BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF CHICAGO DEPARTMENT OF ENVIRONMENT, Complainant, v. JOSE GONZALEZ & 1601-1759 EAST 130TH STREET, LLC., INC., ET AL. Respondents.	)	Site Code:0316485103 AC: 2006-039 AC: 2006-040 AC: 2006-041 **AC: 2007-025 - Consolidated**

NOTICE OF FILING

TO: Mr. Bradley P. Halloran
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Ms. Jennifer A. Burke, Senior Counsel
City of Chicago, Dept. of Environment
30 North La Salle Street, 9th Floor
Chicago, Illinois 60602

PLEASE TAKE NOTICE that we have this day filed with the Clerk of the Illinois Pollution Control Board, Respondent's **Motion to Reconsider or Modify Final Order and Motion to Stay.** Dated at Chicago, Illinois, this 8th day of July, 2009.

JEFFREY J. LEVINE, P.C.
Attorney for Respondents
Jose Gonzalez, and
1601-1759 East 130th Street, LLC.

Jeffrey J. Levine, P.C. #17295
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(312) 372-4600

PROOF OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that he served a copy of the Notice together with the above mentioned documents to the person to whom said Notice is directed by hand delivery, this 8th day of July, 2009.

JEFFREY J. LEVINE, P.C.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF CHICAGO DEPARTMENT OF ENVIRONMENT,	)	
	)	Site Code:0316485103
Complainant,	)	
	)	AC: 2006-039
v.	)	AC: 2006-040
	)	AC: 2006-041
JOSE GONZALEZ & 1601-1759 EAST 130TH STREET, LLC., INC., ET AL.	)	**AC: 2007-025 - Consolidated**
	)	
Respondents.	)	

MOTION TO STAY

Now come Respondents Jose Gonzalez, and 1601-1759 East 130th Street, LLC, by and through their attorney, Jeffrey J. Levine, P.C., and for their Motion to Stay enforcement of the Board's June 4, 2009, Order, state and assert as follows:

1. Respondents have filed a Motion to Reconsider or Modify the Board's Final Order.

2. Respondents intend to appeal he decision if the Board does not grant the requested relief .

3. Because of the substantive issues raised in the Motion to Reconsider, Respondents pray that enforcement of the Board's Order be stayed until resolution of the matter.

Wherefore, for the above and forgoing reasons, Respondents Jose Gonzalez, and 1601-1759 East 130th Street, LLC, pray that this Board reconsider and/or modify its final order and for such further relief as is just and equitable.

Respectfully Submitted,

Dated: July 8, 2009

Jeffrey J. Levine, P.C.
Attorney for Respondents
Jose Gonzalez, and
1601-1759 East 130th Street, LLC.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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v.	)	AC: 2006-039 AC: 2006-040 AC: 2006-041
JOSE GONZALEZ & 1601-1759 EAST 130TH STREET, LLC., INC., ET AL.	)	**AC: 2007-025 - Consolidated**
Respondents.	)	

MOTION TO RECONSIDER OR MODIFY FINAL ORDER

Now come Respondents Jose Gonzalez, and 1601-1759 East 130th Street, LLC, by and through their attorney, Jeffrey J. Levine, P.C., and for their Motion to Reconsider or Modify the June 4, 2009 Final Order, state and assert as follows:

I. Introduction

1. The Illinois Pollution Control Board, (hereinafter "the Board"), in Orders dated March 19, 2009 and June 4, 2009, made numerous factual and legal rulings regarding complaints made by the Chicago Department of Environment (hereinafter "CDOE"), against Respondents and another entity. Said Respondents were cited for two specific types of pollution, material that had been fly dumped on the property and CTA waste from the Brown Line renovation that had recently been dumped on the property by E. King Hauling.

2. The Board ruled that the CDOE did not prove that Respondents caused or allowed the open dumping of the fly-dumped waste. See: March 19, 2009, Order, p. 26. However, with regard to the CTA waste, the Board ruled that 1601-1759 East 130th Street, LLC., (hereinafter "130th LLC") and Jose Gonzalez, Respondents herein, allowed the open dumping of waste in a manner resulting in litter, open burning, and the disposition of general construction or demolition debris. See: March

19, 2009, Order, pp. 27-9.

