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
November 17, 2016
9:16 A.M. to 9:41 A.M.
MEMBERS PRESENT:

Ernest J. Cavallo - Citizen Member  
Michele Defreitas-Within, Esq. - Dept. of Health & Mental Hygiene  
Fidel F. Del Valle, Esq. - Chair, OATH  
Shamonda Graham - Department of Buildings  
Joseph Gregory, Esq. - Fire Department  
Elizabeth Knauer - Citizen Member  
Madelynn Liguori, Esq. - Department of Sanitation  
Jose Marquez - Fire Department  
**Russell Pecunies, Esq. - Dept. of Environmental Protection**  
Thomas Shpetner - Citizen Member  
Matthew Smith - Police Department  
Douglas S. Swann - Citizen Member

ALSO PRESENT:

Rachel Amar - Special Assistant to Commissioner  
Vanessa Caughman - Computer Service Technician, OATH  
**Kelly Corso, Esq. - Assist. Director of Adjudications, ECB**  
David Goldin, Esq. - Administrative Justice Coordinator, Mayor’s Office  
**Diana Haines, Esq. - Assistant General Counsel, OATH/GC**  
Johnathan Jacobs - Business Integrity Commission  
Susan Kassapain - Assistant Commissioner, Vehicle for Hire Hearings Division  
Mark H. Leeds, Esq. - Special Counsel, OATH  
Joanne Rattansingh, Esq. - Managing Attorney  
Tynia Richards - Deputy Commissioner, General Counsel, OATH  
Simone Salloum - Counsel to the Board, OATH  
Peter Schulman, Esq. - Deputy Supervising Attorney, Appeals, OATH/ECB  
Frances Shine - Secretary to the Board, OATH  
Amy Slifka, Esq. - Deputy Commissioner/Executive Director, OATH/ECB  
Thomas Southwick, Esq. - Supervising Attorney, Appeals, OATH
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MR. FIDEL F. DEL VALLE, ESQ.,
CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATIVE
LAW JUDGE, OATH: Good morning everyone.

ALL: Good morning.

MR. DEL VALLE: We may have some guests from the People’s Democratic Republic of China coming in later on to observe, take notes and collect our names, I don’t know. So if you see some folks coming in, it’s about six or seven of them, that’s what that’s all about. They’re from Yale University. They’re in a program at Yale. Some of them were here last week doing basically the same thing.

Anyway, is there a motion to accept the minutes of the last meeting? It’s unanimous.

MR. JOSE MARQUEZ, FIRE DEPARTMENT: I abstain.

MR. DEL VALLE: With one abstention.


MR. DEL VALLE: And the Fire Department
is abstaining. And the Health Department is abstaining. So otherwise it’s accepted, unless anybody’s got any questions or issues with it.

I’ll ask DEP to do their thing, requesting cease and desist orders.

MR. RUSSELL PECUNIES, ESQ., DEPARTMENT OF ENVIRONMENTAL PROTECTION: Okay. Good morning. I am Russell Pecunies, Assistant Counsel with the Department of Environmental Protection. This month DEP is requesting that the Board issue one cease and desist order under the noise code. This is for Blick Art Materials LLC, which is located at 1 Bond Street. The HVAC unit at that location has been cited on three occasions, most recently at the end of September, for excessive noise. And based on the repeated violations and continuing failure to come into compliance, DEP is asking that the board issue an order to cease and desist.

MR. DEL VALLE: Any questions? Motion? It’s unanimous with one abstention.

MR. PECUNIES: Mm-hmm, thank you. And then DEP is also requesting that the Board issue
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21 cease and desist orders to building owners, relating to failure to install backflow prevention devices. In each of these cases, the building owner has been issued a Commissioner’s Order and a summons. They’ve been adjudicated in violation with regard to the summons and they have still not complied by installing the required devices. So in each of these cases, the Department is asking the Board to issue an order to cease and desist.

MR. DEL VALLE: Any questions? When did the law on backflow preventers come into effect?

MR. PECUNIES: It has actually been around -- the law says that it’s -- the State law says that the local water supplier is responsible for ensuring that this get done. That law has been around for a long time. We actually started to enforce it about I would say 15 years ago, maybe a little less; somewhere between ten to 15 years ago.

MR. DEL VALLE: Okay. So it shouldn’t go into a shocker -- to shock anybody.

MR. PECUNIES: And we’ve got a long way
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to go before everybody who needs one has one, so.

       MR. DEL VALLE: Is there a motion? It’s unanimous -- two exemptions.

       MR. PECUNIES: Thank you.

       MR. DEL VALLE: That was short and sweet. Pre-sealing reports, Kelly Corso.

       MS. KELLY CORSO, ESQ., ASSISTANT DIRECTOR OF ADJUDICATIONS, OATH: Good morning.

I’m Kelly Corso. I am Assistant Director for Adjudications for OATH Hearings Division. We have seven pre-sealing reports today and one post-sealing report. For the pre-sealing reports, they all involve backflow violations. And in all the cases the hearing officers recommend that there be no sealing or other action. For six of those cases, the hearing officers’ recommendations are based on the evidence of compliance of the respondents presented at the hearings. In one of the cases, the seventh case, the hearing officer recommended no sealing or other action based on a report that DEP presented at the hearing of a re-inspection of the premises indicating that the backflow device we no longer necessary.
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Now, the post-sealing case involves a noise code violation. And the respondent in that case is Lucky Seven Restaurant and Bar LLC. That restaurant and bar is located at 1447 St. Nicholas Street in Manhattan. This case started back in April of 2014 when DEP issued a summons to the respondent for a violation of the noise code with respect to its sound reproduction equipment that was located in the restaurant and bar. The sound reproduction equipment was exceeding the permitted levels of noise in a complainant’s apartment that was located above the restaurant and bar.

