



**State of New Jersey**  
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CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

CHARLES A. RICHMAN  
*Commissioner*

February 6, 2017

**Via Regular Mail**

Robert Kemock  
Property Manager  
White Sands Central (Condominium)  
2201 South East Central Ave.  
Berkeley Township, New Jersey 08752

**Via Electronic Mail**

James L. Amici  
Supervisor of Enforcement  
Bureau of Housing Inspection  
Department of Community Affairs

Re: Department of Community Affairs, Division of Codes and Standards v. White Sands Central (Condominium)  
OAL Docket No. CAF 11646-16

Dear Parties:

Enclosed please find a copy of the Final Decision in the matter referenced above. Should you wish to appeal from this Decision, you have the right to take an appeal with the Appellate Division of the Superior Court [Rules Governing the Courts of New Jersey, 2:2-3(a)(2)]. You must do so, however, within 45 days from the date of service of this Decision.

Sincerely,

Donald Palombi  
Director of Policy & Regulatory Affairs

Enclosure



**STATE OF NEW JERSEY  
DEPARTMENT OF COMMUNITY AFFAIRS**

**FINAL DECISION**

OAL DKT. NO. CAF 11646-16  
AGENCY DKT. NO. 1514/1505009688

**DEPARTMENT OF COMMUNITY AFFAIRS,  
DIVISION OF CODES AND STANDARDS,**

Petitioner,

v.

**WHITE SANDS CENTRAL (CONDOMINIUM),  
2201 SOUTH EAST CENTRAL AVENUE,  
BERKELEY TOWNSHIP,**

Respondent.

I have reviewed the Initial Decision issued in this matter, dated December 21, 2016, as well as the exceptions filed by Petitioner Department of Community Affairs, Bureau of Housing Inspection (“BHI”). For the reasons set forth at length below, I have determined to reject the Initial Decision and to reinstate the original penalty amount imposed by the Bureau on Respondent White Sands Central.

The facts of this case are not in dispute. Rather, the sole issue turns on the interpretation and application of the statutory and regulatory provisions that govern the assessment of penalties by the Bureau. On or about March 15, 2016, the Bureau served Respondent with an “Order to Pay the BHI Inspection Fee” and accompanying Inspection Report. Specifically, the Order required payment of an inspection fee (which included a lead fee) in the amount of \$914 by June 14, 2016, 90 days from the date of the Order. The Order stated that failure to pay by the due date would result in a penalty for failure to comply, pursuant to the governing statute, N.J.S.A. 55:13A-19. In addition, the Inspection Report went on to state that “[i]f payment is not received within 90 days, a penalty will be assessed in the amount of \$50 or 50% of the inspection fee, whichever is greater up to \$500 maximum.” Initial Decision, page 3.

Robert Kemock, representative of Respondent, testified that he contacted BHI and requested an extension until the middle of July. He further testified that he was told by the individual he spoke to that his contact information would be given to a supervisor, who would call him. However, he received no further communication.

There is no dispute that the fee was not paid by the date indicated in the March 15 Order. As a result, on July 19, 2016 the Bureau issued an "Order to Pay Inspection Fee and Pay Inspection Fee Penalty." This Order required payment of the original \$914 fee as well as a penalty amount of \$457, representing 50% of the fee. On or about July 20, 2016 Respondent sent the Bureau a check for the \$914 inspection fee. Kemock testified that Respondent received the Bureau's new Order containing the penalty on July 22, 2016. Kemock testified that the delay in paying the inspection fee resulted from what he described as cash-flow issues, and the fact that Respondent needed to pay its insurance before it could pay the inspection fee.

