

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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Washington, DC 20001-2714

DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL
SERVICES

Petitioner,

v.

RUFUS AND DELORES STANCIL
Respondents

Case Nos.: FE-I-06-W100171
FE-I-06-W100236
FE-I-06-W100204
FE-I-06-W100237
(Consolidated)

FINAL ORDER

These two consolidated cases involve Notices of Infraction charging Respondents Rufus and Delores Stancil with violations of the District of Columbia Fire Prevention Code¹ (the “fire code”) at an apartment building they own located at 4226 7th Street, N.W. (the “Property”) In one of the of the Notices (W100171), Respondents are charged with three violations for deficiencies in the fire alarm system on March 29, 2006. In the other Notice (W100204), Respondents are charged with ten additional violations of fire code regulations on April 10, 2006. The Government sought fines of \$2,000 for each of the thirteen violations in the two cases for a total of \$26,000.

¹ The District of Columbia Fire Prevention Code is comprised of the ICC International Fire Code/2000 as amended by the D.C. Fire Prevention Code Supplement/2003 (DCMR 12 H) by virtue of 12H DCMR F-101.1, which provides:

The ICC International Fire Code/2000 as amended by the D.C. Fire Prevention Code Supplement/2003 (DCMR 12 H) shall constitute the D.C. Fire Prevention Code/2003, hereinafter referred to as the “Fire Prevention Code”.

Respondents did not file answers to either of the Notices of Infraction within the required twenty days after service.² This failure made Respondents subject to a statutory penalty, equal and in addition to the fine, for failing to answer the Notices of Infraction. Accordingly, on June 1, 2006, this administrative court issued orders in each case finding Respondents in default and subject to the statutory penalty required by D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). The orders also required the Government to serve a second Notice of Infraction.

The Government served a second Notice of Infraction in each of the cases on June 9, 2006. (FE-I-06-W100236 and FE-I-W100237). In these Notices, the Government sought statutory penalties of \$26,000, in addition to the fines of \$26,000, for a total of \$52,000. On June 13, 2006, Respondents filed answers denying all of the violations in both cases.

In a Case Management Order issued on August 25, 2006, a hearing was then scheduled for September 29, 2006. At the hearing convened on that date, Inspector Mark Davis appeared and presented the case for the Government. Fire Inspector Edgar Alvear and Fire Inspector Dayisha Johnson, the charging inspectors in the case, testified for the Government. Respondents did not appear or request a continuance. The hearing proceeded since under the Civil Infractions Act an Administrative Law Judge may proceed with a hearing if a respondent is served with notice of a hearing, but fails to appear without good cause. D.C. Official Code § 2-1802.03(b).

² See D.C. Official Code § 2-1802.02(e) (establishing fifteen days as the requisite period of time for filing of an answer to a Notice of Infraction); see also D.C. Official Code § 2-1802.05 (allowing five days additional time to the period in which respondent may answer when service is by mail)

Based on the testimony of the witnesses, my evaluation of their credibility, and the exhibits admitted into evidence, I hereby make the following findings of fact and conclusions of law:

I. FE-I-06-W10017 (three fire alarm violations on March 29, 2006)

A. Findings of Fact

On March 29, 2007, Fire Inspectors Alvear and Johnson (the “Inspectors”) inspected the Property to determine compliance with fire code regulations. They found that the pull mechanisms on fire alarm pull stations on both the first floor and the basement level were in an open position, but the building alarm was not sounding. Petitioner’s Exhibit “PX” 112 A and B. The fact that the alarm was not sounding while the pull stations were in the open position indicated that the pull stations were inoperable. It also indicated that overall building alarm system was inoperable.

Inspector Alvear had previously been to the Property and found fire code violations. In light of this history, and the danger posed by an inoperable alarm system in an apartment building, the Inspectors issued a Notice of Infraction for this condition, without first issuing a Notice of Violation, which carries no fine.

Respondents had repairs performed on the pull stations and building alarm within twenty-four hours of the issuance of the Notice of Infraction. Inspector Alvear returned to the Property on March 30, 2007 and found that the two pull stations and the building alarm system had been repaired and were operable. He then issued a fire inspection approval, indicating that the three violations had been abated.

