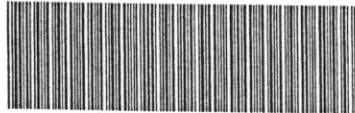




THE CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD

— website

HEARING LOCATION:
Environmental Control Board
66 John Street
10th Floor
New York, NY 10038
(212) 361-1400



826926712864692008

Method of Appearance
Live Hearing

DECISION AND ORDER
Violation #: 034795626P (1 NOV)
Hearing Date: September 17, 2010

To: Lindsay Garroway Esq
80 Maiden Lane
suite 507
New York, NY 10038

City of New York v. SIXTH REALTY
ASSOCIATES LLC

Total Civil Penalty: \$0.00

I Notice(s) of Violation (NOV(s)) was/were issued to the Respondent. On the record before me, and upon the Further Findings of Fact/Conclusions of Law stated below, I find as follows and, where applicable, order payment and compliance.

NOV: 034795626P
PLACE OF OCCURRENCE: 188 AVENUE OF THE AMERICAS MANHATTAN
DATE OF OCCURRENCE: 04/07/2009
ISSUING OFFICER/AGENCY: 1845 DOB
ECB CODE: B165
CHARGE: ZR 32-63
DISPOSITION: DISMISSED
CIVIL PENALTY IMPOSED: \$0.00

FURTHER FINDINGS OF FACT/CONCLUSIONS OF LAW:

NOV: 034795626P ZR 32-63

Lindsay Garroway, Esq., authorized representative appeared with Kevin Wilff for the respondent, Sixth Realty Associates, LLC. Susan Huot appeared on behalf of the petitioner.

Facts:

The petitioner submitted a photo of the sign at issue (See, petitioner's exhibit A).

The respondent submitted a license agreement between Capitol Media and the respondent and an estoppel agreement between Capitol and Fuel Outdoor LLC, a registered outdoor advertising company (OAC).

Mr. Wilff testified that he works for Fuel Outdoor and confirmed the above relationship. Fuel Outdoor controls all aspects of the signage at issue and submitted documentation to show timely correction (See, respondent's exhibits #1- 3).

Arguments:

Notice of Violation (Nov) #34795625N.

The respondent argued that he was not an OAC and should not be classified as such with the higher penalties. The petitioner noted the recent Supreme Court case that found the property owner an OAC with the same set of facts.

Nov#34795627R-

The respondent argued it was an overbroad charge and the petitioner contended that the charge was sufficient on its face.

Nov#34795628Z, Nov#34795629K, Nov#34795626P-Zoning regulations

The respondent argued that these apply only to signs with permits as indicated in the plain language of the statute.

The petitioner noted that permitted means allowable; that these regulations apply to various cases and not just to building cases where a permit is a term of art.

Nov.#34795631J-The petitioner agreed on the evidence presented that this violation should be dismissed as the Rule 49 exemption for property owners.

The petitioner waived the opportunity to submit a memo.

The respondent requested an opportunity to submit a memo on the issue of aggregate penalties, which was granted for September 23.

Decision-

Board of Appeals decisions make it clear that when a property owner leases space for the purpose of placing a sign on the outside of the building available for advertising purposes, they become an outdoor advertising company as defined in Code Section 26-259, See, NYC v Callen, ECB Appeal #900071, 8/18/09; NYC v Maou v, ECB Appeal #0900123, 8/20/09 and Supreme Court of New York, 2010 NY Slip Op 32338U, 8/30/10. The only possible distinction is where the installation is a one-time isolated event.

Nov#34795625N-Based upon the facts presented above, I find the respondent, property owner had an ongoing lease with the OAC to lease space for the purposes of advertising. Accordingly, I find he is an OAC. There was no testimony or evidence indicating a permit.

Accordingly, I find him in violation for displaying a sign without a permit.

Nov#34795627R, I find the details of the violation do not make out a prima facie case. The narrative details need to address why the signage is illegal. This Nov is dismissed.

Nov#34795628Z, Nov#34795629K, Nov#34795626P-With respect to the first and second violations, I find that the petitioner was correct in stating that the signs exceeding the surface area and the maximum height are not allowed in a C1-5 District and the respondent is therefore in violation on each Nov.

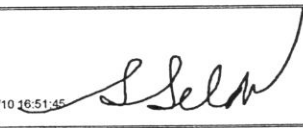
I do find with respect to the third violation, Nov#34795626P that is duplicative because the general charge of outdoor advertising sign being prohibited in the C1-5 district is duplicative of the earlier zoning regulations because as it comes out of the same factual basis. The general citation notes that the signage is not allowed in the zone. The more specific zoning regulations held in violation are cited for having signage in the illegal zone and additionally having the size exceeding surface area and maximum height. Part of the regulation is the fact it is in the illegal zone. To find the respondent in violation for 1.) A sign too large/high in an illegal zone and 2.) also being in the illegal zone is duplicative Accordingly, this Nov is dismissed.

Nov#34795631J is dismissed as the registration exemption for property owners with leases with a registered OAC.

I credit the evidence submitted by the respondent of timely correction and hereby impose a board approved mitigated penalty with respect to all Novs held in violation.

Issue of aggregate penalties-

I further find that the ECB has the authority to impose penalties per violation and find nothing presented by the respondent to persuade that it is contrary to the law.

TOTAL CIVIL PENALTY: \$0.00		
 <small>Thu Sep 2010 09/30/10 16:51:45</small>	= OCT - 4 2010 <small>Control 5</small>	09/30/2010 <small>Date</small>
Stacey Selden, Administrative Law Judge		

**PAYMENT DUE WITHIN TEN (10) DAYS
READ BACK OF THIS ORDER - PROTECT YOUR RIGHTS**