From: Steven Goldstein
To: Black, Patricia; Avny David; Eric J. Stephenson; [redacted]
Cc: van Deursen, Anky
Subject: RE: 184 Centre Street Unit 6 Notice of Tentative Appeal Decision
Date: Friday, November 25, 2022 11:35:18 AM
Attachments: Tantive Decision Process Service Signed 2022_11_25.pdf
Tentative Decision Response Appeal 20221124 Signed.pdf
(ISC)² Member Certification Verification.pdf
Importance: High

Hello All,

Here is my response to the tentative decision along with proof of service, and proof of my credentials to establish my EXPERTISE in auditing businesses. In effect you can read my response and you MUST put this in the agenda for the public to read.

In any event, I look forward to the hearing, and to have the public understand the selective enforcement of the law given what my response describes.

Make sure this is in the record and placed into the official case files.

Steven M. Goldstein
184 Centre Street #6
Mountain view CA 94041
[redacted]

From: Black, Patricia <Patricia.Black@mountainview.gov>
Sent: Wednesday, November 23, 2022 09:16
To: Steven Goldstein [redacted] Avny David [redacted] Eric J. Stephenson <estephenson@pahl-mccay.com>
Cc: van Deursen, Anky <Anky.vanDeursen@mountainview.gov>
Subject: 184 Centre Street Unit 6 Notice of Tentative Appeal Decision

Good morning,

Please see attached.

The Hearing on the above Tenant Petition for Downward Adjustment of Rent: Unlawful Rent was held on September 8, 2022. The Hearing Record was subsequently closed on September 20, 2022.

The Hearing Officer's Written Decision was served on all parties on October 20, 2022. A timely Request for Appeal was submitted by Petitioner-Tenant on October 26, 2022. On November 15, 2022, parties were notified that the Request for Appeal was accepted and that the Appel Hearing date was set for December 5, 2022 at 7 p.m. Please find enclosed a copy of the Rental Housing Committee's Tentative Decision concerning said Request for Appeal.

Pursuant to CSFRA Regulations, Chapter 5, Section H.3.c., the parties may respond to the tentative decision, but must do so at least five (5) calendar days prior to the Appeal Hearing date by emailing their submission to patricia.black@mountainview.gov. Any party submitting a response to the tentative decision must simultaneously serve their response on all other parties by email and mail, if available.
Should you have any questions, you may contact Ms. Black at (650) 903-6149 or patricia.black@mountainview.gov.

Sincerely,

Patricia Black, MPP
Senior Management Analyst
Rent Stabilization Program
650-903-6149 | MountainView.gov
Twitter | Facebook | Instagram | YouTube | AskMV

Sign-up for Rent Stabilization webinars at *mountainview.gov/rspwebinars*. Regístrese en los seminarios web sobre la ayuda de emergencia al alquiler en *mountainview.gov/rspwebinars*.

From:	Steven Goldstein
To:	Black, Patricia; Avny David; Eric J. Stephenson; , City Attorney; Hicks, Alison; Kamei, Ellen; Matichak, Lisa; Ramirez, Lucas; Abe-Koga, Margaret; Showalter, Pat; Lieber, Sally; Emily Ramos; julian.pardo.de.zela@gmail.com; M. Guadalupe Rosas; matt.grunewald.rhc@gmail.com; Nicole Hains Livesay; Susyn Almond
Cc:	van Deursen, Anky
Subject:	RE: 184 Centre Street Unit 6 Notice of Tentative Appeal Decision
Date:	Friday, November 25, 2022 2:32:24 PM
Attachments:	Tantive Decision Process Service Signed 2022_11_25.pdf Tentative Decision Response Appeal 20221124 Signed.pdf (ISC)² Member Certification Verification.pdf
Importance:	High

How is this for a REAL problem for you ALL,

I just noticed that ALL my letters I have received from the so called CSFRA program are originating from the City of Mountain View Community Development Department. THIS IS NOT WHAT THE CSFRA Charter ALLOWS. The CSFRA RHC is an INDEPENDENT AGENCY, thus CANNOT be served by the City agencies. As I pointed out in my response to the tentative decision. In factit is in Section 1709 – Rental Housing Committee Subsection (K):

> " *Integrity and Autonomy of Committee.* The Committee shall be an integral part of the government of the City, but shall exercise its powers and duties under this Article independent from the City Council, City Manager, and City Attorney, except by request of the Committee. The Committee may request the services of the City Attorney, who shall provide them pursuant to the lawful duties of the office in Article 711 of the City Charter**. In the period between the effective date of this Article and the appointment of the initial members of the Committee, the City shall take whatever steps necessary to perform the duties of the Committee and implement the purposes of this Article**."

It appears that the CSFRA practices were broken somehow in the past, and when I bring this up to the courts, the City is going to be confronted with a serious City Charter Crisis. Especially when the OFFICES of the CSFRA are not even in the same building as the City Hall, it is in fact located at 298 Escuela Ave., Mountain View, CA 94040. So this is further proof that the City of Mountain View has broken the independent agency requirements of the City Charter. This is a VERY serious breach, and thus any actions occurring due to this breach are likely not valid and enforceable because of it.

