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
August 25, 2016
9:25 A.M. to 10:09 A.M.
August 25, 2016

MEMBERS PRESENT:

Shari Dawkins, Esq. - Department of Health & Mental Hygiene
Fidel F. Del Valle, Esq. - Chair, OATH
Shamonda Graham - Department of Buildings
Madelynn Liguori, Esq. - Department of Sanitation
Elisabeth Prael, Esq. - Fire Department
Russell Pecunies, Esq. - Department of Environmental Protection
Matthew Smith - Police Department
Thomas D. Shpetner, Esq. - Appointed Member
Douglas S. Swann - Appointed Member

ALSO PRESENT:

Simone Salloum – Assistant General Counsel, OATH
Frances Shine - Secretary to the Board, OATH
Rachel Amar - Special Assistant to the Commissioner, OATH
Helaine Balsam, Esq. - Deputy General Counsel, OATH
Amy Bedford - Business Integrity Commission
Denis Brogan - Assistant General Counsel, OATH
John Burns - First Deputy Commissioner, OATH
Vanessa Caughman - Supervising, Computer Service Technician, OATH
Kelly Corso, Esq. - Assistant Director of Adjudications, OATH
Fana Garrick - Creative Services Coordinator, OATH
David Goldin, Esq. - Administrative Justice Coordinator, Mayor’s Office
Diana Haines - Assistant General Counsel, OATH
Will Hughes - Office of Management & Budget
Vivienne Kahng - Staff Attorney, Appeals, OATH
Mark H. Leeds, Esq. - Special Senior Counsel, OATH
Nancy Lin - Office of Management & Budget
Maria Marchiano - Deputy Commissioner/Chief Clerk, OATH
Mariko Matsuyoshi - Data Analyst, OATH
Tynia Richards - Deputy Commissioner, General Counsel, OATH
Peter Schulman, Esq. - Assistant Director of Adjudications, OATH
Amy Slifka, Esq. - Deputy Commissioner, OATH
Thomas Southwick, Esq. - Supervising Attorney, Appeals, OATH
Doris Stewart - Department of Transportation
August 25, 2016

INDEX

<table>
<thead>
<tr>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Fidel Del Valle, Esq.</td>
<td>4</td>
</tr>
<tr>
<td>Ms. Madelynn Liguori, Esq.</td>
<td>4</td>
</tr>
<tr>
<td>Ms. Amy Slifka, Esq.</td>
<td>4</td>
</tr>
<tr>
<td>Ms. Shamonda Graham</td>
<td>6</td>
</tr>
<tr>
<td>Mr. Thomas Shpetner, Esq.</td>
<td>12</td>
</tr>
<tr>
<td>Ms. Simone Salloum, Esq.</td>
<td>13</td>
</tr>
<tr>
<td>Mr. Russell Pecunies, Esq.</td>
<td>15</td>
</tr>
<tr>
<td>Ms. Kelly Corso, Esq.</td>
<td>17</td>
</tr>
<tr>
<td>Ms. Helaine Balsam, Esq.</td>
<td>20</td>
</tr>
</tbody>
</table>
August 25, 2016

(The board meeting commenced at 9:25 A.M.)

MR. FIDEL DEL VALLE, CHAIR, OATH: Good morning, everyone. Is there a motion to adopt the minutes from the last meeting? They are adopted? I think we'll start -- excuse me?

MS. MADELINE LIGUORI, ESQ., DEPARTMENT OF SANITATION: I have to abstain. I wasn't at the last meeting.

MR. DEL VALLE: Oh, okay. Thank you. Amy Slifka will give us an update on exciting statistics from Environmental Control Board hearings.

MS. AMY SLIFKA, ESQ., DEPUTY COMMISSIONER, OATH: Good morning, everybody. I think most of you know that this is. This is the quarterly presentation and basically it's a number of violations received by OATH ECB broken down by issuing agency, a quarterly comparison of the violations received and heard and decisions rendered, a look at the last time from hearing to decision date, a look at the decision results for each of the issuing agencies, and lastly, a look
August 25, 2016

at most commonly issued violations by agency and appeals.

Okay. Okay, that's not going to work.

Okay. There we go. That'll work. Okay.

