Brief of Position

In Re: 2650 S 18th Street, Pittsburgh, PA 1520,
Docket No. ACHD-17-032

Appellant

Zhitong Zhang
1 Campden Rd
Scarsdale, NY 10583

March 18, 2019

Dear Hearing Officer Slater:

On October 30, 2017, Allegheny County Health Department assessed a civil penalty of $2,500 against me as the owner of 2650 S 18th Street, Pittsburgh, PA 15210, citing "RESULT OF YOUR FAILURE TO TAKE ACTION". The violation was claimed to be based on Section 649 A of Article VI Allegheny County Health Department Rules and Regulations.

I hereby argue that this decision is unjust, violating the cited Rules and Regulations which allows the owner "A REASONABLE PERIOD" to address the issue. Furthermore, the amount of the civil penalty exceeds the penalties prescribed in Section 1605 C of Article XVI of the aforementioned Rules and Regulations, which states that the amount should be determined by considering "the economic benefit gained by such person by failing to comply with the Article", which I had none, and "the willfulness of the violation", which I had none.

I. **There had been a substantial amount of work done at the property to eliminate the Lead Based Paint violation since the initial Inspection before October 30th letter. Just a few minor items remaining.**

Since end of July 2017, I had been in close communication with the management

company concerning the violation, as documented in Ex A1. On August 23, 2017, I received the Lead Abatement Proposal (Ex A2) from the contractor, for the amount of $9,425, and I approved it right away, as documented in Ex A3. During his testimony at the hearing, Inspector Lawrence Robinson admitted that he offered substantial help to the contractor Roth & Hogan to draft this proposal, which means that the proposal should be sufficient and reasonable for me to approve and proceed with.

As documented in Ex A4, I paid $5,000 as the deposit for the Lead Based Paint Abatement project on August 24th, the following day after approving the project. Over the following months, I paid the project in full.

The project started in late August, and by September 19, 2017, "65% of the items were corrected" as observed by Inspector Lawrence Robinson in his email to the Property Manager Diane Wheeler, documented in Ex D4. On November 6th, 2017, as documented in Ex A5, only "some cleaning and touch up to window sills" needed for Inspector Lawrence Robinson to pass the property, as he told the Property Manager Diane Wheeler. Therefore, almost all the items were addressed, only a few very minor items left, based on Inspector Lawrence Robinson's previous inspection, which occurred before October 30th, 2017, the date on which the civil penalty was assessed. As a matter of fact, as documented in Ex A5, the property manager and the contractor thought the property already passed the inspection on November 4th.

"He (Inspector Lawrence Robinson) re inspected and made us go back and replace 1 door. Should have been (the) last item." Based on these facts, on October 30, 2017, the violation had become immaterial. Assessing the civil penalty is unjust, unreasonable and unnecessary.

II. **The tenant and her children had not cooperated nor maintained the property in a clean and sanitary condition and thus made passing the inspection unreasonably difficult.**

As stated in the letter dated Feb 23, 2018 in Ex D12, "regular maintenance of any remaining leaded components is required to assure safe housing". The letter further stated that all lead-based concerns were either fully abated or treated. The department appreciated "efforts in reducing the lead hazards at this property and insuring a safer environment for the children living there".

During his testimony, Administrator Brian Kelly stated that at the first inspection, the tenant was educated concerning the importance of regular maintenance and cleaning, to ensure a safe environment for the children's safety and health.

However, based on Ex D6, on October 19th, 2017, 11 days before the civil penalty was imposed on me, Inspector Lawrence Robinson observed that, "the unit is not cleaned, wells not cleaned, the tenant has no trash can, the tenant never cuts her

rear yard, the tenant has not cleaned—she wants to just move." This naturally had become a problem for passing the inspection.

Furthermore, in addition to passively not cooperating with the effort to abate the Lead Based Paint issue and to bring the property into compliance, the tenant had been actively sabotaging the effort. The situation was further laid bare in Ex A6b, the email from Diane Wheeler concerning the inspection and the tenant. Since May 2017, we had to repair a lot of things that she purposely broke, including windows, doors, drywalls, electrical outlets, which created a lot of issues in addition to getting the lead abatement done. Many a time, I was informed, once we cleaned the window sills and trims, someone would purposely sabotage the work and either damage the sills or trims, or just put dust on it. We replaced the entire window sill which was damaged by the tenant. We replaced a few windows too, which were also damaged by the tenant. I asked the Property Manager to document the damages and sabotaging effort. This had been an "uphill battle" to get all the violation resolved. Not because of lack of trying or effort from our end, but from the tenant refusing to keep the property in a sanitary condition or cooperating in any fashion.

With the tenant passively not cooperating, actively sabotaging the effort, it had been unusually difficult to finish everything for the inspection, especially considering that one small thing would make the property fail for the inspection. What happened was just that, the property failed inspection for a few very minor

items prior to the October 30th letter.

III. **The tenant notified both the management company and the Inspector from the health Department her intention of moving out early October. All parties agreed that it should have been much easier to address the few remaining Inspection items after her moving out.**

The tenant told us that she was looking to move out early October. She was actively looking for a four bedroom apartment given that she had another kid. She stopped paying rent since October, 2017. In Ex D6, Inspector Lawrence Robinson noted that the tenant "wants to just move" on October 19th, 2017. In the conversation documented in Ex A5, the one Property Manager Diane Wheeler told Inspector Lawrence Robinson that "tenant was moving, it will be a lot easier to do after she is out. Hard to keep clean with 5 kids." She further noted that "he (Inspector Lawrence Robinson) was good with that." On November 2nd email on EX A1 page 19th, Diane Wheeler noted that "the tenant let us know she will be sending written notice to Vacate. This is not because of recent HD issues, she had a baby and is getting a 4 bedroom Section 8 voucher. I am not 100% sure of date, will have to check if Notice has been received in Office yet." Given the fluid situation, it would only be reasonable to allow enough time for the tenant to move out, and the property to be kept clean to pass inspection.

