

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

BOARD MEETING

Conducted via Video Conferencing

April 30, 2020

9:36 A.M. - 10:14 A.M.

April 30, 2020

## MEMBERS PRESENT:

**Shamonda Graham - Department of Buildings (DOB)**  
**Joseph Gregory - New York City Fire Department (FDNY)**  
**Joni Kletter, Esq. - Commissioner/Chief Administrative Law  
Judge, OATH, Chair/Executive Director, OATH ECB**  
**Elizabeth Knauer, Esq. - Appointed Member**  
**Madelynn Liguori, Esq. - Department of Sanitation (DSNY)**  
**Jorge Martinez, Esq. - Department of Health & Mental  
Hygiene (DOHMH)**  
**Russell Pecunies, Esq. - Department of Environmental  
Protection (DEP)**  
**Thomas Shpetner, Esq. - Appointed Member**  
**Matthew Smith, Esq. - New York City Police Department  
(NYPD)**  
**Jarrod Whittington - Appointed Member**

## ALSO PRESENT:

Rachel Amar - Special Assistant to Commissioner, OATH  
John Castelli - Deputy Commissioner for Legislative  
Affairs, OATH  
**Kelly Corso, Esq. - Assistant Commissioner for Hearings  
Division Adjudications, OATH**  
**Nicholas Dietz, Esq. - Assistant General Counsel, OATH**  
David Goldin, Esq. - Office of the Mayor (OOM)  
**Timothy Jones, Esq. - Assistant General Counsel, OATH**  
Susan Kassapian, Esq. - Deputy Commissioner/Appeals, OATH  
Richard J. LaPlant - Office of Management and Budget (OMB)  
Nancy Lin - Office of Management and Budget (OMB)  
Svetlana Losilevich - Business Integrity Commission (BIC)  
Vincent P. Maniscalco - Department of Transportation (DOT)  
Yvonne Quintian - Office of Management and Budget (OMB)  
**Peter Schulman, Esq. - Asst. Director for Appeals, OATH**  
**Amy Slifka, Esq. - Deputy Commissioner/Hearings Division,  
OATH**  
Samuel Solomon, Esq. - Chief of Staff/Special Counsel,  
OATH  
Thomas Southwick, Esq. - Supervising Attorney for Appeals,  
OATH  
**Olga Statz, Esq. - General Counsel, OATH**

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2 (The board meeting commenced at 9:36  
3 A.M.)

4 JONI KLETTER, ESQ., CHAIR,  
5 COMMISSIONER/CHIEF ADMINISTRATIVE LAW JUDGE,  
6 OATH: So, good morning, everybody. Today is  
7 April 30, 2020. Is there a motion to adopt the  
8 minutes for the February 13, 2020, meeting?

9 JORGE MARTINEZ, ESQ., DEPARTMENT OF  
10 HEALTH & MENTAL HYGIENE: Yes.

11 MADELYNN LIGUORI, ESQ., DEPARTMENT OF  
12 SANITATION: Motion.

13 MS. KLETTER: Does anyone have any  
14 corrections? Okay.

15 NICHOLAS DIETZ, ESQ., ASSISTANT GENERAL  
16 COUNSEL, OATH: Sorry. Could I just get the  
17 names for who's approving the minutes so I can  
18 make a note?

19 MS. KLETTER: Yeah. So when we call for  
20 a vote, to approve, I think people should state  
21 their names.

22 MR. DIETZ: So, for the people who  
23 approve the minutes, can you please state your  
24 name and then say yes, no, or abstain?

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2 MR. MARTINEZ: I abstain, because I  
3 don't think I was at that meeting.

4 MR. DIETZ: Okay.

5 TOM SHPETNER, ESQ., APPOINTED MEMBER: I  
6 also fall in that category.

7 MR. DIETZ: Who was that who just spoke?

8 MR. SHPETNER: Tom. This is Tom  
9 Shpetner.

10 MR. DIETZ: Okay.

11 MR. MARTINEZ: I think I'm listed as  
12 being a participant, even though I wasn't there.

13 MR. DIETZ: Okay. So, that's fine.

14 ELIZABETH KNAUER, ESQ., APPOINTED  
15 MEMBER: I -- this is Elizabeth Knauer. I think  
16 I need to abstain because, when I was looking  
17 through the materials this morning, I could not  
18 find the minutes. I didn't find the e-mail that  
19 contained the --

20 MS. KLETTER: They're actually on the  
21 website. They're on the OATH website, because I  
22 was [unintelligible]. Yeah.