So, as you can see, the summons received by DSNY, there's been an increase from, 21 percent increase from the first quarter of calendar year '16 to the second quarter; DOB, there's been a 23 percent increase; DOT, a 19 percent increase; FDNY, a 14 percent increase; DEP, a four percent increase; and DOHMH, a 20 percent increase. I'm hitting the wrong button here. Okay. Sorry.

Parks, 104 percent increase, which is kind of seasonal. It makes sense. NYPD, 18 percent increase. DoITT, there's been a 56 percent decrease. BIC, a 76 percent increase, 21 to 37; and Landmarks, a 21 percent decrease, 29 to 23. Okay.

So summons received by ECB comparing the second quarter of 2015 calendar year and the calendar year of 2016. As you can see, DSNY, there's been a 13 percent increase from 117,525,
August 25, 2016

to 133,307. DOT there's been 108 percent increase from 7,404 to 15,403. DOB, again, there's been an 11 percent increase; FDNY, another 11 percent increase; DOHMH, a six percent increase; NYPD, a 91 percent increase from 2,639 to 5,040; DEP, there's been a decrease of nine percent; Department of Parks and Recreation, a seven percent increase. DoITT, a 79 percent decrease from 280 to 60. And BIC, a 429 percent increase from seven to 37, the winner. From Landmarks, it's a 63 percent decrease, 62 to 23; and Agency Code Missing, 29 percent decrease; and Miscellaneous, a 36 percent decrease. Overall, there's been a 17.4 percent increase in summonses received. Yes.

MS. SHAMONDA GRAHAM, DEPARTMENT OF BUILDINGS: You, you have the section Agency Code Missing, so then what is captured in miscellaneous?

MS. SLIFKA: Miscellaneous is Starrett City, Peter Cooper Village--

MS. GRAHAM: Okay.

MS. SLIFKA: Those, those areas. Okay?
MS. GRAHAM: Thank you.

MS. SLIFKA: Yep. Okay. So total summonses heard: DSNY, there's been a one percent increase; DOB, a 15 percent increase; and DOHMH, same 15 percent increase; Fire Department, a two percent increase; DEP, a six percent increase; DOT, it's a 153 percent increase in cases heard from 1,840 to 4,659; NYPD, a 55 percent increase, from 1,686 to 2,619; and DoITT, a 210 percent decrease from 453 to 220; Department of Parks and Recreation, a two percent decrease; BIC, a 67 percent increase; and Landmarks, 14 percent increase. And overall, again, there's been an increase of 13.5 percent from 47,039 to 53,408.

Okay. Decisions rendered -- okay, so DSNY, it's a one percent increase; DOB is seven percent increase; DOHMH, a 10 percent increase; and FDNY, a two percent increase; DOT, it went up 129 percent from 1,484 to 3,405; DEP, a eight percent increase; NYPD, a 60 percent increase from 1,578 to 2,531; Department of Parks, a two percent increase; DoITT, a 51 percent decrease;
August 25, 2016

BIC, a grand total of 300 percent increase from one to four; Landmarks, a 45 percent increase. And basically, overall, there's been a 10.4 increase in decisions rendered.

Okay. So currently, we're getting decisions, 84 percent of our decisions are down a little bit from the first quarter of 2016 to the second quarter 2016, and are done within 84 days — 84 percent are done in less than 10 days, and 98 percent are done in less than 20 days. Okay.

And decisions rendered after the hearings, so overall, dismissal rate, it's a 59.5 percent, in 2015 it was 59.5 percent in violation versus 39.9 percent dismissal. In the second quarter of 2016, it's 58.3 percent in violation and a 41.1 percent dismissal rate. So with regard to the separate agencies, DSNY, it's a 60 percent dismissal rate and a 40 percent in violation rate. With DOB, it's a 78 percent in violation rate and a 22 percent dismissal rate. DOT, it's a 62 percent in violation rate and a 38 percent dismissal rate. Fire Department, 88 percent in violation, 10 percent dismissal, two
percent are stips. DEP, 84 percent in violation and nine percent dismissal. And Parks, 54 percent dismissal, 46 percent in violation. DOHMH is a 58 percent in violation, 42 percent dismissal. Parks, it's a 54 percent in violation, 46 percent dismissal. DoITT, it's a 64 percent dismissal, 36 percent in violation. BIC, it's a 75 percent in violation, 25 percent dismissal. And Landmarks, a 75 percent in violation and a 25 percent dismissal.

