City of Mountain View

Rent Stabilization Program

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

COMMUNITY STABILIZATION AND FAIR RENT ACT (CSFRA)
REQUEST FOR APPEAL OF PETITION HEARING DECISION

Communications and submissions during the COVID-19 Pandemic: To the extent practicable, all communications, submissions and notices shall be sent via email or other electronic means.

Any Party to a petition may appeal the Decision by *serving a written Request for Appeal on all applicable parties and then filing a copy of the completed form with the City* within **ten (10) calendar days** after the mailing of the Petition Decision. If no Appeals are filed within ten (10) calendar days, the decision will be considered final.

I hereby Appeal the Hearing Officer's Decision for the following Petition to the Rental Housing Committee:

Petition Case Number: 20210021 20210021 20210022

Name of Hearing Officer: E. A DeLateur and D. Chantler Decision Date: 10/20/2022

For the following Property Address, including Unit Number(s), if applicable:

84 Cedntre Street #6, Mountain View CA 94041

(Street Number) (Street Name) (Unit Number)

Person Appealing the Hearing Officer Decision *(if more than one person is appealing the petition decision, attach their contact information as applicable)*:

Name: teven Goldstein Phone: [redacted]

Mailing Address: 184 Centre Street #6, Mtn View CA 94041 Email:

I am: ☑ A tenant affected by this petition. ☐ A landlord affected by this petition.

Reason for Appeal:

Please use the space below to clearly identify what issue and part of the Decision is the subject of the appeal (include section headings and subheadings, as necessary). Thoroughly explain the grounds for the appeal. For each issue you are appealing, provide the legal basis why the Rental Housing Committee should affirm, modify, reverse, or remand the Hearing Officer's Decision. *(continue on the next page; add additional pages if needed)*

See Attached Documentation

Filing Instructions:

Once you have completed this form and attached all relevant documents, **serve all parties with complete copies** before formally filing the Appeal with the City. Once served, please file a copy of the completed form with the City of Mountain View via email (preferred method) to patricia.black@mountainview.gov or by mailing to 500 Castro Street, Mountain View, CA 94041.

Declaration:

I (we) declare under penalty of perjury under the laws of the State of California that the foregoing and all attached pages, including documentation, are true correct, and complete.

Signature: Steven Goldstein Digitally signed by Steven Goldstein Date: 2022.10.25 17:44:32 -07'00' Date: 10/20/2022

Print Name: Steven Goldstein

Este formulario está disponible en inglés y español. | 此表格有英文和中文版本

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.

Reason for Appeal *(Continued)*

Proof of Service of Request for Appeal of Petition Hearing Decision

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

☐ **Personal Service**

Delivering the documents in person on the 26 day of October, 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 26 day of October, 2022, addressed as follows to the following individual(s).

☑ **Email**

Emailing the documents on the 26 day of October, 2022, at the email address(es) as follows to the following individual(s).

Respondents

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 26 day of October, 2022

Signature: Steven Goldstein Digitally signed by Steven Goldstein Date: 2022.10.25 17:44:46 -07'00'

Print Name: Steven Goldstein

Address: 184 Centre Street #6 Mountain view CA 94041

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. Appeal from Petition Hearings decisions

INTRODUCTION:

First let me point out the petitioner had this information in my possession prior to the hearing, but the petitioner was expecting the hearing to understand the basis of the arguments. And even more so, that the petitioner was not represented by an attorney and with a known disability, the petitioner was not anticipating that the process would become so riddled with errors. You can argue that in effect the petitioner was testing the effectiveness of this process by withholding the research because it was not required to use what is in effect common knowledge to support the rent reduction claim. Finally, it is the intent of the petitioner to go to court if not granted the solution in the end of this appeal, because the courts WILL provide a PRO BONO attorney to represent me because of the Americans With Disabilities Act, the Santa Clara Court does this routinely. I will also make the RHC and the City of Mountain View defendants in the case and present all records of this matter to the courts. Just understand, this will make significant legal costs and liability to the City if it is required.

FIRST, THE CURRENT RENTAL AGREEMENT IS UNLAWFUL AS A WHOLE:

The current rental agreement is unlawful and void because of changes occurring regarding tax basis.

In 2018 the rent hearing decision based on the property values at that time made a determination that the rents paid AT THAT TIME were warranted given the financial disclosures submitted by the landlord at that time. However, given that the building values is officially 45% less than it was then, that rate of rent is under the conditions of the provision of reduced value and services under the CSFRA. The standard from the 2018 decision would establish the FAIR RATE of RENT to be based on thew expenses at that time, where there is a major reduction if expenses, that implicitly means a rent reduction is required under the CSFRA. It also is NOT legal to unilaterally alter a rental agreement regarding this situation.. Is it legal to change a rental agreement unilaterally if the property value changed?

The answer is NO. In fact the Landlord is REQUIRED to issue an AMENDED AGREEMENT with the consent of the tenant. That information is verified via the website here (https://rentprep.com/leasing-questions/can-landlords-change-rules-mid-lease/#why-cant-landlords) Specifically:

> "**As long as both the tenant and landlord agree**, a lease can be amended and changed to better suit both parties' needs. However, this will not always be possible because there will be cases when either the tenant or the landlord does not want to make changes.
>
> When both parties are in agreement, the actual process to amend a lease isn't very difficult. A new lease can be signed in entirety, or additional contracts can be signed and added to the original lease. The latter option is more common, as voiding the original lease is not something most landlords want to do.
>
> **The key is that both parties must sign all documents, and any conflicting information must be clarified in the most recently signed document**. This ensures that there will not be any disagreements because of differences in documentation, so it is key that you review everything very carefully when executing lease amendments."

In fact the clear truth is that since the only document signed was the one singed in 2016, there is no record of consent to establish any legal rights to the property owner that the current rent rates are lawful. This kind of amendment of rental agreements are WELL ESTABLISHED, and it amazes the petitioner that any property owner does not know how to follow contracts correctly. Perhaps this case will be a reminder to the public of this situation. Granted it may render many rental agreements in the city invalid and render all rents collected unlawful.

