

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3	In the Matter of:)
)
4	ANTONIO D. H. NAM)
)
5	Claimant,)
)
6	vs) PCB 97-234
) (Enforcement)
7	KIKON SUH,)
)
8	Respondent.)

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10 TRANSCRIPT OF PROCEEDINGS had at the hearing
of the above-entitled matter, taken
11 stenographically by Geanna M. Iaquina, CSR,
before HEARING OFFICER JOHN KNITTLE, held at 1000
12 Civic Center Drive, Niles, Illinois, on the 29th
day of March, 2001, at the hour of 9:30 a.m.

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1 A P P E A R A N C E S:

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ILLINOIS POLLUTION CONTROL BOARD,
100 West Randolph Street
Room 11-500
Chicago, Illinois 60601
(312) 814-8917
BY: MR. JOHN KNITTLE

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7 PRESENT:

8 Joseph Annunzio, on behalf of the Claimant

9 Jacob Rees, on behalf of the Respondent

10 Antonio D. H. Nam

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1 HEARING OFFICER KNITTLE: Good morning.
2 My name is John Knittle. I am a hearing officer
3 with the Illinois Pollution Control Board. I'm
4 also the assigned hearing officer for this matter
5 entitled PCB 1997-234, Antonio D. H. Nam versus
6 Kikon Suh.

7 This matter was scheduled for hearing
8 pursuant to a notice of hearing that went out on
9 March 8th. It was publicly noticed as required
10 by the Board's procedural regulations, and is a
11 continuation of previous hearings. We have here
12 with us Mr. Nam and his attorney, Mr. Joe
13 Annunzio. Nobody from the respondent's side is
14 present here today, that's the respondent's
15 attorney and the respondent himself Kikon Suh.
16 They are not present. However, Mr. Annunzio has
17 forwarded to me a faxed copy, Mr. Annunzio --

18 MR. ANNUNZIO: That's right.

19 HEARING OFFICER KNITTLE: -- of a motion
20 to continue the hearing for leave to file answer
21 instanter for leave by Jacob Rees to withdraw as
22 attorney and for respondent and for time for
23 respondent to obtain new counsel and refile third

24 party proceedings.

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1 I have taken about 20 minutes and
2 gone over this. It's approximately 9:55 a.m.
3 The hearing was scheduled to start at 9:30 a.m.
4 I should have noted that it's March 29th, 2001.
5 I want to give Mr. Annunzio -- well, actually,
6 let me summarize before I get started.
7 Essentially the motion states that the respondent
8 moved to continue the hearing for approximately
9 30 days and seeks leave to file his answer
10 instanter and seeks leave for Jacob Rees to
11 withdraw as attorney for the respondent and seeks
12 leave for additional time for the respondent to
13 obtain new counsel and for leave to refile third
14 party proceedings. I'm not sure how all that can
15 get done in 30 days. However, that's what he's
16 asking for.

17 The reasons stated in the motion are
18 that the respondent's attorney after the hearing
19 of February 26th health deteriorated. So he was
20 unable to effectively address the matters raised
21 at the February 26th hearing, especially
22 concerning his formal withdrawal of

23 representation. It also states that the
24 respondent, Mr. Suh, was not advised of and had

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1 no knowledge of the fact of his attorney's
2 conflict of interest and withdrawal until receipt
3 of the hearing officer's order dated March 8th,
4 2001. I'll go over this a little bit more
5 later. I have a summary of what we've done to
6 this point in the case, but I did serve the
7 respondent, in addition to his attorney, in light
8 of the representation at the last hearing that
9 the attorney would be withdrawing.

10 I gave a certified mail copy of the
11 notice of hearing to Mr. Suh. That's what he's
12 referring to there I take it. It also states the
13 respondent has not had adequate time to obtain
14 new counsel to represent his interests. I want
15 to hear what Mr. Annunzio has to say on this
16 before I rule. Mr. Annunzio.

