



ABATEMENT APPEALS BOARD
Wednesday, February 19, 2014 at 10:00 a.m.
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416
ADOPTED April 16, 2014

MINUTES

A. CALL TO ORDER and ROLL CALL.

The meeting of the Abatement Appeals Board for Wednesday, February 19, 2014 was called to order at 12:07 p.m. and a roll call was taken by Commission Secretary Sonya Harris, and a quorum was certified.

BOARD MEMBERS PRESENT:

Kevin Clinch, President
Myrna Melgar, Vice-President
Frank Lee, Commissioner
Warren Mar, Commissioner
Angus McCarthy, Commissioner (arrived 12:14 p.m.)
Debra Walker, Commissioner (Excused)
Dr. James McCray, Jr., Commissioner

Sonya Harris, Building Inspection Commission Secretary

D.B.I. REPRESENTATIVE PRESENT:

Ronald Tom, Acting Secretary to the Board
Chief Housing Inspector Rosemary Bosque
Teresita Sulit, Recording Secretary

Zachary Porianda, Deputy City Attorney

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

C. APPROVAL OF MINUTES: Discussion and possible action to adopt the minutes for the meeting held on November 20, 2013.

Vice President Melgar made a motion, seconded by Commissioner Mar, to approve the minutes of November 20, 2013.

Commission Secretary Harris called for public comment and there was none. The minutes were approved.

The motion carried unanimously.

D. CONTINUED APPEALS: Order of Abatement(s) Cases #6783 and #6784 combined

In the beginning of the proceeding, both cases (#6783 and #6784) were combined together. The Department and the Appellant each were allowed 14 minutes to present their case and 6 minutes each for rebuttal and public comment.

- 1. CASE NO. 6783: 1450 Green Street**
- 2. CASE NO. 6784: 1450 Green Street**

Owner of Record: Anne Hector Revocable TR, Bay West Property Management, 2412 Polk Street, San Francisco, CA 94109

Appellant & Attorney for the Appellant: Adam Clammer, c/o Law Office of Brian E. Soriano, Attorney at Law, 1801 Bush Street, Suite 304, San Francisco, CA 94109 or Alan C. Nolley, Esq/J. Paul Lewis, Wood, Smith, Henning & Berman LLP, 1401 Willow Pass Road, Suite 700, Concord, CA 94520

ACTION REQUESTED BY APPELLANT: Reverse the Order of Abatement.

NOTICE OF DECISION: On February 19, 2014, the Abatement Appeals Board (AAB) held a duly noticed hearing concerning the property referenced above. At the hearing, the AAB heard oral testimony and reviewed the documentary evidence provided by the Department of Building Inspection, the Appellant and other interested persons. After deliberation of the evidence submitted and the relief sought, **the AAB voted to continue the matter to the next AAB hearing.** Accordingly, the Appeal referenced above will be heard on March 19, 2014 following the Building Inspection Commission meeting.

Chief Housing Inspector Bosque said the Appeal before the Board involved two Orders of Abatement and two Notices of Violation were issued on March and May, 2013. The staff report was combined and both items were addressed within the staff report. This was a 9-story building and there were two Notices of Violation which mostly focused on Unit #7. There were some environmental factors regarding tenants moving out and some disputes between both the property owners and tenants.

The Notices of Violation were straight forward as to the maintenance item. This case went to the Administrative Hearing process in the late fall and the property owners were granted a 30-day continuance to try to resolve the matter and to return in December, 2013. The Hearing Officer imposed a 7-day Order of Abatement and the property owner appealed that which was before them today. She made earlier comments about staff's efforts had cases closed and the work to be done and the Board needed to hear the involved parties for more particulars. In the Board's thick

package, there was a lot of correspondence between the parties and showed pictures of the building in question, which was also in the package and it may be useful for the parties speaking.

Commissioner Lee asked what was the current status of the Notices of Violation? Was there construction that went on to abate the Notices of Violation or was work currently in progress? Chief Housing Inspector Bosque said they were not abated and there was a dispute between the two parties as far as access and personal property and they were eager to hear the latest as well. The work was not done and was not inspected to see if that was the case.

Alan Nolley, Esquire, represented one of the owners at the subject property, Adam Clammer. For the purpose of timing, he wanted to combine these two Appeals which involved the same facts. President Clinch said Chief Inspector Bosque also suggested that and they had 14 minutes.

