

ALLEGHENY COUNTY HEALTH DEPARTMENT  
HEARING OFFICER

MARVIN TALIAFERRO, : In re: 1023 Franklin  
: :  
Appellant : Docket No.: ACHD 22-054  
: :  
v. : :  
: :  
ALLEGHENY COUNTY HEALTH : :  
DEPARTMENT, : :  
: :  
Appellee. : :

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

**I. Introduction and Background**

Allegheny County Health Department (“ACHD” or “the Department”), by and through its counsel, files this Post-Hearing Memorandum summarizing and supporting its position in the above-captioned appeal filed by Marvin Taliaferro (“Appellant”).

On July 28, 2022, Appellant filed an appeal in response to the \$1,687.50 civil penalty assessed by ACHD’s Housing and Community Environment Program (“HCE”) and issued on July 18, 2022. (July 28, 2022 Penalty Letter which was admitted as “Hearing Exhibit L”)

HCE issued an initial Notice of Violation (“NOV”) on September 30, 2021, a second NOV on November 23, 2021, a third NOV on February 24, 2021, and a Penalty Assessment Warning (“PAW”) on May 5, 2022, citing violations of Article VI of ACHD’s Rules and Regulations (“Art. VI”) at 1023 Franklin Avenue, 1<sup>st</sup> Floor, Wilkinsburg, PA, 15221 (“the Property” or “Property”) See, respectively, Hearing exhibit B, Hearing Exhibit E, Hearing Exhibit G, and Hearing Exhibit I. In total, HCE had determined that Appellant violated Article VI §§651, 650, 624, and 622. See Hearing Exhibit I. See also *infra* Section II.

At the Department’s fourth inspection, on April 26, 2022, the Department cited six Article VI violations under the above-referenced five Article VI sections. For Section 651D, the department cited as a violation “[v]acant structure not maintained, opening(s) not sealed, premises not free of trash/debris/junk and/or junk vehicle(s) causing a nuisance or safety hazard,” and “[p]remises with vacant structure not

maintained free of trash, debris, garbage, and/or excessive vegetation.” Hearing Exhibit H. In relation to these two violations, the inspector noted that there was trash, rubbish and garbage throughout the rear porch and rear yard, and windows standing open on both floors of the building. Hearing Exhibit H. For section 650 F, the Department cited as a violation “[f]ood source utilized by pest vector,” noting that there was trash and food waste in the yard, which was attractive to rats. Hearing Exhibit H. For section 650 D, the Department cited Appellant for “[w]ater-holding container(s) providing breeding area for mosquitoes or other pest vectors,” noting that the yard contained multiple containers full of standing water. Hearing Exhibit H. For section 624, the Department cited “[b]roken/missing glass in window(s).” Hearing Exhibit H. For section 622, the Department cited “[d]amaged masonry wall(s), loose or falling bricks.” Hearing Exhibit H.

Following its fourth inspection, the Department sent Appellant a PAW on May 5, 2022. After Appellant failed to abate the six violations cited in the PAW, HCE assessed an initial civil penalty. *See* Hearing Exhibit L. According to the inspection report dated June 24, 2022, the 6 violations remained at the property. Hearing Exhibit J.

## **II. Relevant Statutory Provisions**

- A. Article VI §651.D states: 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.
- B. Article VI §650.F.3 states: No person shall maintain, create or fail to eliminate a food source condition that creates or contributes to a pest vector problem... (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.
- C. Article VI §650.D states: 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.
- D. Article VI §624 states: Every window, exterior door and basement hatchway shall be weathertight and watertight and shall be kept in sound working condition and good repair. All entrance doors into a dwelling unit or rooming unit shall be equipped with

a latching or locking device. All exterior windows that are capable of being opened and all other potential means of egress shall be equipped with hardware for latching.

- E. Article VI §622 states: Every exterior wall, roof and foundation shall be weathertight and watertight. Every floor, wall and ceiling shall be sound and tight. All members of the structure shall be kept in good repair and in safe condition.

