

NEW YORK CITY  
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS  
ENVIRONMENTAL CONTROL BOARD

BOARD MEETING

Training Room 143, 12th Floor  
100 Church Street, New York, New York

October 27, 2016

9:25 A.M. to 10:12 A.M.

October 27, 2016

MEMBERS PRESENT:

Ernest J. Cavallo - Appointed Member  
Fidel F. Del Valle, Esq. - Chair, OATH  
Shamonda Graham - Department of Buildings  
Joseph Gregory, Esq. - Fire Department  
Elizabeth Knauer - Appointed Member  
Madelynn Liguori, Esq. - Department of Sanitation  
Jorge Martinez, Esq. - Dept. of Health and Mental Hygiene  
**Russell Pecunies, Esq. - Dept. of Environmental Protection**  
Indi Savitala - Citizen Member  
Matthew Smith - Police Department

ALSO PRESENT:

Simone Salloum - Counsel to the Board, OATH ECB  
Frances Shine - Secretary to the Board, OATH ECB

**Kelly Corso, Esq. - Assist. Director of Adjudications,**  
OATH ECB

Fana Garrick - Public Affairs Assistant, OATH  
David Goldin, Esq. - Administrative Justice Coordinator,  
Mayor's Office  
Diana Haines, Esq. - Assistant General Counsel, OATH/GC  
Johnathan Jacobs - Business Integrity Commission  
Susan Kassapian - Assistant Commissioner,  
Vehicle for Hire Hearings Division  
Mark H. Leeds, Esq. - Special Counsel, OATH  
Ashford Morgan - Computer Service Technician, OATH  
Tynia Richard, Esq. - Deputy Commissioner, General  
Counsel, OATH  
Carmena Schwecke - Assistant Commissioner,  
Vehicle for Hire Hearings Division  
Peter Schulman, Esq. - Assistant Director of  
Adjudications, OATH ECB  
Amy Slifka, Esq. - Deputy Commissioner/Executive Director,  
OATH/ECB  
Thomas Southwick, Esq. - Supervising Attorney, Appeals,  
ECB  
Nora Stephens - Mayor's Office

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2 (The Board Meeting commenced at 9:25  
3 A.M.)

4 MR. FIDEL F. DEL VALLE, ESQ.,  
5 CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATIVE  
6 LAW JUDGE, OATH: Good morning everyone. Is there  
7 a motion to adopt the minutes of the last  
8 meeting? It's unanimous.

9 MR. JORGE MARTINEZ, ESQ., DEPARTMENT OF  
10 HEALTH AND MENTAL HYGIENE: I abstain.

11 MR. DEL VALLE: With one abstention. The  
12 quarterly review presentation by Amy Slifka of  
13 the status of what kind of cases have been coming  
14 before us that are marked as ECB cases by law.

15 MS. AMY SLIFKA, ESQ., DEPUTY  
16 COMMISSIONER/EXECUTIVE DIRECTOR, OATH: Okay,  
17 good morning. As most of you are aware, the  
18 quarterly review, as the Commissioner just said,  
19 about what's going on with ECB type cases coming  
20 to the Hearings Division. So just quickly, we're  
21 going to look at the summonses received for third  
22 quarter of 2016 and then a comparison of the  
23 2015-2016 third quarter of decisions rendered,  
24 summonses received and summonses heard.

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2 We're also going to look at the  
3 percentage of in violation versus dismissed for  
4 each agency. And we actually are doing a  
5 quarterly comparison because Tom had requested  
6 that. He is not here today. And we're going to  
7 look at most commonly issued summonses by agency.  
8 And lastly, the number of appeals by agency.

9 So, as you can see that summonses  
10 received has decreased for DSNY by eight percent.  
11 And for DOB it's increased three percent. DOT, 18  
12 percent decrease. FDNY, nine percent decrease.  
13 DEP, an eight percent increase. And Department of  
14 Health, 34 percent increase. For Parks, there's  
15 been a one percent decrease. And NYPD has been a  
16 13 percent decrease. DoITT, a 47 percent  
17 decrease. BIC, 51 percent decrease. And then  
18 Landmarks, a four percent increase.

