

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF HOUSING, BUILDINGS AND CONSTRUCTION
OFFICE OF THE STATE FIRE MARSHAL
ADMINISTRATIVE ACTION NO. 2014-0005-FM

AARON L. MILLER

COMPLAINANT

V.

CITY OF RUSSELL FIRE DEPARTMENT

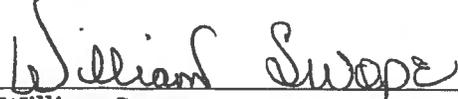
RESPONDENT

FINAL ORDER

The Hearing Officer in the above-styled case issued his Recommended Findings of Fact, Recommended Conclusions of Law, and Recommended Order ("Recommendation") on July 14, 2014, wherein he recommended the issuance of a final order affirming the City of Russell Fire Department's Order to Remedy Fire Hazard dated May 16, 2014 in all of its particulars except as set forth in the Recommendation. Neither party filed exceptions within fifteen (15) from the mailing of the Hearing Officer's Recommendation. The Office of the State Fire Marshal considered the Recommendation on July 30, 2014, and hereby issues its Final Order fully adopting all findings of fact and conclusions of law set forth in the Recommendation, which is attached hereto and incorporated herein by reference.

The City of Russell Fire Department's Order to Remedy Fire Hazard dated May 16, 2014 is AFFIRMED in every respect except as modified by the Recommendation.

SO ORDERED this the 30th day of July, 2014.



William Swope
State Fire Marshal

NOTICE

A final order of the Kentucky Office of the State Fire Marshal may be appealed pursuant to KRS 13B.140, which states:

(1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

(2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served via U.S. Mail and electronic mail on this the 30th day of July, 2014, upon the following:

Aaron L. Miller

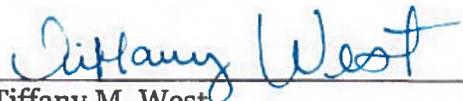
Complainant

Fire Chief Billy Selvage
City of Russell Fire Department
410 Ferry Street
Russell, Kentucky 41169
russellfiredept@roadrunner.com
Respondent

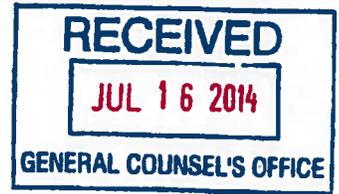
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Hearing Officer



Tiffany M. West
Docket Clerk
Department of Housing, Buildings and
Construction,
Office of the State Fire Marshal



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PUBLIC PROTECTION CABINET
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AARON L. MILLER

COMPLAINANT

V. RECOMMENDED FINDINGS OF FACT,
RECOMMENDED CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER

CITY OF RUSSELL FIRE DEPARTMENT

RESPONDENT

A hearing was held on July 8, 2014 at the offices of the Department of Housing, Buildings and Construction at 101 Sea Hero Dr., Frankfort, Kentucky. phone conference was held in the above-referenced matter on June 11, 2014, at 4:30 p.m. Complainant was present, representing himself. The Respondent was represented by Paul Craft. Present observing in his official capacity as the State Fire Marshall was William Swope. Respondent's party representative was the Fire Chief of the City of Russell Fire Department, Billy Selvage. Michael Davis, General Counsel for the Department of Housing, Buildings and Construction, and John Allender, counsel for the Department, also were present.

The purpose of the hearing was to provide Complainant an opportunity to be heard concerning his appeal of an "Order to Remedy Fire Hazard" issued by Chief Selvage on May 16, 2014. Pursuant to KRS 227.380, Chief Selvage ordered Complainant to remedy hazardous conditions at 202 Ferry St., Russell, Kentucky, a property owned by Complainant, no later than May 31, 2014. The order states in part that "if the owner fails to comply with this Order, the undersigned may cause the property to be repaired, or removed if repair is not feasible, and all

fire hazard conditions remedied shall be at the expense of the property owner pursuant to KRS 227.390.”

The order to remedy identified the hazardous conditions by referencing attached documents that identified specific conditions and violations. The attached documents, which were introduced at the hearing, were the following:

1. Respondent’s Exhibit 1, the Chief’s itemized list;
2. Respondent’s Exhibit 2, the March 14 electrical inspection report
3. Respondent’s Exhibit 3, the March 7 inspection report of the Chief

Also introduced into evidence by Respondent were Respondent’s Exhibit #4, photographs taken of the property contemporaneous with the March inspections and to which Respondent’s Exhibit #1 refers, and Respondent’s Exhibit #5, a June 17, 2014 electrical inspection. Respondent called as witnesses Chief Selvage; Ronald Hacker, the electrical inspector who conducted the inspections documented in Respondent Exhibits 2 and 5 at the request of Chief Selvage; and C.W. Cornett, the investigator who assisted Chief Selvage in investigating the violations.

Complainant called himself as a witness and introduced into evidence Complainant’s exhibit #1, photographs of the property taken by Complainant after the June 17, 2014 inspection, and Complainant’s exhibit #2, a letter from an electrician.

At the beginning of the hearing, the parties agreed that the conditions depicted in Respondent’s exhibit 4 and described in Respondent’s exhibits 1, 2 and 3 existed at the time the order to remedy was issued and stipulated that the violations in the order to remedy existed. Later, during the hearing, Complainant presented questioned whether certain violations concerning gas and electric were actually violations where the gas was cut off and wiring in what was referred to as “the storage area” was not wired to electrical service. As Complainant was

representing himself and expressed some uncertainty as to the legal consequences of stipulations at the beginning of the hearing, Complainant should not be bound by those stipulations where evidence subsequently presented indicates that in a particular case the conditions depicted, which are not disputed, does not constitute a violation.

