

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

February 13, 2020

9:45 A.M. - 10:05 A.M.

February 13, 2020

MEMBERS PRESENT:

Shamonda Graham - Department of Buildings (DOB)

Joseph Gregory - New York City Fire Department (FDNY)

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)**Tynia Richard, Esq. - Acting Commissioner/Acting Chief Administrative Law Judge, OATH****Tom Shpetner, Esq. - Appointed Member**

Matthew Smith, Esq. - New York City Police Department (NYPD)

Douglas Swann - Appointed Member

Jarrod Whittington - Appointed Member

ALSO PRESENT:

Rachel Amar - Special Assistant to Commissioner, OATH

Nicholas Dietz, Esq. - Assistant General Counsel, OATH

Susan Kassapian, Esq. - Deputy Commissioner/Appeals, OATH

Richard J. LaPlant - Office of Management and Budget (OMB)

Svetlana Losilevich - Business Integrity Commission (BIC)

Vincent P. Maniscalco - Department of Transportation (DOT)

Christen Mavine - Department of Environmental Protection (DEP)

Maggie Nieves - Public Affairs Associate, OATH

Latisha Pender - Department of Transportation (DOT)

Hannah Polakowski - Department of Environmental Protection (DEP)

Craig Porges, Esq. - Executive Agency Counsel, OATH

Peter Schulman, Esq. - Asst. Director for Appeals, OATH

Frances Shine - Secretary to the Board, OATH

Amy Slifka, Esq. - Deputy Commissioner/Hearings Division, OATH

Olga Statz - Deputy General Counsel, OATH

Joy A. Thompson, Esq. - Executive Agency Counsel, OATH

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2 (The board meeting commenced at 9:45
3 a.m.)

4 TYNIA RICHARD, ESQ., CHAIR, ACTING
5 COMMISSIONER/ACTING CHIEF ADMINISTRATIVE LAW
6 JUDGE, OATH: Today is February 13, 2020, and I'm
7 going to call the meeting to order. Is there a
8 motion to adopt the minutes for the December 5,
9 2019, meeting? Okay. And motion approved? Is -
10 - how many do we have there? Okay. Okay. Is
11 there one abstention?

12 THOMAS SHPETNER, ESQ., APPOINTED MEMBER:
13 Hi. I wasn't here for that meeting.

14 MS. RICHARD: Two abstentions. Okay.
15 Good morning, Mr. Shpetner.

16 MR. SHPETNER: Hi.

17 MS. RICHARD: We, we had just moved to
18 adopt the minutes. Does --

19 MR. SHPETNER: I have to abstain anyway.
20 I apologize for my lateness.

21 MS. RICHARD: Okay. Okay. No, thank
22 you. Does anyone have any corrections? No?
23 Okay. Alright, great. And you have the two
24 abstentions. Three?

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2 NICHOLAS DIETZ, ESQ. ASSISTANT GENERAL
3 COUNSEL, OATH: Three.

4 MS. RICHARD: Okay, great. Alright. So
5 the next item on the agenda, the introduction of
6 DEP's request for cease and desist orders by Mr.
7 Pecunies.

8 RUSSELL PECUNIES, ESQ., DEPARTMENT OF
9 ENVIRONMENTAL PROTECTION: Alright, thank you.
10 Okay. Okay, good morning. I'm Russel Pecunies
11 with Bureau of Legal of Affairs at the Department
12 of Environmental Protection. For this Board
13 meeting, DEP first has 75 requests for cease and
14 desist orders relating to failure to install
15 backflow prevention devices.

16 In each of these cases, a DEP inspection
17 has determined that the building in question
18 requires the installation of such devices. DEP
19 has issued an order to the property owner
20 requiring them to install such devices. Based on
21 the failure to comply with that order, DEP has
22 issued a summons to the building owner, which has
23 been adjudicated in violation, either at hearing
24 or by default. And, based on DEP's records, in

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2 each of these cases the premises is still not in
3 compliance with backflow prevention requirements.
4 Based on that, DEP is requesting that the Board
5 issue an order to cease and desist in each of
6 these 75 cases.

7 MS. RICHARD: Okay. Are there any
8 questions? Okay. Is there a motion to approve?
9 And all in favor? Okay. A unanimous vote.
10 Okay, thank you.

11 MR. PECUNIES: Okay. So I have five
12 Noise Code requests, which we can do one at a
13 time and vote on separately, or altogether,
14 whichever you would prefer. You want to do them
15 separately?

