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
December 7, 2017
9:27 A.M. to 10:34 A.M.
December 7, 2017

MEMBERS PRESENT:

Fidel F. Del Valle, Esq. - Chair, Chief Administrative Law Judge, Commissioner, OATH
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. - Department of Health and Mental Hygiene (DOHMH)
Thomas Shpetner, Esq. - Appointed Member
Douglas Swann - Appointed Member

ALSO PRESENT:

Rachel Amar - Special Assistant to the Commissioner
York Bergin - Department of Transportation (DOT)
Kelly Corso, Esq. - Assistant Director of Adjudications, Hearings Division, OATH
Shamonda Graham - Department of Buildings (DOB)
Svetlana Goryacheva - Business Integrity Commission (BIC)
Diana Haines, Esq. - Assistant General Counsel, OATH
Susan Kassapian, Esq. - Deputy Commissioner/Hearings Division, OATH
Mark H. Leeds, Esq. - Special Senior Counsel, OATH
Ashford Morgan - Computer Service Technician, OATH
Leemor Peled - Business Integrity Commission (BIC)
Tynia Richard, Esq. - Deputy Commissioner/General Counsel, OATH
Simone Salloum, Esq. - Senior Counsel, OATH
Peter Schulman, Esq. - Assistant Director of Adjudications, Hearings Division, OATH
Debra Scotto - Appointed Member
Frances Shine - Secretary to the Board, OATH
Amy Slifka, Esq. - Deputy Commissioner/Hearings Division, OATH
Olga Statz, Esq. - Deputy General Counsel, OATH
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(The board meeting commenced at 9:27 A.M.)

FIDEL DEL VALLE, ESQ., CHAIR, CHIEF ADMINISTRATIVE LAW JUDGE, COMMISSIONER, OATH:

Welcome to the last meeting of this year. Is there a motion to accept the minutes of our last meeting?

MS. SHAMONDA GRAHAM, DEPARTMENT OF BUILDINGS: I abstain.

MR. DEL VALLE: With one abstention from Buildings, it's unanimous?

MS: DEBRA SCOTTO, APPOINTED MEMBER:

Well, I abstain, too. I wasn't here.

MR. DEL VALLE: Oh, okay. Debbie Scotto is also abstaining. The star of the show, DEP. Center stage.


This month, DEP is requesting that the Board approve requests for 29 cease and desist orders relating to failure to install backflow prevention devices. In each of these cases, the
building owner has been ordered to install the required devices and has failed to do so, based upon which they have been issued a summons which has been adjudicated in violation. And, in each of these cases, the building owner has still not complied with the Commissioner's order, based on which the Department is asking the Board to issue cease and desist orders in each of these cases.


MR. PECUNIES: Thank you.

MS. SCOTTO: Can I, can I just recuse myself from one of those?

MR. DEL VALLE: Sure. Just, which one?

MS. SCOTTO: It's 3920 Parks Corp.

MR. DEL VALLE: Okay. With one recusal, it's unanimous. That's it?

MR. PECUNIES: Yeah, that's it.

MS. GRAHAM: In record time.

MR. PECUNIES: Yep.

MR. DEL VALLE: Call Guinness. Have them stand by. Pre-sealing reports? Kelly Corso.
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KELLY CORSO, ESQ., ASSISTANT DIRECTOR OF ADJUDICATIONS, HEARINGS DIVISION, OATH: Good morning. I'm Kelly Corso, Assistant Director for Adjudications for the Hearings Division, and we have 33 reports today for the Board. One of them is a post-sealing report, and the 32 remaining ones are all pre-sealing reports, including one that is a request for a shut-off.

So, I'm going to start with the post-sealing report, and this is for a noise case. This case began back in 2016 when a summons was issued for noise above allowable levels from respondent, 515 Madison Avenue's kitchen exhaust equipment at its restaurant at 515 Madison Avenue in Manhattan.

Decisions were issued as a result of the summonses that impose penalties and ordering that the respondent comply with the Noise Code. Respondent failed to comply and, on December 22, 2016, DEP requested that the court issue a C&D order. And the Board did issue the C&D order to the respondent, ordering the respondent to appear at a special hearing to show why its
equipment should not be shut down. At the pre-sealing hearing on May 16, 2017, the respondent presented proof of work done to bring its exhaust equipment into compliance with the Noise Code. And, based on that proof, the hearing officer recommended that the equipment remain unsealed, only if a re-inspection by DEP of the equipment and subsequent inspections for a period of 180 days show no violations. So, DEP then went out and re-inspected the equipment on October 3, 2017, and found that it did not comply with the Noise Code and sealed the equipment.

Respondent appeared for post-sealing hearings on October 3rd -- I'm sorry -- October 10th, 17th and 31st, 2017. And, at the October 31st hearing, DEP reported that an inspection on October 18th had showed that the respondent's equipment is now back in compliance with the Noise Code and should be unsealed.

So, the hearing officer is agreeing with DEP's recommendation that the equipment remain unsealed if DEP's initial re-inspection and further re-inspections for a period of 180 days
show no violations. So, that is the post-sealing report.

So, we also have, as I mentioned, 32 reports for pre-sealings. One of the reports involves a waste water discharge permit, and 31 of the reports involve backflow violations, one of which involves a recommendation for a water shutoff.

So, the water waste, the waste water discharge permit report, for this case DEP has requested discontinuance of the C&D proceeding because the respondent has complied with the order, and the hearing officer is agreeing with DEP's request for discontinuance and recommends that the C&D proceeding be discontinued.

On 30 of the backflow cases, we have pre-sealing reports, as I mentioned. Seventeen of those cases, the hearing officers recommend no sealing or other action based on respondents' evidence of compliance, which was presented at the hearings. And, in 13 of those cases, the hearing officers agree with DEP's recommendation to discontinue the C&D proceedings, because DEP
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record reviews indicate the backflow prevention
devices have been installed at the premises.

And the final report is for a backflow
case and it involves a recommendation for a water
shutoff. And, in this case, it involves a
synagogue. Respondent's name is Congregation
Khal Chasidei Skwera Inc. I'm totally
pronouncing it wrong, I'm sure, but that's the
best I can do. It's located at 4502 9th Avenue
in Brooklyn. And this case goes back to 2012
when DEP issued a Commissioner's Order to the
respondent to install backflow prevention device
at its premises. The order warned the respondent
that failure to comply could result in
termination of its water supply to the premises.
And, in March of 2013, DEP issued a summons to
the respondent for failure to comply with the
Commissioner's Order, and the summons was
sustained at a hearing in February of 2015.

In June of 2016, DEP determined that the
required backflow prevention devices still had
not been installed at the cited premises and
requested a C&D Order from the Board. The Board
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issued the C&D Order in June of 2016 and directed
the respondent to appear at a special hearing on
August 23rd to show why the water supply to the
premises should not be shut off.

At hearings between August 23, 2016, and
November 14, 2017, the respondent's
representative stated that there is a Department
of Buildings stop work order on the premises and
that is preventing the respondent from complying
with the Commissioner's Order. The case has been
adjourned 11 times since the first pre-sealing
hearing on August 23, 2016, for the respondent to
comply the Commissioner's Order. Respondent's
representative was advised at the hearings that
water would be shut off if the respondent
continued to ignore the order.

At the last hearing on November 14,
2017, respondent's representative offered no
evidence of progress towards achieving compliance
or any specific information as to what is being
done to resolve the stop work order on the
premises. DEP recommended at the last hearing
that the water service to the premises be
terminated, since no evidence of respondent's progress or compliance was presented. And, based on the lengthy history of the case and respondent's continued failure to comply with the order and to provide any specific information as to what is being done to resolve the stop work order on the premises, the hearing officer recommends that water supply to the premises be shut off.

MR. DEL VALLE: Any questions?

MS. SCOTTO: Is that a standalone synagogue? Are there any residential tenants or anything like that that would be affected?

MR. PECUNIES: Yeah. I mean, we, we looked at it on Google Street Maps.

MS. SCOTTO: Yeah.

MR. PECUNIES: On, on the street view. It's a two-story building. There is nothing attached to it, no residential, nothing. It's just a religious --

MS. SCOTTO: Yeah, just standalone synagogue.

MR. PECUNIES: Yeah, mm-hmm.
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MS. SCOTTO: Thank you.

ELIZABETH KNAUER, ESQ., APPOINTED MEMBER: Elizabeth Knauer, Citizen Member. So, do we have any information about what the basis for the stop work order is? And is there, is there any use of the building now while that's in place?

MR. PECUNIES: I, I don't remember specifically, what the stop work order is for. I know that they've known about it for years and have not, either haven't been trying to resolve it or have been unsuccessful in resolving it.