B Conclusions of Law

The Notice of Infraction alleged three violations: two violations of 12H DCMR F-110.1(1),³ one for the inoperable pull station on the first floor and the other for the inoperable pull station on the basement level, and one violation of 12HDCMR F110.2 because the building-wide fire alarm was out of service.⁴

The Government's undisputed evidence that two pull stations were inoperable on March 29, 2007 establishes that there were dangerous conditions on the Property that could endanger life within the meaning of 12 H DCMR F-110.1(1). Thus the two violations relating to the inoperable pull stations have been established.

³ 12 H DCMR F-110.1(1) provides:

General. Whenever the code official or the code official's designated representative finds in any structure or upon any premises dangerous or hazardous conditions or materials, the code official shall order such dangerous conditions or materials to be removed or remedied in accordance with the provisions of this code..... Dangerous conditions or materials include, but are not limited to, the following:

1. Hazardous conditions, which are liable to cause or contribute to the spread of fire in or on, said premises, building or structure or endanger life or property.

⁴ 12H DCMR F-110.2 provides:

The owner shall be responsible for the safe and proper maintenance of the structure, premises or lot at all times. In existing structures, the fire protection equipment systems or devices, means of egress and safeguards required by this code or a previous statute, code or other District of Columbia municipal regulation, shall be maintained in good working order.

The Government's undisputed evidence that the building-wide alarm was also inoperable establishes that the building owner failed to maintain the building-wide fire alarm system in good working order as required by 12H DCMR F-110.2. Thus this violation has been established as well.⁵

The authorized fine for each of these violations is \$2,000. *See* 16 DCMR 3401.1(e) and (g). Since Respondents have presented no evidence of mitigating factors, a fine of \$2,000 will be assessed for each of these violations for a total of \$6,000.

II. FE-W-06-W100204 – Findings of Fact and Conclusions of Law

Finding of Fact On March 29, 2006, the Inspectors also issued a “Notice of Violation of the Fire Code” (“NOV”) to Respondents that identified additional conditions alleged to violate fire code provisions and set the date of April 10, 2007 for a follow-up inspection. PX 110 A and B The NOV is in effect a warning, which permits a party to avoid fines if the conditions are corrected by the date of the reinspection. When the Inspectors returned to the Property on April 10, 2006, the Inspectors found that none of these conditions had been corrected satisfactorily and issued the second Notice of Infraction, seeking fines of \$2,000 for each of the ten violations alleged in the Notice of Infraction.

For the reasons which follow, I am affirming seven of the violations charged (three for deficient fire extinguishers, two for lack of illumination on exit signs, one for exposed electrical wiring, and one for failing to correct a notice of violation) and dismissing three of the violations

⁵ Fire alarm systems and manual fire alarms boxes are also required to be operational by the Property Management Code 12G DCMR PM-104.1 and 4.

(one violation for failure to maintain fire alarm records, one violation for failure to maintain smoke detection records, and a violation for failure to obtain a certificate of occupancy.)

A. Fire Extinguisher Violations (Items 2, 5, and 7 on the Notice of Infraction)

Findings of Fact The Notice of Infraction alleged three violations of 12H DCMR 110.1(8) for deficiencies in three fire extinguishers at the Property.⁶ A fire extinguisher on the second floor was improperly mounted. It was hanging from the wall on a flimsy clip and not securely mounted on supplied hangars in accordance with manufacturer's instructions as required. IFC 906.7; PX 106 and 107; NOV- 1. It also lacked tags, which are required on portable fire extinguishers to show that they have been properly inspected and serviced in accordance with the National Fire Protection Association requirements (NFPA) 10. See IFC 901.6 and 906.2⁷

⁶ 12H DCMR 110.1(8) provides:

General. Whenever the code official or the code official's designated representative finds in any structure or upon any premises dangerous or hazardous conditions or materials, the code official shall order such dangerous conditions or materials to be removed or remedied in accordance with the provisions of this code..... Dangerous conditions or materials include, but are not limited to, the following:

(8.) Hazardous conditions arising from defective or improperly installed equipment for handling or using combustible, explosive or otherwise hazardous materials.

⁷ Fire extinguishers are also required to be maintained in accordance with NFPA 10 by the Property Maintenance Code 12G DCMR PM-705.2.

There were similar deficiencies with another extinguisher located on the first floor. PX 106A; NOV-4 It was also improperly mounted and lacked tags showing that it had been inspected and serviced. The third extinguisher, in the basement, was outdated and also had not been tagged or inspected. PX 106 B and C; NOV-7.