17 MR. ANNUNZIO: Mr. Suh has had five years
18 in which to find adequate counsel. It took him
19 two years to find counsel to begin with. He
20 finds Mr. Rees. Mr. Rees represents him for
21 approximately three years, and at the time of the

22 hearing then determines that he has a conflict.

23 I don't know what else to say about

24 this. We have been patient. We have done

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1 everything we could to be responsible in this
2 matter. We have been ignored, and as far as I'm
3 concerned, the Pollution Control Board has been
4 ignored in this matter also.

5 I can go and on with this and get
6 angry on record, but I'm not going to do that.
7 I'm just going to just state for the record we're
8 seeking sanctions in this matter too. As far as
9 I'm concerned, the hearing should be closed, must
10 be closed so that the Pollution Control Board is
11 not made a mockery of any further.

12 HEARING OFFICER KNITTLE: So you're
13 objecting then, of course, to the motion to
14 continue?

15 MR. ANNUNZIO: Absolutely.

16 HEARING OFFICER KNITTLE: Okay. I'm going
17 to deny this motion. We are going to proceed
18 with the hearing here today. Let me state that
19 the current status of this hearing as we've had
20 the case in chief of the complainant put on and

21 Mr. Nam has provided testimony, we had continued
22 it a couple hearings back in order to allow the
23 respondent an opportunity to cross-examine Mr.
24 Nam and put on his case.

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1 He is not present here today nor is
2 his attorney. So we're going to close out the
3 complainant's case in chief. The respondent is
4 not here to put on his case in chief. So he's
5 had his opportunity, and we'll be closing out
6 respondent's case in chief, and there will, of
7 course, be no rebuttal because there was no
8 respondent's case to rebut, and I'm going to
9 close this hearing, but before I do that, I want
10 to give a brief summary of where we're at today.

11 Part of the reason I'm denying this
12 motion is the circumstances involved in this
13 case. To my counting, I've done a quick count on
14 the docket sheet here, and this hearing has been
15 noticed and cancelled eight times to this point
16 in time.

17 Starting back in 1999, it was noticed
18 up in a hearing officer order dated March 12th,
19 1999, for a hearing to occur on April 12th and

20 April 13th. It was noticed up in an April 14th,
21 1999, hearing officer order to occur on May 18th
22 and May 19th of 1999. It was then cancelled
23 again. It was noticed on November 25th, 1999, to
24 occur on October 5th and October 6th of 1999.

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1 That cannot be correct. That's an eight. It was
2 noticed up on August 25th. My writing isn't what
3 it should be.

4 At that point in time, it was
5 continued on the record to allow the respondent
6 to file a third party complaint. The third party
7 complaint was filed at that point in time, but it
8 was rejected by the Board for a variety of
9 reasons. Next, the hearing was noticed up in an
10 October 12th, 1999, notice of hearing to occur on
11 October 26th and 27th
12 of '99. That was cancelled. It was then noticed
13 up on February 1st to occur -- February 1st,
14 2000, to occur on March 14th and March 15th of
15 the year 2000 and was cancelled pursuant to a
16 motion filed the day before. March 21st of the
17 year 2000 it was set for an April 4th and
18 April 5th, 2000, hearing. That was cancelled.

19 On December 8th of the year 2000, it
20 was set for a January 3rd and January 4th, 2001,
21 hearing. That hearing actually occurred, and
22 that's the hearing where we took testimony of Mr.
23 Nam and the complainant put on his case in
24 chief. At that point in time, we got a faxed

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1 motion to continue the day before the hearing by
2 the respondent stating that he wanted to refile
3 the third party complaint and continue his time
4 to cross-examine and put on his case in chief,
5 and the motion was granted. There was no
6 objection by the complainant.

7 We then set up a hearing on January
8 19th of the year 2001 to occur on February 26th,
9 2001, and that was the hearing where Mr. Rees
10 informed us of a conflict of interest that was
11 discovered that day and stated that he would be
12 filing -- stated that he would be filing a notice
13 of withdrawal because he could not proceed given
14 the fact that he's cognizant of information with
15 respect to my representation of Mr. Nam that
16 could be a conflict with his representation of
17 Mr. Suh. He stated that he would be withdrawing

18 and would be filing the appropriate documentation
19 with the Board. That was never done.

