



CITY OF  
**PORTLAND, OREGON**

HEARINGS OFFICE

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**HEARINGS OFFICER'S ORDER**

CITY OF PORTLAND, petitioner, vs. PSTN LLC, respondent

CASE NO. 2080041  
[Bureau Case No. 08-162368-HS]

PROPERTY / ZONE / PARK: 9236 SE Woodstock Blvd.

LEGAL DESCRIPTION:  
Section Town of Lent; Block 4, Lot 1 EXC PT IN STS,  
City of Portland, Multnomah County, Oregon

DATE OF HEARING: April 20, 2009

APPEARANCES:

Mr. Mitch McKee, for the City

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A hearing was held on April 20, 2009 ("4/20/09 Hearing") as directed by the Hearings Officer's Corrected Interim Order dated January 8, 2009 ("Corrected Interim Order"). Mr. Mitch McKee appeared and testified at the 4/20/09 Hearing. No appearance was made by Respondent or anyone representing Respondent. Exhibits 47 and 48 relate to mail sent in this case and returned by the Post Office. Exhibits 49 through and including 52 were offered, at the 4/20/09 Hearing, by Mr. McKee; the Hearings Officer admits exhibits 49 through and including 52 into the evidentiary record. Exhibit 53 (including 53a and 53b) were submitted by Mr. McKee after the 4/20/09 Hearing, but during the open record period. The Hearings Officer admits Exhibit 53 (including 53a and 53b) into the evidentiary record. The Hearings Officer makes this decision based upon the evidentiary record as a whole including testimony by Mr. McKee and Mr. Dowell and the exhibits admitted into the evidentiary record (1 through and including 53).

The Hearings Officer finds that Exhibit 49 confirms the address of the property subject to this case; 9236+ SE Woodstock Blvd., Portland, Oregon 97266 (the "Subject Property") and the address of the owner. The Hearings Officer finds that the Subject Property is within the City of Portland and therefore within the jurisdiction of the Hearings Officer. The Hearings Officer finds that notices and other mailings in this case were made to the address in Exhibit 49; as well as to other addresses (see also Exhibits 2 and 4).

The Hearings Officer finds that Exhibit 50 is a "case history" of inspections by the City of Portland Bureau of Development Services ("BDS"). The Hearings Officer finds Exhibit 50 to be credible evidence reflective of the events and circumstances of inspections conducted by BDS.

The Corrected Order granted authority to the City to vacate the tenants and occupants residing at the Subject Property. Further, the Corrected Order imposed an additional civil penalty in the amount of relocation costs subject to the City, as long as the City provided, and the Hearings Officer approved, the relocation costs. The City submitted, at the 4/20/09 Hearing, an accounting of relocation costs paid to relocate low-income tenants residing at the Subject Property (Exhibit 52). The Hearings Officer reviewed Exhibit 52 and finds the documentation supports the City's request for a civil penalty for relocation costs in the amount of \$17,418.96. Exhibit 53 requested that the Hearings Officer designate the City of Portland Bureau of Housing and Community Development as the payee for the \$17,418.96 relocation cost civil penalty (Fund # 10000, Business area: CDHCASFH000000GC, Statistical Internal Order: 0HCPG0001116, Cost Center for Stat IO: HCPG000002). The Hearings Officer finds it appropriate, if the \$17,418.96 relocation cost civil penalty is not paid by May 26, 2009, that a lien will be imposed upon the Subject Property with the Portland Bureau of Community Development being entitled to the relocation costs in the event the lien amount is thereafter paid.

The Corrected Order granted the City authority to request additional civil penalties, over and above relocation costs. At the 4/20/09 Hearing, the City requested additional civil penalties be assessed for additional inspections conducted by the Bureau of Development Services, for inspections conducted by the City of Portland Fire Bureau, and a civil penalty to recognize the Respondent's collection of rent from tenants during time that the Respondents knew the Subject Property was a serious fire, life and safety risk.

Mr. McKee, at the 4/20/09 Hearing, testified that 5 additional inspections were conducted at the Subject Property by the Bureau of Development Services after the January 5, 2009 hearing (cost of \$94.56 for each inspection) for a total of \$472.80. The Hearings Officer finds that inspections by BDS, after the 4/20/09 Hearing, were necessary considering the occupancy of tenants and serious risks created by the fire, life and safety violations at the Subject Property.

