

**BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY**

In the Matter of the Appeals filed by)
)
MARK PEARSON,)
Appellant,)
)
of two Notices of Violation issued for)
operating an Unpermitted Vacation)
Rental on a property located at 171)
Bumblebee Place on Lopez Island,)
issued by the)
)
SAN JUAN COUNTY DEPARTMENT OF)
COMMUNITY DEVELOPMENT,)
)
Respondent,)
_____)

File No. PAPL00-18-0007
File No. PAPL00-18-0010

DECISION

SJC DEPARTMENT OF
MAY 09 2019
COMMUNITY DEVELOPMENT

I. SUMMARY OF DECISION.

The pending appeals are both denied. The Notices of Violation were each fully supported by credible and substantial evidence in the Record, so they are each upheld.

If the appellant wishes to advertise and/or operate his house as a short-term vacation rental, as reflected on "Airbnb" materials included in the Record, he must first obtain a vacation rental permit from the County, which may include conditions of approval that are consistent with those applied to legally permitted vacation rentals in other parts of the County, including without limitation all standards found in SJCC 18.40.275.

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II. APPLICABLE LAW.

Jurisdiction.

SJCC 18.100.140 provides the Hearing Examiner with jurisdiction and authority to conduct an open record hearing on appeals of any code enforcement Notice of Violation in accordance with the San Juan County hearing examiner rules and procedures. "The hearing examiner shall consider the evidence and testimony presented at the hearing and, based on this information, shall reverse or uphold the notice of violation, in whole or in part". *SJCC 18.100.140(D)*.

Burden of Proof.

SJCC 18.100.140(B) provides that the Director has the burden to prove by a preponderance of the evidence that: 1) The person named on the notice of violation is the responsible party for causing the violation or is the property owner; and 2) The violation listed on the notice of violation occurred. The Washington Supreme Court has written that proof by a preponderance of evidence means "more likely than not." See *In re Marriage of Freeman, 169 Wn.2d 664, 239 P.3d 557 (2010)*.

Evidence.

In this matter, the appellant challenges Notices of Violation that allege he advertised and/or operated a vacation rental on his property without first obtaining a vacation rental permit, in violation of SJCC 18.40.275(M). The same code provision provides that: "*Evidence of operation includes advertising, online calendars showing availability, guest testimony, online reviews, rental agreements or receipts.*"

Final Decision.

Decisions of the hearing examiner are the final decision of the County and there is no further administrative appeal. *SJCC 2.22.240*.

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III. RECORD.

The Record for the matter includes all materials in the appeal file, including the Staff Report prepared to address issues raised in this appeal, with 6 attached Exhibits:

- 1) The first Notice of Violation challenged in this appeal, numbered PCI000-18-0073, with supporting materials as attachments, issued on Aug. 21, 2018, with Aug. 24, 2018 as the Date of Service;
- 2) Mr. Pearson's first written Appeal statement, signed by the appellant on Oct. 25, 2018, marked received by the Department on Oct. 29, 2018, with supporting materials as attachments, assigned Appeal File No. PAPL00-18-0007;
- 3) The second Notice of Violation challenged in this appeal, numbered PCI000-18-0120, with supporting materials as attachments, issued on Nov. 1, 2018, with Nov. 5, 2018 as the Date of Service;
- 4) Mr. Pearson's written Appeal statement, signed by the appellant on Dec. 14, 2018, marked received by the Department on Dec. 20, 2018, with supporting materials as attachments, assigned Appeal File no. PAPL00-18-0010;
- 5) Collection of email correspondence by and between Carl Person, the appellant's father and designated appeal hearing representative, and Erika Shook, Director of the San Juan County Department of Community Development, various dates; and
- 6) Hearing notices.

At the appeal hearing, Carl Pearson, the appellant's father and hearing representative, offered two additional exhibits to support his arguments, marked and identified as follows:

- A1. Collection of 5 pages purportedly printed from "Airbnb" website or 'customer support' regarding the appellant's listing, some with type-written annotations/captions providing Carl Pearson's description of what the page reflects; and
- A2. Collection of 4 pages printed by Carl Pearson generally regarding the Airbnb "Open Homes" program.