23 MS. KNAUER: They're on the -- oh, okay.  
24 I didn't realize that.

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2 MR. DIETZ: So we have three  
3 abstentions?

4 MS. KNAUER: I abstain, because I didn't  
5 have an opportunity to review them. I apologize.

6 MR. DIETZ: Okay.

7 MS. LIGUORI: Nicholas, this is Madelynn  
8 Liguori from Sanitation. I vote in favor of  
9 adoption.

10 MR. DIETZ: Okay. Others who are in  
11 favor of adopting the minutes?

12 JOSEPH GREGORY, NEW YORK CITY FIRE  
13 DEPARTMENT: Joseph Gregory from the Fire  
14 Department. I approve the minutes.

15 MR. DIETZ: Okay, thanks.

16 MATTHEW SMITH, ESQ., NEW YORK CITY  
17 POLICE DEPARTMENT: Matt Smith, NYPD, yes.

18 MR. DIETZ: Okay. Alright.

19 JARROD WHITTINGTON, APPOINTED MEMBER:  
20 Jarrod Whittington, Appointed Member. Yes.

21 MR. DIETZ: Thanks. Okay, anyone else?  
22 So far, I've got four names for yes, so we're  
23 missing some people. Is Russ or Shamonda here?

24 RUSSELL PECUNIES, ESQ., DEPARTMENT OF

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2 ENVIRONMENTAL PROTECTION: I, I don't know why  
3 this keeps muting. Can you hear me, Nick?

4 MR. DIETZ: Yes.

5 MR. PECUNIES: Nicholas? Yeah, okay.

6 MR. DIETZ: Yes.

7 MR. PECUNIES: Russ Pecunies from DEP  
8 votes yes.

9 MR. DIETZ: Okay. So we've got five  
10 yeses, I count. Is Douglas Swann here? No? And  
11 Shamonda?

12 PETER SCHULMAN, ESQ., ASSISTANT DIRECTOR  
13 FOR APPEALS, OATH: He isn't on yet.

14 MR. DIETZ: Right. And Shamonda is  
15 still not here. So --

16 AMY SLIFKA, ESQ., DEPUTY  
17 COMMISSIONER/HEARING DIVISION, OATH: You, you  
18 can't hear Shamonda. She said she's talking, but  
19 you can't hear her.

20 MR. SCHULMAN: Shamonda, are you --

21 SAMONDA GRAHAM, DEPARTMENT OF BUILDINGS:  
22 Hello?

23 MR. DIETZ: Yes.

24 MS. SLIFKA: Oh, there you go. Okay.

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2 We hear you.

3 MS. GRAHAM: Good morning, everybody.  
4 Shamonda Graham, Department of Buildings. I vote  
5 yes.

6 MR. DIETZ: Okay, thanks.

7 OLGA STATZ, ESQ., GENERAL COUNSEL, OATH:  
8 Good morning, Shamonda.

9 MS. GRAHAM: Good morning.

10 MR. DIETZ: So I've got six yeses. Is,  
11 is --

12 MS. KLETTER: And how many abstentions  
13 do you have?

14 MR. DIETZ: Three abstentions.

15 MS. KLETTER: Oh, good.

16 MR. DIETZ: So, Olga, that's sufficient?

17 OLGA STATZ, ESQ., GENERAL COUNSEL, OATH:  
18 Yeah, we're good.

19 MR. DIETZ: Okay, thanks.

20 MS. KLETTER: Okay. So, moving on, the  
21 next item on the agenda is OATH ECB's Proposed  
22 Rule, an amendment permitting financial hardship  
23 waivers for respondents facing restitution  
24 penalties, by Nick Dietz.

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2 MR. DIETZ: Okay. Hi. My name is Nick  
3 Dietz. I'm an Assistant General Counsel at OATH.  
4 The rule we are proposing today would amend 48  
5 RCNY 6-19(a) on filing an appeal, and would  
6 repeal part of 48 RCNY 6-19(b) on financial  
7 hardship. This Proposed Rule has been certified  
8 by the Law Department and the Mayor's Office of  
9 Op- Operations.

10 The Rule would enable all respondents  
11 who are facing financial hardship to obtain  
12 financial hardship waivers when they appeal  
13 decisions of hearing officers.

14 So there are three types of sanctions a  
15 hearing officer can issue: penalty, which can be  
16 monetary or non-monetary, such as community  
17 service or the loss of a license; a fine, which  
18 is a monetary penalty; and restitution, which is  
19 payment to third party claimants.

