

**DISTRICT OF COLUMBIA  
OFFICE OF ADMINISTRATIVE HEARINGS**

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DISTRICT OF COLUMBIA  
DEPARTMENT OF PUBLIC WORKS

Petitioner,

v.

THE CURRENT NEWSPAPER  
Respondent.

Case Nos.: 2012-DPW-K507327  
2012-DPW-K507328  
2012-DPW-K507329  
2012-DPW-K507331  
2012-DPW-K507332  
2012-DPW-K507333  
2012-DPW-K507384  
**(CONSOLIDATED)**

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**FINAL ORDER**

**I. Introduction**

**A. Summary of this Final Order**

This Final Order holds that Respondent is not liable for littering, as charged, and dismisses the Notices of Violation.

**B. Procedural History**

These seven cases arise under the Litter Control Administration Act of 1985, D.C. Official Code §§ 8-801 to 8-810, and Title 21, Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Violation No. K507327 (the “First NOV”), the Government charged Respondent The Current Newspaper (“Respondent”)

with a violation of 21 DCMR 700.4, for littering (the “Regulation”), on public space in front of 1308 Longfellow Street, NW. By Notice of Violation No. K507328 (the “Second NOV”), the Government charged Respondent with a second violation of the Regulation, alleged to have occurred on public space in front of 1310 Longfellow Street, NW. By Notice of Violation No. K507329 (the “Third NOV”), the Government charged Respondent with a third violation of the Regulation, alleged to have occurred on public space in front of 1323 Longfellow Street, NW. By Notice of Violation No. K507331 (the “Fourth NOV”), the Government charged Respondent with a fourth violation of the Regulation, alleged to have occurred on public space in front of 1322 Longfellow Street, NW. By Notice of Violation No. K507332 (the “Fifth NOV”), the Government charged Respondent with a fifth violation of the Regulation, alleged to have occurred on public space in front of 1332 Longfellow Street, NW. By Notice of Violation No. K507333 (the “Sixth NOV”), the Government charged Respondent with a sixth violation of the Regulation, alleged to have occurred on public space in front of 1329 Longfellow Street, NW. By Notice of Violation No. K507384 (the “Seventh NOV”), the Government charged Respondent with a seventh violation of the Regulation, alleged to have occurred on public space in front of 1323 Longfellow Street, NW. All seven littering violations are alleged to have occurred on February 15, 2012. The Government requested a \$75 fine for each Notice of Violation, for a total fine amount of \$525.

Respondent filed timely answers with the Office of Administrative Hearings (“OAH”) pleading Deny and requesting a hearing for each Notice of Violation<sup>1</sup>. Consequently, on May 23, 2012, OAH issued a Hearing Notice and Scheduling Order, scheduling a hearing for all seven Notices of Violation on June 13, 2012.

On June 13, 2012, the hearing proceeded as scheduled. Kayanda Jones, the Department of Public Works inspector who issued the Notices of Violation (the “Inspector”), appeared on behalf of the Government. Davis Lee Kennedy, Respondent’s president, and James Saunders, Respondent’s distributor, appeared on behalf of Respondent, as allowed by OAH Rules 2835.6 and 2835.7.

Based on the testimony of the witnesses, my assessment of their credibility, the exhibits admitted into evidence, and the entire record in these matters, I now make the following findings of fact and conclusions of law.

## **II. Findings of Fact**

On February 15, 2012, the Inspector observed Current Newspapers on the public space in front of a number of residences along Longfellow Street, NW, including the seven addresses involved in these Notices of Violation. Respondent, through its representatives, did not dispute that it had delivered the newspapers to residences on Longfellow Street, but asserted that the newspapers were not litter.

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<sup>1</sup> The Government served the Notices of Violation upon Respondent on April 23, 2012. Respondent filed its answers on May 1, 2012.

When Respondent receives a request from a resident to stop newspaper delivery, either temporarily or permanently, it records that request and then does not deliver as requested. Its records do not reflect requests to stop delivery at any of the seven residences involved in these Notices of Violation.

### **III. Conclusions of Law**

#### **A. Consolidation of these seven cases**

When Notices of Violation have been issued to the same Respondent, an administrative law judge may consolidate the cases for all purposes. OAH Rule 2820.1(a). Since all seven Notices of Violation were issued to the same Respondent, The Current Newspaper, the cases have been consolidated for all purposes.

#### **B. Liability for violating 21 DCMR 700.4**

The Government has charged Respondent with violating 21 DCMR 700.4, which provides:

No person shall deposit, throw or place or cause to be deposited, thrown or placed any solid waste in any alley, street, catch basin, or other public space, or into the Potomac River or other waters in the District, or onto any premise under the control of others.

Under the Litter Control Administration Act, the Government must establish violation of a regulation by a preponderance of the evidence. D.C. Official Code § 8-805(b)(1). The evidence adduced at the hearing did not establish by a preponderance of the evidence that Respondent violated the Regulation as charged on February 15, 2012.

Respondent argued that the newspapers it delivered to residents were not solid waste. In addition to asserting that the newspapers were solid waste under the Litter Control Administration Act, the Government also cited 21 DCMR 701, which requires that reasonable measures be taken to prevent certain materials from being littered on streets, sidewalks or other public space. 21 DCMR 701.3. However, Respondent was not charged with violating this regulation. Further, this regulation appears to cover only handbills, leaflets, advertising and informational material. Newspapers are not specifically listed in the materials covered by 21 DCMR 701.

More to the point, the newspapers were not “solid waste” under the Litter Control Administration Act. By definition, solid waste must be “useless, unwanted, or discarded materials resulting from normal community activities.” 21 DMCR 799.1. On this record, the newspapers were not useless, unwanted, or discarded materials. Accordingly, Respondent is not liable for violating the Regulation.

#### **IV. Order**

Based on the findings of fact and conclusions of law, it is, this 19th day of June 2012:

**ORDERED**, that all seven cases are **CONSOLIDATED** for all purposes, pursuant to OAH Rule 2820.1(a); and it is further

**ORDERED**, that Respondent is **NOT LIABLE** for violating 21 DCMR 700.4, as charged in the Notices of Violation, and, accordingly, these cases and the underlying Notices of Violation are hereby **DISMISSED WITH PREJUDICE**; and it is further



