

STATE OF INDIANA
BEFORE THE FIRE PREVENTION AND
BUILDING SAFETY COMMISSION

FILED
MAR 13 2020
SPECIAL SERVICES
ALJ

IN THE MATTER OF:

CENTURY CENTER

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CAUSE NO.: DHS-1909-FPBSC-009

CORRECTION

On March 12, 2020, the Administrative Law Judge's Recommended Order Granting Summary Judgment ("Order") was issued in this matter.

The final page of the Order inadvertently references the Indiana Gaming Commission as the proper agency to submit any objections to. This is incorrect. Any objections to the Order must be timely submitted to the Fire Prevention and Building Safety Commission.

DATE: March 13, 2020

Donald L. Hannah

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CERTIFICATE OF SERVICE

I certify that on March 13, 2020, I served the foregoing Correction on the following persons at the addresses shown below by Email.


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Administrative Law Judge

Scott Herczeg
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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED ORDER
GRANTING SUMMARY JUDGMENT

This matter came before Donald L. Hannah, Administrative Law Judge ("ALJ") for the Indiana Department of Homeland Security ("Respondent") on a petition filed by Century Center ("Petitioner") requesting a review of Respondent's Inspection Report Order Number AE7441-Century Center ("Civil Penalty"), dated July 25, 2019.

On December 4, 2019, Respondent filed its Motion for Summary Judgment, Memorandum of Law in Support, and Designation of Evidence. On January 3, 2020, Petitioner filed its Response and Exhibits.

The ALJ, having considered Respondent's Motion for Summary Judgment with supporting documents, as well as Petitioner's Response with supporting documents, hereby makes the following findings of fact, conclusions of law, and recommended order.

FINDINGS OF FACT

1. The undisputed facts for which no genuine issue exists are:
 - a. On May 28, 2019, Respondent inspected Petitioner's structure located at 120 South Saint Joseph Street, South Bend, Indiana. Affidavit of Crystal Thompson (Respondent's Exhibit 1, ¶ 4).
 - b. Respondent found five (5) violations of Indiana's building and fire safety laws and served Petitioner an inspection report order requiring these violations to be corrected by June 28,

2019. Affidavit of Crystal Thompson (Respondent's Exhibit 1, ¶ 5); May 28, 2019 Inspection Report Order (Respondent's Exhibit 2).

- c. One (1) of the five (5) violations was to section 907.8.5 of the 2014 Indiana Fire Code. May 28, 2019 Inspection Report Order (Respondent's Exhibit 2, Violation Number 2).
 - d. Petitioner did not file for administrative review of the Inspection Report Order and it became final. Affidavit of Douglas Boyle (Respondent's Exhibit 3).
 - e. Petitioner hired a third party to correct the violation, but the third party failed to timely make the correction. Petition for Review (Respondent's Exhibit 5); Email (Petitioner's Exhibit 6).
 - f. On July 11, 2019, Respondent reinspected Petitioner's structure and found that Violation Number 2 of the Inspection Report Order had not been corrected. Affidavit of Crystal Thompson (Respondent's Exhibit 1, ¶ 7).
 - g. On July 11, 2019, Respondent issued Petitioner a \$250 civil penalty for failure to correct Violation Number 2. July 11, 2019 Civil Penalty (Respondent's Exhibit 4).
 - h. It is Respondent's policy to impose \$250 civil penalty for any violations that are not remedied by the correction date. Affidavit of Kristin Settle (Respondent's Exhibit 6, ¶ 4).
 - i. On July 25, 2019, Petitioner filed its petition for review of the civil penalty. Petition for Review (Respondent's Exhibit 5).
 - j. In its petition for review, Petitioner admits that the violation was not corrected by the required date. Petition for Review (Respondent's Exhibit 5); Email (Petitioner's Exhibit 6).
2. Respondent is charged with adopting and enforcing a statewide code of fire safety laws and building laws.
3. Any findings of fact that may be construed as conclusions of law, and any conclusions of law that may be construed as findings of fact, are so deemed.

