reverend or something who
22 just had cataract surgery. Anything else?

23 We'll go to the Department of
24 Environment Protection's request for cease and

1 March 30, 2017

2 desist orders.

3 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
4 OF ENVIRONMENTAL PROTECTION: Good morning. I'm
5 Russell Pecunies with the Bureau of Legal Affairs
6 at the Department of Environmental Protection.
7 DEP is requesting this month that the Board issue
8 one cease and desist order under the Sewer Code.
9 The respondent is DuMont Burger LLC, located at
10 314 Bedford Avenue in Brooklyn. The business was
11 inspected and determined to need two grease traps
12 and was ordered to install them by October of
13 last year. When they failed to do so, summonses
14 were issued based on that failure to do so.

15 The respondent has still not installed
16 the required grease interceptors and has also
17 failed to appear as directed for a mandatory
18 compliance meeting on February 8th. So, due to
19 the continuing failure of the business to comply
20 with the Sewer Code requirements to install
21 grease traps, the Department is asking the Board
22 to issue an order to cease and desist.

23 MR. DEL VALLE: Any questions? Motion?
24 It's unanimous.

1 March 30, 2017

2 MR. PECUNIES: I can vote "yes" now,
3 right?

4 MR. DEL VALLE: Yeah. Sure. It's not
5 going to make a lot of difference.

6 MR. PECUNIES: Okay. The Department is
7 also requesting two cease and desist orders be
8 issued under the Noise Code. The first is for
9 Entre Amigo Restaurant and Bar Corp. at 2244
10 Amsterdam Avenue. This is for the sound system,
11 for loud music from the sound system. The
12 Department began inspecting this location based
13 on complaints in July of last year. We have
14 issued summonses for excessively loud music in
15 July, August, October, and January. The
16 respondent stipulated to the first one, was found
17 in violation for the next two. The fourth one was
18 just on for a hearing on Tuesday. So, I'm not
19 sure what happened to that one.

20 The respondent has not paid any of the
21 fines that were imposed on the first three
22 summonses. And due to their continuing failure to
23 comply with the Noise Code and their apparent
24 disregard for the fact that they keep getting

1 March 30, 2017

2 summonses, the Department is asking the Board to
3 issue an order to cease and desist.

4 MR. DEL VALLE: Questions? Motion?
5 Again, it's unanimous.

6 MR. PECUNIES: And the second one under
7 the Noise Code is for 111 Audubon Food Corp.,
8 located at 111 Audubon Avenue in Manhattan. This
9 location has been cited on four occasions since
10 July for loud noise from its refrigeration unit
11 and has still not come into compliance with the
12 Noise Code, based on the most recent inspection,
13 based upon which the Department is asking the
14 Board to issue an order to cease and desist.

15 MR. DEL VALLE: Motion? Unanimous.

16 MR. PECUNIES: And finally, the
17 Department has and I believe I counted 27
18 requests for cease and desist orders for failure
19 to comply with backflow prevention requirements.
20 In each of these cases, the building owner has
21 been served with an order to install the required
22 devices. When they failed to do so, they were
23 issued with a summons. The summons has been
24 adjudicated in violation in each of these cases

1 March 30, 2017

2 and the building owner has still not complied
3 with the backflow prevention requirements. So in
4 each of these cases, the Department is asking the
5 Board to issue an order to cease and desist.

6 MR. DEL VALLE: Questions? Motion? It's
7 unanimous.

8 MR. PECUNIES: Thank you.

9 MR. DEL VALLE: Thank you. And Kelly
10 Corso will introduce requests for pre-sealing
11 reports.

12 MS. KELLY CORSO, ESQ., ASSISTANT
13 DIRECTOR OF ADJUDICATIONS, OATH: Good morning.
14 We have 24 pre-sealing reports for today's Board.
15 Fourteen of those involve backflow violations and
16 ten involve Air Code violations. In all of the
17 backflow cases and in two of the Air Code cases,
18 the hearing officers recommend no sealing or
19 other action based on the respondents' evidence
20 of compliance that was presented at the hearings.

21 In the remaining eight Air Code cases,
22 the hearing officers agreed with DEP's
23 recommendation that the C&D's be discontinued
24 because DEP had determined that the respondents

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

March 30, 2017

have obtained their operating permits, bringing their boilers and burners into compliance with the Air Code. And that's it.

MR. DEL VALLE: Are there any questions? Nope. Motion? Unanimous. Is there a motion to go into executive session? We are going into executive session.

[OFF THE RECORD]

[ON THE RECORD]

MR. DEL VALLE: We're back in public session. Are there any questions? Is there a motion to adjourn? We're adjourned. Happy spring.

(The Board Meeting concluded at approximately 9:54 A.M.)

CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Environmental Control Board on March 30, 2017 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Fei Deng

Date: March 31, 2017

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018