20 Now, currently, if a respondent wants to  
21 appeal a ruling, they must first pay the full  
22 judgment. But, if the respondent can demonstrate  
23 financial hardship, they can obtain a waiver and  
24 appeal the decision without paying first.

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2 However, as it stands now, this financial  
3 hardship exception only applies to respondents  
4 who are ordered to pay a fine or a penalty and  
5 does not apply to respondents who are ordered to  
6 pay restitution, even if they are suffering from  
7 financial hardship. So our Proposed Rule would  
8 repeal that exclusion so that responden-  
9 respondents who are ordered to pay restitution  
10 can also seek financial hardship waivers, just  
11 like respondents who are ordered to pay fines and  
12 penalties. That's the rule.

13 MS. KLETTER: Thank you. Is there, are  
14 there any questions?

15 MR. MARTINEZ: Yeah. Just for my own  
16 information, what constitutes financial hardship?

17 MR. SCHULMAN: Do you want me to answer  
18 that?

19 MR. SHPETNER: I mean, I had a companion  
20 question, which is just, it, it just se- says  
21 whatever the ALJ says is a hardship, and they  
22 have the sole discretion inside the, the text of  
23 the rule. But do we have any, just to put some  
24 flesh on Jorge's question, do we have any, you

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2 know, thematic texture about how that really -- a  
3 rubric for what an ALJ would, would consider?

4 Like --

5 MR. DIETZ: Yes.

6 MS. STATZ: It's, it's --

7 MR. SHPETNER: -- DUI payments, for  
8 example. Is that, per se, relevant or, you now,  
9 a, a way to make one more or less eligible for a  
10 waiver?

11 MS. STATZ: It's, it's not the ALJs or  
12 the hearing officers who make the determination.  
13 It's actually from Peter's unit, the Appeals  
14 Unit. So they --

15 MR. SHPETNER: I thought the rule said  
16 something about the ALJ. I apologize.

17 MS. STATZ: Yeah, it's, it's -- but the  
18 way it happens is that the Appeals Unit normally  
19 makes that determination and we ask, and the  
20 Appeals Unit -- and I'm going to ask Peter to  
21 give more details -- the Appeals Unit actually  
22 asks for proof of financial hardship. It's going  
23 to be a tax return, it can be proof of pub-,  
24 receiving public assistance or unemployment or

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2 something like that, and an actual determination  
3 based on figures is made. So --

4 MR. SHPETNER: So that's interesting,  
5 because it's a little different than what the  
6 statute suggests. And it also, I'm questioning,  
7 or just kicking it around because we're just here  
8 meeting, you know, do we need a bit of a rubric?  
9 Is it, or is it just an opinion, you know?

10 MS. STATZ: Please be clear. Tell me  
11 what, what is it you're asking?

12 MR. SHPETNER: I just don't, I, I just  
13 don't understand if we have like established  
14 criteria that we routinely rely upon or are we  
15 just looking at whatever we get submitted and  
16 make our minds up? I, I just am curious about  
17 like if there's -- I, I just don't understand the  
18 process, I suppose is, is a, is a higher level  
19 way of saying it.

20 MR. MARTINEZ: Is there a written  
21 guidance for --

22 MR. SHPETNER: That's my question.

23 MR. MARTINEZ: -- Peter's unit to, you  
24 know, this is what you do for someone who applies

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2 for financial hardship? You have to, they have  
3 to submit X, Y and Z? You know, something  
4 written down, more for- formal.

5 MR. SCHULMAN: Right. So you do need to  
6 submit documentation. That is formal. But what  
7 that documentation is, is more open, but it is  
8 going to be something that shows an inability to  
9 pay, pending the appeal.

10 We generally would look at tax returns  
11 or, as Olga said, a documentation that shows  
12 somebody's on public assistance. There, there is  
13 no strict mathematical formula for it. It does  
14 depend on the type of fine that's being imposed,  
15 as well as the income. For a \$100.00 Sanitation  
16 ticket, somebody would have to show greater  
17 financial need than a Department of Buildings  
18 violation that imposes a \$1,000.00 penalty or  
19 \$10,000.00 or, in the case of illegal occupancy,  
20 \$50,000.00. So it is kind of a rolling thing.  
21 We, we do try to be fairly generous with it.  
22 But, if somebody asks for it, it is generally  
23 granted as long as they're submitting  
24 documentation that shows their own financial

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2 hardship.