All witnesses who appeared at the appeal hearing offered testimony under oath. Erika Shook, Director of the San Juan County Department of Community Development, appeared and testified for the County, summarizing issues and facts discussed in her Staff Report and the Notices of Violation that are the subject of this appeal. The appellant, Mark Pearson, did not appear at the hearing. Instead, his father, Carl Pearson, appeared and testified on behalf of the appellant, raising procedural objections and arguments challenging each Notice of Violation.

1 8. The first Notice of Violation included advertisement materials regarding Mr.
2 Pearson's "Waterfront Home on Lopez Island" with a photo of "Mark", easily found on the
3 Airbnb website on August 20, 2018, including a calendar showing the Pearson property was
4 open and available to rent for periods less than 30 days for some days in August or
5 September of 2018, for \$325 per night. The Airbnb calendar printouts show different
6 shades/colors for different days and parts of weeks for each month, indicating
7 "Availability", for instance, all of August is in black, except for 3 days, the 27th-29th, which
8 are in blue; and for September, the 15th-26th is shown in blue, the rest in black. The Airbnb
ad includes glowing reviews/testimonials from multiple parties who rented the Pearson
property. (See Ex. 1, first NOV, with Declaration of James Finn, SJCo Code Enforcement
Officer, 5 pages of Airbnb ad printed and included with NOV. Calendar showing available
dates appears on page 2 of 5; nightly charge appears on page 4 of 5; Reviews from renters
appear on pages 2 and 3, with 3 from May, 1 from June, 2 from July, and 1 from August of
2018).

9 9. The first Notice of Violation was issued on August 21, 2018, the same date the
10 notice was placed in the mail, in an envelope addressed to the appellant, Mark Pearson, at
11 the address listed on county tax records for the property, 171 Bumblebee Road, Lopez
12 Island, WA 98261. Consistent with SJCC 18.100.180(A)(2) ("Service by mail shall be
13 presumed effective upon the third business day following the day upon which the document
14 was placed in the mail"), the date of service was August 24, 2018, meaning the appeal
15 deadline for the first NOV was October 8, 2018 (45 days from the date of service, See
16 SJCC 18.100.130(A)).

17 10. Unrebutted documentary evidence and staff testimony establish that the first Notice
18 of Violation was properly placed in the regular US Mail and also sent by registered mail
19 return receipt requested, addressed to the appellant, Mark Pearson, at the Lopez Island
20 address where the property at issue is located, which is the same address for Mr. Pearson
21 shown on county tax records.

22 11. The Staff Report explains that, as a matter of policy, the County's Code
23 Enforcement staff mails notices by both registered mail and regular mail because, often,
24 registered mail is not picked up by the recipient.

25 12. Both Notices of Violation properly include the signature of the County's Code
26 Enforcement Officer, James Finn. (See SJCC 18.100.080(K), which provides that a notice
of violation shall contain: "The signature of the director, code enforcement officer, or
inspector issuing the notice of violation" (emphasis added)). Accordingly, appellant's
arguments that a Notice should be rescinded because it is missing the Director's signature
must fail and do not provide any basis in fact or law to support the pending appeals.

13. Following a series of emails from Carl Pearson to Ms. Shook in early October of
2018 (see Staff Report, pages 3 and 4, findings 16, 17, and 18; and Ex. 5, copies of email

1 *correspondence*), the Department received a written appeal signed by the appellant, Mark
2 Pearson, on October 29, 2018, a copy of which is included in the Record as *Exhibit 2*.

3 14. The appellant did not and cannot rebut the fact that the first Notice of Violation was
4 properly addressed and mailed to his Lopez Island address. Ms. Shook's testimony
5 confirmed that neither copy of the NOV – the copy sent via regular US Mail or the copy by
6 registered mail – was/were returned to the Department as undeliverable. Obviously, neither
7 mailing was ever returned to the Department, because Carl Pearson transmitted a photo of
8 the certified mail envelope to Ms. Shook at some point in October of 2018. (*See Ex. 5,*
9 *email from Carl Pearson to Ms. Shook, dated Oct. 18, 2018, at 10:10 a.m., message*
referencing transmittal of same envelope to Ms. Shook on October 8th, alleging it had been
returned to County, when clearly it was not, because it was in Mr. Pearson's possession
when he made a copy of the envelope; and Ex. 4, appellant's second appeal, attached photo
of certified mail envelope postmarked Aug 21, and marked by the appellant as Exhibit
"D").

