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Press Release

Mayor Gary McCarthy Announces Verdict Leveling \$85,400 In Fines Against Landlord

SCHENECTADY – Mayor Gary McCarthy announced today, June 3, 2013, that Schenectady City Court Judge Mark Blanchfield handed down a Decision and Order in City of Schenectady v. Edward Kahn, after a two day trial. Kahn was found guilty of 254 violations of the City Building Code and ordered him to pay \$85,400 in fines. City Inspectors had charged Kahn with hundreds of violations of the City’s Building Code. Kahn attempted to dodge responsibility for the violations by working with two other individuals, David and Daniel Richburg, respectively, to change ownership of the property to keep a step ahead of authorities. “These individuals worked together to avoid responsibility for their actions,” said Deputy Corporation Counsel Carl Falotico, who tried the case on behalf of the City. “Today, a clear message was sent: The City of Schenectady takes prosecutions of Building Code cases seriously and we will ensure that those responsible for the violations are held accountable.” City Court Judge Blanchfield ruled that despite the attempts by Kahn to avoid legal ownership of the property, he controlled and operated it. Blanchfield further ruled that State and City law assigns culpability for building code violations to operators of properties, as well as to the owners. “Today, the Court found in favor of the City. We have been sending the message that owner’s must maintain their properties. Though the City wants to work with people in a common sense manner, today’s results show the consequences of failing to live up to their responsibility” said Mayor McCarthy. This verdict shows that the City of Schenectady is able to hold people responsible for their actions, regardless of the attempts they make to avoid responsibility. The City’s Building Inspectors will work to ensure that the buildings are safe for residents of the City.

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At a Term of City Court held in and
for the City of Schenectady in the
City of Schenectady, New York, on
the 3rd day of June, 2013

STATE OF NEW YORK COUNTY OF SCHENECTADY
CITY COURT CITY OF SCHENECTADY

THE CITY of SCHENECTADY

-against-

EDWARD KAHN

Defendant.

DECISION AND ORDER
DOCKET # 2012-2389,-2390

APPEARANCES:

For the City : Carl Falotico, Esq.
Assistant Corp. Counsel

For the Defendant: Edward Kahn, Pro Se

Mark W. Blanchfield, J.

Defendant had been charged with numerous counts of several different statutory violations with respect to a multi-unit rental building known as 33 Swan Street, in the City of Schenectady, New York. A bench trial was held on May 6, 2013 and May 9, 2013 with respect to these violations. At the conclusion of the bench trial in this matter, the City of Schenectady itself moved to dismiss several of the charges, the motion was granted without opposition from the defendant.

The charges that remain at the end of the motion refer to two periods of time.

With respect to the first period, February 1, 2012 through May 10, 2012, defendant remains charged with

1. 100 counts of violating New York Property Maintenance Code § 304.13.1 for inadequate glazing,
2. 100 counts of violating New York Property Maintenance Code § 305.3 for permitting holes to exist in the floor and walls under and behind kitchen and bathroom sinks;
3. 100 counts of violating City Code § 138.11 for failing to obtain building permits for constructing a deck off the rear of the building;

4 100 counts of violating City Code § 167.46 (D) for permitting garbage and debris to remain in open areas outside the building.

With respect to the second period of time, May 17, 2012 through June 4, 2012, defendant remains charged with:

1. 18 counts of violating New York Property Maintenance Code § 304.13.1 for inadequate glazing;
2. 18 counts of violating New York Property Maintenance Code § 305.3 for permitting leaks to exist in various ceilings and walls;
3. 18 counts of violating New York Property Maintenance Code § 305.1 for permitting holes to exist in various ceilings and walls, for a bathroom vanity being unsecured to a wall, and for lifted kitchen floor tiles.

The number of counts was based on the number of days in which the building was alleged to be in violation of each of the statutes.

At the trial, testimony was given by two members of the City's code enforcement staff. Defendant himself submitted deed documents as evidence that he did not own the building during the relevant time periods.

Defendant's Role With Respect to the Property

As defendant's primary defense was that he was not an owner or otherwise responsible party with respect to 33 Swan Street at the relevant times, the Court will address that issue first.

The parties have briefed the issue of whether someone other than the title owner can be liable under the statutes in question. The City contends that the defendant is liable as an "operator" under City Code § 167-6, which includes a "proprietor of a multiple dwelling," and as an "owner" as that term is defined in New York's Property Maintenance Code § 202, which includes persons "otherwise having control of the property." The defendant contends that City Code § 210-5 (Landlord Registration Statment) requires a person to be formally designated as a managing agent by the owner before that person can be liable under the relevant statutes.