3 Most rejections happen because the  
4 respondent might be, say, a corporation and they  
5 submit individual tax returns. We would then ask  
6 for the corporation's tax returns. That's really  
7 the issue that we run into, is documentation that  
8 matches the individual. Right now, we --

9 MS. KLETTER: My understanding, Peter,  
10 is this rule is just about making our rules more  
11 consistent because, right now, there's sort of an  
12 arbitrary inconsistency right now. Yes.

13 MR. SCHULMAN: Right. So our rules  
14 allow financial hardship, the waiver, pending  
15 appeal of monetary penalties. You don't need to  
16 pay that in advance. But for DCA cases,  
17 restitution can be imposed. Restitution is  
18 different than a monetary penalty. That is money  
19 that goes towards the complainant in that case,  
20 right, the contractor who breached, who, who did  
21 shoddy work will need to pay back a complainant  
22 who initially filed that complaint with DCA.  
23 That can run into the hundreds of thousands of  
24 dollars.

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2 We've had that, and that DCA contractor  
3 doesn't have that money to put up right away.  
4 And the rule, as it stands right now, says  
5 restitution cannot be waived pending appeal. So  
6 they need to put it up. We cannot take an appeal  
7 if they don't put up hundreds of thousands of  
8 dollars. And we've run into several contractors  
9 who, therefore, cannot appeal. We want to be  
10 able to allow them to appeal. That's really the  
11 only change that's happening here is to allow  
12 more appeals than we've been getting.

13 MS. KNAUER: Can I ask a question? This  
14 is Elizabeth Knauer. Does this, so does this  
15 even apply to any violations that are returnable  
16 to the, you know, Environmental Control Board?  
17 Or is it just DCA?

18 MR. SCHULMAN: Actually, no, it does  
19 not.

20 MS. STATZ: No, it does not.

21 MS. KNAUER: Then why, why are we, why  
22 do we need to vote on this rule change? Just  
23 because of the sort of coherent OATH rules now?  
24 Okay. So it really doesn't really apply to

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2 anything that would come before us. Because I  
3 was a little confused. I had never heard of  
4 restitution being ordered in an ECB case, so I, I  
5 wa-, I was going to ask, when does that happen?  
6 I thought there might be like an obscure number  
7 of violations. Okay. So it, it really doesn't  
8 apply to our --

9 MS. STATZ: No, no.

10 MS. KLETTER: Okay.

11 MR. SCHULMAN: No.

12 MS. KLETTER: Yeah, any other questions?  
13 Peter, were you going to say something?

14 MR. SCHULMAN: No. I'm good. Okay,  
15 thank you.

16 MS. KLETTER: So I'm going to ask for a  
17 motion to approve the rule.

18 MS. KNAUER: Motion.

19 MS. KLETTER: Thanks.

20 MR. DIETZ: Can I get names, please? So  
21 I can --

22 MS. KLETTER: So we'll call for a vote,  
23 then, yeah, state your name and your vote,  
24 please.

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2 MR. MARTINEZ: Jorge, yes.

3 MR. DIETZ: Okay.

4 MS. KNAUER: Elizabeth Knauer, yes.

5 MR. DIETZ: Thanks.

6 MR. SHPETNER: Tom Shpetner, yes.

7 [CROSSTALK] [00:12:58] [09:48:58 A.M.]