It appears the City has done this covertly to prevent the public from being aware of the action. Especially when the Ballot measure to validate it failed to pass in a 2 to 1 voting margin. It almost looks like Measure D was intended to solve this crisis by trying to get the voters to approve it after the fact. But since it was REJECTED, the continuation of the action behind the scenes creates a major problem for the City of Mountain View.

And do not try to just blow me off because I am just a tenant. This was a violation of the City Charter, and I am surprised how long it was allowed to continue even after the rejection of Measure D. The facts are do not blame me for pointing this out, it was an error that for some reason was undetected. Maybe it was because I have no documentation that indicates that the RHC has its own legal services anymore, thus not being independent and violating the City Charter like this.

Steven M. Goldstein
184 Centre Street #6
Mountain view CA 94041
[redacted]

From: Black, Patricia <Patricia.Black@mountainview.gov>
Sent: Wednesday, November 23, 2022 09:16
To: Steven Goldstein <GoldyCISSP@hotmail.com>; Avny David <davny@yahoo.com>; Eric J. Stephenson <estephenson@pahl-mccay.com>
Cc: van Deursen, Anky <Anky.vanDeursen@mountainview.gov>
Subject: 184 Centre Street Unit 6 Notice of Tentative Appeal Decision

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Sincerely,

Patricia Black, MPP
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Steven M. Goldstein
184 Centre Street #6
Mountain View, CA 94041
[redacted]

RENTAL HOUSING COMMITTEE
CITY OF MOUNTAIN VIEW

STEVEN GOLDSTEIN, Tenant, vs. DAVID AVNY, Landlord	RESPONSE TO LANDLORD RESPONSE Petition No.: 20220012 20210021 ans 20210022 Date: Oct. 26, 2022 Time: 8:00 a.m. Response to Tentative Decision

Response to Tentative Decision Sent on 11/23/2022

As per Tentative agreement Section IV part A: Petitioner DOES NOT LACK LEGAL authority for his arguments regarding reissuance of the 2021

First, the petitioner is going to address something so that it is on the record. The petitioner is a Certified Information Systems Security Professional and my certificate number is [redacted], and the petitioner has been certified since 2008. Second, the petitioner has performed business and systems auditing as a Certified Designated Auditor for the Department of Defense for 4 years, many other businesses like public utilities, medical research, and defense contractors in my career. The petitioner is in fact authorized to shut down processes that do not comply with either security or best practice standards. That means the petitioner is an Independently Certified Expert Witness and as such given the freedom that the HO and the RHC has given to the other parties the RHC has demonstrated bias and not recognized my authority to actually audit this process. This means when the RHC simply determines that the petitioner has no grounds to make allegations, the RHC is simply incorrect

The fact that the 2021 decision has controlled the 2022 decision based on what is demonstrated as plagiarism is not a minor problem, and this was an issue already determined to be dealt with by either attorneys or judges in court cases:

As far as the original order the Hearing Officer has violated the Model Rules of Professional Conduct specifically:

> "In the United States, lawyers are bound to the ethics rules in the American Bar Association Model Rules of Professional Conduct (MRPC) and their state bar equivalents. Both courts and bar associations interpret plagiarism to fall within MRPC Rule 8.4, which states, "It is professional misconduct for a lawyer to: …engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Essentially, plagiarism is not specifically banned, but rather falls within ethical rules regarding dishonesty and deceit. These violations effectively require some level of intent. Identifying this element helps to better understand how plagiarism is handled throughout the legal profession."

And the RHC should also be aware that the ABA forbids this kind of behavior as well, which in effect disqualifies and decisions regard my appeal based on the fact of poison of the poisonous tree here. The idea that the RHC has attempted to cover up this kind of unprofessional conduct regarding active attorneys can cause grounds for them to be investigated for violating the rules of conduct. The ABA published an article in March 2020 called "Copy That!": What is plagiarism in the practice of law?" written by by Dennis A. Rendleman, former ABA Ethics Counsel and current Springfield, Illinois, lawyer (https://www.americanbar.org/news/abanews/publications/youraba/2020/youraba-march-2020/_copy-that-_--what-is-plagiarism-in-the-practice-of-law-/) and it states:

> It is professional misconduct for a lawyer to:
>
> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
>
> In In re Mundie, 453 Fed.Appx. 9 (2011) the United States Court of Appeals for the Second Circuit issued a public reprimand against lawyer Steven A. Mundie that lumped lawyer misconduct within the rubric of plagiarism:
>
> Mundie was referred to this panel after his filing of a brief in *Yi Mei Li v. Mukasey,* No. 06–3422–ag, that (a) contained references to evidence not found in the administrative record; (b) misstated the petitioner's name and gender, as well as the issues to be raised in this Court; and (c) contained extensive portions apparently copied from a brief prepared by another attorney concerning a different litigant.