SECOND, THE HEARING OFFICIAL DID NOT FOLLOW CSFRA:

The situation where a landlord officially has the value of the property changed invalidates the original rental agreement and is in violation of the CSFRA because the language used in the CSFRA states:

> (c)Petition for Downward Adjustment — Decrease in Housing Services **OR** Maintenance. A decrease in Housing Services or maintenance, or deterioration of the Rental Unit beyond ordinary wear and tear, without a corresponding reduction in Rent, is considered an increase in Rent. A Tenant may file a Petition to adjust the Rent downward based on a loss in rental value attributable to a decrease in Housing Services or maintenance or deterioration of the Rental Unit. The Petition must specify the circumstances allege to constitute a decrease in Housing Services or maintenance, and demonstrate that the Landlord was provided with reasonable notice and an opportunity to correct in like manner to Petitions filed pursuant to Subsection 1710(b)(2) herein.(d)

The Hearing officer incorrectly used the rationale that the Decrease in Housing Services, (The official value of the property declining by 45%) was REQUIRED to be in the case of reduction of maintenance. However, they would be if the section read "Decrease in Housing Services **OR** Maintenance. A decrease in Housing Services AND maintenance, or deterioration of the Rental Unit beyond ordinary wear and tear, without a corresponding reduction in Rent is considered an increase in Rent." But the text of the CSFRA DOES NOT SAY THAT.

In this case the LANDLORD officially requested a downward evaluation of the Building itself, and it was granted. As per the language of this section the dramatic official change in value renders the CSFRA is not complied with, it is NOT necessary for a tenant to prove lack of maintenance under the language stated accurately. In effect the CSFRA requires rent reductions upon any depreciation of the values of the properties that are officially determined. But the hearing officer clearly did not understand the text of the CSFRA in this decision.

THIRD, CITY INSPECTOR TESTIMONY IS BARRED BECAUSE OF THE FACT THAT THEY CANNOT TESTIFY UNDER PERJURY OF LAW:

There is a more serious problem along with this decision. There is no testimony to support the hearing officer's determination that the building APPEARS to be maintained properly given that all testimony from the City Inspector indicated he had no ability to determine whether the building is being maintained. And the petitioner in fact on 2 occasions in two different hearing managed to put on the official record that he had no knowledge to provide regarding structural safety, only his opinion. No inspection was performed under the legal standards that will be discussed further.

In fact, even if you read this report from an attorney (https://www.berding-weil.com/articles/public-agency-protection-in-building-permit-process-myth.php) this attorney clearly points out:

> "During the last decade the Bay Area has experienced a dramatic surge in the amount of construction projects undertaken by private property owners. In the City of Santa Clara, for instance, the value of building permits issued in 1996 was $251,175,782.00, the highest since 1984. As another example, the City and County of San Francisco issued 51,000 residential and commercial building permits for the 1997 fiscal year which totaled $873 million dollars. For the 1998 fiscal year the San Francisco Department of Building Inspection estimates the value of building permits issued to be a staggering $1 billion dollars.
>
> Despite the large number of privately-financed construction projects in the Bay Area, there is a common public misconception in California concerning the building permit process and the role that local, city and state agencies play in overseeing this process. It is commonly perceived that the building permits that are routinely issued by city building inspectors for construction work certify that the building or "work of improvement" is quality built, safely constructed, and that all of the relevant building and state Health & Safety Code requirements have been met. The reality behind what a building permit represents, however, is quite different.
>
> Under current statutory schemes, local municipalities and city public agencies are essentially stripped of any responsibility for the work performed by their building inspector employees and the permits that these inspectors issue. In truth, a building permit is little more than a statement by the local municipality that the homeowner or developer who contracted for the work of improvement has paid the requisite fees to the local city housing authorities. A building permit does not represent that the construction that was undertaken is safe and free from defects or that all of the necessary building codes have been strictly complied with. By explaining the building permit process in detail, this article will uncover the myth that the issuance of a building permit by a public agency guarantees that your home or work of improvement is safe, free from any defects, and is code compliant.
>
> Conclusion
>
> As the above cases reveal, unknowledgeable property owners, including unit owners in homeowners associations, may be the ones to suffer if they depend on the public agency to stand behind the building permit it issues and the inspectors it hires to oversee ongoing private works of improvement. These cases reinforce the point that a building permit issued by a public agency is neither a guarantee of the quality of the contractor's work, nor is it a representation of the adequacy of the work that was performed on the property. Building codes, the issuance of building permits, and building inspections are merely devices used by municipalities to collect the revenues that help fund the municipality."

When viewed from this perspective, the building permits issued by public agencies are not meant to serve as insurance policies by which the municipality

guarantees that each building is built in compliance with the building and zoning codes. The fees a city collects for issuing building permits merely act to offset expenses incurred by the city in promoting the public interest in general, and in no way function as insurance premiums which make the city liable for each item of defective construction on the improved premises. A building permit simply represents to the property owner that the work that was inspected is complete and that all of the required administrative details have been performed by the contractor to the building inspector's satisfaction.

Armed with this knowledge of what a building permit truly represents, association boards of directors and private property owners can plan accordingly and take affirmative protective steps when planning to fund a work of improvement on their property. Such simple measures as requiring the hired contractor to maintain greater limits of insurance coverage, or hiring an independent construction manager to diligently oversee that the contractor's ongoing work complies with the relevant building codes, will ensure that the association is protected after the construction process has been completed."

In effect if a City Inspector cannot be held responsible for any false statements or errors in their OPINIONS under the law, they cannot be considered either expert witnesses or experts. Because those persons are required to be responsible whether they actually perform due diligence regarding their work or are in compliance with the legal standards of the state in any way like building code requirements. This also means that contractors CANNOT self certify their work, the work must be performed by an independent entity. By being immune of all liability, they forfeit their expertise in testifying especially where building codes conflict with practices. Remember to take the oath regarding any legal proceeding, one must testify under threat of perjury, but since that cannot be enforced by CA state laws, the oath taken prior to the hearing cannot be enforced, such that the oath is not valid. This invalidates any testimony by the City Inspector. In effect the City NEVER should have allowed the City Inspector testify. On top on that the city is interfering with the independence of the CSFRA procedures which is not allowed given that the CFSRA is explicitly to be operating without any interference from the city officials.