8 MR. SHPETNER: Oh, sorry.

9 MS. LIGUORI: Madelynn Liguori, yes.

10 MS. GRAHAM: Shamonda Graham --

11 MR. PECUNIES: Russ Pecunies, yes.

12 MR. DIETZ: Okay.

13 MS. GRAHAM: Shamonda Graham, yes.

14 MR. DIETZ: Okay.

15 MR. WHITTINGTON: Jarrod Whittington,  
16 yes.

17 MR. DIETZ: Yes. So I've got seven  
18 yeses. Is there every- anyone else?

19 MR. GREGORY: Joseph Gregory, yes, if  
20 you didn't get.

21 MR. SHPETNER: And if you didn't get it,  
22 Tom Shpetner, yes.

23 MR. DIETZ: Yeah, I have that. Okay.  
24 So, then, that would be now we've got eight

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2 yeses. And --

3 MS. KLETTER: And I, and I vote yes,  
4 Nick.

5 MR. DIETZ: And who's that? And no --  
6 do we have any abstentions? So that's no.

7 MS. STATZ: You got it? You're good?

8 MR. DIETZ: Oh, yes.

9 MS. STATZ: Okay.

10 MS. KLETTER: Okay. Do you want to  
11 just, Nick, state the final number, please?

12 MR. DIETZ: Oh, okay. So we have, then,  
13 nine votes in favor and none opposing and no  
14 abstentions.

15 MS. KLETTER: Okay, thank you.

16 MR. DIETZ: Sure.

17 MS. KLETTER: The next item on the  
18 agenda is DEP's request for Cease and Desist  
19 Orders by Russell Pecunies.

20 MR. PECUNIES: Alright, thank you. Good  
21 morning. Everybody can hear me?

22 MS. STATZ: Yep.

23 MR. PECUNIES: Yes? Okay, great.

24 Russell Pecunies, with the Bureau of Legal

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2 Affairs at the Department of Environmental  
3 Protection. For this Board meeting, DEP is  
4 requesting that the Board approve 65 requests for  
5 cease and desist orders.

6 In each of these 65 cases, the building  
7 owner was ordered by DEP to install the  
8 appropriate required backflow prevention devices  
9 on their property. In each of these cases, the  
10 building owner failed to comply with that order  
11 and was then issued a summons for failing to  
12 install. And, in each of these cases, that  
13 summons was adjudicated in violation and the  
14 premises is still not in compliance.

15 Based on that, DEP is asking the Board  
16 to approve these cease and desist orders. I  
17 would note, because of the unusual circumstances,  
18 I would just add that we are aware that OATH's  
19 clerical staff is not currently in the office and  
20 that the actual issuance and scheduling of these  
21 orders will have to wait for that to happen. So  
22 we're aware that these probably will not be  
23 scheduled until sometime during the summer, at  
24 least. [Unintelligible] [00:16:18] [09:52:18]

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2 A.M.] when OATH is able to physically issue the  
3 orders, that that can take place.

4 MS. KNAUER: Can I ask a question?

5 Elizabeth Knauer. So, if OATH is able to issue  
6 the orders at some point but the offices are  
7 still closed for hearings, what will be the  
8 process, then? There would be an order out there  
9 but the respondent wouldn't be able to  
10 [unintelligible] [00:16:57] [09:52:57 A.M.]

11 MR. PECUNIES: I, I can -- all cease and  
12 desist hearings right now, with OATH's hearing  
13 offices being closed, are going to be rescheduled  
14 until sometime, I'm assuming, in at least July or  
15 August. These will not be scheduled, I think  
16 it's safe to say, until OATH's hearing operations  
17 are able to do live hearings again. These are  
18 not going to be done as remote hearings. These  
19 will be live hearings that will take place in,  
20 you know, I don't know, August, September. But,  
21 but --

22 MS. KNAUER: So, and just to clarify,  
23 what you're saying is that the cease and desist  
24 orders will not be issued until the hearings can

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2 be scheduled?

3 MR. PECUNIES: Right. Correct.

4 MS. KNAUER: Okay, okay.

5 MR. PECUNIES: Yeah, because the order  
6 has a date on it for them to pop in.

7 MS. KNAUER: Right.

8 MR. PECUNIES: So the, the order won't  
9 be issued until there is a date that they will be  
10 directed to come in, and OATH will be open for  
11 live hearings at that time, whenever it is, so.  
12 Yeah, but we basically, we, we just did not want  
13 to skip a Board meeting and not have any orders  
14 approved, even though we realize the orders will  
15 not go out for, for some time.

16 MS. KLETTER: Any other questions? I'd  
17 ask for a motion to approve the orders.

18 MS. GRAHAM: Motion.

19 MS. KLETTER: Thank you. Call for a  
20 vote.

21 MR. MARTINEZ: Jorge Martinez, yes.

22 MR. GREGORY: Joseph Gregory --

23 MS. KNAUER: Elizabeth Knauer, yes.

24 Sorry.

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2 MR. DIETZ: Yes. Okay, I think I missed

3 --

4 MS. LIGUORI: Madelynn Liguori, yes.

5 MR. DIETZ: Okay.

6 MR. SMITH: Matt Smith, yes.

7 MR. DIETZ: Yes.

8 MS. GRAHAM: Shamonda Graham, yes.

9 MR. SHPETNER: Tom Shpetner, yes.

10 MR. WHITTINGTON: Jarrod --

11 MR. PECUNIES: Russ --

12 MR. WHITTINGTON: -- Whittington, yes.

13 MR. PECUNIES: Russ Pecunies, yes.

14 MS. KLETTER: Joni Kletter, yes.

15 MR. DIETZ: So I count one, two, three,  
16 four, five -- I have eight yeses. I missed --

17 MS. KLETTER: Any abstentions? Any  
18 opposed?

19 MS. LIGUORI: Would, would it make sense  
20 to maybe do a roll call of the Board members?  
21 That way, we don't miss anyone.