16 MS. RICHARD: I don't have a preference,
17 but sometimes, yeah, there --

18 MR. PECUNIES: Yeah, I can walk through
19 each of them --

20 MS. RICHARD: -- there are issues that -
21 -

22 MR. PECUNIES: -- quickly, separately.

23 MS. RICHARD: Yeah.

24 MR. PECUNIES: Okay. So the first one,

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2 in no particular order, is Millennium Ambulatory
3 Surgery Center, LLC -- which is what it sounds
4 like -- at 1408 Ocean Avenue in Brooklyn. This
5 location has an air conditioning unit that, my
6 understanding, it serves the operating room,
7 actually.

8 MS. RICHARD: Oh, okay.

9 MR. PECUNIES: And it has been cited on
10 three occasions last year for excessive noise
11 from that air conditioning unit. On the third
12 violation, they most recently defaulted in late
13 January and we are still getting complaints.
14 And, based on that, DEP is asking the Board to
15 issue an order to cease and desist.

16 MS. RICHARD: Questions? No questions?
17 Alright. You want to go forward, or do you want
18 to go to, go through?

19 MR. PECUNIES: Go through all five and
20 vote on them together, or?

21 MS. RICHARD: Okay, okay.

22 MR. PECUNIES: Okay. The second one is
23 El Camion 111, Inc. This is located at 198
24 Avenue A. It is a restaurant. The equipment at

1 February 13, 2020

2 this restaurant, the kitchen exhaust, was the
3 subject of cease and desist order 2016-0006,
4 which was issued to the prior establishment,
5 Empire Biscuit, LLC.

6 During part of 2016, the first half of
7 2016, Empire Biscuits' owner came in several
8 times for cease and desist hearings and, at the
9 last hearing in July, reported that they were
10 going out of business, which would mean that the
11 equipment would no longer be used. Based on
12 that, that cease and desist order was
13 discontinued.

14 Now, a new establishment has opened at
15 the location. They are using the same kitchen
16 exhaust. It's the same complainant. And
17 although on this one we've only issued two
18 violations, one in October and one in January,
19 because of the prior history and because it's the
20 same complainant who's being affected by it, we
21 thought we would ask the Board to issue a cease
22 and desist order on this now instead of waiting
23 until the April meeting, which means that the
24 complainant would have to live with it for

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2 another two months. So DEP is asking the Board
3 to issue a cease and desist order on this one.

4 MS. RICHARD: Any questions? Okay.

5 MR. PECUNIES: Okay. The next one is
6 Tang 920 Amsterdam, LLC. The premises is 920
7 Amsterdam Avenue. This is a restaurant with a
8 kitchen exhaust that has been cited for excessive
9 noise three times. They last appeared on New
10 Year's Eve and were found in violation for the
11 third time. Based on the repeated violations and
12 continuing failure to come into compliance, DEP
13 is asking the Board to approve a cease and desist
14 order on this one.

15 MS. RICHARD: Questions?

16 MR. PECUNIES: Yeah?

17 SHAMONDA GRAHAM, DEPARTMENT OF BUILDINGS:

18 In general, how many violations do you issue
19 before you come to the Board and ask --

20 MR. PECUNIES: Three.

21 MS. GRAHAM: Okay. I wanted to make
22 sure that was the number.

23 MR. PECUNIES: They don't all have to be
24 adjudicated.

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2 MS. GRAHAM: Okay.

3 MR. PECUNIES: But the rule that was
4 established a long time ago was three. The first
5 one has to be adjudicated, because then that
6 contains the order from the hearing officer to
7 comply forthwith.

8 MS. GRAHAM: Mm-hmm.

9 MR. PECUNIES: And then the rule in the
10 past has always been two subsequent ones --

11 MS. GRAHAM: Got it.

12 MR. PECUNIES: -- after the date of the
13 first one --

14 MS. GRAHAM: Got it.

15 MR. PECUNIES: -- being found in
16 violation.

17 MS. GRAHAM: Okay.

18 MR. PECUNIES: Yeah?

19 ELIZABETH KNAUER, ESQ., APPOINTED
20 MEMBER: Just to clarify, you mean rule of thumb.
21 There's not a Code --

22 MR. PECUNIES: This was, yeah, it, it's
23 not -- this was something that was established,
24 more or less, back when, I don't know if you knew

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2 Phyllis Roberts, who was a hearing officer, a
3 staff hearing officer --

4 MS. KNAUER: Yes.

5 MR. PECUNIES: -- who sort of was, at
6 that time, in charge of, of the cease and desist
7 hearings and the cease and desist program, if you
8 will. And it was sort of her rule that we needed
9 three in order to come to the Board and ask for
10 an order.

11 MS. KNAUER: But it wasn't codified? It
12 was just --

13 MR. PECUNIES: It's not codified, no.

14 MS. RICHARD: Okay. Same question?

15 MR. SHPETNER: Exactly.

16 MS. RICHARD: Okay.

17 MR. PECUNIES: The fourth one, fourth
18 one is Baker's Pizza, which actually seems like
19 it's very close to El Camion. This one is at 201
20 Avenue A. El Camion is at 198 Avenue A. This is
21 a restaurant. Their kitchen exhaust has been
22 cited three times and we are still getting
23 complaints. And, based on that, DEP is
24 requesting that the Board issue an order to cease

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2 and desist.