Mr. McKee, at the 4/20/09 Hearing, testified that the Fire Bureau submitted supporting documentation of inspections conducted by the Fire Bureau throughout the course of this case (Exhibit 53b). The Hearings Officer finds that the Fire Bureau documentation does support Mr. McKee's request for a \$8,400 civil penalty for Fire Bureau inspection costs (SAP Center Code: FRPR000001). The Hearings Officer finds it appropriate, if the \$8,400 Fire Bureau cost of inspection penalty is not paid by May 26, 2009, that a lien will be imposed upon the Subject Property with the Portland Fire Bureau being entitled to the fire bureau inspection costs in the event the lien amount is thereafter paid.

Mr. McKee, at the 4/20/09 Hearing, testified that Respondent was aware of the fire, life and safety violations and continued to collect rent from existing tenants and rent units to new tenants. Mr. McKee estimated monthly rents collected by Respondent ranged from \$600 to \$900 per month. Mr. McKee stated he used, for the purposes of calculating a civil penalty, the amount of \$750 rent paid per tenant to Respondent. Mr. McKee stated, for the purposes of calculating a civil penalty, he used 7 months of collected rent by Respondent. Mr. McKee requested a total of \$57,750 to be assessed as a civil penalty in recognition of Respondent's collecting rent for a period of time Respondent was aware of the fire, life and safety risks at the Subject Property. The Hearings Officer finds the City's request very reasonable. The Hearings Officer finds that Respondent was made aware of the serious nature of many of the violations, in particular the fire, life and safety violations, and did not correct the violations; rather, continued to collect rent and rent units anew. The Hearings Officer finds that the behavior of Respondent is an aggravating circumstance (collecting rent, renting units with known safety risks, failure to make reasonable correction efforts) as described under ADM 9.01, Rule 17.

The Hearings Officer finds that the Respondent's behavior towards the tenants/occupants to be callous and highly insensitive to the safety risks experienced by the tenants/occupants. The Hearings Officer finds that Respondent made very little effort towards correcting the fire, life and safety violations. The Hearings Officer finds that even after the fire, life and safety violations were brought to the attention of Respondent, the Respondent rented units to new tenants, thereby knowingly placing such tenants in a high safety risk situation. The Hearings Officer finds that the above-discussed penalties are more than merited in this case.

#### ORDER AND DETERMINATION

1. The terms of the Corrected Order shall remain in full force and effect unless specifically modified or supplemented by this Order.
2. An additional civil penalty in the amount of \$17,418.96 is assessed and if not paid by May 26, 2009, shall become a lien against the Subject Property. In the event a lien is filed against the Subject Property for the \$17,418.96 tenant relocation costs and thereafter paid, amounts paid shall be credited to: City of Portland Bureau of Housing and Community Development (Fund # 10000, Business area: CDHCASFH000000GC, Statistical Internal Order: 0HCPG0001116, Cost Center for Stat IO: HCPG000002).
3. An additional civil penalty in the amount of \$472.80 is assessed and if not paid by May 26, 2009, shall become a lien against the Subject Property for additional BDS inspections.
4. An additional civil penalty in the amount of \$8,400 is assessed and if not paid by May 26, 2009, shall become a lien against the Subject Property. In the event a lien is filed against the Subject Property for the \$8,400 Fire Bureau inspection costs and thereafter paid, amounts paid shall be credited to: City of Portland Fire Bureau (SAP Center code FRPR000001).
5. An additional civil penalty in the amount of \$57,750 is assessed, for aggravating circumstances, and if not paid by May 26, 2009, shall become a lien against the Subject Property.
6. This order has been mailed to the parties on May 8, 2009, and shall become final and effective on May 22, 2009. Any objections to this order must be in writing and received by the Code Hearings Office prior to the effective date.
7. The Hearings Officer retains jurisdiction of this case until June 1, 2009, at which time this case shall be closed.
8. This Order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: May 8, 2009

GJF:rs

Enclosure

  
Gregory J. Frank, Hearings Officer

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Complaint	McKee, Mitchell R.	Received
1a	Attachment A - List of Violations	McKee, Mitchell R.	Received
2	Notification List	McKee, Mitchell R.	Received

