

**ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARINGS**

DWELLING DEVELOPMENT)	
c/o SCOTT SCHAMING,)	In re: HCE-20161130-5173
)	816 Selby Way
Appellant,)	Pittsburgh, PA 15203
)	
vs.)	
)	
ALLEGHENY COUNTY HEALTH)	
DEPARTMENT)	
)	
Appellee.)	

**THE ALLEGHENY COUNTY HEALTH DEPARTMENT’S
POST-HEARING MEMORANDUM**

I. Introduction and Background.

The Allegheny County Health Department (hereinafter “ACHD” or “Department”) files this post-hearing memorandum summarizing and supporting its position in the appeal of the above captioned real estate company (hereinafter “Appellant”).

The appeal was filed on April 21, 2017 and was based on a civil penalty assessment letter sent to the owner by the ACHD dated April 10, 2017 (hereinafter “April 10th Penalty Letter”). Exhibits D1 and D7. ACHD levied the \$2,500.00 penalty because Appellant failed to correct violations of ACHD’s Rules and Regulations Article VI, Housing and Community Environment (hereinafter “Article VI”) observed at the Property in a timely manner. Exhibits D1 and D7. Pursuant to Section 1105 of Article XI, “Hearings and Appeals”, of the ACHD’s Rules and Regulations (hereinafter “Article XI”), a full evidentiary hearing was held on August 15, 2017 (hereinafter “Hearing”).

The appeal challenges the penalty assessed in the April 10th Penalty Letter and alleges that the tenant at the Property, John Peluso, failed to allow Appellant entrance to the Property for

the purpose of making repairs in a timely manner because Mr. Peluso failed to respond to Appellant's voicemail and letter and Mr. Peluso changed the locks at the Property. Appellant further claims that it gained entry on April 12, 2017 and subsequently repaired all the violations identified by the Department in one week. Appellant did not request and the ACHD Director did not unilaterally grant a stay of the proceedings, therefore, pursuant to Article XI § 1111, the ACHD's decision found in the April 10th Penalty Letter remains in full force and effect.

II. Proposed Findings of Fact.

- A. On January 9, 2017, the ACHD inspected the Property and observed twelve Article VI violations that are the responsibility of the owner/Appellant (hereinafter "First Inspection Report"). Exhibit D3; Verbatim Transcript of August 15, 2017 Hearing (hereinafter "Tr.") at p. 31.
- B. On February 15, 2017, the ACHD observed that no violations had been corrected at the Property (hereinafter "Second Inspection Report"). Exhibit D4; Tr. at p. 31.
- C. On March 30, 2017, the ACHD observed that all violations that are the responsibility of the owner/Appellant remained at the Property (hereinafter "Third Inspection Report"). Exhibit D5; Tr. at p. 31.
- D. Prior to the filing of the Appeal, the ACHD has no record of Mr. Peluso preventing Appellant from gaining access to the Property for the purpose of repairing violations. Tr. at pp. 44-45.
- E. The ACHD did not issue a gain entry letter to Mr. Peluso. Tr. at p. 45.
- F. Mr. Peluso vacated the premises at the end of April 2017. Tr. at p. 13.

- G. As of the date of the hearing, Appellant failed to schedule an inspection of the Property for the Department to confirm that all violations had been repaired. Tr. at p. 45.
- H. Appellant's mailing address, phone number, and email address used by ACHD during the investigation are current. Exhibits D2, D6-D9; Tr. at p. 13.

III. Discussion.

In an administrative appeal of a final agency action of the ACHD, the appellant "shall bear the burden of proof and the burden of going forward with respect to all issues." Article XI § 1105.D.7. Therefore, because this matter revolves around whether Mr. Peluso's behavior prevented Appellant from making repairs in a timely manner and whether the repairs were completed in April 2017, Appellant must prove by a preponderance of the evidence that Mr. Peluso prevented Appellant from gaining access to the Property and that it made repairs within a week of gaining access. Appellant has never disputed the application of Article VI or the presence of Article VI violations at the Property itemized in the First, Second, and Third Inspection Reports. Exhibits D3-D5.

A. Appellant Failed to Demonstrate That Tenant Prevented Access to the Property for the Purpose of Making Repairs in a Timely Manner.

Appellant claims that Mr. Peluso prevented Appellant from making repairs at the Property before April 12, 2017 by refusing access and changing the locks. Exhibit D1; Tr. at p. 8-9. Mr. Peluso had been a tenant of the Property for seventeen years and was present during the ACHD's inspections before vacating the Property at the end of April 2017. Exhibits D3-D5; Tr. at p. 7, 13.

In the appeal, Appellant also alleged that it sent a letter to Mr. Peluso stating the “situation”. Exhibit D1., Tr. at p. 15. However, Appellant did not elaborate what was written in the letter and failed to produce a copy at the hearing. Tr. at p. 15. Appellant claimed it tried to gain entry in February 2017, before the ACHD was involved, and again in March 2017. Tr. at p. 17. This statement is confusing due to ACHD’s first inspection taking place on January 9, 2017 and a copy of that report was mailed to the Appellant on January 10, 2017. Exhibits D3 and D7; Tr. at p. 31, 39. Appellant believes that he left a voicemail for the ACHD stating that Mr. Peluso would not allow Appellant to enter the Property but Appellant has no recollection of the date of the message. Tr. at p. 15-16. Prior to the filing of the Appeal, the ACHD had no record of Mr. Peluso preventing Appellant from gaining access to the Property for the purpose of repairing violations, therefore, the ACHD never issued a gain entry letter to Mr. Peluso. Tr. at pp. 44-45.