Most commonly issued: for DOT, it's construction material or equipment stored on the street without a permit and it’s failure to comply with terms and conditions of the permit and failure to permanently restore the cut in the required time. For NYPD, it's unlicensed mobile food vendor, it's vending within 10 feet of a driveway, subway, or crosswalk, or next to a hospital, and it’s unpermitted food cart. For DOB, it's failure to maintain your elevator bank system, it's work without a permit, and it’s failure to comply with the order of the commissioner. And for DSNY, it's failure to
August 25, 2016

clean 18 inches into the street, dirty sidewalk, dirty area -- that's DSNY. And DEP, it's failure to submit an annual test report for backflow preventer or it's failure to install the backflow preventer, or it's fail to keep or have available for inspection your noise mitigation plan. For FDNY, it's inspection and testing, fire protection systems, failure to prevent unnecessary and unwarranted alarms, and fire protection systems just not functioning properly. DOHMH, it's failure to eliminate rodent infestation shown by active rodent signs and failure to eliminate conditions conducive to rodent debris, and failure to eliminate conditions conducive to pests, garbage can spillage. Landmarks, it's work without or in violation of certificate of approval. And then it's miscellaneous work without a certificate of approval and then it's work without a permit or certificate of approval for your flag or sign. For DoITT, it's failure to provide working public pay telephones and operator services, it's required sign missing and impermissible as per
the requirements of the subsection, and fail to clean and maintain public telephone. For Parks, it's failure to comply with directions or prohibitions on signs, unauthorized consumption, possession of alcoholic beverages, and unauthorized vending. And for BIC, it's employed individuals without their approved ID card, failure to register wholesale and/or market business as per the Code, and failure to obtain an identification card.

So as far as appeals, you can see the numbers there. DOB, we had 215; DSNY, 169; Fire, 94; Health, 55; DEP, 19; DOT, 33; DoITT, 20; NYPD, 13; and Parks, just one, for a total of 619.

Total number of defaults, for April, May and June of 2016, it was 87,989, 73.9 of those were DSNY, 8.2 was DOT, and 5.1 was DOB. And that's it. Any questions?

MR. THOMAS SHPETNER, APPOINTED MEMBER: Yes, Amy, one quick one. The dismissal rates by agency, maybe at the next meeting or next quarter, we could do a comparison of another, of
maybe the prior quarter or the prior year, the
second quarter of 2016. And the reason I ask is
that I think I saw some improvements. I remember
NYPD had a much higher, I believe, they had a
much higher dismissal rate than they do
currently. So it's improving in other words.
Maybe they're writing better tickets, maybe we
have better outcomes because we redesigned the
form. So I'm not sure what it would be
attributable to, but that would be something
interesting to, just as a governance matter to
discuss.

MS. SLIFKA: Okay.

MR. SHPETNER: It seems like I saw
improvement in the stats, but I can't remember
precisely.

MS. SLIFKA: Sure. We'll see what we
can do there. We should be able to do that. Any
other questions? Okay. Thank you.

MR. DEL VALLE: That was my recollection
too.

MR. SHPETNER: Yeah, I, I--

MS. GRAHAM: It is.
August 25, 2016

MR. SHPETNER: I mean, we'd spent a lot of time on those forms, for example. Maybe that helped. I don't, you know, it'd be good to know.

MR. DEL VALLE: I hope so.

MR. SHPETNER: Gains without facts are [unintelligible].

MR. DEL VALLE: It just makes us hopefully feel better anyway. They look prettier. We're now going to have Simone Salloum introduce proposed rules.

MS. SIMONE SALLOUM: So up first -- Simone Salloum, Assistant General Counsel of OATH, we have the proposal for the repeal of the Department of Transportation penalty schedule, which is located in 48 R.C.N.Y. 3-124 and this is kind of part of the whole process that OATH is undertaking to move the penalty schedules out of the OATH rules and into the respective agency rules. We are coordinating repeal with the Department of Transportation to ensure that their penalty schedule gets promulgated simultaneously with the repeal. Does anyone have any questions about this proposal?
August 25, 2016

MR. DEL VALLE: Is there a motion? Or an abstention? Or is there a, a -- let me rephrase that. All in favor. All opposed.