### **III. Proposed Findings of Fact**

- A. On September 27, 2021, HCE Inspector Colleen Murphy inspected the Property for the first time and observed the following conditions: “Large plastic containers are holding rain water,” “Trash and food waste in the yard, attractive to rats,” and “Large amount of garbage/debris in back yard.” Hearing Exhibit A. She cited these conditions as the following violations: “Water-holding container(s) providing breeding area for mosquitoes or other pest vectors,” “Food source utilized by pest vector,” and “Owner/operator of multiple family dwelling or rooming house not maintaining the shared garbage area(s). Garbage accumulation.” Hearing Exhibit A. Hearing Transcript pp. 12-13.
- B. On September 30, 2021, the Department sent Appellant a copy of the inspection report and first NOV, citing Appellant for three Article VI violations and stating that the violations must be abated by October 11, 2021. Hearing Exhibit B. Hearing Transcript pp. 13-14.
- C. On October 12, 2021, HCE Inspector Murphy returned to the Property for reinspection and observed that the previously cited violation for “Food source utilized by pest vector” remained, and the other two violations which were cited at the first inspection had been corrected. Hearing Exhibit C. However, Inspector Murphy now observed for the first time “trash, debris, rubbish, and garbage throughout the rear porch, rear yard, and side premises,” which was cited as “Occupant or Owner/ Occupant not maintaining exterior premises free of debris and trash.” Hearing Exhibit C. Hearing Transcript pp. 16-17.
- D. On November 23, 2021, the Department sent Appellant a copy of the second inspection report and the second NOV, stating that the violations must be abated by December 28, 2021. Hearing Exhibit E. Hearing Transcript pp. 18-20.
- E. According to the testimony of HCE Supervisor Christopher Zeiler, the tenant vacated the property starting in early February 2022. Hearing Transcript at pp. 35:10 – 38:22, 44:20 – 48:3.
- F. On February 18, 2022, HCE Inspector Murphy returned to the Property and observed that the violation for “Food source utilized by pest vector,” which had been present at the first two inspections, remained. Hearing Exhibit F. Inspector Murphy also observed that the issue related to the garbage had remained on the property, but now observed that the property was vacant. As such, she removed the citation from the second inspection, and now cited the property owner for “Premises with vacant structure not maintained free of trash, debris, garbage, and/or excessive vegetation.” Hearing Exhibit F. Hearing Transcript pp. 20-22.
- G. On February 24, 2022, the Department sent Appellant a copy of the third inspection and the third NOV, stating that the violations must be abated by March 31, 2022. Hearing Exhibit G. Hearing Transcript pp. 22-24.

- H. On April 26, 2022, HCE Inspector Murphy returned to the Property and observed that the previously cited violation for “Food source utilized by pest vector,” which had been present at all previous inspections, remained. Hearing Exhibit H. Inspector Murphy also observed that the previously cited violation “Premises with vacant structure not maintained free of trash, debris, garbage, and/or excessive vegetation,” which was first cited at the previous inspection, remained. Hearing Exhibit H. Inspector Murphy further observed 4 new conditions at the property, which she described as follows: “Windows standing open on both floors of building,” “Multiple containers in yard ... full of standing water,” “Broken window in basement, right side of house,” and “Missing bricks above basement glass block window on right side of house.” Hearing Exhibit H. Inspector Murphy cited these conditions respectively as “Vacant structure not maintained, opening(s) not sealed, premises not free of trash/debris/junk and/or junk vehicle(s) causing a nuisance or safety hazard,” “Water-holding container(s) providing breeding area for mosquitoes or other pest vectors,” “Broken/missing glass in window(s),” and “Damaged masonry wall(s), loose or falling bricks.” Hearing Exhibit H. Hearing Transcript pp. 24-25
- I. On May 5, 2022, HCE issued the PAW, which was sent to Appellant with a copy of the fourth inspection report. The PAW informed Appellant that if they did not abate the violations cited from the fourth inspection by June 9, 2022, a civil penalty may be levied against them. Hearing Exhibit I. Hearing Transcript pp. 25-27.
- J. On June 24, 2022, HCE Inspector Murphy returned to the Property and observed that each condition cited at the previous inspection, and listed in the PAW, remained, and had not been abated by the date required in the PAW. Hearing Exhibit J. Hearing Transcript pp. 27-28.
- K. On July 18, 2022, HCE issued the initial Penalty Assessment Letter, which levied a civil penalty of \$1,687.50 against Appellant. Hearing Transcript pp. 34-36.
- L. On July 28, 2022, Appellants filed a notice of appeal in response to the Department’s Penalty Assessment Letter. *See generally* Notice of Appeal.

#### **IV. Discussion**

ACHD may assess civil penalties pursuant to ACHD Rules and Regulations Article XVI, “Environmental Health Civil Penalties,” against any person who violates any provision under Article VI. Art. VI § 664. Pursuant to ACHD Rules and Regulations Article XI, “Hearings and Appeals” (“Article XI”), In an administrative appeal, when ACHD has assessed a civil penalty, ACHD bears the burden of proof by a preponderance of the evidence. Art. XI § 1105. The preponderance of the evidence standard requires proof “by a greater weight of the evidence” and is equivalent to a “more likely than not standard”. *Commonwealth v. Williams*, 732 A.2d 1167, 1187 (Pa. 1999); *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Commw. Ct. 2002).