City Code § 167-6 defines an operator as a "proprietor of a multiple dwelling," and states that "[s]aid person need not be the owner of the premises of which he is the operator." The Code provides that an action can be initiated against an "operator" for its failure to abate violations of the Code (§ 167-14). Similarly, the New York Property Maintenance Code defines an owner as a person "otherwise having control of the property" (§ 202) and treats that class of persons the same as title owners for liability purposes (§ 301.2). Thus, persons other than the titled owner can be liable under each set of statutes. Moreover, the Landlord Registration sections of the City Code do not negate the routes to liability for non-title owners found elsewhere in the City Code and in the New York Property Maintenance Code, as they merely provide for a means by which the City

can contact and maintain information regarding rental property ownership.

Defendant has submitted two deeds, one from Daniel Richburg to defendant Edward Kahn, and one from Edward Kahn to one Ana A. Acosta, both executed on January 18, 2012--purportedly to show that he was not the title owner of the property during any of the times relevant to this case. Notably, the deeds were not filed with the Schenectady County Clerk on the same day, rather the deed from Mr. Kahn to Ms. Acosta was filed on June 4, 2012--some four months later.

According to City Code Inspector Heidi Pashley, defendant Kahn admitted to her that the deed transfers were part of a plan by Mr. Kahn and two other persons (David and Daniel Richburg) to obtain financing for the building, and that the three remained "partners" and were "all working together" with respect to 33 Swan Street. According to Ms. Pashley, Mr. Kahn also stated that he was "still involved with the property" notwithstanding the deed transfers. Moreover, Mr. Kahn was present at nearly all of Ms. Pashley's site visits, that he was able to use his own keys to let her into the units, and that Mr. Kahn often "did the speaking" even when one of the Richburgs was present. Mr. Kahn was the point of contact for Ms. Pashley over the many months while the City was endeavoring to get the defendant to bring 33 Swan Street up to code-compliant status. Mr. Kahn himself communicated with the Code Department to get an inspection completed (Exhibit A) and paid the City the \$500 penalty required before the inspection could be completed (Exhibit B).

Given the abundant evidence before the Court, it has been proved beyond a reasonable doubt that the defendant, Edward Kahn, was an "operator" of 33 Swan Street as that term is defined in the City Code, and that he was also an "owner" as a person "otherwise having control of the property" as that term is defined in the New York Property Maintenance Code. Thus, Mr. Kahn can be liable under these statutes provided the specific charges are themselves proved.

The Specific Charges

The City's witness, Code Inspector Heidi Pashley, testified credibly that she was at the premises on numerous occasions--beginning in December, 2011 and continuing until January, 2013. In December, 2011 she observed several broken windows at the premises as well as garbage and debris strewn on the yard and driveway areas throughout the exterior of the property. Ms. Pashley observed those problems again in January, 2012, once again by the middle of May, 2012 and then further after the defendant first appeared in court on these charges, which was June 4, 2014. Photographs of the debris and garbage (Exhibits "C" and "D")--taken in mid-May, 2012 and at a point after June 4, 2012, respectively--were received in evidence. There was no evidence tending to disprove Ms. Pashley's observations.

Ms. Pashley also testified credibly that on one of her visits on or about May 16, 2012, she actually went inside the building and observed leaking ceilings in the second floor rear apartment, as well as holes in the walls and floors, and an unattached bathroom vanity in the first floor rear apartment. She also observed holes under the kitchen and bathroom sinks, and a leaking ceiling in a rear enclosed porch. A photograph of a deteriorated interior ceiling was received in evidence to

document some of these charges (Exhibit "D"). According to Ms. Pashley, these issues remained uncorrected on subsequent visits until she finally observed that they had been corrected in January, 2013. Though cited in the complaint as an additional basis for the "general" code violation, she did not testify that she observed any lifted floor tiles. Again, there was no evidence tending to disprove Ms. Pashley's stated observations. However, Ms. Pashley's testimony indicated that she did not enter the building until May, 2012 and there was no specific factual support as to how long these conditions may have existed before she first observed them.

Ms. Pashley also testified credibly that during her mid-May visit she observed a deck being constructed, allegedly without a permit for said construction. There was no evidence establishing how long that construction had been in progress by the time she first observed it.