MR. SHPETNER: I'm abstaining.

MR. DEL VALLE: It is approved with one abstention and one opposed.

MS. SALLOUM: And next we have the adoption of the amendment to the DOB penalty schedule, which added five new infractions and amends two existing infraction related to construction superintendents and site safety managers and coordinators. We published this proposed rule in the City Record on July 8, 2016. We held a public hearing on August 9, 2016, and we received no written comments and no one testified at the public hearing, although two people from the public did attend the hearing. Does anyone have any questions on this, this rule that's up for adoption?

MR. DEL VALLE: Is there a motion to adopt?

MS. GRAHAM: One abstention.

MR. DEL VALLE: Oh, okay. Let me
August 25, 2016

rephrase that again because I asked for a motion. All in favor. It's unanimous with one abstention from Buildings.

MS. SALLOUM: Thank you.

MR. DEL VALLE: And last, DEP.

MR. RUSSELL PECUNIES, ESQ., DEPARTMENT OF ENVIRONMENTAL PROTECTION: Good morning. Russell Pecunies, Assistant Counsel, Department of Environmental Protection. DEP is requesting the Board issue one cease and desist order this month under the Sewer Code. This is for Inday 1178 LLC. Inday is an Indian restaurant located at 1133 Broadway. An inspection late last year determined that the restaurant needed to install a grease trap for one of their sinks and grease traps for each of two floor drains. When they failed to comply, beginning in January, DEP, Bureau of Wastewater Treatment issued a series of notices of violations and Commissioners Orders directing respondent to comply. Up through June, there was still no compliance and the respondent was noticed to appear at a mandatory compliance meeting on July 27th with the Bureau of
August 25, 2016

Wastewater Treatment, which they failed to appear for. Due to the continuing failure of the respondent to comply with the requirement to install the grease interceptors, DEP is asking for the issuing order to cease and desist.

MR. DEL VALLE: Any questions? Is there a motion? It's unanimous with one abstention.

MR. PECUNIES: Thank you. And DEP has 28 requests for cease and desist orders for building owners who have failed to comply with Commissioner's Orders to install backflow prevention devices. In each of these cases, a summons has been issued to the respondent, which has been adjudicated in violation and respondent is still not in compliance. Based upon which the Department is asking the board to issue cease and desist orders in each of these cases.

MR. DEL VALLE: Any questions? Is there a motion? It unanimous with one abstention.

MR. PECUNIES: Alright. Thank you.

MR. DEL VALLE: That was short and sweet. Is there a motion to enter into executive session to discuss litigation? Oh, sorry about
August 25, 2016

that. Sorry, Kelly. Presealing reports.

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

I'm Kelly Corso, Assistant Director of Adjudications for OATH. And we have 19 presealing reports for today's Board. We have 13 cases that involve backflow violations, three involve air code violations, and four that involve noise code violations. For the backflow cases and the air code cases, the hearing officers in all those cases recommend no sealing or other action based on the respondent's evidence of compliance presented at the hearings. For the noise code cases, for three of those, the respondents presented evidence at the hearings of work that was done to bring the cited kitchen exhaust fans into compliance of the noise code. And the hearing officers recommend, in all of those cases, that DEP reinspect the equipment and that the equipment remain unsealed only if the initial reinspection by DEP and further reinspections for a period of 180 days show no violation. And the last noise code case, the
August 25, 2016

hearing officer recommends no further action and that's based on a recent DEP inspection report that indicated that the cited exhaust fan was disabled and a new exhaust fan was installed.

That's it.

MR. DEL VALLE: Any questions? Is there a motion to adopt? It's unanimous. Thank you. Now, is there a motion to adjourn to executive session to review litigation? That's adopted and we'll wait a moment.

[OFF THE RECORD]

[ON THE RECORD]

MR. DEL VALLE: No one's outside? I wonder why everybody leaves right after this. Maybe I should leave something exciting for the second part.

MR. SHPETNER: I have a question.

MR. DEL VALLE: A movie or something.

MR. SHPETNER: Yeah. Can we, can you update the Board on where we stand in terms of filling the open citizen vacancies?