Attorney Nolley answered Commissioner Lee's question concerning the status. Currently there were comprehensive remediation and repair efforts that have taken place for some time and some of the owners of the property were present today. Mr. Clammer and tenants worked together to resolve all the issues cited on the Notices of Violation and the Order of Abatement. There were actually some construction and repair activities that took place this week and they remained ongoing. Mr. Nolley said that he was not necessarily here to argue or dispute any of the Notices of Violation, Orders of Abatement or to dispute the issues that needed to be addressed on the subject apartment.

They were here today to discuss the property owners' diligent efforts to address the Notices of Violation since last April when the Notices of Violation were issued and had expended substantial resources on addressing the tenants' issues on the Notices of Violation and Order of Abatement. This was in addition to working with the subject tenants and their attorneys of record, hand in hand to go through the numerous issues cited in the Abatement Orders. Contrary to the sentiments of the tenants who claimed that the owners of the property had refused to act on the Notices of Violation and the Abatement Orders, there had been numerous efforts on the parts of the owners to address the concerns over the last ten or so months since last April, 2013.

In the packets given to the Board in support of their Appeal to these two Orders, they attached various exhibits, evidenced correspondence exchanged between the two parties and evidenced all the environmental contamination, construction repair and other issues that were found at the apartment and the owner's diligent effort addressed those issues. The packet also provided them with a timeline of events since April, 2013 through past January, 2014 which was about seven months of events placed in chronological order.

In the timeline and documents provided, there had been substantial interior and exterior issues that were addressed in conjunction with the numerous departments in the City of San Francisco and appropriate authorities and agencies. Mr. Clammer is one of the owners of the apartment and the other owners had retained numerous consultants, experts and the other contractors to remedy the issues that were cited in the Notices of Violation and the Abatement Orders. The real issue was to focus on the unfortunate hurdles and the roadblock the tenants and their attorneys of record had put in front of them and their attempts to address the issues in the Notices of Violation and the Abatement Orders.

A lawsuit had unfortunately spawned out of this. Instead of cooperation with the owners during the last nine months and addressed the concerns of the Notices of Violation and Orders of Abatement, the tenants and their attorneys used this opportunity as a springboard and to build and garner evidence for their lawsuit unlike the owners who worked with them hand and hand with the issues cited on the Notices of Violation and Orders of Abatement.

In May, 2013, their clients issued a notice to surrender possession of the property which was about a month after the first Notice of Violation was issued. In spite of the issued notice to the tenants, they currently have not surrendered the property but moved out of the property. This created many issues throughout this process in attempt to remediate and repair the issues at the property, and they had 24-hour notice and about a day to gain access to the tenants and their attorneys, which made it more difficult to address the concerns in a timely manner.

President Clinch said the tenants moved out but continued to pay rent? Attorney Nolley said they moved out and had not continued to pay rent or surrendered possession of the unit. They wanted to adhere to all of the local and statewide statutes and ordinances and cannot enter the property without a 24-hour notice.

Vice President Melgar asked if they had not surrendered possession of the property, their personal belongings were still at the property? Attorney Nolley said correct and it had been addressed. Some of the repairs and remediation efforts had focused on cleaning of their personal belongings. They were still in the apartment and tried numerous times over the last several months to work with the tenants and their attorney of record to ensure the remediation repair effort and the cleaning of their personal belongings were in accordance with what they wanted with their protocols.

After the first Notice of Violation in May, 2013, Mr. Clammer and the other owners made it clear they will address the concerns and the Notices of Violation in addition to not having surrendered the property. The tenants were notified and it became roadblocks and hurdles since May, 2013. The tenants' refusal for entry to perform the necessary repairs and the remediation efforts complicated efforts to comply with the Notices of Violation and Abatement Orders.

The key point to note was Mr. Clammer, the owner and Mr. David Rizzolo of the San Francisco Department of Public Health both noticed the tenants' efforts derailed any remediation and repair efforts since June and July of 2013. Mr. Clammer and the other owners had obtained numerous consultants, inspectors and contractors to perform the repair since last year. All of the efforts were hindered by numerous delay and frustrations by the tenants and their attorneys despite some progress on these repairs.

Brian Soriano, insurance counsel appointed to represent Mr. Clammer, said he was involved in both the Director's Hearings and addressed some concerns on the lack of inconsistency between what transpired at these Hearings. There were two of them because the tenants filed a lawsuit for over \$750,000 based on the landlord/tenant relationship and he was Mr. Clammer's insurance council. They had contractors and remediation work in response to the Notices of Violation last May. Some construction work on the outside of the building created a dust infiltration. The

building is a tenant-in-common owned property and most tenants simply vacuumed up the dust and went on with their lives without incident.