FOURTH, ANOTHER GROUNDS FOR IMPERMISSIBLE TESTIMONY AND SUBMISSIONS BY THE LANDLORD:

The fact the inspections performed were "self-certifying" meaning the people who did the work are testifying they are in compliance with building codes. This is ILLEGAL under any circumstances; the conflict of interest is so strong that there is no way to determine whether the inspection was done in accordance with the standards of structural integrity. In this case

evidence was presented showing both the City Inspector and the Contractor had building standards that were not complied with.

FIFTH, INSPECTION REQUIREMENT FAILURES RENDERS ALL EVIDENCE PRESENTED BY LANDLORD INAPPLICABLE

Given the demonstrated REQUIREMENTS under building code and the lack of compliance, the fact that any evidence and arguments made by the property owner cannot be even considered evidence or grounds for denial of a rent reduction. This situation has resulted in a significant failure to provide even the appearance of due process as a result. This situation has become so prima facie appearance of bias in this matter as a result.

First let me address the fact that Building Code is being violated by both the Owner and the City Inspector regarding this petition

Under the building code of CA passed 2016 https://up.codes/viewer/california/ca-building-code-2016/chapter/17/special-inspections-and-tests#17 it states all inspections must be comprised of the following:

> "1703.6 Evaluation and Follow-Up Inspection Services
>
> Where structural components or other items regulated by this code are not visible for inspection after completion of a prefabricated assembly, the owner or the owner's authorized agent shall submit a report of each prefabricated assembly. The report shall indicate the complete details of the assembly, including a description of the assembly and its components, the basis upon which the assembly is being evaluated, test results and similar information and other data as necessary for the building official to determine conformance to this code. Such a report shall be approved by the building official.
>
> 1703.6.1 Follow-Up Inspection
>
> The owner or the owner's authorized agent shall provide for special inspections of fabricated items in accordance with Section 1704.2.5.
>
> 1703.6.2 Test and Inspection Records
>
> Copies of necessary test and special inspection records shall be filed with the building official.
>
> Section 1704 Special Inspections and Tests, Contractor Responsibility and Structural Observation
>
> 1704.1 General
>
> Special inspections and tests, statements of special inspections, responsibilities of contractors, submittals to the building official and structural observations shall meet the applicable requirements of this section.

1704.2 Special Inspections and Tests

Where application is made to the building official for construction as specified in Sections 105 or 1.8.4, as applicable, the owner or the owner's authorized agent, other than the contractor, shall employ one or more approved agencies to provide special inspections and tests during construction on the types of work specified in Section 1705 and identify the approved agencies to the building official. These special inspections and tests are in addition to the inspections by the building official that are identified in Section 110.

[OSHPD 2] An inspection agency having accreditation to the International Standards Organization (ISO) accreditation Standard 17020 shall be deemed to comply with the requirements for an approved inspection agency.

1704.2.1 Special Inspector Qualifications

Prior to the start of the construction, the approved agencies shall provide written documentation to the building official demonstrating the competence and relevant experience or training of the special inspectors who will perform the special inspections and tests during construction. Experience or training shall be considered relevant where the documented experience or training is related in complexity to the same type of special inspection or testing activities for projects of similar complexity and material qualities. These qualifications are in addition to qualifications specified in other sections of this code.

The registered design professional in responsible charge and engineers of record involved in the design of the project are permitted to act as the approved agency and their personnel are permitted to act as special inspectors for the work designed by them, provided they qualify as special inspectors.

1704.2.2 Access for Special Inspection

The construction or work for which special inspection or testing is required shall remain accessible and exposed for special inspection or testing purposes until completion of the required special inspections or tests.

1704.2.3 Statement of Special Inspections

The applicant shall submit a statement of special inspections in accordance with Section 107.1, Chapter 1, Division II, as a condition for permit issuance. This statement shall be in accordance with Section 1704.3.

Exception: A statement of special inspections is not required for portions of structures designed and constructed in accordance with the cold-formed steel light-frame construction provisions of Section 2211.7 or the conventional light-frame construction provisions of Section 2308.

1704.2.4 Report Requirement

Approved agencies shall keep records of special inspections and tests. The approved agency **shall submit reports of special inspections and tests to the building official and to the registered design professional in responsible**

charge. Reports shall indicate that work inspected or tested was or was not completed in conformance to approved construction documents. Discrepancies shall be brought to the immediate attention of the contractor for correction. If they are not corrected, the discrepancies shall be brought to the attention of the building official and to the registered design professional in responsible charge prior to the completion of that phase of the work. **A final report documenting required special inspections and tests, and correction of any discrepancies noted in the inspections or tests, shall be submitted at a point in time agreed upon prior to the start of work by the owner or the owner's authorized agent to the building official.**"

In effect the City inspector nor the contractor submitted ANY of the required EVIDENCE to support claims. The only thing on the record was their "opinion" thus such submissions were not allowed to be even considered regarding this petition. On top of that since there was no record of continual maintenance, the exceptions to said inspections do not apply in this matter as described here in the code:

"1704.2.5 Special Inspection of Fabricated Items

Where fabrication of structural, load-bearing or lateral load-resisting members or assemblies is being conducted on the premises of a fabricator's shop, special inspections of the fabricated items shall be performed during fabrication.

Exceptions:

Special inspections during fabrication are not required where the fabricator maintains approved detailed fabrication and quality control procedures that provide a basis for control of the workmanship and the fabricator's ability to conform to approved construction documents and this code. Approval shall be based upon review of fabrication and quality control procedures and periodic inspection of fabrication practices by the building official.

Special inspections are not required where the fabricator is registered and approved in accordance with Section 1704.2.5.1."

However, FABRICATION is CONSTRUCTION and NOT REPAIR, thus this exception does not apply. Remember all inspections are required under the code to include the following:

"1704.3.1 Content of Statement of Special Inspections

The statement of special inspections shall identify the following:

The materials, systems, components and work required to have special inspections or tests by the building official or by the registered design professional responsible for each portion of the work.

The type and extent of each special inspection.

The type and extent of each test.

Additional requirements for special inspections or tests for seismic or wind resistance as specified in Sections 1705.11, 1705.12 and 1705.13.

For each type of special inspection, identification as to whether it will be continuous special inspection, periodic special inspection or performed in accordance with the notation used in the referenced standard where the inspections are defined."