19 Comparing the third quarter of 2015 to  
20 third quarter of 2016 of summonses received, we  
21 see a 25 percent increase for Sanitation. For  
22 Buildings, there's a 43 percent increase. For  
23 Health, a 16 percent increase. For the Fire  
24 Department, a ten percent increase. For DOT, a 94

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2           percent increase. For DEP, a seven percent  
3           increase. For NYPD, a 47 percent increase. For  
4           Parks, a decrease of five percent. And for DoITT,  
5           a decrease of 85 percent: 314 to 47. That's a big  
6           decrease. And for BIC, a grand 450 percent  
7           increase: two to 11. And for Landmarks, there's  
8           been a decrease of 57 percent. And overall,  
9           there's a 27.5 increase from third quarter of  
10          2015 to the third quarter of 2016.

11                        As far as summonses heard, for  
12          Sanitation, the difference -- the comparison is a  
13          14 percent increase for Sanitation. There's been  
14          a decrease of 34 percent for DOT. A 16 percent  
15          increase for Buildings. A 12 percent increase for  
16          Fire. For Health, a 23 percent increase. And for  
17          NYPD, a 21 percent increase. DEP, there's a  
18          decrease of three percent. And Parks, a decrease  
19          of 13 percent. DoITT, a 51 percent decrease. And  
20          BIC, an 800 percent increase from two to 18. And  
21          overall there's been an 8.3 percent increase.

22                        MS. GRAHAM: Amy?

23                        MS. ELIZABETH KNAUER, APPOINTED MEMBER:  
24          I think there's -- I think that there's

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2 something, or the numbers that you're reading  
3 don't seem to match up with what's on the screen.

4 MS. SLIFKA: Did I do the wrong --

5 MR. ERNEST J. CAVALLO, APPOINTED MEMBER:  
6 Yeah.

7 MS. SLIFKA: Summonses heard. No,  
8 summonses -- total summonses heard --

9 MR. CAVALLO: But you were saying --

10 MS. SLIFKA: -- from 17,672 to 18,683  
11 was a six percent increase. Buildings, 11,866 to  
12 15,202, a 54 percent increase.

13 MR. CAVALLO: Fine.

14 MS. SLIFKA: Health, 4,058 to 4,842 is a  
15 19 percent increase. Did I do something wrong? --  
16 4,374 to 4,824 is a ten percent increase.

17 MS. KNAUER: Now you're on -- now it's  
18 right.

19 MS. SLIFKA: Okay.

20 MR. CAVALLO: Yeah, now you're right.

21 MS. SLIFKA: Did I -- did I --

22 MR. CAVALLO: You had them --

23 MS. KNAUER: I think you might have been  
24 off pages or something.

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2 MS. SLIFKA: Oh, okay. Oh, maybe that  
3 was it, alright. Sorry.

4 MS. GRAHAM: Amy?

5 MS. SLIFKA: Yes.

6 MS. GRAHAM: Shamonda Graham, Department  
7 of Buildings. So, the cases heard, these are  
8 actual cases where the respondents, hearing  
9 officers and --

10 MS. SLIFKA: Correct.

11 MS. GRAHAM: Okay.

12 MS. SLIFKA: They're hearings.

13 MS. GRAHAM: Okay.

14 MS. SLIFKA: Okay, let's make sure I  
15 have the right -- ahh, okay. So, okay, I see what  
16 you're saying.

17 MS. KNAUER: Maybe the slides are in a  
18 different order.

19 MS. SLIFKA: Okay, so let me just see  
20 about what I spoke. Alright, here we go. Okay.  
21 So, you're right. Okay, so for hearings,  
22 decisions rendered, okay. And now the comparison  
23 of third quarter '15 to third quarter '16:  
24 There's been a 25 percent increase in DSNY,

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2           right. We got that? Forty-three percent increase  
3           for DOB. Sixteen percent increase for Health. Ten  
4           percent increase for Fire. Ninety-four percent  
5           increase for DOT. Seven percent increase for  
6           Parks. Forty-seven percent increase for NYPD. Oh,  
7           I got Parks and DEP incorrect. Okay. So for DEP,  
8           there's a seven percent increase. For Parks,  
9           there's a five percent decrease. For DoITT, there  
10          was an 85 percent decrease. And for BIC, there  
11          was a 450 percent increase. And for Landmarks, a  
12          decrease of 57 percent. Overall, there's a 27.5  
13          percent increase for decisions rendered. Alright.  
14          So basically --

15                   MR. CAVALLO: Amy?

16                   MS. SLIFKA: Yeah.

17                   MR. CAVALLO: Does anybody know what's  
18          happening at DoITT?

19                   MS. SLIFKA: So, why they're not issuing  
20          very many summons?

21                   MR. CAVALLO: Yeah, way down.

22                   MS. SLIFKA: I don't know. I mean, maybe  
23          it has to do with the fact that they're -- I  
24          really don't know.