The apparent copying raises the issues of whether Mundie engaged in plagiarism, whether he violated his duties to his client and the Court by presenting facts and argument that did not bear on the issues in his case, and whether he charged his client fees for services which he did not render.

(The Mundie Court did not cite to any Rule of Professional Conduct, though reference was made to the ABA Model Standards for Imposing Lawyer Sanctions.)

The Iowa Supreme Court has contributed to confusion by conflating the academic standards of plagiarism and provision of unbundled legal services with a lawyer's violation of the Rules of Professional Conduct. In *Iowa Sup. Ct. Bd. Of Prof. Ethics and Conduct v. Lane*, 642 N.W.2d 296 (Iowa 2002) the court unfortunately states:

This issue is akin to the matter of ghost-writing attorneys who "author pleadings and necessarily guide the course of the litigation with unseen hand." In this situation, an attorney authors court documents for a pro se litigant who, in turn, submits the court document as his or her own writing. This practice is widely condemned as unethical and a "deliberate evasion of the responsibilities imposed on attorneys." Just as ghost writing constitutes a misrepresentation on the court, so does plagiarism of the type we have before us. [citations omitted.]

The Iowa Court's 2002 perspective on "ghost-writing" as plagiarism or ethically improper has been largely reversed. ABA Formal Opinion 07-446 specifically concludes:

[W]e do not believe that nondisclosure of the fact of legal assistance is dishonest so as to be prohibited by Rule 8.4(c). Whether it is dishonest for the lawyer to provide undisclosed assistance to a pro se litigant turns on whether the court would be misled by failure to disclose such assistance. The lawyer is making no statement at all to the forum regarding the nature or scope of the representation, and indeed, may be obliged under Rules 1.2 and 1.6 not to reveal the fact of the representation.

The Iowa Court references cases regarding plagiarism in the academic context–a whole different universe. See, In Re Zbiegien, 433 N.W.2d 871 (1988)

(Not even academia has settled the issue, especially what is called "self-plagiarism"–not necessarily the oxymoron it seems. But that's a digression for another day. See, "The Repetition Compulsion.")

Judge Richard Posner noted in a brief essay in The Atlantic: " 'Plagiarism,' in the broadest sense of this ambiguous term, is simply unacknowledged copying, whether of copyrighted or uncopyrighted work." Moreover, "A writer may... quote a passage from another writer just to liven up the narrative; but to do so without quotation marks–to pass off another writer's writing as one's own–is more like fraud…."

There are very few cases that state that legal pleadings and briefs can be copyrighted. In one case, co-parties attempting to coordinate filings, resulted in a

copyright violation claim. In *Newegg, Inc. v. Ezra Sutton, P.A.*, 120 U.S.P.Q.2d 1111 (C.D. Cal. Sep. 13, 2016) (2016 BL 299780), the District Court of the Central District of California concluded that the defendant lawyer's use of Newegg's draft brief, provided to him for coordinating purposes, violated Newegg's copyright (that was filed before the draft was provided) on the draft brief. The defendant lawyer used substantial portions of the draft in his own brief. See, also, May I Copy Legal Arguments from Another Lawyer's Brief?

But there's the rub. In the practice of law, plagiarism is not plagiarism just because something is copied. In their 2008 article, "Plagiarism and Legal Scholarship in the Age of Information Sharing: The Need for Intellectual Honesty," professors Carol M. Bast and Linda B. Samuels distinguish between scholarly plagiarism and the practice of law.

> Much of the writing in legal practice is collaborative, with the focus on the persuasiveness of the document, rather than its originality. An attorney is expected to represent the best interests of clients when developing pleadings, motions, briefs, and memoranda of law for consideration by the court and when drafting transnational documents….Practitioners often employ associates and law clerks to draft documents, with oversight by the partner whose client is being served. As a result, a document may be the work product of a number of attorneys.

Moreover:

> [A]ttorneys often use form books or earlier documents based on forms to create the draft of a document. In the practice of law, copying is the norm in certain types of writing, perhaps followed by varying degrees of customization.

The gist of the issue is that distilled by professors Peter Joy and Kevin McMunigal in their Ethics column in the ABA Criminal Justice publication:

> Rather than focusing on *originality*, ethics authorities investigating allegations of inappropriate copying in litigation should focus on the *quality* of the filing, how well it serves its function….If a lawyer simply cuts and pastes an argument from a law review article, someone else's brief, or even his or her own prior brief, it raises significant concern about whether the lawyer has fulfilled one of a lawyer's most basic duties, competence. The duty of competence, set forth in Model Rule 1.1, requires thorough preparation, including adequate research into the facts of the case.(

Joy and McMunigal, "The Problems of Plagiarism as an Ethics Offense," ABA Criminal Justice, Summer 2011

Model Rule 1.1 is the applicable standard:

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
>
> This approach provides a focus to the debate over plagiarism in writings in the practice of law. In the spirit of this column, I will steal — but cite — my conclusion:
>
> Plagiarism is rightfully a mortal sin in academic settings, where original expression is paramount. Litigation is different, with far more room for borrowing ideas and writings. But be warned that significant unattributed copying may cross the line. Be forthright; give the cite.
>
> Schatz and McGrath "Beg, Borrow, Steal: Plagiarism vs. Copying in Legal Writing," 26 California Litigation 3 (2013)
>
> ABA Center for Professional Responsibility is a national leader in developing and interpreting standards and scholarly resources in legal and judicial ethics, professional regulation, professionalism and client protection mechanisms.