The inspections and reports indicate here that that requirement was NOT met. Meaning all written submissions were defective and were not allowed to be considered in the petition. The facts that this was done violated my due process rights as a result because of illegal evidence was considered. On top of this is here

"1704.5 Submittals to the Building Official

In addition to the submittal of reports of special inspections and tests in accordance with Section 1704.2.4, reports and certificates shall be submitted by the owner or the owner's authorized agent to the building official for each of the following:

Certificates of compliance for the fabrication of structural, load-bearing or lateral load-resisting members or assemblies on the premises of a registered and approved fabricator in accordance with Section 1704.2.5.1.

Certificates of compliance for the seismic qualification of nonstructural components, supports and attachments in accordance with Section 1705.13.2.

Certificates of compliance for designated seismic systems in accordance with Section 1705.13.3.

Reports of preconstruction tests for shotcrete in accordance with Section 1908.5.

Certificates of compliance for open web steel joists and joist girders in accordance with Section 2207.5.

Reports of material properties verifying compliance with the requirements of AWS D1.4 for weldability as specified in Section 26.6.4 of ACI 318 for reinforcing bars in concrete complying with a standard other than ASTM A706 that are to be welded; and

Reports of mill tests in accordance with Section 20.2.2.5 of ACI 318 for reinforcing bars complying with ASTM A615 and used to resist earthquake-induced flexural or axial forces in the special moment frames, special structural walls or coupling beams connecting special structural walls of seismic force-resisting systems in structures assigned to Seismic Design Category B, C, D, E or F."

None of this was provided by ANYONE involved in this petition. As the petitioner pointed out multiple times, the ASSUMPTION of the structural integrity is illegal under the building codes. In fact if the building is not properly inspected, the building is not up to code, and cannot be legally used or provided a certificate of occupancy from the city. What has happened is that there is a systemic problem with ensuring that the certificate of occupancy is in fact valid, and if it isn't all rents are not lawful in this building. More related information follows in the building code:

> "1705.12.2 Structural Wood
>
> For the seismic force-resisting systems of structures assigned to Seismic Design Category C, D, E or F:
>
> Continuous special inspection shall be required during field gluing operations of elements of the seismic force-resisting system.
>
> Periodic special inspection shall be required for nailing, bolting, anchoring and other fastening of elements of the seismic force-resisting system, including wood shear walls, wood diaphragms, drag struts, braces, shear panels and hold-downs.
>
> Exception: Special inspections are not required for wood shear walls, shear panels and diaphragms, including nailing, bolting, anchoring and other fastening to other elements of the seismic force-resisting system, where the fastener spacing of the sheathing is more than 4 inches (102 mm) on center."

The City has NOT provided any record of periodic inspections of the seismic resistance of the structure at 184 Center Street, where the foundation already has significant cracking and even some of the exterior walls show signs of defects in the structure. This again must be performed EITHER by the City Inspector of the Building Owner. However, no record exists regarding this issue. On top of that our elevated walkway was NOT inspected in compliance with the building code written here:

> "1705.12.5.1 Access Floors
>
> Periodic special inspection is required for the anchorage of access floors in structures assigned to Seismic Design Category D, E or F."

All documents and testimony DID NOT INCLUDE ANY RECORD OF TESTING ANCHORAGE OF THE ELEVATED WALKWAY. Thus, no evidence or testimony was permissible in this petition. On top of this the building code also stated:

> "1704.6 Structural Observations

Where required by the provisions of Section 1704.6.1 or 1704.6.2, the owner or the owner's authorized agent shall employ a registered design professional to perform structural observations. Structural observation does not include or waive the responsibility for the inspections in Section 110 or the special inspections in Section 1705 or other sections of this code.

Prior to the commencement of observations, **the structural observer shall submit to the building official a written statement identifying the frequency and extent of structural observations.**

At the conclusion of the work included in the permit**, the structural observer shall submit to the building official a written statement that the site visits have been made and identify any reported deficiencies that, to the best of the structural observer's knowledge, have not been resolved**."

Again, in this petition this was not only not properly done in compliance with the building code, but the City has not been enforcing this building code requirement, thus making again both the contractor and the City Inspector written documentation and testimony was required to be stricken and not considered in any way. In fact, the contractor acted to avoid any examination of any load bearing portions of the building in order to avoid having to report them. Given that the inspections appear to have no record of any such inspections. The idea that a hearing officer can ASSUME that the building integrity is sound is not in compliance with the CSFRA evidentiary requirements. The facts are the record simply has no proof of proper inspections, and even the City Inspector cannot testify as to the soundness of the structure given, he was avoided by the owner regarding multiple changes in the structure. The fact that a POST remodeling building permit was issued WAS ILLEGAL, you cannot after the fact approve a remodeling unless you are there to INSPECT THE ENTIRE PROCESS, which in this case there was no monitoring g or the remodeling of the building since the new owner took it. Thus the building permit is actually invalid, because such verification is missing.

On top of this here is another area the petitioner pointed out multiple times and gets ignored, that the building code requires load testing to be performed. Here isa that section of the building code:

"Section 1708 In-Situ Load Tests

1708.1 General

. The engineering assessment shall involve either a structural analysis or an in-situ load test, or both. The structural analysis shall be based on actual material properties and other as-built conditions that affect stability or load-bearing capacity, and shall be conducted in accordance with the applicable design

standard. If the structural assessment determines that the load-bearing capacity is less than that required by the code, load tests shall be conducted in accordance with Section 1708.2. If the building, structure or portion thereof is found to have inadequate stability or load-bearing capacity for the expected loads, modifications to ensure structural adequacy or the removal of the inadequate construction shall be required.

1708.2 Test Standards

Structural components and assemblies shall be tested in accordance with the appropriate referenced standards. **In the absence of a standard that contains an applicable load test procedure, the test procedure shall be developed by a registered design professional and approved. The test procedure shall simulate loads and conditions of application that the completed structure or portion thereof will be subjected to in normal use**.

1708.3 In-Situ Load Tests

In-situ load tests shall be conducted in accordance with Section 1708.3.1 or 1708.3.2 and shall be supervised by a registered design professional. The test shall simulate the applicable loading conditions specified in Chapter 16 as necessary to address the concerns regarding structural stability of the building, structure or portion thereof.

