ABATEMENT APPEALS BOARD
Wednesday, December 15, 2010 at 9:00 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
ADOPTED January 18, 2012

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for December 15, 2010 was called to order at 9:00 a.m. by President Lee. Roll call was taken by Secretary Ann Aherne, and a quorum was certified.

BOARD MEMBERS PRESENT:
Frank Lee, President
Debra Walker, Vice-President
Kevin Clinch, Commissioner
Reuben Hechanova, Commissioner
Warren Mar, Commissioner
Mel Murphy, Commissioner
Criss Romero, Commissioner (excused)

Ann Aherne, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:
Edward Sweeney, Deputy Director of Inspection Services
Rosemary Bosque, Chief Housing Inspector

Francesca Gessner, Deputy City Director

B. OATH: Secretary Aherne administered an oath to those who would be giving testimony.

C. REQUEST FOR AAB JURISDICTION AND NEW APPEAL

D. NEW APPEAL: Order of Abatement.

1. **CASE NO. 6743: 593 – 32nd Avenue (Request for Jurisdiction)**

   Owner of Record and Appellant: Christina Fong, 1776 Sutter Street #201, San Francisco, CA 94115

ACTION REQUESTED BY APPELLANT: The Appellant has requested that the AAB take jurisdiction over an appeal of Director's Order No. 200929750. This appeal was filed after the appeal period provided by San Francisco Building Code Section 102A.10 expired. The AAB may consider testimony, deliberation and possible action to grant jurisdiction pursuant to San Francisco Administrative Code Chapter 77.5(b)(2).

Secretary Aherne stated in this case, the Appellant missed the deadline for filing of an appeal of an abatement order and as a result, the Executive Secretary rejected the filing as late.

Under Chapter 77.5b of the Administrative Code, the AAB may grant the request for late jurisdiction if the Appellant shows that her delay in filing the appeal was due to misrepresentation, mistake, or other error on the part of the City.

Under this first Agenda item, the AAB will first consider the late jurisdiction request and each party will be given three minutes to present their case as to why jurisdiction should or should not be granted. At this time, the AAB will not consider the merits of the appeal, but instead, will consider whether the lateness was excusable and therefore jurisdiction should be granted.

President Lee asked if the AAB was convened to discuss or see if the Board should hear the appeal to the Order of Abatement. The AAB will hear three minutes from the Department then three minutes from the requester, is that correct? The Department will go first.

Secretary Aherne stated that is correct. The address on this case is 595 32nd Avenue.

Rosemary Bosque, Chief Housing Inspector, stated the subject property is a 2-unit building in which the Department received the complaint just for background information regarding the request for jurisdiction. She complained back in December 23rd of last year we went and performed an inspection on the 29th of last year and issued a notice of violation at that time.

Inspector Bosque said what is really before the AAB is the issue of late appeal. The item, because it had not been abated, the property at the time was owned by the Bank of New York. It went to a Director' s Hearing on February 11th of this year, and it was noticed properly to the owner at the time 10 days or more from the date of that February 11th hearing and those notices went out on or about the 27th and 28th of July of this year. At that time, when the staff did its research, the owner of record was in fact the Bank of New York so the hearing notification went to that property owner.

Inspector Bosque stated unbeknownst to the Department, there was a pending sale. The bank never notified DBI of this and three days before the Director's Hearing on February 8th, the title actually changed. The staff did not know that but we had subsequently become aware of that and a copy of that deed is in the package so the Director's Hearing that occurred. The property owner that was notified 10 days before the Bank of New York did not show up, and an order was issued on the property.

Inspector Bosque said what happens in these cases is that we actually have access to the Recorder's information and we go online and we look to see what the recorded documents are that exist. The problem is when there is a deed recorded that does not get into that system right away, so the City does not have in real time that information because there are things beyond the Department of Building Inspection's control mainly the data entry by the Recorder's Office and because of staffing shortages. There is a delay in revocation of documents and the delay of when that information is put online for the Department to have access.

Inspector Bosque said you can see from your records, we did not know and it does not show up as Christina Fong, the current owner of record, until we sent the initial bill out several months later. On July 15th of this year, Ms. Fong had become aware of the Order of Abatement and she could tell you more of how that occurred. I sent a letter to the Director asking for relief on the recordation of order and the assessment of cost. The Department reviewed that information and found that that notification was a civil matter between her and the bank and indicated that nothing else would occur and that the money was owed.

Vice President Walker asked what is the staff recommending?