20 He also stated that he would speak
21 with his client, which is never a bad idea, about
22 the fact that he had a conflict of interest and
23 that he would be filing a withdrawal and he would
24 speak to him that day, that day being February

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1 26th, 2001. That was apparently not done as
2 evidenced in the motion that we received today.

3 Since that time, I have tried to
4 contact Mr. Rees three or four times, have left
5 messages with him because I had not received his
6 notice of withdrawal. I've attempted to contact
7 the respondent, Mr. Suh. We played a little
8 phone tag. He left a message on my voice mail
9 stating that he did receive the notice of hearing
10 that I served on him. I served that on him in
11 light of the fact that his attorney represented
12 on record that he would be filing a notice of
13 withdrawal. Even though we never received that,
14 I was doing that as a courtesy.

15 As it is, Mr. Rees is still the
16 attorney of record for Mr. Suh and was present

17 when we set the hearing and, of course, did
18 receive appropriate notice, and this matter, as I
19 said, was publicly noticed. I've not spoken in
20 person with Mr. Rees or Mr. Suh any time within
21 the last 30 days.

22 So where does that leave us? That's
23 a good question. Before we get started on the
24 final wrap up here, I do want to note for the

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1 record that each one of these times that the
2 hearing was cancelled, it was at the behest of
3 the respondent. A number of times, the
4 complainant agreed, and there are, in fact, some
5 joint motions to cancel the hearing that the
6 complainant was kind enough to agree to.

7 However, I do want to note for the
8 record that every cancellation of the hearing to
9 this point in time has been the cause of the
10 respondent and the complainant has been ready to
11 go forward at everything hearing and has, as far
12 as I'm concerned, been gracious enough to attempt
13 to work with the respondent in this particular
14 issue. Mr. Annunzio, you're trying to say
15 something?

16 MR. ANNUNZIO: No. That's fine.

17 HEARING OFFICER KNITTLE: Okay. I want
18 the Board to be clear that at least from my
19 perspective as hearing officer in this case, the
20 reason this hearing has not gone forward any of
21 the eight times it has previously been scheduled
22 has been completely and totally due to the
23 respondent.

24 Also, motions to cancel the hearing

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1 are governed by Section 101.510 of the Board's
2 new procedural rules. They state that unless the
3 Board or hearing officer orders otherwise, the
4 hearing officer may grant motions to cancel the
5 hearing that are filed no fewer than ten days or
6 if all parties agree to the motion five days
7 before the scheduled hearing.

8 Mr. Annunzio, you haven't agreed to
9 this motion, I take it?

10 MR. ANNUNZIO: I have not.

11 HEARING OFFICER KNITTLE: This motion is
12 not timely filed. I did consider it on its
13 merits, even though it was not timely filed.
14 Just for the edification of the Board, I think it

15 can be defied on the fact that it wasn't timely
16 filed as well. I can grant the motion to file
17 after the prescribed time only if the movant
18 demonstrates that the movant will suffer material
19 prejudice if the hearing is not cancelled.
20 There's no allegations of material prejudice in
21 the motion. So that's a moot point, and for all
22 those reasons and for others that I will set
23 forth in my hearing officer order and my hearing
24 report, the motion is denied, and as I've said,

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1 as far as I'm concerned, this hearing is ended.

2 We're going to go off the record and
3 set up a briefing schedule. There are no members
4 of the public present to provide public comment.
5 We will continue this matter until 1:00 o'clock
6 in an effort to allow members of the public to
7 provide public comment if they so desire and in
8 light of these odd circumstances that we have
9 before us today. Let's go off the record.

10 (Discussion had
11 off the record.)

12 HEARING OFFICER KNITTLE: As luck would
13 have it, we just had a message from the front

14 desk that Mr. Rees, the attorney for Kikon Suh,
15 will be here in approximately ten minutes.