22 MS. KNAUER: Yeah, because I think when  
23 I spoke, someone spoke at the same time as me,  
24 but I couldn't tell who it was.

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2 MR. SHPETNER: I would agree. Or just  
3 start with the noes and the abstentions, anyway,  
4 because these are routine, typically.

5 MR. DIETZ: Oh, okay. I can read  
6 through. So we have Joni Kletter was a yes;  
7 Matthew Smith was a yes; Jorge Martinez was a  
8 yes; Madelynn Liguori, yes; Russ Pecunies, yes;  
9 Shamonda Graham, yes; Tom Shpetner, yes;  
10 Elizabeth Knauer, yes.

11 MS. STATZ: Joseph Greg-, did you say  
12 Joseph Gregory?

13 MR. DIETZ: Oh, no, I didn't. Sorry.

14 MR. GREGORY: Okay. Joseph Gregory is a  
15 yes.

16 MR. WHITTINGTON: And Jarrod  
17 Whittington, yes, also.

18 MR. DIETZ: Oh, sorry. Good thing we  
19 did that. So I've got one, two, three, four,  
20 five, six, seven, eight, nine, ten -- 10 yeses,  
21 zero nos, zero abstentions.

22 MS. KLETTER: Thank you. Okay. I'm  
23 going to ask for a motion to go into Executive  
24 Session to discuss our new decisions in the cases

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2 listed in the Judicial Report.

3 [MS. KNAUER INDICATES MOTION]

4 MS. KLETTER: Thank you.

5 MR. SCHULMAN: Okay. So, I'd ask that  
6 people who are not employed by OATH can either go  
7 out of the call or I can place you in a waiting  
8 room, if you want to come back in when we're  
9 done.

10 MS. STATZ: Good morning, Timothy.

11 [OFF THE RECORD]

12 [ON THE RECORD]

13 MS. KLETTER: Are there any additional  
14 questions or comments? No? Okay. The date of  
15 the next Board meeting is what, Peter?

16 MR. SHPETNER: Actually, I have a  
17 question. And it's a softball. Like, I mean  
18 just, how's it going? Like, this is weird, you  
19 know.

20 MS. KLETTER: Sure. Yeah, well, first  
21 of all, I want to say that I hope to meet you all  
22 in person soon. I know, obviously, some of you  
23 I've met. I haven't had a chance to meet with  
24 all of you. But, fortunately, OATH has remained

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2 fully operational during this time period. So we  
3 immediately contracted with a company called  
4 Court Call my first week that I started, which  
5 has allowed us to conduct our hearings remotely.  
6 And it's been extremely effective. So all  
7 parties can be at home and call into a hearing.  
8 It's recorded, there are virtual wait rooms. It  
9 makes the whole process very easy. I don't know  
10 if Amy is still on the call, but she can describe  
11 it in a little more detail.

12 And, for example, on Thursday there were  
13 over 250 telephonic hearings that were held in  
14 our Hearings Division.

15 MR. SHPETNER: That's pretty cool.

16 MS. KLETTER: So I've just been  
17 incredibly impressed with the team in terms of  
18 what we've been able to accomplish over the last  
19 six weeks.

20 MR. SHPETNER: Can I slip in an  
21 anecdotal question? Sorry. I'm sorry to  
22 interrupt. But, just anecdotally, do you think  
23 the hearings are as, as good quality as they are  
24 in person? Because I, I just have been reading

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2 and sensing myself, just like in person is just,  
3 you know, one percent better. So do you feel  
4 like there's any slippage, or am I just  
5 overthinking it?

6 MS. KLETTER: Well, is Amy on? I don't  
7 think we've had many complaints, honestly.

8 MR. SHPETNER: That's great.

9 MS. KLETTER: And I was surprised,  
10 myself, because I expected to hear complaints  
11 from the agencies.

12 MR. SHPETNER: Well, that was the  
13 premise of my question.

14 [CROSSTALK] [00:23:56] [10:05:56 A.M.]