Chief Housing Inspector Bosque stated the staff is recommending that it was a civil matter between the parties so this is the Department recommendation and that the $1,300 assessment of cost is to be repaid to the Department. As far as recovering that, that should be between the current owner and the old owner. That is the Department's recommendation.

Commissioner Hechanova stated on the technical item, it is 2009 on your recommendation number 1, correct because on the sheet here it says December 29, 2010 NOV. Inspector Bosque asked if Commissioner Hechanova was talking about the recommendation on the staff report?

Commissioner Hechanova stated Department findings and recommendation, and asked if that was a typo? Inspector Bosque asked if Commissioner Hechanova was looking at item number 1?

Commissioner Hechanova stated yes, number 1. Inspector Bosque stated yes that was issued in 2009, it is a typo.

President Lee asked if there were any other questions? He said that three minutes would be allowed for the requester, property owner.

Christina Fong, Appellant, stated she was nervous so bear with her. She is the requester for your review to grant back jurisdiction to take a look at reversing the Order of Abatement, as well as the penalties that are assessed against her.

Ms. Fong stated in February, 2008, she became a San Francisco first-time homeowner with the intent to occupy the house with her mom but had been forced to become an unwilling landlord to non-paying occupants. She is sad to say that she and her mother are still unable to occupy this house because for the last nine months, she had to hire an eviction company and an attorney to legally try to evict the non-paying occupant in the house.

Ms. Fong said that she was requesting the Board to take back jurisdiction of her appeal because she finds it inherently unfair that she was denied the ability and opportunity to appeal the Order of the Abatement issued on February 11th. Since technically, as a property owner, she did not receive notification of the hearing as required by Section 102a.4 of the San Francisco Building Code and because she was not notified, she did not attend the scheduled hearing.

Ms. Fong stated that consequently, she was not able to appeal the order before this Board and was therefore denied the right and ability to appeal the Directors' decision within the 10 days allowed because she was not made aware that there was an entire DBI proceeding that started in December, 2009. She did her due diligence once she became aware of the issue and believe that DBI was negligent by not pursuing its notices of hearings and the Order of the Abatement with the bank.

Ms. Fong said that now she has corrected the problem and is being forced to pay the enforcement fees for the complaint that was made against the bank. When she purchased this house, she was not aware that there was a complaint filed with DBI on December 23, 2009 or the notices of proceedings that followed. This is evident from the Housing records that all documents from December 23rd through April 21st were sent to the attention of Bank of New York, the Trustees. The only document that DBI finally sent her as acknowledgement that she was the owner was the August 13th final bill assessing cost of $1,346.50.

Ms. Fong stated that DBI did not, in good faith, provide her notice of the Director's Hearing or the Order of Abatement and she disagreed with the Director's belief that DBI fulfilled its obligation when it noticed the bank up until the final bill which was then sent to her attention. She believes DBI failed in its fiduciary duty to notice the property owner, her, and is hiding behind the excuse that notice to the bank was satisfied notice to the property owner at the time.

President Lee stated that he had a question. How did Ms. Fong learn of this Order of Abatement?

The Appellant stated after going through hell ever since she bought this house, because of all the problems with trying to evict the current occupants. An attorney had advised her, since she was having so many problems with this house, she should check to see if there was a complaint filed at DBI, given the totality of her situation and that is the reason why she went and called DBI and contacted the Housing Inspection division and asked if there was a complaint against the property.

The Appellant said that she is really unfamiliar with anything to do with buying a house, let alone becoming a landlord to people who are not paying. It was basically her attorney that recommended that she check with DBI, and that is when she found out there was a complaint in December that the furnace needed to be fixed. That is how she learned about the Order of Abatement through that process and that was in July by that time.

President Lee asked and what was the role of her realtor or your agent in this whole process?

The Appellant stated apparently, they did not do their fiduciary duty to help her, so she has been screwed left and right by everybody that she thought were there to protect my rights and it has been hell. I wish I had never bought this house in San Francisco.

Vice President Walker stated she actually had a question of counsel. Should we do that now or after? This is an interesting issue for me of noticing and I just have a question as to, this is at the crux of it for me. Even though there was a new owner at the time we issued the notice, we issued it to the wrong person because we believe that the previous owner was still the current owner. Who was the legal owner at the time of the issuance of our notice?

Attorney Gessner stated it depends on how many notices you are talking about. There was a notice for the Director's Hearing in January but then there is the actual Order of Abatement in the mail. At the time the Order of Abatement issued, ownership had changed according to the document.

Vice President Walker stated the follow up is, is it then the bank's responsibility to notify any subsequent owner of the transfer?

