

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE DECISION

DAVID T. TESSITOR, : In re: 1100 Woodland Road,
: Pittsburgh, PA 15237
Appellant, :
: Docket no. ACHD-20-025
v. :
: Copies Sent To:
ALLEGHENY COUNTY HEALTH : David T. Tessitor
DEPARTMENT, : P.O. Box 81706
: Pittsburgh, PA 15237
Appellee. :
: Vijya Patel, Esq.
: 301 39th Street, Building 7
: Pittsburgh, PA 15201

DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH
DEPARTMENT HEARING OFFICER

I. INTRODUCTION

This case concerns a series of housing violations at a property in McCandless Township. David Tessitor (“Mr. Tessitor” or “Appellant”) owns the property at 1100 Woodland Road (the “Property”) in McCandless. In September 2019, Nicholas Baldauf (“Mr. Baldauf”), a housing inspector for the Allegheny County Health Department (“ACHD”) inspected the Property and found numerous violations of the ACHD’s Housing Code. These violations included excessive plant growth, junk and debris scattered throughout the Property, dilapidated garage, water-holding containers providing breeding areas for pest vectors, and a structure that was not maintained and sealed.

Mr. Baldauf conducted several follow-up inspections in the ensuing months, and found that the violations remained substantially the same through June of

2020. In July 2020, the ACHD assessed Mr. Tessitor a \$2500 civil penalty for failure to repair the violations at the Property. Mr. Tessitor timely appealed the civil penalty, contending that he made substantial progress on the repairs, and that further progress was hindered because he likely contracted COVID-19 around January of 2020.

After reviewing the evidence and testimony presented at the hearing, as well as the relevant rules and regulations and position statements submitted by the parties, this tribunal finds that the ACHD has met its burden of proving by a preponderance of the evidence that the civil penalty was justified. Mr. Tessitor's appeal is therefore **DISMISSED**.

II. EVIDENCE

The following exhibits were introduced by the ACHD¹:

- D1: September 3, 2019 Inspection Report
- D2: October 18, 2019 Inspection Report
- D3: November 18, 2019 Inspection Report
- D4: January 2, 2020 Inspection Report
- D5: February 14, 2020 Inspection Report
- D6: June 11, 2020 Inspection Report
- D7: September 12, 2019 Email
- D8: June 18, 2020 Memo from Nicholas Baldauf
- D9: June 18, 2020 Memo from Chris Zeiler
- D10: November 2019 Photographs
- D11: June 2020 Photographs

III. STATEMENT OF FACTS

The following facts are established:

- 1) David Tessitor ("Mr. Tessitor" or "Appellant") owns the property at 1100 Woodland Road, Pittsburgh, PA 15237 (the "Property"). (Hearing Transcript ("H.T.") at 8).

¹ Mr. Tessitor did not introduce any evidence at the hearing.

- 2) Around January 5, 2020, Mr. Tessitor began experiencing symptoms consistent with COVID-19. These symptoms lasted for several months. (H.T. at 5-6).
- 3) On September 3, 2019, ACHD housing inspector Nicholas Baldauf (“Mr. Baldauf”) conducted his first inspection of the Property. (Ex. D1; H.T. at 18). At this inspection Mr. Baldauf found violations for excessive plant growth, junk and debris scattered throughout the Property, a dilapidated garage, water-holding containers providing breeding areas for pest vectors, and a structure that was not maintained and sealed. (*Id.*).
- 4) On September 12, 2019, Mr. Baldauf emailed Mr. Tessitor to notify him that the violations must be corrected by October 15, 2019. (Ex. D7; H.T. at 26-27).
- 5) On October 18, 2019, Mr. Baldauf conducted a re-inspection of the Property. (Ex. D2; H.T. at 19). Mr. Baldauf found violations for excessive plant growth, junk and debris scattered throughout the Property, dilapidated garage, water-holding containers providing breeding area for pest vectors, and structure not maintained and sealed. Pursuant to this inspection, the ACHD also granted Mr. Tessitor an extension to make repairs. (H.T. at 20).
- 6) On November 18, 2019, Mr. Baldauf conducted another re-inspection of the Property. (Ex. D3; H.T. at 20). He found the same violations remaining from the September and October inspections.
- 7) On January 2, 2020, Mr. Baldauf conducted another re-inspection of the Property. (Ex. D4; H.T. at 21-22). He found the same violations remaining from the September and October 2019 inspections. Pursuant to this inspection, the ACHD granted Mr. Tessitor a second extension to make repairs. (H.T. at 22).
- 8) On February 14, 2020, Mr. Baldauf conducted another re-inspection of the Property, and found that no significant progress had been made since the previous inspection. (Ex. D5; H.T. at 22-23).
- 9) On June 11, 2020, Mr. Baldauf conducted another re-inspection of the Property. (Ex. D6; H.T. at 24). He found the same violations remaining from the September and October 2019 inspections. (*Id.*).
- 10) The ACHD decided to assess a civil penalty against Mr. Tessitor for \$2,500. The ACHD assessed this civil penalty on July 8, 2020. (Ex. D6).

