DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE H[1]EARINGS
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DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS Petitioner, v. LAWRENCE MEALY Respondent	Case Nos:CR-I-07- Q103648 CR-I-07- Q103649 CR-I-07- R102942 **Consolidated**

FINAL ORDER

I. Introduction

In each of these consolidated cases, the Government has charged Respondent Lawrence Mealy with violations of housing code regulations at a single family rental property he owns at 3356 Brothers Place, S.E. (the "Property"). In Case No. CR-I-07-Q103648, the Government alleges a violation of 14 DCMR 705.1 for a broken window and seeks a fine of $100. In Case No. CR-I-07-Q103649, the Government alleges a violation of 14 DCMR 600.2 for a defective electrical outlet and seeks a fine of $500. Both of these violations were alleged to have occurred on November 28, 2006. Respondent entered untimely pleas of Deny in both of these cases on May 10, 2007. [2]

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[2] Both Notices of Infraction were served on January 30, 2007. The answers were late since answers are required to be filed within 20 days after service (15 days plus 5 additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). The Civil Infractions Act requires a respondent to demonstrate "good cause" for failing to answer a Notice of Infraction within the time allowed by the statute. D.C. Code §§ 2-1802.02(f) and 2-1802.05. If a respondent cannot make such a showing, respondent is subject to a penalty equal to the amount of the fine. D.C. Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).

In the third case, Case No CR-I-07-R102942, the Government alleges that Respondent committed thirteen additional violations of housing code regulations at the Property on March 5, 2007, and seeks fines of $8,300 for those violations. The violations charged primarily involved conditions such as loose and peeling paint and defective window hardware. The Notice of Infraction in that case was served on July 11, 2007. Respondent filed a late answer with a plea of Admit with Explanation to that Notice of Infraction on August 27, 2007.

Although cases in which pleas of Admit with Explanation are ordinarily decided solely on the papers, I determined from a review of the papers filed by Respondent in CR-I-07-R102942 that written submissions alone could not adequately explain the circumstances of the violations. OAH Rule 2813.1 (b)(2) 1 DCMR 2813. 1(b)(2). As the case involved the same Respondent for alleged violations at the same rental property occupied by the same tenant, and thus common issues of law or fact, I consolidated it with the two cases in which Respondent had entered pleas of Deny. OAH Rule 2819.1. 1 DCMR 2819.1.1.

In a Case Management Order served on November 7, 2007, a hearing was originally scheduled for November 29, 2007. At the request of counsel for Respondent, the case was continued and rescheduled for January 16, 2008. At the hearing convened on that date, T. Gail Maddox-Levine, Esq. and Lori Parris, Esq. appeared on behalf of the Government. Respondent was represented by Theresa L. Lewis, Esq. Gladys Mealy, wife of Respondent and co-owner of the Property, testified on behalf of Respondent.

At the opening of the hearing, after the nature of the available pleas was explained, Respondent changed his plea in all cases to Admit with Explanation. As Respondent admitted the violations, the sole issue to be decided in these cases is whether there are circumstances that warrant reduction or suspension of the fine.

II Findings of Fact

Respondent has rented the Property to the same tenant for approximately six years**.** Respondent experienced no difficulties in his relationship with the tenant until about mid -2006.

The tenant failed to pay the rent in August, September and October, 2006. On November 1, 2006, Inspector Virgil Williams inspected the Property and issued three Notices of Violation for housing code violations. In one of the Notices, he alleged a violation for a window with broken glass, with abatement required in three days. Petitioner's Exhibit "PX "101. In the second Notice, he alleged two violations involving electrical defects, with abatement required in 7 days. PX 130. In the third Notice, he alleged 26 violations involving various housing code regulations. Abatement of those violations was required in 15 days. PX 111.

The Inspector returned to the Property on November 28, 2007. He found that the broken window remained uncorrected. He also found that one of the two electrical violations remained uncorrected. Based on his observations that date, he issued the Notice of Infraction for the broken glass for which the Government seeks a fine of $100. He also issued a Notice of Infraction for a defective electrical outlet for which the Government seeks a fine of $500.

The Inspector returned to the Property on March 5, 2007. He determined that 13 of the 26 items in the Notice of Violation with a 15-day abatement period remained uncorrected. Based on this inspection, he issued the Notice of Infraction seeking $8,300 in fines for the thirteen violations.

