

CORRECTED

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

BOARD MEETING

VIA VIDEO CONFERENCE

100 Church Street, New York, New York

February 7, 2023

10:33 a.m. to 11:10 a.m.

February 7, 2023

MEMBERS PRESENT:

Asim Rehman, Esq. - Commissioner/Chief Administrative Law Judge, OATH, Chair/Executive Director, OATH ECB
Shamonda Graham - Department of Buildings (DOB)
Elizabeth Knauer, Esq. - Appointed Member (Water)
Madelynn Liguori, Esq. - Department of Sanitation (DSNY)
Jose Marquez, Esq., for Joseph Gregory, Esq. - New York City Fire Department (FDNY)
Jorge Martinez, Esq. - Department of Health and Mental Hygiene (DOHMH)
Russell Pecunies, Esq. - Department of Environmental Protection (DEP)
Matthew Schneid, Esq. - Appointed Member (Real Estate)
Thomas D. Shpetner, Esq. - Appointed Member (Business)
Matthew Smith, Esq. - New York City Police Department (NYPD)
Douglas S. Swann - Appointed Member (Air)
Jarrold Whittington - Appointed Member (Noise)

ALSO PRESENT:

Rachel Amar - Senior Advisor to Commissioner, OATH
Sola Best, Esq. - Assistant General Counsel, OATH
John Castelli, Esq. - Deputy Commissioner for Legislative Affairs, OATH
Kelly Corso, Esq. - Assistant Commissioner/Hearings Division Adjudications, OATH
Timothy Jones, Esq. - Senior Counsel, OATH
Vivienne Kahng, Esq. - Supervising Attorney for Appeals, OATH
David C. Kim, Esq. - Assistant General Counsel, OATH
Peter Schulman, Esq. - Deputy Commissioner/Appeals Division, OATH
Frances Shine - Secretary to the Board, OATH
Amy Slifka, Esq. - Deputy Commissioner/Hearings Division, OATH
Tom Southwick, Esq. - Assistant Commissioner/Appeals Division, OATH
Olga Statz, Esq. - Deputy Commissioner/General Counsel, OATH
Hasan Tariq, Esq. - Agency Attorney Intern, Appeals, OATH
Emma Wright, Esq. - Agency Attorney Intern, Appeals, OATH
Ithamar Zacharie, Esq. - Agency Attorney Intern, Appeals, OATH

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2 (The board meeting commenced at 10:33
3 a.m.)

4 ASIM REHMAN, ESQ., COMMISSIONER/CHIEF
5 ADMINISTRATIVE LAW JUDGE, OATH, CHAIR/EXECUTIVE
6 DIRECTOR, OATH ECB: Let's see. I see a motion
7 by Matt, I see a second by Matthew Smith, a
8 second by Matthew Schneid. Any opposition to
9 moving into executive session? Okay, let's --

10 [OFF THE RECORD]

11 [ON THE RECORD]

12 MR. REHMAN: Okay. We are now back on
13 the record with our special February 7th meeting.
14 We are discussing the case of DEP v. Competi-
15 Competition Architectural Metals, Appeal No.
16 2201375. I'd like to request a motion to vote on
17 the decision. I see a motion by Madelynn
18 Liguori. I see a second by Jarrod Whittington.
19 And the question on the table is to, voting in
20 favor of granting the DEP's appeal, which would
21 ultimately reverse the, the hearing officer. So
22 it is granting, the question is granting the
23 appeal or denying the appeal. By denying the
24 appeal, we are affirming the hearing officer. So

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2 one moment. Okay. Could GC Unit please do the,
3 the, the vote poll?

4 DAVID C. KIM, ESQ., ASSISTANT GENERAL
5 COUNSEL, OATH: So is there objection to the
6 motion to reverse the hearing officer's decision?
7 I'm just wondering, just -- the motion is to
8 reverse the, the hearing officer's decision,
9 right?

10 MR. REHMAN: Yes. Are we, are we doing
11 an individual roll on this?

12 MR. KIM: Uh-huh. Okay, individual
13 roll. Okay.

14 MR. REHMAN: Yeah, I know.

15 MR. KIM: Yeah, okay. I'll call the
16 votes on the motion individually on this.

17 MR. REHMAN: Yeah.

18 MR. KIM: Commissioner Asim Rehman?

19 MR. REHMAN: Yeah, I grant the appeal,
20 reversing the hearing officer. Yes.

21 MR. KIM: Thank you. Shamonda Graham?

22 SHAMONDA GRAHAM, DEPARTMENT OF BUILDINGS
23 (DOB): I grant the appeal, reversing the hearing
24 officer.

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MR. KIM: Joseph Gregory?

JOSE MARQUEZ, ESQ., NEW YORK CITY FIRE DEPARTMENT (FDNY): This is Jose Marquez, the Fire Department, recommending granting the appeal and reversing the decision.

MR. KIM: Elizabeth Knauer?

ELIZABETH KNAUER, ESQ., APPOINTED MEMBER (WATER): I vote to deny the appeal and affirm the hearing officer.

MR. KIM: Madelynn Liguori?

MADELYNN LIGUORI, ESQ., DEPARTMENT OF SANITATION (DSNY): I vote to grant the appeal and reverse the hearing officer.

MR. KIM: Jorge Martinez?

