

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARING

KAREN BORETSKY, MD, and	:	In Re: 605 Worth Street, Apartment 2
EQUITY REAL ESTATE	:	Pittsburgh, PA 15217
SERVICES, INC.,	:	
	:	
Appellants,	:	
	:	
v.	:	
	:	
ALLEGHENY COUNTY HEALTH	:	
DEPARTMENT,	:	
	:	
Appellee.	:	

**DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH
DEPARTMENT HEARING OFFICER**

I. INTRODUCTION

The central issue in this case is: Are a landlord and a property management company responsible for alleged lead paint hazards at an apartment? Dr. Karen Boretsky (“Dr. Boretsky”) is a Boston-based anesthesiologist who owns a house at 605 Worth Street (the “Property”) in Pittsburgh’s East End. The Property is managed by Equity Real Estate Services, Inc. (“Equity”).¹

In 2017, the Allegheny County Health Department (“ACHD”) became involved in this case when the Commonwealth of Pennsylvania posted lead test results of a child at the Property to the state’s version of the National Electronic Disease Surveillance System (“NEDSS”). The ACHD reached out to the child’s parents—the tenants at the Property—and offered them a full lead risk assessment. The parents accepted.

¹ Dr. Boretsky and Equity are referred to collectively as “Appellants.”

ACHD housing inspector Lawrence Robinson performed the lead risk assessment and issued a report in August 2017 outlining his findings. Mr. Robinson's report, which was corroborated by analyses from a lead testing lab, showed lead levels that exceeded EPA acceptable limits in several areas of the Property. These areas included: the soil outside the Property, the living room, the kitchen, and the child's room. Based on the report and lab analyses, the ACHD instructed Dr. Boretsky and Equity to properly abate the lead paint hazards.

In October 2017, the ACHD issued a notice of violation to Appellants, prohibiting them from re-occupying the Property until the lead paint hazards were abated. Appellants timely appealed, arguing that they complied with all legal requirements, and that the tenants are responsible for any lead hazards that exist or may have existed at the Property.

Based on the evidence and testimony presented at the hearing, I find that Dr. Boretsky and Equity are indeed responsible for the lead paint hazards at the Property, and that the hazards have not yet been abated. Appellants' appeal is therefore **DISMISSED**.

II. EVIDENCE

The following exhibits were offered into evidence by Appellants:

- A1: Lead-based paint notification
- A2: Painting invoice
- A3: Lease Agreement


The following exhibits were offered into evidence by the ACHD:

- D1: Soil Report
- D2: Dust Report
- D3: Letter dated 8/21/2017
- D4: Letter to Dr. Boretsky, dated 8/10/2017

- D5: Letter to Equity Real Estate, dated 8/10/2017
- D6: Lead-based paint risk assessment report
- D7: Inspection report dated 10/11/2017
- D8: History report
- D9: Email dated 4/13/2018
- D10: Email dated 6/20/2018

III. FINDINGS OF FACT

Based on my review of the evidence and having resolved all issues of credibility, I find the following facts:

- 1) Karen Boretsky, MD (“Dr. Boretsky”) owns the property at issue, 605 Worth Street, Apartment 2, Pittsburgh, PA 15217 (the “Property”). Dr. Boretsky is an anesthesiologist at Boston Children’s Hospital. (Hearing Transcript (“H.T.”) at 14-16).
- 2) Equity Real Estate Services, Inc. (“Equity”) is a property management company that has managed the Property for over ten years. (H.T. at 16).
- 3)  were tenants at the Property in 2017. (Exs. A1, D7,
- 4) On August 2, 2017, ACHD lead risk assessor Lawrence Robinson (“Mr. Robinson”) produced a Lead-Based Paint Risk Assessment Report for the Property pursuant to an investigation into possible child lead poisoning. Mr. Robinson’s 21-page report cataloged the numerous lead hazards at the Property and detailed how the lead hazards could be abated. In his report, Mr. Robinson emphasized how dangerous the lead hazards were to the child living at the Property. (Ex. D6).
- 5) On August 8 and 9, 2017, the ACHD received analytical reports for the soil and the interior of the Property from PSI, Inc. (“PSI”), an engineering and consulting firm with which the ACHD contracted. (Exs. D1, D2). The two reports from PSI indicated elevated lead levels in several areas of the Property, including the child’s bedroom, the kitchen, the front yard, and the rear drip line. (*Id.*).
- 6) On August 8, 2017, the ACHD performed an investigation at the Property into possible child lead poisoning. After the investigation, ACHD

