

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: (202) 442-4789

DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WORKS

Petitioner

v.

NEWTON TOWERS LLC DEMERS REAL
ESTATE INC

Respondent

Case Nos.: 2012-DPW-K421281
2012-DPW-K421282

FINAL ORDER

I. Introduction

On September 15 and 16, 2011, the Government served two Notices of Violation, (“Notices”) upon Newton Towers LLC, Demers Real Estate, Inc. (the “Respondent”), alleging a violation of 21 DCMR 2022.1, for failure to separate recyclables (“K421281”) and 21 DCMR 2022.4 (failure to have sufficient number of containers) (“K421282”) on September 14, 2011 at 1435 Newton Street, N.W. (the “Property”). The Government sought a fine of \$200 for each violation. I find Respondent liable and impose a fine of \$200 for each violation; I will also impose a penalty of \$400 for late answer and \$800 for Respondent’s failure to appear for the hearing for a total fine of \$1,600.

A Hearing Notice was sent to the parties on March 5, 2012, setting the hearing for March 27, 2012. On March 27, 2012, Deborah Armstrong, the Inspector who issued the

Notice, (the “Inspector”) appeared on behalf of the Government. No one appeared on behalf of Respondent.

As evidenced by the certificate of service, the Hearing Notice that set the hearing date was mailed to Respondent on March 5, 2012, at 1664 Columbia Road, N.W. the same address used by the Department of Public Works to serve the Notices. The record did not contain any other address for Respondent. Respondent received the Notices mailed to that address as evidenced by their return of the Notice with their plea. There is no evidence that Respondent attempted to change its official address with the Government. The Hearing Notice was not returned to this administrative court as undeliverable by the postal authorities. Therefore, Respondent received proper notice of the hearing. *See Dusenberry v. United States*, 534 U.S. 161, 167-171 (2002); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep’t of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep’t of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).

Based upon my assessment of the credibility of the witness, and evidence and testimony submitted, I make the following findings of fact and conclusions of law.

II. Findings of Fact

On September 14, 2011, while on patrol at the side rear of the Property, the Inspector observed and photographed a dumpster containing commingled cardboard and food waste. Petitioner’s Exhibit (“PX”) 106. The recyclable dumpster was also overflowing

with recyclable materials. PX 103. The Inspector researched the ownership of the Property and found that Respondent is the owner of the Property. PX 100.

The Notices were served on September 14th and 15th 2011. Respondent answered on October 24, 2011, beyond the 19 days allowed for Respondent to file an answer.

III. Conclusions of Law

Respondent is charged with violating 21 DCMR 2022.1, which states:

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.

And 21 DCMR 2022.4 which states:

A sufficient number of containers shall be provided to store such recyclables which may accumulate on the premises during the intervals between collections.

The Government has established by a preponderance of the evidence that Respondent committed the violations on September 14, 2011 because recyclable materials were commingled with non-recyclable materials in the recyclable dumpster that was overflowing with solid waste, on the Property.

The Council of the District of Columbia has prescribed a fine of \$200 for each violation of 21 DCMR 2022.1 and 2022.4 on commercial property. D.C. Official Code § 8-807 (2001 ed.); 21 DCMR 2061. Therefore, I will impose a fine of \$200 for each violation for a total fine of \$400.

IV. Penalty for Failure to File a Timely Answer

The Litter Control Administration Act, D.C. Official Code §§ 8-804(f) and 8-807(c)(1), provides that a penalty equal to the amount of the proposed fine must be imposed if a Respondent 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). Respondent's answers were filed beyond the 19 days allowed, therefore I will impose penalty of \$400.

V. Penalty for Failure to Appear.

As to Respondent's failure to attend the hearing, D.C. Official Code § 8-805 (e) provides that a person who has responded to a notice of violation and fails, without good cause to appear for the hearing is liable for a penalty equal to twice the amount of the civil fine. This penalty is in addition to any other fines and penalties that may apply. The Scheduling Order notified Respondent of the applicable penalty. I will impose the statutory penalty of \$ 800.

VI. Order

It is, therefore, this _____ day of _____, 2012:

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

ORDERED, that Respondent shall pay a fine of **\$800 in K421281** and **\$800 in K421282** for a total fine including statutory penalty of **\$1,600** 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 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 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 § 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 the appeal rights of any party aggrieved by this Order are stated below.

Claudia A. Crichlow
Administrative Law Judge