

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARING

ZHITONG ZHANG,	:	In re: 2650 S. 18 th Street
	:	Pittsburgh, PA 15210
Appellant,	:	
	:	Docket No. ACHD-17-032
v.	:	
	:	<u>Copies Sent To:</u>
ALLEGHENY COUNTY HEALTH	:	<i>Appellant:</i>
DEPARTMENT,	:	Zhitong Zhang
	:	1 Campden Road
Appellee.	:	Scarsdale, NY 10583
	:	
	:	<i>Counsel for Appellee:</i>
	:	Vijya Patel, Esq.
	:	301 39 th Street, Building 7
	:	Pittsburgh, PA 15201

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

I. INTRODUCTION

This case concerns lead hazards at a house on Pittsburgh’s South Side. Appellant Zhitong Zhang (“Mr. Zhang” or “Appellant”) owns the property located at 2650 S. 18th Street, Pittsburgh, PA 15210 (the “Property”). In October of 2017, the Allegheny County Health Department (“ACHD” or the “Department”) inspected the Property and found lead paint hazards in the bedrooms, bathrooms, kitchen, and living room. Based on these lead hazards, the Department assessed a \$2,500 civil penalty against Mr. Zhang for violating Article VI, § 649.A of ACHD Rules and Regulations, which requires the owner of a property to eliminate a lead-based paint hazard within a reasonable period of time.

The ACHD directed Mr. Zhang to have the lead hazards repaired within 30 days of July 18, 2017, which was the date of the first inspection. But due to a series of delays and miscommunications, the process took several months to be completed.

The issue at hand is whether the civil penalty that the ACHD issued was properly assessed in light of the violations at the Property. This tribunal finds that the ACHD has met its burden of proving by a preponderance of the evidence that Mr. Zhang violated ACHD Rules and Regulations Article VI § 649.A relating to lead hazards. However, based on Mr. Zhang's lack of willfulness in violating Article VI, lack of economic benefit from the violation, and the fact that this is his first time being cited for violating ACHD Rules and Regulations, the civil penalty is reduced from \$2,500 to \$2,000.

II. EVIDENCE

The following exhibits were offered into evidence by Appellant Zhitong Zhang, and admitted:

- A1: July-November Email Exchange
- A2: LBP Abatement Proposal
- A3: Email of Proposal Approval
- A4: Expense Ledger for 2650 S. 18th Street
- A5: Text Message Exchange
- A6A: Emails dated 2/2/18
- A6B: Emails dated 1/18/18
- A6C: Emails dated 2/14/18
- A7A-D: Eviction Information
- A8A-E: Before Photos
- A9: After Photos

The following exhibits were offered into evidence by Appellee Allegheny County Health Department, and admitted:

- D1: Lead-Based Paint Risk Assessment Report

D2: Letter dated 7/25/17
D3: Letter dated 8/31/17
D4: Email dated 9/19/17
D5: Letter dated 10/30/17
D6: Memo dated 10/19/17
D7: Lead Determination Report issued 1/19/18
D8: Lead Determination Report issued 2/8/18
D9: Email dated 2/2/18
D10: Email dated 2/14/18
D11: Lead Determination Report issued 2/23/18
D12: Letter dated 2/23/18

III. FINDINGS OF FACT

Based on this tribunal's review of the evidence and having resolved all issues of credibility, the following facts are established:

1. Zhitong Zhang ("Mr. Zhang" or "Appellant") is the owner of the property located at 2650 S. 18th Street, Pittsburgh, PA 15210 (the "Property"). (Hearing Transcript ("H.T.") at 6)).
2. The Allegheny County Health Department ("ACHD" or the "Department") is a local health agency whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including the Allegheny County Health Department's Rules and Regulations, Article VI, Housing and Community Environment ("Article VI").
3. At all times relevant to this matter, Three Rivers Property Management, LLC ("Three Rivers") was the property management company for the Property. (Exs. A1, A5; H.T. at 23).
4. A tenant moved into the Property in 2015, and left the Property in July 2018. (H.T. at 25).
5. On July 18, 2017, the ACHD conducted an inspection of the Property, and one week later, informed Appellant that he had 30 days to correct these lead hazards. (Ex. D2). Appellant was instructed to hire a Lead Certified Contractor and was provided a copy of the lead-based paint risk assessment report. (Exs. D1, D2).
6. Areas that required lead hazard reduction required reduction included bedrooms, bathrooms, the kitchen, and the living room. (Ex. D1).