Additionally, Article XI provides that “[i]t shall generally be the burden of the party asserting the affirmative of the issue to establish it by a preponderance of the evidence.” Art. XI § 1105. An affirmative defense is one which “raises new facts and arguments that, if true, defeat the plaintiff’s claim, even if all the allegations contained in the complaint are true.” *R.H.S. v. Allegheny County Dept. of Human Services, Office of Mental Health*, 936 A.2d 1218 (Pa. Commw. Ct. 2007). Appellant does not aver that the numerous violations which are the subject of this enforcement action do not exist or that they did not occur. Rather, it brings an extrinsic allegation, arguing that the tenant caused the violations, and that the property was not vacant beginning in February of 2022, thus raising “new facts and arguments.” Therefore, this argument, inasmuch as it does not speak to the elements of the underlying violations, should be treated as an affirmative defense. It is well-established that “‘the burden of proof...rests upon the party who...asserts the affirmative of an issue’; thus, ‘one alleging a fact...has the burden of establishing it.’” *V.W. v. Department of Public Welfare*, 51 A.3d 282, 285 (Pa. Commw. Ct. 2012) (citing *Lincoln Intermediate Unit #12 v. Bermudian Springs Sch. Dist.* 441 A.2d 813, 815 (Pa. Commw. Ct. 1982)) (quoting *Hervitz v. New York Life Ins. Co.*, 52 A.2d 368, 369 (Pa. Commw. Ct. 1987)). Thus, the burden of proof here rests with the Appellant.

**A. Notwithstanding the fact that Appellant bears the burden, ACHD has exceeded its hypothetical burden of proof that the penalty was correct and proper.**

Considering the continuing nature of the violations present at the Property, ACHD has proven by more than a preponderance of the evidence that the penalty was properly levied. Specifically, despite many months and numerous citations and opportunities, Appellant failed to comply with Article VI in the time afforded.

As demonstrated by the record, Appellants failed to abate all the violations after five inspections and notices. *See* Hearing Exhibits A, C, F, H, and J. HCE Inspector Murphy and HCE Supervisor Zeiler testified that after each inspection, HCE notified Appellants (either through the NOV, PAW, or Penalty Assessment Letter) of the cited conditions and the compliance dates for remedying the violations. Hearing Transcript at pp. 13, 18, 22, 25, and 34. Therefore, Appellants had knowledge of the violations at the

Property, as well as the deadline for abatement of those violations. Appellants' repeated failure to remedy the offending conditions at the Property, some of which were present for nine months, and all of which were present for at least four months, led the Department to assess the Initial Penalty.

Furthermore, HCE's Environmental Health Specialist Coleen Murphy and HCE's Environmental Health Supervisor Chris Zeiler testified credibly that the unit was vacant beginning in February 2022. Hearing Transcript at pp. 24: 7 - 8, 35:10 – 38:22, 44:20 – 48:3. Section 651.D.1 only applies to "vacant" structures or properties. HCE supervisor Zeiler testified that the Department considered a number of factors when determining that the property was vacant starting in February of 2022, including that the utilities had been shut off, the back windows were open during a very cold time period, and the first floor of the property was full of trash. Hearing Transcript at pp. 45: 3-12, 50: 6-20. HCE inspector Murphy testified that she observed the structure to be vacant at her April 26, 2022, inspection. Hearing Transcript at p. 24: 7-8. Based on the above referenced testimony, the Department met its burden in establishing that the property was vacant beginning in February of 2022.

Lastly, HCE Supervisor Zeiler testified as to the factors considered by the Department when calculating the penalty and that the Department's penalty calculation was done correctly and was free of mistakes. Hearing Transcript p. 42: 4-24. Therefore, the Department has demonstrated by more than a preponderance of the evidence that the penalty was properly levied.

**B. Appellant failed to meet their burden of proof regarding their claim that the violations were the responsibility of the Tenant.**

Appellant bore the burden of demonstrating by a preponderance of the evidence that the violations were the responsibility of the tenant. *See* Art. XI § 1105. In their Notice of Appeal, Appellant did not dispute the violations cited by the Department. *See generally*, Appellant's Notice of Appeal. Instead, Appellant argued that they were not responsible for the violations because the tenant caused the conditions. For five of the six cited violations, that argument is irrelevant.

As noted above, ACHD cited Appellant for violations of Article VI §§ 622 and 624. These violations refer to issues with the general structure of the property; as mentioned above, the cited conditions

were a broken window and missing or loose bricks. Responsibility for these structural issues is governed by ACHD Article VI §621, which provides that “The responsibility for compliance with the applicable requirements of Sections 622 through 625 shall be upon the owner.” Article VI § 621. As such, liability for those violations cannot be imputed onto the tenant, and Appellant’s affirmative defense strictly does not apply to these violations.