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2 MR. CAVALLO: Okay.

3 MS. SLIFKA: I don't know if they're  
4 monitoring the phone booths or not monitoring. I  
5 know they're putting in these electrical things.

6 MR. CAVALLO: Fair answer. That's  
7 probably it, right.

8 MS. SLIFKA: Yeah. So there might be  
9 more of we're doing that and changing their  
10 technology.

11 MR. CAVALLO: Changing their manpower.  
12 Sorry, Ernest Cavallo, Citizen Member.

13 MS. SLIFKA: So, that could be what it's  
14 about. And overall, we're completing 98 percent  
15 of our decisions in less than 20 days.

16 MS. GRAHAM: One of the questions --  
17 Shamonda Graham, DOB; the amount of cases that  
18 were heard for DOB is 15,000 and decisions  
19 rendered is -- and I'm just estimating -- is  
20 9,000. So if decisions are being rendered less  
21 than ten days, what is the --

22 MS. SLIFKA: Well, less than 20 days.

23 MS. GRAHAM: Well, ten or 20.

24 MS. SLIFKA: Less than 20, yeah.

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2 MS. GRAHAM: But it wouldn't put it into  
3 the next quarter. So my question is --

4 MS. SLIFKA: Well, it actually could  
5 because the end of the month of the second  
6 quarter --

7 MS. GRAHAM: Mm-hmm.

8 MS. SLIFKA: -- could go into the  
9 beginning of the month of the third quarter.

10 MS. GRAHAM: Okay. But would it impact  
11 so much so that we would be 7,000 decisions off?

12 MS. SLIFKA: It could.

13 MS. GRAHAM: Is that possible?

14 MS. SLIFKA: It is possible, depending  
15 on the types of violations.

16 MS. GRAHAM: Okay. So can you just look  
17 at that and just maybe give me some feedback on  
18 why that number is so different: the amount that  
19 decisions that were heard versus the decisions  
20 rendered; the cases heard versus decisions  
21 rendered?

22 MS. SLIFKA: Okay.

23 MS. GRAHAM: Thank you so much.

24 MS. SLIFKA: So, decisions after the

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2           hearing: so we did a third quarter of 2015  
3           comparison with the third quarter 2016  
4           comparison. As I said, Tom had asked for this. So  
5           as you can see, in 2016 you have a total in  
6           violation of 52.6 percent and a total dismissed  
7           of 46.9 percent. Interesting, in 2015 you had a  
8           56.2 percent in violation and a 43.1 percent  
9           dismissal rate. So it's not, you know, it's  
10          pretty much the same.

11                        So for Department of Sanitation, you can  
12          see the comparison in 2015 there was a 63 percent  
13          in violation rate, 37 percent dismissal. And in  
14          2016, it's a 72 percent in violation -- I mean,  
15          72 percent dismissal rate and 28 percent in  
16          violation rate. For Buildings, you have in '15 an  
17          81 percent in violation and in 2016 you have an  
18          80 percent in violation. It's pretty, pretty  
19          close. For DOT, you had a 58 percent in violation  
20          and in 2016 you had a 62 percent in violation.  
21          Yeah?

22                        MS. MADELYNN LIGUORI, ESQ., SANITATION:  
23          Amy, just out of curiosity, if the dismissal  
24          rate, especially for Sanitation, does that

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2 include all that big withdrawal of prosecution  
3 that we had to do for Finance?

4 MS. SLIFKA: No, because those were  
5 withdrawal of prosecutions.

6 MS. LIGUORI: Those are withdrawals, so  
7 they don't appear in that?

8 MS. SLIFKA: They're not appearing in  
9 here, so.

10 MS. LIGUORI: Thank you. I'm sorry,  
11 Madelynn Liguori, Sanitation.

12 MS. SLIFKA: Okay. So for FDNY, there's  
13 an 89 percent in violation in 2015 and a 90  
14 percent in violation in 2016. For DEP, an 80  
15 percent in violation rate and an 82 percent in  
16 violation in 2016. Just to mention these high in  
17 violation rates, there's usually a petitioner  
18 representative present in those cases. NYPD, you  
19 see a 48 percent in violation rate in 2015 and a  
20 45 percent in violation rate in 2016. So for  
21 Health, it's the same interestingly enough. So,  
22 it's 59 percent in violation rate in 2015 and a  
23 59 percent in violation rate in 2016. For Parks,  
24 51 percent in violation rate in 2015; 49 percent

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2 in violation rate in 2016. DoITT, a 41 percent in  
3 violation rate in 2015 and a 74 percent in  
4 violation rate -- I'm sorry -- dismissal rate; so  
5 they're in violation rate went down to 26  
6 percent.

