

## How to Handle City-Issued Violation Hearing

by Adam Leitman Bailey, Esq.

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If you get a violation from certain city agencies, such as the Department of Buildings (DOB), the NYC Fire Department, or the NYC Department of Sanitation, and you want to fight it, you'll need to appear at the Environmental Control Board (ECB) for a hearing. Here's what you'll need to know to prepare for the hearing.

### Preparing for Hearing

Before the hearing date, you should collect certain information. The DOB's Web site, [www.nyc.gov/html/dob/html/violations/violations.shtml](http://www.nyc.gov/html/dob/html/violations/violations.shtml), has updated information about the ECB, including possible violation penalties and other useful information. You can also review the law governing the violation and read a discussion of the criteria needed to correct many of the most common violations.

The penalty guidelines give the administrative law judge (ALJ) discretion to order a mitigated (that is, reduced) penalty. Director/actor Woody Allen's quip, "Seventy percent of success in life is showing up," can be applied to fighting most city-issued violations. By merely making an appearance and providing some reasonable excuse or defense, you may get the ALJ to impose the smallest or most reduced penalty, especially if you make a decent case to support your position or can provide proof that you've corrected the alleged offense.

Winning the case requires proper preparation. In this age of information and technology, don't rely solely on testimony to satisfy the decider of truth and justice. Almost every case should be presented with dated pictures

or documentation proving the falsity of the alleged violation. This may include receipts, logs, reports, deeds, registrations, or other evidence. Also, witnesses to the conduct or lack of conduct leading to the violation should be prepared to be questioned.

### Importance of Early Check-In

On the date of your ECB hearing, plan to arrive long before your scheduled hearing time. Assuming the government agency's inspector or witness has also appeared for the hearing, cases are heard on a first-to-check-in, first-to-be-served basis. Litigants who arrive after 9 AM shouldn't make any early lunch plans. Many days, only eight to 10 judges are available to hear well over 100 cases scheduled for hearings. Once you arrive, immediately complete a sign-in form and hand it to an official behind the sign-in desk to be date-stamped. Postponements are freely given, but you must request them in person.

### Parties Involved

Once your case is called and you enter the hearing room, you'll be greeted by an ALJ, a representative from the city agency that issued the violation notice, and, in many cases, the inspector or person who issued the violation notice. Be forewarned: This won't be a *Law & Order* courtroom. Instead, you'll find yourself in a tiny room that looks like a small office and can't accommodate more than four or five chairs, a desk, and a computer.

### Your Hearing

Don't let the lack of court decorum impede your efforts to seek justice for yourself or your client. The city agency has the duty to prove that you or your company committed the offense listed in the violation. So the agency gets the opportunity to present its case first. But you may

request that the case be dismissed before testimony begins. If you believe that your violation was wrongly issued, you should ask for a dismissal based on a technical defense (discussed below) or other documentary evidence that clearly shows that the violation issued was in error—for example, it named the wrong owner. Many times, the ALJ will listen to your argument but reserve his decision and proceed to hear the case.

The government agency may call a witness or witnesses to testify, or simply rely on documentary evidence, such as logs and photos, to prove its case. When the government finishes presenting a piece of evidence or questioning a witness, you'll have an opportunity to question the evidence, try to discredit the witness, or ask the witness questions to get more information.

In one case handled by my firm, a building inspector issued a violation notice for not properly maintaining a building in a safe condition, because of a metal railing pulling away from the wall on the sixth story of a residential building. After the government presented its case, my cross-examination of the witness revealed that the building inspector's impaired vision made it impossible for him to have accurately assessed whether the building had been kept in such a dangerous condition. The inspector noted his need for a visual aid, such as glasses or contact lenses, to see properly. And he admitted that he was without any assistance on the date in question. The ALJ dismissed the case.

As noted above, in this age of video, Internet data, and photography, you should be prepared to win your case before you walk into the hearing room. After the agency has finished presenting its case and you've completed your cross-examination, you can present your own case. This can involve witnesses testifying or your presenting documents relevant to winning your case, including, but not limited to, photos, receipts, logs, deeds, or previous cases with similar facts that favor your case.

Keep in mind that ALJs rarely disagree with past decisions of their tribunal. So it's wise to find previous decisions that demonstrate your argument at the hearing. *Apartment Law Insider* and its sister publication, *Landlord v. Tenant*, provide past ECB decisions.

The agency or judge will also have the opportunity to ask your witnesses questions and ask about the evidence that you provide at the hearing.

## Common, Successful Defenses

Your due process rights under the U.S. Constitution provide one of the most common and successful technical defenses at an ECB hearing. The city agencies are required to take great precautions to ensure that you're informed about a pending hearing. They must attempt service—that is, delivery—of the notice of violation personally to you or your company at your building. If unable to do so, they must stick or tape the notice to your building's door. The city agency is then required to place a copy of the affidavit demonstrating service in the ECB hearing file. Additionally, if the agency can't personally deliver the violation notice to you, it must mail a copy of the violation notice to all other addresses listed on any agency records, such as the Department of Finance or multiple dwelling registration. If any of these actions didn't occur, you should demand that the case be dismissed.

Other common and successful defenses include the described offense not having the statute listed on the violation, the proper owner not being named on the violation, or the proper address not being listed on the violation. Cases involving an emergency condition resulting in a violation, and the inability to gain access to correct or repair a violation, have been dismissed in the past. Also, repairing a violation-causing condition while the ticket was being written has helped get violations dismissed. ■

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