Environmental Health Administrator Brian Kelly informed Dr. Boretsky and Equity that there were high levels of lead found in the following areas:

- a. Kitchen floor;
 - b. Living room window sill;
 - c. 3rd floor front window sill;
 - d. Child's room window sill; and
 - e. Dining room window sill. (Ex. D3).
- 7) On August 10, 2017, Mr. Robinson sent a letter to Dr. Boretsky, informing her that the ACHD had performed a lead hazard risk assessment, and notifying her that she had 30 days to correct the hazard before a second inspection. (Ex. D4).
- 8) Also on August 10, 2017, Mr. Robinson sent a letter to Equity indicating that Equity must share the results of the Lead-Based Paint Assessment Report and inspections with any current or prospective tenant. (Ex. D5).
- 9) On October 11, 2017, the ACHD issued an inspection report, indicating that lead paint hazards remained on the property, and directed Equity and Dr. Boretsky to remove the lead hazards. (Ex. D7).
- 10) On July 18, 2018, an evidentiary hearing in this matter was held.

IV. DISCUSSION

A. Burden of Proof

The ACHD concedes that it bears the burden of proof in this appeal, pursuant to Article XI § 1105(C)(7)(a)(iii). (*ACHD Statement* at 1). To succeed in this appeal, the ACHD must prove by a preponderance of the evidence that its order was properly issued in light of the violations present at the Property.

B. Appellants' Arguments

Because neither Equity nor Dr. Boretsky submitted a post-hearing brief or position statement, their arguments must be gleaned from the hearing transcript. Jerry Speer, Equity's representative at the hearing, provided Equity's central

argument: “We gave notice [of the lead hazard] to the tenant who had signed the lease regarding the lead-based paint, and that’s all we should be required to do. We painted it and encapsulated whatever lead paint would have been there and we think we need to move ahead.” (H.T. at 7).

Additionally, Equity and Dr. Boretsky “came to an agreement not to read [the Lead Assessment Report] and not to accept it.” (H.T. at 16). A core element of Appellants’ approach here has been to refuse to read or accept any of the reports on the theory that if they did not read the reports, they would not be required to abate the lead hazards. (H.T. at 16, 18, 27-28, 30, 46, 62; Ex. D8).

Finally, Appellants have refused to allow the ACHD to take dust samples at the Property. (H.T. at 17). The reasoning for this refusal is twofold. First, Appellants believe that federal regulations do not require them to test for lead or mitigate lead hazards. (H.T. at 17). Second, Appellants believe that if they do allow a lead test, they will have to “give an entire report to every tenant who occupies this property[.]” (H.T. at 17-18).

C. ACHD’s Arguments

The ACHD makes two related arguments in support of its position that Appellants need to abate the lead hazards at the property. First, the ACHD asserts that the record and the evidence produced by the ACHD “conclusively demonstrate that lead hazards exceeding the EPA’s action levels exist throughout the Property[.]” (*ACHD Statement* at 2).

Second, the ACHD argues that the Property can only be cleared for occupancy if the lead violations have been corrected and verified by the ACHD. (*Id.*, citing ACHD Rules and Regulations, Art. VI, Houses and Community Environment, (hereinafter “Article VI” or “Art. VI”) § 649). Because Appellants have refused to allow the ACHD to conduct a second round of dust sampling at the Property to inspect for lead, the ACHD cannot verify that the violations have been corrected. (*ACHD Statement at 2*, citing Art. VI § 660).