16 MR. ANNUNZIO: I'm going to ask my client
17 to leave. I mean, what is the sense of this? I
18 mean, he's already been here almost 45 minutes.

19 HEARING OFFICER KNITTLE: Right. Which
20 will put him here at approximately 10:20 if he's
21 true to his ten minute word. We're going to wait
22 for him to arrive. Whether or not your client is
23 here I think we should discuss off the record.

24 MR. ANNUNZIO: Okay.

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1 HEARING OFFICER KNITTLE: Let's go off.

2 (Discussion had
3 off the record.)

4 HEARING OFFICER KNITTLE: Pursuant to an
5 off-the-record discussion, we have set a briefing
6 schedule. The complainant's posthearing brief
7 will be due on or before April 30th, 2001. The
8 respondent's brief will be due on or before May
9 28th, 2001. The reply brief will be due on or
10 before June 15th, 2001, and that's the
11 complainant's reply brief.

12 This hearing is closed. As I said,

13 we are going to stay here off the record and wait
14 for Mr. Rees. Since we last went on the record,
15 we have had another message saying that he's
16 going to be 15 minutes now instead of ten minutes
17 because he's stuck in traffic. So it may be a
18 little while, but we will sit and wait.

19 (Brief pause.)

20 HEARING OFFICER KNITTLE: We're back on
21 the record. It is approximately 10:34 a.m. Mr.
22 Rees has joined us. Mr. Rees, as you know,
23 represents Kikon Suh. As I informed Mr. Rees off
24 the record, I've denied the motion in total.

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1 I've denied the motion to continue the hearing.
2 I've denied leave to file instanter an answer.
3 I've denied leave by Jacob Rees to withdraw as
4 attorney for the respondent and for respondent to
5 obtain new counsel and refile the third party
6 proceedings, and the reasons I denied all those
7 are painstakingly and somewhat ramblingly on the
8 record to this point already before Mr. Rees
9 arrived.

10 Mr. Rees, do you have a statement you
11 wanted to make or do you want to make a -- I'd

12 allow you to talk about the motion if you want
13 even though I've already ruled upon since you
14 didn't have that opportunity because you weren't
15 here.

16 MR. REES: Yes. I would like to speak to
17 the motion. I appreciate the -- that I'll be
18 getting the opportunity or I'm getting the
19 opportunity to do so.

20 For the record, my name is Jacob Rees
21 and of record, I am still the attorney for the
22 respondent in this proceeding, not having
23 formally withdrawn. A motion to continue this
24 hearing had been filed by me yesterday evening.

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1 The formal filing was this morning before the
2 Pollution Control Board. Fax copies of the
3 motion were sent to Mr. Annunzio on behalf of the
4 complainant and to Mr. Knittle at the Pollution
5 Control Board.

6 Also, this morning I placed a number
7 of phone calls to Mr. Annunzio beginning at
8 approximately 8:00 this morning to let Mr.
9 Annunzio know two things; one, that I had filed a
10 motion; secondly, that I had -- that I would be

11 coming late this morning, and I can only assume
12 that Mr. Annunzio conveyed the substance of my
13 conversation -- conveyed the substance of my
14 conversation to the Board.

15 I did have a conflict this morning
16 with another matter at the Daley Center in
17 Chicago. The judge came late on the bench. That
18 matter was concluded. I called a number of times
19 as soon as that matter was concluded and got Mr.
20 Annunzio's voice mail. I also received the voice
21 mail for the second for the mayor that I had been
22 switched to. I left messages indicating that was
23 I was on route and that I would be here hoping to
24 address the motion.