IV. Communication Breakdown in Late October contributed to the Confusion

In Ex A5, Property Manager Diane Wheeler noted that "The contractor left multiple messages for HD Inspector. He is questioning a lot of the findings but hasn't been able to speak with anyone. He is going to try to get through to a supervisor. I'll try by email today as well."

On November 3nd, 2017, when I first get the letter imposing the civil penalty, my first reaction was "I thought we had fully resolved the lead situation;", and that was Diane Wheeler's impression. The contractor "to his understanding this was passed". Because Inspector Lawrence Robinson "re inspected once and then made us go back and replace 1 door. Should have been last item."

As it is clear, before the October 30th, 2017, there was a communication breakdown, and a misunderstanding of whether the property had passed the inspection occurred on October 19th, 2017.

V. I had no economic benefit gained by failing to comply with the order, nor any willfulness to violate. This is also a first time violation.

As documented in Ex A1, Ex A3, and Ex A5, within all the communications that I

had with the Property Manager, which was frequent, often nervous and imploring, I made it very clear that I wanted to bring the property into compliance as soon as possible. In Ex A1 Page 3 on August 2nd I told Property Manager Diane Wheeler "Do want to make sure that the project get done before the deadline comes up." Ex A1 page 6 on August 9th "Given that we need to correct this within a month for 2650 S 18th, I'm just wondering if there is any update. Don't want the situation to worsen by any means." In Ex A5 text exchanges with Diane Wheeler on November 3rd and November 4th 2017, I noted that "I thought we have fully resolved the lead paint situation…Let's make sure that we have a resolution/solution by (deadline for appeal) please." On November 27th, 2017, "Just want to follow up and see if everything has been squared away with the lead situation". "Do you have time for a quick phone call? I'm just getting more and more nervous with the lead paint situation still unresolved. Would like to hear from you what our plans are here." It is abundantly clear that I wanted the Lead Based Paint situation abated as soon as possible.

In addition to all these communications, plenty of resources were put into the project to finish it as soon as possible. As stated in Section I, once the proposal was made on August 23nd, I approved it on the same day, (Ex A3) and paid for the deposit $5,000 the following day (Ex A4, page 2). The rest $4,425 was paid in the following months from the account that I maintained with the property manager. Pretty large amount of money was also spent on fixing other items mysteriously

popping up: June 15, 2017, $4,850 for sewer line repairs, June 22nd, 2017, $2,750 for shower repairs, plumbing and floor bathrooms. January 8th, 2018, $1,395 for new bathtub and plumbing for leak to basement, $150 replacing window, $225 replace broken window sill and trim and paint, $537 for electrical, on February 16th, 2018, $3,200 for new hot water tank, plumbing, multiple wall and floor repairs, new bathroom vanity, balusters, smoke detectors. For me, anything required by Health Department, I would just pay and fix, no questions asked. Funny enough, in a proposal given me last week to bring this unit back to rentable condition, seems like I need to pay for all these items once again.

It is also abundantly clear that I had no economic incentive to avoid complying with ACHD's order, as matter of fact, all the cost to comply was already paid for and allocated for. All I wanted and that was communicated with the property manager, was to get it done before the deadline. In addition, this is the first violation that I had with the ACHD, and hopefully the last, I pray. I am asking myself what I am being punished for.

V. Substantial damage was done by the tenant to the property before she and her children moved out. This civil penalty is unusually cruel and a mockery to me who had always tried to do the right thing.

One thing I want to make very clear is that when we first rented this property to

this tenant, it was a lovely single family house, clean, and welcoming, as documented in Ex A8a, A8b, A8c, A8d, and A8e, the pictures taken before the tenant took possession of the property. The property had been regularly inspected by Section 8 Inspectors to insure safe and healthy living condition for the tenant. As documented in Ex A4 General Ledger for 2650 S 18th, on February 17th, 2017, before the Lead Based Paint issue occurred, I paid in total $750 to address the minor issues raised by the Section 8 Inspection and the property successfully passed.

When the tenant left eventually in June 2018, not paying rent since October 2017, the property was left in total despair. Pictures were shown in Ex A9, the windows and doors were left open, furniture left in the house, and in the front yard and back yard to rot. Since then, the property has been left vacant. I already spent over $3,000 to move out the junk, and clean up the mess. Just last week, I was quoted by Wolfe's Painting & Handyman Servicers for $33,230 to repaint, retile, and bring the property back to rentable condition again. Just put things into perspective, I bought this property in 2010 for ~$74,000, and still have around $40,000 mortgage on it. The whole process had been a nightmare for me, and for almost anybody else, they would probably just default on the mortgage and move on from the property.

In conclusion, Allegheny County Health Department did not allow reasonable period for me to comply the order, because the tenant not doing her basic cleaning

and maintenance, substantial amount of damage done by her to the property during the period, her intent of moving out, and breakdown of the communication. Furthermore, the nature or the amount of the civil penalty is not consistent with the Rules and Regulations because there was no economic incentive for me to delay the compliance, nor willfulness, and substantial amount of work had been done before the October 30th civil penalty letter.

Hereby I ask Your Honor to consider the effort that I put into this, the financial stress it already created, and most importantly, mercy for someone who has suffered excruciatingly psychologically, for the reason of trying to provide a decent housing for a Section 8 tenant, which ended up in a financial disaster. Again, I hope that the nightmare experience with the Section 8 would end here with me, and never repeated again.

Most Sincerely Yours,

Zhitong Zhang