

DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WORKS
Petitioner,

v.

GEORGE L. McCABE, JR.
Respondent

Case No.: 2011-DPW-K413763
NOV No.: K413763

FINAL ORDER

I. Introduction

In this case, the Government seeks to hold a property owner strictly liable for a violation of 21 DCMR 700.3 that has occurred in the public space adjacent to his property. For the following reasons, I conclude that Respondent is not liable for a violation of § 700.3 because the violation did not occur on his Property and he did not cause the violation. I will dismiss this charge.

On May 17, 2011, the Government served a Notice of Violation upon Respondent George L. McCabe, Jr., alleging that Respondent violated 21 DCMR 700.3 by failing to properly containerize solid wastes.¹ The Notice of Violation charged that the violation occurred on May 12, 2011, in front of 1655 Avon Place, N.W. (the “Property”), and sought a fine of \$75.

¹ 21 DCMR 700.3 provides:

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 filed a timely answer with a plea of Deny to the charge.

A hearing was held on February 15, 2012. Inspector Sonya Chance, the Government inspector who issued the Notice of Violation (the “Inspector”), appeared and testified on behalf of the Government. Respondent appeared and testified on his own behalf.

Based upon the testimony of the witnesses, my evaluation of their credibility, and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Respondent owns the Property, a residential establishment. Petitioner’s Exhibit (“PX”) 101. On May 12, 2011, the Inspector inspected the public sidewalk at the corner and to the front of the Property and found there a large pile of uncontainerized plastic bags, cardboard boxes, loose trash, and other debris. The solid waste provided food, harborage and breeding places for rodents and insects. PX 100.

None of the solid waste was on Respondent’s Property. Respondent did not place the solid waste onto the public sidewalk. Although the solid waste was located at Respondent’s point of collection for solid waste, this corner is also used as the point of collection for Respondent’s neighbors.

When Respondent received the Notice of Violation, he suspected which neighbor had placed the uncontainerized solid waste into the public space. Respondent confronted the neighbor, who agreed not to store uncontainerized solid waste in the public space in the future.

III. Conclusions of Law

Respondent is charged with a violation of 21 DCMR 700.3, which requires all solid wastes to be containerized in a manner that does not provide food, harborage or breeding places for insects or rodents or creates a nuisance or fire hazard. *See* 21 DCMR 700.3. The Government has failed to prove that Respondent committed the violation on May 12, 2011, because the uncontainerized solid waste found by the Inspector was not left on Respondent's Property, and the Government has failed to show that Respondent caused the solid waste to be placed in the public space.

Although the Government charged a violation of 21 DCMR 700.3, the Government argues that Respondent as a property owner is strictly liable for violations of § 700.3 that occur in the public space adjoining Respondent's property.

It is important to emphasize that the Government did not charge Respondent with a violation of § 702.2, which requires residential property owners to maintain abutting public space up to the curb line in a clean condition.²

The Government's position is that, since a property owner is held strictly liable for violations of § 700.3 that occur on his or her property, and since § 702.2 imposes a requirement for the (residential) property owner to maintain the adjoining public space in a clean condition, the doctrine of strict liability should apply to this situation as well.

² 21 DCMR 702.2 provides:

Each owner, tenant, or lessee (or the agent of that person) who has control of or occupies any building that contains three (3) or fewer dwelling units within the District shall maintain in clean condition the public space between the curb line (or the lateral lines of the roadway) and the property line of that building.

Respondent contends that it is unreasonable to impose a duty on him to police all solid waste dumped onto the public space next to his Property.

For the following reasons, I conclude that, when the Government charges a violation of 21 DCMR 700.3 in the adjoining public space, Respondent is not strictly liable for the violation, but rather the Government must show that Respondent caused the solid waste to be placed in the public space. If the Government seeks to hold Respondent strictly liable for nuisance conditions in the adjoining public space, the Government must charge a violation of the appropriate regulation. For a residential property owner, the applicable regulation is 21 DCMR 702.2.

The District of Columbia Court of Appeals has held that § 700.3 imposes strict liability on those who own or control a property, regardless of the source of, or reason for, the offending waste. *See Gary Investment Corp. v. District of Columbia Department of Health*, 896 A.2d 193, 197 (2006) (imposing strict liability on property owner for violation of § 700.3); *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 203 (D.C. 1995) (also imposing strict liability).

In *Bruno, supra*, a DPW inspector issued a Notice of Violation to a property owner after the inspector observed “an accumulation of cardboard boxes filled with trash, bulk waste, chair and carpet” on the ground around a dumpster on the property. *Bruno at 203*. The Court of Appeals held that DPW is not required to establish *scienter* or knowledge on behalf of the property owner. *Id. at 204*.

In *Gary Investment, supra*, an inspector for the District of Columbia Department of Health (“DOH”), which also enforces § 700.3, cited a property owner for a violation of this regulation. The administrative law judge (“ALJ”) hearing the case found that the property owner

had made good faith efforts to comply with the regulation, but found the property owner strictly liable because uncontainerized solid waste was observed on the owner's property. *Id. at 195.*

The Court of Appeals in *Gary Investment* affirmed the doctrine established in the *Bruno* case that property owners are strictly liable for violations of § 700.3 that occur on their property. The Court rejected arguments by the property owner that this rule should not apply where DOH authorizes a much higher fine schedule for a violation (at that time, \$1,300 instead of \$150 for a first commercial violation). *Id. at 197-98.*

In both *Bruno* and *Gary Investment*, the Government inspector found the nuisance condition on the owner's property.

In the present case, the Inspector did not find any condition that violated § 700.3 on Respondent's Property. All of the uncontainerized solid waste was found on a public sidewalk adjacent to the Property. The fact that the solid waste was located at Respondent's point of collection could create an inference that Respondent had placed it there, but for two factors: (1) Respondent's neighbors also use the same spot for their point of collection; and (2) Respondent suspected who the culprit was and confronted the culprit. I have credited Respondent's testimony as to these factors. Because of these factors, Respondent has rebutted any inference that he placed the solid waste into the public space.

Under these factors, the only way Respondent can be held liable for a violation of § 700.3 is if the doctrine of strict liability can be extended to this situation. I agree with Respondent that he is not strictly liable for this condition, under § 700.3.

Section 700.3 requires the proper storage and containerization of solid waste. In order to prove Respondent improperly stored and containerized solid waste, the Government must show either: (1) that the uncontainerized solid waste was located on Respondent's Property; or (2) that Respondent caused the solid waste to be placed in the public space. For example, if the Government had shown that Respondent had placed the solid waste out for collection, this would be sufficient to prove that Respondent violated § 700.3. However, the evidence in this case shows that Respondent had no nexus to the placement of the solid waste into the public space.

The fact that a separate regulation requires the property owner to maintain abutting public space in a clean condition means that this constitutes a separate manner in which one can violate the Litter Control Administration Act. If the Government seeks to hold a property owner liable for failing to maintain abutting public space in a clean condition, the Government must charge a violation of the appropriate regulation, 21 DCMR 702.2.³ See D.C. Official Code § 8-803(d)(2) (the Notice of Violation must cite the "law or regulation violated.")

Under the circumstances of this case, Respondent is not liable for a violation of 21 DCMR 700.3, and the charge must be dismissed.

IV. Order

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

³ Commercial property owners, as opposed to residential property owners, are required to maintain the abutting public space up to 6" into the public roadway in a clean condition. 21 DCMR 702.1.

ORDERED, that this case and the underlying Notice of Violation (K413763) are **DISMISSED WITH PREJUDICE**; and it is further

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

Paul B. Handy
Administrative Law Judge