10 15. Nevertheless, without any credible, corroborating and plausible written evidence or
11 disinterested witness testimony to support his allegations, at the appeal hearing, Carl
12 Pearson argued that the first Notice of Violation was never delivered to his son's address,
13 and that it was somehow returned to the County. Such argument is not supported by
14 sufficient evidence in the record, and must be rejected. Mr. Pearson's explanations,
15 excuses, and testimony on the subject were not believable, and were contradicted by Ms.
16 Shook. More significantly, somehow he received the Notice, so he was able to generate an
17 email to Ms. Shook complaining about details set forth in the citation on October 3, 2018,
18 well before the first appeal deadline expired on October 8, 2018. (*See Ex. 5, collection of*
19 *emails to/from Carl Pearson and Ms. Shook, specifically the email dated October 3, 2018*
20 *at 2:38 p.m.*).

21 16. By operation of applicable County codes referenced above, including those that
22 specify the date of service for a Notice of Violation served by mail and the deadline for
23 appealing same, and facts set forth above, the Examiner finds and concludes that the
24 appellant's first appeal, PAPL00-18-0007, was untimely. Accordingly, it should be
25 dismissed and the appellant is not entitled to any relief as requested in his untimely appeal.
(*See SJCC 18.100.140(A)(1), which provides that an appeal may be dismissed if the*
hearing examiner determines it is untimely).

26 17. Even if the first appeal was timely and not otherwise deemed procedurally
defective, it would still fail on substantive issues, because an abundance of substantial and
credible evidence supports the underlying facts supporting issuance of the challenged
Notice of Violation. For instance, un rebutted evidence in the Record establishes that the
Department more than satisfied its burden to prove by a preponderance of the evidence that:
1) Mark Pearson is the responsible party for causing the violation or is the property owner;
and 2) the violation listed on the notice of violation occurred. As to the first issue, no one

1 contested the fact that the appellant, Mark Pearson, is the owner of the Lopez Island
2 property named in the NOV. As to the second issue, whether the violation occurred,
3 written materials from the Airbnb website, all included as part of the evidence provided
4 with the first NOV, establish that the Pearson property has been advertised and/or operated
5 as a vacation rental, for periods less than 30-days. Again, the appellant does not challenge
6 the fact that he has never obtained a vacation rental permit.

7 18. At the very least, the Examiner finds that the Airbnb advertisement materials used to
8 support each of the two challenged Notices of Violation make it more likely than not that
9 the appellant has advertised and/or operated his waterfront house on Lopez Island as a
10 vacation rental, i.e. for periods less than 30-days. As noted elsewhere, the Airbnb calendars
11 all use different shades/colors indicating "Availability" in months at issue, for periods of
12 time that are clearly less than 30 days.

13 19. The guest reviews/testimonials included in the Airbnb ads also make it more likely
14 than not that the Pearson house was rented for periods less than 30-days, because more than
15 one review from different customers in a given month clearly indicates that at least two
16 people rented the same place in the same month, meaning it was rented to at least two
17 people in parts of that month for less than 30-days each. The Airbnb materials printed on
18 August 20, 2018 show 3 reviews dated May of 2018 and 2 from July of 2018; the Airbnb
19 materials printed on November 1, 2018 show 4 reviews from August of 2018. This
20 evidence fully supports the challenged NOVs and rebuts Carl Pearson's arguments made at
21 the appeal hearing that his son's house was only available for periods longer than 30 days,
22 among other things.

23 20. In his written appeal statement challenging the first Notice of Violation, Mr.
24 Pearson did not deny that his property was rented for periods of less than 30-days. At the
25 appeal hearing, the appellant's father, Carl Pearson, did not deny that his son's property has
been rented for less than 30-days. When asked, he also had no evidence to offer that would
show that the people identified in the reviews/testimonials provided in the Airbnb ads all
stayed at his son's house for periods longer than 30 days.