JORGE MARTINEZ, ESQ. - DEPARTMENT OF HEALTH & MENTAL HYGIENE (DOHMH): I vote to grant the appeal and reverse the hearing officer.

MR. KIM: Russell Pecunies?

RUSSELL PECUNIES, ESQ., DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP): Abstain.

MR. KIM: Okay. Matthew Schneid?

MATTHEW SCHNEID, ESQ., NEW YORK CITY POLICE DEPARTMENT (NYPD): I vote to deny the

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2 appeal.

3 MR. KIM: Thomas Shpetner? Thomas
4 Shpetner?

5 THOMAS SHPETNER, ESQ., APPOINTED MEMBER
6 (BUSINESS): Sorry. I was muted. I, I vote to
7 dismiss the appeal and affirm the hearing
8 officer.

9 MR. KIM: Okay, thank you. Matthew
10 Smith?

11 MATTHEW SMITH, ESQ., NEW YORK CITY
12 POLICE DEPARTMENT (NYPD): Affirm the hearing
13 officer.

14 MR. KIM: Douglas Swann?

15 DOUGLAS S. SWANN, APPOINTED MEMBER
16 (AIR): I vote to grant the appeal.

17 MR. KIM: Jarrod Whittington?

18 JARROD WHITTINGTON, APPOINTED MEMBER
19 (NOISE): I vote to grant the appeal, reverse.

20 MR. KIM: Okay, I'm counting the, the
21 votes. It seems that reverse, seven, and affirm,
22 four, and abstaining, one. So the motion to
23 reverse the hearings officer's decision is
24 approved with seven re-, seven in favor, four

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2 opposed and one abstention.

3 MR. REHMAN: Okay. Does anyone have any
4 other business to discuss? I see -- yes, Matthew
5 Schneid?

6 MR. SCHNEID: I just have a, a
7 logistical administrative question for future,
8 similar type cases. So is the, is the procedure
9 -- I, I guess in the future, in the case of,
10 there's a lot of very similar cases.

11 Notwithstanding that I voted against this, is the
12 proper that I should just vote in favor of the
13 next case because, now, this is our precedent?

14 PETER SCHULMAN, ESQ., DEPUTY
15 COMMISSIONER/APPEALS DIVISION, OATH: As, as a
16 full board appeal, I believe so.

17 OLGA STATZ, ESQ., DEPUTY COMMISSIONER /
18 GENERAL COUNSEL, OATH: No, not necessarily,
19 Peter. The, the Board members are independent.
20 The Board members have to vote according to what
21 they find in the deter-, the decisions.

22 MR. SCHNEID: Because I'm just, I'm
23 almost positive a case is going to come up next
24 week, or in a couple of weeks when we go. It's

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2 going to be substantially similar facts. Should
3 I --

4 MS. STATZ: This, if there is -- I want
5 to make very clear that there is no such thing as
6 a Ba- Board member who is obligated to vote one
7 way or another. The Board members are charged
8 with reading the determinations and making a
9 determination based on what they see in the, in
10 the decisions.

11 MR. SCHULMAN: Part of, part of it is
12 following Board precedent.

13 MS. STATZ: Following, following Board
14 precedent doesn't mean slavishly doing what
15 people tell them to do. If there is a Board
16 precedent that does not suit or that they don't
17 believe, or that they believe is distinguishable
18 in a particular case, we cannot say, there's no
19 law that says that they must follow that
20 precedent in that particular case. That's part -
21 - that's what the law is. There are things that
22 are analogous and there are things that you can
23 distinguish. So Board members are entitled to
24 read decisions and make determinations as they

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2 see fit.

3 MR. REHMAN: I, I tend to agree with,
4 with Olga here, and, and would hope that Board
5 members, if they see similar decision, would,
6 would make decisions that are informed by the
7 work that we do, including informed by the
8 discussion that we had over these last two
9 meetings. But, of course, if there are things
10 that a Board member sees heading in a different
11 direction or would like to revisit discussions,
12 they're entitled to do so by, by raising that in
13 panel discussion. Eliza- Elizabeth?

14 MS. KNAUER: Right. I mean, I, I was
15 just going to point out that, to, to Matt that
16 while -- and I, I, I share your opinion -- you
17 may continue to disagree with the precedent, that
18 there would be a sort of futility, based on the
19 vote today, of rai- raising it to the full Board,
20 so.

21 MR. SCHNEID: Understood. Okay.

22 MR. REHMAN: Mindful of time, I just
23 would like to check if anyone has any other
24 comments? Okay. Seeing none, motion to close

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2 today's meeting? I see a motion from Shamonda, I
3 see a second from Madelynn. I'd like to -- any
4 objections?

5 Okay. Let me first say thank you to
6 everyone for making the time today, for the time
7 that you made last week, for your contributions
8 into a, a hearty and difficult, but civil
9 discussion. And I will see you all at the next
10 Board meeting. Have a good day. We are
11 officially closed.

12 MS. GRAHAM: Enjoy. Bye, everyone.

13 MR. SHPETNER: Bye. Thank you.

14 MS. STATZ: Bye.

15 (The board meeting concluded at 11:10
16 a.m.)

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Environmental Control Board, 2/7/2023

CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on February 7, 2023, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: March 2, 2023

GENEVAWORLDWIDE, INC

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New York, NY 10018

Reviewed and corrected by OATH General Counsel

Office. March 7, 2023