II. Respondents Did Not Cause or Allow the Pollution

3. While knowledge is not an element of a violation of Section 12(a), alleged polluters are not charged under a theory of strict liability. The State must prove that the alleged polluter has the capability of control over the source of the pollution or that the alleged polluter was in control of the premises where the pollution occurred. *People v. A.J. Davinroy Contractors*, 249 Ill.App.3d 788, 793-96, 618 N.E.2d 1282, 1286-88 (5th Dist. 1993); *Phillips Petroleum Co. v. Illinois Environmental Protection Agency*, 72 Ill.App.3d 217, 390 N.E. 2d 620 (2nd Dist. 1979). In this instance, the Board is mistaken in labeling Respondents as the polluters. The Board concluded that E. King Hauling, without the permission of Respondents, deposited the CTA waste on the ground at the site. See: March 19, 2009, Order, p. 24.

4. The Board relies upon *People v. Fiorini*, 143 Ill.2d 318, 574 N.E.2d 612 (1991) and *Freeman Coal Mining Corp. v. PCB*, 621 Ill.App.3d 157, 163, 313 N.E.2d 616, 621(5th Dist. 1974). The *Fiorini* decision involved an amendment to the statute requiring that a third-party defendant have actual knowledge that he caused or contributed to the illegal open dumping or open burning in order for liability to attach. The decision reviewed the established rules regarding violations and concluded that the amendment could not be retroactively applied. While *Fiorini* held that intent or knowledge are not recognized elements to prove a violation, the analysis applied by Illinois courts to determine whether an alleged polluter has violated the act is whether the alleged polluter exercised sufficient control over the source of the pollution. *Fiorini*, 143 Ill.2d at 346. In the *Freeman* decision, the Freeman Mine argued that it could not be held liable because naturally occurring rainwater caused the refuse from the mining operation (gob pile) to run off into an adjacent creek. The Court premised the liability upon the fact that the Freeman Mine had created and was aware of the

pollution refuse.

> ...there is no question that Petitioner had knowledge of the pollutional discharges flowing from its land and the gob pile it had created. *Freeman Id.* 621 Ill.App.3d at 161

In the instant case, Respondents neither created the pollution nor were aware of the dumping until after the loads had been dumped contrary to the agreement to store the material in roll-off boxes.

5. In Illinois, a property owner is responsible for pollution on his land, unless the facts establish that the owner lacked the capacity to control the source of the pollution or had taken precautions to prevent intervening causes of the pollution. *Perkinson v. Illinois Pollution Control Board*, 187 Ill.App.3d 689, 694-95, 543 N.E.2d 901(3rd Dist 1989). Courts seek to hold owners responsible for pollution that develops on an owner's property or pollution that occurs where an owner has not adequately secured his property against vandals. See: *Union Petroleum Corp. v. United States*, 651 F.2d 734 (Ct. Cl. 1981). If a property owner does not exercise sufficient control over the source of the pollution in such a way as to have caused, threatened, or allowed the pollution, he cannot be held responsible for a violation. *Phillips Petroleum Company v. Illinois Environmental Protection Agency*, 72 Ill.App.3d 217, 220-21, 390 N.E.2d 620 (2nd Dist. 1979).

6. The findings of liability against respondents are against the manifest weight of the evidence as the Respondents herein are not the alleged polluters. In this instance, the source of the pollution is the City of Chicago's Transit Authority. (The Complainant is also the City of Chicago.) The pollution was delivered by E. King Hauling working as a sub-contractor for Paschen Construction pursuant to a contract with the City of Chicago. All workers at the site at the time of the CDOE inspection were employed by E. King Hauling or Paschen Construction. See: March 19, 2009, Order, p. 14. It was the E. King employees who were burning wood to keep warm. See: March 19, 2009, Order, p. 28.

7. As the Board has determined, the polluters were a different entity than Respondents. It is uncontested that the pollution originated from the renovation of CTA's Brown Line, and was dumped on Respondent's land contrary to the agreement made with Respondent Jose Gonzalez. Mr. Gonzalez, immediately upon being made aware that E. King Hauling had violated their agreement, proceeded to this site and supervised the cleanup of the site. In this instance, CDOE cannot demonstrate that the alleged polluter had the capability of control over the pollution or that the alleged polluter was in control the premises where the pollution occurred, as the actual entity that caused and allowed the pollution, E. King Hauling, was not charged.