This shows that the HO must have known by doing anything that can be interpreted as misrepresentation would render any action invalid and unenforceable. There are other resources like an article Beg, Borrow, Steal: *Plagiarism vs. Copying in Legal Writing* By Benjamin G. Shatz and Colin McGrath Benjamin G. Shatz and Colin McGrath Published California Litigation Vol. 26 • No 3 • 2013 (chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.manatt.com/Manatt/media/Media/PDF/beg-borrow-steal-2013.pdf)

—What is "Plagiarism"?—

> Black's Law Dictionary defines "plagiarism" as the "deliberate and knowing presentation of another person's original ideas or creative expressions as one's own." (Black's Law Dict. (9th ed. 2009) p. 1267, col. 1.) This definition is not particularly helpful for determining what constitutes plagiarism for practicing lawyers. Legal arguments are presented to courts for evaluation of their merits, not their origins. The quality of an attorney's presentation may be a factor of its persuasiveness, but is not itself directly evaluated.
>
> Nor does a lawyer making an argument necessarily mean to imply that "this is my argument; the product of my genius, and not the result of ideas from my clients, partners, associates, research sources, or anyone else." Judge Richard Posner has written that plagiarism is "innocent" when done in a context in which "no value is attached to originality noting that judges " 'steal' freely from one another without attribution or any ill will." (Posner, On Plagiarism (April 2002) The Atlantic Monthly, at p. 23.)

> The law dictionary definition seems to encompass a broad range of activity, including conduct that is standard operating procedure for writing pleadings and briefs. Many lawyers rely on form books written for the specific purpose that other lawyers may copy them. (See Federal Intermediate Credit Bank v. Kentucky Bar Assn. (Ky. 1976) 540 S.W.2d 14, 16 [no impropriety in plagiarizing legal instruments].) Law firms and legal offices of all sorts maintain copies of briefs and pleadings for their attorneys to consult and reuse. Senior attorneys often sign documents drafted primarily by junior lawyers (named or unnamed) in their employ. These practices seemingly fall within the wide definition of "plagiarism," yet such practices are expected and encouraged by the legal profession as efficient and effective lawyering. Thus, "plagiarism" as applied to litigators must be more than merely using another attorney's "original ideas or creative expressions as one's own."

So as far as Blacks Law Dictionary goes the RHC is suborning plagiarism by NOT establishing prober rules to in effect ALLOW plagiarism in the process. Thus, invalidating the entire process due to violations on Due Process. **The idea that the RHC by NOT making rules to ensure this was prevented does not mean it was legal and would result in SERIOUS legal liability for all parties involved.** The article also stated:

> "Of course, to paraphrase Judge Posner, what makes plagiarism so potentially serious is that it "may lead the reader to take steps…that he would not take if he knew the truth." (Posner, *supra*, at p. 23.) This gravest of consequences should not be a factor in litigation: The better legal argument should prevail, whether plagiarized or not. Nonetheless, because litigation places a premium on attorney honesty, the candor and professionalism of counsel are serious enough issues for judges to take offense if being misled about an argument's origins.
>
> Nonetheless, an irony is that the restrictions that courts impose on citing to unpublished opinions mean that — depending on the jurisdiction and context — it may be itself a breach of the rules to cite to the source, when you borrow from such an opinion containing research and reasoning directly applicable to your argument. Even the sternest regulators of litigation plagiarism surely could not punish a lawyer who lifted from an unpublished opinion, but failed to provide proper attribution. Yet it would seem absurd for a lawyer to ignore such material, simply on the basis that it could not be cited."

Finally in the article published here Could Ghostwriting Come Back to Haunt You? The Ethics of Ghostwriting Pleadings for Pro Se Litigants by Caitlyn Parsley and Andrea K Holder for the publication For The Defense.

http://digitaleditions.walsworthprintgroup.com/publication/?i=577376&article_id=3343028&view=articleBrowser

> "the conclusion is VERY clear, As an attorney you must consult the LOCAL RULES OF PROFESSIONAL CONDUCT and ETHIC OPINIONS in your jurisdiction to determine the appropriate course of action BEFORE you agree to ghostwrite documents to a client. More importantly, you must be sure that there is a clear understanding between the LIMITED scope of your representation." What this means is in effect BOTH the HO and the author of the decision are BOTH in major jeopardy of finding themselves defending their actions before the State and the Bar.