7. Three Rivers hired the firm Roth & Hogan as a contractor to address lead hazards at the Property. Roth & Hogan prepared its proposal in August of 2017, which Appellant accepted. (Exs. A2, A4; H.T. at 15, 18).
8. On August 22, 2017, the ACHD conducted a second inspection of the Property, and notified Appellant that lead hazards remained. (Ex. D3).
9. At this inspection, Lawrence Robinson ("Mr. Robinson"), the Department's Senior Sanitarian, met with John, Appellant's contractor from Roth & Hogan at the Property. (Ex. A1; H.T. at 35, 42). Mr. Robinson is a Certified Lead Risk Assessor by the State of Pennsylvania, and created the lead-based pain risk assessment for the Property. (Ex. D1; H.T. at 35).
10. On September 18, 2017, Mr. Robinson visited the Property and found that approximately 65 percent of the lead abatement had been completed. (Ex. D4; H.T. at 7-8).
11. After this visit, the ACHD informed Diane Wheeler ("Ms. Wheeler"), the General Manager of Three Rivers, that paint chips and lead dust at the Property must be cleaned. (Ex. D4).
12. On October 17, 2017, the ACHD conducted a third inspection of the Property, and notified Ms. Wheeler that structural disrepair, as well as paint chips and lead dust remained at the Property. (Ex. D6; H.T. at 47-49).
13. On October 30, 2017, the ACHD issued a letter to Mr. Zhang levying a \$2,500 civil penalty against him for failing to abate the lead hazards at the Property. (Ex. D5).
14. On November 6, 2017, Three Rivers filed an appeal of the ACHD's October 30, 2017 civil penalty letter.
15. In January of 2018, the ACHD took samples of surfaces throughout the Property and found high levels of lead in the bedrooms. (Ex. D7; H.T. at 50).
16. On February 5, 2018, the ACHD again took samples and found elevated lead levels in a bedroom. (Ex. D8; H.T. at 51).
17. On February 23, 2018, the ACHD issued a letter indicating that the lead hazards had been sufficiently remedied to comply with ACHD lead standards. (Ex. D12; H.T. at 52-53).

18. In July of 2018, the tenant at the Property moved out. (H.T. at 8).

19. On December 18, 2018, a hearing was held in this matter.

IV. DISCUSSION

Pursuant to ACHD Rules and Regulations Article XI—Hearings and Appeals (“Article XI”), § 1105.C.7, the ACHD bears the burden of proof in an administrative appeal when it assesses a penalty or issues an order. To prevail in its appeal, the ACHD must prove by a preponderance of the evidence that the penalty was properly assessed in view of any violations present at the Property.

A. Responsibilities of the Landlord and Tenant

A point of contention here is whether the landlord (Mr. Zhang) or the tenant is responsible for abating the lead hazards at the Property. At the hearing, Lawrence Robinson (“Mr. Robinson”), the ACHD’s Senior Sanitarian who performed the lead inspections at the Property addressed this issue, declaring, “The owner is usually responsible the physical structure of the house. It should be clean—like, rented and cleaned with intact paint and up to the Article Six standards of the County. And the tenant is expected to also maintain it and clean it.” (H.T. at 37-38). In other words, the landlord is responsible for taking care of the physical features of the house, while the tenant is responsible for regular maintenance and cleaning. (H.T. at 55, 80).