MS. SCOTTO: Was, was there a permit affiliated with that at some point? Or was it, a stop worker order just issued on the property and it's hanging there?

MR. PECUNIES: I'm sorry?

MR. SCOTTO: Was there ever a DOB permit issued to do work on that building, or?

MR. PECUNIES: Well, that's the issue. The issue is is that an order to comply with the backflow requirement, to, to install the device and generate the required test reports, you have
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to get a Department of Buildings permit, and they

can't get it.

MS. SCOTTO: Yeah. No, I realize that.

But, the stop, the cause of the stop work order,

was it because they had permits issued and were

engaged in doing work? Or was this --

MR. PECUNIES: Yeah, that, that, well,

that was --

MS. SCOTTO: -- a stop order, work order

just issued?

MR. PECUNIES: -- yeah, that, that, I'm

not sure exactly what the stop work order was

for.

MS. CORSO: I believe, I believe that is

the case. I believe that there was at least some

summonses issued to the premises for work without

a permit.

MS. SCOTTO: While there was an open

permit. Okay.

MR. DEL VALLE: Yeah. There, there

could be basically two reasons for a stop work

order. One is that they didn't have a permit to

begin with, or they had a permit, but they were
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still engaging in, in --

MS. SCOTTO: Out of the scope, or --

MR. DEL VALLE: -- dangerous practices on the property or, or not dangerous, in violation of some safety regulation like gas connections or stuff like that.

MS. SCOTTO: Or out of scope.

THOMAS SHPETNER, ESQ., APPOINTED MEMBER: Tom, Thomas Shpetner, Citizen Member. Maybe this doesn’t really go to the, the notion of why or why not we should approve the, the, the shutoff, but the, the documentation we have says that there were 13 hearings since August 2016 where the respondent was represented. How do we wind up with 13 hearings on the same issue? In a year?

MR. PECUNIES: Well, they are represented by counsel.

MR. SHPETNER: Sure, but it's --

MR. PECUNIES: And counsel is coming every time, saying we're working on it, we're trying, we're trying, we're working on it, and asking for adjournments. And because, you know,
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we're not doing this in order to shut people's
water off, we're doing it in order to get
compliance, you know, up, up to a point. You
know, but, this, this is one that got to the
point where adjourning it again seemed pointless.
So, that's why our attorney made the
recommendation to shut it off.

MR. SHPETNER: Right. I just, my -- the
number 13 sort of leaps off the page as -- you
know, I could see maybe three, maybe five, I
don't know what the number is. But, 13 sounds
like one a month for --

MR. DEL VALLE: I, I, I, I have to, I
have to agree with Mr. Shpetner. The practice
is, if the Agency consents, they, they get an
adjournment. But, it's hard not to come to the
conclusion that they're playing a game or jerking
us around.

MR. SHPETNER: Yeah, look, I, I, I --
and I credit the philosophy of wanting to get
people in compliance and not shutting their,
their, the water off. I just found 13 to be sort
of, you know.
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MR. PECUNIES: Well, and this is one of the high volume reps who is there all the time.

MR. DEL VALLE: They're disingenuous.

MR. PECUNIES: And, so, you know.

MR. SHPETNER: Okay. Yeah, thanks.

MR. DEL VALLE: Any other questions, observations? Is there a motion to accept? It's unanimous. And does anybody want to make a, a bet on how fast they comply when they get their water shut off? Is there a motion to go into executive session?

MR. SHPETNER: Excuse me.

MR. DEL VALLE: Oh, I'm sorry.

MR. SHPETNER: Before we go to executive session.

MR. DEL VALLE: Sure.

MR. SHPETNER: There were some materials that were distributed that aren't on the agenda regarding some correspondence from --

JORGE MARTINEZ, ESQ., DEPARTMENT OF MENTAL HEALTH AND HYGIENE: In, in the revised agenda.

MR. SHPETNER: No, on, on the revised
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agenda -- I have the revised agenda. It's, it's not here, so I just want to make sure that that, that item regarding the correspondence from Mr. Avigdor. That's his name. I don't know why it's not reflected on the agenda, but maybe it's just a scrivener's error. I just want to make sure that we don't skip that topic.

MR. MARTINEZ: It was on my agenda.

MR. DEL VALLE: You, you want to talk about it now?

MR. SHPETNER: Sure. I mean, it was distributed by Frances on, I think, the 4th. But, in any event, there was some correspondence directed to the Board and, but it named me in particular. For what reason, I have no idea. And my remarks do not go to the substance of the reply that was fashioned.

MR. DEL VALLE: Well, let me, let me put it in, into context how, how -- it, it's kind of weird all the, all the way around. An individual contacted us by e-mail requesting the personal addresses of Board members, purportedly to contact or, or whatever. He also wanted to know
when the Board was meeting so he could come in and whatever. We responded to him. Anybody can come in and sit at a Board meeting -- it's, it's open to the public -- but, we're not giving out people's personal addresses. We told him that what he should do if he wants to contact an individual Board member is to write that person a letter, mail it to the Environmental Control Board, care of the Environmental Control Board, in a sealed envelope and we will pass it on to whomever it's, it's addressed to. As a matter of fact, that's true of virtually anybody.

What he did, instead, was he responded by e-mail with an, an attached copy of the letter to only one Board member and then, in the e-mail, he also said that he was requesting that it be distributed to all the Board members --

MR. SHPETNER: Right.

MR. DEL VALLE: -- including me.

MR. SHPETNER: So, I -- that, that's well understood. So, I have several questions. The first one is, why was it removed from this agenda?
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MR. DEL VALLE: Because it's not really a Board issue.

MR. SHPETNER: Well, that's not true. I mean, that's flatly not true. If there's correspondence to the Board, it's a Board issue.

MR. DEL VALLE: I mean a Board issue --

MR. SHPETNER: I mean, I -- excuse me.

MR. DEL VALLE: -- in the sense of a Board meeting.

MR. SHPETNER: Please. I'll, I'll --

MR. DEL VALLE: Okay.

MR. SHPETNER: -- I'll not talk over you.

MR. DEL VALLE: Alright.

MR. SHPETNER: First of all, if there's correspondence to the Board, it should be distributed to the Board. We get very little correspondence, as far as I'm aware. But, you know, just as a basic matter of governance, if there's correspondence to the Board, we can't acquit our responsibilities as Board members without, without knowledge of that correspondence. Do you not agree? Or am I
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making a, a point that, that you care to rebut?

                  MR. DEL VALLE: Yes.

                  TYNIA RICHARD, ESQ., DEPUTY
COMMISSIONER, GENERAL COUNSEL: It was
distributed to the Board.

                  MR. DEL VALLE: It was distributed to
the Board.

                  MR. SHPETNER: Let's be clear.

                  MR. DEL VALLE: And it was a stupid
letter of which we get thousands of every year.

                  MR. SHPETNER: Okay. Forget about --

                  MR. DEL VALLE: And we don't wind up
with massive discussions of every idiot who
writes us a letter.

                  MR. SHPETNER: Okay, I don't know that
the letter was stupid, but I think --

                  MR. DEL VALLE: I think it was.

                  MR. SHPETNER: Well, I appreciate you
sharing your opinion, but this isn't to denigrate
the, the, the correspondent. I think that that's
probably something that should be an opinion that
should be expressed privately, not on the record.

                  MR. DEL VALLE: No, I want to ex-
express it right now. The person made absolutely
ridiculous statements and they're demonstrating
absolute ignorance of the process, making
requests of us which are ultra vires, and it
would, it's a typical wacko letter of which I get
thousands of.

MR. SHPETNER: Well, I'm not, my --

MR. DEL VALLE: And it was addressed to
me --

MR. SHPETNER: Excuse me.

MR. DEL VALLE: -- inclu-, I was, I was
copied on it. And it is my obligation to respond
to it, and I did by having a person respond to it
on my behalf because, after 40 years of dealing
with wackos from the public, I know that if they,
I signed a letter personally, I'll have a pen pal
for the rest of my life. But, if you have --

MR. SHPETNER: Excuse me.

MR. DEL VALLE: -- someone else respond
to it, then they don't think they have you
trapped into a, a, a correspondence for eternity.

MR. SHPETNER: Excuse me. The letter
was addressed to my attention, okay? It was not
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--

MR. DEL VALLE: And you got, and you can do whatever you want with it.

MR. SHPETNER: Excuse me. I -- let me please continue. I, I am not here to denigrate the correspondent or to characterize his opinions. I'm talking about governance.

MR. DEL VALLE: Governance of what?