In her Initial Decision, the Administrative Law Judge recognized that the Hotel and Multiple Dwelling Law is "remedial legislation necessary for the protection of the health and welfare of the residents of this State in order to assure the provision thereof of decent, standard and safe units of dwelling space." N.J.S.A. 55:13A-2. The statute is to be "liberally construed" in order to effectuate its purposes. Ibid. With regard to penalties, the Law provides that no person shall "[r]efuse or fail to comply with any lawful ruling, action, order or notice of the commissioner." N.J.S.A. 55:13A-19(a)(4). Any person violating that provision "shall be liable to a penalty of not less than \$50.00 nor more than \$500.00 for each violation, and a penalty of not less than \$500.00 nor more than \$5,000.00 for each continuing violation." N.J.S.A. 55:13A-19(b).

The relevant regulatory provision, dealing with certificates of inspection and inspection fees, is N.J.A.C. 5:10-1.12. It provides in pertinent part that:

(a) Within 90 days of the most recent inspection of any hotel or multiple dwelling, the owner thereof shall file with [the Bureau] or a local enforcing agency exercising jurisdiction under N.J.S.A. 55:13A-13a, upon forms which shall have been provided, an application for a certificate of inspection.

1. Any owner who shall fail to comply with the requirements of this subsection and/or of (c) below shall be subject to a penalty in the amount of 50 percent of the unpaid fee, but not less than \$50.00 nor more than \$500.00 for each such unpaid fee.

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- (c) Said application shall be accompanied by a fee as required by
- (h) below, except that no fee shall be required for a retreat lodging facility.

This is the Section relied upon and cited to by the Bureau in the present matter in setting the amount of the penalty at \$457 (50% of the fee).

In the Initial Decision, the ALJ found that Respondent had in fact failed to comply with the March 15, 2016 Order by not paying the inspection fee within the time allowed. However, she concluded that N.J.A.C. 5:10-1.12 was not applicable in this instance. Thus, relying solely on the applicable statutory provision, the ALJ found that the penalty could be set in any amount not less than \$50 nor more than \$500. She stated that the Bureau had discretion as to the amount of any penalty, and could take into account mitigating and aggravating circumstances. In that regard, she made note of Kemock's call to the Bureau, and his assumption that his request for an extension had been granted. The ALJ went on to say that while that conclusion may not have been reasonable, given the lack of a return call from the Bureau, payment was in fact made within 30 days of the due date, which was "not a significant amount of time." Initial Decision, page 6. And, she concluded that Respondent was "not in defiance of the Order or ignoring it" but rather simply needed additional time. Ibid. The ALJ concluded that the penalty amount should be modified to \$150.

I disagree with the ALJ's conclusion that the regulation does not apply in this instance. As I understand it, that conclusion seems based on the ALJ's belief that the penalty paragraph of that regulation (N.J.A.C. 5:10-1.12(a)(1)) which imposes the 50% penalty amount, only applies to a failure to file a timely application for a certificate of inspection, as required by N.J.A.C. 5:10-1.12(a). However, as cited above, that penalty paragraph actually applies by its terms to "[a]ny owner who shall fail to comply with the requirements of this subsection and/or of (c) below ...." (emphasis added). The provision referred to - N.J.A.C. 5:10-1.12(c) - is the requirement for payment by an owner of an inspection fee. Thus, the language of the regulation imposing a 50% penalty applies equally to a failure to pay an inspection fee in a timely manner, as occurred in this case.

Thus, the appropriate calculation of the penalty is by application of the regulatory standard, which imposes an automatic penalty amount of 50% of the unpaid fee, as long as the amount is not less than \$50 nor more than \$500. In this case, that resulted in the penalty of \$457, as properly assessed by the Bureau.

Additionally, the Initial Decision recites several “mitigating factors” which the ALJ determined supported a lower penalty amount. However, the regulation imposes a specific penalty amount; it does not permit the exercise of Bureau discretion or the consideration of “mitigating factors”. As such, the penalties are calculated uniformly and consistently assessed against the regulated population.

For all of the reasons set forth in detail above, I thus reject the Initial Decision, and reinstate the original penalty amount of \$457.

Date: 2/6/17

  
CHARLES A. RICHMAN  
Commissioner