

**BROWARD COUNTY HEALTH AND SANITARY CONTROL BOARD**  
**MINUTES OF BOARD MEETING – July 26, 2012**

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The Board meeting was called to order at approximately 9:35 a.m. on Thursday, July 26, 2012 by Chair Stuart Kaufman.

The Clerk called roll and the following members were present:

Stuart Kaufman, Chair  
Lily Sayre, Vice Chair  
Robert McColgan  
Ronald Kaplan  
Dr. Mark Gendal

The following members were absent:

Commissioner Pamela Bushnell  
Karen Kaestner

Also present were: Patrice Eichen, Attorney for the Board  
Paul Eichner, Attorney for the Department  
Anthony Vomero, Petitioner Representative

Mr. Kaufman advised that these proceedings were being recorded.

A motion was made by Ms. Sayre to approve the May 31, 2012 minutes, which was seconded by Mr. McColgan and unanimously passed.

**CASE NO. 12-011 OSDS, ROSA CRUZ**

Mr. Eichner appeared on behalf of the Department; Rosa Cruz, appeared and her husband, Teekasingh Cruz, spoke on her behalf.

Mr. Eichner read the Complaint into the record, which involved a sanitary nuisance on the subject property due to a failing septic system.

Jay Morgenstern, Environmental Supervisor, gave sworn testimony in which he indicated that he inspected Respondent's property on June 19, 2012 and observed sewage overflow, at which time he issued a Notice of Violation to Ms. Cruz. He said that he had previously been to the property in May 2012 with the same problem and that Ms. Cruz subsequently had the system pumped, thereby temporarily abating the nuisance. Mr. Morgenstern then identified photographs showing the septic system failure that he had taken of the property on July 13, 2012, which were entered into evidence. He testified that the condition of the property was a violation of the laws cited in the Complaint and that a sanitary and health nuisance existed. Mr. Morgenstern returned to the property on July 24, 2012 at which time he observed that when water was used in the house, there was again a sewage overflow, the violation still existed and that pumping the tank was not solving the problem.

Mr. Cruz asked Mr. Morgenstern if he was at the site on July 24, 2012. Mr. Morgenstern said that he was there on that date and that the overflow was not constant and only appeared when water was used in the house.

Mr. Cruz testified that there was excessive water usage at the house due to the tenants' sabotage and that she was attempting to evict the family. There was discussion regarding the water usage on the property.

Ms. Cruz gave sworn testimony in which she indicated that the tenants at the property misrepresented to her how many people would be residing in the home, which consequently is the cause of the over usage of water. She also indicated that the tenants were running water from a pool into the system causing it to overflow, and would then call the Health Department to investigate the problem.

Mr. McColgan opined that it was up to the homeowner to bring the septic system up to code. Ms. Sayre stated that she felt that if not for the over usage of water by the tenants, the system would be adequate.

Mr. Kaufman suggested that if Ms. Cruz would pump the tank pending the eviction of her tenants, the problem could be temporarily abated. Ms. Cruz was amenable to Mr. Kaufman's suggestion.

Mr. Eichner recommended that the Board issue an Order as follows:

1. Respondent pump the system on a regular basis.
2. Respondent apply lime to the affected area on an as needed basis.
3. A \$250 civil penalty
4. A \$500 administrative fee
5. That the fines and fees be due by 8/17/12
6. That the Board retain 90 day jurisdiction
7. Standard sanction language be included in the order.
8. That a status hearing be set for the next meeting of the Board

Ms. Sayre motioned to adopt Mr. Eichner's recommendations, and that each time the Health Department finds Respondent out of compliance, a \$50 re-inspection fee be assessed. Ms. Sayre opined that a civil penalty not be assessed and that the administrative fee be reduced to \$250. Ms. Eichen stated that the County Code only allows for a \$500 administrative fee. Ms. Sayre amended her motion to assess a \$250 civil penalty and waive the administrative fee, which was seconded by Mr. Kaplan and passed unanimously.

**CASE NO. 12-009 SP, WATERFORD CONDOMINIUM APARTMENTS, INC.**

Mr. Eichner appeared on behalf of the Department; no one appeared on behalf of the Respondent.

Mr. Eichner advised the Board that the Respondent's representative had spoken with Patricia Riley of the Broward County Health Department Environmental Engineering section in regard to the subject pool. He further stated that this person had been of the impression that his attendance would not be required at this hearing due to the Stipulation agreed at the May 31, 2012 hearing and Respondent's payment of the stipulated amount. Mr. Eichner advised that there were new developments in this matter in that although the appropriate paperwork had been submitted to the Department and the fine had been paid, both the salt generator and the chlorinator were operating and one of those needed to be turned off, which would require the flipping of a switch. He stated that he would be recommending that the Board retain jurisdiction, the matter be set for a hearing, and that the generator be placed in the off position, leaving the chlorination system in operation, which is the only system authorized to be in use.