8. The hearings revealed that the CDOE chose not to conduct an adequate investigation (which would have resulted in potential liability for the City of Chicago), and chose not to charge the contractors working under contract with the City of Chicago. The CDOE has not demonstrated that Respondents violated the act as they did not exercise sufficient control over the source of the pollution, the CTA. In this instance Respondents were not the source of the pollution, did not cause the pollution, did not allow the pollution and did not know the pollution had occurred until after the fact. The hearings demonstrated that Respondents neither caused, threatened nor allowed the pollution. The least culpable party was ticketed. As the violation is penal in nature, the plain meaning of the statute must be strictly construed.

III. The Pollution was a Result of Uncontrollable Circumstances

9. During the course of the limited investigation, Inspectors Macial and Chris Antonopoulos discovered the entities responsible for a large amount of debris on the site. Both investigators testified regarding an agreement entered into regarding what has been deemed the "suspect CTA waste" at the property in question. Mr. Antonopoulos described how the agreement was between Mr. Gonzalez, Paschen Construction, E. King and a representative of the CTA. The agreement called for

CTA waste material from the Brown Line construction, to be stored in roll-off truck boxes over the weekend at the site in question. AC 2006-39, May 17, 2007, Tr. 31; May 9, 2007, Tr. 44, 59-60.

10. When the CID landfill opened, the roll-off boxes would be removed from the property and brought to CID. AC 2006-39, May 17, 2007, Tr. 31. Complainant's investigation revealed that, either E. King or Paschen Construction didn't follow the agreement to store the CTA waste in the roll-off trucks. It was that entity who caused the CTA waste to be deposited at the property in question. May 17, 2007, Tr. 49.

11. The investigators collected manifests at the site which indicated that the waste material came from the CTA at 567 West Lake Street. 2006 AC-39, May 9, 2007. Tr. 33-6. E. King was the hauler on the manifests. 2006 AC-39,May 9, 2007, Tr. 83-4. Mr. Antonopoulos testified that Mr. Maciel had the hazardous waste manifests on the day of the investigation. 2006 AC-39, May 17, 2007, Tr. 44-5. No tickets were issued to the CTA, Paschen Construction or E. King Trucking. The investigators allowed the waste to continue to be removed. AC 06-39, May 9, 2007, Tr. 204.

12. Complainant's investigation revealed that, either E. King or Paschen Construction didn't follow the agreement to store the waste in the roll-off trucks. It was that entity who caused the CTA waste to be deposited at the property in question. 2006 AC-40, May 17, 2007, Tr. 49.

13. Respondents had taken every precaution to insure that the waste would be kept in roll-off boxes at the site. The property was secured with fencing and a locked gate. Respondent Gonzalez entered into agreements with reputable contractors. Respondents were not the polluter nor did they encourage or allow the action. The pollution was dumped as a result of uncontrollable circumstances, a mistake made by employees of another entity.

IV. The Evidence of a Solicitation of a Bribe was Neither Unsubstantiated nor Inconclusive

14. Inspector Rafael Macial knew Respondent Jose Gonzales growing up in his

neighborhood. Respondent Gonzalez testified that Investigator Macial had previously threatened him when he refused to "work out" (pay a bribe) an alleged violation. Macial told Respondent: "You'll pay for this." See: AC 06-39, May 9, 2007, Tr. 181-82.

15. Inspector Macial was not adverse to "working out" claims. Inspector Macial testified that on occasions he has discussed "working out" claims with alleged violators rather than issuing violations. See: AC 06-39, May 9, 2007, Tr. 126-28. Mr. Macial testified that he has told certain individuals that he could help them avoid citations. May 9, 2007, Tr. 126. He would say to individuals, "Help me help you avoid a citation." May 9, 2007, Tr. 127. Inspector Macial denied asking for a bribe stating that based upon his credibility, he was pretty sure that he had never taken a bribe. See: May 9, 2007, Tr. 124-27. However, Respondent Gonzalez interpreted Mr. Macial's offers to "work it out" as a request for a bribe. May 9, 2007, Tr. 180-83.

