

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

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DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WORKS

Petitioner

v.

NOUR ASSOCIATES LLC
Respondent

Case No.: 2012-DPW-K508848
NOV No.: K508848
Case No.: 2012-DPW-K508849
NOV No.: K508849
(Consolidated)

FINAL ORDER

I. Introduction

On April 23, 2012, DPW served Notice of Violation No. K508848 (the “first case NOV”) upon Respondent alleging a violation of 21 DCMR 700.3 for failing to properly containerize solid waste. The NOV alleged that the violation occurred at 3413 Georgia Avenue, N.W. (the “Property”), on February 15, 2012. DPW sought a \$150 fine. Respondent filed an answer to the first case NOV with a Deny plea.

On April 23, 2012, DPW served Notice of Violation No. K508849 (the “second case NOV”) upon Respondent alleging a violation of 21 DCMR 2022.4 at the Property for failing to have a sufficient number of containers for separated recyclables. DPW alleged that this violation also occurred on February 15, 2012, and sought a \$200 fine. Respondent also denied this charge.

I held an evidentiary hearing on June 7, 2012. Yolanda Hood, the charging Inspector, represented the Government and Selwyn Holder, President of Holder Enterprises, Respondent's tenant at the Property, appeared for Respondent and testified. Because the cases involved common questions of law and fact, I consolidated them without objection. OAH Rule 2820.

Based upon the testimony of the witnesses, my evaluation of their credibility, the exhibits admitted into evidence, and the entire record, I make the following findings of fact and conclusions of law.

II. Findings of Fact

Respondent owns a commercial building on the Property which is shared by two tenants. Respondent has experienced a long history of illegal dumping on the Property by neighbors and unknown passersby.

On February 15, 2012, Ms. Hood observed and photographed an area on the Property that was partially enclosed by a wire fence. This area included a large, open dumpster, a smaller container for recyclables, and a can for grease. The recyclables container held a small amount of commingled recyclables. The dumpster contained solid waste and several cardboard boxes. Uncontainerized solid waste and cardboard boxes were also scattered on the ground near the dumpster creating a harborage or breeding place for rodents and insects. Petitioner's Exhibits 100, 101, and 103. Ms. Hood concluded that there was not sufficient room in the recycling container for all the cardboard boxes then on the Property.

III. Conclusions of Law

A. The 21 DCMR 700.3 Charge

Respondent is charged with violating 21 DCMR 700.3, which forbids the improper storage of solid waste in a manner that provides food, harborage, or breeding places for insects or rodents, or creates a nuisance or fire hazard. Respondent concedes that solid wastes were improperly stored on the premises, but contends that the waste was deposited on the Property by neighbors or unknown passersby who illegally dumped the trash onto the Property.

Respondent's defense is unavailing because § 700.3 imposes strict liability on those who own or control a property, regardless of the source of, or reason for, the offending waste. *See Gary Investment Corp. v. District of Columbia Department of Health*, 896 A.2d 193, 197 (2006) (imposing strict liability on property owner for violation of § 700.3); *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 203 (D.C. 1995) (also imposing strict liability); *DOH v. McDonald*, OAH No. I-00-70348 at 3-4 (Final Order, September 24, 2002)⁴ (holding that a missed trash pick-up due to holiday did not mitigate property owners' liability for violation of § 700.3); see also *DOH v. Young*, 2002 D.C. Off. Adj. Hear. LEXIS 7, *4 (Final Order, March 12, 2002) (noting that "[t]he purpose of § 700.3 ... is to give property owners a greater motivation to take all necessary steps to control conditions that can lead to an increase in the rat population.") The Government has therefore proved by a preponderance that Respondent violated § 700.3.

The Government sought a fine of \$150 for a first violation of § 700.3 at a commercial establishment. 24 DCMR 1380.2. I will impose a fine in that amount.

A. The 21 DCMR 2022.4 Charge

DPW also charged that Respondent violated 21 DCMR 2022.4, which provides:

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

When Ms. Hood inspected the Property on February 15, 2012, cardboard boxes were in the solid waste dumpster and were scattered on the ground near it. Based upon the evidence, it is reasonable to infer that illegal dumping contributed to this condition, but it is not clear which boxes Respondent's tenants placed on the Property and which were the product of illegal dumping. The mere presence of large quantities of cardboard on the Property does not establish that the containers were insufficient to "store such recyclables which may accumulate on the premises during the intervals between collections." This is especially true when, as here, there is credible evidence of a history of illegal dumping that likely contributed to the number of boxes on the Property.

Because the evidence does not show whether on February 15, 2012, the on-site containers were insufficient to hold all the cardboard boxes and other recyclables that originated at the Property and *were being stored for collection*, DPW did not prove that the Respondent violated § 2022.4. I will therefore dismiss this charge.

IV. Order

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

ORDERED, that Respondent is **NOT LIABLE** for violating 21 DCMR 2022.4 as charged in NOV K508849 and this charge is **DISMISSED WITH PREJUDICE**; and it is further;

ORDERED, that Respondent is **LIABLE** for violating 21 DCMR 700.3 as charged in NOV K508848; and it is further

ORDERED, that Respondent shall pay a fine of **\$150** 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 reconsideration and appeal rights of any party aggrieved by this Order are stated below.

Louis J. Burnett
Administrative Law Judge