

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

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DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WORKS
Petitioner

v.

GEORGIA AVENUE LAUNDROMAT &
C.E.L. ENTERPRISES INC.
Respondents

Case No.: 2011-DPW-K410833
NOV No.: K410833

FINAL ORDER

I. INTRODUCTION

A. Parties: District of Columbia Department of Public Works (“DPW”) and Respondents Georgia Avenue Laundromat and C.E.L. Enterprises. Respondents were represented by Philip Cabrales, Vice President of C.E.L. Enterprises, at the hearing. Kayanda Jones (“Inspector”) represented DPW.

B. Relevant Law: 21 District of Columbia Municipal Regulations (“DCMR”) 2022.1 (failing to separate recyclables from solid waste).

C. Issue Presented: Did Respondents fail to separate recyclables from solid waste at 5926 Georgia Avenue, NW (the “Property”) on April 4, 2011?

D. Date and Time of Evidentiary Hearing: November 29, 2011, at 10:30 a.m.

E. Witnesses: Mr. Cabrales testified on behalf of Respondents. Inspector Jones testified for DPW.

F. Exhibits Received into Evidence: Exhibits 100 and 200.

G. Result: DPW has met its burden to establish the violation by a preponderance of the evidence. Because there are mitigating factors, I find Respondents liable but reduce the fine to \$100.

II. FINDINGS OF FACT

DPW issued Notice of Violation No. K410833 on April 8, 2011. The NOV alleged that Respondents violated 21 DCMR 2022.1 on April 4, 2011 by failing to separate recyclables. Respondents filed a timely plea of “Deny” on April 20, 2011. DPW seeks a fine of \$200.

On April 4, 2011, the Inspector went to the rear of the Property and inspected a large trash bin. It bore a label of “KMG” and a sign “trash only.” Exhibit 100. A self-service laundromat is located on the Property. The trash bin contained bags and loose trash which mixed recyclables and trash. *Id.* Included in the trash bin were laundry detergent bottles, paperboard, water bottles, and food and toiletry waste. *Id.*

Respondent C.E.L. Enterprises owns and operates the laundromat, which has been on the site for a number of years. Respondents have separate recycling bins and trash bins inside the laundromat for the use of the customers. Exhibit 200. Respondents have posted signs designating the bins as trash or recycling bins. Respondents take recyclables to the rear of the Property and KMG picks them up.

III. CONCLUSIONS OF LAW

DPW charged Respondent with violating 21 DCMR 2022.1 that provides:

Each owner and each occupant of a commercial property shall, at a minimum, separate for recycling paper, paperboard, cardboard, and clean and rinsed metal, glass and plastic containers. The materials that are separated for recycling shall be stored in bins, dumpsters, or other containers that are not used for the simultaneous storage of solid waste and recyclable materials. The owner may provide through a lease agreement for an occupant to be responsible for separating these materials for recycling in which case the occupant shall also be responsible for meeting the requirements of this subsection. Notwithstanding the existence of such a lease agreement, the owner is responsible for complying with this regulation except where the Director determines that there are circumstances that warrant holding the occupant liable for compliance. The Director may issue a notice of violation to the occupant or to the owner.

DPW has met its burden to prove by a preponderance of the evidence that Respondents mixed recyclables with solid waste. I find credible the Inspector's testimony that she found solid waste materials mixed with recyclable materials. *See* Exhibit 100. I also found credible the Inspector's testimony that she inspected the trash bin located on the Property.

Mr. Cabrales testified that the business doesn't produce any trash—just lint from the dryers and water from the washers. All other waste, such as laundry bottles and food waste, is brought there by customers. Mr. Cabrales provides separate recycling and trash bins and has signs designating them as such. Exhibit 200. I do not find persuasive his argument that the trash and recyclables are not Respondents' responsibility. The regulation provides that the owner and the occupant of a commercial property are responsible for separating recyclables from solid waste. 21 DCMR 2022.1. Just as the owner of an apartment building may not literally generate the trash and recyclables created by the tenants and still be liable for them, so too Respondents, who do not literally generate the trash and recyclables created by the laundromat clients, are

liable for separating them. But for the business of the laundromat, the recyclables and solid waste would not be there.

DPW has met its burden to establish the violation by a preponderance of the evidence. DPW sought a fine of \$200 which is specified in 21 DCMR 2061.3 for a first violation. I find that there are mitigating circumstances in this case that justify a reduction in the fine. Respondents have provided separate bins for solid waste and recyclables. Respondents have labeled the bins to encourage recycling. I reduce the fine to \$100.

IV. ORDER

It is, therefore, this 28th day of December, 2011:

ORDERED, that Respondents are **LIABLE** for the violation as charged in the Notice of Violation; and it is further

ORDERED, that Respondents shall pay a fine in the amount of **\$100** in accordance with the attached instructions 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 Respondents fail 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 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 Respondents' 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 Respondents pursuant to D.C. Official Code § 8-807(f); and it is further

ORDERED, that the reconsideration and appeal rights of any party aggrieved by this Order are stated below.

Ann C. Yahner
Principal Administrative Law Judge