The respondent did appear for the first hearing in August of 2014 and was found in violation and was ordered to comply with the noise code. They did not comply with the noise code and they were subsequently issued three more summonses. A re-inspection by DEP in June of 2016 showed the respondent still had not complied with the noise code. And in July of 2016 the Board approved a cease and desist order for the case. The order had required the respondent appear at a
special hearing in August of 2016 and the respondent failed to appear. Respondent rescheduled a hearing for September and again they failed to appear. And as a result of that, DEP sealed the equipment.

After the equipment was sealed, the respondent appeared for a post-sealing hearing -- a number of post-sealing hearings. There was one in September, October and November. At the November hearing, DEP submitted an inspection report showing that the respondent had installed a limiter on its sound reproduction equipment and that noise readings that were taken from the complainant’s apartment were now within the decibel range required by the noise code. So the hearing officer in this case has agreed with DEP’s recommendation that the equipment remain unsealed if DEP’s re-inspection and subsequent re-inspection for a period of 180 days show no violation.

MR. DEL VALLE: Motion? Unanimous with one inspection. And I’m sure their neighbors are very happy.
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MS. CORSO: I’m sure.

MR. DEL VALLE: You made it fast. Is there a motion to go into executive session for additional review? Granted.

[OFF THE RECORD]

[ON THE RECORD]

MR. DEL VALLE: Before we wrap up, I just want to give a little bit of update of thrills and chills. As everyone knows I think, we are in the middle so far of a two-year reorganization of an administrative adjudication agreement in the City. And part of that process involves shifting a lot of legacy things that were brought over from other agencies: probably the Health Department or the Taxi Limousine Commission or DEP and a whole bunch of other stuff. And one of those items involves legacy rules that are more appropriately in Buildings Department, Sanitation Department and so forth.

The original target from the First Deputy Mayor was to have that completed by 2017. And earlier this month we noticed that there’s two months left till 2017. So, various agencies
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will be getting a goose from us about that stuff in the coming couple of months before they get a goose from a higher authority as it were. That’s just FYI.

Other than that, the consolidation of the Hearings Division is moving along very well. At this current stage, we are getting new space in the Bronx. The current space is too small. And it was determined that with the Criminal Justice Reform Act coming online in June of next year, it’s going to be way too small. So, we are starting negotiations with a space in a building in the -- right in the middle of the court complex up on 161st Street, which I think is really neat. The other option was the old Central Post Office in the Bronx, which would have been really, really impressive but not very practical unfortunately because we can’t destroy any of the landmark WPA murals that are there, which would be I think a mortal sin if that were done.

So that’s going very well. And we’re getting more space likewise in Queens because we’re consolidating all our Queens operations at
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the Falchi building in Long Island City. The facility in Jamaica, which we share with the DOF -- Department of Finance, is getting too tight. So, we’re getting another floor in the Falchi building, which should be completed about this time next year for us to start moving cases in there.

And along those lines, we’re starting to circulate personnel from venue to venue, to do cross-pollination of good practices and making sure that hearing officers can do whatever cases come before them. The only complication so far has been scheduling and in particular certain types of summonses; one of the issues that is important to the Administration is that individuals be able to deal with whatever summons they got from whatever agency at any location basically at any time.

That’s easier said than done when in particular types of violations you need the enforcement agent present for the hearing. Actually the vast majority of summonses we deal with don’t require the enforcement agent to be
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present. But there are certain ones that require the enforcement agent to be present and that involves creating a complicated matrix for scheduling those types of things.

One of the things that is very Buck Rogers’y that is coming down the pike is the mechanism for teleconferencing hearings; not only for the benefit of a respondent but for the benefit of enforcement agencies. We’ve been doing this for several months already with the Port Authority police and it seems to work great. But again it’s a technology thing that has to be flushed through and budgeted and no one be traumatized over it too much, which they’re already traumatized by the Criminal Justice Reform Act stuff.

Any questions? Yeah?

MR. PECUNIES: Yeah. The new locations in the Bronx and Queens will mean that the existing locations will be closing or they’re in addition to the existing locations?

MR. DEL VALLE: Existing locations will be closing.
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MR. PECUNIES: Okay. And the timeframe for that tentatively on both of them is about a year from now?

MR. DEL VALLE: Yeah. Yeah. In Staten Island location, which we’re getting a new location there anyway, which was started long before the Criminal Justice Reform Act stuff, hasn’t been settled exactly where it’s going to be; although it looks like a particular location is being focused on. And the Staten Island reason is mostly because the building is decrepit, to put it politely. I mean, I don’t --

MR. PECUNIES: Will that still be in the vicinity of the ferry terminal or --

MR. DEL VALLE: I think it’s within range of it, yeah. We don’t want to -- I don’t want to say that too much because the Buildings Department might run over there and condemn it. Is there a motion to adjourn? We are adjourned.

(The Board Meeting concluded at approximately 9:41 A.M.)
CERTIFICATE OF ACCURACY

I, Lea Simmons, certify that the foregoing transcript of Environmental Control Board on November 17, 2016 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

[Signature]

Date: November 18, 2016

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