While the charges relating to the absence of rental certificates were withdrawn by the City in their trial motion, there was uncontradicted testimony that the defendant continued to rent to tenants while the property remained in a non-compliant condition.

There was no proof that the defendant had been convicted of any of these offenses before these charges were lodged.

While there is proof beyond a reasonable doubt that the broken windows and exterior debris and garbage violations occurred over more than 118 days, the charges currently before the Court relate to 100 days of violation of the "open areas" provisions and 118 days of violation of the "glazing" provisions. Accordingly, the defendant is convicted of 100 counts of violating City Code § 167.46 (D) for permitting garbage and debris to remain in open areas outside the building. The defendant is also convicted of 118 counts of violating New York Property Maintenance Code § 304.13.1 for inadequate glazing.

Notably, the multiple violations for holes and deterioration of the walls and ceilings ("interior surfaces" violations) were charged as only one count per day starting on February 1, 2012 and ending on June 4, 2012, or just 118 counts. Similarly, the "general" building code charges relating to the unsecured vanity and holes under the kitchen and bathroom sinks were also charged as only one count per day starting on May 17, 2012 and ending on June 4, 2012, or 18 counts total. The Court finds that 100 of the "interior surface" charges relating to the time period from February 1 through May 10, 2012 were not proved beyond a reasonable doubt, and the defendant is acquitted of those 100 charges. The "interior surface" charges dating from May 17, 2012 through June 4, 2012 were proved beyond a reasonable doubt, and the defendant is accordingly convicted of 18 counts of that code violation.

Even though there was insufficient proof to establish any lifted floor tiles, there was proof beyond a reasonable doubt as to other instances of non-compliance with the "general" provisions of the New York Property Maintenance Code from May 17, 2012 to June 4, 2012. The defendant is therefore convicted of 18 counts of violating New York Property Maintenance Code § 305.1 for permitting holes to exist in various ceilings and walls, for a bathroom vanity being unsecured to a wall.

With respect to the alleged failure to obtain a building permit for construction of a deck on the property, there was not proof beyond a reasonable doubt that such violation occurred before the city's Code Inspector first arrived on the property in May, 2012. Thus, the defendant is acquitted of those charges.

In summary, the Court hereby finds as follows:

1. The defendant is convicted of 118 counts of violating New York Property Maintenance Code § 304.13.1 for inadequate glazing,
2. The defendant is convicted of 100 counts of violating City Code § 167.46 (D) for permitting garbage and debris to remain in open areas outside the building,
3. The defendant is convicted of 18 counts of violating New York Property Maintenance Code § 305.3 ("interior surfaces"),
4. The defendant is convicted of 18 counts of violating New York Property Maintenance Code § 305.1 ("general" code violations),

The defendant is acquitted of all the remaining charges.

In the absence of any contrary proof, these convictions will be considered to be first offenses by the defendant.

Schenectady City Code § 167-15 (A) provides that a person convicted of a City Housing Code violation, for a first offense, be subject to a fine of not less than \$500 nor more than \$1,000 per day of violation, or up to one year of imprisonment, or both fine and imprisonment. Schenectady City Code § 167-15 (B) provides that a person convicted of a Uniform Fire Prevention and Building Code violation be subject to a fine of not more than \$1,000 per day of violation or imprisonment not exceeding one year, or both such fine and imprisonment.

In light of the foregoing, the Court hereby Orders that the following sentence be imposed:

1. Defendant is fined \$100 per day for each of the 118 days in which the property was in violation of New York State Property Maintenance Code § 304.13.1 for inadequate glazing, or \$11,800,
2. Defendant is fined \$500 per day for each of the 100 days in which the property was in violation of City Code § 167.46 (D) for permitting garbage and debris to remain in open areas outside the building, or \$50,000,
3. Defendant is fined \$100 per day for each of the 18 days in which the property was in violation of New York Property Maintenance Code § 305.3 ("interior surfaces"), or \$11,800,
4. Defendant is fined \$100 per day for each of the 18 days in which the property was in


violation of New York Property Maintenance Code § 305.1 ("general" code violations), or \$11,800.

A total of \$85,400 is owed for all violations. Defendant is given until July 31, 2013 to pay the fines in question or face re-sentence.

This opinion constitutes the Decision and Order of the Court.

Dated: June 3, 2013
at Schenectady, New York

ENTER


Mark W. Blanchfield
City Court Judge
City of Schenectady