Respondent was served with the three Notices of Violation on November 17, 2007. PX 101,130, and 111. Immediately after receiving the Notices of Violation, Respondent made

efforts to gain access to the Property to make repairs. The tenant accused Respondent of stealing things and reading her mail and prohibited Respondent from entering the Property. Respondent's Exhibit "RX" 203. The tenant's interactions with Respondent changed from harmonious to hostile in mid-2006, after the tenant underwent major surgery.

Because Respondent, who is a senior citizen, was no longer able to deal with the tenant, he hired a property management company to manage the Property soon after the Notices of Violation were issued. Respondent's property manager also experienced repeated difficulties and interference in efforts to make repairs. The tenant accused workers sent by the property management company of stealing her clothes and food. On several occasions, the tenant screamed at workers sent to make repairs and followed them around. The interference was so disruptive that on some occasions they left. RX 203

In addition, the tenant changed the locks on the Property, preventing access when she was not there. As she was frequently away for the day for medical treatment and sometimes out of town, this further limited the time that Respondent's property manager had access to the Property to make repairs.

To address the situation, Respondent went to Superior Court to gain access to the Property. On June 19, 2007, Respondent and the tenant entered an agreement that provided for access to Property on several specified dates in June and July of 2007. RX 202. The tenant provided a copy of the key only after the settlement.

On June 27, 2007, Respondent entered into a contract with a contractor named Garcia Shields for $1,843 to correct the violations in the Notice of Violation that remained uncorrected. The work was to be performed on the days specified in the Superior Court praecipe. RX 204.

Despite the settlement, the tenant refused access to the Property on at least one of the dates specified in the settlement. RX 203

Before entering into the contract with Mr. Shields, Respondent expended approximately $3,000 for repairs, as reflected in six invoices from the management company dated from January through June, 2007. RX 205-211 Respondent expended additional funds for appearances in landlord tenant court.

In a letter dated March 2, 2007, the Department of Consumer and Regulatory Affairs (DCRA) informed Respondent's property manager that it was closing the Notices of Violation cases that required abatement in three days or seven days based on the owner's statement that the violations were corrected. RX 211. Respondent was served with Notices of Infraction in each of these cases on January 30, 2007, but did not file answers in either case until May 10, 2007 [3]

Respondent did not respond to the Notice of Infraction served on July 11, 2007 until August 27, 2007. Respondent was out of town on vacation for most of the month of August and did not receive the Notice of Infraction until he returned home.[4] He filed an answer to Notice of Infraction immediately upon returning.

All of the violations alleged in all three Notices of Infraction have been corrected. The contract with Mr. Shields required that the DCRA Inspector approve the repairs. RX 204.

[3] Mrs. Mealy testified that they did not respond to this Notice of Infraction within the required twenty days because based on the letter from DCRA, she believed the cases had been closed.

[4] Although the date of service on the Notice of Infraction was July 11, 2007, Respondent stated that the Notice of Infraction was in fact postmarked July 25, 2007. In light of the fact that Respondent filed an answer in person immediately upon his return, I have credited Mrs. Mealy's testimony that the Notice of Infraction was not received until they returned from vacation.

III Conclusions of Law

Respondent's plea of Admit with Explanation establishes each of the violations charged in the Notices of Infraction. The Government is seeking fines totaling $8,900 for these violations. However, I believe that in the unique circumstances of this case, the fines should be completely suspended.

As detailed in my findings of fact, Respondent made repeated efforts to gain access to the property to make repairs, and encountered repeated interference from the tenant. Respondent finally had to go to court to gain access to complete the repairs. But for the obstacles to making repairs posed by the tenant, it is likely that the violations alleged in the Notices of Violation would have been remedied in the abatement periods specified.

Regulations on notices of housing code violations require that a respondent receive a notice, which allows "a reasonable time for the performance of any act required by the notice." 14 DCMR 105.2(c). [5] Lack of prior notice and a reasonable opportunity to correct has been found to prohibit the Government from seeking fines in Notices of Infraction for housing code violations in numerous decisions issued by this administrative court. *See,* for example, *DCRA v. Abdullahi Barrow* OAH No. CR-I-06-R102358 (Final Order 2006); *DCRA v. Ricky Bryant* OAH No. CR-I-05-Q100031 (Final Order 2005). In light of the obstacles posed by the tenant, Respondent was not afforded the reasonable time to correct before the Government sought fines for the violations.