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1 Also, with respect to the motion, I
2 understand that it has been denied, which leaves
3 the respondent in somewhat of a predicament, and
4 I hope the Court would consider this in perhaps
5 reconsidering the motion, and that predicament is
6 this, if, in fact, I am not given leave to
7 withdraw, then I'm in a situation where either I
8 would have to continue the case for Mr. Suh or
9 Mr. Suh having gotten late notice of the -- of

10 this hearing, and I'm not saying, of course, that
11 that's any fault of the Board because the Board
12 was obviously not obligated to give a notice of
13 this hearing, but given the fact that Mr. Suh had
14 not obtained new counsel yet and also given the
15 fact that I have not formally withdrawn yet, that
16 leaves me with the situation where I am
17 representing a respondent in a case in which, as
18 indicated at the prior hearing, I had also
19 represented the complainant in the drafting of a
20 number of leases for the property which is the
21 subject of this particular Board hearing.

22 I've indicated to Mr. Annunzio --
23 well, let me strike that. What I'm going to be
24 asking, and I'll be asking this on the record and

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1 making a statement, that I'm fully prepared to go
2 ahead with the cross-examination of Mr. Nam if
3 the Board would consent to opening up the
4 hearing, but, of course, that would require
5 consent by Mr. Nam. That would require consent
6 by Mr. Nam in effect waiving any what might be
7 considered conflict of interest that I may have
8 had.

9 HEARING OFFICER KNITTLE: You're saying
10 that he'd have to consent to allow you to
11 cross-examine him in light of the conflict of
12 interest?

13 MR. REES: Right.

14 HEARING OFFICER KNITTLE: You're not
15 saying that you cross-examining him -- he doesn't
16 have to consent to that if I tell him to?

17 MR. REES: No, no, no. Of course, it's
18 not simply the cross-examination. It's my
19 continued representation of Mr. Suh. The point
20 being that if I have not yet withdrawn, I'm in a
21 situation where without the complainant's
22 consent, in effect, to my continued
23 representation of Mr. Suh and Mr. Suh not having
24 had the opportunity or not having been able to

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1 obtain another lawyer as yet to represent him in
2 these proceedings and to, in effect, take over my
3 position in this, in that regard, Mr. Suh is left
4 with no recourse whatsoever, and we're simply
5 left with the statement -- with whatever
6 statements Mr. Nam may have made with respect to
7 his testimony, and I would like to respectfully

8 request that the Board either -- that the hearing
9 officer and the Board either reconsider the
10 motion for a continuance so that Mr. Suh can
11 obtain additional counsel to represent him or, in
12 the alternative, I would request that Mr. Nam
13 confer with his attorney and perhaps waive any
14 potential conflict given the fact that I prepared
15 a number of leases for Mr. Nam in connection with
16 this property.

17 If that waiver were to be given, I
18 would be prepared to go ahead with the case and
19 bring that case to a -- bring at least the
20 testimony to a conclusion this morning and
21 perhaps a couple of hours this afternoon.

22 HEARING OFFICER KNITTLE: Let me see what
23 Mr. Annunzio has to say.

24 MR. ANNUNZIO: No, no. I'm not going to

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1 let him cross-examine, period. If it was so
2 important that we had to stop the hearing last
3 time because of a potential conflict of interest
4 because of whatever reason, I'm not going to
5 allow him to do it now because his client
6 couldn't find another attorney or didn't bother

7 to find another attorney, didn't even -- I'm not
8 going to get started.

9 HEARING OFFICER KNITTLE: So you're
10 objecting to --

11 MR. ANNUNZIO: Yes, I'm objecting.

12 HEARING OFFICER KNITTLE: -- Mr. Rees'
13 request?

14 MR. ANNUNZIO: Request, yes.

15 HEARING OFFICER KNITTLE: Let me -- I may
16 want to revise one thing. I looked in the
17 appearances, withdrawals, and substitutions of
18 attorneys in the judicatory proceeding,
19 withdrawals are governed by 101.400(v), an
20 attorney who has appeared in a representative
21 capacity who wishes to withdraw from that
22 representation must file a notice of withdrawal
23 with the clerk together with proof of service and
24 notice of filing on all parties on their

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1 representatives.

2 I don't know if this can be construed
3 as a notice of withdrawal. You've asked leave to
4 file a withdrawal. What's your intention here,
5 Mr. Rees?