1708.3.1 Load Test Procedure Specified

Where a referenced standard contains an applicable load test procedure and acceptance criteria, the test procedure and acceptance criteria in the standard shall apply. In the absence of specific load factors or acceptance criteria, the load factors and acceptance criteria in Section 1708.3.2 shall apply.

1708.3.2 Load Test Procedure Not Specified

In the absence of applicable load test procedures contained within a standard referenced by this code or acceptance criteria for a specific material or method of construction, such existing structure shall be subjected to a test procedure developed by a registered design professional that simulates applicable loading and deformation conditions. For components that are not a part of the seismic force-resisting system, at a minimum the test load shall be equal to the specified factored design loads. For materials such as wood that have strengths that are dependent on load duration, the test load shall be adjusted to account for the difference in load duration of the test compared to the expected duration of the design loads being considered. For statically loaded components, the test load shall be left in place for a period of 24 hours. For components that carry dynamic loads (e.g., machine supports or fall arrest anchors), the load shall be left in place for a period consistent with the component's actual function. The structure shall be considered to have successfully met the test requirements where the following criteria are satisfied:

Under the design load, the deflection shall not exceed the limitations specified in Section 1604.3.

Within 24 hours after removal of the test load, the structure shall have recovered not less than 75 percent of the maximum deflection.

During and immediately after the test, the structure shall not show evidence of failure."

Again please observe the word in this portion

"Section 1708 In Situ Load tests, 1708.1 General **Whenever there is a reasonable doubt as to the stability or load-bearing capacity of a completed building, structure or portion thereof for the expected loads, an engineering assessment shall be required"**

The key word is SHALL, meaning the City inspector NOR the owner has ANY discretion regarding getting a proper load test to be performed under the building code. The Hearing officer was shown cracks in the balconies, the elevated walkways, and the foundation, thus there was a clear REASONABLE DOUBT of the buildings safety. There was no load testing done either. There was no attempt to establish any RECORD of proof of safety here. Since this was NOT performed all evidence and argument depending on the "ASSUMPTION" of the structure being sound is not allowed to be considered in the matter. The hearing officer surely should have been aware of this? I have on multiple occasions brough up a "reasonable doubt" and documented it. Thus the Owner and the City are BOTH in violation of the building codes. Again, all evidence and testimony must be stricken and must be vacated and either overruled by this committee or at least remanded for a new hearing where the previous exhibits and testimony are prohibited for the new determination.

SIXTH, THE CITY MUST USE GPR TO DETECT FAULTS IN ALL WOODEN STRUCTURES.

The facts are the tools exist to do Non Destructive Inspection of wooded structure supports it is called GPR in Wood Structures and is described on this web page (https://www.mdpi.com/1999-4907/12/4/492) and the PDF version will be included with this submission. In fact this process has been used in the state of California for years, but obviously the City and the Property owners do not want it to be used because they are trying to get people to assume that everything is fine AS LONG AS they have NO KNOWLEDGE of problems. But it is the duty of said City and Property Owners to have a record to PROVE that the safety of a rental unit is on the record. There is NO ASSUMPTION OF SAFETY. This article was published in 2021 and researched by the Forest Products Laboratory, a division of the U. S.

Forest Service, the USDA in the US. Even the the U.S. Dept of Transportation is using this information to evaluate wood bridges. Specifically this research states:

> "Abstract: This paper is a review of published studies involving the use of ground penetrating radar (GPR) on wood structures. It also contains background information to help the reader understand how GPR functions. The use of GPR on wood structures began to grow in popularity at the turn of the millennium. GPR has many characteristics that make it attractive as an inspection tool for wood: it is faster than many acoustic and stress wave techniques; it does not require the use of a couplant; while it can also detect the presence of moisture. Moisture detection is of prime concern, and several researchers have labored to measure internal moisture using GPR. While there have been several laboratory studies involving the use of GPR on wood, its use as an inspection tool on large wood structures has been limited. This review identified knowledge gaps that need to be addressed to improve the efficacy of GPR as a reliable inspection tool of wood structure. Chief among these gaps, is the ability to distinguish the type of internal feature from the GPR output and the ability to identify internal decay. "

And the summary states:

> "Summary and Needs Assessment: There are several aspects of ground penetrating radar that make it an attractive inspection tool for use on wood and wood structures. GPR is commercially available, portable, does not require the use of a couplant, and is faster than point by point inspection methods. Studies have shown that GPR is capable of detecting moisture pockets, voids, and metal connectors which are critical for assessment of wood structures. Locating internal features using GPR can be accomplished by inexperienced inspectors.
>
> Discontinuities in the dielectric constant in the direction of the wave are detected by GPR. The dielectric constant is the real component of the ratio of the permittivity of radar in the inspected material to the permittivity in a vacuum. DC is frequency dependent and increases with decreasing frequency in wood. Wood below the fiber saturation point has a DC of four or less. As the moisture content within the wood increases, the DC can increase above four to a maximum of 80 for pure water. Similar to strength properties, DC is orthotropic in wood with the highest DC parallel to the wood grain.
>
> Correlating aspects of the radar signal to moisture content has been a focus of many studies. There has been some success in this area; however, the GPR output is also affected by many factors including, but not limited to, grain orientation, temperature, size of inspected object, and density. Given the positive results obtained from research in this area, the development of a GPR based method of moisture content measurement for wood structures at some time in the future is not unreasonable.
>
> The most obvious gap in GPR inspection is the identification of internal features and the location and identification of decay. However, this gap is partially mitigated by the ability of GPR to detect moisture pockets, which are

often an indicator of interior decay. As previously stated, an inexperienced inspector using GPR can easily locate internal features within wood structures. Unfortunately, identifying the nature of the feature is more difficult. Knots, voids, and nails produce similar output in GPR radargrams. There is a need for a method by which internal features can be quickly characterized in the field.

There is little research in the area of locating decayed wood with GPR. Currently, inspections using GPR rely upon the presence of moisture as an indicator of decay. However, in the absence of moisture, decay may still be present. There is a need for a method to locate and identify internal decay through characteristics of the GPR signal. Ideally the method will be independent of the presence of moisture. If these two areas of research can be addressed, GPR will be a powerful inspection tool for wood-based structures."