Mr. Zhang blames the tenant for the damage at the Property because she was “actively sabotaging the effort” to comply with the ACHD’s directives. (*Appellant Brief* at 4-5). Specifically, Mr. Zhang accuses the tenant of purposely breaking

windows and damaging doors, drywall and electrical outlets. (*Id.*). Mr. Zhang contends that before the tenant moved in, the Property was “clean...and welcoming,” and that after the tenant left, the Property was in “total despair.” (*Appellant Brief* at 10; Exs. A8, A9).

Furthermore, there was miscommunication among Mr. Zhang, Three Rivers, and the ACHD concerning when the tenant would move out and when work could be completed to repair the lead hazards. Mr. Zhang points out that Three Rivers’ general manager Diane Wheeler (“Ms. Wheeler”) told Mr. Robinson that the repairs “will be a lot easier to do after [the tenant] is out,” and that Mr. Robinson “was good with that.” (*Appellant Brief* at 6; Ex. A5). Mr. Zhang argues that this breakdown in communication further delayed the repairs. (*Appellant Brief* at 6-7).

The ACHD responds that there was no connection between the tenant’s actions and the presence of lead hazards at the Property. (*ACHD Brief* at 7). At the hearing, Mr. Robinson testified that the tenant’s alleged behavior did not cause the lead hazards and would not have prevented their repair. (H.T. at 46). Rather, Mr. Robinson puts the onus for the delayed repair on Appellant’s contractors who failed to properly prepare and paint the lead-contaminated surfaces in the house. (H.T. at 59). Also, Mr. Robinson flatly contradicts Ms. Wheeler’s assertion that he agreed that it would be best to wait until the tenant moved out to make the necessary repairs. (H.T. at 70). The record shows that Mr. Robinson was not even aware of any alleged property damage done by the tenant until Ms. Wheeler informed him in early 2018. (Ex. D9; H.T. at 74-75).

Although Appellant may be correct that the tenant did some damage to the Property, there is scant evidence that the tenant was to blame for the delays in removing the lead hazards from the Property. First, neither the tenant nor Ms. Wheeler were present at the hearing to testify as to any alleged interference. The only evidence of the tenant's actions was a second-hand account from Ms. Wheeler's emails and a third-hand account from Mr. Zhang's testimony. Second, this tribunal finds that it is the responsibility of the landlord, not the tenant, to abate lead hazards at the Property. Article VI § 649.A explicitly directs that the ACHD may issue an order "to the owner" to eliminate a lead hazard. While Mr. Zhang did not do anything intentional to delay the repairs, he is ultimately the party responsible for completing them.

B. Timeliness of Repairs

Regarding lead paint hazards, Article VI states, "When the Director determines that the presence of lead-based paint or lead-based paint hazard on any premises creates a health hazard to any child or any other person, the Director may issue an order to the owner to eliminate the hazards within a reasonable period prescribed by the Director." Art. VI, § 649.A.

Mr. Zhang argues that between July and October of 2017, he performed a substantial amount of work at the Property to eliminate the lead paint violations. (*Appellant Brief* at 2-3). Mr. Zhang indicates several action steps he took to address the problem. These include: approving the lead abatement proposal from the contractor, staying in close communication with Three Rivers, and paying for the

lead-based paint abatement project. (*Id.*; Exs. A1, A2, A4). He sums up the repairs he made thusly: “For me, anything required by the health Department, I would just pay and fix, no questions asked.” (*Appellant Brief* at 9).

Mr. Zhang also points to Mr. Robinson’s observations that by September 19, 2017, “65% of the items were corrected,” and that on November 6, 2017, only “some cleaning and touch up to window sills” needed to be completed. (*Appellant Brief* at 3; Exs. A5, D4). Effectively, Mr. Zhang contends that he made a good faith effort to make the necessary repairs in a timely manner.

The ACHD retorts that inaction by Mr. Zhang and his agents delayed the abatement of lead hazards by months. (*ACHD Brief* at 3-5). On July 25, 2017, the date of the first inspection, the ACHD informed Appellant in writing that lead-based paint hazards were present at the Property, and that he had 30 days to correct these hazards. (Ex. D2). The ACHD also provided Appellant with a copy of the lead-based paint risk assessment report, a comprehensive document outlining, among other information, the hazards at the property, treatment options, and prohibited methods. (Ex. D1; H.T. at 80-81).