Complainant for the most part did not deny that conditions on the property needed fixing. The thrust of Complainant's defenses were that (1) some of the violations were created by acts of tenants over whom he had no control; (2) that he felt he was being treated more harshly because he was a long-haired musician; (3) he had been unable to identify and address potential hazards due to being on the road for a period of time in connection with his employment and lacking money to address the hazards; (4) that he had fixed most of the violations as of the date of the hearing.

Strictly speaking, at issue was the condition of the property at the time the order was entered. However, both parties presented evidence concerning remediation of the violations so some findings concerning remediation are made herein.

Being sufficiently advised, the hearing officer makes the following recommendations.

RECOMMENDED FINDINGS OF FACT

- 1. All of the witnesses were credible.**
- 2. Respondent's exhibits 1, 2, 3 and 4 accurately depict or describe the condition of the property at the time the order to remedy was issued.**
- 3. The wiring in the storage area was not connected to electrical service or capable of becoming a conduit for electricity without modifying the wiring to make it operational.**

Item #17 and #19 on Respondent's exhibit 1 referenced wiring in what was referred to by Complainant as the storage area. Complainant testified that the wiring was not connected to

electrical service. Complainant's testimony on this point was not contradicted by any of Respondent's witnesses.

4. The wiring in the storage area that was not connected to electrical service did not pose any hazard.

This was established by the testimony of C.W. Cornett.

5. The gas service had been cut off in one or more apartments by the utility company.

6. Chief Selvage received numerous complaints concerning Complainant's property, dating back to 2012 as well as more recently in 2014.

Chief Selvage's testimony on this point was not contradicted.

7. Complainant had made progress in the past concerning problems with his property but less so in recent months.

Complainant and Chief Selvage were basically in harmony on this point. Chief Selvage testified that his policy was to work with persons in violation as long as they were making progress, and testified that Complainant had made progress in the past but not in the prior 5 or 6 months. Similarly, Complainant contended that he had made progress in the past and explained that due to absences resulting from the requirements of his work and lack of funds he had been unable to attend to the problems with his property recently.

8. Some of the problems on the property were caused by tenants.

The testimony of Complainant indicates that a tenant or tenants who failed to pay gas bills, resulting in gas shut-off, created the space-heater violations that are among the violations to be addressed in the order to remedy.

9. The itemized list in Respondent's Exhibit 1 includes multiple photographs of the same conditions, and the violations listed in Respondent's Exhibits 1, 2 and 3 include some duplication and overlap.

This was established by testimony of Complainant and Chief Selvage, and was acknowledged by both sides generally.

10. Respondent's exhibit 5, the testimony of Ronald Hacker, and acknowledgment by counsel for Respondent established that certain violations in the order being appealed have been corrected and inspected to the satisfaction of Respondent.

The violations that are corrected that are referred to in this finding are identified in Respondent's Exhibit 5 as "corrected."

11. Some violations not requiring skilled labor have been corrected.

A number of violations listed involved the presence of space heaters. Complainant's testimony that the space heaters have been removed is accepted. Other violations, such as Item #31 on Respondent's exhibit #1, concerned the presence of extensions cords. Complainant's testimony that same have been removed is accepted.

12. Complainant has taken steps towards fixing most of the other violations but acknowledges that some violations had not been corrected as of the morning of the hearing.

Complainant admitted 8 or 9 violations remained uncorrected, but absent another inspection the hearing officer cannot make further findings of corrections, other than as specified in findings elsewhere hereinabove.

13. There was no evidence that remaining violations were so serious that their repair is not feasible.

RECOMMENDED CONCLUSIONS OF LAW

1. All of the violations referenced in the order existed at the time the order was issued except for any violation(s) concerning wiring in “the storage room.”

The wiring in the storage room could not pose a hazard without intervention of an electrician to hook the wiring up to electrical service. It is unreasonable and contrary to the purpose of safety regulations to find a violation where no hazard could have resulted without modification of the property through skilled labor.

In contrast, where gas has been cut off and conditions exist that would pose a hazard if gas service was restored, labor to modify the property is not required to manifest a hazardous condition, only the decision of the gas company to restore service.

2. Applicable law does not excuse violations that exist because of the acts of others or a lack of funds to remedy the violations or lack of knowledge of the violations.

RECOMMENDED ORDER

The hearing officer recommends that the State Fire Marshall uphold the Order to Remedy Fire Hazard dated May 16, 2014, in all of its particulars except for the violation(s) concerning electrical wiring in the vacant room.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the mailing of the Recommended Order within which to file exceptions with the agency head, the State Fire Marshall.

The final order of the State Fire Marshall may be appealed pursuant to KRS 13B.140

which states:

(1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

(2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

Dated July 14, 2014.



MIKE WILSON, HEARING OFFICER

CERTIFICATION:

The original of the foregoing was mailed to Tiffany West, Docket Clerk, DHBC, 101 Sea Hero Road, Suite 100, Frankfort KY 40601, with copies mailed to Michael Curtis, P.O. Box 1455, Ashland KY 41105, Aasron Miller, Paul Craft, P.O. Box 280, Greenup KY 41144-0280, and Michael Davis, DHBC, 101 Sea Hero Road, Suite 100, Frankfort KY 40601, on July 14, 2014.



MIKE WILSON, HEARING OFFICER