In effect the industry and the city are stuck with the prospect of having to use this tool and likely are going to find MANY properties needing major work. Which has prevented anyone up until now to demonstrate the failure of this safety tool. There is no proof of invalid science meaning there is no grounds to prohibit if not REQUIRE its use to protect the safety of residential housing tenants. No one has demonstrated it is unsound of unscientific.

In 2014 There was another article titled "In situ assessment of structural timber using non-destructive techniques" published in the Journal Materials And Structures The text states:

"Abstract This paper summarizes the test recommendations for selected non-destructive testing (NDT) techniques as developed by members of the RILEM Technical Committee AST 215 ''In situ assessment of structural timber''. The recommendations cover visual inspection, moisture content determination, species identification, digital radioscopy, and ground penetrating radar. The paper includes a matrix of common NDT to assess structural timber. The discussion of each technique is intended to provide users with sufficient information to understand the theoretical basis, typical equipment set up, and basic capabilities and limitations.

9 Conclusion: GPR has several key advantages for assessing structural timber including fast scanning; only requiring one-sided access, the ability to identify common timber defects (e.g., rot and voids); the ability to identify excessive moisture, good repeatability; and tolerance of imperfect surface coupling. Disadvantages are that the method is not well suited to detecting thin defects (e.g., fine cracks) and data interpretation and post-processing can be complicated, requiring expertise"

Again, it appears that with 2 SCIENTIFIC reports supporting such a practice, given it is NON DESTRUCTIVE unlike load testing, this process should have been used to check the safety of this structure. The fact it is avoided only can lead to the idea that there is a reasonable doubt of structural integrity problems and it does not want to be detected.

Given that this tool was not used, any APPEARANCE of safety determined by the hearing officer is invalid, cannot be justified by any evidence. Thus, the burden of proving that the structure and its value has declined by default forces the CSFRA to in fact proactively rent reduce the situation presented in this case.

SEVENTH, ASSUMPTION OF STRUCTURAL SOUNDNESS IS INAPPLICABLE FOR ANY STRUCTURE:

Under the California Law there is no assumption of safety allowed regarding any public entity. It is the legal responsibility to perform reasonable actions to establish that any residence is in fact a safe or up to code. In fact the California Public Liability Laws actually excludes any immunity where there has not been any reasonable action taken to assure the public safety. In this case the City Inspector by failing to take reasonable actuions like using the proper methods and tools and acting in non-compliance with building code has put the city in a serious legal matter.

For example, the City can be ordered to pay the petitioner the rent collected by the owner of the property BECAUSE the rental agreement cannot be lawful if there is building code violations rendering the legal requirement of the certificate of occupancy was invalid. As per page 55 of the State of CA Law Revision Commission publication titled "Proximate Cause" which states:

> "Thus, under the Act, there are actually two bases for liability: (1) negligent failure after notice to take action necessary to remedy the condition or to protect the public from danger or (2) negligent creation of the dangerous or defective condition. At least as to invitees, the liability of private landowners for dangerous conditions of their property rests on the same bases.43
>
> (f)Proximate cause. Under Section 53051, the injuries in question must "result" from the dangerous or defective condition. This requirement is regarded as the equivalent of the common law requirement of proximate cause, and like it, is ordinarily treated as an issue of fact.44
>
> The courts have uniformly held that the public entity remains liable under the statute even though the defective condition was created or maintained by a private person who is jointly liable therefor.45 Like- wise, the concurrent or intervening negligent act of a third party does not cut off the chain of causation provided all of the statutory conditions of liability are satisfied.46 However, the injury must be shown to have been proximately caused by some dangerous defect in the property itself or in its ordinary and customary use, and not solely by the tortious conduct of third persons.47 By the same token, the mere failure of the public entity to make and enforce safety regulations 48 or to carefully supervise

activities of its employees 49 is not actionable under the statute, absent some dangerous or defective condition of public property itself. In the important case of Stang v. City of Mill Valley/'0 for example, the Supreme Court held that the Public Liability Act did not impose liability for loss of a house due to the failure of the city to maintain its water mains and hydrants in sufficiently workable condition to permit the fire department to control a fire therein. The court pointed out that the city had not created the condition which caused the loss (i.e., the fire) and that the defective condition of the water system had merely failed to pro- vide a remedy for such condition. When the statutory conditions of liability are met, however, the courts recognize that the usual defenses to a negligence action, such as contributory negligence 51 and assumption of risk 52 are available to the defendant city, county or school district.

The impact of the Muskopf decision abolishing governmental immunity upon the statutory liability provided in Section 53051 of the Government Code is somewhat difficult to assess. Certain significant possibilities, however, may readily be suggested.

Second, it has been held that cities may be held liable to the same extent as private owners for injuries resulting from defective property being used in a "proprietary" capacity, irrespective of the provisions of the Public Liability .Act.56 (Since counties and school districts may also be deemed to act in a proprietary capacity under some cir- cumstances,57 it would seem that the same rule would apply to them.) In light of this rule, the possible effect of Muskopf upon the liability of cities, counties and school districts for dangerous and defective property may be analyzed along at least four different lines :

(1) It could be argued that since liability exists without Section 53051 for defective property employed in "proprietary" activities, and since Muskopf has removed the governmental immunity barrier to common law liability for "governmental" activities, Section 53051 has, in effect, been rendered a nullity which may hereafter be ignored by injured claimants. This argument, however, would seem to be contrary to the manifest legislative intent to specify in Section 53051 what the conditions of liability are.