D. Analysis

This tribunal finds that the ACHD has the stronger argument. First, Appellants’ attempt to shield themselves from liability by refusing to read the reports, letters and other materials from the ACHD is baseless. At the hearing, Equity argued that “federal regulations” did not require Appellants to test for or mitigate lead hazards. (H.T. at 17). But Appellants never even identified which “federal regulations” they were referring to. Ignorance of the law is no excuse for the Appellants.

Second, the evidence of lead hazards at the Property is overwhelming. The lab analyses from PSI showed elevated lead levels in the soil, the child’s room, the living room, the dining room, and other areas of the house. (Exs. D1, D2). Mr. Robinson’s painstakingly-detailed Lead-Based Paint Risk Assessment Report supports the lab analyses, and issues recommendations to the Appellants for how to abate each hazard. (Ex. D6; H.T. at 43-44). And the numerous letters that the

ACHD sent to Dr. Boretsky summarize and corroborate these findings. Appellants did not present anything to contradict the ACHD's evidence.

Third, the law and the record are clear regarding Appellants' obligations to abate lead hazards. Article VI § 660 provides in relevant part, "No person shall occupy as owner-occupant or let to another for occupancy any vacant dwelling unit, light housekeeping unit or rooming unit unless it is clean, sanitary, in good maintenance and repair and fit for human habitation. Should a unit for which violations have been identified and orders issued becomes vacant prior to correction of these violations, the owner shall have the unit inspected and corrections verified by the Department prior to any reoccupancy." Art. VI § 660(A).

Article VI also declares, "Prior to any attempt to remove, abate or hazard reduce an identified lead-based paint hazard, the owner shall advise the Director in writing of the proposed methods to be used and the schedule of abatement." Art. VI § 649(C).

Here, Appellants have failed to meet the reoccupancy requirements in Art. VI § 660(A). A major reason for this is that Appellants have not allowed the ACHD to conduct dust sampling to verify if the Property can be reoccupied. (*See* H.T. at 17, 25-26, 46-48, 63-64, 66; Ex. D8). By refusing to allow the ACHD to conduct proper testing Appellants have backed themselves into a legal corner.


The record also demonstrates Appellants have failed to meet the abatement requirements of Art. VI § 649(C). Appellants argue that they "gave notice [of the lead hazard] to the tenant who had signed the lease regarding the lead-based paint,

and that's all [Appellants] should be required to do." (H.T. at 7). But that's not all Appellants are required to do. Article VI §§ 649 and 660 establish specific procedures for abating lead hazards. The ACHD explained these procedures in detail during the hearing, including why the paint work that Equity performed was insufficient to fix the hazards. (H.T. at 31-36, 53-58). Finally, the ACHD demonstrated at the hearing that Appellants bear the primary responsibility for abating the lead hazards at the Property. (H.T. at 34-35, 54-55).

The bottom line is that the ACHD provided strong evidence to support their case, and Appellants presented scant evidence to support theirs.

V. CONCLUSION

Based on the evidence and testimony presented, this tribunal finds that Dr. Boretsky and Equity are responsible for the lead paint hazards at the Property and have failed to properly abate these hazards. Appellants' appeal is therefore **DISMISSED**. This decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.


Max Slater
Administrative Hearing Officer
Allegheny County Health Department

Dated: October 2, 2018

Copies Sent To:
Appellant Karen Boretsky, MD:
Boston Children's Hospital
333 Longwood Avenue, 5th Floor
Boston, MA 02115

Representative for Appellant Equity Real Estate Services, Inc.:

Jerry Speer

2029 Murray Avenue

Pittsburgh, PA 15217

Counsel for ACHD:

Vijya Patel, Esq.

301 39th Street, Building 7

Pittsburgh, PA 15201