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(not for service of pleadings)

August 2, 2013

Mr. Charles Bliss
Codes Division
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Mr. Charles Bliss
Capital Region-Syracuse Bd. of Review
Main Hearing Room, First Floor
Hughes State Office Building
333 East Washington Street
Syracuse, NY 13202

Re: Petition No. 2013-0250, decided July 18, 2013

Dear Mr. Bliss:

Cornell University is in receipt of Petitioner Ochshorn's lengthy e-mail to you dated July 31, 2013, that purports to (1) advance a post-decision re-argument of the majority of his Petition and (2) discourse on a novel matter that was not pled by the Petitioner in his original Petition dated May 28, 2013.

On behalf of Cornell University I respectfully write to register Cornell University's objection to both attempted actions taken by Petitioner Ochshorn.

The objection to Petitioner's attempted actions is based on my understanding that the Board of Review strives where possible to be guided, in its practices, by the New York Civil Practice Law and Rules. (19 NYCRR part 1205, sec. 1205.5 Practice of Boards of Review).

To the first point, the Petitioner's purported re-argument after the Board of Review's Decision on July 18, 2013, of all but two (2) of his Petition's many arguments, Cornell's objection is based on CPLR Rule 2214 governing the service of motion papers and their submission to a court for a ruling. All such papers are to be presented at the hearing, before a decision is made, to provide a complete record for the court to consider. As New York Civil Practice Law and Rules, Rule 2214(c) articulates, "[o]nly papers served before or at the hearing shall be read by the court in support of or in opposition to, the motion unless the court for good cause shall otherwise direct." (emphasis added). Thus, as would be the case before the courts of New York State, it is improper in this proceeding for a party to launch a post-decision argumentative foray directed to the tribunal which made that decision, without first obtaining the permission of the tribunal (which of course the tribunal has the authority to grant "for good cause"). Petitioner did not even attempt to establish "good cause" for his post-decision re-argument. In fact, Petitioner's purported post-decision re-argument is just that - sheer re-argument for the sake of being argumentative, wasting the Board of Review's time on points already considered - as plainly revealed by the fact that Petitioner *re-argues the matters on which he was sustained* by the Board of Review's Decision of July 18, 2013.

To the second point, the Petitioner's pleading of a purported new matter that was not pled in his Petition dated May 28, 2013, (see Ochshorn e-mail dated July 31, 2013, at the 13th paragraph of 19 unnumbered paragraphs), Cornell's objection is based on the fact that the matter is not properly before the Board of Review. It is required under Rule 2214(a) that such a matter be properly noticed for hearing together with the petition or motion and the supporting papers upon which the motion or petition is based. A party cannot argue after the decision is made for relief that the party did not even request. As I understand the procedure of the Board of Review, the matter would be noticed for hearing by the Board of Review, presumably after it receives a proper Petition and supporting papers. See New York Civil Practice Law and Rules, Rule 2214(a).

Petitioner Ochshorn's e-mail of July 31, 2013 was addressed to you but I suspect it was in your capacity as an administrative representative of the NYS Uniform Fire and Building Code Boards of Review, Capital Region-Syracuse Board of Review and that it was intended as a motion to the Board of Review. I therefore likewise respectfully request that this objection on behalf of Cornell University be placed before the Capital Region-Syracuse Board of Review, in opposition to Petitioner's motions.

In the event that the Capital Region-Syracuse Board of Review does decide to permit re-argument by Mr. Ochshorn, as it of course may if it so chooses, then Cornell respectfully requests an opportunity to respond in full prior to any further consideration by the Board of Review.

Thank you for your assistance. If you have any questions please do not hesitate to contact me.

Sincerely,



Shirley K. Egan
Associate University Counsel

SKE:hls:nhp

cc: Jonathan Ochshorn
Gary Wilhelm
Bob Stundtner
Gilbert Delgado
Dean Kent Kleinman
Michael Niechwiadowicz
Thomas D. Hoard