Similarly, ACHD cited Appellant for one violation of Article VI § 650.F and two violations of Article VI § 651.D. Regarding liability, § 650 F.3 states, “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.” Article VI § 650.F. In this case, the Department ordered the owner of the property to abate the condition; as such, it was Appellant’s responsibility to abate the condition, not the Tenant’s. Article VI § 650.F. *See* Hearing Exhibit I. Additionally, Article VI § 651.D.1 states, “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.” As noted above, the Department had determined that the property was vacant, and the testimony of the Department’s Inspector and Supervisor established that this determination was made correctly. Article VI § 651.D.1. As the owner of a vacant property, Article VI § 651.D.1 made Appellant solely responsible for maintaining the structure and sealing the entries. *Id.* Thus, Appellant’s affirmative defense does not apply to those three violations.

Regarding the violation of Article VI § 650.D, Appellant has also not met their burden of demonstrating that this violation was the responsibility of the tenant. HCE Supervisor Zeiler offered testimony demonstrating that Appellants were aware of the condition of the property and had acknowledged responsibility for abating the condition as it related to trash on the property. Hearing Transcript at pp. 39:18 – 40:3. Further, HCE Supervisor Zeiler testified that when properties are vacant, “the conditions fall upon the owner to resolve.” Hearing Transcript at 45: 14-15.

Appellant, through his testimony, asserted that the tenant was responsible for bringing trash onto the property. *See* Hearing Transcript at pp. 57:17 – 64:16. While Appellant did question the Department’s testimony related to the specific dates that the property was vacated, he did not offer any testimony or

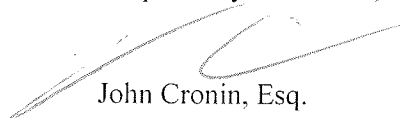
evidence to suggest that the property was occupied during the period that the Department had determined it was vacant. Hearing Transcript at pp. 55: 12 – 21, 56: 20 – 22. Other than their testimony, Appellant offered no other witnesses. Appellant did introduce exhibits, which included a lease agreement, receipts for dumpsters, a text exchange with the tenant, and a “No Occupancy Permitted” sign which was dated August 21, 2021. Hearing Exhibits 1 – 5. These exhibits were offered for consideration of the hearing officer, and Appellant provided very little testimony related to them. *See* Hearing Transcript pp. 74-76, generally. Regarding these exhibits, the lease, dumpster receipts, and text exchange do not demonstrate that the property was occupied, and are thus not relevant to this affirmative defense. No testimony was offered by the Appellant in relation to the no occupancy sign; however, although it relates to occupancy, a sign indicating that no occupancy is permitted does not indicate that the property was occupied. Thus, Appellant did not meet their burden of demonstrating, by a preponderance of evidence, that the property was not vacant during the time period in which they were cited for violations of Article VI Section 650 D.

For the reasons outlined above, Appellant’s affirmative defense is either inapplicable to the violations cited by ACHD or is otherwise not supported by sufficient evidence to prevail.

**V. Conclusion**

ACHD properly assessed the \$1,687.50 penalty against Appellant, after they failed to abate the conditions giving rise to the violations assessed with respect to the property. The Department demonstrated the continuing presence of six Article VI violations, and further demonstrated that it was the property owner’s responsibility to abate the cited violations. Conversely, Appellants failed to meet their burden to demonstrate their affirmative defense that the tenant was occupying the property and causing the violation for Article VI section 650D. Further, Appellant’s affirmative defense is strictly inapplicable to the remaining five Article VI violations which were cited. As such, this tribunal must affirm the penalty and dismiss the appeal.

Respectfully Submitted,



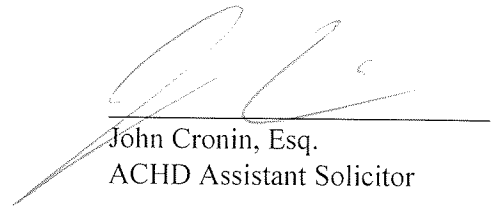
John Cronin, Esq.  
ACHD Assistant Solicitor



**Certificate of Service**

I hereby certify that on 4/27/2023, I served a true and correct copy of the Allegheny County Health Department Post-Hearing Memorandum on the following individual by electronic mail as follows:

Tariq Abdur-Rahim  
111 Westward Ho Drive  
Pittsburgh, PA, 15235  
tariqpgh@gmail.com

  
John Cronin, Esq.  
ACHD Assistant Solicitor