Conclusions of Law The deficiencies identified in the three extinguishers establish that that there were hazardous conditions arising from defective of improperly installed equipment in violation of 12H DCMR 110.1(8). The authorized fine for each of these violations is \$2,000. See 16 DCMR F-110.1(8).

B. Illumination of Exit Signs (Items 3 and 4 on the Notice of Infraction)

Findings of Fact The Notice of Infraction alleged two violations of 12H DCMR F-110.2 for exit sign that were not illuminated. (NOV 2,3) One of the exit signs was not connected to a power source. PX106 G. The other was directly above an exit door. PX106 F. The lack of illumination for the signs could prevent building occupants from finding their way to an exit in the event of fire or other emergency.

Conclusions of Law Exit signs are required to be illuminated by IFC 1010, which is a provision of the fire code by virtue of 12H DCMR F-101.1. The lack of illumination on the exit signs establishes that there was a failure to keep these fire protection devices in good working order as required by 12H DCMR 110.2. The authorized fines for each of these violations is \$2,000. 16 DCMR 3401.1(e) and (g)

C. Exposed Electrical Wires in Basement. (Notice of Infraction Item 6)

Findings of Fact The Inspectors found exposed electrical wires in the basement meter room when they inspected the property on March 29, 2007. They directed that the hazard be corrected, since contact with these live wires could cause serious injury or death. NOV- 5.

When the Inspectors returned to the Property for the follow-up inspection, they found that instead of purchasing and installing metal electrical boxes to cover the wires, Respondents had taped over the wires with large amounts of electrical tape, a method of covering the wires not permitted by any electrical code. This provided inadequate protection for the wires because rodents or weather conditions could cause deterioration of the tape and result in the wires again being exposed. PX 106 J-M;

Conclusions of Law The inadequately enclosed electrical wires constituted a violation of 12H DCMR F110.1 as alleged in the Notice of Infraction, as it constituted a hazardous condition that could endanger life. The authorized fine for this violation is \$2,000. 16 DCMR 3401.1(d)

C. Fire Alarm and Smoke Test Records (Notice of Infraction – Item 8 and 9)

Findings of Fact Respondents were charged with a violation of 12H DCMR F107.1 for failing to obtain or maintain required fire alarm and smoke detector test records.⁸ When they visited the Property, the inspectors requested that Respondent Rufus Stancil provide them with these records, but none were provided.

⁸ IFC 907.20.5 requires that written records be maintained on inspection and testing of fire and life safety systems and be made available to code officials.

Conclusions of Law The provision that Respondents were charged with violating, 12 H DCMR F-107.1, requires that permits be obtained for certain activities when required by the fire code.⁹ As used in that regulation, it is apparent that the term “permit” refers to a document which is applied for to obtain the authorization of a code official to engage in certain activities or operations.¹⁰ The permit regulation contains extensive lists of the type of operations and installations requiring permits. In general, the operations or installations listed pose specific types of fire hazards, such storage of compressed gases or operation of dry cleaning facilities. 12 DCMR 107.9-11 The regulation contains no requirement that a building owner apply for or obtain a permit to maintain records on the testing of smoke detectors or the fire alarm. The regulation is thus inapplicable to the violation charged.

While Respondents failure to maintain and provide fire alarm and smoke detector test records may constitute violations of other requirements, those violations were not charged. A

⁹ 12H DCMR F-107 provides in part:

1 Permits Required. Permits shall be obtained from the code official in accordance with the provisions of this code. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the code official.

2. Application for Permit. Application for a permit required by this code shall be made to the code official on a form provided by the code official. Applications for permits shall be accompanied by construction documents, technical information and any other information required by the code official for evaluation of the application.

3. Action on Application. The code official shall examine or cause to be examined all applications for permits and amendments thereof within a reasonable time after filing. If the code official is satisfied that the proposed work or operation conforms to the requirements of this code and all laws and ordinances applicable thereto, the code official shall issue a permit therefore as soon as practicable. If the application or the construction documents do not conform to the requirements of all pertinent laws, the code official shall notify the

Notice of Infraction is required to specify the proper law or regulation alleged to have been violated. D.C. Official Code §§ 2-1802.01(b)(2),(c); *DCRA v. Whitney Restaurants*, OAH No. CR-I-05-S100209 (Final Order, 2005). Under the Civil Infractions Act, an administrative law judge must dismiss violations alleged in a Notice of Infraction that are defective on their face. D.C. Official Code §§ 2-1802.01(b)(2),(c). Accordingly, the two violations alleged for failing to maintain fire alarm and smoke detector records will be dismissed.

