

BROWARD COUNTY HEALTH AND SANITARY CONTROL BOARD
MINUTES OF BOARD MEETING – May 31, 2012

The Board meeting was called to order at approximately 9:40 a.m. on Thursday, May 31, 2012 by Chair Stuart Kaufman.

The Clerk called roll and the following members were present:

Stuart Kaufman, Chair
Lily Sayre, Vice Chair
Commissioner Pamela Bushnell
Robert McColgan
Karen Kaestner
Ronald Kaplan
Dr. Mark Gendal

No members were absent.

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

A motion was made by Commissioner Bushnell to approve the April 26, 2012 minutes, which was seconded by Mr. McColgan and unanimously passed.

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

Mr. Eichner moved that the case number on the Complaint be amended to reflect the correct case number, that is, 12-009 SP.

Mr. Eichner appeared on behalf of the Department; Joseph Vito, building manager, appeared on behalf of the Respondent.

Mr. Eichner indicated that there was a stipulation reached between the parties. He read the Complaint on the record.

Mr. Eichner stated that he had spoken with Mr. Vito prior to the hearing in regard to what steps would be necessary to eliminate the nuisance. Mr. Vito indicated that he was willing to disengage the salt generator and go back to the mechanical feed system already in place and to activate the pH feeder and chlorine feeder, which would alleviate the nuisance and place the pool in compliance with the applicable laws. Mr. Vito reported to Mr. Eichner that his engineer had spoken with Patricia Riley of the Department engineering section. Mr. Eichner stated that Respondent was having difficulties obtaining the permit and plans filed with the City of Pompano Beach, which were needed by the Health Department. Mr. Eichner said that this matter began in or about September 2011 due to issues from both the Health Department and the Respondent. Mr. Eichner proffered that Mr. Vito had agreed to pay a \$500 administrative fee and a \$250 civil penalty which the Department was willing to accept.

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. The Board establish a date certain for which the fines and fees are due.
- d. The Department re-inspect the property prior to the next hearing for which a \$50 fee shall be assessed.
- e. That a \$500 administrative fee be assessed.
- f. That a \$250 civil penalty be assessed.
- g. That the matter be set for status at the next meeting of the Board.

Mr. Vito objected that the \$50 was excessive. He stated that he was not able to obtain the blueprints due to the property's age and that he was having new blueprints drawn that would be acceptable to the Department for permission to engage the salt generator.

Mr. Eichner stated that he had no objection to waiving the re-inspection fee.

Mr. Vito indicated that all the stipulation as represented by Mr. Eichner was correct. He added that the pool was safe as of the Department's last inspection.

Siobhan Townsend, Environmental Specialist, gave sworn testimony indicating that she had been to the subject pool on four occasions, the last being on May 24, 2012 at which time she found the chlorine and pH levels acceptable.

Mr. Eichner reiterated his above recommendations and added that the above fees and fines be due by June 25, 2012, that the salt feeder remain off line until plans were approved by the Department, and that the mechanical feeder remain on line until such plans are approved.

Mr. McColgan made a motion to accept the recommendations, which was seconded by Commissioner Bushnell, and passed without objection.

CASE NO. 12-001 SAN, BRAD HERTZ

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

Jay Morgenstern, Environmental Engineer, gave sworn testimony in which he indicated that he had been to the subject property on May 30, 2012 at which time he encountered a woman who stated that she was the property manager and authorized to have the problem with the plumbing resolved. He said that the sewer line at the back of the house had been cleared. Mr. Morgenstern presented photographs he took of the site during this visit, which were entered into evidence. He indicated that the remaining issue was placing a proper cap on the sewer line. Mr. Morgenstern testified that the safety and health nuisance was no longer present. He stated that he told the property manager that the cap was required and that she should contact him when this was accomplished.

Mr. Eichner stated that the Department legal office had notified the attorney representing the mortgage company of the nuisance and was subsequently advised that another law office was now representing the plaintiff mortgage company. A letter was then sent to the current attorney's office representing the mortgage company. A response had not be received at the time of the hearing.

Mr. Eichner recommended that the Board issue an order direction:

1. That the Board maintain 90 day jurisdiction
2. That the matter be set for a status at the next meeting of the Board.
3. That the order include standard sanction language.
4. That all previous orders remain in full force and effect.
5. That an additional \$50 fee be assessed for the May 30, 2012 re-inspection.

A motion was made by Ms. Sayre to adopt Mr. Eichner's recommendations, which was seconded by Ms. Kaestner, 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 read the Complaint on the record.

Jay Morgenstern, Environmental Engineer, gave sworn testimony in which he stated that he had served the Respondent with a Complaint and Notice of Hearing. He said that he first went to the subject property on April 24, 2012 at which time he observed a septic tank covered with a sheet of plywood which covered the lid of the tank which was broken on two ends. He further testified that both the inlet and outlet to the tank were exposed into the interior of the tank. Mr. Morgenstern stated that a concrete slab had been poured over the septic tank and that the concrete was broken to gain access to the tank for pumping. He added that it was never covered properly and the tank was left in that state. He said that he issued a Notice of Violation at the owner's brother on April 26, 2012 and subsequently spoke to the owner a number of times, who told Mr. Morgenstern that he would correct the problem but failed to make any repairs. Mr. Morgenstern stated that the condition of this property violated the applicable laws and that it was a safety hazard. He indicated that he took photographs of the site on May 8, 2012 which were an accurate representation of the site on that date. He stated that he returned to the property on May 29, 2012, took another picture of the site and indicated that it was a current and accurate representation of the site. These pictures were entered into evidence. Mr. Morgenstern stated that he had reported this property to the City of Hollywood Code Enforcement, and was told that it could take several months before anything could be done to remedy the situation.

Mr. Kaufman asked that in the future the Board be made aware of the parties who file complaints with the Department.

Mr. Eichner recommended that the Board find that:

1. Respondent is in violation of the laws referenced in the Complaint.
2. Complainant was properly served with a copy of the Complainant and Notice of Hearing and failed to appear.

and that they issue an order directing that:

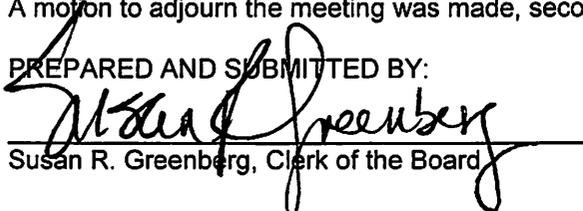
1. A \$500 civil penalty be assessed
2. A \$500 administrative fee be assessed,
3. The Respondent come into compliance within the next 15 days.
4. The matter be set for a status hearing
5. The Board retain 90 day jurisdiction
6. Standard sanction language be included
7. Fines and fees be paid by June 25, 2012
8. A subpoena be issued to the Respondent for the next hearing.

Mr. McColgan motioned to adopt the recommendations, which was seconded by Commissioner Bushnell, which was unanimously passed.

There was discussion as to having a Department employee, rather than a process server, serving parties with a subpoena.

A motion to adjourn the meeting was made, seconded and unanimously passed.

PREPARED AND SUBMITTED BY:


Susan R. Greenberg, Clerk of the Board