The tenants in Unit #7 raised concerns about potential toxic exposure from asbestos and lead. They contacted David Rizzolo of the Department of Public Health who contacted him to postpone the cleaning of the dust infiltration. He continued to cooperatively work throughout May with Mr. Rizzolo for testing and found no viable asbestos involved or lead-based paint contained in the dust that infiltrated the apartment but it was all from the exterior.

The lead-swipe test showed lead-based paint on a typical 80-year old building which was no surprise. The only positive result was a lead-based paint used around the window sills. Despite all the testing, their cooperation and Mr. Rizzolo's approval of their protocol, the tenants contacted another colleague at the Department of Public Health without disclosure that Mr. Rizzolo was currently involved in the case.

On June 27, 2013, they received a Notice of Violation from Joe Walsh of the Department of Public Health that prevented them from complying with all the repairs necessary to the Notices of Violation from the Department of Building Inspection. The majority of these items on the Notices of Violation were specific to Unit #7 and the required access. The building should be vacant and everything needed to be removed but before anything can be removed, the Department of Public Health's Notice of Violation required a protocol for cleaning and remediation of the unit.

At the first Director's Hearing on October 24th, they submitted a timeline of events with 20 Exhibits. They documented this had been very difficult to work with the tenants' attorney. They submitted this at the first Director's Hearing and explained that they had a delicate situation between the rent ordinances and the tenants' lawsuit. The Department of Public Health granted them a maximum of 30-day continuance and return on December 5th to report their documented progress. In the timeline submitted in this Appeal, significant work transpired between October 24th and December 5th to address the Department of Public Health's Notice of Violation.

At the December 5th Hearing, they had a different Hearing Officer who was not familiar with the case and had to start from scratch. The tenants were present at both Hearings and represented by counsel at the second Hearing which they went back and forth at the Director's Hearing. Dr. Howard commented about fairness, hand strung by the Department of Public Health and penalized by the Department of Building Inspection to address the repairs and her very genuine concerns about her safety and belongings. The Hearing Officer asked for staff's recommendation despite the first Hearing recommended 7 days for the Order of Abatement which they requested to appeal the decision.

President Clinch asked if the Department had any comment.

Commissioner McCarthy asked for the Department's recommendation and where they stand? Chief Inspector Bosque said the ongoing dispute between the parties occurred after the violation was issued. On October and December, 2013, they recommended a 7-day Order of Abatement be issued because the tenant wanted to get back into the unit. The dispute went back and forth

and it was up to the Hearing Officer and they needed to hear from both sides. She would not characterize the way it was mentioned on the information on the Health Department, but it was independent from them trying to get resolution. After they heard all the evidence, they have no problem if the Board wanted to give them more time. They tried to get both parties together so they can get access and made sure the items were taken care of soon or this will continue for a long time.

Vice President Melgar said there was an outstanding violation from the Department of Public Health, S. F. Health Code Article 26, Section 1609. Was there an outstanding violation for unsafe work practices for the exterior work that created this in the first place? Chief Inspector Bosque said the notices before the Hearing Officer were very specific to unit #7 and some other items but it did not include items David Rizzolo had addressed.

Commissioner Mar said the inspectors re-inspected the property and some work was in progress. These tenant/landlord disputes often went before the Board for work and cannot proceed because the tenants disallowed contractors in. Had their inspectors sensed it was true or not or if that was the case? Chief Inspector Bosque said there was testimony from two attorneys that stated the work was not done because they were disallowed access and a lawsuit was filed. From the testimony, they understood the work was done, although the testimony indicated the desire to do so but had not heard from the occupants of the unit and they were present.

President Clinch said the Appellant had six minutes of rebuttal. Secretary Harris said the rebuttal was generally three minutes and they heard both cases so it was six minutes and the public comment was after the rebuttal. Since the Department declined its rebuttal time, the Appellant still had the option for rebuttal.

Attorney Soriano said he would not take six minutes. He emphasized the fact Attorney Nolley pointed out earlier that they served a notice to temporarily vacate as required for the scope of repairs. Despite serving the notice in July of last summer, the tenants cashed the first half of the statutory compensation as required by the San Francisco's Rent Ordinance and to date they had not surrendered possession of the unit, which hindered the owners' efforts to have all the work done. He had emails from the last 30 days between himself and their attorney where he continued to remind him the tenants remained in possession and had not surrendered possession. The current litigation prevented the defendants and their agents from entering the client's unit in contradiction to the discovery rules and actually an argument required them to provide a 30-day notice which they ignored because of the pressure from the City which was not good law.

