

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

September 21, 2018

VIA INTER-OFFICE MAIL AND EMAIL

Max Slater, Esq.
Administrative Hearing Officer
Allegheny Co. Health Dept.
542 Fourth Avenue
Pittsburgh, PA 15219

RE: Allegheny County Health Department's Position Statement in the Appeal Hearing for Equity Real Estate and Karen Boretsky, M.D., 605 Worth Street, Apt. 2, Pittsburgh, PA 15217 (SR#: HCE-20170728-3865).

Dear Hearing Officer Slater:

Pursuant to Allegheny County Health Department ("ACHD") Rules and Regulations Article XI, Hearings and Appeals, ("Article XI") § 1105, a full evidentiary hearing was held on July 18, 2018 to adjudicate the appeal filed by Equity Real Estate on behalf of Dr. Karen Boretsky. Equity Real Estate and Dr. Boretsky appealed an order from the ACHD that prohibited re-occupancy of 605 Worth Street, Apt. 2, Pittsburgh, PA 15217 ("Property") until all the lead hazard violations identified at the Property had been corrected to the satisfaction of the ACHD.

Pursuant to Article XI § 1105.C.7, the ACHD bears the burden of proof in an administrative appeal when it issues an order. To prevail in its appeal, the ACHD must prove by a preponderance of the evidence that the order was properly issued in light of the violations present at the Property. Equity Real Estate is a property management company that has managed the Property for over ten years.¹ Dr. Boretsky is the owner of the property and she is an anesthesiologist at Boston Children's Hospital.²

ACHD Rules and Regulations Article VI, Housing and Community Environment, ("Article VI") § 649 permits the ACHD to issue an order to eliminate lead hazards in a property whenever it has been confirmed to create a health hazard to any child or other person. Brian Kelly, the ACHD's Environmental Health Administrator I, testified that the ACHD's Housing program consults a state-wide database, National Electronic Disease Surveillance System, to identify cases of confirmed elevated blood lead levels in Allegheny County and then performs

¹ Verbatim Record of July 18, 2018 Hearing (hereinafter "Record") at p. 16.

² Record at pp. 14-16; See also <http://www.childrenshospital.org/directory/physicians/b/karen-boretsky>.



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lead investigations with the permission of the occupants of the property.³ Lead investigation includes analytical sampling of household dust, soil, and lead-based paint at the property to determine whether lead levels exceed the Environmental Protection Agency's ("EPA") action levels. Children are more susceptible to lead poisoning due to frequency of hand-to-mouth activity and rapid rate of development of their nervous systems.⁴ Thus, it is imperative for occupants and landlords to regularly maintain the property to ensure lead hazards are controlled, eliminated, or encapsulated according to approved methods.⁵ After identifying lead hazards at a property, a property can only be cleared for occupancy if the violations have been corrected and verified by the ACHD.⁶ Final approval by the ACHD requires another round of dust sampling to ensure that no leaded dust above the EPA action level is present in the property as a result of mitigation work.⁷

The Record and the ACHD's evidence adduced during the July 18th hearing conclusively demonstrate that lead hazards exceeding the EPA's action levels exist throughout the Property, including in the soil, household dust, and lead-based paint in bedrooms, the kitchen, and the rear porch.⁸ Appellants did not challenge the test results for the soil, household dust, or lead-based paint.

The Record also clearly shows that Equity Real Estate and Dr. Boretsky were uncooperative in correcting the lead hazards at the Property. Rather than reading the analytical reports for the soil, household dust, and lead-based paint provided to them, which identifies the areas where lead hazards exist and describes recommended mitigation techniques, Equity Real Estate acknowledged that it came into agreement with Dr. Boretsky to not read the reports and also refused to accept these same reports in the hearing.⁹ Moreover, the ACHD attempted to contact Dr. Boretsky by email and telephone to notify her of the continuing lead hazards at the Property, but she failed to respond.¹⁰ In the hearing, Equity Real Estate alleged that "EPA standards do not require testing or mitigation...[i]t only required disclosure".¹¹ However, Equity Real Estate failed to identify any EPA provision that supported this claim. Although it was aware that the ACHD could not clear the Property for re-occupancy without confirming that the

³ Record at pp. 21-23.

⁴ Record at p. 23.

⁵ Record at pp. 25, 55-60. *See also* Article VI § 649.

⁶ Article VI § 660.

⁷ Record at p. 25-26, 31.

⁸ Exhibits D1, D2, and D6.

⁹ Record at pp. 16, 18, 27-28, 30, 46, 62; Exhibit D8.

¹⁰ Record at pp. 48-49, 61-62; Exhibits D9 and D10.

¹¹ Record at p. 11.

lead hazards have been mitigated, Equity Real Estate refused to allow the ACHD to take additional dust samples to test for lead concentration and failed to obtain approval from the ACHD for proposed removal, abatement, or hazard reduction methods.¹²

This case arises from the Appellants' deliberate disregard for the seriousness of lead poisoning in their Property. If the Appellants read the analytical reports and the assessment report, they could have corrected the violations appropriately, and in a timely manner, without having to leave their property vacant for a prolonged period. Instead, the Record and exhibits demonstrate that the Appellants chose to waste the ACHD's time and resources by refusing to read the reports. The ACHD, having the burden of proof, presented irrefutable evidence that lead levels exceeding the EPA's action levels are present throughout the Property. Thus, it appropriately issued an order to the Appellants that the Property cannot be reoccupied until the lead hazards are corrected and verified by the ACHD. Therefore, since the Appellants failed to present any evidence challenging the presence of lead hazards at the Property and the ACHD's authority to prohibit vacancy prior to confirmed mitigation, the ACHD asserts that the appeal should be dismissed.

Sincerely,



Vijyalakshmi Patel
ACHD Assistant Solicitor

cc: Michael A. Parker, ACHD Solicitor (via email)
David Namey, ACHD Housing Program Manager (via email)
Dr. Karen Boretsky, Appellant (via email and first-class mail)
Equity Real Estate, Appellant (via email and first-class mail)

¹² Record at p. 17, 25-26, 46-48 63-64, 66; Exhibit D8. *See also* Article VI § 649.C.