So, when the RHC states that it is simply a case of they didn't write any rules to prohibit what happened, that does not apply here. It is not withstanding that the entire case of this matter has been poisoned to such a degree that the RHC has no choice but to delete the entire history of this case and remand it for an entirely de novo process. If it does not, it will be responsible for being an accessory to the fact that this practice was NEVER legal nor does the RHC have any discretion in the matter. In fact again given the petitioner's expertise is in handling this kind of action being a Certified Information Security Expert from ISC2 CISSP Certificate [redacted], this body has to under the LAW, unless proven otherwise by some other evidence, because of its previous action, must take the petitioner's statement as an established EXPERT in the field. The petitioners expertise is considered legally as EXPERT testimony in either local, state and federal courts. But it appears that the RHC is selectively omitting that evidence and proof.

<u>As per Tentative agreement Section IV part B: Petitioner's argument that the rental agreement for the Property is invalid is TOTALLY appropriate topic for appeal.</u>

The RHC states that simply because the original HO made a determination that the Hosing Service ARE NOT connected to the PROPERTY VALUES was without ANY legal basis. There has never been any case law that states that a rental agreement is enforceable based on the situation that was presented. The idea that the HO did not even render any consideration on the point means that the HO decision excluded that point, thus it meant the decision was NEVER justified. Especially as pointed out later in this document the RHC stated:

> "While Petitioner is correct that the language of Section 1710(c) requires a Petitioner to demonstrate either a reduction in Housing Services or a reduction in maintenance, Petitioner's argument misstates the Hearing Officer's reasoning for analyzing whether there had been a reduction in maintenance. Specifically, the Hearing Officer noted the following"

It just seems that the current tentative decision has many logical and legal defects very easily identified. As a matter of fact, the decision did not establish ANY legal or other basis to support the HO decision. How this analysis comes up with such a false conclusion based on not facts is amazing. The fact that the property history is official records is EVIDENCE and cannot be just disregarded in consideration of this matter.

Finally, the fact that the City has no records of any compliance with any State Housing Laws nor Building Codes of any kind means the Certificate of Occupancy is invalid. The idea that the building was not inspected to provide the required proof of compliance to have such a Certificate of Occupancy renders the rental agreements illegal. This is NOT a surprise; the city is known for not keeping up to date on these Certificates.

As per Tentative agreement Section IV part C. The Hearing Officer INCORRECTLY interpreted and applied CSFRA § 1710(c).

The RHC correctly pointed out this provision of the CSFRA:

> “"Housing Services include, **but are not limited to**, repairs, *maintenance*, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, Utility Charges that are paid by the Landlord, refuse removal, furnishings, telephone, parking, right to have a specified number of occupants, and any other benefit, privilege, or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include proportionate part of services provided to common facilities of the building in which the Rental Unit is contained." (Emphasis added.)”

However again the RHC should be aware of the clause **but are not limited to** which means the petitioner has no responsibility to provide proof that would satisfy ONLY the provisions written after that part. In effect it was established that a BROAD interpretation of what constituted “Housing Service” is NOT constrained to any elements described in that paragraph. In effect ANY kind of documentation for example a County Tax Appraisal is EVIDENCE enough to satisfy this paragraph. But the HO knew that. Thus, the RHC is not in compliance with the TEXT of the law. As pointed out, the fact was the petitioner bears no responsibility to PROVE anything once the Property Owner declared themselves that the

property was not the same VALUE as was agreed to in 2016. The LETTER of the law clearly was invoked by demonstrating the systemic decrease in property values as officially determined by the County.

<u>As per Tentative agreement Section IV part D The Hearing Officer DID abuse her discretion in permitting and considering the City Inspector's testimony.</u>

The RHC has improperly determined that it could use services and accept testimony on behalf of the city by stating:

> ""*Integrity and Autonomy of the Committee*. The Committee shall be an integral part of the government of the City, but shall exercise its powers and duties under this Article independent from the City Council, City Manager, and City Attorney, except by request of the Committee. The Committee may request the services of the City Attorney, who shall provide them pursuant to the lawful duties of the office in Article 711 of the City Charter"

However, it appears that it cut off the entire paragraph which also states:

> *Integrity and Autonomy of Committee.* The Committee shall be an integral part of the government of the City, but shall exercise its powers and duties under this Article independent from the City Council, City Manager, and City Attorney, except by request of the Committee. The Committee may request the services of the City Attorney, who shall provide them pursuant to the lawful duties of the office in Article 711 of the City Charter. In the period between the effective date of this Article and the appointment of the initial members of the Committee, the City shall take whatever steps necessary to perform the duties of the Committee and implement the purposes of this Article.

What that means is that the City could only perform services within the window of which as the text states:" In the period between the effective date of this Article and the appointment of the initial members of the Committee, the City shall take whatever steps necessary to perform the duties of the Committee and implement the purposes of this Article."