11) On August 7, 2020, Mr. Tessitor filed an appeal of the ACHD's civil penalty assessment. (H.T. at 16).

12) On September 30, 2020, an administrative hearing in this matter was held.

IV. DISCUSSION

A. Burden of Proof

Pursuant to Article XI § 1105.C.7, the ACHD bears the burden of proof in an administrative appeal when it assesses a civil penalty. To prevail in its appeal, the ACHD must prove by a preponderance of the evidence that the penalty was properly levied in light of the continuing violations present at the Property.

B. Relevant Regulations

The regulations at issue in this case are the following sections of ACHD Rules and Regulations, Article VI ("Housing and Community Environment"):

§ 650 RODENT AND PEST VECTOR CONTROL: PROTECTION.

A. No person shall occupy as owner-occupant, or let to another for occupancy, any dwelling, dwelling unit, light housekeeping unit or rooming unit unless every foundation, floor, wall, ceiling, roof, window, exterior door and basement hatchway is free from openings large enough to permit the entry of rodents.

B. No person shall occupy as owner-occupant, or let to another for occupancy, any dwelling, dwelling unit, light housekeeping unit or rooming unit unless every basement or cellar window, used or intended to be used for ventilation, and every other opening to a basement or cellar which may permit the entry of rodents is supplied with a protective device which will effectively prevent the entry of rodents.

C. When the Director determines that the presence of mosquitoes, flies, or other insects in any area of the County constitutes a danger to public health, the Director may require that all dwellings in the area comply with the following provisions during such times of the year as the Director deems necessary.

1. Every door opening directly from a dwelling to outdoor space shall have screens and a self-closing device, except that the Director may exempt from this requirement cellar and basement doors in any dwelling if the exemptions will not create a danger to public health.

2. Every window or other device with openings to outdoor space used or intended to be used for ventilation shall have screens.

3. The owner or operator shall supply and the occupant of a dwelling unit shall hang screens required under the provisions of this Section except where the owner or operator and occupant have agreed otherwise as to who shall supply and hang the screens.

D. No person shall maintain or permit to be maintained any artificial receptacle or pool, including but not limited to scrap tires or appliances, containing water in such condition that breeding of pest vectors therein may become a danger to the public health or create a nuisance.

E. No person or municipality shall maintain a premise so as to cause the development of nuisance pest vectors.

F. No person shall maintain, create or fail to eliminate a food source condition that creates or contributes to a pest vector problem.

1. Feeding of domestic birds or animals shall be done in a manner so as not to create a nuisance by a pest vector attracted by the food. Uneaten food shall be promptly removed and food spillage shall be cleaned up promptly.

2. Feeding of non-domestic birds and animals shall be done in such a manner so as not to create a pest vector nuisance to residents, occupants or users of a premises. When the Director determines that feeding of non-domestic birds or animals have created a nuisance, the Director may order the person feeding to cease such activity.

3. Any food source utilized by a pest vector shall be eliminated by the owner of the property or other responsible party when so ordered by the Director.

§ 651 RODENT AND PEST VECTOR CONTROL: MAINTENANCE.

A. No person shall maintain domestic animals so as to create a nuisance by reason of animal waste, bedding, food, pest vectors or odors. Any person who maintains domestic animals shall clean up and properly dispose of all animal waste generated so that such waste does not create a nuisance by reason of odors or pest vector attraction. The Director may specify a schedule of maintenance.

B. It shall be the responsibility of the owner of any property to promptly remove and properly dispose of any dead animals located on their property.

