

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

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DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WORKS
Petitioner

v.

CAS 4000 KANSAS. LLC
Respondent

Case Nos.: 2010-DPW-07473¹
2010-DPW-08663²
2010-DPW-K400703
2010-DPW-K401820
2010-DPW-K402443
2010-DPW-K402448
2010-DPW-K403956
2010-DPW-K404689
2011-DPW-K405169
2011-DPW-K406792
2011-DPW-K417296
2011-DPW-K417297

(Consolidated)

FINAL ORDER

I. Introduction

These twelve cases have been consolidated. In eleven of them, the Department of Public Works (“DPW”) has charged that Respondent CAS 4000 Kansas LLC violated 21 DCMR 700.3, which requires solid waste to be stored or containerized properly. In the other case (K417297), DPW charged a violation of 21 DCMR 705.2, which requires commercial buildings to have their trash picked up at least twice weekly. DPW has identified the location of the violations as 4000

¹ The Notice of Violation Number for this case is K184733. The Notice of Violation number, not the docket number, will be used to refer to this case throughout this Order.

² The Notice of Violation Number for this case is K187319. The Notice of Violation number, not the docket number, will be used to refer to this case throughout this Order. For all other cases, the Notice of Violation number is included within the docket number.

Kansas Avenue, NW. The dates of each alleged violation, the fines sought by DPW, and the timeliness of Respondent's answers are set forth below.

Notice of Violation Number	Violation Date	Fine Sought	Answer Filed within 19 Days of Service?
K184733	May 14, 2010	\$300	Yes
K187319	June 9, 2010	\$1,000	Yes
K400703	September 20, 2010	\$150	No
K401820	October 22, 2010	\$300	Yes
K402443	November 4, 2010	\$600	Yes
K402448	November 9, 2010	\$1,000	Yes
K403956	November 29, 2010	\$150	Yes
K404689	December 8, 2010	\$300	Yes
K405169	January 3, 2011	\$1,000	Yes
K406792	January 13, 2011	\$2,000	No answer filed
K417296	July 11, 2011	\$1,000	No
K417297	July 11, 2011	\$150	No

Respondent has filed answers with pleas of Admit with Explanation to eleven of the Notices of Violation. As shown above, three of those answers were filed late – more than 19 days after the date of service. Orders have been issued permitting DPW to respond to Respondent's pleas, but DPW has not done so. Respondent has not filed an answer to Notice of Violation K406792 and is in default in that case.

II. Findings of Fact

A. The § 700.3 Violations³

Respondent owns a multi-unit apartment building at 4000 Kansas Avenue, NW. There is no direct evidence of the number of units in that building but, as explained below, the plea of Admit with Explanation is sufficient to conclude that there are at least four units there.

³ These findings do not apply to Notice of Violation K406792, which is discussed separately below.

The pleas of Admit with Explanation establish that, on each violation date listed above, solid waste was stored at the property in a manner that provided food for rodents. The photographs that DPW filed with the Notices of Violation corroborate that finding. They show that large quantities of trash, including food items, were on the ground next to the dumpsters at the property on each violation date. That trash was an easily accessible food source for rodents.

Respondent filed similar explanations with each of its pleas. Respondent states that the trash has been hauled away, or that it has instructed its tenants to dispose of their trash properly. Respondent also states that it has arranged for trash pick-ups three times per week. DPW has not responded to any of those assertions and I therefore credit them.

B. The § 705.2 Charge (Notice of Violation K417297)

Although Respondent pleaded Admit with Explanation to this charge, both its explanation for that Notice and its explanations for some of the § 700.3 charges state that Respondent has arranged with Bowie Trash Service for trash pickups three times per week. To support that claim, it has filed an invoice from Bowie for July 2011 (the month of the violation), but the invoice does not state how many times per week the pickups occur. Nevertheless, as noted above, DPW has not responded to any of Respondent's explanations, and in the absence of any contrary evidence, I credit Respondent's assertion. I find, therefore, that trash is picked up from Respondent's property at least three times per week.

C. Notice of Violation K406792

Based on the certificate of service, I find that DPW mailed this Notice of Violation to Respondent on January 21, 2011. Respondent received that mailing, based on the certified mail receipt filed by DPW. Respondent has not filed an answer.

D. Prior Violations

In six of these cases (Notice of Violation Nos. K184733, K401820, K402443, K402448, K404689 and K406792) DPW charged that Respondent committed the violations within 60 days of other violations and sought an increased fine on that basis. It is therefore necessary to determine whether those violations occurred within 60 days of any other violations.⁴

For Notice of Violation K184733, Respondent's plea of Admit with Explanation established that the violation occurred on May 14, 2010. In that case, DPW alleged that Respondent had committed one earlier violation within 60 days, and referred to Notice of Violation K180866. Respondent pleaded Admit with Explanation to that Notice, which charged that the violation occurred on April 5, 2010, within 60 days of May 14, 2010.⁵

For Notice of Violation K401820, Respondent's plea of Admit with Explanation has established that the violation occurred on October 22, 2010. In that case, DPW alleged that Respondent had committed one earlier violation within 60 days, and referred to Notice of

⁴ On two other Notices of Violation, (Nos. K187319 and K405169) DPW alleged that the violations occurred within 60 days of at least one other violation. DPW, however, sought only the fine for a non-repeat violation, so it is not necessary to decide whether any of those three violations is eligible for a higher repeat offender fine.