MR. SHPETNER: Of this Board. And --

MR. DEL VALLE: What is this Board governing?

MR. SHPETNER: That's a separate issue that I'll address next. However, when there is correspondence directed to me, in my capacity as a Board member, I understand that there's a principle that there should be a turnaround time of 14 days to reply to that, and I think that's a sound and, and, and, and, and understandable and reasonable policy to make that happen. However, this letter was addressed to me and it was not shown to me until the reply had been made, which I would suggest presents an opportunity for us to communicate more effectively in terms of making
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our responses to the public. In my capacity as a Citizen Member of the Board, this correspondence was not shown to me until it had been already replied, until the reply had been fashioned and transmitted. So, if Mr. Avigdor had a good point, a bad point, or in-between mediocre point is beside, is a side issue. The fact is, the correspondence had not been shown to me and, if he had an excellent point, this could have been compounded by the failure, for me, to understand what the Board, what any response was before it had been fashioned.

So, my point is we need to collaborate better as a Board, communicate better as a Board. I'll note for the record that I asked you to reply to my e-mail, asking for you to engage with me on this, and you never responded to me. I'm acting in good faith. I'm confused by the fact that, by the procedural history here, and I feel like this is an opportunity for us to have a more constructive relationship and, and understand exactly what the public's concerns are, because I am a Citizen Member of this Board. I was
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appointed to represent the citizenry, and Mr. Avigdor, whether he has a good or not good point to make, he deserves the, the benefit of the doubt and I deserve the opportunity, in my capacity as a Board member, to be aware of his concern and have some notion of how the reply is going to look before it's transmitted.

MS. RICHARD: So, can I, can I just ask a question? When you say that you have some confusion about the history here, I'm just trying to --

MR. SHPETNER: There's no confusion.

MS. RICHARD: Okay. You --

MR. SHPETNER: The history is --

MS. RICHARD: -- I thought you just said you had confusion about something.

MR. SHPETNER: Okay.

MS. RICHARD: I'm trying to understand.

MR. SHPETNER: If I said that, I misspoke.

MS. RICHARD: Okay.

MR. SHPETNER: What -- here, here's what happened. Mr. Avigdor wrote to the Board, but
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addressed the letter to me, personally. How he picked my name, I have no idea. Maybe I was at the top of the list or he just liked my name. I don't know. But, and I don't know or, or, frankly, care about whether or not his point was good, off the wall or in between. I mean, I care, of course, because I want to know that the concern -- my point is simply that this was mishandled --

MR. DEL VALLE: I disagree with it being mishandled. Two points right now. This is it. I responded to that letter based on what he said about OATH. That's my business, that's not this Board's business, number 1. Number 2, you have a copy of the letter. You can take it for whatever you want. You can do with it whatever you want. You can respond to it in any way you want. I responded to the letter not on behalf of the Board, on behalf of OATH where he made massive misrepresentations and clearly didn't understand what the process was and whose responsibility it is for what. And, and that is --

MR. SHPETNER: Correspondence directed
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to the Board should be --

    MR. DEL VALLE: The, the correspondence

--

    MR. SHPETNER: -- should be shared.

    MR. DEL VALLE: -- was also shared with
me by the writer who said to copy me, and I took
it and I responded based on what he sent me.
That's it.

    MR. SHPETNER: Well, let me ask you a
different question, then. What's the harm in
showing it to me before it goes out?

    MR. DEL VALLE: None whatsoever.

    MR. SHPETNER: So, then, why didn't that
happen?

    MR. DEL VALLE: Because it's irrelevant,
because it would have gone out whether you saw it
or not. My response from OATH would be my
response from OATH.

    MR. SHPETNER: Okay.

    MR. DEL VALLE: Whatever you say.

    MR. SHPETNER: I, I, I respectfully
object.

    MR. DEL VALLE: Fine. Your objection is
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noted.

MR. SHPETNER: I, I feel like --

MR. DEL VALLE: For what it's worth.

MR. SHPETNER: == number 1 -- no, it's worth plenty if you're --

MR. DEL VALLE: Not to me.

MR. SHPETNER: -- denigrating. Well, you're, you're saying my opinion as a Board member doesn't matter?

MR. DEL VALLE: Not as far as the operation of the Office of Administrative Trials and Hearings. That's correct.

MR. SHPETNER: Can you explain?

MR. DEL VALLE: The Environmental Control Board's function is to be the Environmental Control Board. The Office of Administrative Trials and Hearings is an independent agency. The Environmental Control Board is an appendage to that Agency for, basically, appellate processes and that's it. For, for items that, charges specifically directs to the Environmental Control Board.

MR. SHPETNER: So, are you saying, then,
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that --

MR. DEL VALLE: So, the operation of the Office of Administrative Trials and Hearings is, is my responsibility, not this Board's.

MR. SHPETNER: Is it your, is it your -- are you stating, then, that correspondence directed to me, in my capacity as a Board Member --

MR. DEL VALLE: I didn't say that. I said --

MR. SHPETNER: Well, I'm asking you a question. Please don't interrupt me. I'm just asking -- and I, and, please, I'm not sure --

MR. DEL VALLE: I, I know what you're, I know where you're going.

MR. SHPETNER: No, no, but I, but I also want to note that your bellicose tone is inappropriate. I'm trying to just get to the bottom of a simple governance issue and this --

MR. DEL VALLE: It's not a governance issue.

MR. SHPETNER: It most certainly is when correspondence --
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MR. DEL VALLE: That's your opinion.

MR. SHPETNER: It's not my opinion.

It's a fact. I'm --

MR. DEL VALLE: It's not a fact.

MR. SHPETNER: -- I'm trying to execute my --

MR. DEL VALLE: This is, this is, this -- that letter --

MR. SHPETNER: Excuse me. Please listen.

MR. DEL VALLE: -- related to the operation of OATH, not to the operation of the Environmental Control Board.

MR. SHPETNER: Please stop interrupting me. I want to just make a couple of things understood better, not just for my benefit but maybe for the benefit of everyone and Mr. Avigdor, if he gets an opportunity to see this video. And I want to just pull this back from a bellicose posture to one where we're going to act as reasoned and calm, you know, collegial professionals.

It's my reading of the facts here that
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this letter was directed to me, in my capacity as a Board Member. And whether or not Mr. Avigdor misunderstood the function of OATH or misunderstood the function of the Environmental Control Board or had a good response, a good issue or a poorly reasoned issue is not the point that I'm trying to address here. The point I am addressing is that when correspondence is directed to me, in my capacity as a Board member, it is improper for me to not see our response, which is made as a Board.

MR. DEL VALLE: No, it's not. It's made by me.

MS. RICHARD: Which is to say, Tom --

MR. DEL VALLE: By the Office of Administrative Trials and Hearings.

MR. SHPETNER: That, that is a hair that, that, that is not --

MR. DEL VALLE: It is not, it is not a response by the Environmental Control Board.

MR. SHPETNER: Well.

MS. RICHARD: Which is to say, Tom, if you would like to write some response, you are,
you are entitled to do that.

    MR. SHPETNER: If I were to write to Mr. Avigdor and not share that response with the Board, it would be considered an ultra vires act by me, would it not?

    MS. RICHARD: Well --

    MR. DEL VALLE: Not necessarily.

    MS. RICHARD: -- I didn't say --

    MR. SHPETNER: That's, that's, that's just, you ju-, that's just flatly incorrect.

    MS. RICHARD: I don't, I don't have an opinion at this moment, since it was directed to you.

    MR. SHPETNER: You should, because you're an attorney. Okay? And if you --

    MR. DEL VALLE: It would be an ultra vires act only if, only if --

    MS. RICHARD: Don't try to insult me. Don't try to insult me. I'm not --

    MR. DEL VALLE: -- you were, you were writing as --

    MR. SHPETNER: No, I'm not trying to insult you. I'm trying to point out to you that
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--

MS. RICHARD: -- going to be dragged into this.

MR. DEL VALLE: -- on behalf of the Board.

MR. SHPETNER: I'm trying to point out to you that you've --

MS. RICHARD: I am saying --

MR. SHPETNER: -- got a misread of the law if you think --

MS. RICHARD: -- I am saying to you --

MR. SHPETNER: Excuse me.

MS. RICHARD: I have, first of all, I have not expressed a read of the law. Let me state what I'm stating.

MR. SHPETNER: Okay, please.

MS. RICHARD: I am stating that I don't have an opinion as to whether or not it would be ultra vires for you to respond to the letter, since it is directed to you --

MR. SHPETNER: My quest-- --

MS. RICHARD: -- as a Board Member.