CONCLUSIONS OF LAW

1. Ind. Code § 4-21.5-3-23 provides that “a party may . . . move for a summary judgment in the party’s favor as to all or part of the issues in a proceeding . . . an administrative law judge shall consider a motion filed under subsection (a) as would a court that is considering a motion for summary judgment filed under Trial Rule 56 of the Indiana Rules of Trial Procedure.”
2. Indiana Trial Rule 56(C) provides that summary judgment shall be granted if “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” “A fact is ‘material’ if its resolution would affect the outcome of the case, and an issue is ‘genuine’ if a trier of fact is required to resolve the parties differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences.” *Hugh v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).
3. Ind. Code § 22-13-2-2 provides that the Fire Prevention and Building Safety Commission (“Commission”) is required to “adopt a statewide code of fire safety laws and building laws.”
4. In exercising its authority to adopt a statewide code of fire safety and building laws, the Commission adopted the 2014 Indiana Fire Code in 675 Ind. Admin. Code 22-2.5.
5. Under Ind. Code § 22-14-2-10 and Ind. Code § 22-15-27, the Division of Fire and Building Safety (a Division within the Indiana Department of Homeland Security and hereafter referred to as the “Division”) is charged with, among other things, enforcement of all fire safety and building laws related to Class 1 structures.
6. Ind. Code § 22-12-1-3 defines building laws, in pertinent part, as any law governing “construction, addition, or alteration of a Class 1 or Class 2 structure at the site where the structure will be used.”
7. Ind. Code § 22-12-1-4 defines Class 1 structures, in pertinent part, as any part of “[a] building or structure that is intended to be or is occupied or otherwise used in any part by any of the following: (1) the public, (2) three . . . or more tenants, (3) one . . . or more persons who act as the employees of another.”

8. Ind. Code defines fire safety laws as “any building law, equipment law, or other law safeguarding life or property from the hazards of fire or explosion.”
9. Under Ind. Code § 22-14-2-4 and Ind. Code § 22-15-2-6, the Division may, in carrying out its responsibilities, “enter and inspect any property” and “issue and enforce administrative orders under IC 22-12-7.”
10. Ind. Code § 22-12-7-7 permits the Indiana Department of Homeland Security to impose fines of up to \$250 per day for violations of laws that it enforces.
11. It is undisputed that Respondent performed an inspection of property to determine compliance with Indiana’s fire safety laws, found several violations of the 2014 Indiana Fire Code, and issued Petitioner an administrative order to correct these violations. The order required compliance by June 28, 2019. On July 11, 2019, Respondent performed a reinspection to determine compliance, but found one remaining violation and issued a \$250 civil penalty under authority of Ind. Code §22-12-7-7(5).
12. It is Respondent’s policy to impose \$250 civil penalty for any violations that are not remedied by the correction date.
13. Petitioner admits that the violation was not corrected by the required date.
14. Petitioner argues that the \$250 fine should be waived because the third-party service provider failed to timely correct the violation. Petition for Review (Respondent’s Exhibit 5). However, by law it was Petitioner’s responsibility to timely correct the violation, not the third-party service provider.
15. The material facts are not in dispute, and Respondent is entitled to summary judgment in its favor.

RECOMMENDED ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Indiana Department of Homeland Security's Motion for Summary Judgment is **GRANTED**;
and
2. The Civil Penalty of \$250 issued to Century Center is **AFFIRMED**.

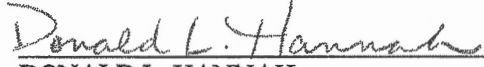
ISSUED this 12th day of March, 2020.



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CERTIFICATE OF SERVICE

I certify that on March ^{12th}, 2020, I served the foregoing Administrative Law Judge's Recommended Order Granting Summary Judgment on the following persons at the addresses shown below.


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Administrative Law Judge

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**NOTICE OF RIGHT TO OBJECT TO THE ADMINISTRATIVE LAW JUDGE'S
RECOMMENDED ORDER GRANTING SUMMARY JUDGMENT**

Notice is hereby given that any objection to the Administrative Law Judge's Order must be filed with the Indiana Gaming Commission, identifying the basis of the objection with reasonable particularity, no later than eighteen (18) days from the date of issuance of this order unless such date is a Saturday, a Sunday, a legal holiday under state statute or a day that the Indiana Gaming Commission's offices are closed during regular business hours in which case the deadline would be the first day thereafter that is not a Saturday, a Sunday, a legal holiday under state statute or a day that the Indiana Gaming Commission's offices are closed during regular business hours. This Administrative Law Judge's Order is not the final order of the Indiana Gaming Commission in this proceeding. However, in the absence of any objection, the Indiana Gaming Commission will affirm the Administrative Law Judge's order as its final order or will serve notice of its intent to review any issue related to the Administrative Law Judge's Recommended Order Granting Summary Judgment.