21 21. Despite giving lengthy testimony with very specific details regarding research he
22 conducted into Airbnb website policies, Airbnb's new 'Open House' options, marks on
23 envelopes, and other topics, the appellant's father feigned ignorance when asked if he knew
24 whether his son's property was ever rented for periods less than 30-days. His responses and
25 testimony on virtually every other topic were/was full of detail, very specific, and thorough
in nature. His inability to shed any light on whether his son's house has been rented or
available for rent on a short-term basis, as shown on Airbnb materials in the record, made
Mr. Pearson appear to be strategically evasive on the subject. Given that he had
explanations, arguments, and exhibits prepared for almost everything else (on many other
issues that he believed to be of assistance to his son's appeal), his sudden ignorance on such
a critical issue was not credible or plausible. His demeanor when answering questions

1 about the short-term rental of the property changed from the confident air he exuded when
2 speaking about other topics. Just as significantly, written materials in the Record fully
3 corroborate facts supporting issuance of both challenged Notices of Violation, including
4 without limitation the fact that the appellant's waterfront home on Lopez Island has been
5 advertised and/or operated as a vacation rental (for periods less than 30-days), all without a
6 vacation rental permit.

7 22. Simply put, neither the appellant, Mark Pearson, or his hearing representative and
8 father, Carl Pearson, offered any credible or believable testimony or evidence to rebut the
9 key facts supporting issuance of each challenged Notice of Violation.

10 23. The second Notice of Violation was issued on November 1, 2018, after the Code
11 Enforcement Officer once again discovered an ad on the Airbnb website for rental of the
12 appellants' waterfront home on Lopez Island, which included more reviews/testimonials
13 from previous guests, and an advertised daily-rental rate, not a monthly rate. The date of
14 service for the second Notice was November 5, 2018, making the appeal deadline
15 December 20, 2018. (*Staff Report, page 4; Ex. 3, second Notice of Violation, numbered*
16 *PCI00-18-0120*). The appellant submitted his appeal of the second notice on December 20,
17 2018. (*Ex. 4, copy of second Appeal at issue, assigned No. PAPL00-18-0010*). The
18 Department does not dispute that the appellant's second appeal was timely.

19 24. None of the appellants factual issues raised in his second appeal are supported by
20 credible evidence in the record, and none of his legal arguments are supported by applicable
21 codes or policies. Instead, documentation provided with the second NOV, the Staff Report,
22 and Ms. Shook's testimony at the appeal hearing provided far more than a preponderance of
23 evidence to establish that a) Mark Pearson is, in fact, the property owner and person
24 responsible for the alleged violation; and b) the Pearson property on Lopez Island was
25 advertised and/or operated as a vacation rental without a permit at some point in the weeks
26 and months before the second NOV was issued.

27 25. The appellant's second appeal generally alleges that the second NOV should not
28 stand because he appealed the first NOV. This argument and grounds for appeal is without
29 merit, because SJCC 18.100.070(F) expressly provides that: "*When an administrative or*
30 *judicial appeal is pending, additional notices of violation may be issued at the same*
31 *location for new or additional violations.*"

32 26. Appellant's argument that writing an envelope or a citation to "Mark (Carl)
33 Pearson" fails to adequately identify the property owner in this matter is disingenuous at
34 best. There is no dispute that Mark Pearson owns the property in question. Nor is there any
35 dispute that Carl Pearson was in regular communication with the Department via email, on
36 behalf of his son, Mark Pearson, discussing issues raised in the first NOV in the weeks
leading up to issuance of the second NOV. Accordingly, the Examiner finds that it was
entirely reasonable and appropriate for County staff to include reference to both gentlemen,

1 as one person, Mark Pearson, is the owner and person responsible, and the other person,
2 Carl Pearson, held himself out to be Mark's father and representative in dealing with
3 County staff on these matters. The labeling could be read to imply that both Mark and Carl
4 Pearson are "person(s) responsible" for the alleged violation of county codes. In any
5 event, the appellant, Mark Pearson, never disputed that he is the owner, and he never
6 demonstrated any problem responding to the second Notice, even if it did include his
7 father's name as well as his own.