MR. SHPETNER: But --
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MS. RICHARD: It would be up to you to respond or to sit around and have a meeting of the Board and to decide what it is you'd like to draft.

MR. SHPETNER: If, if I were to respond to Mr. Avigdor without sharing that response to the Board, if I'm writing to him in my capacity as a Board Member, I would suggest that that bespeaks poor communication at, at a minimum and poor governance for sure.

MR. DEL VALLE: Alright, that's your opinion.

MS. RICHARD: Well, but, isn't the basics, though, Tom, that --

MR. SHPETNER: No, this is the basics. I --

MS. RICHARD: -- in order to respond --

MR. SHPETNER: Excuse me. This is about the basics. What --

MS. RICHARD: -- in order to respond --

I'm not finished.

MR. SHPETNER: Please.

MS. RICHARD: In order to respond to a
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letter like this, you have to know the operations of the Agency. It's required. And that's stuff that we do know and that the Board does not --

MR. SHPETNER: I --

MS. RICHARD: -- necessarily know.

MR. SHPETNER: And I credit that. I've said this about three or four times that Mr. Avigdor, whether the, whether he was right or wrong, whether your response was good or not good, is not the point that I'm trying to express. And if you choose to ignore it, that's okay. But --

MS. RICHARD: I'm not choosing to ignore any of it. I'm just stating that --

MR. SHPETNER: -- well, then, that's, but then why are you explaining that, that proc--

MS. RICHARD: -- we, if, if we --

MR. SHPETNER: Excuse me. Well, excuse me.

MS. RICHARD: -- we can spend a lot of time arguing.

MR. SHPETNER: Please, I am still -- no.
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I'm, I'm not going to spend --

MS. RICHARD: -- but, but the basics is that operational knowledge is needed to respond.

MR. SHPETNER: We're going to speak -- excuse me. Please don't talk over me. This, it's really important that I make this clean and clear. Okay? And I'll, I'll let you reply, and if I have a rebuttal, I'll make it. My point is that I was not in any position to, to address the sufficiency or the clarity of his arguments. That's a conversation that we should have had because the letter itself, maybe it, maybe it is full of mistakes or misunderstandings. You're in the best position to address those. I conc-, I don't only concede that, I would espouse it and advance it. I agree with you that you have special knowledge of the workings of the Board and this, the interplay of the Charter and all of the other operative rules and, and guiding principles under which we --

MS. RICHARD: That's all I'm trying to say.

MR. SHPETNER: Okay, and that's fine.
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All I'm trying to say is that when correspondence comes to me in my capacity as a Board Member, the proper way to handle it is for you to share it with me and, if there's a reply that's being fashioned and you don't share it with me, it behooves me to ask why was I excluded? And it also behooves me to ask, why was this item removed from the agenda?

MR. DEL VALLE: That, the last sentence is the key question here. And I think you're laboring under the impression that my response was on behalf of the Board. It was not. And since it was not on behalf of the Board, there is no purpose in taking it or discussing it with the Board. If there is a Board response or maybe a response from a Board Member, that's a different question and that's something for the Board.

MR. SHPETNER: If your, if your response was not on behalf of --

[CROSSTALK] [00:27:58]

MR. DEL VALLE: But I want to be perfect—perfectly clear, in case anybody is under any misapprehension, this Board has no
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authority whatsoever over the operation of the
Office of Administrative Trials and Hearings,
which was the main misimpression of
this, this gentleman's letter.

MR. SHPETNER: Okay. Not, not
suggesting that --

MR. DEL VALLE: And in that capacity is
how I responded to it, because he, the writer, on
his initiative, decided to share that
correspondence with every member of this Board,
which includes me. And when I got it in my
capacity as the head of this Agency, I saw that
it needed correction. I directed my staff person
to draft a letter on my behalf to him disabusing
him of his misimpression.

MR. SHPETNER: Okay. But --

MS. KNAUER: But, Tom --

MR. SHPETNER: Excuse me. I'm sorry,
Elizabeth.

MR. DEL VALLE: Which, which --

MR. SHPETNER: Ex- excuse me.

MR. DEL VALLE: -- which does not
obviate you doing whatever you want to do or, for
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that matter, the rest of the Board doing anything it wants to do as the Board.

MR. SHPETNER: Okay.

MR. DEL VALLE: As the Environmental Control Board.

MR. SHPETNER: Please allow me to reply, because you ha-, (a) you skipped over my question about why it was removed from the agenda, but let me get back to that.

MR. DEL VALLE: Because it's irrelevant.

MR. SHPETNER: Excuse me. It's not irrelevant.

MR. DEL VALLE: That's your opinion.

MR. SHPETNER: It's not my opinion.

It's a fact.

MR. DEL VALLE: It is your opinion.

MR. SHPETNER: Excuse me.

MR. DEL VALLE: Are you giving your opinion or not?

MR. SHPETNER: No. I'm telling you the fact.

MR. DEL VALLE: Well, your facts are wrong.
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MR. SHPETNER: No, the facts are the facts, Fidel. You can't choose your facts.

MR. DEL VALLE: I'm not choosing my facts. I, I'm not --

MR. SHPETNER: You can choose your opinion.

MR. DEL VALLE: -- and I'm not, and I'm not Donald Trump either, making up false facts like you are.

MR. SHPETNER: I don't know how Donald Trump is relevant here, but my point is a simple one. The letter was addressed to the Board. It was not --

MR. DEL VALLE: It was addressed to you, and then it was --

MR. SHPETNER: Excuse me.

MR. DEL VALLE: -- shared with the Board.

MR. SHPETNER: Excuse me.

MR. DEL VALLE: So --

MR. SHPETNER: The letter --

MR. DEL VALLE: -- if you want the Board to deal with it, make a motion for the Board to
deal with it. Otherwise, what are we doing?

MR. SHPETNER: Let me please continue.

Please stop talking over me. The letter was addressed to the Board. For OATH to reply on behalf of the Board --

MR. DEL VALLE: OATH did not reply to the --

MR. SHPETNER: Jesus Christ.

MR. DEL VALLE: -- on behalf of the Board. I don't know how to put that in anymore plain English.

MR. SHPETNER: You just said, you just said --

MR. DEL VALLE: It replied on behalf of OATH.

MR. SHPETNER: Okay. First of all, I don't know why you're adopting such a bellicose tone, but I --

MR. DEL VALLE: Because I'm tired of nonsense.

MR. SHPETNER: This is not nonsense.

This --

MR. DEL VALLE: This is rubbish.
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MR. SHPETNER: -- this is basic corporate governance.

MR. DEL VALLE: This is not a corpora-
corporate governance. This is not a matter of this Board that I responded to. I responded to a matter of OATH. Yes, sir?

MR. DOUGLAS SWANN, APPOINTED MEMBER: At the very least, I think what Tom is trying to say is that he should have been advised of the response.

MR. DEL VALLE: Well, I'm sorry his feelings are hurt. But, there, his, his --

MR. SWANN: But it's not about feelings being hurt.

MR. DEL VALLE: -- it's irrelevant what --

MR. SWANN: It's about communication. Why is it such a big deal for, for --

MR. DEL VALLE: That's what I want to know.

MR. SWANN: -- OATH, who has the knowledge to respond to the letter, and he's acknowledged that. Why is it such a big deal for
him to not be advised as to what's going on, at the very least? It was addressed, the letter was addressed to him, specifically.

MR. DEL VALLE: So? He's been advised of what the letter is.

MR. SWANN: After the fact, after the letter was sent out and the response.

MR. DEL VALLE: It was OATH's letter that went out in, in response to a copy that OATH got.

MR. SHPETNER: The letter was addressed to me.

MR. DEL VALLE: Yes, yes, it was addressed to you.

MR. SHPETNER: So, why is OATH responding if --

MR. DEL VALLE: Because OATH was sent a copy by the writer. I mean, are we, I -- I am speaking English, aren't I? Yes?

MR. SWANN: But, I think you're missing the --

MR. DEL VALLE: Elizabeth?

MR. SWANN: -- point of the communica-
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communication part of this.

MR. DEL VALLE: What's the point to the communication part?

MR. SWANN: We are part of the Board.

He was, the letter was addressed to him as a Board Member, as a Citizen Member.

MR. DEL VALLE: And it was sent to him.

MR. SWANN: After the fact.

MR. DEL VALLE: After what fact?

MR. SWANN: After it was written and sent.

MR. DEL VALLE: Well, obviously, after - -

MR. SHPETNER: After the reply.

MR. DEL VALLE: So what?

MR. SHPETNER: That's the point.

MR. SWANN: You don't --

MR. DEL VALLE: It is not, was not sent on behalf of the Board.