16. As Respondent had refused to pay Investigator Macial the bribe he had requested, Macial took specific retaliatory actions. Inspector Macial ticketed Respondent Jose Gonzalez's landscaping company, (believing that he was under contract for the CTA), telling him: "...I'll see to it that you never get work from the CTA again." See: AC 06-39, May 9, 2007, Tr. 204. He told Respondent Gonzalez, "...we're going to write you a ticket for everything I could write you a ticket on." May 9, 2007, Tr. 193. Baseless violations were written to Speedy Gonzalez Landscaping, Inc., in an effort to preclude that entity from obtaining city contracts.

17. The alleged violations also contained baseless allegations regarding securing the property, salt unloading operations, ACM or asbestos, waste next to residential homes and oil flowing into the sewer. AC 06-39, May 9, 2007, Tr. 68, 129-32. Macial contended that these charges were put into his investigative report because Respondent Speedy Gonzalez Landscaping, Inc., committed the additional offenses (AC 06-39, May 9. 2007, Tr. 130), but he had no evidence that the offenses

occurred. AC 06-39, May 9, 2007, Tr. 68, 129-32. These allegations are listed as attachment "B" in Complainant's Inspection Reports. See: Complainant's Exhibits.

18. Mr. Maciel conceded that he had "no idea" why the violations were charged when there was no basis for them. AC 06-39, May 9. 2007, Tr. 132. Investigator Macial, on March 22, 2006, wrote numerous false allegations yet denied that the offenses had occurred. He ticketed entities who did not own or control the property. Macial testified that he just assumed that Mr. Gonzalez "was doing something illegal." 2006 AC-40, May 9, 2007, Tr. 83. This is direct evidence indicating that Macial attempted to retaliate against Respondent for failure to pay a bribe.

19. Another indication is that, even though Respondents did not cause the pollution, Respondents were not allowed time to clean the property. Chris Antonopoulos testified that people are given time to clean up sites where they did not cause or allow the debris. May 17, 2007, Tr. 42. Antonopoulos testified that if a property owner has waste material dumped on his land, it is common for investigators to give the owner time to clean up the property. Correspondingly, Antonopoulos stated that a person with a large amount of waste would be given more time than a person with less debris. May 17, 2007, Tr. 40-2. This is consistent with the statute which allows corrective action to eliminate the pollution within a reasonable time. See: 415 ILCS 5/3. In this instance, contrary to the statute, Respondents were not allowed reasonable time (or any amount of time) to eliminate the waste. Respondents were told by investigators to stop cleaning the site and were given a fourth citation when they followed those instructions. The Board ruled that this fourth citation was improperly issued. See: March 19, 2009 Order, pp. 3, 35. However, no mention is made of Complainants failure to follow the statute or the retaliatory nature of the CDOE's agents.

20. No evidence impeached the testimony of Respondent Jose Gonzalez that Inspector Macial had sought a bribe. In contrast, Inspector Macial's testimony was consistently false. Maciel

maintained at the hearing that the trucks on site were dumping material. May 9. 2007, R. 42, 72, 74, 78. He later testified that he assumed this. May 9, 2007, Tr. 137. Mr. Macial initially testified that he could not determine whether trucks were loading or unloading at the site. May 9. 2007, Tr. 16. He testified that he concluded that another entity's trucks were dumping at the site. May 9. 2007, Tr. 72, 74. This conclusion is contrary to his report (May 9. 2007, Tr. 43, 46-7), and his prior deposition testimony wherein he testified that the trucks were loading. May 9, 2007, Tr. 74-6.

21. Maciel testified that he would impound a truck if it was dumping but did not impound the E. King trucks on the lot. May 9, 2007, Tr. 48. Neither Macial or anyone else saw trucks dumping. May 9, 2007, Tr. 81. He agreed that he testified both at the hearing and at his deposition that, rather than loads being dumped, the material was being removed and that the trucks were loading. May 9, 2007, Tr. 138. He then testified that a worker told him, "We're bringing it here."May 9, 2007, Tr. 141, line 6. He then testified, "I don't recall if he did say that or not." May 9, 2007, Tr. 141, line 12. The Board termed this completely fluid testimony as "...merely in the nature of clarification and amplification." Macial's claim of FBI training is deemed "irrelevant" by the Board. See: March 19, 2009 Order, p. 9.