Siobhan Townsend, Environmental Specialist, gave sworn testimony indicating that she had been to the subject property on July 25, 2012, at which time she found that the salt generator was on in addition to the acid and chlorine feeder. She stated that the chlorine and acid were within acceptable levels. She added that the problem could be remedied by turning off the saltwater system.

Patricia Riley, Environmental Engineer, gave sworn testimony in which she stated that the Respondent had not applied for the salt system to be placed on line. She stated that under the new Florida Statute, the Department no longer does plan reviews which now go to the building department of the city. She said that either the property owner or building department goes to the Health Department to submit

approved plans from the building department as well as an application for either operating permit or the modification inspection, which is signed and sealed by the engineer of record. Ms. Riley testified that she had not yet received those documents in relation to this property. She added that once those documents are received by the Health Department, an inspection would be necessary for which she would need to see a copy of the approved plans, which she had yet to receive. Ms. Riley stated that she had had a discussion with the property manager at which time she related the above information.

Mr. Eichner recommended that:

1. An order be issued in which:
  - a. The Board maintain 90 day jurisdiction
  - b. The standard sanction language is included.
  - c. That the matter be set for status at the next meeting of the Board.
  - d. All previous orders remain in effect.
  - e. That the Respondent unplug/disconnect the salt water generator while the chlorination machinery is in use until the saltwater generator properly inspected and permitted.

There was discussion regarding the saltwater generator versus the chlorine feeder.

Ms. Sayre motioned to accept Mr. Eichner's recommendations, which was seconded by Mr. Kaplan.

Mr. McColgan asked that the order to include that the Respondent immediately cease the service of the unapproved, illegal saltwater generator until properly permitted by the Department.

Ms. Sayre and Mr. Kaplan agreed to accept the amended motion, which passed unanimously.

#### **CASE NO. 12-001 SAN, BRAD HERTZ**

Mr. Eichner appeared on behalf of the Board; no one appeared on behalf of the Respondent.

Mr. Eichner proffered that Jay Morgenstern, Environmental Engineer, had advised him that he had been to the subject property June 13, 2012 and observed that the cap had been placed on the pipe and that the property was now in compliance. Mr. Morgenstern had taken pictures of the repair, which were entered into evidence.

Mr. Eichner recommended that the Board issue an order indicating that the property was in substantial compliance with the Board's orders, that the fines and fees previously assessed had not been remitted and remained due and owing, that Respondent be responsible for the cost of service of the subpoena totaling \$45.00, which is due by August 17, 2012 or it shall be forwarded for collection.

A motion was made by Mr. McColgan to adopt Mr. Eichner's recommendations, which was seconded by Dr. Gendal, and unanimously passed.

#### **CASE NO. 12-007 OSDS, MICHAEL H. CAIN**

Mr. Eichner appeared on behalf of the Department; no one appeared on behalf of the Respondent.

Mr. Eichner proffered that the nuisance still existed and that the fines and fees assessed by the Board had not been remitted. He stated that a subpoena had been served on the Respondent as well as an Amended Notice of Hearing which was received by the Respondent by way of overnight UPS delivery indicating that the hearing date had been moved to this date. Mr. Eichner stated that there had been two subsequent inspections.

Jay Morgenstern, Environmental Engineer, gave sworn testimony in which he stated that he visited the subject property three times: June 25, July 12, and July 24, 2012. He said that on each of these inspections, the nuisance still remained in that the septic tank lid was open, and the inside of the tank was exposed and not properly covered.

Mr. Eichner recommended that the Board find that:

1. Respondent be assessed an additional \$500.
2. Respondent be assessed \$50 for each of the three inspections noted above.
3. Respondent be responsible for the \$20 subpoena fee.
4. The matter be set for a status hearing
5. The Board retain 90 day jurisdiction.
6. Standard sanction language be included.
7. All previous orders remain in effect.
8. That the fines be paid by August 17, 2012

Mr. Morgenstern further stated that the house appeared to be occupied. He stated that he could not do anything to motivate the Respondent to repair the system. Mr. Morgenstern indicated that he had notified Code Enforcement in this regard.

There was discussion as to the exposure to the public of the potential hazard by having the tank cover open. Mr. Eichner suggested that the Health Department write to City of Hollywood Code Enforcement regarding the safety issue. Ms. Eichen suggested that this letter be directed to Code Enforcement with a copy to the City Manager. Mr. Eichner added that this letter from Environmental Health be written to his recommendations.

Ms. Sayre motioned to adopt Mr. Eichner's recommendations, which was seconded by Mr. Kaplan and unanimously passed.

A motion to adjourn the meeting was made by Mr. Kaplan, seconded by Mr. McColgan, and unanimously passed.

PREPARED AND SUBMITTED BY:

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Susan R. Greenberg, Clerk of the Board