15 MS. KLETTER: But the sound quality has  
16 been very good, and we can also offer webcam  
17 hearings as well, if needed. There's an  
18 opportunity in the Trials Division where we can  
19 do video hearings as well. We did have one call  
20 which involved interpreters, so that was a little  
21 bit more challenging, obviously, because there  
22 were eight people who were dialed in in a video  
23 conference with an interpreter, but they managed  
24 to, to get through the hearing and --

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2 MR. SHPETNER: Okay, cool.

3 MS. KLETTER: -- and, again, I didn't  
4 hear many complaints, which --

5 MS. GRAHAM: Tom, can you hear me?

6 MR. SHPETNER: Yes.

7 MS. GRAHAM: Tom, can you hear me? So  
8 this is Shamonda Graham from Department of  
9 Buildings.

10 MR. SHPETNER: Hi, Shamonda.

11 MS. GRAHAM: Department of Buildings,  
12 Department of Buildings has been participating in  
13 these hearings, and I must say I am extremely  
14 proud to be a part of this. I mean, it was  
15 difficult in the very beginning stages, but, as  
16 we picked up, it seems like even the respondents  
17 are getting used to it.

18 The one thing that, that is a major  
19 difference is, in some cases, the hearings take a  
20 bit longer. It really depends on the technology  
21 capabilities of the respondent, as well.

22 MR. SHPETNER: Right.

23 MS. GRAHAM: But, for the most part,  
24 this is definitely, as far as I'm concerned,

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2 certainly a foreseeable future, not, maybe not  
3 necessarily for all cases, but for cases where it  
4 makes sense to do so. Like, for me, high volume  
5 reps, this is definitely a way that we could go  
6 in coordinating and getting some of those heavy  
7 hitting respondents off the calendar and off to  
8 the side, maybe doing hearings, you know, non-  
9 stop, all day, opposed to being in the mix.

10 MR. SHPETNER: Yeah, so --

11 MS. GRAHAM: So, right now, the DOB  
12 really likes it.

13 MR. SHPETNER: Well, maybe, also, I've,  
14 you know, I've wondered about this, whether or  
15 not we could always have improved the forum a  
16 little bit for submissions that are done  
17 electronically, because they tend to wind up with  
18 these peculiar results where, you know, no one's,  
19 you know, participating directly. It's all via  
20 e-mail and things. So maybe somebody doesn't  
21 know to use the magic words in a Sanitation case,  
22 for example. So maybe this is a bridge to  
23 ameliorating that sort of, some of the things  
24 that I've not loved about that forum.

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2 MS. KNAUER: How are, how are, how are  
3 the hearings conducted where documentary evidence  
4 needs to be presented?

5 MS. GRAHAM: So, on, on the DOB end,  
6 evidence has -- can you hear me, Elizabeth? This  
7 is Shamonda.

8 MS. KNAUER: I can, yeah. Thank you.

9 MS. GRAHAM: So, so on the DOB end,  
10 evidence has somewhat always been an issue,  
11 because we basically have our evidence attached  
12 to the paper summonses. But the plan right now  
13 is, once we are fully mobile, the evidence will  
14 be in the system. So what's happening right now  
15 is, when the evidence is available and the  
16 respondent is capable of accessing it, we will  
17 send the evidence to the hearing officer via e-  
18 mail, and I believe the hearing officer is  
19 facilitating getting it to the respondent so that  
20 they can see it. And then, once all parties  
21 agree that they can see it and they're okay with  
22 it, the evidence is submitted as we would  
23 normally submit.

24 So, I mean, right now the, there's an

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2 operational hurdle, but I must say it's really on  
3 the DOB end that, the bottom line is we're moving  
4 to mobile summonses and, once that happens, all  
5 the evidence will be in an electronic state at  
6 the onset, which makes it very different and it  
7 makes us very much more capable to move the  
8 evidence around. But, right now, we are not  
9 having any major issues as it relates to  
10 evidence.

11 And then the great thing, I must say,  
12 Commissioner, I want to thank OATH because, not  
13 only considering the current environment for the  
14 respondent which, as far as I'm concerned, we  
15 just want compliance, they're also considering  
16 that as it relates to the City agencies. So,  
17 because of the current environment, you know,  
18 we're not having a hard time getting adjournments  
19 or tech- technological issues, for the respondent  
20 as well. We just simply ask for the adjournment  
21 and that kind of gives us time to gather  
22 everything that we need to gather so we can go  
23 back at it at the next hearing.

24 MS. KNAUER: And the respondents could

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2 submit documentary evidence through e-mail to,  
3 directly to the hearing officer and the  
4 petitioning agency? Is that how it works?

