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*(not for service of pleadings)*

October 15, 2013

Mr. Brian Tollisen  
Assistant Director for Regional Services  
Division of Code Enforcement and Administration  
One Commerce Plaza  
99 Washington Avenue  
Albany, NY 12231

Mr. Charles Bliss  
Representative, Southern Tier  
PO Box 129  
Rushford, NY 14777

Re: Petition No. 2013-0250  
Decided July 18, 2013  
Motion for Permission to Reopen denied September 19, 2013

Dear Mr. Tollisen and Mr. Bliss:

Cornell University's representative Gary Wilhelm received a copy of an e-mail dated October 3, 2013 concerning the above-captioned matter, which was sent to Mr. Tollisen by Jonathan Ochshorn. Mr. Ochshorn is a private individual and does not represent Cornell University.

As seems clear from his e-mail, Mr. Ochshorn is attempting yet again to reargue Petition No. 2013-0250, specifically Item 3 of it, without having first requested (or obtained) the permission of the Capital Region-Syracuse Board of Review to do so. Moreover, this attempt is in disregard of the Board's recent denial, on September 19, 2013, of his previous motion requesting the Board's permission to reopen the matter.

On behalf of Cornell University, I respectfully request that this October 3, 2013 e-mail from Mr. Ochshorn be deemed a motion to the Board of Review requesting its permission to allow him to reargue. I understand the Board may, if it so chooses for "good cause," grant Mr. Ochshorn leave to reopen. For the reason stated below, I believe treating Mr. Ochshorn's e-mail as a motion for leave to reopen is lawful and appropriate given that "practice before the boards of review shall be guided by the Civil Practice Law and Rules," to the extent it advances the purposes of the regulations governing the "Practice of Boards of Review." (19 NYCRR Part 1205, sec. 1205.5(e)).

I also respectfully request that this letter containing Cornell's objection to the motion for permission to reopen be likewise placed before the Capital Region-Syracuse Board of Review at the time it considers such motion to reopen.

As cited in my letter of August 2, 2013, a copy of which is attached for reference, the regulations on "Practice of Boards of Review" found at 19 NYCRR Part 1205, section 1205.5(e) suggest that Boards of Review and indeed, all parties appearing before it, "shall be guided by the Civil Practice Law and Rules" where not inconsistent with the regulations found in Title 19 NYCRR, Part 1205. In this case, Mr. Ochshorn's purported re-argument is improper under Civil Practice Law and Rules Rule 2214(c). The only sanctioned way procedurally is for a party *first* to request permission from the court or (as in this case) quasi-judicial board, to reopen and reargue a matter. Only if granted is it appropriate for the moving party to proceed with reargument.

Petitioner Ochshorn states that his focus is Determination No. 3 of the Board of Review's Decision, rendered on July 18, 2013. Mr. Ochshorn re-argues this third point of his petition, and even disputes as "completely irrelevant" the submittal from the City of Ithaca that the Board of Review, in its July 18, 2013 decision, requested the City to make! (E-mail October 3, 2013) On July 18<sup>th</sup> the Board of Review heard - fully - from all three parties concerned, including Mr. Ochshorn, and then exercised its independent, considered judgment to reach its own decision on the matter. The fact that the decision does not coincide with Mr. Ochshorn's position does not mandate further review, no matter how many times he requests it.

In the event that the Capitol Region-Syracuse Board of Review does decide to permit a reopening and reargument by Mr. Ochshorn, as it may if it so chooses, then Cornell respectfully requests the opportunity to respond in full prior to any further consideration by the Board of Review.

Thank you very much. If you have any questions please do not hesitate to contact me.

Sincerely,

  
Shirley K. Egan  
Associate University Counsel

SKE:hls:nhp  
Enclosure

cc: Jonathan Ochshorn  
Gary Wilhelm  
Robert Stundtner  
Gilbert Delgado  
Dean Kent Kleinman  
Mike Niechwiadowicz  
Thomas D. Hoard  
Ed Girzone