3 MS. KNAUER: I have a question.

4 MR. PECUNIES: Yeah.

5 MS. KNAUER: Since they are so close, is
6 it the same complainant? And is there any chance
7 that it's only one or the other establishment and
8 not both that are causing the violation?

9 MR. PECUNIES: Sometimes, sometimes we
10 have multiple complainants. We usually, because
11 the inspectors have, they do the first inspection
12 with a particular complainant's apartment, they
13 have that complainant's phone number, they know
14 how to get in touch with them. So even if there
15 are multiple complaints, the inspections are
16 generally done from the same complainant's
17 apartment.

18 MS. KNAUER: No, I, I'm sorry. I don't
19 think my question was clear. What I was asking
20 was, with respect to these two that their
21 addresses are in close proximity.

22 MR. PECUNIES: Oh, yeah.

23 MS. KNAUER: Are they on the other side
24 of --

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2 MR. PECUNIES: Well, one is --

3 MS. KNAUER: -- opposite sides of Avenue
4 A, or are they on, in --

5 MR. PECUNIES: -- one is an even street
6 --

7 MS. KNAUER: Okay, so -- okay.

8 MR. PECUNIES: -- number, the other is
9 an odd street number.

10 MS. KNAUER: Okay. So they'd be on the
11 other side.

12 MR. PECUNIES: So I'm assuming they're
13 on opposite sides of the street.

14 MS. KNAUER: Okay, okay.

15 MS. RICHARD: Okay.

16 MR. PECUNIES: And the last one is for
17 Ikraveit Food Market, Inc., which is located at
18 3408 30th Street in Queens. This is a deli and
19 market that does cooking, so they have a kitchen
20 exhaust. The kitchen exhaust has been cited
21 three times for excessive noise, most recently in
22 the middle of January. And based on the repeated
23 violations and continuing failure to comply, DEP
24 is again asking the Board to issue an order to

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2 cease and desist.

3 MS. RICHARD: Okay. Questions on this
4 one? None. Alright. So is there a motion to
5 approve? Alright. All votes. It's unanimous.
6 Okay, thank you.

7 MR. PECUNIES: Yeah, thank you.

8 MS. RICHARD: Alright. So, next, we
9 will have requests for pre-sealing reports by
10 Peter Schulman.

11 PETER SCHULMAN, ESQ., ASSISTANT DIRECTOR
12 FOR APPEALS, OATH: Good morning. I am Peter
13 Schulman, Assistant Director over Appeals. Kelly
14 couldn't be here today, so I'll be doing the C&D
15 presentation for the pre-sealing reports.

16 We have 20 pre-sealing reports today,
17 all involving backflow cases. And 18 of them,
18 the hearing officers recommended that there be no
19 sealing or other action, based on respondent's
20 evidence of compliance presented at the hearing.

21 In the last two, the hearing officer
22 agreed with DEP's recommendation to discontinue
23 the actions based on DEP's determination that, in
24 one of the cases, there was no water at the

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2 premises and, in the other case, the respondent
3 had no connection to the premises.

4 Any questions?

5 MS. KNAUER: I did have a question.

6 This might be something that's, that's common,
7 but I've never noticed it before. I noticed that
8 in quite a few of the, of the ones where the
9 respondent had shown that they actually had
10 installed the backflow prevention device, the,
11 the reports indicated they were installed, and
12 sometimes multiple years ago. So I was just
13 curious as to why they were just being cleared
14 now. There was one, I think, where they
15 installed it as far back as 2016. Many of them
16 were 2017. So I just wondered why --

17 MR. SCHULMAN: Why they, yeah.

18 MS. KNAUER: -- why they hadn't gotten,
19 you know, off the hook before now.

20 MR. PECUNIES: Yes. Because we're now,
21 we, we've now instituted a program of threatening
22 to shut off their water, and that is bringing a
23 lot of old ones that have been in default for a
24 long time back in front of hearing officers and

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2 getting them to comply.

3 There were a number of them that go back
4 as far as '11, '12, '13. Not a lot, but some
5 that just defaulted back then and we never did
6 anything about it. And now we're doing something
7 about it.

8 MS. KNAUER: But they, but my question
9 was not so much that the violations went so far
10 back, but actually there the proof of
11 installation dated from a much earlier date in
12 several of them. So was it just that they never
13 came to the hearing to submit their proof?