MR. SWANN: So --

MS. KNAUER: I just want to make -- I'm sorry. I've had my hand up for a while.

MS. RICHARD: Yeah, yeah, please.
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MS. KNAUER: And I think we are --

MR. DEL VALLE: The Board's opinion on my response is irrelevant.

MS. KNAUER: I just want to make a suggestion. I under-, I understand what you're saying, that it was not, it was not written on behalf of the Board, and I, I understand, to you, that's very clear. To the person to whom it was addressed, Mr. Avigdor, who obviously has some confusion about the difference between OATH and the Board -- clearly, that was the whole point of the response, was his con-, was, or at least part of the point was his --

MR. DEL VALLE: Correct.

MS. KNAUER: -- confusion. I think, I don't know if this will ever come up again. But, if it does, my suggestion to you would be to put in the very first paragraph of your response, on behalf of OATH and not on behalf of the Board, that you, to make it very clear that this is being written on behalf of OATH and not on behalf of the Board because, if you look at the first paragraph of the response, it says that, that
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OATH is in receipt of your letter to Mr. Shpetner, a member of the Environmental Control Board, which is Chaired by Fidel Del Valle, Commissioner and Chief Administrative Law Judge of OATH. So, even that, to, to a person who obviously is under some confusion about the differing roles of OATH and the Board, that paragraph in and of itself, I think, is just enhancing that confusion and I think it would be very easy to make it clear this response is written on behalf of OATH and not of the Environmental Control Board to whom your letter was originally addressed. And I think that would --

MR. DEL VALLE: That's a good idea.

MS. KNAUER: -- that would, that would go a long way towards clearing up the concerns that Tom and Doug have raised, which I share, that it, that something that is written in response to a letter addressed to Tom, as a Board member, will it be perceived by the recipient as a response on behalf of the person to whom the letter was originally written.
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So, I think it's just important, if you are going to respond to such a letter, which I'm, I'm not, I'm not disputing that it's appropriate that you do so. I'm just saying, if you're going to, please make it very clear to, to the, to the person to whom you are writing, who clearly was already confused, make it clear this response is not, is not being sent to you on behalf of the Environmental Control Board or any individual member. And I think that would, that would at least alleviate my concern that a response will be perceived in that fashion.

I also think that, you know, the timing I think is, is the issue that, that Tom and Doug are really raising. I, I pers-, my personal view is, yes, if you're going to write a letter that's on, in, on your behalf and, and is clearly from OATH and not from the Environmental Control Board or the Members of the Environmental Control Board, I, I actually don't have an issue that we should have to see it in advance or -- that's, I don't, I don't have an issue with that. But, I, I think it, it would have been probably better to
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send Tom the let-, the, the original communication from Avigdor when it was received so that, you know, if he felt that it, if he wanted to respond in a, in a more timely fashion, he would have had the opportunity to do so.

I mean, there -- maybe this guy is a, a total wacko as you, as you describe it. I, I read the letter, I, I read the correspondence and I, you know, I, I, I didn't perceive his, his complaints to have a great deal of merit. But, you know, Tom might have felt differently and, or we might receive another communication that is, in, in the view of the Board or a particular Member of the Board, is more meritorious and we'd like to respond to it in our capacity and maybe in a more timely fashion than -- I don't, I don't know if it was weeks or, or months later that Tom actually got it.

So, I, I would just suggest that if you're going to respond on your behalf, make it clear it's on your behalf, not the Board. And provide communications of this nature, if they're addressed to an individual Board Member or to the
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Citizen Members of the Board, just give it to us, you know, in a, a more timely fashion so that if we feel like we need to address it, we, we can without, without a lot of delay. So, those are my points.

MR. DEL VALLE: Thank you. I think, I think that, that paragraph you quoted made it clear that this was a response from OATH, but I can see that someone who may be otherwise challenged may not be, may interpret it differently. Correspondence addressed to Board Members, I've sent to Board Members to do with which whatever they see fit, and it was done. And, and Board Members can continue to do what they, whatever they see fit to do.

MR. SHPETNER: So, let me just put forth for the record that my point is not that anything contained within the letter is good, bad or otherwise. I credit Elizabeth's remarks. They, they're sensible. They make sense. Mr. Avigdor's, I think, main confusion was who has jurisdiction over the matters that he was trying to bring before a City tribunal. And the notion
of his wanting or needing some explanation concerning the workings of City government, I believe that -- I don't just believe, it is a fact that we, in our capacity as Board Members, should be cooperating and communicating, not arguing by disparaging one another or one another's ideas, but by calmly and soberly exchanging our viewpoints so that we can promote governance, not deter it. That's a notion that is unassailable.

MR. DEL VALLE: It sounds very nice. I don't know what it means --

MR. SHPETNER: What it means, is that --

MR. DEL VALLE: -- in this context, but --

MR. SHPETNER: -- for you to raise your voice or denigrate a citizen with a complaint by call- --

MR. DEL VALLE: I will denigrate anybody who deserves to be denigrated. Period. I don't care whether he's a citizen or a martian.

MR. SHPETNER: Nevertheless, we, as Board Members, have an opportunity --
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MR. DEL VALLE: I take enough nonsense every day from all kinds of rubbish --

MR. SHPETNER: Excuse me.

MR. DEL VALLE: -- coming out that --

MR. SHPETNER: Please, please allow me -

MR. DEL VALLE: -- I'm not going to sit here and enjoy it.

MR. SHPETNER: -- please allow me to continue without interrupting. I'm trying to make a point that's an important one. We, as a Board, have an opportunity to improve the manner in which we communicate under the guise of promoting good governance. And we, as Board Members, represent ex officio, the various Commissioners of a number of very important City agencies and, by our very composition, we Citizen Members have been appointed to represent constituencies to protect the interests of the citizens of this City.

It's not an obligation I take lightly.

The correspondence in question was replied to within two or three days, well within the 14 days
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that we have as a, as a principle to respond to these types of inquiries. There was ample opportunity for me, or anyone else on the Board, to see this correspondence. That opportunity seems to have been purposefully forgone, and that is a black eye on this Board. The removal of this correspondence from the agenda is not in furtherance of good governance, but it is to thwart the notion of governance. That's the point I'm trying to make. And if anyone feels differently, this is a very good opportunity for them to set the record straight with their views.

MR. DEL VALLE: To set the record straight, I don't have to share with anybody on this Board my response to a communication that I receive, whether it's right or wrong or whatever in it. That's number 1.

Number 2, there are a lot of folks who think that they can get from government or from anybody else by whining and putting out false cries of this, that or the other thing, including outrageous insults to government agencies and government officials, and we, like good, sober
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public officials, will sit there and grin and take the garbage as it is flung to us. That's a matter of philosophy for one person or another. I'm not inclined to sit here and smile as someone throws insults or lies or falsehoods at me. I respond to them. That's number 2.

Number 3, a piece of correspondence, whether it was addressed to this Board, addressed to the Governor, the President or the Mayor, that comes to my attention regarding the operation of my agency, I will respond to. The persons or persons who, to whom that correspondence is first addressed, right, as the addressee on the, on the salutation, can do with it whatever he wants or she wants, in whatever fashion he wants. But I am under no compulsion to consult with anybody as to my response in my capacity as the head of that agency.

On the other hand, if it is a response for the Board, as, for example, the innumerable issues that are brought before the Board vote, that's an entirely different matter.

Now, you're of the opinion that because
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that letter involved, in part, the Environmental Control Board, that it has to go through, through some kind of collaborative Board process, which you, I presume, is part of what you characterize as governance. That's fine. That's your opinion. My opinion, if it is something that addresses something that's within my exclusive scope of responsibility, I will respond to it and I will not, at my discretion, consult with anybody else or will consult with anybody else.

As far as this particular letter, the only difference between this letter and, and the zillions of 311 messages we get, right, and they're all over the compass, is that it was addressed to a specific member of the Board, of this Board. And that's basically it. And your, your view as to governance -- and I'm not exactly sure what governance you're talking about -- are fine. That's, that's your, that's your, your view and it is what it is. You have the correspondence there. If you wish to consult with other Board members, if you wish to consult with anybody else that you want, you can consult
with them. You can respond to the person, if you wish to respond to that person directly or not. That is your business. If you wish the Board, as a body, to respond to them, you can then bring that to the Board for a Board response.

Why was it removed from the agenda? Because it did not belong on the agenda. The person in question asked that it be distributed to all members of the Board and, for economy's sake, rather than mail it out to everybody separately, we sent it out together with the Board materials. But there's nothing to discuss about it. Therefore, it's not on the agenda. There's nothing to discuss there. There is nothing in that letter that is, that was open for discussion that I, that I'm aware of. If somebody felt that it was open for discussion, then they would simply bring it up for discussion as any Board member can bring up anything for discussion during a meeting.

