

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

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DISTRICT OF COLUMBIA
OFFICE OF PLANNING
Petitioner

v.

TRIANGLE COMMUNITY ASSOCIATION
INC.
Respondent

Case No.: 2011-OP-T100232
NOI No.: T100232

FINAL ORDER

I. Introduction

On January 31, 2011, Inspector Keith Lambert issued a Stop Work Order for erecting a sign on an historic building without a permit at 2519 Pennsylvania Ave, NW. (the Property) Subsequently, on April 29, 2011, the Office of Planning mailed a Notice of Infraction to Respondent alleging three violations at the same Property: 1) a violation of 12A DCMR 105.1 for working without a permit - new signage; 2) a violation of 12A DCMR 105.1 for working without a permit - new awning; and 3) a violation of 14 DCMR 114.1 and 114.3 for the unauthorized removal a Stop Work Order. The Government seeks a fine of \$2,000 for each of the violations, for a total of \$6,000. On May 12, 2011 Respondent filed an answer denying each of the three violations.

Two status conferences were held in this case, the first on June 7, 2011 and a second on August 31, 2011. I then scheduled a hearing for October 12, 2011. At the hearing held on that date, Keith Lambert, the charging inspector, and Timothy Dinee, an architectural historian,

represented the Office of Planning. Robert Blair, who leases the premises for his bar and restaurant, appeared for Respondent. At the opening of the hearing, Respondent changed his plea to Admit with Explanation to the violation charged for unauthorized removal of the Stop Work Order, but retained his plea of Deny to the other two violations.

Based on the testimony at the hearing, the documents admitted into evidence, and the entire record, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

The Property, which is a rowhouse, is owned by Triangle Community Association. Mr. Blair leases the premises for his bar and restaurant called the Bayou.

Inspector Keith Lambert initially inspected the Property on January 3, 2011. He returned on January 31, 2011 and found that new signs had been installed since his initial visit. Petitioner's Exhibit "PX" 102. The most prominent sign, installed just beneath a third floor window, appears to measure at least six feet in width and two feet in height.¹ PX 107, 109. The word "Bayou" appears on that sign in gold letters against a deep blue background. While there had been no lettering on an awning that covers a sidewalk seating area at the time of the initial inspection on January 3, 2011, lettering that reads the "Bayou" appears on the awning in at least three locations in photographs taken by Inspector Lambert on January 31, 2011. PX 104, 106, and 110. It is unclear from the evidence whether that lettering exceeds one square foot in size. In addition, a new sign, on which menu items appear to be listed, had been mounted on an awning support post. PX 109. That sign appears to exceed one square foot in size.

¹ This estimate is based on the size of the sign compared to the size of the worker on a ladder next to sign in PX 107.

Mr. Blair first opened a business at the Property in 2008. Since the business was a private club, there was no exterior signage. Before 2008, an establishment called Excalibur, which was not owned by Mr. Blair, operated at this location. Excalibur had exterior signage which was removed when the location was converted to a private club.

Awning Inspector Lambert concluded that the awning over the outdoor seating area had been newly installed because of the new lettering on the awning. Mr. Blair testified that the new lettering had been painted on the existing awning. The color and dimensions of the awning appear to be the same in the photos taken by Inspector Lambert before and after the lettering was placed on the awning. *Compare* PX 104 to PX 109. In light of this evidence, it does not appear that the Government, which has the burden of proof, has presented sufficient evidence to support a finding that the awning was newly installed.

Stop Work Order At the time of the inspection on January 31, 2011, Inspector Lambert posted a Stop Work Order on the entrance door to the establishment. PX 108. When he returned to the Property on March 29, 2011, he found that the Stop Work Order had been relocated several feet to the left of the door on the front of the building which faces the outdoor seating area. PX 111.

Inspector's Signature on the Notice of Infraction The Notice of Infraction form contains a line where the inspector is to sign and attest that he "observed and/or determined that the infractions charged have been committed." The Inspector's signature appears on that line on the white copy of the Notice of Infraction filed with this tribunal. The signature is not, however, visible on the yellow copy of the Notice of Infraction that was received by Respondent. It appears that the Inspector may not have pressed firmly enough for his signature to be visible on

the copies.

III Conclusions of Law

Signage Violation Respondent was charged with a violation of 12A DCMR 105.1 for installing new signage without a permit. The types of signs requiring sign permits are specified in 12A DCMR 3107.3A. This regulation applies to all “outdoor display signs and other forms of exterior advertising,” even if not located in an historic district. That regulation provides that, with certain exceptions not applicable in this case,² no sign that exceeds 1 square foot:

shall be erected, made a part of a building, painted, repainted, placed, replaced, hung, re-hung, altered, repaired structurally, changed in color, made to flash, or maintained, without a permit issued in accordance with this Section by the code official.

At the hearing, Respondent stated that he believed that a permit was not required because Excalibur previously had signs at this location. In view of the wording of the above regulation, that belief was clearly mistaken. The regulation requires a permit to replace a sign and even provides that repainting an existing sign requires a permit.