8 27. Given Carl Pearson's demonstrated pattern of evasion and transmitting emails
9 raising excuses or hyper-technical and baseless arguments about how or whether notices
10 were ever properly mailed, addressed, or delivered to his son's property, the Examiner finds
11 that it was entirely reasonable and appropriate for staff to post the second notice of
12 violation at a conspicuous place on Mark Pearson's property. It is no different than a utility
13 company that finds it necessary to hang a door hanger, or post a notice at a property, where
14 a customer fails to pay a bill, or respond to other forms of outreach from the provider.
15 Nothing in the code prohibits such posting. In fact, posting a property is just one more
16 means that the notice can be brought to the attention of a property owner, who in this case
17 has a representative who devoted more time to arguments about mail than the substance of
18 the NOV, i.e. whether Mark Pearson's house was advertised or operated as a vacation rental
19 without a vacation rental permit before each NOV was issued. Arguments about posting
20 the Pearson property are without merit and provide no basis to grant either appeal.

21 28. In this appeal, the appellant did not offer the type of records commonly offered to
22 support claims that a property is only made available for long-term rentals. For instance,
23 the appellant offered no leases, rental agreements, business records, receipts, logs of
24 bookings, or other written materials to support claims that the property has only been rented
25 long-term, and not for periods of less than 30-days. Carl Pearson aggressively argued his
26 point of view, using selected pieces and parts of Airbnb printouts, but never credibly
27 explained why he did not click print on Airbnb booking records for his son's property,
28 which certainly include records of prior bookings made on the website, including the time-
29 periods covered by such bookings, i.e. for three days, a week, a month, or longer. Clearly,
30 Carl Pearson knows how to use the Airbnb website. His testimony included an extensive
31 explanation and attempt to coach the hearing room on all he knew about Airbnb, their
32 website policies, and where to look on the website for various options. The Examiner finds
33 that Mr. Pearson's selective presentation of facts – excluding reference to any sources that
34 would certainly help his case if his case was actually based on truth and not evasion or
35 obfuscation – tends to make his testimony far less credible than testimony and evidence
36 offered by County staff, who have no personal or financial interest in the outcome of this
37 appeal.

38 29. At the hearing, Carl Pearson claimed that his son's house was no longer available
39 for rentals for time periods less than 35 days, and that it was available for short-term stays
40 as part of the Airbnb "Open Home" program, which allows people who have experienced

1 loss of their home due to a disaster or similar catastrophe, among other things, to stay in an
2 Airbnb listing for free. He did not know when it started, claiming that it was before
3 November 1st. Based on Mr. Pearson's lack of credibility on other topics mentioned in this
4 decision, the Examiner does not find his explanation on this topic to be believable. It was
5 not supported by disinterested testimony from other witnesses, like prior guests who might
6 have stayed in the house for 35 days, or for free after a disaster. Again, he also claimed that
7 he "does not know" if his son's property has been rented for less than 30-days. His
8 selective knowledge did not enhance his credibility.

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10 30. The Airbnb ads do not include any words that inform customers that Mark
11 Pearson's house is/was only available for rentals of 35 days or more. The Examiner finds
12 that, especially after the first NOV was issued, the appellant was fully aware that short-term
13 rentals of less than 30-days would require a vacation rental permit. So, if he really wanted
14 to make it clear that his house was *not available* for short-term rentals, he easily could have
15 amended the text that appears on his Airbnb ad to say so up front, just like it tells readers
16 about the wonderful property they can rent. He did not. Instead, as noted above, the
17 second NOV included an ad that shows availability for less than 30-days, at a nightly rate,
18 with testimonials printed on November 1, 2018 including 4 reviews from the month of
19 August of 2018. Again, 4 individual guest-reviews from one month does not support the
20 appellant's claims that all rentals were for more than 30 days each. Instead, it makes it
21 more likely than not that the house was rented for about one week a time to four different
22 parties in the month of August. And, it is worth noting that none of the reviews express
23 gratitude for allowing them to stay in the house for free, while they recover from some
24 disaster or troubles that might qualify them to take advantage of the Airbnb Open Home
25 program described by Mr. Pearson at the appeal hearing.

26 31. Both of the challenged Notices of Violation were in a proper form, provided
sufficient information and content, and were properly mailed/served and received by the
appellant and/or his designated representative.