3	Photo	McKee, Mitchell R.	Received
4	Multnomah Assessor Property Information	McKee, Mitchell R.	Received
5	9/17/08 Photos	McKee, Mitchell R.	Received
6	9/24/08 Photos	McKee, Mitchell R.	Received
7	TRACS printouts	McKee, Mitchell R.	Received
8	TRACS printout	McKee, Mitchell R.	Received
9	Case history	McKee, Mitchell R.	Received
10	10/1/08 Notice of Violation - Property Maintenance Code, Peggy Whelan to PSTN LLC, Noman Ahmad	McKee, Mitchell R.	Received
11	10/15/08 Referral of Housing Case to Code Hearings Officer, Whelan to PSTN	McKee, Mitchell R.	Received
12	Temporary Certificate of Occupancy	McKee, Mitchell R.	Received
13	2/20/08 Letter Phil Burkart to PSTN	McKee, Mitchell R.	Received
14	4/7/08 Letter Burkart to PSTN	McKee, Mitchell R.	Received
15	5/8/08 Letter Burkart to PSTN	McKee, Mitchell R.	Received
16	9/30/08 Notice of Enforcement Penalty, Lisa Dibert to PSTN	McKee, Mitchell R.	Received
17	Correction Notices	McKee, Mitchell R.	Received
18	Correction Notices	McKee, Mitchell R.	Received
19	Commercial Building Permit	McKee, Mitchell R.	Received
20	Woodstock Plaza Second Floor Plan	McKee, Mitchell R.	Received
21	Fire Inspection Report	McKee, Mitchell R.	Received
22	Inspector Jason Andersen documentation	McKee, Mitchell R.	Received
23	Housing Maintenance Notice - Inspection Checklist	McKee, Mitchell R.	Received
24	City Lien Report	McKee, Mitchell R.	Received
25	Hearing Notice	Hearings Office	Received
26	Notice of Rights and Procedures	Hearings Office	Received
27	Mail Return Memo	Hearings Office	Received
28	12/26/08 Request to reschedule Received	Parveen Ahmad, Member of PSTN	
29	Mail Return Memo	Hearings Office	Received
30	12/29/08 letter with photos	PSTN,	Received
30a	Photos	PSTN,	Received
31	E-mail from McKee/Response to request for postponement with attachment	McKee, Mitchell R.	Received
31a	E-mail AJ Jackson to McKee	McKee, Mitchell R.	Received
32	Fire Code Citation dated 10/16/08	McKee, Mitchell R.	Received
33	Fire Code Citation dated 10/23/08	McKee, Mitchell R.	Received
34	Fire Code Citation dated 10/30/08	McKee, Mitchell R.	Received
35	Narrative (5 pgs)	McKee, Mitchell R.	Received
36	Letter from attorney Dowell on Law Firm Dowell letterhead with attachments (4 pgs.)	Dowell, Attorney, James	Received
37	Copy of email from Haney at Fire Bureau dated 1/2/09	Fire Bureau	Received
38	Letter to Hearings Officer dated 1/2/09	Fire Bureau	Received
39	Fire Code Citation dated 10/9/08	Fire Bureau	Received
40	Fire Code Citation dated 10/16/08	Fire Bureau	Received
41	Fire Code Citation dated 10/23/08	Fire Bureau	Received
42	Fire Code Citation dated 10/30/08	Fire Bureau	Received
43	Fire Code Citation dated 11/17/08	Fire Bureau	Received
44	Fire Inspection Report dated 11/18/08 (2 pgs)	Fire Bureau	Received
45	Fire Code Citation dated 12/30/08	Fire Bureau	Received
46	Fire Code Citation dated 1/2/09	Fire Bureau	Received
47	Returned mail memo w/attached copies of envelopes	Hearings Office	Received
48	Certification of Civil Penalty and Lien	Hearings Office	Received
49	Multnomah Co. Assessor report	McKee, Mitchell R.	Received
50	Case History update report	McKee, Mitchell R.	Received

51	AMANDA data printout	McKee, Mitchell R.	Received
52	Determination & Certification of Service documents and expense reports for relocating tenants (20 pgs.)	McKee, Mitchell R.	Received
53	Memo	McKee, Mitchell R.	Received
53a	Personal Service & Posting document	McKee, Mitchell R.	Received
53b	Portland Fire & Rescue Illegal Occupancy document with invoices (9 pgs.)	McKee, Mitchell R.	Received