[5] The requirement to provide prior notice and a reasonable opportunity to correct is applicable only to housing code violations. in Subtitle A of Title 14, which includes Chapters 1-13 of Title 14. 14 DCMR 100.1.

An additional reason why no fine is warranted is that through diligence and perseverance, and the expenditure of nearly $5,000 for repairs,[6] Respondent has now fully repaired all items cited in the three Notices of Violation.

We turn now to the issue of the statutory penalty for failing to file answers within the required period. The Civil Infractions Act requires a respondent to demonstrate "good cause" for failing to answer a Notice of Infraction within 20 days of the date of service by mail. If the respondent cannot make such a showing, a respondent is subject to a penalty equal to the amount of the proposed fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).

Assessment of a statutory penalty under the Civil Infractions Act is not dependent on whether a fine is imposed for the violations charged. Rather, it depends on whether a respondent, without good cause, has failed to timely answer the charge. D.C. Official Code §§ 2-1802.02(f). *Accord DOH v. Williams Pest Control Co.*, OAH No. I-00-20085 at 5 (Final Order, June 7, 2001).[7]

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[6] This amount includes the approximately $3,000 charged for repairs by the property management company and the $1,800 paid to the contractor, Mr. Shields.

[7] As this administrative court has previously observed:

> In prescribing the penalty, the statute does not distinguish between charges that the Government has proved and those for which there has been a failure of proof. The statutory penalty for failure to file does not depend upon whether the Government has established the underlying violations. Indeed, a contrary rule would subvert the purpose of the penalty provisions of the Civil Infractions Act, which is to promote an efficient adjudication system by encouraging prompt filing of responses to Notices of Infraction. Respondents who believe that they have a valid defense to a charge would have no incentive to file a prompt response if their ultimate vindication would eliminate the late filing penalty.

DOH v. Washington General Contractors, OAH No. I-00-10387 at 11 (Final Order, July 11, 2001).

With respect to case No. Case No CR-I-07- R102942, in which the Government sought $8,300 in fines, the Respondent did not respond to the Notice of Infraction served on July 11, 2007 until August 27, 2007. However, based on Mrs. Mealy's testimony, I have found that Respondent was out of town for an extended period when that Notice of Infraction was received and filed an answer promptly after returning. In light of this, I find that good cause for the late filing is established and will assess no penalty for the late filing of that answer.

With respect to the remaining two cases in which the Government has sought fines of $100 and $500, Respondent was served with Notices of Infraction in each of these cases on January 30, 2007, but did not file answers in either case until May 10, 2007. Mrs. Mealy testified that they did not respond to this Notice of Infraction in these cases within the required twenty days because of the letter from DCRA dated March 2, 2007 to Respondent's property manager stated that DCRA was closing the cases.

In this instance, Respondent has not established good cause for the late filing of the answer. The Notice of Infraction contains a clear warning of the consequence of failing to file a timely answer. It states:

> **You MUST SIGN and RETURN this form WITHIN 15 DAYS of the date of service. You must also indicate below each charged infraction whether you ADMIT, ADMIT WITH EXPLANATION or DENY.**

In addition, the Notice of Infraction contains the following warning :

> **WARNING: Failure to answer … each infraction on this Notice within 15 days of the date of service will result in assessment of a penalty equal to and in addition to the specified amount of the fine.**

Even if one accepts the explanation that Respondent believed that answers to the Notices of Infraction were not required because of the letter from DCRA dated March 2, 2007, the deadline for filing a timely answer expired on February 20, 2007, before the letter sent by

DCRA. Consequently, in this instance, Respondent has not established good cause for the late filing of the answers and a statutory penalty of $600, equal to the fines sought by the Government in the Notices of Infraction, will be imposed. [8]

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is, hereby, this 29th day of January, 2008:

ORDERED, that Respondents shall pay a statutory penalty in the total amount of **SIX HUNDRED DOLLARS ($600)** in accordance with the attached instructions within 20 calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting 20 days from the date of mailing of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

[8] A fine of $100 for a violation of 14 DCMR 705.1 for the broken window is authorized by 16 DCMR 3305.4 (p); 16 DCMR 3201.1(d)(1). A fine of $500 for a violation of 14 DCMR 600.2 for the defective electrical outlet is authorized by 16 DCMR 3305.3(z); 16 DCMR 3201.1(c)(1).

ORDERED, that appeal rights of any person aggrieved by this Order are set forth below.

January 29, 2008

_____/s/_____
Mary Masulla
Administrative Law Judge

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