Attorney Gessner stated that is not really within your jurisdiction.

Vice President Walker stated this is more establishing it for me whether or not I will vote to have a new hearing or not. The hearing notice was sent to the right owner, is that right, the bank?

President Lee stated let me ask this question. What does our Board have jurisdiction over? We do not have jurisdiction over the Director's Hearings right? We do not listen to appeals for the Director's Hearings but we listen to appeals for Order of Abatements. Is that correct?

Attorney Gessner stated correct. The issue here is why she missed the 10-day hearing of the appeal of the Order of Abatement so the Board here needs to make a finding, whether under the Code, for delay in missing that 10-day deadline was somehow caused by a misrepresentation, mistake, or error on the part of the City.

President Lee stated so the question is, when did that the letter of Order of Abatement go out, when it was posted and how many days after that.

Vice President Walker stated three days after the ownership change. So my question is, it is not just what is under our jurisdiction but the City failed to record in due time the Order of Abatement. We can and are supposed to look at whether we allow a rehearing of the abatement.

Attorney Gessner stated it is not a rehearing. You would be granting jurisdiction to allow her to appeal the Order of Abatement for the first time to the AAB.

Commissioner Mar stated I also have a follow-up question. Given that the City took this time and did not record it, and we sent the first letter to the bank who was the owner, is there any recourse for the City to go after the previous owner because they could have dealt with this before they sold the house right?

Attorney Gessner asked if Commissioner Mar was talking about between the requester and the bank?

Commissioner Mar stated because we said the civil suit is between her and the bank. Yet the bank could have dealt with this with the City as well. They are also responsible to the City, not just to her because they sold her a problem, are they not? I just want to ask, is the bank, the previous owner, responsible for taking care of something with the City or can they just pass it off. Can any owner just pass off their problem with the City to somebody else unknowingly?

Attorney Gessner stated it is the current owner of record at any given time. He is liable to the City for any fees and responsible for the Order of Abatement whether he is the current owner of the property.

Commissioner Murphy stated looking at this, the way I see it, the Housing Inspector wrote a notice in December of 2009. At that time, the Bank of New York owned the property. There was no compliance and the case was scheduled for the Director's Hearing. The notification at that time went to Bank of New York between the time of the notification and the hearing, Ms. Fong took title to the property. Nobody showed up for the hearing, my understanding, and the order was then issued. In March, the Order of Abatement was mailed to the Bank of New York. The owner claims that the mail should have gone to her and not to the Bank of New York. She made repairs, is that true?

The Appellant stated yes, the invoice and re-inspection took place recently so it was repaired within less than 10 days.

Commissioner Murphy stated so she made the repairs as soon as she was aware of them and then mailed it to the Housing Inspector in July and for some reason, the inspector did not go out and verify those repairs until October. Why?

President Lee stated because I think you just made your case that the Order of Abatement went to the wrong party.

Commissioner Murphy stated yes, so I see the present owner.

Vice President Walker stated that is what we are looking at. I feel the same way. I think that the Order of Abatement went to the wrong person, and we did not know. It is not necessarily because we made an error. We relied on information in our system, but another entity in our system had not updated it to give us proper immediate current ownership. So the issue for me is just a fair notice and fair hearing opportunity. That is all we are looking at, not the facts of anything else that is for another day.

Commissioner Murphy stated if we want to point the finger at anybody, it would probably be the Assessor's Office.

Attorney Gessner stated if there are additional questions for the requester, otherwise I recommend you go to public comment and then continue to deliberation.

President Lee stated any public comment?

Luke O'Brien, San Francisco Coalition for Responsible Growth, stated I can weigh in on some of this, as an agent in San Francisco. Whatever has become a liability of the acquiring party is whatever is recorded at the time of the sale. So if a material fight was noticed and recorded and disclosed in the sale, then the party acquiring the property buys and agrees to that. One term would be a cloud on the title or any other negative fact associated with the property and they buy with an understanding that is an issue that they have to deal with.

Mr. O'Brien said I came late so I am not sure if I heard it is possibly a short sale but given that it was being sold by the bank, sounds like it was not a regular transaction. In the case of a bank doing a sale, the rules are very different, and I can say that from experience. If I have a client buying a property from a bank, I make it very clear to my client that the rules of disclosures, the normal procedures for a transaction do not apply.