C. Composting of yard wastes and organic materials shall be conducted so as not to create a pest vector nuisance, actual or potential health hazard, odors or other nuisance. The Director may evaluate a home recycling system and specify methods or materials required for operation to prevent or eliminate a nuisance. The Director may order the suspension of composting and recycling of wastes when the Director determines it contributes to an actual or potential health hazard or nuisance.

D. No person shall maintain a building or premises, occupied or not, whereby its deterioration, unsealed openings or other characteristics create a pest vector attraction, nuisance or safety hazard.

1. It shall be the responsibility of the owner of a vacant structure to maintain the structure in a condition where all openings are sealed to prevent the entry and attraction of pest vectors and to prevent a nuisance or safety hazard.

2. It shall be the responsibility of the owner of a vacant premise or lot to maintain the property in a condition to prevent the entry, attraction or breeding of pest vectors and to prevent a nuisance or safety hazard.

E. Any premises determined by the Director to be a nuisance by reason of unrestricted plant growth shall be maintained so as to restrict such growth to ten (10) inches or less. In single family dwellings, the occupant shall be responsible for compliance with this section.

§ 655 GENERAL REPAIR AND MAINTENANCE.

Every owner of a premises and every operator of a rooming house shall maintain the dwelling and premises, including all fences, enclosures and appurtenances, in sound condition and good repair.

C. Arguments

The ACHD asserts that the \$2500 civil penalty was justified because of the litany of violations observed at the Property. In its position statement, the ACHD itemizes, “Multiple violations of Article VI were observed at the Property, including excessive plant growth, junk and debris scattered throughout the Property, dilapidated garage, water-holding containers providing breeding area for pest vectors, and structure not maintained and sealed.” (*ACHD Position Statement* at 2).

The ACHD further justifies the civil penalty on the grounds that Mr. Tessitor had made little progress in the time between the first inspection in September 2019 and the issuance of the civil penalty nine months later. The ACHD concludes, “[F]rom September 3, 2019 to June 11, 2020, only one violation was repaired, removal of the water-holding containers. During this time period, significant repairs were not made to the Property. Moreover, more than one year after the initial inspection, all the violations are still not repaired.” (*Id.*)

Mr. Tessitor, for the most part, does not contest the ACHD’s findings. However, he contends that the chief reason he was unable to make many of the

necessary repairs was that he experienced COVID-like symptoms beginning in January 2020 and continuing for several months thereafter². (H.T. at 5-6). He argues, “[G]iven the extenuating circumstances created by the COVID-19 pandemic, instead of fines being assessed, the earlier status of follow up inspections by the Department be reinstated.” (*Appellant’s Position Statement* at 2).

Although this tribunal is sympathetic to Mr. Tessitor’s significant health issues, the fact remains that the violations issued by the ACHD predate the onset of Mr. Tessitor’s COVID-like symptoms by several months. The first inspection by Mr. Baldauf was made in September 2019, more than four months before Mr. Tessitor became ill.

Moreover, the record shows that the ACHD was lenient in its enforcement action against Mr. Tessitor. Lori Horowitz, the ACHD’s Housing Program Manager, testified that the ACHD only assessed the civil penalty after six inspections, rather than its customary three. (H.T. at 15). The ACHD also granted Mr. Tessitor two separate extensions to make repairs. (H.T. at 20, 22). Mr. Tessitor has had ample opportunity to fix the violations at issue.

Mr. Tessitor also claims that he cleaned up the violations pertaining to the backyard at the Property. (H.T. at 10; *Appellant’s Position Statement* at 1-2). However, he did not provide any evidence to support these claims. And the photographs submitted by the ACHD indicate that the backyard-related violations

² To the best of this tribunal’s knowledge, Mr. Tessitor has not been formally diagnosed with COVID-19. However, based on the symptoms described by Mr. Tessitor at the hearing, it is probable that he had COVID-19.

remain. (Exs. D10, D11). Based on the evidence presented at the hearing, the ACHD sufficiently proved that it was justified in issuing the \$2500 civil penalty.

V. CONCLUSION

This tribunal finds that the ACHD has met its burden of proving by a preponderance of the evidence that the civil penalty was justified. Mr. Tessitor's appeal is therefore **DISMISSED**. This decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.

Max Slater

Max Slater
Administrative Hearing Officer
Allegheny County Health Department

Dated: December 14, 2020