5 KELLY CORSO, ESQ., ASSISTANT  
6 COMMISSIONER FOR HEARINGS DIVISION ADJUDICATIONS,  
7 OATH: Yes, Elizabeth. This is Kelly Corso.  
8 That's correct. They can e-mail the evidence to  
9 the hearing officer and the same, it will go the  
10 same way as Shamonda, with the DOB evidence. The  
11 parties will then all e-mail [unintelligible]  
12 [00:28:51] [10:10:51 A.M.] and then it's uploaded  
13 into our system.

14 [CROSSTALK] [00:28:59] [10:10:59 A.M.]

15 MS. KNAUER: Okay. So is there a  
16 procedure for doing that a certain number of days  
17 in advance of the hearing? Or does it just  
18 happen right before the hearing or during the  
19 hearing?

20 MS. CORSO: It happens during the  
21 hearing.

22 MS. GRAHAM: During the hearing.

23 MR. SHPETNER: During the hearing.

24 MR. GREGORY: And this is --

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2 MS. KNAUER: During the hearing.

3 MR. GREGORY: -- this is Joe Gregory  
4 from the Fire Department. Just to let you know,  
5 FDNY has been doing this for quite some time with  
6 us. So we're kind of, I guess, are old hats at  
7 it. It's just been expanded and it's been  
8 working well for us before the, the pandemic and  
9 it's wel-, working well now during the, the  
10 crisis. So it, it's a --

11 MR. SHPETNER: Oh, okay.

12 MR. GREGORY: -- it's a great system  
13 that's in place.

14 MR. SHPETNER: So I'm glad we didn't  
15 have to just adopt new technology on the fly.  
16 That's cool. Okay, good.

17 MS. KLETTER: Great. I'm glad to hear  
18 that the agencies are just able to work with us  
19 on this as we adjust to this new reality.

20 MS. CORSO: Yes.

21 MR. SHPETNER: So are we going to kick  
22 off Appeals pretty soon? Is that a natural  
23 consequence of all these hearings?

24 MR. SCHULMAN: We, we've been doing, we,

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2 we've still been doing appeals.

3 MR. SHPETNER: Oh, I haven't had,  
4 haven't had to do one in a while. Maybe  
5 [unintelligible] [00:30:10] [10:12:10 A.M.] or  
6 whatever.

7 MR. SCHULMAN: Yeah, we, we did cut it  
8 back to one panel a month right now. So I, I do  
9 believe you're on for the panel in May, which  
10 would be May 21st.

11 MR. SHPETNER: I'm here for months,  
12 Peter. I just, you know.

13 MR. SCHULMAN: May 21st, you're on for  
14 that one.

15 MR. SHPETNER: Alright. I, I --

16 MS. KNAUER: Because I was on a penal  
17 and I thought it worked perfectly.

18 MR. SHPETNER: Oh, good. Okay.

19 MR. SCHULMAN: Yeah. Well, the panel  
20 that you were on, Elizabeth, some people were  
21 still in the office and you did a phone --

22 MS. KNAUER: That's correct.

23 MR. SCHULMAN: We did a panel last week  
24 where it was Webex. So we'll be doing the panel

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2 in May on Webex again. And I think, and the  
3 staff attorneys will join us on that.

4 MS. SLIFKA: This is Amy. I just wanted  
5 to say that the remote hearings are going really  
6 well, actually. And I want to thank the agencies  
7 for being really helpful and making this all work  
8 so smoothly.

9 MS. KLETTER: Okay. So is the next  
10 meeting for ECB June 11th? Because that's what I  
11 have. Okay.

12 MS. STATZ: Yes.

13 MS. KLETTER: June 11th. I'm going to  
14 make a mot-, is there a motion to adjourn the  
15 meeting? Thank you.

16 MS. GRAHAM: Motion.

17 MS. KLETTER: Adjourned. Thanks so  
18 much, everybody. I hope to meet you soon.

19 (The board meeting concluded at 10:14  
20 A.M.)

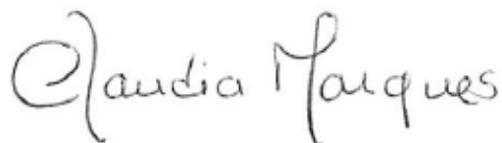
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Environmental Control Board, 4/30/2020

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on April 30, 2020, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Claudia Marques

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Date: May 8, 2020

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