But after 2 years, that provision has far been expired. The idea that the RHC refuses to perform independent analysis and take for face value alone any testimony from any city employee is not within the language of this provision. What this claim is doing is trying to selectively omit. And in fact, an act of misrepresentation on the part of the RHC. Why did this

even be discussed, it is a simple fact the RHC did not comply as an "INDEPENDENT" agency by in effect employing the services of the City Inspector in the case. In fact, that provision did not even include the ability to employ the City Attorney, and NO ONE ELSE. This was a major defect in the tentative decision.

As per Tentative agreement Section IV part E The Hearing Officer DID NOT HAVE discretion to permit and consider self-certified reports from Respondent's witness.

The tentative decision stated this:

> "First, it should be noted that formal rules of evidence for court proceedings are not applicable in administrative hearings. *See* CSFRA Regulations Chapter 5 section E(4). Therefore, the authentication and certification requirements in the Evidence Code are not applicable to the evidence submitted in a petition hearing. Secondly, Petitioner fails to cite any legal authority for his conclusion that self-certification of work performed by a licensed contractor is illegal or constitutes a conflict of interest. Lastly, the Hearing Officer had discretionary authority both to permit the submission of the documentary evidence from Mr. von Clemm (Landlord's Exhibits #8 and #9) and to determine the weight she would afford to said evidence. The Hearing Officer determined that the letters submitted by Mr. von Clemm were reliable and afforded them significant weight in reaching her conclusions. Perhaps most importantly, the Hearing Officer noted that Mr. von Clemm was not certifying the work in his letters, but rather offering his educated opinion.2 *See* HO Decision, pg.10, fn.4. The Hearing Officer determined that he was qualified to give his opinion. *Id.* As mentioned previously, the role of the Committee is not to reweigh the evidence in the record; as such, the Hearing Officer's consideration of Mr. von Clemm's letters stands."

The idea that the HO hearing is ONLY an administrative hearing is patently FALSE, it is a "quasi-judiciary" process. This the League of California cities published a report titled Common Issues in Quasi-Judicial Hearing in2013 found here chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2013/2013-Annual-Conference-City-Attorneys-Track/9-2013-Annunal-Adam-U-Lindgren-Common-Issues-in-Qu

There is specific language stating:

"III. Laws Applicable to Quasi-Judicial Hearings.

Quasi-judicial hearings are subject to federal and state due process, the fair hearing requirement of Code of Civil Procedure section 1094.5, and additional requirements applicable to particular hearings. Relying on these authorities, California courts have held that administrative hearings must be fair and that administrative decision makers must be impartial.

"The Federal Due Process Clause imposes constraints on governmental decisions that deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth and Fourteenth Amendments." Mathews v. Eldridge (1976) 424 US 319, 331.

The California Constitution's due process safeguards are in Article 1 §7. California due process includes a liberty interest in "freedom from arbitrary adjudicative procedures." People v. Ramirez (1979) 25 Cal.3d 260, 268-69; accord Saleeby v. State Bar of California, (1985) 39 Cal.3d 547, 563-64. Thus, the fairness of all administrative hearing procedures may be judged under California due process, irrespective of whether the hearings involve deprivation of a property or liberty interest. LOCC, "Due Process in Local Administrative Hearings," Manuela Albuquerque, Spring 2009.

Code of Civil Procedure section 1094.5(b) creates a statutory right to a fair hearing, which must be conducted before an impartial tribunal. Clark v. City of Hermosa Beach (1996) 48 Cal.App.4th 1152. Under section 1094.5, quasi-judicial proceedings are subject to review in administrative mandamus. Topanga Ass'n for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 514. In administrative mandamus, courts apply either the independent judgment rule or the substantial evidence test. Mountain Defense League v. Board of Supervisors of San Diego County (1977) 65 Cal.App.3d 723, 727. If the substantial evidence test applies, both trial and appellate courts limit their review to the question of whether the agency's findings were supported by substantial evidence in light of the whole record. CCP §1094.5."

Also:

"Rules of Evidence

Most cities do not use formal rules of evidence in quasi-judicial hearings. See, e.g., Stockton Municipal Code §1.44.090.A. "Administrative hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply;" PAMC §1.12.090, "The hearing officer may conduct the hearing informally, both as to rules of procedure and admission of evidence, in any manner which will provide a fair hearing." (administrative citation hearings); El Cerrito Municipal Code §1.14.100, "[T]he hearing officer shall conduct an orderly hearing and shall accept evidence on which persons commonly would rely in the conduct of their business affairs. Formal rules of evidence shall not apply." (administrative citation hearings)."

This process is NOT an administrative CITATION hearing, thus the general rule used DOES NOT APPLY. And the RHC should have been advised of this.

