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DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WORKS
Petitioner

v.

PHYLLIS J. BOJAN BOJAN REALTY CO.
Respondent

Case No.: 2011-DPW-K413176
NOV No.: K413176

FINAL ORDER

I. Introduction

This case arises under the Litter Control Administration Act of 1985, D.C. Official Code §§ 8-801 to 8-810 and Title 21, Chapter 20 of the District of Columbia Municipal Regulations (DCMR). By Notice of Violation (NOV) K413176 the Government charged Respondent violated 21 DCMR 2022.1 by failing to separate recyclables from solid waste for storage and collection on May 3, 2011, at 1810 29th Street SE (the “Property”). The Government sought a fine of \$200. Respondent entered an untimely plea of Deny.

I heard this matter on February 23, 2012. Investigator Sherry Porter appeared and testified on behalf of the Government. Phyllis J. Bojan, Property Manager for and Owner of the Property, appeared and testified on behalf of Respondent. Based on the entire record in this matter, I now make the following Findings of Fact and Conclusions of Law.

II. Findings of Fact

Respondent owns and manages 1810 29th Street SE (the “Property”), which is an apartment building. Petitioner’s Exhibit (“PX”) 101. On May 3, 2011, several plastic garbage bags of food, cardboard, and plastic bottles were on the ground in front of six solid waste containers in the rear of the Property. PX 100. Inside the solid waste containers were glass bottles, aluminum cans, plastic bags, and other discarded items. *Id.* When Respondent received the NOV on May 9, 2011, she distributed to her tenants two flyers outlining tenant recycling responsibilities and what materials are recyclable. Respondent’s Exhibits (“RX”) 200, and 201. Respondent includes in all new leases a provision requiring tenants to recycle.

III. Conclusions of Law

a. Respondent is Liable for Violating 21 DCMR 2022.1

Respondent is charged with violating 21 DCMR 2022.1, which requires that recyclables be separated from regular trash prior to setting it out for collection at commercial properties.¹ The Government has the burden to prove Respondent’s liability for the alleged violation by a

¹ The full text of 21 DCMR 2022.1 is as follows:

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.

preponderance of the evidence. D.C. Code § 8-805(b)(1). The Government has established that Respondent owns the Property; that there were cardboard, glass, and plastic recyclable materials comingled with solid waste on the Property; and that these materials were simultaneously stored in a single container intended for storage of solid waste. Respondent's argument that she is not responsible for her tenants' actions is unavailing as 21 DCMR 2022.1 provides for owner liability regardless of their direct involvement in a violation. While Respondent's attempts to educate her tenants are commendable, they do not provide an adequate defense to alleviate liability for the violation.² Accordingly, I assess a fine of \$200.³

b. Respondent is Liable for a Penalty for Untimely Answer

Under the Litter Control Administration Act, D.C. Official Code § 8-804(f) 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 issuance of said Notice. The date of service for the NOV was May 5, 2011, and Respondent received the NOV on May 9, 2011. Respondent's Deny plea was filed on September 19, 2011. More than four months passed between the date of issuance and Respondent's filing an answer. Respondent did not provide any reason for this delay. Accordingly, I impose a statutory penalty of \$200.

² There were multiple violations pictured in PX 100, however, the Government only sought to prosecute one. Property owners are also found strictly liable for a violation of this regulation, regardless of who perpetrated the actual act.

³ This fine amount is consistent with a single violation of 21 DCMR 2022.1 within a 60-day period at an apartment building. 21 DCMR 2061.3.

IV. Order

It is, therefore, this **13th** day of **April, 2012**:

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

ORDERED, that Respondent shall pay a fine of **\$400** 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.

Caryn L. Hines
Administrative Law Judge