⁵ A Final Order was issued in that case on October 14, 2010, imposing a fine of \$1450. That fine remains unpaid.

Violation K400703. Respondent's plea of Admit with Explanation to that Notice established that the violation occurred on September 20, 2010, less than 60 days earlier.

For Notice of Violation K402443, Respondent's plea of Admit with Explanation established that the violation occurred on November 4, 2010. In that case, DPW alleged that Respondent had committed two earlier violations with 60 days, and referred to Notices of Violation K400703 and K401820. As noted above, the violations in those cases occurred on September 20 and October 22, 2010, respectively, within the previous 60 days.

For Notice of Violation K402448, Respondent's plea of Admit with Explanation established that the violation occurred on November 9, 2010. In that case, DPW alleged that Respondent had committed three earlier violations with 60 days, and referred to Notices of Violation K400703, K401820 and K402443. As noted above, the violations in those cases occurred on September 20, October 22 and November 4, respectively, all within the previous 60 days.

For Notice of Violation K404689, Respondent's plea of Admit with Explanation established that the violation occurred on December 8, 2010. DPW sought an increased fine based upon its claim that there had been one previous violation within the preceding 60 days. As noted above, the violation charged in Notice of Violation K402448 occurred on November 9, 2010, within 60 days.⁶

⁶ The violations charged in Notices of Violation K404689 and K403956 both occurred within 60 days of at least three preceding violations. DPW, however, asked for only the fine for one preceding violation in Notice K404689 and did not ask for any enhanced fine in Notice K403956.

In Notice of Violation K406792, DPW charged that the violation occurred on January 13, 2011. Respondent's plea of Admit with Explanation to Notice of Violation K405169 established that a violation occurred on January 3, 2011, within the previous 60 days. In fact, there were four previous violations, but DPW only asked for the fine authorized for a single preceding violation.

III. Conclusions of Law

A. The § 700.3 Violations

DPW charges that Respondent violated 21 DCMR 700.3, which says:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

Respondent's pleas of Admit with Explanation to each of the § 700.3 violations (except No. K406792, discussed below) establish that it violated § 700.3 on each of the dates alleged by DPW. In each case, DPW charged that the violations were commercial violations. Commercial violations are those committed by or at facilities that do not receive solid waste collection service from the District, including residential buildings with four or more dwelling units. 24 DCMR 1399.1; 21 DCMR 700.8(a). While there is no direct evidence of the number of dwelling units at Respondent's property, a plea of Admit or Admit with Explanation, like a guilty plea in a criminal case, admits all material facts alleged by DPW, including all material facts necessary to calculate the fine that DPW seeks. *See, e.g., Millet v. United States*, 977 A.2d 932, 937-38 (DC 2009). Absent any contrary evidence in the record, I will rely upon Respondent's plea to

establish that its building has at least four dwelling units and is subject to the fines for commercial properties.⁷

The fine for a § 700.3 violation at a commercial property depends upon whether DPW required the Respondent to abate the violation and whether there were previous violations within the preceding 60 days. The fine schedule at 24 DCMR 1380.2 establishes the applicable fine amounts. The table below shows the authorized fine for each § 700.3 violation, and the factors that determine the fines. If DPW asked for a fine less than the amount specified in the fine schedule, that lesser amount is the authorized fine, because DPW may not obtain a fine greater than the amount it asks for. OAH Rule 2804.12, 1 DCMR 2804.12. As shown below, the authorized fines for the ten § 700.3 violations to which Respondent has pleaded Admit with Explanation amount to \$5,800.

NOV #	Abatement Required?	# of Previous Violations within 60 Days	Fine Asked by DPW	Fine Schedule Amount	Authorized Fine
K184733	No	1	\$300	\$300	\$300
K187319	Yes	3	\$1,000	\$8,000	\$1,000
K400703	Yes	0	\$150	\$1,000	\$150
K401820	Yes	1	\$300	\$2,000	\$300
K402443	Yes	2	\$600	\$4,000	\$600
K402448	No	3	\$1,000	\$2,000	\$1,000
K403956	No	0	\$150	\$150	\$150
K404689	No	1	\$300	\$300	\$300
K405169	Yes	1	\$1,000	\$2,000	\$1,000
K417296	Yes	0	\$1,000	\$1,000	\$1,000
Totals			\$5,800	\$20,750	\$5,800

Respondent has asked for suspension or reduction of the fines, primarily because it has removed the offending trash. The large number of violations shows that Respondent has made