6 MR. REES: If what you're referring to is
7 the motion that was filed yesterday, it is --

8 HEARING OFFICER KNITTLE: Today.

9 MR. REES: -- today with a copy being
10 faxed off yesterday afternoon, my intention is to
11 ask the Board to permit me to file a formal
12 notice of withdrawal. In the alternative, if Mr.
13 Nam, as I've indicated before, would consent to
14 my continued representation of Mr. Suh --

15 HEARING OFFICER KNITTLE: Right. No. I
16 understand that. I hate to cut you off, but my
17 question is so this is not the notice of
18 withdrawal; this is seeking leave to file a
19 notice of withdrawal?

20 MR. REES: That's essentially correct. I
21 don't believe that that document itself conforms
22 to rule 101.400.

23 HEARING OFFICER KNITTLE: Correct.

24 MR. REES: It is not directed to Mr. Suh

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1 either.

2 HEARING OFFICER KNITTLE: On the notice of
3 withdrawal issue, if you file a notice of
4 withdrawal, I don't have any -- to my

5 understanding -- it's my understanding that I
6 don't have a lot of latitude on what I can do
7 there. You know, you file a motion of withdrawal
8 and it doesn't give the Board or the hearing
9 officer an opportunity to reject that notice of
10 withdrawal, at least upon my reading of this new
11 procedural rule. However, what I denied was the
12 leave to file a notice of withdrawal, and I want
13 that point to be clear.

14 MR. REES: I understand that. I also
15 don't want to be put into a conflict here with
16 respect to the rules.

17 HEARING OFFICER KNITTLE: I understand.
18 That's going to be your decision to make whether
19 or not you want to -- because you haven't -- even
20 if I grant you leave, which I haven't done, to
21 file a notice of withdrawal, you still haven't
22 filed a notice of withdrawal. So you're still
23 technically the attorney, correct?

24 MR. REES: That's correct.

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1 HEARING OFFICER KNITTLE: So as of now,
2 regardless of what happens with this motion,
3 you're the attorney of record for Mr. Suh?

4 MR. REES: That is correct.

5 HEARING OFFICER KNITTLE: Which puts you
6 in a predicament in terms of how to proceed
7 here. I have, as I said, denied this motion, and
8 I guess the more pressing issue as far as you're
9 concerned in this motion is the motion to
10 continue the hearing because once the hearing --
11 once that motion is denied, the hearing goes
12 forward, and you're put in the predicament of
13 being the attorney without -- with a possible
14 conflict of interest.

15 MR. REES: Well, that conflict of interest
16 is not something that is hidden at this point.
17 That's been made aware --

18 HEARING OFFICER KNITTLE: I'm not saying
19 it's been hidden, but I'm saying that that's the
20 situation you're in because I've denied the
21 motion to continue the hearing. You haven't
22 filed a notice of withdrawal. The hearing is
23 going forward, and it's up to you to proceed as
24 you see fit. Now, if you want to, I would allow

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1 cross-examination of this witness, but that's
2 going to be up to --

3 MR. REES: That's up to the witness.

4 HEARING OFFICER KNITTLE: Well, if you're
5 not going to proceed unless he waives his right
6 to -- waives the conflict, as you stated, that's
7 going to be up to him, and you may want to talk
8 to him and see what he wants to do, but if he
9 doesn't -- does he waive that right, Mr.
10 Annunzio?

11 MR. ANNUNZIO: No. No, he's not going to.

12 HEARING OFFICER KNITTLE: Under that
13 circumstance, as I said, the motion to continue
14 has been denied, and you don't feel comfortable
15 in proceeding because of the conflict, which has
16 not been waived --

17 MR. REES: Well, I don't think -- if the
18 client -- if Mr. Nam won't waive the conflict,
19 then my hands are tied. I can't proceed in the
20 face of that conflict.