MR. DEL VALLE: Yes, which is a bit of a hairy issue considering the last two meetings we
were pretty close to not having a quorum. In Sept-, the Mayor's Office of Appointments has three people in the pipeline. One person has, the Mayor has submitted the name of one person to the City Council. The City Council's committee on rules, privileges, and I forgot the rest of the title, is supposed to have a hearing on the person which, in this case is the sound, the noise expert, I believe, in the first week of September. They don't have a date yet. That's just information as of yesterday afternoon. And it's expected that the Council will vote on that nomination towards the end of September at their next stated meeting and hopefully it'll be before our Board meeting and we can, we can have at least one more board member then. The other two individuals are still going through the vetting gauntlet and hopefully by the end of 2016, we'll be at full complement.

MR. SHPETNER: I thought there were only two vacancies.

MR. PECUNIES: No, there are three.

MR. DEL VALLE: Three, I believe.
MR. SHPETNER: Two. Right? Rob and Emily?

MS. HELAINE BALSAM, ESQ., DEPUTY GENERQAL COUNSEL, OATH: Oh, everybody's a holdover.

MR. SHPETNER: Well, that's, that's fair, but, I mean, there are two literal vacancies. So you're--

MR. DEL VALLE: Oh. So maybe one of the holdover guys, whom I don’t know whom, is being, is being considered for reappointment or something.

MR. SHPETNER: You don't know whom?

MR. DEL VALLE: They haven't shared it with me.

MR. SHPETNER: I'm surprised that you're not aware of who the--

MR. DEL VALLE: No. Probably after they put -- what they've done in the past in regard, at least when I've been around, is that after they do the vetting process, they tell me who it is and then they ask us to talk to the person and, and if they haven't been dissuaded after,
August 25, 2016

after they find out what's involved, then they.
they proceed after that. It's an insanely long
and tedious process. By the way,
parenthetically, I asked, I asked the head of
that office how many boards does the City have to
fill vacancies in and she said 273. Some of them
so obscure I can't even imagine what the heck
they are, but they are working on it. I know
that we've been harassing them for the last two
or three months to move on it. And we'll see
where the jolly, the yellow brick road takes us.
So that's where we're at. That's as much as I
know right now.

Is there a motion, by the way, to affirm
the appeals panels' decisions?

MS. GRAHAM: Yes.

MR. DEL VALLE: It's unanimous. Before
I ask to adjourn, I want to point out that
Helaine Balsam, who has been connected to ECB for
something like the last 30 years, is going to be
moving on. Over the last 30 years, well right
now she's the Deputy General Counsel, and I have
to actually read a list of all the stuff that
August 25, 2016

she's done, which is incredible.

MS. BALSAM: No, you don't.

MR. DEL VALLE: Yeah, I do. Yes, I do.

This is for posterity. This is being recorded, you know, this, we're putting this in a time capsule. She's been Managing Attorney for ECB's Brooklyn office. She's heard thousands of cases relating to environmental issues in the City of New York. She's a permanent member of the faculty of the New York City Administrative Judicial Institute. She's held adjunct faculty positions at New York Law School, the City University of New York. And she has drafted countless rule amendments and changes and is almost singlehandedly responsible for guiding the revision, the largest revision of Administrative Law Rules in the City of New York in the last 30 years. And she's going to be Executive Director and General Counsel of the Loft Board starting in a couple weeks.

MS. BALSAM: Monday.

MR. DEL VALLE: Monday. And I just wanted to acknowledge our gratitude for all this
August 25, 2016

time that she, and all of her contributions and
I'm happy for her and at the same time not so
happy for us that she's leaving. And if anybody
wants to hang around after the meeting, we've got
some stuff over here and we can hang around and
mingle and say thanks again.

Is there a motion to adjourn?

MR. SHPETNER: Can we applaud first?

MR. DEL VALLE: Yes.

[APPLAUSE]

MR. DEL VALLE: Let the record show
there was applause. Are we adjourned? We are
adjourned. Thank you.

(The board meeting concluded at 10:09
A.M.)
CERTIFICATE OF ACCURACY

I, Lea Simmons, certify that the foregoing transcript of Environmental Control Board on August 25, 2016 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

[Signature]

Date: August 26, 2016

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