The evidence establishes that one of the signs that had been installed at the Property, the sign above the third floor window, greatly exceeded one square foot in size. Consequently, the violation of 12A DCMR 105.1 charged in the Notice of Infraction for installing signage without a permit will be affirmed.

The fine authorized by regulation for a first offense of violating 12A DCMR 105.1 by failing to obtain a required permit is \$2,000. 16 DCMR 3306.1.1 and 16 DCMR 3201.1(a)(1). Because of the large size of the sign installed beneath the third floor window, the violation was

² The exceptions to the requirement to obtain a sign permit appear at 12A DCMR 3107.3.5

significant and the full fine of \$2,000 will be imposed.

Awning Violation Respondent was also charged with installing an awning without a permit. As the Government's evidence is insufficient to establish that an awning was installed without a permit, that charge will be dismissed.

Stop Work Order Violation Respondent was charged with violating 12A DCMR 114.1 and 114.3 for the unauthorized removal of a Stop Work Order. Those provisions provide as follows.

114.1 Authority. Whenever the code official finds that any work on any building, structure or premises is being performed contrary to the provisions of the Construction Codes, or the Zoning Regulations or in an unsafe or dangerous manner, the code official is authorized to issue a stop work order.

114.3 Removal of a Posted Stop Work Order. Unauthorized removal of a posted stop work order is a violation of the Construction Codes and subject to the penalties provided in D.C. Official Code § 6-1406³ and the injunctive relief set out in D.C. Official Code § 6-1407.

By regulation, a fine of \$2,000 may be imposed for violating 12A DCMR 114.1 when this violation is adjudicated under the Civil Infractions Act. 16 DCMR 3306.1.1(e) and 16

³ DC Official Code § 6-1406 sets forth the penalties for criminal violations of the Construction Codes. It also provides for adjudication under the Civil Infractions Act, as in this proceeding. It provides in relevant part:

(a) Except as provided in subsection (b) of this section, any person who violates any of the provisions of the Construction Codes or orders issued under the authority of the Construction Codes shall, upon conviction, be subject to a fine not to exceed \$ 2000, or imprisonment not to exceed 90 days, or both, for each violation.

(c) Civil fines, penalties, and fees may be imposed, in addition to other available remedies, for any infraction of the provisions of the Construction Codes, including the provisions of the Fire Prevention Code, pursuant to Chapter 18 of Title 2 ("Civil Infractions Act"). Adjudication of any infraction shall be pursuant to the Civil Infractions Act.

DCMR 3201.1(a)(1).

Respondent's plea of Admit with Explanation establishes the violation charged for unauthorized removal of the Stop Work Order. However, there are mitigating circumstances that warrant reduction of the authorized fine. First, Respondent has accepted responsibility for the violation. Secondly, although the Stop Work Order had been moved from the door where it had been posted by the Inspector, it was still readily visible in a conspicuous location on March 29, 2011, the date of the violation charged.⁴ Consequently, the fine for this violation will be reduced to \$500.⁵

Inspector's Signature on the Notice of Infraction At the outset of the hearing, Respondent moved for dismissal of the Notice of Infraction because it had not been signed by the inspector.

Notices of Infraction are to contain a "certification attesting to the matters set forth in the notice." D.C. Official Code § 2-1802.01. As indicated above, while the Inspector's signature does appear on the copy of the Notice of Infraction filed with this tribunal, it is not visible on the copy of the Notice of Infraction received by Respondent, perhaps because the Inspector did not press hard enough when signing. However, even if the Inspector failed to sign the Notice of

⁴ A Stop Work Order is to be posted in a conspicuous location. 12A DCMT 114.2 provides:

Location of Posted Stop Work Order. The code official shall post the stop work order in a conspicuous location, visible to the public and other government officials, in or about the building, structure or premises affected by the stop work order.

⁵ If the Stop Work Order had been removed on the date of the violation charged, a higher fine would be warranted.

Infraction, dismissal of the Notice of Infraction would not be warranted in this case. At the hearing, the Inspector testified extensively under oath about the violations charged in the Notice of Infraction. Any defect in the Notice was cured by the subsequent testimony attesting to the matters set forth in the Notice, and Respondent's motion to dismiss will therefore not be granted.

IV. Order

Based on the above findings of fact, conclusions of law, and the entire record in this matter, it is this 26th day of October, 2011:

ORDERED, that Respondent is liable for violating 12A DCMR 105.1 for working without a sign permit and 12A DCMR 114.1 and 114.3 for unlawfully removing a Stop Work Order; however, Respondent is not liable for violating 12A DCMR 105.1 for working without a permit - new awning; and it is further

ORDERED, that the charge of violating 12A DCMR 105.1 for working without a permit for new awning shall be **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that Respondent shall pay a total of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500)** for the fine in accordance with the attached instructions within 20 calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting 20 days from the date of mailing of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); 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 § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that pursuant to OAH Rule 2828, any party may file a motion for reconsideration within fifteen calendar days of the date of service of this order (the fifteen days consists of ten days, plus five additional days when service is made by mail (OAH Rule 2812.5)); and it is further

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

Mary Masulla
Administrative Law Judge