D. Failure to Obtain a Certificate of Occupancy. (Notice of Infraction – Item 10)

Finding of Fact Respondents were charged with a violation of 12H DCMR F-107.1 for failing to obtain or maintain a certificate of occupancy. The Inspectors did not see a certificate of occupancy posted on the Property and when they asked Mr. Stancil where it was, he said he kept it elsewhere.

Conclusion of Law There is nothing in the fire permit regulation charged to suggest it applies to requirements to have a certificate of occupancy. Accordingly, this violation will be dismissed because an inapplicable regulation has been charged.

It should be noted in addition that there is a specific regulations which requires that a certificate of occupancy be obtained.¹¹ Even if the proper regulation had been charged, the

applicant in writing, identifying the non-conforming items and the corresponding relevant code sections.

¹¹ 11 DCMR 3203, which provides in part as follows:

[N]o person shall use any structure, land, or part of any structure or land for any purpose other than a one-family dwelling until a certificate of occupancy has been issued to that person stating that the use complies with the provisions of this title and the D.C. Construction Code, Title 12 DCMR.

11 DCMR 3203.3 provides, in pertinent part:

Government's evidence was inadequate to establish that Respondents did not have a certificate of occupancy. Mr. Stancil is reported to have said that he had a certificate, and the Government presented no evidence from the custodian of records for certificates of occupancy to establish that Respondents did not have one. Such evidence is typically provided by the Government when a failure to have a certificate of occupancy is charged. While the Government's evidence may have been adequate to establish that Respondents failed to post the certificate of occupancy, it was not adequate to establish that they had not obtained a certificate of occupancy.

E. Failure to Comply with a Notice of Violation (Notice of Infraction –Item 1)

Respondents were also charged with a violation of 12 H DCMR F-112.2 for failing to comply with a Notice of Violation issued by a code official.¹² Respondents were notified in a Notice of Violation issued March 29, 2006 of the violations discussed above. The evidence establishes that six of those violations (three relating to fire extinguishers, two relating to lack of illumination for exit signs, and one relating to exposed electrical wires) had not been abated as of

Except in the case of a church, all certificates of occupancy shall be conspicuously posted in or upon the premises to which they apply so that they may be seen readily by anyone entering the premises

The authorized fines is \$2,000 for failing to obtain certificate of occupancy and \$500 for failing to post a certificate occupancy *See* 16 DCMR 3312.1(a) and 16 DCMR 3312.3(o).

¹² 12 H F-112.2 provides in relevant part:

Failure to Correct Violations. If the notice of violation is not complied with as specified by the code official, the code official shall, first, issue a collateral citation, then if violations are not corrected as specified, request the Corporation Counsel to institute the appropriate legal proceedings to restrain, correct or abate such violation or to require removal or termination of the unlawful use of the building or structure in violation of the provisions of this code or of any order or direction made pursuant thereto....

April 10, 2007. There was consequently a failure to comply with a notice of violation as specified by the code official and a violation of 12 DH DCMR F-112.2 has thus been established.

F. Abatement

When the Inspectors returned to the Property on July 20, 2006, they found that all extinguishers were properly tagged and mounted, PX 112 I, J, E, G, the exit signs were illuminated PX 112 J, and the wiring in the meter room was properly covered. PX 112C, D. Because all violations had been satisfactorily corrected, they issued a fire inspection approval letter. PX 100.

G. Fines

As Respondents did not appear and have presented no evidence of mitigating factors with respect to any of the seven violations in FE-W-06-W100204 that have been established by the Government, the authorized fine of \$2,000 will be assessed for each of these violations for a total of \$14, 000. These fines are in addition to the fines of \$6,000 assessed in FE-I-06-W100171 for the three violations involving the fire alarm system, resulting in total fines of \$20,000 in the two cases.

III. Statutory Penalty

As for the statutory penalty, the Civil Infractions Act requires a respondent to demonstrate “good cause” for failing to answer a Notice of Infraction within 20 days of the date of service by mail. If the respondent cannot make such a showing, the statute requires that a penalty equal to “the amount of civil fine for the infraction set forth in the notice.” D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).