Throughout the hearing, Appellant claimed Mr. Peluso had a history of identifying minor violations or false disrepair at the Property. Tr. at p. 7, 11, 26. This claim is irrelevant to this case because the inspection reports mailed by the ACHD list violations identified by an ACHD inspector during inspections of the Property; they are not violations identified by Mr. Peluso. Exhibits D3-D5, D7; Tr. at p. 30. Appellant has failed to provide any evidence of Mr. Peluso’s obstructive behavior to explain its inability to repair all the violations in a timely manner.

B. Appellant Failed to Establish that All Violations Had Been Repaired Within One Week of Gaining Access to the Property.

Appellant claims that it gained entry to the Property on April 12, 2017 and made all repairs within one week. Exhibit D1; Tr. at p. 15. However, Appellant has failed to schedule an inspection with the Department for confirmation that all violations have been repaired. Tr. at p. 44-45.

Lori Horowitz, operations manager of the Housing and Community Environment Program of the Department, testified that on June 6, 2017, she informed Appellant by telephone and email that the Department would need to conduct an inspection to confirm the violations were repaired. Exhibits D2 and D9; Tr. at p. 37-38, 42-43. The ACHD was uncertain whether violations had been repaired by the end of April 2017 because in the June 6, 2017 phone call with Appellant, Appellant stated that he never received the inspection reports and requested Ms. Horowitz to email copies of the letters and inspections reports to him. Exhibit D2; Tr. at p. 43-44. During the hearing, Appellant claimed that he did not receive any inspection reports, notices of violations, or voicemails from the Health Department despite the contact information used being current. Exhibits D2-D9; Tr. at p. 13-14, 16, 18; 38-39. Appellant alleged he did not receive notices from the Department until the Department emailed him. Exhibit D2; Tr. at p. 18. However, the appeal indicates that Appellant did receive reports from the Department as it identifies the April 10th Penalty Letter as the “most recent letter” and describes prior attempts made to repair the Property. Exhibit D1.

Appellant further claims he did not contact the Department to schedule an inspection of the Property because he was concerned about Mr. Peluso. Tr. at p. 25-26. However, Mr. Peluso vacated the Property at the end of April 2017 and Appellant spoke with Ms. Horowitz and received her email on June 6, 2017. Exhibits D2 and D9, Tr. at p. 13. Appellant fails to explain why he did not schedule an inspection during the five weeks when the Property was empty or why he did not schedule an inspection by June 9, 2017 as instructed by Ms. Horowitz in the email. Exhibit D2. Appellant’s contradictory statements regarding notice of violations at the Property and failure to schedule an inspection with the Department suggest that Article VI violations were not corrected by the end of April 2017 and may have existed on June 6, 2017.

IV. Findings of Law.

- A. Appellant failed to correct any Article VI violations by March 30, 2017, the date of the third inspection.
- B. Appellant failed to demonstrate that Mr. Peluso prevented Appellant from making repairs in timely manner.
- C. The Department used Appellant's current email address, mailing address, and phone number to notify him of violations at the Property.
- D. The \$2,500.00 penalty shall remain for Appellant's failure to correct violations in a timely manner and to schedule an inspection for the Department to confirm the repairs.
- E. The \$2,500.00 penalty shall be paid the Environmental Health Fund within 30 days of the Hearing Officer's order.

V. Conclusion.

This case arises from the Appellant's failure to correct any violations found in the inspection reports by the deadlines specified in the notices of violations. Appellant shifts blame onto the tenant to explain why the violations were not corrected by the deadlines despite providing no evidence to support its position. Moreover, Appellant insists that the violations have been repaired despite failing to schedule inspections when advised to do so. The Transcript and exhibits show that the Appellant had proper notice of the violations and neglected to address them in a timely manner. Therefore, since the Appellant failed to meet its burden of proof, the ACHD asserts that its appeal should be dismissed.

Respectfully Submitted,

/s/ Vijyalakshmi Patel
Vijyalakshmi Patel, Esq.
Pa. Id. No.: 319945
Assistant Solicitor
Allegheny County Health Dept.
301 39th Street, Building No. 7
Pittsburgh, PA 15201
Tel.: 412-578-2653
Fax: 412-578-8144
Email: vijya.patel@alleghenycounty.us

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2017, I served a true and correct copy of the Post-Hearing Memorandum on the following individual by PDF electronic mail:

Dwelling Development
c/o Scott Schaming
P.O. Box 10779
Pittsburgh, PA 15203
Email: scott@firewaterresponse.com

/s/ Vijyalakshmi Patel
Vijyalakshmi Patel, Esq.
Attorney for the Appellee