On February 6th, he emailed their attorney, Steven McDonald on the first half of their statutory compensation for moving out and the other half was available when they surrendered possession. They understood they had people remove their personal belongings with the protocol of approving. It was a little unfair to penalize the owners for failure to remedy and perform the required work when despite the notice to temporarily vacate, they had not regained possession of the unit. This was difficult since there was different competing interest between the Rent Ordinance, the Departments of Public Health and Building Inspection. The owners went to the Director's Hearing, brought their contractors and incurred significant expenses because of the delays. The other residents were owners of the building and had every incentive to see these

repairs conducted and Mr. Clammer's mother was also a resident of the building. There was no desire to drag their feet on completing these repairs that were necessary to keep this building properly maintained.

Commissioner McCray said from the date of the Notice of Violation and the 7-day Order of Abatement proclamation, when did the delay begin? Attorney Soriano said the delay began the day before they cleaned the construction debris and were stopped by the Department of Public Health because the tenants were taking efforts to hinder those efforts in May and for a month.

President Clinch called for public comment.

Amy Howard, MD, one of the tenants in Apartment #7, who resided with her husband for over five years, said all statements were untrue. In answer to his question, it was not what he did. The litigation began in late November, 2013 when they finally could not get anywhere and the lease was when they lost full use of their apartment on December 1, 2012. As with many other urgent pleas for repair, they had not once responded to any of them.

Months later she contacted them directly and discovered they had not heard of their situation. They refused to accept any bids or pay for any of the repairs until she finally contacted the Department of Building Inspection, who issued the first Notice of Violation in April, four months since this began. The landlord was outraged and threatened them for 35 minutes with eviction and would stop at nothing to secure it. If they refused to leave, he made threats of intolerable condition to force them out which eventually happened.

When construction started in May, the construction debris rained into their apartment. They complained it was not contained and did nothing to contain it. It escalated to where they needed to evacuate because it was filled with a thick dust which made it very difficult to breathe. During that time, she had to evacuate and was pregnant but subsequently lost the baby. It was well known link between lead and miscarriage, which the California Department of Public Health recognized the EPA antibody.

President Clinch allowed her three more minutes because everyone else had the two times the amount.

They moved from hotel to hotel and continued to plea for the repair and cleaning. The owners hired a housekeeper to clean the dust which Mr. Rizzolo later advised them to stop. They hired uncertified people to do bogus testing to show there was no lead or asbestos and everything was fine. She notified the Health Department who did their own testing and found tons of high levels of lead and there was tons of lead which covered their apartment and their possessions.

They were forced to move as it was unsafe to live there and disallowed them access. Since the first Director's Hearing with the DBI in late October, her pleas were ignored. They hired uncertified laborer for partial cleaning and their report indicated everything was clean, despite the lab reports indicated it did not match the claim that everything had passed. They hired another group to remove the mold and most of their belongings but some of it was still inside. They had no intention to clean the lead and asbestos and avoided any kind of regulation. They

never prevented them from entering the apartment and it was never the same uncertified worker that did the work.

President Clinch asked for any other public comment.

Commissioner McCray asked what was Ms. Howard's response to the indication she refused to surrender possessions and what it meant to her? Dr. Howard said after they evacuated, they paid several months on hotels and the apartment's rent and they were broke and applied for loans. All their belongings remained there because they cannot afford to abate asbestos and lead on all of their possessions. All the testing was done but they still have legal possession of the unit and some of their belongings were still there except what they took away.

Vice President Melgar offered her deep condolence for Ms. Howard's loss. She asked when Joe Walsh issued the Notice of Violation, and if they had not hired people with certification? She saw a detailed abatement plan dated February 12th from the Forensic Analytical which was a certified firm and prior to that there was no attempt to have a certified person for cleaning although it would not have taken care of the Notice of Violation regardless. Dr. Howard said it was issued in June and they were uncertified and had not written a protocol to address lead and asbestos but prior to that they hired a certified person who had an inactive or expired certification.

Vice President Melgar believed that Forensic Analytical was certified and perhaps Chief Inspector Bosque would probably know about their current certification. The Notice of Violation that Joe Walsh issued was for lead only and not for asbestos. Dr. Howard understood it was based on the Department of Public Health and Mr. Walsh was only the lead person and they were unable to have an asbestos person because they were only one family and did not qualify.