32. Both Notices of Violation were fully supported by the type of evidence detailed in
SJCC 18.40.275(M): *"Evidence of operation [of a vacation rental] includes advertising,
online calendars showing availability, guest testimony, online reviews, rental agreements
or receipts."*

33. Given that the appellant did not cease advertising rental of his property as a vacation
rental after the first NOV was issued, and may have only done so on or about November 8,
2018, after the second NOV was issued, the Examiner finds and concludes that the
\$2,300.00 penalty issued against Mark Pearson for the first NOV should be fully enforced.

34. With respect to the \$2,300.00 penalty imposed for the second NOV, the Examiner
finds that such penalty should be held in abeyance, to allow the Code Enforcement Officer
to work with the appellant to formulate a Compliance Plan, consistent with SJCC

1 18.100.100, wherein the appellant commits to demonstrate ongoing compliance with
2 applicable codes and regulations. Such Compliance Plan may include a requirement that
3 the appellant must: a) seek a vacation rental permit, if such use is permitted on his
4 property; or b) modify all ads, especially online ads, to eliminate any confusion that, going
5 forward, his house is not available to rent for periods less than 30 days, if such rentals are
6 permitted under county codes; or c) stop renting his property, if that is his choice. Any
7 Compliance Plan should also include a requirement that the appellant demonstrate he is
8 paying lodging taxes or other taxes and fees that might apply, depending on the
9 circumstances.

10 35. The Examiner finds that daily penalties of \$100.00 each consecutive day that a
11 violation continues on the property are not necessary at this time, but that such penalties
12 would be entirely appropriate if the appellant continues to advertise or operate his property
13 as a vacation rental without a valid permit and/or fails to take corrective action and keep his
14 property in full compliance with applicable county codes.

15 36. Except as modified herein, all statements of fact contained in the Staff Report are all
16 incorporated by reference as findings of fact by the hearing examiner supporting this
17 Decision.

18 V. CONCLUSIONS OF LAW.

19 1. Based on testimony and evidence in the Record, including without limitation all
20 findings set forth above, the Examiner concludes that the challenged Notices of Violation
21 are fully supported by substantial and credible evidence. The Department more than
22 satisfied its burden to prove by a preponderance of the evidence that: 1) Mr. Pearson is the
23 responsible party for causing the violation or is the property owner; and 2) the violation
24 listed on the notice of violation occurred.

25 2. The Examiner and most hearing participants are fully aware that the right to remain
26 silent in criminal prosecutions is absolute. In civil and administrative hearings, such as this
appeal of a notice of violation, there is no such protection. Actually, almost the opposite is
the case. If a party fails to testify at a hearing, the fact finder is allowed to draw an adverse
inference from the silence.

3. In civil matters with far more at stake than in this appeal, courts have allowed fact
finders to draw adverse inferences against parties who fail to testify. For example, in an
administrative case where a physician's medical license, and his career, was essentially on
the line, the physician's review board was free to draw adverse inferences from his refusal
to testify or produce requested documents, where such adverse inferences were supported
by some other evidence. *Alsager v. Bd. of Osteopathic Med. & Surgery*, 196 Wn. App. 653,
384 P.3d 641 (Div. II, 2016), citing *Diaz v. Wash. State Migrant Council*, 165 Wn. App.

1 59, 85, 265 P.3d 956 (2011); *Jane Doe v. Glanzer*, 232 F.3d 1258, 1264 (9th Cir. 2000).

2 4. Here, the appellant failed to appear at his own appeal hearing. He did not offer any
3 testimony or answer any questions to support his appeal. His written appeal statements do
4 not deny that he advertised or operated his house as a vacation rental without a permit. He
5 offered no Airbnb logs or records to rebut Airbnb ads included with each NOV showing
6 that his house has been advertised for rent for periods less than 30 days, for a nightly rate,
7 and that numerous guests provided testimonials showing that they stayed in the house for
less than 30-days each, as there were several in some of the same months. If his father's
claims are true, he could have easily submitted Airbnb logs, receipts, personal booking
logs, or similar records within his control, showing that his house was at all relevant times
rented for periods longer than 30-days at a time. He did not.