21 HEARING OFFICER KNITTLE: Well, that's
22 your opinion. I'm not tying your hands is what
23 I'm trying to make clear. I'm not saying you
24 can't cross-examine him because you could

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1 cross-examine him now, and if Mr. Suh were here,

2 I'd allow this cross-examination to go forward
3 even though I have denied the motion to continue
4 the hearing because the reason I would be doing
5 that is not because I think it's the right call.
6 I think that the hearing is over, and I think the
7 hearing should -- I don't think any
8 cross-examination should continue. The reason I
9 would allow it is because I don't want to have to
10 come back here again if the Board disagrees with
11 me, and I would allow the cross-examination more
12 in terms of an offer of proof in case the Board
13 disagrees with me on this decision.

14 MR. REES: I would love to cross-examine
15 Mr. Nam. Unfortunately, without his consent, I
16 can't do so. I am effectively at this point
17 barred from proceeding.

18 HEARING OFFICER KNITTLE: Barred by who?

19 MR. REES: Not barred by the hearing
20 officer or by the Board, but by Mr. Nam.

21 HEARING OFFICER KNITTLE: Well, the reason
22 I've denied it -- and I am cognizant of your
23 predicament in terms of Mr. Suh not being here
24 and you not feeling able to go forward in light

1 of the conflict is because that's why we
2 continued it last time, and, in fact, I continued
3 it on my own last time at the last hearing on, I
4 think it was, February 26th because I was
5 cognizant of the problem that was there, and
6 that's why we allowed it to continue, and that's
7 why we gave you 30 days to file your notice of
8 withdrawal and to inform Mr. Suh of the conflict
9 and of the hearing set for today.

10 For whatever you reason, and you
11 stated in the motion that it was due to an
12 illness, that wasn't done, but I have done all
13 that I'm going to do to address that problem. So
14 that's why the motion to continue the hearing was
15 denied and as was the motion for leave to file an
16 answer and for the -- to file a third party
17 proceeding. I think at the previous hearing, not
18 the one on the 26th, but the one on the 3rd and
19 the 4th of January was continued in order to file
20 the third party complaint, and at that time, I
21 stated that if the third party complaint wasn't
22 filed, that we'd go forward on 2-26, which we
23 did. In fact, I think I even stated further that
24 unless the Board issues an order staying this

1 matter, we're going to go forward on February
2 26th, and the Board never issued any order and
3 has not to this point in time.

4 So it's my decision that the motion
5 to continue the hearing is denied and this
6 hearing is going forward today and has gone
7 forward. It was scheduled to start at 9:30.
8 There was nobody here to cross-examine Mr. Nam.
9 So I closed your -- the respondent's case --
10 excuse me. I closed the complainant's case in
11 chief. There was no one here to present the
12 respondent's case. So I closed the respondent's
13 case and closed the hearing. There have not been
14 any members of the public present here either,
15 and so I've held it open until 1:00 o'clock to
16 allow members of the public to testify if they so
17 choose.

18 You're here now.

19 MR. REES: That's correct.

20 HEARING OFFICER KNITTLE: And in light of
21 the fact that I've already continued the hearing
22 for the reasons I've previously stated, I would
23 allow you to cross-examine Mr. Nam but we've
24 already gone over the fact that you don't feel

1 comfortable in doing that. As you stated, you
2 feel barred from doing that, and that's fine.
3 That's your decision, but I'm saying I would
4 allow you that opportunity or Mr. Suh, if he were
5 present, but he's not, and you don't -- are not
6 going to do that, correct?

7 MR. REES: In light of the fact that I
8 have represented Mr. Nam in connection with this
9 particular property, I cannot cross-examine him
10 without his consent.

11 HEARING OFFICER KNITTLE: And that being
12 so, then the hearing is effectively closed. As I
13 said, I'm going to open it again at 1:00 for
14 public comment. If you want to come back at
15 1:00, I'm not going to direct Mr. Nam to be
16 here. You can make another motion to the Board.
17 You can appeal my decision to the Board and try
18 to have the Board schedule another hearing for
19 this purpose, and I'd be more than happy to tell
20 you how to do that and what you have to appeal.
21 I also want to let you know that we set a
22 briefing schedule. The briefing schedule is the
23 complainant's posthearing brief is due on
24 April 30th, the respondent's is due on May 28th,

1 and the complainant's reply brief is due on June
2 15th.