Vice President Melgar said if someone presented a plan for cleaning only lead with the proper certification, would she accept it? Dr. Howard said the ironic part was last summer, they actually obtained protocols on everything from licensed people and presented them with multiple bids, multiple people and ways to have this done but they refused. It was mainly because of the threats and they wanted them out and they were under rent control and it cost them money. All they asked for was the lead, asbestos and their personal items be cleaned properly which they had refused. They took a cheaper route by cleaning the mold and disposed of their belongings but the asbestos and lead will always remain there.

Commissioner Mar asked Chief Inspector Bosque if permits were needed on the lead and asbestos abatement and if the owners moved on that. He was confused about where the lead and asbestos originated from but from the owner's attorney it came from the external work that was done on the building or whether there was paint or sanding from the old paint which blew into the apartment. When the Health Department found there was lead involved, they should have abated it and took the proper precautions.

Chief Inspector Bosque said keep in mind the lead abatement and the appropriate practices under the Lead Ordinance within the Department of Building Inspection were two different things.

They were not experts in lead abatement which was the Health Department and they have their notices. As far as forensic, they needed to confirm with the Health Department. If the Commission was interested and wanted to continue this item, they needed Mr. Rubio and someone from the Health Department to address those concerns as far as abatement was concerned but she cannot answer that question.

Any structural work would require building permits but it did not deal with the environmental issues. They obviously needed containment under the ordinance that was in the building code but if the tenant wanted a licensed and certified person and have it done, they were now several months from that and she would be interested to hear the property owners' response why it did not happen.

President Clinch asked for further public comment and speaker had six minutes.

Kelly Shield, represented Dr. Howard and Mr. Beaumont in a civil suit, also related to the same facts here. The situation was not one that the property owner and his counsel attempted to say the tenants did want this to be resolved and tried many months to resolve it. Some of her property still in the house was completely destroyed. There was a picture of the mold on the wall and their clothing, furniture and beddings had been contaminated and not salvageable. They lived in separate housing for months without their belongings and currently unresolved. On the underlying violations, the lead violation had not been abated. In fact, they did not prevent them from repair and remediation work but repeatedly asked them how they would handle the lead.

Currently they had not addressed the lead or asbestos except the mold issue, which was a huge problem but not the only matter. The state of the matter was they must be licensed and passed all of the testing. She can provide them some of the test results that were sent to the opposing counsel last week which showed lead, asbestos and mold contamination which they admitted was there. There was still absolutely nothing done as far as what they planned on the lead abatement and asbestos. The tenants were blamed for refusal of entry for the repair problem which was not true and it was a landlord/tenant dispute as a contingent situation, but it was not due to refusal of access. They wanted this all done since November and when the litigation was filed after the Notices of Violation were issued and several months later.

President Clinch asked for additional public comment.

John Beauright, one of the co-tenants and co-owners of the building. On the question of how much work was done, they completed extensive repairs to the external part of the building to a beam that was rusted. They repaired the beam, re-welded and repaired the rebar in the wall and grouted and painted over the external part of the building was completed.

President Clinch asked if there was any other public comment?

Dr. Howard's husband addressed the lead infiltration. They indicated not to worry about the problem with the mold and dust that came in and suggested only to vacuum it. Their tester's report indicated nothing was wrong whereas some results on the air bag lead test showed high levels of lead and mold distribution, in comparison between the exterior and interior showed

problems. They were aware of this before and sent a cleaning crew to vacuum it with their equipment and hired an elderly cleaning lady to clean it up.

They needed to understand the proper procedure for clean up and address the exterior of the building. From inside of the building, there were holes in the wall and the whole beam was completely stripped. When DBI recently inspected the property, they worked without the proper containment and there were looms of visible dust of thick haze that covered everything on the outside and inside of their apartment which was tested for lead.

There was so much dust inside, not because of the crack in the walls where everything was coming down, but big cracks in the floor boards. Their kitchen cabinets had no backings and exposed to the exterior part of the building. When they first moved in, they found a bird's nest inside the cabinet because of the exposed hole from the outside but had not addressed that since they resided there for five years. They assured them they would address that as negligence on their part which was why their apartment probably had more dust inside than the other tenants.