When the second inspection occurred on August 22, 2017, Mr. Robinson found that repair work for the lead paint violations had not begun and that Appellant’s contractor from Roth & Hogan was unprepared to address the lead hazards because he had not received the full lead-based paint risk assessment report from Appellant. (Ex. A1; H.T. at 41-43, 67).

When Mr. Robinson revisited the Property on September 13, 2017, at Ms. Wheeler's invitation, he found that although 65% of the lead hazards had been corrected, two failed clearance sampling reports indicated that high levels of lead remained at the Property even after the penalty was assessed. (*ACHD Brief* at 5; Exs. D5, D7, D8). Furthermore, Mr. Robinson testified that by that point, at least 90% of the work should have been completed. (H.T. at 63). The evidence indicates that lead hazards remained on the Property as late as mid-January of 2018, and that the Property did not pass inspection until February 2018. (Exs. D7, D12; H.T. at 50, 53).

This tribunal finds that the ACHD has the better argument here. Although Mr. Zhang correctly notes that he took all of the above-mentioned steps to eliminate the lead hazards, the lead hazards remained at the Property for nearly half a year after the first inspection. The ACHD notified Mr. Zhang, Three Rivers, and Roth & Hogan about the lead hazards and outlined all the steps that needed to be done within 30 days. (Ex. D2). And the process ended up taking six months instead. The bottom line is that while Mr. Zhang took steps to fix the lead hazards, he did not do so in a timely manner.

C. Amount of the Civil Penalty

The Department justifies the \$2,500 civil penalty it issued on the grounds that it could have assessed a much larger penalty. Under the ACHD's civil penalty rules, the Department may assess a penalty of up to \$10,000 for each violation and an additional penalty up to \$2,500 for each day of continued or repeat violation.


(ACHD Art. XVI §§ 1604, 1605). Factors that the ACHD considers when assessing a penalty include: economic benefit gained by failing to comply with regulations, willfulness of the violation, the actual and potential harm to the public, frequency and magnitude of the violation, and any other relevant factors. (*Id.*). Following this rubric, the Department argues that it could have assessed a penalty against Appellant totaling over \$500,000. (*ACHD Brief* at 6-7). Judged against this specter, the Department classifies the \$2,500 civil penalty it issued as a “negligible fine[.]” (*Id.*).

Mr. Zhang counters that the civil penalty is unjust here because he derived no economic benefit from failing to comply with the ACHD’s order, he did not willfully violate the order, and this is his first violation. (*Appellant Brief* at 7-9). Mr. Zhang points to the communications between him and Ms. Wheeler stressing the urgency of resolving the lead violations before the Department’s deadline. (*Id.* at 8). He also emphasizes the financial resources he poured into fixing up the Property between July 2017 and February of 2018, including the replacement of windows, windowsills, paint, and walls. (*Id.* at 8-9).

This tribunal finds that due to Mr. Zhang’s lack of willfulness in violating Article VI, lack of economic benefit from the violation, and the fact that this is his first time being cited for violating ACHD Rules and Regulations, the civil penalty is lowered from \$2,500 to \$2,000.

V. CONCLUSION

Upon review of the evidence and testimony presented in this case, the relevant law, and the arguments presented by the parties in their briefs, this tribunal finds that the ACHD has met its burden of proving by a preponderance of the evidence that Mr. Zhang violated ACHD Rules and Regulations Article VI § 649.A relating to lead hazards. However, based on Mr. Zhang's lack of willfulness in violating Article VI, lack of economic benefit from the violation and the fact that this is his first time being cited for violating ACHD Rules and Regulations, the civil penalty is hereby reduced from \$2,500 to \$2,000. This administrative decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.


Max Slater
Administrative Hearing Officer
Allegheny County Health Department

Dated: June 12, 2019