

ALLEGHENY COUNTY HEALTH DEPARTMENT  
ADMINISTRATIVE HEARING

DWELLING DEVELOPMENT	:	In re: 816 Selby Way
c/o SCOTT SCHAMING,	:	Pittsburgh, PA 15203
	:	
Appellant,	:	<u>Copies Sent To:</u>
	:	Dwelling Development
v.	:	c/o Scott Schaming
	:	P.O. Box 10779
ALLEGHENY COUNTY HEALTH	:	Pittsburgh, PA 15203
DEPARTMENT,	:	
	:	Vijya Patel, Esq.
Appellee.	:	Assistant Solicitor
	:	Allegheny County Health Department
	:	301 39 <sup>th</sup> Street, Building 7
	:	Pittsburgh, PA 15201

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

**I. INTRODUCTION**

This case concerns whether a real estate company failed to correct various housing code violations in a timely manner. In April of 2017, the Allegheny County Health Department (“ACHD”) levied a \$2,500 penalty against Dwelling Development (“Appellant”) for failing to correct violations of Article VI of the ACHD’s Rules & Regulations pertaining to housing (“Article VI” or “Housing Code”) at a property at 816 Selby Way in Pittsburgh (the “Property”). Appellant challenged the penalty, contending that the tenant at the Property, John Peluso (“Mr. Peluso” or “Tenant”) refused to allow Appellant to access the Property to make repairs.

Based on the evidence and testimony presented at the hearing, I find that Appellant has failed to show that Mr. Peluso prevented Appellant from gaining access to the Property and making repairs in a timely manner. Therefore, the

appeal is dismissed, and Appellant shall pay the \$2,500 penalty to the Environmental Health Fund within thirty (30) days of this order.

## **II. EVIDENCE**

Appellant did not offer any exhibits into evidence.

The following exhibits were offered by the ACHD and admitted into evidence:

- D1: Letter from Stefan Schaming
- D2: E-mail dated June 6, 2017
- D3: Inspection
- D4: Inspection
- D5: Inspection
- D6: History report
- D7: Letters
- D8: Correspondence dated May 11, 2017
- D9: History report

## **III. FINDINGS OF FACT**

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

- 1) Appellant Dwelling Development (“Dwelling” or “Appellant) owns the Property. (Hearing Transcript (“H.T.”) at 4).
- 2) Scott Schaming (“Mr. Schaming”) is the owner of Dwelling. (H.T. at 4).
- 3) John Peluso (“Mr. Peluso” or “Tenant”) was a tenant at the Property for approximately 17 years, until April of 2017. (H.T. at 7).
- 4) On January 9, 2017, the ACHD inspected the Property and observed twelve Article VI violations, which are the responsibility of Appellant. (Ex. D3; H.T. at 31). These violations include, among others: peeling drywall, faulty electrical outlets, gaps in floor-wall junctions, openings in the foundation, rotted siding, and cracked ceiling plaster. (Ex. D3).
- 5) On February 15, 2017, the ACHD conducted a follow-up inspection at the Property, and found that none of the violations had been corrected. (Ex. D4; H.T. at 31).

- 6) On March 30, 2017, the ACHD conducted another inspection at the Property, and found that none of the violations had been corrected. (Ex. D5; H.T. at 31).
- 7) Prior to the filing of the appeal, the ACHD had no record of Mr. Peluso preventing Appellant from accessing the Property in order to repair violations. (H.T. at 44-45).
- 8) The ACHD did not issue a gain entry letter to Mr. Peluso. (H.T. at 45).
- 9) Mr. Peluso vacated the premises in April 2017. (H.T. at 13).
- 10) On August 15, 2017, an administrative hearing was held to resolve this matter.
- 11) As of the date of the hearing, Appellant has not scheduled an inspection of the Property for the ACHD to confirm that all violations had been repaired. (H.T. at 45).

#### **IV. DISCUSSION**

Under the ACHD Rules & Regulations in operation at the times when the appeal was filed, the hearing was held, and the briefs submitted, “The person filing the appeal shall bear the burden of proof and the burden of going forward with respect to all issues.” ACHD Rules & Regulations, Article XI § 1107(C). Therefore, 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.

##### **A. Appellant failed to show that Tenant prevented access to the Property for making timely repairs.**

Appellant claims that Mr. Peluso changed the locks and refused Appellant access to the Property in order to make repairs. (Ex. D1: H.T. at 8-9). In its appeal, Appellant alleges that it sent Mr. Peluso a letter explaining the “situation.” *Id.* But

Appellant never elaborates what was written in this letter, and did not produce a copy of it at the hearing. (H.T. at 15). Appellant also believes he left the ACHD a voicemail stating that Mr. Peluso would not allow Appellant to enter the Property, but Appellant has no recollection of when he allegedly left that message. (H.T. at 15-16). The ACHD conducted its first inspection on January 9, 2017, and mailed the inspection report to Appellant the next day. (Exs. D3, D7). But until Appellant filed its appeal on April 21, 2017, the ACHD had no record whatsoever of Mr. Peluso purportedly blocking Appellant from gaining access to the Property to make repairs.

At the hearing, Appellant claimed that Mr. Peluso “cried wolf a lot,” meaning that he had a history of identifying minor or non-existent issues at the Property. (H.T. at 7, 11, 26). But this claim is not relevant because the ACHD’s inspection reports list violations identified by ACHD’s inspectors, not violations identified by Mr. Peluso. (Exs. D3-D5, D7; H.T. at 30). The evidence and testimony presented at the hearing indicate that Appellant has not established that Mr. Peluso caused Appellant to be unable to make repairs to the Property 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 states that it finally gained entry to the Property on April 12, 2017, when Mr. Peluso moved out, and completed all repairs within a week of gaining entry. (Ex. D1; H.T. at 15). However, Appellant has not scheduled an inspection with the ACHD to confirm that the violations have been repaired. (H.T. at 44-45).

During the hearing, Lori Horowitz, ACHD’s operations manager of the Housing and Community Environment Program, testified that on June 6, 2017, she

informed Appellant by email and phone that the ACHD would need to conduct an inspection to verify that the violations were repaired. (Exs. D2, D9; H.T. at 37-38). In the June 6, 2017 phone call, The ACHD did not know whether the violations had been repaired by the end of April 2017 because Appellant claimed that he never received the inspection reports and requested that Ms. Horowitz email him copies of the inspection reports and other correspondence. (H.T. at 42-43).

Although Mr. Schaming admitted that the contact information he provided to the ACHD was current, he claimed that he never received any inspection reports, notices of violations, or voicemails from the ACHD. (Exs. D2-D9; H.T. at 13-14, 16, 18, 38-39). However, the appeal shows that Appellant did receive reports from the ACHD, as it identifies the April 10<sup>th</sup> Penalty Letter as the “most recent letter,” and also describes prior attempts to repair the Property. (Ex. D1).

Mr. Schaming also claims that he did not contact the ACHD to schedule a follow-up inspection of the Property because he was “worried about the situation with [Mr.] Peluso at the time.” (H.T. at 25). But Mr. Peluso vacated the Property at the end of April 2017, and Appellant spoke with Ms. Horowitz received her email on June 6, 2017. (Exs. D2, D9; H.T. at 13). Mr. Schaming fails to explain why he did not schedule an inspection during the intervening five weeks in which the Property was vacant, or why he did not schedule an inspection by June 9, 2017 as instructed by Ms. Horowitz in the email. (Ex. D2). I find that Mr. Schaming’s contradictory statements regarding correspondence with the ACHD and failure to schedule an inspection with the ACHD suggest that the violations were not corrected by the end