President Clinch said typically in this type of situation, they would give more time for the Appellant to provide the documentation and the tenant wanted an accredited contractor to do the work and a demonstration in the following meeting which the tenants would obviously agree and to hold it for a month. Vice President Melgar disagreed to hold it for a month and wanted to vote on it today. Commissioner Mar said he was still unclear to vote on it. What actually existed there and the Department cannot confirm whether the problems were abated or there were permits for the asbestos and lead, etc. He was concerned if there were attempts made and there were conflicts in the story.

Vice President Melgar said she had not heard a clear staff's recommendation about what the Board should do. She understood the Health Department's ordinance, asbestos and lead was about remediation, not abatement for cleaning which needed to happen. They did not need a permit, but needed to follow the code and hire a properly certified contractor to have it done in a certain way and the cost for cleaning was less compared to the work. They had to do the work later, but the priority was to do the cleaning which was not done without the threat of enforcement and she wanted that to stand.

Chief Inspector Bosque said she wanted the Order issued because they can be in protracted disagreements between these parties for a long time and she needed to deal with health and safety issues. Sometimes things could erode into a situation where litigation could be filed but the testimony she heard the Order should be issued and the very least needed to happen for a recorded Order that everybody understood the Department was very serious about this. They can still try and work through their issues since the first Notice of Violation was issued. She had not heard testimony since May, 2013 the property owner agreed to send a certified person to work on the cleaning. From that standpoint, she recommended the Order be issued and needed to act on these concerns with sufficient information to make a determination.

Commissioner Mar said that was clear. Commissioner McCarthy said he wanted to hear from the legal counsel who they recommended to clean and abate it. Attorney Soriano said he did not want to make any misstatement about identifying that person. The Restoration Management

Company was one proposed by the tenants and they jumped on one of their proposals and thought that would smooth things through. The Restoration Management heard different things from both sides and Tony Rubio was involved with the Restoration Management Company.

Commissioner McCarthy said at that point in the testimony, he understood it was fine except they were not the people in the building who did the cleaning. Attorney Soriano said initially there was a different company, Van Brunt and Associates, and testimony they were not licensed but they were. The people in the Department of Public Health knew the principle Van Brunt for over 20 years and his license lapsed at some point during the project which was what they referred to but they were approved before involved with the Department of Public Health and they presented everything to them.

Commissioner McCarthy said they talked about communication while the homeowners said it was a different company that went there. Attorney Soriano said they identified the contractors that went there at every point in the process the whole time. Commissioner McCarthy said they had a very bad start with some tragic outcome and eventually there was no trust but they tried to find a balance for an agreed abatement company that would satisfy the property owners and tenants. Attorney Soriano said the Department of Public Health would ultimately have to give their permission as to who was going there. They were currently working with Restoration Management Company with their knowledge. Commissioner McCarthy said they should take the Restoration Management Company vetted with both parties.

Dr. Howard said the problem was the Restoration Management Company was one of the companies they secured a bid for. They were hired to work only on the mold and not to use the certified, lead or asbestos. Therefore, the personnel, equipment and protocols were all different. They were ready since last summer and the protocols were in place and the certified people did the testing which the Department of Public Health had approved.

Vice President Melgar said if the Restoration Management can do the cleaning required under the Notices of Violation issued by Mr. Walsh and an asbestos contractor, would that be acceptable to her and it was not for the mold. The two hazards and the place were covered in dust and needed cleaning before any work can start and they had the proper certification. Dr. Howard said it would be fine if they grouped it with the protocols they had. The problem was RMC will not do work unless they had a protocol detailing them what to work and that person had written with certification and everything so the liability falls on the person directing it. They will not use the certified people unless the protocol stated it and it had to couple with their protocol and RMC.

Vice President Melgar said the Notice of Violation by the Department of Public Health dictated the scope of work. Dr. Howard said not entirely and this was where it became complicated. The lead wipe was one legal way of testing for lead which involved wiping a hard horizontal surface of a square foot which meant the lead wipe cannot be used on a personal belonging or a piece of paper or something like that. While they legally tested there and said everything needed cleaning, they used that to say they needed to clean the floor and counter top but everything else in the apartment did not need to be cleaned because the Health Department cannot mandate it since there was not a legal way of a wipe on it. In spite of this, Joe Walsh sent them an email

that they needed to clean the tenant's property. You have the spirit of it not trying to get around whatever you can get around kind of thing, if that made sense.

Vice President Melgar said it made sense and she was surprised this company would try to get around the spirit of the law and still maintain their reputation because the fact was not just invented by the Health Department but actually the State Department of Health put them on a list because they have the proper certification. She hoped they could move forward on this and if there was a company that can be hired with the proper certification which she will need in compliance with this Notice of Violation and valid at the time of the wipe sample taken at the end of the job and would appeared the tenants were open to have it happen.