14 MR. PECUNIES: Submit? I mean it's
15 possible that they just never submitted it.

16 MS. KNAUER: Okay.

17 MS. RICHARD: Okay. Any other
18 questions? Motion to approve? All in favor?

19 MR. SCHULMAN: Thank you.

20 MS. RICHARD: Okay, thank you, Peter.
21 Alright. So can we have a motion, then, to go
22 into executive session to discuss decisions to
23 Judicial Report? Okay, we have our motion.

24 [OFF THE RECORD]

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2 [ON THE RECORD]

3 MS. RICHARD: Alright. So we're back on
4 in Public Session, and we should announce, I
5 guess, the next -- we don't have any more items
6 on the agenda. The next Board meeting, what's
7 our date, Peter?

8 MR. SCHULMAN: I don't know. Have we
9 picked a date?

10 MS. RICHARD: Oh, we only picked the
11 February, right?

12 MS. GRAHAM: We're like the
13 [unintelligible] [00:14:54].

14 MS. RICHARD: I think we did.

15 MR. PECUNIES: I think we only went up
16 to this date, then. Yes.

17 MR. DIETZ: Yeah.

18 MS. GRAHAM: Yeah, we did.

19 MR. SCHULMAN: Yeah. Probably a couple
20 more dates.

21 MS. RICHARD: Yeah, yeah. So let's pick
22 some more dates, then. What do we have, April?

23 MR. PECUNIES: So the next three would
24 be April, June and August?

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2 MR. SCHULMAN: Right.

3 MS. RICHARD: Yeah, that sounds good.

4 And should we go with -- what's this, the second
5 week of the month?

6 MS. GRAHAM: Well, June is like
7 graduation month.

8 MS. RICHARD: Okay.

9 MS. GRAHAM: So we should keep that in
10 mind.

11 MS. RICHARD: Are graduations the
12 beginning or the end?

13 MS. GRAHAM: The end.

14 MR. SHPETNER: Well, the second, the
15 second --

16 MS. GRAHAM: I guess they're all over,
17 they're usually, usually in that middle or
18 towards the end. Middle and end.

19 MADELYNN LIGOURI, ESQ., DEPARTMENT OF
20 SANITATION: You want to do the first, the first
21 week in June?

22 MS. SHPETNER: Oh, my kid graduates.

23 MS. LIGOURI: Say that again? We have
24 to do the training. The training for the hearing

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2 officers.

3 MS. RICHARD: Oh, the training for the
4 new hearing officers. The hearing officer
5 training starts in June.

6 [OFF MIC CONVERSATION]

7 MS. GRAHAM: Madelynn, you, you know.
8 You're involved in the school. It's like the
9 middle/end of June, right?

10 MS. LIGUORI: Yeah.

11 MS. GRAHAM: Yeah.

12 MR. PECUNIES: The second Thursday would
13 be the 9th, but the second full week, it would be
14 the 16th in April.

15 MS. LIGUORI: That would be spring
16 break. I don't think that's what -- yeah.

17 MS. KNAUER: Oh, that's spring break?
18 I'm going to, I'm going to be away for spring
19 break this year.

20 MR. SCHULMAN: Is there any reason not
21 to do the last day of April, April 30th?

22 MR. SHPETNER: Could I propose that we
23 strike up a quick e-mail chain about some
24 proposed dates and just yea or nay?

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2 MS. GRAHAM: Yeah, that sounds good.

3 MR. SHPETNER: Rather than everybody
4 consult their diaries right now?

5 MS. RICHARD: Does that work better for
6 people? Yeah.

7 MR. SHPETNER: It just --

8 ALL: Yeah.

9 MR. SHPETNER: -- it seems like we, we
10 should overlay the school calendar and some other
11 things and, and just, you know.

12 MS. GRAHAM: Mm-hmm.

13 MS. RICHARD: Yeah, I don't think of
14 those things. That's true. Okay, alright. So
15 we'll do that. We'll do that. Alright, Peter,
16 I'll rely on you to kind of put it together.
17 Thanks.

18 MR. SCHULMAN: Sure. Sure.

19 MS. RICHARD: Okay. Okay. So we'll
20 select dates for those three months. Any other
21 issues? I don't have any updates, to be honest
22 with you. We were moving forward with more Board
23 members. I would have an update, and I don't
24 have any, so that's not a great sign. I

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apologize.

Okay. So is there a motion to adjourn?

Okay. Alright. Well, meeting adjourned. Thank
you.

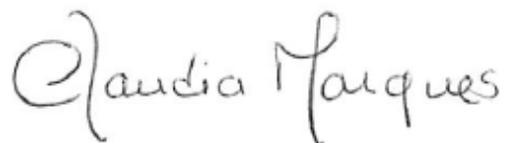
(The board meeting concluded at 10:05
a.m.)

Environmental Control Board, 2/13/2020

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on February 13, 2020, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Claudia Marques

Date: March 16, 2020

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