So, in other words the RHC HO hearing have MANY requirements, one being that formal rules of evidence are in fact required in order to submit any exhibits or testimony in a hearing. the RHC really already knows this, but is trying to in effect protect their failure to ensure "due process" under both the state and federal constitutions, which also means that the HO must be able to present an APPEARANCE of objectivity in all actions, not just substantive. Finally, there was no substantive PROOF of any claims made, only opinions regarding the certifications. No proper demonstration of non-defective material or proper installation procedures was provided, thus any so called "statements" were no evidence of any kind.

As per Tentative agreement Section IV part F The Hearing Officer DID abuse her discretion in permitting Mr. Carr's testimony or Mr. von Clemm's letters,

The RHC falsely claims that:

> "If Petitioner's argument is merely that the Hearing Officer should have weighed Mr. von Clemm's letters or Mr. Carr's testimony differently in reaching her conclusion because they failed to provide certain documentation to support their conclusions, then the burden was on Petitioner to establish the significance of the purported omissions at the hearing. The Petitioner failed to do so. Accordingly, the Hearing Officer did not abuse her discretion in weighing only the evidence before her at the time of the HO Decision."

Actually, given that the petitioner has already proven this is a judiciary proceeding under the state and federal constitution, the idea that no documentation to support the conclusions argued by the City Inspector AND the Contractor in effect rendered any exhibits invalid as evidence in the proceeding. And again, the fact is the City Inspector and the Contractor has a requirement under Certificate of Occupancy requirements to provide MUCH more than just their opinion, but evidence to support them. What the RHC is apparently afraid of is the landlords and the city must provide such documentation and proof in order to make any testimony to support any claim regarding any hearing. Or worse a lot of Certificates of Occupancy me be spoiled because of the lack of the above. This of course can be the basis of reversing many cases already

brought to the RHC. Remember that in order to be a legal rental property the Certificate of Occupancy requirements must be maintained, this is NOT a duty of the Petitioner, it is a duty of the City Inspector and the Landlord. The fact that no documentation has been even presented is proof of non compliance thus rendering a certificate of occupancy void. The idea that it can be demonstrated to be invalid because no follow up safety records exist, that there is no validity of a Certificate of Occupancy under state law. The RHC must be aware of this, but is trying to avoid being a compliance agent for the State laws and the Building Codes. Just like how many Cities are resisting current state laws on the books.

On top of this, since no EVIDENCE was presented in the case only opinions that were lacking any scientific proof, this actually can be demonstrating BIAS in the process. As the RHC knows any appearances of bias in the judiciary system is prohibited under DUE PROCESS OF LAW. Again, WHEN true evidence is presented regarding these testimonies, are only when they can even be considered by a hearing officer.

As per Tentative agreement Section IV part g The Hearing Officer's Decision was not invalidated by her failure to order an investigation or inspection of the Property,

> As outlined above, there are no specific evidentiary procedures or requirements proscribed by the CSFRA, outside of the "preponderance of the evidence" standard. Petitioner has not established why the Hearing Officer was legally obligated to order an inspection or investigation of the Property, or even how the requirements of the California Building Codes are applicable to the Petition hearing. While the requirements of the California Building Code might have provided the Hearing Officer with helpful guidance about habitability standards, the Hearing Officer was not legally bound or even authorized to enforce those requirements in the manner Petitioner asserts. Ultimately, it was wholly within the Hearing Officer's discretion whether to request or order an additional inspection. It is safe to assume that the Hearing Officer did not believe this additional information was necessary to assist in reaching her decision. The Petitioner has provided no basis for the Committee to reach a different conclusion, or to find that the Hearing Officer erred or abused her discretion.

As previously demonstrated, there are STATE and FEDERAL CONSTITUTIONAL and OTHER LEGAL requirements that the CSFRA RHC must be in compliance with. The fact that

the CSFRA member are REQUIRED to comply with the FEDERAL and STATE CONSTITUTIONS and LAWS is without doubt.

If the RHC has not yet implemented the required processes as describe in the previous tentative decision rebuttal. the facts are the HO is acting as a judiciary officer and is directly involved with compliance issues regarding housing in the city of Mountain View. To the petition, it just appears that the RHC has never completely understood the required standards of practice as both a body involving rental property regulations, and enforceability of their decisions as a police action under California law.

Granted, since most of the RHC board members are not even trained in any way to understand the complexity of the role they are appointed to. This is NOT because of simple oversight; this is by DESIGN regarding the choices made by the City Council interview process. This is the kind of error that will become public record unless the RHC does start taking their responsibility seriously.

The idea that a Court would have copies of all documents and the hearing records will demonstrate the APPEARANCE OF BIAS that seems to be occurring here. The RHC is not just administering CITATIONS, thus the claim they are making regarding rules of evidence and code of conduct rule either lacking or purposely ignored renders the process in severe doubt.

The petitioner has seen other cases where my arguments were practically identical, but The petitioner is treated differently, this is clearly going to be a problem when brought to the courts. In fact, the record clearly shows hostility towards the petitioner by the RHC for years. Not only that, but if the RHC decides to continue this action, it will leave the petitioner no choice but to file a complaint regarding disability discrimination on the part of the RHC. Since the RHC is NOT in compliance with local court rules and state and federal laws regarding reasonable accommodation for those with disabilities.