22. The issue is not that the material was both deposited and removed or Macial's testimony regarding some hypothetical training, rather the issue is Macial's observations and his complete inability to provide competent evidence related thereto. A more rational witness, Mr. Antonopoulos, testified that the individuals on site were cleaning up the site, moving piles and dumping them into E. King trucks which left the site. May 17, 2007, Tr. 59-60. Antonopoulos concluded that this was consistent with cleaning the site. May 17, 2007, Tr. 53-4. The Board however, did not believe that Macial's false testimony materially prejudiced Respondents (See: March 19, 2009 Order, p. 9) and relied upon his testimony in holding Respondents liable.

23. Another indication of the retaliatory nature of the investigators was the utter lack of information regarding other entities at the site. No photographs of workers or E. King trucks were taken by the investigators. Neither the manifests nor any of the other documents observed that day regarding other individuals at the site are included in the investigation report. 2006 AC-40, May 9, 2007. Tr. 35-8. No mention was made in the investigation report that Elaine King was present on site discussing the agreement. 2006 AC-40, May 9, 2007, Tr. 44-9. Macial testified that he selectively excluded such information in his investigation report. 2006 AC-40, May 9, 2007, Tr. 48-52.

24. Mr. Macial further testified that his ability to read peoples credibility was part of his investigation. 2006 AC-39, May 9, 2007, Tr. 117. He claimed that he had learned this in special FBI training (May 9, 2007, Tr. 116-24), but Maciel could not give any specifics. He didn't recall the name of the course, the name of the teacher, the address of the course, and finally, that he paid for the course with a money order. As Mr. Macial's credibility as a witness was in question, the Hearing Officer should have taken part in the Board's decision.

25. Throughout the course of the discovery and hearing, Inspector Macial repeatedly referred to Respondent Jose Gonzalez as "Speedy Gonzalez," the name of the Respondent landscaping company. See: AC 06-39, May 9, 2007, Tr. 39-40. After the initial violations were alleged, an unknown individual contacted the Department of the Environment and stated that "Speedy has dumped new C and D waste on the site." See: AC 07-25, May 17, 2007, Tr. 15-8. Additional violations were then filed against Respondent.

26. The testimony given by Respondent Gonzalez, the admission by Macial that he would "work out" violations ("Help me help you avoid a citation."), the fact that no other entities received violations, the duplicitive nature of the violations given to multiple entities, the unexplained baseless nature of many of the charges and the false testimony provided by Inspector Macial are direct and

indirect evidence of a Solicitation of a Bribe. The ruling of the Board in holding that the claim that Macial sought a bribe was unsubstantiated and inconclusive (See: March 19, 2009 Order, p. 9) is arbitrary, capricious and against the manifest weight of the evidence. The Board cannot hold that discovery omissions were harmless and also rule that Respondents proof regarding the solicitation of a bribe was inconclusive and unsubstantiated. See: March 19, 2009 Order, p. 9. The Board is unaware if the discovery requested would have substantiated the proof that a bribe was solicited. For instance, if CDOE investigators identified witnesses present, by providing their business cards, those witnesses could have lent credence to Mr. Gonzalez's testimony and further impeached Inspector Macial. The action by the Board is against the manifest weight of the evidence and is arbitrary and capricious.

V. Complainant did not sustain its Burden of Proof

27. The Board's March 19, 2009 Order holds that pursuant to the agreement, E. King Hauling was supposed to keep all loads of CTA debris inside roll-off containers (dumpsters) or the beds of the dump trucks while on the site. See: March 19, 2009 Order, p. 12. All workers on the site at the time of the CDOE inspection were employed by E. King Hauling or Paschen Construction. See: March 19, 2009 Order, p. 14. Elaine King had not followed the agreement to store material on site where an E. King Hauling supervisor was also present. See: March 19, 2009 Order, p. 15. Without Mr. Gonzalez's knowledge, the agreement was not followed and the hauler dumped CTA waste at the site without permission. See: March 19, 2009 Order, p. 24. When Mr. Gonzalez learned of the breach of the agreement, he immediately and vociferously demanded that the waste be cleared from the property. See: March 19, 2009 Order, p. 19.