In this case, although Respondents filed timely answers to both second Notices of Infraction, Respondents did not file any answers to the two first Notices of Infraction served on April 11, 2007 and have presented no evidence to establish good cause for the late filing. Accordingly, good cause for the late filing has not been established.

The amount of civil fine for the violations sought by the Government in the two Notices of Infraction was \$26,000. Although the Government failed to establish three of the violations, the statutory penalty will be imposed for each of the thirteen violations charged because imposition of the statutory penalty under the Civil Infractions Act is not dependent on whether the Government has proven a charge. Rather, it depends on whether a respondent, without good cause, has failed to timely answer the charge. D.C. Official Code §§ 2-1802.02(f). *Accord DOH v. Williams Pest Control Co.*, OAH No. I-00-20085 at 5 (Final Order, June 7, 2001).¹³ Thus, a statutory penalty of \$26,000 will be imposed in addition to the fines of \$20,000 for a total of \$46,000.

IV. Service

Respondents did not answer either of the first Notices of Infraction. Inspectors Johnson

¹³ As this administrative court has previously observed:

In prescribing the penalty, the statute does not distinguish between charges that the Government has proved and those for which there has been a failure of proof. The statutory penalty for failure to file does not depend upon whether the Government has established the underlying violations. Indeed, a contrary rule would subvert the purpose of the penalty provisions of the Civil Infractions Act, which is to promote an efficient adjudication system by encouraging prompt filing of responses to Notices of Infraction. Respondents who believe that they have a valid defense to a charge would have no incentive to file a prompt response if their ultimate vindication would eliminate the late filing penalty.

and Alvear served the first Notice of Infraction (W100171) on Respondent Rufus Stancil by hand delivering to him at the Property. Three Metropolitan Police Officers were present at the time and Respondent was handcuffed due to disorderly behavior. The certificate of service on the Notice indicates that it was personally delivered at 7012 8th Street, N.W., the address that appears on the driver's license Respondent presented to the Inspectors. However, Inspector Johnson testified that delivery in fact took place at the Property, and I so find.

Notice of Infraction W100204 was served by hand delivering it to Delores Stancil at 7746 16th Street N.W, Respondents residence address as shown on property tax records.¹⁴ Although this personal delivery is not reflected on the certificate of service, I find that the Notice of Infraction was personally delivered based on Inspector Johnson's testimony.¹⁵

The Notices of Default issued by this administrative court in both cases were mailed by First Class mail to 7746 16th Street, the residence address of Rufus and Delores Stancil, and not returned.

Inspector Johnson personally delivered both of the second Notices to Respondent Rufus Stancil at the Property on June 9, 2006. Respondent filed answers to both of these Notices of Infraction on June 13, 2006.

DOH v. Washington General Contractors, OAH No. I-00-10387 at 11 (Final Order, July 11, 2001).

¹⁴ This finding is based on Inspector Alvear's testimony that 7746 16th Street is Respondents' address on city property tax records and she handed the Notice to Dolores Stancil at this address.

¹⁵ In addition, the Government mailed this Notice of Infraction by certified mail to both 7012 8th Street, PX 113-115, the address on Mr. Stancil's drivers license, and 7746 16th Street NW, PX 103-105, the address on the city's property records, but it was returned unclaimed.

The Case Management Order informing Respondents of the hearing at which they failed to appear were mailed to both 7746th Street,, NW, their residence address on property tax records, and 7012 8th St, NW, the address on Respondent Rufus Stancil's drivers license and not returned.

I therefore conclude that Respondents received adequate notice of the charges and the hearing , as required by the Due Process Clause and the Civil Infractions Act. *See* D.C. Official Code §§ 2-1802.01 and 2-1802.05 ¹⁶; *see also Dusenberry v. United States*, 534 U.S. 161, 167-171 (2002).

V. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is, hereby, this 28th day of March, 2007:

ORDERED, that Respondents shall pay a total of **FORTY-SIX THOUSAND DOLLARS (\$46,000)** 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

¹⁶ Service requirement under the Civil Infractions Act appear in D.C. Official Code § 2-1802.05, which provides as follows:

Any notice or order served upon a respondent or other person pursuant to this chapter may be personally served, delivered to the respondent's or other person's last known home or business address and left with a person of suitable age and discretion residing or employed therein, or mailed to the respondent or other person by first class mail to the respondent's last known home or business address. When service is by mail, 5 additional days shall be added to the time period within which the respondent or other person may, or is required to, take any action specified in the notice or order.