(2) It could be argued, in order to carry out the legislative intent expressed in Section 53051, that the rules governing liability of cities, counties and school districts (so far as dangerous and defective property is concerned) have not been affected by the Muskopf decision, and that the previously recognized distinction between property employed in a "proprietary" as distinguished from a "governmental" capacity still exists. In short, this argument would be that Muskopf has not changed the prior law. This view, however, would perpetuate the very distinction which Muskopf abolished as being both "illogical" and "inequitable." 58 In two recent opinions, the first division of the District Court of .Appeal for the First .Appellate District has nevertheless taken this view.59 Neither opinion explores the full implications of the conclusion there reached that notwithstanding Muskopf, there can be no tort liability of a city, county or school district arising out of a dangerous or defective condition of public property being

employed for a "governmental" purpose unless all of the statutory conditions of the Public Liability .Act are satisfied. Moreover, although the court explicitly admits that the applicability of the Public Lia- bility .Act in defective property cases will hereafter, in its view, require a continued application of the "governmental"-"proprietary" distinction, neither opinion attempts to justify this result or to recon- cile it with the Supreme Court's condemnation of that distinction in Muskopf. Both opinions, in professing to be adhering to the legislative intent expressed in the Public Liability Act, avoid any attempt to ex- plain why common law liability may exist as an exception to that Act when the entity is acting in a proprietary capacity, while common law liability may not exist under the Muskopf case when the entity is act- ing in a governmental capacity. In view of the unsatisfactory nature of these decisions, they should not be regarded as necessarily conclusive on the point in the absence of approval by the Supreme Court.

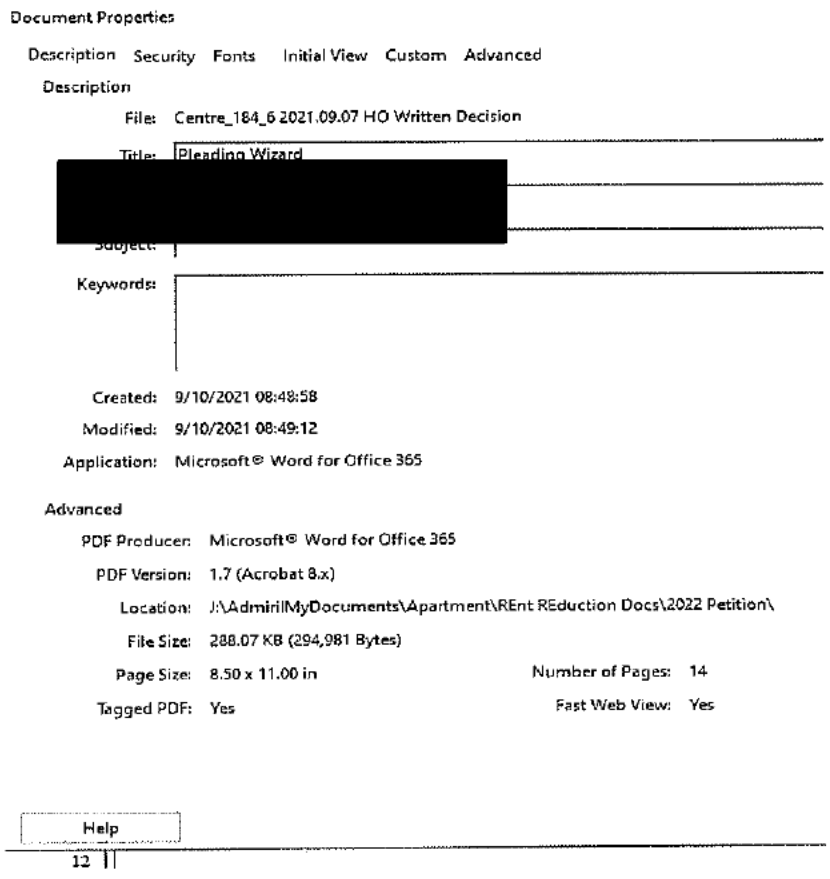
(3) It could be argued that Section 53051 remains effective as the legislative standard of liability, but that the old distinction between "proprietary" and "governmental" uses of property should be deemed to have been abolished by Muskopf. This view, however, would tend to restrict the scope of tort liability of cities, eounties and school districts, for in certain cases the statutory conditions laid down by Section 53051 are stricter and liability thereunder is correspondingly narrower than at common law.60 Under this view, liability for property defects would hereafter exist only when all of the requirements of Section 53051 are :met, e:ven though proprietary liability would have been recognized prior to Muskopf. Such a narrowing of tort liability seems clearly contrary to the general tenor of the Muskopf and Lipman opinions and seems unlikely to prevail."

Thus, when the City Inspector failed to be in compliance with the building Code as described in the analysis of the inspection requirements under the code, it rendered the City and all of its agents to be liable for any perpetuation of unproven safe living conditions in any rental unit in the City of Mountain View. Surely someone in the Hearing Staff or the RHC was instructed about this issue. Or was it that it was never part of the required education in order for this agency to avoid liability and violations of due process by not enforcing these legal requirements? In the end, it appears that the Hearing officer did not follow proper procedure by REQUIRING an investigation and inspection of the property under the current standards of inspections defined under the CA Building Code. Thus, the hearing officers decision is not enforceable for lack of compliance with State Building Codes and Laws.

EIGHTH THE ORDER REVISING THE ORIGINAL DECISION IN 2021 IN EFFECT KILLED ANY RES JUDICA AND RESET THE APPEALS TIMELINESS CLOCK TO OCTOBER 21, 2022

The fact that the original hearing officer did NOT write the original decision as demonstrated during this hearing shows that the decision was invalid. This is not a non-substantive failure in the decision. I demonstrated that information right here

As far as the document submitted called Centere_184_6_2021.09.07 HD Written Decision, there is serious problems with this being of any EVIDENTIARY value. The first part again is that the decision was written with the WRONG party name, it uses WILLIAM GOLDSTEIN as the party. However, what is more disturbing is that this decision was written by a different ATTORNEY, the information proving it part of the Document Metadata and is documented right here:


Document Properties

Description Security Fonts Initial View Custom Advanced

Description

File: Centre_184_6 2021.09.07 HO Written Decision

Title: Pleading Wizard

[redacted]

Subject:

Keywords:

Created: 9/10/2021 08:48:58

Modified: 9/10/2021 08:49:12

Application: Microsoft® Word for Office 365

Advanced

PDF Producer: Microsoft® Word for Office 365

PDF Version: 1.7 (Acrobat 8.x)

Location: J:\AdmirilMyDocuments\Apartment\REnt REduction Docs\2022 Petition\

File Size: 288.07 KB (294,981 Bytes)