8 5. At no point before or at the hearing did the appellant attempt to invoke any Fifth
9 Amendment privilege against self-incrimination. Even if he had, Washington courts
10 provide that once a witness in a civil suit has invoked his or her Fifth Amendment privilege
11 against self-incrimination, the trier of fact is entitled to draw an adverse inference from that
12 witness's refusal to testify. *Chaffee v. Keller Rohrback LLP*, 200 Wn. App. 66 | 401 P.3d
418 (2017), citing *Olympic Pipe Line*, 104 Wn. App. at 355-56 (citing *Ikeda v. Curtis*, 43
Wn.2d 449, 458, 261 P.2d 684 (1953)).

13 6. In this matter, the evidence presented by the Department, which was included with
14 each challenged Notice of Violation, constitutes a preponderance of evidence supporting a
15 finding and conclusion that Mark Pearson violated SJCC 18.30.275(M) by advertising
16 and/or operating a vacation rental without first having obtained a vacation rental permit.
17 The appellant offered no personal testimony or rental records that are in his possession and
18 control to credibly rebut such evidence. Given that the record already includes sufficient
19 evidence to support issuance of each NOV, the appellant's failure to appear and testify on
20 his own behalf and make himself available for questions by Department representatives and
21 the hearing examiner, supports an adverse inference against him that further supports all
22 findings and conclusions included as part of this Decision. Specifically, the appellant
presumably had records and access to materials in his possession and control that could
have refuted or rebutted facts established by the Department to support each notice of
violation, if the allegations in either NOV were untrue. His failure to appear and bring
forward any records to show that his previous guests shown on Airbnb were long-term
renters, i.e. for more than 30-days each, infers that the NOV's were properly issued and
based on facts that the appellant cannot refute.

23 7. Any legal conclusions or other statements made in previous or following sections of
24 this document that are deemed conclusions of law are hereby adopted as such, and are
25 incorporated herein by this reference.

VI. DECISION.

The appellant's first appeal, PAPL00-18-0007, was untimely. Accordingly, it is hereby dismissed and the appellant is not entitled to any relief as requested in his untimely appeal. (See SJCC 18.100.140(A)(1). Even if the first appeal was not procedurally defective, it would fail on substantive issues – because credible and substantial evidence in the record establish that Mark Pearson's waterfront home on Lopez Island was advertised and/or operated as a vacation rental without a vacation rental permit.

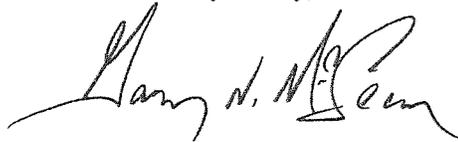
The second appeal was timely, and the appellant has standing to pursue such appeal. Nevertheless, as with the first appeal, credible and substantial evidence in the record established that Mark Pearson's waterfront home on Lopez Island was advertised and/or operated as a vacation rental without a vacation rental permit.

In any event, for each appeal, based on a preponderance of credible, unchallenged, and un rebutted evidence in the record, including without limitation the Airbnb ads included as part of each NOV, the Department satisfied its burden of proof to establish that: 1) Mr. Pearson is the responsible party for causing the violation or is the property owner; and 2) the violation listed on each notice of violation occurred. See SJCC 18.100.140(B). Thus, both Notices of Violation are upheld.

Given that the appellant did not cease advertising and/or operating his property as a vacation rental after the first NOV was issued, and may have only done so after the second NOV was issued, the \$2,300.00 penalty issued against Mark Pearson for the first NOV should be fully enforced.

The \$2,300.00 penalty issued against Mr. Pearson for the second NOV shall be held in abeyance for two years, and then reduced to zero, if he submits written proof to the Director at such time demonstrating that he has remained in full compliance with this Decision. Before such time, the penalty will be reduced to zero if the appellant enters into a Compliance Plan, consistent with SJCC 18.100.100, wherein the appellant commits to demonstrate ongoing compliance with applicable codes and regulations, and/or obtains a vacation rental permit, if such use is permitted on his property.

ISSUED this 9th Day of May, 2019



Gary N. McLean, Hearing Examiner

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Effective Date, Appeals, Valuation Notices

Hearing Examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology, pursuant to RCW 90.58.140, WAC 173-27-130 and/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of any appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and confer with advisors of their choosing, possibly including a private attorney.

Affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation.