

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
441 4th Street, NW, Suite 540-S
Washington, DC 20001-2714

DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL
SERVICES

Petitioner,

v.

GHANA CAFÉ and
ANTHONY OPARE

Respondents

Case No.: FE-I-08-W100697

FINAL ORDER

I. Introduction

On September 19, 2008, the Government served a Notice of Infraction upon Respondents Ghana Café and Anthony Opore, charging Respondents with three violations of the District of Columbia Fire Prevention Code.¹ The Notice of Infraction charged that Respondents violated: (1) 12H DCMR F-109.7, by obstructing the operations or disobeying any lawful command with the extinguishment of a fire; (2) 12H DCMR F110.1, by failing to remedy dangerous conditions or remove hazardous materials; and (3) 12H DCMR F-112.2 by failing to comply with a notice of a verbal order by a code official. The Notice alleged that the infractions occurred on

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”.

September 14, 2008, at 2465 18th Street, N.W. (the “Property”), and sought a fine of \$2,000 for each infraction of the Fire Prevention Code, for a total fine of \$6,000.

Respondents filed a timely answer with a plea of Deny to the charges. On November 21, 2008, an evidentiary hearing was held. Fire Sergeant Mark Davis appeared on behalf of the Government. Respondent Anthony Opare appeared on behalf of both Respondents. Fire Inspectors Edgar E. Alvear, Jr., Kimberly P. Pinkney, John Kelly, and Karen A. Hunt testified for the Government. Mr. Opare’s wife, Abigail Opare, testified on Respondents’ behalf.

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

II. Findings of Fact

Respondent Mr. Opare and his wife are the owners of the Property, and they operate there a restaurant business known as, “Ghana Café.” On September 14, 2008, Respondents participated in a festival called, “Adams-Morgan Day.” In this festival, store and restaurant owners, including Respondents, set up booths in the public space in front of the businesses along 18th Street, N.W., between Columbia Road, N.W., and U Street, N.W. Fire Code officials were present to ensure fire safety at the festival.

Prior to the festival, Respondents obtained a public space permit from the District of Columbia Department of Transportation (“DOT”), allowing Respondents to occupy the public space in front of their restaurant. Respondent’s Exhibit (“RX”) 202. The permit stated that,

“Other details are worked out with DCFD and EMS ...” and that, “All work must comply with all District regulations and statutes.”

The festival event ran from 12:00 PM until 7:00 PM along 18th Street, N.W., from Columbia Road, N.W., to U Street, N.W. Beginning approximately at 9:00 AM, various Fire Code officials, including Fire Inspectors Alvear, Hunt, and Pinkney, walked to the businesses and informed the business operators that their fires had to be extinguished by 6:30 PM. Respondents were notified of this requirement, although it is not clear whether Mrs. Opare was the person who was notified.

Respondents operated two open-flame charcoal/brick barbeque grills, which they used to cook food that they sold at the festival. At approximately 6:00 to 6:15 PM, Inspector Alvear walked to Respondent’s booth and instructed the persons there to extinguish the fire at 6:30 PM. At 6:30 PM, the fire at Respondent’s booth was still not extinguished, and four inspectors, including Inspectors Alvear, Pinkney and Hunt, stood in front of the grills.

First, Inspector Alvear spoke with Respondent Mr. Opare, and told him the grills needed to be extinguished immediately. Mr. Opare responded that he had permission to cook food until 7:00 PM and he refused to extinguish the fires. Mr. Opare also maintained that his public space permit entitled him to occupy the public space, and to cook food there, for the entire day of September 14, 2008 without any restrictions.

Shortly afterward, Inspector Hunt spoke with Mrs. Opare, and told her she needed to extinguish the fires immediately. At that time, there was fresh food on the grills.

Ms. Opare responded that she needed more time. She told the inspectors that she was concerned for public safety because there was a crowd in front of the booth. Inspector Hunt told her several additional times that she was ordered to extinguish the fires immediately. At that time, all four inspectors were standing within one foot of the grills. Ms. Opare then went and filled a large pan with water and came back and tossed the water onto the open flames. Ms. Opare said either, “Are you satisfied?” or “There! It’s out.”²

The spray of water onto the flames caused ash and debris to splash out from the open pits and caused a large plume of smoke to billow out. Inspector Alvear was injured when hot ashes hit his left eye, and he required medical treatment for his injury. The other inspectors also were hit by hot ashes and soot. At the time that Mrs. Opare threw water onto the flames, she knew that this method of extinguishment created danger for the Fire Code officials and other persons gathered near the flames. There were safer methods available, such as smothering the flames and placing enclosures over them.

II. Conclusions of Law

The Government charges Respondent with three infractions of the D.C. Fire Code. I will address each infraction separately.

² Inspector Pinkney testified to the former statement, and Mrs. Opare testified to the latter statement. The effect is substantially the same, so there is no need for me to determine which account is accurate. Both Mrs. Opare and Inspector Hunt testified in accord that Mrs. Opare initially refused to extinguish the fires immediately but that she also cited safety concerns for doing so. Although Mrs. Opare claimed that no fresh food was on the grills, I found the accounts of the various fire inspectors to be more credible. It made sense that Respondents were still grilling food, since Mr. Opare took the position that he was entitled to cook food until after 7:00 PM or even until midnight.

(1) 12H DCMR F-109.7 Obstructing operations/disobeying lawful command to extinguish fire

12H DCMR F-109.7 provides:

Obstructing operations. No person shall obstruct the operations of the Fire Department in connection with extinguishment or control of any fire, or actions relative to other emergencies, or disobey any lawful command of the Fire Chief or officer of the Fire Department in charge of the emergency, or any part thereof, or any lawful order of a police officer assisting the Fire Department.

The Government has proven through credited evidence and testimony in this case that, on September 14, 2008, Respondents violated this regulation by refusing to obey several lawful commands to extinguish their fires by 6:30 PM. The credited evidence shows that Fire Code officials, employees of the D.C. Fire Department, issued commands to Respondents and to Mrs. Opare, Respondents' agent, both in the morning hours and evening hours of September 14, 2008, to extinguish the fires in Respondents' open flame pits by 6:30 PM.

The credited evidence further shows that both Mr. Opare and Mrs. Opare refused several commands to extinguish the fires. At approximately 6:15 PM, Mr. Opare was told by Inspector Alvear to extinguish the flames by 6:30 PM, and Mr. Opare argued with Inspector Alvear about whether he was required to do so. At approximately 6:30 PM, in the presence of several other Fire Code officials, Inspector Hunt ordered Mrs. Opare several times to extinguish the flames immediately, and Mrs. Opare refused to obey these orders. Eventually, Mrs. Opare relented, but this occurred only when the Fire Code officials had gathered around the pits and would not leave.

Thus, the record shows that fire department employees issued several lawful commands to Respondents and to their agent, Mrs. Opare, who is a co-owner of the business in question, to

extinguish their open flames at 6:30 PM. Respondents disobeyed these commands, and they are responsible for a violation of § F-109.7.

Respondents contend that they are not liable for the infraction for three reasons: First, the commands were allegedly not lawful because Respondents had obtained a public space permit that entitled them to occupy the public space for the entire day. This defense is without merit. The public space permit, issued by the District Government, required Respondents to comply with the D.C. Fire Department requirements and to obey all applicable laws. Also, the fact that the permit was issued for the entire day did not mean that the commands to extinguish the fires at 6:30 PM were unlawful. The Fire Code officials were charged with maintaining fire safety, and they had authority to impose restrictions on the use of fires in the public setting.

Respondents' second contention is that they did not receive any warnings of this requirement prior to 6:15 PM on that date. I have found, based on the testimony of the Fire Code officials, and particularly that of Inspector Alvear, that Respondents were warned of this requirement in the morning of September 14, 2008. However, even if this were not so, there is no requirement that a warning be given. Once a lawful command has been given to extinguish the fires, Respondents had a duty to comply.

Respondents' third contention is that Mrs. Opare was motivated by public safety concerns in refusing to comply with the orders. This is also without merit. While it is true that the method of extinguishment eventually used by Mrs. Opare was unsafe, there were safe methods available for extinguishing the fire. Therefore, Respondent is liable for a fine. I will consider the motivations of Mr. Opare and Mrs. Opare in assessing the appropriate fine.

The Council of the District of Columbia has determined that an infraction of 12H DCMR F-109.7 is a Class 1 Infraction, subject to a fine of \$2,000 for a first violation. *See* 16 DCMR 3401.1(c), and 16 DCMR 3201.1(a)(1). Nevertheless, Administrative Law Judges have discretion to reduce fines when there are mitigating factors. D.C. Official Code § 2-1801.03(b)(6). In this case, Respondent has presented one mitigating factor, that Mrs. Opare was motivated by safety concerns in her actions, although her concerns were mistaken in part.³ This did not constitute a defense to the charge, but it is a factor I will consider in assessing the fine. On the other hand, there is an aggravating factor, that Mr. Opare was motivated by business concerns and obstructed the officials in their duties. After considering these factors, I will reduce the fine amount to \$1,500 for this infraction.

(2) 12H DCMR F110.1 Failing to remedy dangerous conditions or remove hazardous materials

12 H DCMR F-110.1 provides in pertinent part:

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. When necessary to secure safety in addition thereto, the code official shall be authorized to prescribe limitations on the handling and storage of materials or substances or upon operations that are liable to cause fire, contribute to the spread of fire, or endanger life or property. 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.

* * *

³ I must emphasize that I **only** find that Mrs. Opare was motivated by safety concerns in initially questioning the orders to immediately extinguish the fires. When Mrs. Opare finally complied with the orders, she did so in a dangerous manner and she was angry with the code officials when she did so.

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

The Government has proven that Respondents violated this regulation on September 14, 2008, because Mrs. Opare took actions that made a potentially dangerous fire situation into an actual fire emergency, causing risk to the life and safety of the Fire Code officials and others. One of the officials, Inspector Alvear, was seriously injured to his eye and required medical treatment.

Respondents argue that they are not responsible for this violation for the following reason: They claim that the Fire Code officials themselves created the fire danger by requiring Mrs. Opare to extinguish the fires immediately in disregard of public safety. According to Respondents, the officials themselves contributed to the danger by standing within one foot of the open flames and by failing to advise Mrs. Opare as to a safe method to extinguish the flames. I disagree.

Inspector Hunt's command to extinguish the flames occurred after numerous orders to do so had been ignored. The officials stood next to the flames to let Respondents know that they must comply with the orders and to protect the public. Mrs. Opare acted recklessly by throwing the water into the open flame. I do not conclude that Mrs. Opare intentionally injured the officials, but it is clear that she was angry with them when she threw the water onto the flames. Her comments, "Are you satisfied?" or "There, it's out," expressed this anger.

Further, Mrs. Opare gave the officials no opportunity to explain any safe fire extinguishment practices. Her action came as a complete surprise to them.

Finally, while the officials' proximity to the flames put them in the path of the soot and ashes, they were acting to protect the public. They should not be condemned but commended for their actions.

An infraction of 12H DCMR F-110.1 is a Class 1 Infraction, subject to a fine of \$2,000 for a first violation. *See* 16 DCMR 3401.1(d), and 16 DCMR 3201.1(a)(1). In this case, I do not find any mitigating factors and I will impose the full fine of \$2,000. Even if Respondent had presented mitigation, this would be balanced against the aggravating factor that a Fire Code official who was exercising his lawful duties was seriously injured by Respondents' actions.

(3) 12H DCMR F-112.2 Failure to comply with a notice of a verbal order by a code official

12H DCMR F-112.2 states:

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 (now Attorney General) 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 provision of this code or of any order or direction made pursuant thereto. The police department shall be requested by the code official to make arrests for any offense against this code or orders of the code official affecting the immediate safety of the public.

This charge must be dismissed for two reasons: First, the description of the charge listed by the Government in the Notice of Infraction states, "Failure to comply with a notice of a verbal order by a code official," which is at variance with the actual text of § F-122.2. Second, the Government has not shown that any of the provisions of § F-122.2 were actually violated in this case. Therefore, this charge must be dismissed with prejudice.

Summary

Respondents are responsible for a fine of \$1,500 for violating 12H DCMR F-109.7 (Disobeying lawful command to extinguish fire), and for a fine of \$2,000 for violating 12H DCMR F-110.1 (Failure to remedy a hazardous condition). The total fine amount is \$3,500. The third charge, under 12H DCMR F-112.2, will be dismissed.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is this 12th day of December, 2008:

ORDERED, that Respondents GHANA CAFÉ and ANTHONY OPARE, jointly and severally, shall pay the amount of **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500)** in accordance with the attached instructions; and it is further

ORDERED, that if the Respondents fail to pay the above amount in full within 35 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 **FIFTY-THREE DOLLARS (\$53)**, or portion thereof, starting 35 calendar days after the mailing date 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 Respondents' 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