7 MS. LIGUORI: Wow.

8 MS. SLIFKA: I can't speak for them. I  
9 really don't know why that happened. They might  
10 not have had representation. For BIC, it's 50-50  
11 in 2015 and then in 2016 it was 55 percent in  
12 violation. Landmarks, it's a hundred percent in  
13 violation in both years, so interestingly enough.

14 So the most commonly issued pretty much  
15 stayed the same last quarter to this quarter and  
16 kind of will stay the same from year to year: Use  
17 or opening in the street without a permit. DOT,  
18 failure to comply with the terms or conditions of  
19 the permit and failure to permanently restore  
20 your cut. NYPD, it's the right of way, the  
21 failure to yield law and it's vending in a bus  
22 stop and it's failure to display your license or  
23 plate. These are vending violations.

24 MR. CAVALLO: Question. Ernest Cavallo,

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2 Citizen Member. The NYPD right of way, failure to  
3 yield, that's new isn't it, being up on top?

4 MS. SLIFKA: Yeah. Yes, it's new that  
5 it's on top. I think they got, you know, it went  
6 up a little bit this summer. And it's relatively  
7 -- well, it's kind of new.

8 MR. CAVALLO: I think from a citizen  
9 point of view, that's really good that they are  
10 enforcing that.

11 MS. SLIFKA: Yeah.

12 MR. CAVALLO: I think the Mayor's zero  
13 policy on pedestrian injury and death is really  
14 important and this shows that the Police  
15 Department is taking it seriously.

16 MS. SLIFKA: Agreed. Agreed. And for  
17 DOB, it's failure to comply with Commissioner's  
18 Order, work without a permit and unlawful acts  
19 that didn't complied with the Order of  
20 Commissioner. DSNY, it's failure to clean 18  
21 inches to the street, dirty sidewalk areas and  
22 storage of receptacles. DEP, failure to submit  
23 your annual test report, failure to install  
24 backflow and failure to keep or have available

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2           for inspection a noise mitigation plan. FDNY,  
3           it's inspection and testing, fire protection  
4           systems, unnecessary alarms. Certificate of  
5           fitnesses and their qualifications and not having  
6           them. DOHMH, failure to eliminate rodent  
7           infestation, shown by active rodent signs, first  
8           condition, failure to eliminate conditions  
9           conducive to rodent, first violation if any to  
10          eliminate conditions conducive to pests, garbage,  
11          spillage from cans and such. And Landmarks, it's  
12          work without a permit or certificate of approval,  
13          maybe just different types. And miscellaneous  
14          violations: putting up a flag, sign or banner  
15          without approval. For DoITT, it's failure to  
16          provide a working public payphone, required sign  
17          is missing and failure to maintain your public  
18          payphone/ telephone area. For Parks, it's failure  
19          to comply with directives of Park Officer,  
20          unauthorized consumption or possession of alcohol  
21          and unauthorized vending. And for BIC, it's  
22          idling of motor vehicles, failure to register  
23          your wholesale business and failure to obtain  
24          identification cards.

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2 And as far as appeals goes, you can see  
3 DOB has been 170 by the enforcement agency. DSNY  
4 has 470; FDNY, 52; Health, 69; DEP, 23; DOT, 56;  
5 NYPD, 29; Parks, 12; Miscellaneous, one; and a  
6 total of 582.

7 MR. JOSEPH GREGORY, ESQ., FIRE  
8 DEPARTMENT: Now, those are appeals by both the  
9 petitioner and respondent?

10 MS. SLIFKA: Those are appeals by the  
11 enforcement agency.

12 MR. GREGORY: Oh, okay.

13 MS. SLIFKA: Okay?

14 MS. GRAHAM: Oh, they're separated.  
15 Nice.

16 MS. SLIFKA: Any further questions?  
17 Okay, great, thanks. Oh, percentage of cost, one  
18 more. Okay. So, DSNY, it's 70.4 percent;  
19 Department of Transportation, 9.2 percent;  
20 Health, 5.9; and Buildings, 5.5. So, it's a total  
21 of \$81,406.

22 MR. DEL VALLE: Wow. The bulk's from  
23 Sanitation.

24 MS. SLIFKA: Yes.

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2                   MR. DEL VALLE:  DEP has requests for  
3           cease and desist orders?