MR. SHPETNER: So, again --

MR. DEL VALLE: As you did, by the way.

MR. SHPETNER: And I did. But, I think
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I've said it now three or four times, there's nothing about the underlying facts that I'm here to discuss. What I'm here to discuss --

MR. DEL VALLE: You, your discussion is that we didn't go and ask you for your input and opinion in OATH's response. That's your problem with the Board.

MR. SHPETNER: It's not the, it's not, it's not a correct characterization of my problem. My problem is that the reply was made without anybody knowing about it. The letter was written as though I was cc'ed on it before it went out or that -- it, it says that I was cc'ed. I was cc'ed after the fact, after the arguments have been devised.

MR. DEL VALLE: Yeah.

MR. SHPETNER: And I am suggesting that that was a missed opportunity for us to communicate as a Board.

MR. DEL VALLE: It, it's --

MR. SHPETNER: You've mischaracterized my remarks and I'm going to let the record stand. I assume this is on video. It is what it is.
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I'm interested in how this will be characterized within the minutes. Nevertheless, my point is simply that correspondence directed to a Board member in their capacity as a Board member, in the interest of effective governance, should be shared with that Board member before a reply is fashioned, not after. And I would think that anybody here who feels differently, other than our chair, should advance that view now so that we can have that debate.

MS. SCOTTO: But if the letter, basically, is improperly sent to the Board and it should have really been sent to OATH, and it was sent to OATH as well, and the Commissioner takes the bull by the horns and just simply deals with it, I, I don't, I really don't see why it needs to come to us.

MR. SHPETNER: I can address that easily. The point is that I'm not going to the sufficiency of the argument. I'm talking about the very nature of its existence.

MS. SCOTTO: But I, but, but --

MR. SHPETNER: And you're, you're
missing, you're missing my point, respectfully,
Debbie. The point is, whether the gentleman had
a good argument or one that was not good is, has
nothing to do with the remarks I'm, I'm, the, the
notion I'm advancing.

MS. SCOTTO: But, I, I don't agree with
that.

MR. SHPETNER: Well, then, you can
explain why --

MR. DEL VALLE: You're, you're, the --

MR. SHPETNER: -- cor- --

MS. SCOTTO: Be- because it was, it
should never have been sent to the ECB Board. So
--

MR. SHPETNER: That's the very problem
that we're facing, though, is that, you know,
there's a, there's a, an attempt afoot to, to
water down the responsibilities of this Board
that's been afoot for a long time now. And the
lack of, lack of correspondence, the lack of
communication is really at the crux of this. And
to not share the correspondence with the, with
the person to whom it was addressed is a missed
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governance opportunity.

MS. SCOTTO: No. I think it's an
overinflated sense of importance for the Board.

MR. SHPETNER: Thank you for sharing
your view. I don't, I don't --

MS. SCOTTO: That's my opinion.

MR. SHPETNER: -- espouse them.

MADELYNN LIGUORI, ESQ., DEPARTMENT OF
SANITATION: Madelynn Liguori, Sanitation. I've
been on this Board since 2001. I cannot imagine
this is the first time an individual Board member
has ever received correspondence. I understand
your, your opinions on this. I have never had
any correspondence shared with me that came to
the Board. And because pr- -- well, if it was
addressed to the Board inadvertently, I mean.

This is how government works. My
Commissioner does not read every single thing
that she gets in the mail. It gets distributed
for someone else to answer. She's copied on it,
so that she has a copy of it. And I think, in
this instance, you were copied on the response.

Again, I just, I understand your points, but you
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were copied on the response. The Health Tribunal has absolutely nothing to do with this Board. The Health Tribunal has always been a separate tribunal and only recently has been merged into the Hearings Division at OATH. So, I can't really dispute -- I, I mean, granted, probably the, the tones being used on both sides probably were not professional and appropriate. But, I think the substance, the letter that went out, maybe with Elizabeth's changes in the future, that says it's from OATH directly would be helpful. But, I personally and from an agency standpoint do not see an issue with the letter that was sent out.

MR. MARTINEZ: Jorge Martinez, Department of Health. Would it be helpful, or would it be onerous, I should ask, whether i-, it would be too much for, if a letter comes in addressed to any Board member, for the Board member to just, at the same time, for it to be transmitted to the Board member? I don't know how many of these come through. I haven't, me, personally, I haven't seen any in the time I've
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been here. It's been a while. But, I mean, no
one's asking, or at least I wouldn't demand that
we have a say in the response because, as you
said, it deals with OATH issues, not ECB issues.
But, if it's addressed to a Board member, would
it be onerous for that missive, this letter to be
sent out to the Board member? They can do with
it as they wish. They can consult with other
Board members, they can ask questions. Yes.

MR. DEL VALLE: That sets forth exactly
what was done.

MR. SHPETNER: No, that's not what was
done.

MR. DEL VALLE: It was not sent to you?
You don't have a copy of it in front of your face
right now?

MS. KNAUER: Not at the, not at the time
it arrived.

MR. SHPETNER: Excuse me. I, I did not
get it until the reply had already gone out.

MR. DEL VALLE: The reply was going to
go out whether you got it or not.

MR. SHPETNER: And that's not my point.
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MR. DEL VALLE: Then, what is your point?

MR. SHPETNER: That, that it was --

MR. DEL VALLE: That you get it before we send the reply out?

MR. SHPETNER: -- that I have some understanding of what was sent in and what was sent out.

MS. KNAUER: Since it was sent by -- I mean, I think, I'm just thinking back on Jorge's point which --

MR. DEL VALLE: I don't get it.

MS. KNAUER: -- I had made earlier, to the extent it was sent by e-mail, it would have, it seems like it would have been a simple matter to flip the e-mail to Tom at the time it was received. That's all. Just send it to him, not have him, not necessarily have him involved in the response that OATH is sending.

MR. DEL VALLE: But, the, the, the, the mistake, the mistake that was done was to fashion the response and send it together for in-,
deficiencies in the correspondence, as a matter of information.

MR. SHPETNER: I don't understand your point. Are you saying the mistake was sharing it with me at all?

MR. DEL VALLE: I'm saying that the mistake was weighing to and including in the, the forwarding OATH's response, which was held back together and sent at the same time so it would be easier for the Board members, and I, and that Board member, in particular, to see the issues that were incorrectly put forward by the correspondence. Fine. In the future, maybe the, the process should simply be, as was suggested by, by the Health Department, forward the correspondence directly to you with no explanation or elucidation and my response would go out separately without sharing it with anybody. And you can continue to function in a vacuum.

MR. PECUNIES: You want to go first?

MS. GRAHAM: Yes. Shamonda Graham, Department of Buildings. First, correspondence
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get misrouted within City agencies on a regular basis. But, I think what's missing here is, when it is misrouted, there is a clear statement in any response that the original correspondence was misrouted and was forwarded to me for reply or, since I was included, I am replying. So, that's the piece, as Elizabeth suggested, that's missing here.

On behalf of the Department of

Buildings, I just want to make clear that we do not share the sentiments of the Chair regarding the people who write us letters and who complain. We do receive thousands of them. You are absolutely correct. Some have merit, some do not. But, I want to make clear that every single one of them deserve some type of response.

MR. DEL VALLE: Absolutely.

MS. GRAHAM: And I also want to make clear, which you did and I'm fine with. I, I'm not speaking to the merit or the tone of this letter. But, I also want to make clear that on behalf of Department of Buildings, should any correspondence come through to Department of
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Buildings that is addressed to myself as the representative for the Department of Buildings, then I am expressly requesting that I have a copy of it, even if there's a lot of them. And the other thing that I want to point out, to suggest that we, as Board members, convene amongst each other to decide what we're going to do or how we will approach a situation when someone has reached out to us, I think is improper, I think it's inappropriate. We have these meetings as the forum to do so, so I don't think it's appropriate for any of us to reach out to each other to have separate and apart meetings from this, from this, the meeting that we already have scheduled.

Also, as Tom pointed out, looking at the dates of the correspondence, because of the dates that they were sent out, if Tom or any other Board member had saw fit to have it on the agenda, if we had it in a timely fashion we could have expressly requested that it be added to the agenda opposed to making a motion to have a discussion on the matter.
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Some of the things that were said today and the tones used, I agree with Madelynn, we should definitely try to go, to be courteous to each other and respect each other's opinions. Everybody has one, and there's nothing wrong with expressing that.