SIDE NOTE,

WHO wrote this tentative decision? Because there is NO SIGNATURE on it. In fact, there is no associated attorney identification on it as well. Given that so many blatant misrepresentations are present in this document, given what I already pointed out above, this

kind of legal action could put whover wrote it into jeopardy regarding ABA and state of CA Professional Codes.

In Conclusion:

As detailed above, the RHC CANNOT deny the appeal in its entirety and CANNOT affirm the Decision in its entirety:

1. Petitioner is entitled to a downward adjustment of rent as to the allegations of unsafe conditions of the balcony/deck in the Property.

2. Petitioner is entitled to a downward adjustment of rent as to the allegations of cracks in the walkways of the complex.

3. Petitioner is entitled to a downward adjustment of rent as to the allegations of the floor of Property being unstable.

4. Petitioner is entitled to a downward adjustment of rent based on a decrease in housing services and maintenance due to a decrease in the assessed value of the Property.

Dated this 25 of November, 2022. Steven Goldstein

Attorney Name

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Steven M. Goldstein

(ISC)² ID Number

[redacted]

Ok

CISSP

Certification
Certified Information Systems Security Professional

Active Date
Apr 15, 2008

Expiration Date
Apr 30, 2023

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Ok

Rent Stabilization Program

(650) 903 6149 | mvrent@mountainview.gov
Mountainview.gov/rentstabilization

This is not a rent decrease. Landlord(s)/Property Owner(s) will receive written notification of a public hearingthat will be held for this Petition and have the right to appear and be heard at these hearings.

NOTICE OF SUBMISSION AND PROOF OF SERVICE TO LANDLORD OF PETITION REQUESTING DOWNWARD ADJUSTMENT OF RENT AS DEFINED BY THE COMMUNITY STABILIZATION AND FAIR RENT ACT (CSFRA)

To Landlord/Owner/Agent

Landlord: David Avny

Address: [redacted]

This is to notify you that a petition has been submitted requesting a downward adjustment of the rent for my rental unit pursuant to the City of Mountain View Community Stabilization and Fair Rent Act ("CSFRA"). ***A copy of the petition is attached to this Notice. To review the complete and redacted Petition Packet, including evidentiary documentation, please contact the City of Mountain View's Rent Stabilization Program.***

The submitted petition is based on the following reasons:

(Check each box that applies; a separate petition form is required for each checked box.)

- ☑ Unlawful rent pursuant to the CSFRA
- ☑ Failure to maintain habitable premises and/or has decrease in housing services or maintenance
- ☐ Undue tenant hardship

You are entitled to participate in all stages of this process and to have representation if you wish. You also have the right to file a Response Notice. A copy of the Response Notice is attached. For more details about the petition process, please visit www.mountainview.gov/rentstabilization. Once the attached petition is accepted for filing by the Rental Housing Committee's designated administrator, the process for deciding the petition will begin.

For help, please call the City of Mountain View's Rent Stabilization Program at (650) 903-6136, email mvrent@mountainview.gov or visit our Rent Stabilization Program during our virtual office hours on Tuesdays from 10 am-12 pm by registering at www.mountainview.gov/rspofficehours.

Tenant

Date: 11/25/2022

Signature: Steven Goldstein D g a y s g ed by S eve Go ds e Da e 2022 25 24 45 -08'00'

Print Name: Steven Goldstein

Address: 184 Centre Street

Unit Number: 6

Este formulation está disponible en español y mandarín. | 此表格有西班牙语和中文版本

DISCLAIMER: Neither the Rental Housing Committee nor the City of Mountain View make any claims regarding the adequacy, validity, or legality of this document under State or Federal law. This document is not intended to provide legal advice. Please visit mountainview.gov/rentstabilization or call 650-903-6136 for further information.

Tenant Proof of Service of Petition Packet

I declare that I am over eighteen years of age, and that I served one copy of the attached Notice of *Tenant Petition* on the ***affected party(ies) listed below by***:

☐ **Personal Service**

Delivering the documents in person on the 25 day of November, 2022, at the address(es) or location(s) above to the following individual(s).

☐ **Mail**

Placing the documents, enclosed in a sealed envelope with First-Class Postage fully paid, into a U.S. Postal Service Mailbox on the 25 day of November, 2022, addressed as follows to the following individual(s).

☑ **Email**

Emailing the documents on the 25 day of November, 2022, at the email address(es) as follows to the following individual(s).

Affected Party

David Avny,
[redacted]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Executed on this 25 day of November, 2022

Signature: Steven Goldstein D g ta y s gned by Steven Go dste n Date: 2022 11 25 11:25:09 08 00

Print Name: Steven Goldstein

Address: 194 Centre Street #6, Mountain View CA 94041