⁷ Respondent's use of a commercial trash hauler three times a week, instead of the District's trash collectors, also supports an inference that the property has at least four dwelling units.

little or no effort at preventing violations. The purpose of § 700.3 is to encourage property owners to take all reasonable steps to avoid the accumulation of trash on their property that can lead to a public health hazard, and the authorized fines provide an economic incentive for property owners to do so. Responding to repeated violations by doing little or nothing until a new Notice of Violation is issued is not conduct that warrants any reduction of the fines, especially because DPW has asked for thousands of dollars less than the fines authorized for most of these violations. Respondent's thrice-weekly trash pickups also do not mitigate the fines. It is obvious that pickups at that frequency are insufficient for removal of the solid waste generated at Respondent's building. Additional pickups or additional dumpsters are necessary. Therefore, I will not reduce any of the authorized fines for these ten violations. Respondent must pay fines of \$5,800.

The Litter Control Administration Act, D.C. Official Code §§ 8-804(f) and 8-807(c)(1), provides that a respondent who fails to answer a Notice of Violation within the prescribed deadline of 19 days after service by mail (14 days pursuant to D.C. Official Code § 8-804(f), plus 5 days when service is by mail, pursuant to OAH Rule 2811.5, 1 DCMR 2811.5) is liable for a penalty equal to the amount of the fine imposed. That penalty may be suspended, however, if there is good cause for the respondent's failure. D.C. Official Code §§ 8-808(b)(5). As shown above on page 2, Respondent's answers to two of the § 700.3 Notices (K400703 and K417296) were filed beyond the deadline. Because Respondent has not provided any explanation for the late answers, I must impose the statutory penalty in addition to the fines in each case. For Notice K400703, the penalty is \$150 and for Notice K417296, the penalty is \$1,000. The total penalty, therefore, is \$1,150.

B. The § 705.2 Charge (Notice of Violation K417297)

Notice of Violation K417297 charges that Respondent violated 21 DCMR 705.2, which says:

Solid wastes shall be collected as follows:

- (a) At least twice per week unless fewer collections are approved by the Mayor; and
- (b) Once per week for premises on Supercan routes.

Because the evidence establishes that trash is collected three times a week from the property, Respondent did not violate § 705.2. Therefore, I will dismiss the charge. OAH Rule 2804.11, 1 DCMR 2804.11. Although Respondent's answer to this Notice of Violation was late, I may not impose a penalty for the late answer if I do not impose a fine for the violation. *Washington v. District of Columbia Department of Public Works*, 954 A. 2d 945 (D.C. 2008).

C. Notice of Violation K406792

The 19-day deadline for answering this Notice of Violation has passed, with no answer filed. OAH Rule 2805.5 provides, in relevant part:

[I]n a Litter Control Administration Act case, if a Respondent fails to answer within the time allowed by law, an Administrative Law Judge shall determine whether:

- (a) The Government has submitted evidence of proper service; and
- (b) The Notice of Infraction or Notice of Violation meets all legal requirements on its face.

If so, the Administrative Law Judge shall find the Respondent in default and shall impose the legally authorized fine and penalty.

The requirements of this rule have been satisfied in this case. The certified mail receipt is sufficient evidence of service, and the Notice of Violation is proper on its face. DPW asked for

abatement of this violation, and charged that it was Respondent’s second violation within the preceding 60 days. A fine of \$2,000 is authorized for such a violation at a commercial property, 24 DCMR 1380.2. I will impose that fine pursuant to Rule 2805.5. As there is no basis in the record for concluding that Respondent had good cause for failing to file an answer, I also will impose a penalty equal to the fine, as required by D.C. Official Code §§ 8-804(f) and 8-807(c)(1). Respondent, therefore, must pay a penalty of \$2,000 in addition to the fine for this violation.

D. Summary of the Amounts Owed

Respondent must pay a total of \$10,950, as shown below:

Fines for ten § 700.3 Violations	\$5,800
Penalty for late answers to two Notices of Violation	\$1,150
Fine and penalty for Notice of Violation K406792	\$4,000
Total	\$10,950

V. Order

Based on the findings of fact and conclusions of law, it is, this _____ day of _____, 2012:

ORDERED, that Notice of Violation K417297 is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that Respondent is **LIABLE** for the violations charged in the remaining Notices of Violation; and it is further

ORDERED, that Respondent must pay fines and penalties in the total amount of **\$10,950** in accordance with the instructions below within 35 days of the mailing date of this Order (30 days plus 5 days service time pursuant to D.C. Official Code § 8-807(h)(1) and 1 DCMR 2812.5); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within 35 days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ %, starting 35 days from the mailing date of this Order, pursuant to D.C. Official Code § 8-807(h)(1) and 24 DCMR § 1312.7; and it is further

ORDERED, that failure to pay 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 § 8-807(d-1), and the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 8-807(f); and it is further

ORDERED, that any party may ask for reconsideration or relief from this Order as stated below; and it is further

ORDERED, that any party may appeal this Order as stated below.

John P. Dean
Administrative Law Judge