Dr. Howard said they had the protocol and the company with the proper certification and the clearance testers available. They were tricked many times along the process and did not trust them. If they used these protocols and people, they would feel comfortable. They were certified and passed to work through the Notices of Violation and alleviate this off themselves which was what they pleaded since last spring.

Attorney Soriano spoke briefly and did not want to provoke any additional arguments. They worked with the Restoration Management Company at their suggestion for some time and it was Dr. Howard who wanted to set the protocol. After the principle Tony Rubio at the Restoration Management Company, reviewed the test result and inspection, he determined what the appropriate protocol and subject to approval by the Department of Public Health. Dr. Howard wanted a broader scope that was not confirmed by the Restoration Management Company and not required by the Notice of Violation which was an issue for civil litigation which they were currently engaged.

It was easy to say lawyers were liars and all these things. He implored the Board that they submitted a lot of documentation so there would not be a he said/she said about these things. They had a licensed, approved company and worked with the appropriate City agency, Department of Public Health, Mr. Walsh. They did everything under the microscope and there was a lack of trust and the relationships between the landlords/tenants were hurt. They made every effort, even by her own admission, they took the proposal of Restoration Management Company thinking that would satisfied some of the suspicions she had of every third-party contractor that had been hired. They cannot let her dictate a protocol that was not confirmed by the Department of Public Health and/or the industry professionals approved by the State.

Commissioner McCarthy asked Vice President Melgar if she would consider giving a period of time for some form of communication they can both agree? Vice President Melgar said not on this one and she felt very strongly about this case. Cleaning was much cheaper than litigation and it was preventable. President Clinch said the water was so muddied and he did not think it was clear to him and there were many contradictory testimonies. He would personally prefer a one month period of review or return back and have demonstrated progress rather than simply siding with one side or the other.

President Clinch made a motion, seconded by Commissioner Lee, to continue this item for 30 days.

Commissioner Mar asked if they should set some conditions on what should happen in 30 days rather than just continued it? He was open to the continuance as well but wanted something done and would like to hear from the Health Department. It was reasonable they set the scope of work, the protocols and approved the contractor. He wanted some process to happen during those 30 days otherwise they will be back here again.

Secretary Harris said you can let them know but you cannot state that as part of the motion. Deputy City Attorney Zachary Porianda said the Board would be running up against the bounds of their jurisdiction. They can provide recommendation as to what they expected to see at the next Hearing but the motion would be just to continue. President Clinch stated Commissioner Mar said it well and they would obviously take a different view in a month's time if there was no progress. Commissioner McCarthy said it was really clear that it was 30 days and if there was an end to this they will take a position.

Attorney Nolley said they implored the Board to read the materials submitted within the next 30 days, and they may not have had a lot of time to review them but President Clinch stated there were a lot of contradictory testimonies today and he believed the documents they submitted would resolve a lot of the issues.

Commissioner McCarthy said the point they tried to make was they had all the materials needed and had 30 days to resolve this. It appeared they had someone to do the job and the tenants needed to be convinced that they were the person and once that was done it would be good. Commissioner Lee suggested March 19th which was 28 days from today. Attorney Porianda clarified to continue to the next Hearing on March 19th at which time the Board would take action on the Order of Abatement.

President Clinch made a motion, seconded by Commissioner Lee, to continue the item to the next meeting, March 19th.

There was no public comment, and Secretary Harris called for a roll-call vote.

President Clinch	Yes
Vice-President Melgar	No
Commissioner Lee	Yes
Commissioner Mar	Yes
Commissioner McCarthy	Yes
Commissioner McCray, Jr.	No

The motion carried with a vote of 4 to 2.

E. REQUEST FOR RE-HEARING: Case No. 6781, 2278 – 42nd Avenue, originally heard on November 20, 2013.

ACTION REQUESTED BY APPELLANT: To grant a rehearing.

Testimony, deliberation and possible action to grant or deny the request for re-hearing. If re-hearing is denied in Case No. 6781, the AAB will take no further action in Case No. 6781.