28. CDOE witness Antonopoulos testified that it was common for investigators to give the owner time to clean up the property and that an owner with a large amount of waste would be given

more time than one with less waste. See: March 19, 2009 Order, p. 19. Respondent was never contacted by CDOE and given time to clean the debris. See: March 19, 2009 Order, p. 22. Respondent was not the owner of the property. It was owned by Respondent 1601-1759 East 130th Street, LLC. Respondent Jose Gonzales acted in his capacity as a corporate representative of Respondent 1601-1759 East 130th Street, LLC. He maintained access to the property, but no evidence demonstrated that he caused or allowed the pollution, that he had control over the pollution, or that he controlled the premises when the pollution occurred. See: *People v. A.J. Davinroy Contractors*, 249 Ill.App.3d 788, 793-96, 618 N.E.2d 1282, 1286-88 (5th Dist. 1993)

29. All evidence indicated just the opposite. No testimony was presented regarding the individuals present when the dumping took place. However, contrary to the evidence presented at the hearings, the Board ruled that Mr. Gonzalez was in control of the Site when the CTA waste dumping took place and had the capability of controlling the pollution and that Mr. Gonzalez allowed the dumping of the CTA waste. See: March 19, 2009 Order, p. 25. This ruling by the Board is arbitrary and capricious, not supported by any evidence, and therefore is against the manifest weight of the evidence.

30. The Board's ruling contains other errors such as the discussion of Respondents' August 6, 2007 Motions to Dismiss. See: March 19, 2009 Order, pp. 7-9. On that date Respondents filed Post Hearing Briefs. Contrary to the Order, Respondent Speedy Gonzalez Landscaping, Inc.'s Post Hearing Brief specifically lists, at paragraph 7, the false allegations made by CDOE, including salt unloading, asbestos, waste next to residential homes and oil flowing into sewers. These false claims indicate reprisal as a result of Respondent Gonzalez's failure to pay Macial the bribe he demanded.

VI. Discovery Violations Resulted in Due Process Violations

31. The Board's March 19, 2009, Order, at page 9, dismisses Respondents claims of

discovery abuse as "harmless." Respondents contend those omissions, constitute a denial of procedural due process. Respondents had issued subpoenas to all Complainant's witnesses for depositions as well as for the hearing. Respondents subpoenas were ignored. The investigator in this case, Rafael Maciel, testified that certain information was transcribed into "field notes". Counsel for Complainant was not informed of the existence of these notes. AC 06-39, May 9, 2007, Tr. 58-9. Mr. Maciel testified that Edward Collins "took the information down".

32. On May 1, 2007, Mr. Maciel, Mr. Collins and all other witnesses were issued subpoenas for documents for the hearing. The subpoenas sought "any and all documents related" to the cases. The "field notes" referenced by Mr. Maciel were never produced in discovery or pursuant to the subpoenas. Nor were the business cards collected from individuals at the site ever produced pursuant to the subpoena. AC 06-39, May 9, 2007, Tr. 53-4. Complainants therefore selectively withheld documents sought pursuant to subpoena. Although counsel for Complainant has a continuing duty to provide discovery, the material was never produced. The business cards collected by Macial would have provided the identity of witnesses who would have substantiated Respondent Gonzalez's claim that Macial had sought a bribe. See: March 19, 2009, Order p.9, holding that claim of bribery solicitation unsubstantiated. Complainants selectively withheld documents sought pursuant to subpoena. Respondents objected to the introduction of Complainants exhibits as they were not complete. The Board failed to penalize Complainants for their discovery violations and accepted Macials testimony.

33. Contempt for the legal process was also demonstrated by Mr. Maciel's reference to his claimed training by the FBI regarding his ability to tell if someone was telling a lie. Mr. Maciel testified that he had not disclosed this alleged training in his deposition testimony because "he only gave information that he thought was pertinent". AC 06-39, Tr. 118. Complainant's agent admitted

that he failed to give truthful deposition testimony by determining what he maintained was "pertinent". Respondents were therefore precluded an opportunity to investigate Maciel's claim and properly impeach his testimony.

34. As the Board did not follow discovery requirements and the hearing did not comport to established rules the proceeding violated the fundamental due process rights of Respondents. Respondents were treated differently from Complainants who were not required to follow procedures for the hearing. Finally, there is no evidence that the costs imposed were reasonable.

VII. Conclusion

35. Respondents contend that the action by the Board is arbitrary and capricious and against the manifest weight of the evidence.

Wherefore, for the above and forgoing reasons, Respondents Jose Gonzalez, and 1601-1759 East 130th Street, LLC, pray that this Board reconsider and/or modify its final order and for such further relief as is just and equitable.

Respectfully Submitted,

Jeffrey J. Levine, P.C.
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Dated: July 8, 2009

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