3 MR. REES: 4-30, 5-28, and June 15th?

4 HEARING OFFICER KNITTLE: Correct. So the
5 respondent will still have the opportunity to
6 file a posthearing brief in this matter, and if
7 the respondent thinks that any of my rulings are
8 in error, which is not out of the realm of
9 possibility by any means --

10 MR. REES: I understand that.

11 HEARING OFFICER KNITTLE: -- then I
12 suggest that those rulings be appealed to the
13 Board.

14 Any further statements, Mr. Rees?

15 MR. REES: I'd like five minutes, a five
16 minute recess?

17 HEARING OFFICER KNITTLE: Sure. Go off
18 the record for five.

19 (Discussion had
20 off the record.)

21 (Break taken.)

22 HEARING OFFICER KNITTLE: We are back on
23 the record after a short recess. Mr. Rees has
24 some comments you want to make.

1 MR. REES: Yes, I do, just one other
2 comment. I understand what your ruling is with
3 respect to my motion, and I believe that the
4 hearing officer and Mr. Annunzio and Mr. Nam both
5 understand what my predicament is with respect to
6 cross-examination of Mr. Nam. However, with the
7 Board's leave, I would like you to consider my
8 calling of one witness on behalf of Mr. Suh since
9 I am still representing him, which witness is
10 actually present in this room right now, and that
11 would be Mr. Annunzio himself, the attorney for
12 Mr. Nam.

13 MR. ANNUNZIO: For what?

14 HEARING OFFICER KNITTLE: Mr. Annunzio.

15 MR. ANNUNZIO: Could we go off the
16 record?

17 HEARING OFFICER KNITTLE: Sure.

18 (Discussion had
19 off the record.).

20 HEARING OFFICER KNITTLE: We are back on
21 the record. Mr. Rees, are you intending to call
22 Mr. Annunzio?

23 MR. REES: Not at this time, no.

24 HEARING OFFICER KNITTLE: Okay. That

1 leaves us in the same situation we were before.
2 This hearing is closed. I find based on my legal
3 judgment and experience, I'm required to make a
4 credibility determination about witnesses who did
5 testify. I do not find any credibility issues
6 with Mr. Nam, who is the sole testifying witness
7 to this point in time. So we're going to
8 continue this on the record until 1:00 o'clock in
9 order to make sure we get all public comments
10 that are available and that's where we stand.

11 Mr. Rees, is there any further
12 comments before I close this?

13 MR. REES: None at this time.

14 HEARING OFFICER KNITTLE: Mr. Annunzio?

15 MR. ANNUNZIO: No.

16 HEARING OFFICER KNITTLE: Let's go off.

17 (Discussion had
18 off the record.)

19 (Break taken.)

20 HEARING OFFICER KNITTLE: Good afternoon.
21 It's about 1:05 p.m. There is nobody here except
22 Geanna and I and nobody present to provide public
23 comments. Neither of the parties is present at
24 this moment. So I'm going to close the hearing.

1 As we stated before, the transcript
2 will be ready approximately April 10th, and I
3 will put out a hearing report shortly thereafter
4 summarizing what happened at this hearing and
5 some of the previous hearings as well. Thanks.

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1 STATE OF ILLINOIS)
) SS.
 2 COUNTY OF C O O K)

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4 I, GEANNA M. IAQUINTA, CSR, do
 5 hereby state that I am a court reporter doing
 6 business in the City of Chicago, County of Cook,
 7 and State of Illinois; that I reported by means
 8 of machine shorthand the proceedings held in the
 9 foregoing cause, and that the foregoing is a true
 10 and correct transcript of my shorthand notes so
 11 taken as aforesaid.

12

13

14 _____
 GEANNA M. IAQUINTA, CSR.
 Notary Public, Cook County, IL
 15 Illinois License No. 084-004096

16

17 SUBSCRIBED AND SWORN TO
 before me this ____ day
 18 of _____, A.D., 2001.

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 Notary Public

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