Mr. O'Brien stated the bank has all the resources legally and otherwise to know what the law is and what their obligations are and it is probably fair to say that there is a fair degree of unchartered territory, even though we have been in the short sale business for a few years now with the recession. So some of this probably has not been tested in courts, so we do not know exactly what the law is. But as a buyer buying a property from the bank, you should be prepared for some nasty surprises, just as you are in the event of an estate sale. It is one of the few cases where the term "as is" has muscle and means something. It is what it is when it happens, and I thought I would share that with you.

President Lee stated any other public comment? Seeing none, public comment is closed.

Vice President Walker stated it seems to me, Ms. Fong was caught in the middle of a quick sale, a lack of updating notice. I would like to make a motion that we grant her request to take back jurisdiction and allow her appropriate notice. Maybe today we could notice her, I don't know.

Attorney Gessner stated the way this agenda allows you to take up the merits of the appeal is the next item on the agenda. If you were to grant jurisdiction, the next step would be to proceed then to hear the case today on the merits.

Commissioner Murphy stated I seconded the motion.

President Lee stated the Department did nothing wrong in this case. I believe that DBI did send the letters to the proper property owner, as listed in the Recorder's Office. However, it did appear that the Recorder's Office was a little slow on listing the new owner.

President Lee said the notice of the Director's hearing was sent to the bank, which was the right place, but they should have informed the new buyer. That is my belief. Subsequently, nobody showed up at the Director's Hearing and then the Abatement Order was issued. Technically, the

Abatement Order should have been sent to the new owner, but it wasn't. If it was received by the new owner, they did have the right to appeal within 10 days so I would support the motion.

Vice President Walker stated and just as a follow up maybe we could look at ways of flagging these cases to the Assessor's Office somehow. Especially in our new system if there are violations attached to the property, that these things get recorded quickly so that people and the public are updated as to the reality of it.

Vice President Walker made a motion, seconded by Commissioner Murphy, to take jurisdiction over the case. The motion carried unanimously.

2. **CASE NO. 6743: 593 – 32nd Avenue (New Appeal if Jurisdiction Granted Above)**

   Owner of Record and Appellant: Christina Fong, 1776 Sutter Street #201, San Francisco, CA 94115

   ACTION REQUESTED BY APPELLANT: the Abatement Appeals Board is taking jurisdiction over Item #2.

Secretary Aherne stated the Department has seven minutes if it wishes to state its case. Ms. Fong will then have seven minutes.

President Lee asked for public comment. There was none. President Lee called for the Department's rebuttal (3 minutes).

Chief Housing Inspector Bosque stated since I have already summarized the case, I want to address some of the discussion of the questions that had come up previously. The time frame from the position of the Director's hearing officer to the time that it gets sent to the Recorder's, the delay of the process we have to wait for the 10-day appeal period. So when staff goes ahead and issues it and sends it out, then there is a 10-day period we must wait for the order of record that has been noticed, whether or not we send it over to the Recorder's Office, so there is usually around a 30-day period before it gets sent to the Recorder's Office.

Inspector Bosque stated that she thinks part of the problem is, as far as future direction to the Department, maybe the Recorder's Office, there is a delay between when an instrument is recorded and when it appears. I think that is part of the problem. Also, we note that when we take a document, Order of Abatement, revocation of an order to the Recorder's Office, it could be some weeks before that had recorded because we stand behind individuals coming that day to get their documents recorded. I will say that Ms. Fong, when she was contacted by DBI and worked with the staff when she immediately got access to the property and abated the complaint.

Regarding the delay in doing the inspection, there was no delay. If you look at the data sheet, the assigned Housing Inspector did make continuous effort to contact the owner at that time in order to get in and verify so that we could conclude and resolve this particular case. So with that,

unless she has any other further questions at this point let the owner further testify.

President Lee asked to hear from the Appellant. You have seven minutes.

The Appellant stated as I have previously indicated, on July 8th is when I became aware of the complaint filed at DBI and of my own volition based on the advice from my attorney, checked it out to see what was going on and if there was a complaint. On July 9th I contacted the Housing Inspector assigned, Albert Leong, and met with him on July 12th which was on a Monday and he provided me with the case file.

The Appellant said within 10 days, I arranged a date and time for a service technician to repair the heater. I rectified the situation as soon as possible on July 16th and provided a copy of the invoice to Mr. Lau on July 20th as proof of repair. On July 16th, I had corrected the Order of Abatement as soon as I was made aware of the problem and if I had known about the Order of Abatement sooner, I would have been able to appeal and follow the process that you guys have outlined. As soon as I learned of it, even though it was after the fact, I actually went ahead and made the corrections, made the repairs as soon as possible.

The Appellant stated that she does not know if she has anything more to add but she appreciates that the AAB took back jurisdiction of the case. She also wanted to thank a couple of individuals from the DBI staff who helped her to get through this process of learning to have the Abatement Appeals Board take back jurisdiction before she could have an appeal heard. The Appellant thanked Ms. Bosque, Ms. Aherne and Ms. Harris as well. They helped her figure what to do here today and that is all she had to say.

President Lee asked any questions from Commissioners? Any public comment?

Vice President Walker asked for rebuttal.

Secretary Aherne stated we do have three minutes for rebuttal, if the Department or Appellant needs it. I do not think Ms. Fong has anything else to say. There is no public comment.

Vice President Walker stated this is unfortunate, because this is one of those issues that the bank should have been aware of this on the description sheet. The bank should have been responsible for that. These issues are real that we dealt with and I appreciate that you have carried forward but I think the assessment of cost is the amount of money that we put into it as a Department. To me, it looks like the Department acted rightly in this case. I think I will be supporting upholding the assessment of cost and upholding the Department's recommendation on this case and ask that the bill be taken care of. I think you are then free to do what you want against the previous owner, because it is a civil matter and out of our hands on that matter.

Commissioner Hechanova stated in light of what had already happened her primary comment would be that we provide service to the citizens of our City, and we not be punitive where in the course of due process, there were balls that were dropped. The category of being rational and practical about this, without getting lost in the Department’s policy on such a minor item of where the owner had really taken into account responsible action, and along with that, it was

really very simple that we should extend a courtesy of service by granting this appeal because we need to take care of our citizens. It was really outside of her scope when the former owner dropped on her this category item. So there are processes, but the category is we should be rational and practical. Something like this is fairly minor.

Commissioner Murphy stated I would agree with Commissioner Hechanova.

Commissioner Murphy stated I think Ms. Fong did everything right and she is getting slapped on the wrist here, at least that is the intent. At the time, it is too bad for the owner and I do not particularly like that. I am sure there was some staff time spent on this. Maybe too much time, but that is not for me to say. That is just my humble opinion.

President Lee stated I think that this is unfortunate that this situation arises but I do not think our Department did anything wrong and I think to completely waive the fee would be admitting that DBI did something wrong. Maybe there could be a compromise, maybe a midpoint? How about 50% of what the fees were and then suggest that the owner go seek remediation or something with the previous owner?

Commissioner Clinch stated I just do not believe the owner will have a chance to get the money from the bank. We are charging this fine to her when she did nothing wrong. I am wholly opposed to that.

Vice President Walker stated I think this is setting a bad precedent. This is basically allowing banks to just what they want to do. Ultimately, it is the bank's fault, but the AAB is setting a precedent here because there is no other argument other than the bank failed to deal with this issue and we failed to record it. We allowed her for the new hearing on our end of it maybe I can get an assessment from the Department on what this is all about, excuse me, fines and penalties?

Chief Housing Inspector Bosque stated the amount that was in the final bill that was sent out August 13th is $1,346.50. That was our time and that was the final bill which was before this appeal.

Commissioner Clinch stated I would like to make a motion that the case be closed with no fines.

Vice President Walker stated there is a motion on the floor. I made the motion.

Secretary Aherne stated you did not make the motion.

Commissioner Clinch stated I would like to make the motion that this case be dropped and no fines applied to the current owner.

Attorney Gessner asked is that the motion to grant the appeal and reverse the Order of Abatement including the assessment of cost. It is not penalty or fines but assessment of cost.

Commissioner Clinch made a motion, seconded by Commissioner Murphy that the case be dropped with no fines to the owner. The motion is to also grant the appeal and reverse the assessment of cost.

President Lee asked if there was any further discussion?

Secretary Aherne called for a roll call vote.

The Commissioners voted on follows:

President Lee	***No***
Vice President Walker	***No***
Commissioner Clinch	***Yes***
Commissioner Mar	***Yes***
Commissioner Murphy	***Yes***
Commissioner Hechanova	***Yes***

A roll call vote was taken and the motion carried on a vote of 4-2.

Commission Secretary Aherne asked if there was any general public comment relating to the Abatement Appeals Board? Seeing none, we can move to adjournment.

Commissioner Hechanova made a motion, seconded by Vice President Walker that the meeting be adjourned. The motion carried unanimously.

The meeting was adjourned at 9:49 a.m.

Respectfully submitted,

_____

Serena Fung, Secretary

_____

Edited by: Sonya Harris, BIC Secretary