I also want to make clear that if our opinions are not respected when we open our mouths and we make suggestions and the result is that we're going to be yelled at or belittled or there's a back and forth. This is not about winning an argument. This is about deciding how to handle things going forward so that the outcome is the best that it can be for the public. But, we're on this Board to protect the public and to make sure that the matters that we are able to decide, we do so in the best interests of pub— well, for me, public safety, of course. And I just want to make sure that we continue to do that opposed to watering it down with, you know, jurisdictional issues and things of that sort.

OATH, just to be clear, absolutely had
December 7, 2017

the jurisdiction to respond to this letter, and that is just not the point. And I don't want us to lose the fact that that's not the point. Any correspondence to the Board should go to the Board before any response is sent out if that response does not make clear that it is not on behalf of the Board. It's just that simple.

MR. DEL VALLE: Thank you.

MS. GRAHAM: I know it wasn't simple. I'm sorry.

MR. DEL VALLE: No, it was pretty straightforward, I think.

MS. GRAHAM: Thank you.

MR. DEL VALLE: In English. I think it should be --

MS. GRAHAM: I like plain language.

MR. DEL VALLE: -- clearly understood.

MS. GRAHAM: I like plain language.

Customers understand plain language, for the record.

MR. DEL VALLE: Sometimes.

MS. GRAHAM: You do.

MR. PECUNIES: I'm okay.
MR. DEL VALLE: Is there a motion to adjourn to Executive Session to, for judicial review? We are going to Executive Session. We are now in the Public Session.

JOSEPH GREGORY, ESQ., FIRE DEPARTMENT:

I, I, I just wanted to say -- from the, the Fire Department, Joseph Gregory -- that without getting into right or wrong with respect to the issue that was discussed here, I just think that the exchange that we witnessed, and that the public witnessed, highlights the importance of the need for Board members, all Board members to be civil toward each other and not antagonistic. So, I mean, once the professionalism goes out the window, the effectiveness of the Board is greatly diminished. And that doesn't benefit anybody, whether it be the public, Board members or otherwise. So, I just wanted to say that, because I think it's important for us to remain professional. This is a professional environment. We're all professionals in one field or another, and I don't think that there's any excuse for anybody deviating from that
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professionalism under any circumstances.

MS. KNAUER: Here, here.

MR. DEL VALLE: Thank you.

MS. GRAHAM: A motion to adjourn.

MR. DEL VALLE: Se-, I need a second.

We're adjourned.

(The board meeting concluded at 10:34 A.M.)
CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on December 7, 2017, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

[Signature]

Date: December 11, 2017

GENEVAWORLDWIDE, INC
256 West 38th Street - 10th Floor
New York, NY 10018
Ms. Senigo:
Would you kindly distribute this letter of complaint to the OATH board members, particularly to the community representatives like Mr. Shpetner.

Thank you.

Morton Avigdor, Esq.
Mr. Thomas Shpetner. Citizen Member
Office of Administrative Trials and Hearings (OATH) | City of New York
100 Church Street, 12th Floor
New York, NY 10007

Mr. Shpetner:

I wish to bring to your attention the serious deficiencies I have faced with the Office of Administrative Trials and Hearings (OATH) | City of New York.

I am a solo practitioner working out of South Brooklyn, I have tried numerous cases before OATH Judges. The hearings are biased. The odds are stacked against the Defendants. The Judges make their decisions before a defendant is heard. OATH rushes to deny Defendants reopening of a defaulted hearing. They deny Defendants their day in Court. When offered a reasonable excuse, the staff is imperialistic. There is inordinate delay in their response to practitioners.

Let me elaborate.

If a defendant misses a hearing he has one other chance to make another date and overturn a default. If a defendant misses twice, he has defaulted. However, when a defendant requests a DOH inspector’s appearance, a DOH no-show only means that DOH must come to the next hearing. If DOH misses a second hearing the Judge will not default the hearing in favor of the Defendant, but will schedule yet another hearing date. The Defendant must return yet another time. How do I justify these extra costs to my clients?

I recently tried a matter before OATH. DOH made their claims and the ALJ began writing a decision. I was shocked. I was not offered an opportunity to speak on behalf of my client and be heard, before a decision was rendered! When I protested, the Judge was taken aback and begrudgingly allowed me to speak. This is hypocrisy, not a forum of fairness and justice.

On one occasion, I requested a reopening of a matter. I dropped off two hand delivered requests and an overnight package. It took OATH about 8 months to respond and grant my request.

The reason for this letter of protest is OATH’s latest miscarriage of Justice.

I had a matter with DOH on behalf of a client. We were negotiating a settlement which was ultimately signed. (See attached letter). An error occurred and a default judgement was entered by OATH. DOH had no objection to the re-opening of the hearing, but OATH disagreed.

DOH stated

“The Administrative Tribunal is a separate agency with separate rules. **While the Department has no objection to your client requesting the re-opening of Docket 02091-17D0** it is not within my purview to grant or deny that request. Based on a review of the Tribunals records it appears they denied the request to re-open Docket 02091-17D0 on June 1, 2017 because the May 23rd hearing date was the second default in this matter.”
How can OATH seek to enforce a law that an agency promulgates, when the agency itself has no objection for a defendant to have their day in Court? If DOH misses 2 hearings, they are given many other chances. Not defendants.

There is still an opportunity for this indiscretion to be corrected.

I am asking the Committee to consider rescheduling the hearing on the Zera Kodesh matter previously scheduled for May 23rd Docket Number 02091-17D0 and that it be reinstated to the violation docket for hearing. I only seek my client’s day in Court.

Respectfully,

Morton Avigdor, Esq.

917 861 9550
October 30, 2017

Mr. Morton Avigdor, Esq.
Delivered by email at avigdorm@aol.com

Re: Your letter to Environmental Control Board

Dear Morton Avigdor, Esq:

The NYC Office of Administrative Trials and Hearings (OATH) is in receipt of your letter to Mr. Shpetner, a member of the Environmental Control Board, which is chaired by Fidel F. Del Valle, Commissioner and Chief Administrative Law Judge of the Office of Administrative Trials and Hearings (OATH).

In your letter you raise issues regarding hearings on summonses that used to be filed at the Health Tribunal, which has since been disbanded as all summonses are now filed at what is called the OATH Hearings Division. Please be advised that the cases you cite in your email do not have any connection to the ECB Board. The only types of cases that emanate from the Health Department that are tangentially related to the ECB Board are pest and rodent cases. No cases that ever went to the Health Tribunal have any relation to the Board. Furthermore, the Board does not have any jurisdiction over the issues you raise in your letter since the Board does not have any oversight powers related to OATH’s rules of procedure, the hearing process or how hearings are conducted. The role of the Board as it relates to hearings on a small fraction of Health Department cases, is to issue an appeal decision in a rodent or pest case if and when an appeal is filed and accepted for review and decision. You can find the section of law that establishes the ECB Board at Chapter 45 of the City Charter §1049-a.

As you probably know, people who have summonses that have hearings at OATH can appear at their hearing on their own or with an attorney or a representative whom they hire. Hearings are conducted by Hearing Officers; they are not conducted by judges, as your letter states. Administrative Law Judges (ALJs) are those who are appointed to five year terms and who sit in the OATH Trials Division. OATH’s rules of practice and procedure for its Hearings Division, where summonses are filed for hearings can be found on our website at http://www1.nyc.gov/site/oath/hearings/hearings-division-rules-of-practice.page
As a representative registered with the OATH Hearings Division who has certified that he will become familiar with the rules of practice and signed for and received those rules, I apologize if this letter restates rules which you already know. However, stating our rules of practice and procedures is the best way to illustrate the OATH hearing process and those rules are in place to ensure that all respondents are treated equally because no exceptions to those rules are made.

§6-14(b) and §6-14(c) are the relevant sections governing the issues you raise in your letter regarding adjournments of hearings for the inspector who issued the summons at issue. §6-14(b) states: If a Hearing Officer has adjourned a hearing:

1) solely for the purpose of obtaining the Inspector's testimony, and
2) the Respondent timely appears on the adjourned hearing date, and
3) the Inspector fails to timely appear on the adjourned hearing date,
the hearing shall not be further adjourned solely to obtain the testimony of such Inspector unless the Respondent consents to the second adjournment or the Hearing Officer determines that extraordinary circumstances warrant the second adjournment. "Extraordinary circumstances" are circumstances that could not have been reasonably foreseen by the Petitioner.

§6-14(c) states: A Hearing Officer may not adjourn a hearing on more than two (2) occasions because of the unavailability of the Inspector.