Page Size: 8.50 x 11.00 in Number of Pages: 14

Tagged PDF: Yes Fast Web View: Yes

Help

12

The real problem was that [redacted] was NOT present during the hearing. Unlike courts, where the clerk can be known as to write cases for approval of the judge and the judge signs them, this person was NOT at present in the hearing, thus anything written about the case, even if written by reading and the viewing of the case video, cannot apply. In fact, isn't it required that my permission is required to allow a third party to be an active participant of the process? Only when the persons are present during all aspects of the process could it be valid. However, the recorded hearing seen her does not establish her presence https://drive.google.com/file/d/1oOgd2CYYPdBxiaZIInuxt4gtDZwDRUoo/view?usp=sharing But the real problem

was this document written by an outside party literally was signed by DEREK CHANTLER. If this decision was to be valid at the very least the preparers signature is required as an included portion of the document itself. In effect DEREK was plagiarizing the document by falsely claiming he wrote it. The petitioner must be notified whether this was going to be done PRIOR to the previous hearing and be approved, otherwise this is using in effect an attorney that is working for the hearing officers own Law Firm. This information can be proven with looking at the Chantler Law Offices website right here (http://www.chantlerlaw.com/aboutus.html). Finally, as a major issue, I AM AN CISSP an IT Information Security Professional, and what I know of regarding this situation at best, DEREK CHANTLER used [redacted] computer and not his own. The problem is that in the legal field if one is not using the proper hardware and logged into the computer using a different user's credentials, that is in effect a Computer Fraud and Abuse act violation as well as a violation of proper Acceptable Use Practices standards in this field. Thus, the PROVIDENCE of this document is so SPOILED that it is of no use and no enforcement. Finally, given that the funding is available, the hearing officers should be ASSIGNED a laptop to perform their work utilizing proper credentials. Given that this work simply involves at most web browsing and office software. Otherwise, this situation does not qualify for Bring Your Own Device to work given the nature of it.

But for the City it is not good because this act resets the clock regarding appealing that decision. Because this hearing officer in effect proved the previous decision was invalid.

In the course of the current petition, the petitioner pointed out that the previous decision was completely defective because of the fact that the decision was NOT written by the Hearing Officer, AND that it identified the wrong petitioner in the case.

So what did this hearing officer do, she tried to AMEND the previous decision. Not only is this not allowed because any amendment would have to be written by the original hearing officer, but one hearing officer cannot revise another ones decision in any way. That is the role and the responsibility of the RHC. Since the RHC did not correct the errors in that petition, it rendered the decision unenforceable.

And this in fact rest the clock regarding the petitioners rights to appeal the decision. Because the revision order was written on October 21st 2022. This act negates any decision that the appeal was not timely, because in effect the previous decision was so defective, it REQUIRED another hearing officer to reset the decision. Mad.

Thus my original appeal is also being submitted from the past, given the current hearing officer reset the appeal clock.

Argument 1: The hearing officer demonstrated bias when considering the arguments from the tenant alone versus the landlord's attorney. What proof do I have, the fact that Juliet Brodie and Jason Tarricone presented the same facts and argument twice that both times the landlord was adjudicated as not maintaining the apartment building. Since I presented practically the same case evidence that means there was no legal basis to rule that the apartment was properly maintained.

Argument 2: Since the two hearings that took place in 2017 and 2018 were never overruled by the RHC, the hearing officer was not even given any discretion whether the current petition was not supported by sufficient evidence. The concept of stare decisis means once the case decision was made and no appeal reversed it, then the lowest court is not permitted to take the role of an appellant court. If the hearing officer knew their role it would have been a case of res judica and the decision was already made. He simply tried to rewrite the history of the landlord's maintenance history. That was not in his power as a hearing officer. This in the hands of the RHC members.

Argument 3: That the attorney submitted and was proven during cross examination false letters and promoted perjurious testimony that event the hearing officer stated was defamatory to the tenant. In effect allowing for character assassination to prevail over evidence that proved that false information was presented by the landlord's attorney. John Carr wrote that I was interfering with work being done at my building, that was proven false. The Balcony contractor made the same claim but was proven false. The plumber's testimony that my abuse of the plumbing was proven false. And upon presentation of the plumbing history proved that the plumbing was not given yearly maintenance. And that the landlord claimed work was performed on the walkway with materials that were not used at all.

Argument 4: The landlords attorney never provided any evidence of actual safety testing being done on the building other than people "jabbing" the wood with a screwdriver. Given that the certificate of occupancy must have some record of compliance with the California Building Code. This is not a presumed fact once the ownership changed hand in the building on Feb 2016. In fact the Mountain View Municipal code Sec. 8.10.3 states that documentation of compliance with the:

"The provisions of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Fire Code, Mountain View Green Building Code, and International Property Maintenance Code shall apply to existing structures and premises; equipment and facilities; light, ventilation, space heating, sanitation, life and fire safety hazards; responsibilities of owners, operators and occupants; and occupancy of existing premises and structures. website states that documentation of inspection of the property"

But given there is no current record of said inspections to document compliance even after 5 years of change of ownership clearly means that the certificate of occupancy has been expired and not properly reissued. In effect the landlord is operating an illegal apartment building in the city of Mountain View. The fact that no certified home inspection was ever performed once the old certificate of occupancy was expired due to change of ownership.

Argument 5: The hearing officer literally expected me to pay and have an electrical and plumbing inspection done on my apartment. Not only is this cost prohibitive against a tenant thus making the cost more than the benefit, but since I do not own the property, I cannot even get anyone to inspect the building. In fact, it is specifically the responsibility of the property owner to perform that task.

Thus, I am also reviving my appeal given that the original decision REQUIRED rewriting, and thus was invalid from the beginning and again this rests the appeal timeliness clock to October 21, 2022

IN CONCLUSION:

The petitioner is warranted an overruling of the hearing officers' decision OR a remand to exclude the evidence and testimony submitted related to the errors above. Given that my appeal has provide ample legal and constitutional reasoning to establish it was not sufficiently performed to the legal standards to be considered valid. If the landlord can produce any evidence in compliance with the above conditions, that evidence is valid, but if no other evidence is available, then the tenant can be shown to have given enough evidence to establish a rent reduction under the CSFRA. The simple truth is the property dropped in values and that ALONE under the CSFRA entitles a tenant to a rent reduction proportionate to the reduction in

value of the building as determined under the official records of the Santa Clara County Tax Assessments.

Dated this 26 of October, 2022.

Attorney Name