4                   MR. RUSSELL PECUNIES, ESQ., DEPARTMENT  
5           OF ENVIRONMENTAL PROTECTION:  Yup.

6                   MR. DEL VALLE:  By the way, I got a  
7           great explanation on backflow preventers last  
8           night.

9                   MR. PECUNIES:  I can do a presentation  
10          for you if you want.  I'll need advance notice  
11          though.

12                  MR. DEL VALLE:  That sounds like a good  
13          idea actually.

14                  MR. PECUNIES:  Okay.  I'm Russell  
15          Pecunies, Assistant Counsel, Department of  
16          Environmental Protection.  Good morning.  This  
17          month DEP has 28 requests for cease and desist  
18          orders, relating to failure to install backflow  
19          prevention devices.  In each of these cases, the  
20          Commissioner has determined that a backflow  
21          prevention device is required.  The building owner  
22          has been ordered to install it.  They have been  
23          given a summons for failing to comply with that  
24          notice.  And they have been found in violation

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2 pursuant to that summons and are still not in  
3 compliance. So in each of these 28 cases, the  
4 Department is asking the Board to issue an order  
5 to cease and desist.

6 MR. DEL VALLE: Any questions? Is there  
7 a motion? It's unanimous with one abstention.

8 MR. PECUNIES: Thank you. And the  
9 Department is also requesting a cease and desist  
10 order this month under the Noise Code. The  
11 respondent is the Pre-school of the Arts, which  
12 is located at 40 West 22nd Street. They have been  
13 cited on four occasions for noise from their air  
14 conditioning unit, most recently just earlier  
15 this month. Due to their repeated violations of  
16 the Noise Code from this piece of equipment and  
17 the continuing failure to come into compliance,  
18 DEP is asking the Board to issue an order to  
19 cease and desist.

20 MR. DEL VALLE: Questions? Is there a  
21 motion? Granted. I suspect that you won't have  
22 any trouble telling them to shut down their AC  
23 right now.

24 MR. PECUNIES: That's why the violations

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2 are sort of scattered. It's a seasonal -- I think  
3 it's a seasonal problem, yeah.

4 MR. DEL VALLE: Is that it?

5 MR. PECUNIES: That's it.

6 MR. DEL VALLE: How about pre-sealing  
7 reports? Oh, pre-sealing reports. Thank you.

8 MR. PECUNIES: Thank you.

9 MS. KELLY CORSO, ASSISTANT DIRECTOR OF  
10 ADJUDICATIONS, OATH: Good morning. We have 17.  
11 I'm sorry, I'm Kelly Corso, Assistant Director of  
12 Adjudications here at ECB OATH. We have 17 pre-  
13 sealing reports for the Board this morning. Seven  
14 of these cases involve backflow violations and  
15 ten involve air code violations. For the backflow  
16 violations, in six of the cases the hearing  
17 officers recommend no sealing or other action  
18 based on the evidence of the respondents'  
19 compliance that was presented at the hearings. In  
20 the remaining backflow case, the respondent did  
21 not appear at the hearing. However, the hearing  
22 officer has agreed with the DEP's recommendation  
23 that the C&D order be discontinued because it's  
24 duplicative of a C&D order -- a different C&D

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2 order, which is scheduled for a hearing on  
3 November 1st.

4 And for the Air Code cases, two of these  
5 cases, the hearing officers recommend no further  
6 action based on the respondents' proof presented  
7 at the hearings that the respondents have  
8 obtained valid operating certificates for their  
9 cited boiler or burners. And in the remaining  
10 eight Air Code cases, the respondents did not  
11 appear at the hearings. However, the hearing  
12 officers agreed with DEP's recommendation that  
13 the C&D orders be discontinued for these cases  
14 because the respondents have obtained renewed  
15 operating certificates bringing them into  
16 compliance with the Air Code.

17 MR. DEL VALLE: Any questions? Is there  
18 a motion to approve? It's unanimous, with one  
19 exception -- exemption. Is there a motion for us  
20 to retire to executive session in order to  
21 discuss judicial matters? It's unanimous.

22 Is there a motion to adjourn? We are  
23 adjourned.

24 (The Board Meeting concluded at

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approximately 10:12 A.M.)

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CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Environmental Control Board meeting on October 27, 2016 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



A handwritten signature in cursive script, reading "Fei Deng", is written above a horizontal line.

Date: October 28, 2016

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