Per the rules, OATH Hearing Officers should not adjourn a hearing more than twice if the reason is for the inspector who issued the summons to appear. Your letter did not provide summons numbers for the cases on which you believe this additional adjournment took place. Please feel free to reply to this letter with that information; the Deputy Commissioner in charge of the OATH Hearings Division office where these hearings took place has already agreed to review the hearing recordings to determine if the Hearing Officer overstepped the rules by granting another request for an adjournment for the inspector.

In your letter you raise another concern about a defaulted case that should have been settled. For this complaint, you cite Docket 02091-17DO. You state that you were “negotiating a settlement which was ultimately signed. (See attached letter)” but that an “error occurred and a default judgement was entered by OATH.” According to OATH records, there is no settlement offer on record. Please also note that no such “attached letter” (or settlement agreement) was included with your email to me on October 29, 2017 nor did the Health Department or the respondent submit a copy of such an agreement to the OATH Hearings Division prior to the scheduled hearings.

The OATH rules governing the hearing process clearly state that if an admission through payment is not made (either in full or by signed settlement agreement and payment) prior to the hearing and/or the case is not rescheduled by the respondent, then the respondent is required to attend the scheduled hearing and failure to attend the hearing will result in a default decision being issued.

OATH records indicate that there was a default decision issued due to the fact that no settlement
was received and because no one appeared at the scheduled hearing. OATH records indicate that you then requested a new hearing and your request for a new hearing was granted by OATH per its rule that allows a new hearing if it is a first request and the request is received within 60 days of the case defaulting. A new hearing date was set and the notice was sent to the respondent in the mail. Since OATH and the Health Department are separate and apart from each other, I cannot speak to the Health Department’s processes and I cannot tell you if the Health Department sent out another settlement offer when the new hearing date was granted. If it did, then the settlement offer would have had to have been accepted before the new hearing date. However, no settlement offer or payment was received before this new hearing date and no one appeared at the newly scheduled hearing. This led to a default decision being issued a second time.

You state that you contacted the Health Department asking them about the case and that the Health Department responded with this response when you inquired about the case defaulting:

The Administrative Tribunal is a separate agency with separate rules. While the Department has no objection to your client requesting the re-opening of Docket 02091-17D0 it is not within my purview to grant or deny that request. Based on a review of the Tribunals records it appears they denied the request to re-open Docket 02091-17D0 on June 1, 2017 because the May 23rd hearing date was the second default in this matter.

You then ask “how can OATH seek to enforce a law that an agency promulgates, when the agency itself has no objection for a defendant to have their day in Court? If DOH misses 2 hearings, they are given many other chances. Not defendants.”

The Health Department is correct in its response that it does not have jurisdiction over the matter in question since it is OATH’s rules of practice that determine the hearing process and when cases can be reopened; the Health Department does not have any role in determining the hearing process of this court since this administrative law court is the entity that determines it’s hearing process. The Health Department is not connected to this court; the Health Department is a party which is appearing before this court, as is a respondent. The Health Department is the party that is bringing the charges against the respondent and filing those charges at OATH; OATH is the neutral forum where the hearing is held on those charges. Both the petitioner and respondent are subject to the rules of practice laid out in Section 6 of OATH’s rules.

I have included the denial of the new hearing which was made pursuant to the rules governing defaults found at §6-21(e) which states If a motion to vacate a default has been previously granted, and a new default decision has been issued, a motion to vacate the second default decision in relation to the same summons will not be granted. Notwithstanding the foregoing, the Chief Administrative Law Judge or his or her designee will have the discretion, in exceptional circumstances and in order to avoid injustice, to grant a request for a new hearing.
The second request for a new hearing has been reviewed and no exceptional circumstances have been demonstrated or verified; the review concludes that the denial was done correctly and in accordance with our rules. Furthermore, OATH rules do not allow “many other chances” for the petitioner or issuing agency, as you state in your letter. See §6-09(d) which states A Respondent's failure to appear at the scheduled time or to make a timely request to reschedule pursuant to §6-05 of this chapter constitutes a default to the charges, and subjects the Respondent to penalties in accordance with §6-20 of this chapter; while §6-09(f) states If a Petitioner fails to appear at the scheduled place, date and time, the hearing may proceed without the Petitioner.

If you still believe that the Department of Health entered into a Settlement agreement, you should contact the Health Department again and try to ascertain what happened with that settlement agreement. OATH rules permit the agency to withdraw the summons and/or enter into agreements with the respondent after the hearing date. See §6-28 Application to File a Post-Hearing Agreement A written application to file a post-hearing agreement must be made jointly and with the consent of all the parties to a matter. Such applications must be made to the designated Deputy Commissioner of OATH, or his or her designee as approved by the Chief Administrative Law Judge. The post-hearing agreement will not amend the Hearing Officer's final written decision and when filed, will become part of the record.

Sincerely,

Marisa L. Senigo
Assistant Commissioner for Public Affairs & Communications
NYC Office of Administrative Trials and Hearings (OATH)

cc: Mr. Thomas Shpetner, ECB Board Member

Enc.
Your request for a new hearing is denied.

OATH records show a prior request for a new hearing was granted and you did not appear. Your second request did not establish that exceptional circumstances prevented you from appearing.

Section 6-21(e) and (f) of the OATH Hearing Division’s Rules of Practice provide that if a request for a new hearing has previously been granted and a new default decision has been issued, or if a request for a new hearing is filed more than one year from the date of the original default decision, a request for a new hearing will not be granted except in exceptional circumstances and in order to avoid injustice. A request for a new hearing has previously been granted in this case and/or your request was not filed within one year from the date of the original default decision. No showing of exceptional circumstances has been made in this case. Therefore, the request cannot be granted.

cc: Morton Avigdor, Esq,
957 East 10th Street
Brooklyn, NY 11230

Note: the denial of a request to reopen a default is a final agency action and not subject to appeal or review
DEPARTMENT OF HEALTH & MENTAL HYGIENE, 
-against- 

ZERA KODESH
1237 48 STREET,
BROOKLYN, NY 11219

(Respondent)

Violation/Summons No.: 02091-17D0
Decision Date: 5/31/2017
Hearing Officer: Roccosalvo, Felicia - E38
Respondent's Rep.: 
Type of Hearing: DFLT (Default/No Appearance)

Summary Disposition: DFLT2 - Second Default/ No Appearance

Respondent failed to appear on the date and time stated in the Notice of Violation, The facts stated on the Notice of Violation are admitted. Respondent is found in violation and ordered to pay the penalties stated in this decision.

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**TOTAL:** $16,000.00
To pay the penalty imposed as the result of a summons/notice issued by the DEPARTMENT OF HEALTH & MENTAL HYGIENE:

- By mail: Send a check or money order for the full amount owed. DO NOT send cash. Write your Summons/Notice Number and ACCELA ID on the front of the check or money order and make it payable to: OATH – Hearings Division. Mail a copy of this notice and payment via First Class Mail to:
  OATH Hearings Division
  PO Box 4199
  Church Street Station
  New York, NY 10261-4199

Please do not include any other documents with your payment.

- In person: Bring a check, money order, or credit card to one of the OATH Hearings Division locations below. Cash is not accepted.
  **Manhattan** at 66 John Street, 11th floor, NYC, NY 10038
  or
  **Brooklyn** at 9 Bond Street, 6th floor, Brooklyn, NY 11201

- Online: Using a credit or debit card go to [https://a858-elpaca.nyc.gov/CitizenAccess/](https://a858-elpaca.nyc.gov/CitizenAccess/). First time users will be required to set up a User ID, password, and request a PIN to utilize this service. A Summons/Notice number is required to pay. Instructions are provided on the website. A service fee is charged for all credit and debit card transactions.

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To pay the penalty imposed as the result of a summons/notice issued by the DEPARTMENT OF CONSUMER AFFAIRS:

- By mail: Send a check or money order for the full amount owed. DO NOT send cash. Write your Summons/Notice Number on the front of the check or money order and make it payable to: NYC Department of Consumer Affairs. Mail a copy of this notice and payment via First Class Mail to:
  NYC Department of Consumer Affairs
  Collections Division
  42 Broadway, 9th Floor
  New York, NY 10004

Please do not include any other documents with your payment.

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To Request a New Hearing

To request a new hearing, fill out the form called “Request for a New Hearing After a Failure to Appear.” A first request for a new hearing received by the OATH Hearings Division no more than 60 days from the date of the Default Decision will be granted.

If the request is made more than 60 days but less than one year from the date of the default decision, the request must state a reason (called a “reasonable excuse”) for the respondent’s failure to appear.

You can find further information and the forms on the OATH website at: [www.nyc.gov/oath](http://www.nyc.gov/oath), or you can pick up the form at any Hearings Division location.