If re-hearing is granted in Case No. 6781, the AAB will rehear Case No. 6781 immediately following the grant of re-hearing. Information regarding that Appeal, originally heard and denied on November 20, 2013, is set forth below:

1. CASE NO. 6781: 2278 – 42nd Avenue

Owner of Record and Appellant: Maxine Pauson, 72 Cameron Way, San Francisco, CA 94124

Owner of Record and Appellant: Maxine Pauson, 2278 – 42nd Avenue, San Francisco, CA 94116

Attorney for the Appellant: Scott A. Freedman, Zacks & Freedman, PC, 235 Montgomery Street, Suite 400, San Francisco, CA 94104

ACTION REQUESTED BY APPELLANT: Reverse the Order of Abatement.

NOTICE OF DECISION: On February 19, 2014, the Abatement Appeals Board (AAB) held a duly noticed hearing regarding their request for rehearing of the November 27, 2013 Notice of Decision concerning the property referenced above. At the hearing, the AAB reviewed the Appeal application and found that no new evidence or legal error was presented by the Appellant. Therefore, the AAB voted to deny the request for rehearing.

Chief Housing Inspector Bosque said the staff felt the application for the petition for the rehearing did not include any new information and based upon the detailed Hearing that the Abatement Appeals Board had back in November all the issues were addressed. However, she informed the Board that Mr. Scott Freeman, attorney for the property owner, sent her a text during this hearing indicating he had to leave since it was so late and requested a continuance on the petition for rehearing.

Vice President Melgar asked what that meant? Chief Housing Inspector Bosque said he asked for a continuance regarding the property owner's request for rehearing because he had to leave early. Obviously the staff position was there was no new information and recommended the Board go with the Notice of Decision from November. President Clinch asked if they could make that decision if the Appellant was not present and it was his choice to leave? Chief Housing Inspector Bosque said the property owner was present.

Commissioner McCray asked when was the decision made? Chief Housing Inspector Bosque said in November, 2013 and the Notice of Decision was in the package at the end. There was a detailed Hearing and there was the criteria on whether or not to grant the re-hearing and the City

Attorney can elaborate on that. From staff's position, the application for the position of re-hearing did not include any new information.

Commissioner McCray asked what was the reason for it? Chief Housing Inspector said it was up to them to ask the property owner. They also asked repeatedly for entry into the property to determine if any progress had been made and they had not yet been able to secure that. What was on the application was the property owner indicated she was unable to make the necessary repair within the timeframe that the Abatement Appeals Board indicated. On her November report, this had been an ongoing situation and this was a City Attorney case. As far as the repairs were concerned, they felt their decision giving her an additional amount of time before was generous. If they did not get an Order, at least they can move forward and send that message so the City Attorney can negotiate further.

Vice President Melgar said she was generous at the last meeting and reported since that meeting she reached out to the property owner's attorney, Mayor's Office of Housing and Chief Inspector Bosque to discuss with each other. She knew an application form was sent and a representative from the Mayor's Office on Housing was there. There were numerous conversations, but sadly things had not progressed and even basic first step and she did not know why. She had a couple of conversations with Mr. Freeman, who assured her he would help with the forms but it had not happened. She would uphold the staff's recommendation and they had given time. Commissioner McCray asked not to re-hear? Attorney Porianda clarified what was before the Board was whether or not to grant a re-hearing and the motion was to deny the re-hearing.

President Clinch asked if the Appellant wanted to speak.

Maxine Pauson, owner of the property, said she had the application and spoke with Mike Palmer many times. She filled out the application and had not submitted it entirely, but it was all completed on her end. They were still researching the required necessary forms needed for the financial lien she did not have on her house but needed to show proof of everything. Mr. Palmer said even if she was accepted for the loan, it was an average about 6 months to complete the work. She was definitely eligible for the loan and completed the application but had not submitted it to them because she did not receive all the information she needed.

Vice President Melgar made a motion, seconded by Commissioner McCarthy, to deny the re-hearing request.

Secretary Harris called for public comment and there was none. She also called for a roll-call vote:

President Clinch	Yes
Vice-President Melgar	Yes
Commissioner Lee	Yes
Commissioner Mar	Yes
Commissioner McCarthy	Yes
Commissioner McCray, Jr.	Yes

The motion carried unanimously.

F. GENERAL PUBLIC COMMENT

There was no General Public Comment for items not on the Abatement Appeal Board Agenda.


G. ADJOURNMENT

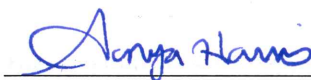
Commissioner Mar made a motion, seconded by Commissioner Lee, that the meeting be adjourned.

The motion carried unanimously.

The meeting was adjourned at 1:30 p.m.

Respectfully submitted,


Serena Fung, Secretary


Edited by: Sonya Harris, BIC Secretary