

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
441 Fourth Street, N.W.
Washington, DC 20001-2714

DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WORKS
Petitioner,

v.

CHRISTOPHER J. BAYSMORE
Respondent

Case Nos.: 2012-DPW-K502914
2012-DPW-K502979
2012-DPW-K506190
[consolidated cases]

FINAL ORDER

I. Introduction

These three consolidated 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”). In the first case, the Government served a Notice of Violation (“NOV”) (No. K502914) on January 18, 2012, on Christopher J. Baysmore (“Respondent”), alleging that Respondent violated 21 DCMR 700.3 for improper storage of solid waste (the “Regulation”). The violation allegedly occurred at 544 Irving Street, N.W. (the “Property”). The Government sought a fine of \$75 as a first-time residential offense.

In the second case involving NOV No. K502979, Respondent was charged with violating the same Regulation at the same Property on January 30, 2012. The Government sought a fine of \$150 as a second-time residential offense.

In the third case, NOV No. K506190, the Government charged Respondent with violating 21 DCMR 702.1 for failing to maintain his abutting public space in clean condition (“the

Regulation”). The Government alleged that the violation occurred on December 13, 2011, at the Property and sought a fine of \$75 as a first-time residential offense.

On April 24, 2012, Respondent untimely answered NOV No. K502979 with a plea of Admit with Explanation, but later changed his plea to Deny. And on May 16, 2012, Respondent filed untimely answers of deny to NOV Nos. K506190 and K502914. He further requested that these two cases be consolidated with NOV No. K502979. I granted that consolidation request, and scheduled an evidentiary hearing for June 15, 2012.

On the day of the hearing, the Government appeared represented by Inspector Yolanda Hood. Respondent appeared on his own behalf.

After being advised of the three available pleas, Respondent sought to change his pleas from Deny to Admit with Explanation to all three charges. The Government did not oppose the change of pleas. I construed Respondent’s request as a motion to amend his pleas, which I granted.

Based on the testimony of the witnesses, my evaluation of their credibility, 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

By virtue of his three pleas of Admit with Explanation, Respondent admits that he is the owner of the Property, and that on December 13, 2011, he failed to maintain his abutting public space in clean condition, and on January 4, and again on January 30, 2012, there was improper

storage of solid waste, which provided food, harborage, or breeding places for insects or rodents, and created a nuisance or fire hazard.

Respondent also admits that he untimely answered all three NOVs. Respondent had a death in the family on February 4, 2012. He was distracted and did not give attention to the Property during that time period.

Respondent accepts responsibility for the offenses. The trash and debris was removed. Respondent leases the Property. Respondent was undergoing an eviction on December 13, 2011, the date of the offense in NOV No. K506190. Respondent further admits that he was not familiar with the procedures and time period he was permitted to leave a tenant's Property out after an eviction.

Respondent believes there is illegal dumping at the Property. However, Respondent visits the Property only once per week to ensure the clean condition of the Property. Respondent inherited the Property from his mother who passed on May 9, 2010.

III. Conclusions of Law

The Government charged Respondent with violating 21 DCMR 702.1, which states in pertinent part:

Except as provided in § 702.2, each owner, tenant, or lessee (or the agent of that person) who has control of or occupies any building lot or land within the District shall maintain in clean condition the public space from the property line of that building, lot or land and extending eighteen inches (18 in.) from the curb line (or the lateral lines of the roadway) into the abutting roadway.

The Government also charged Respondent with violating 21 DCMR 700.3, which states:

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.

Based on his pleas of Admit with Explanation, Respondent is liable for violating 21 DCMR 700.3 in two instances and 21 DCMR 702.1 as charged in the NOVs. By having uncontainerized trash bags lying on the ground at the Property, Respondent violated 21 DCMR 700.3 and 21 DCMR 702.1. *DOH v. Washington Rehabilitation*, OAH No. I-00-20331 at 3-4 (Final Order, March 12, 2002) (noting that such conditions violate § 700.3 because they create an opportune environment for rodents and other vermin to “feed and breed”); see also *DOH v. Danner*, OAH No. I-00-70193 at 3 (Final Order, January 31, 2002) (noting that “[t]he storage of wastes in open trash cans and on the ground at Respondent’s building violated [§ 700.3] because rats easily could obtain access to food items in the plastic bags”).

Respondent asserts others likely threw the trash there, but did not indicate he was present when the offense was observed. This argument is unavailing because the D.C. Court of Appeals has determined that certain violations of the Litter Control Administration Act impose strict liability on property owners regardless of the reason for the offending condition. *DOH v. New Deanville, L.L.C. a/k/a New 3145 Deauville, L.L.C.*, OAH No. I-00-70350 at 4 (Final Order, February 1, 2002); *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 203 (D.C. 1995).

A maximum fine of \$75 is authorized for a residential violation of 21 DCMR 702.1 and 21 DCMR 700.3 as a first-time residential offenses. 24 DCMR 1380.1. The authorized fine for

violating 21 DCMR 700.3 increases to \$150 as a second offense within 60 days. 24 DCMR 1380.1.

The Administrative Law Judges of this administrative court have plenary powers to reduce fines based on mitigating factors such as acceptance of responsibility, corrective action taken, efforts undertaken to prevent future violations, and good faith efforts to comply. D.C. Official Code § 8-808(b)(5). Respondent accepts responsibility for the offenses. The violations were abated. Based on the foregoing mitigating factors, I am reducing the authorized fines of \$75 each to \$50 each, and the fine of \$150 to \$125. D.C. Official Code § 8-808 (b)(5).

We now address the statutory penalty for failing to timely answer the Notices of Violation. Pursuant to D. C. Official Code §§ 8-804(f) and 8-805(e), when a respondent fails to answer a Notice of Violation within 19 calendar days, respondent is liable for a penalty equal to the civil fine. Respondent explained he had a death in the family, which distracted him from attending to the Property. I find that good cause has been established, and I will suspend the statutory penalties.

IV. Order

It is, therefore, this 20th day of June, 2012:

ORDERED, that Respondent is **LIABLE** for violating 21 DCMR 702.1 and 21 DCMR 700.3 as charged in the Notices of Violation; and it is further

ORDERED, that Respondent shall pay reduced fines in the total amount of **TWO HUNDRED TWENTY-FIVE DOLLARS (\$225)** 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 2811.5); 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 % per month, 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 pursuant to OAH Rule 2828, any party may file a motion for reconsideration of the final order within 15 calendar days of the date of service of this Order (the 15 calendar days consist of ten days, plus five additional days when service is made by mail); and it is further

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

Claudia Barber
Administrative Law Judge