Appendix A

2019 IL App (1st) 172874-U

No. 1-17-2874

Order filed on May 28, 2019.

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JAY SHACHTER, Plaintiff-Appellant, v. CITY OF CHICAGO, a municipal corporation, Department of Administrative Hearings, and Department of Streets and Sanitation, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 14 CH 3749 The Honorable Celia M. Gamrath, Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

SUMMARY ORDER

¶ 1 NATURE OF THE CASE

¶ 2 Plaintiff Jay Shachter appeals *pro se* from the circuit court's judgment affirming the administrative decision of the City of Chicago.[1] In particular, the City's Department of Administrative Hearings (Department) found Shachter liable for having weeds on his property in

[1]Shachter also represented himself *pro se* in the proceedings below.

excess of 10 inches, with the e-ticket notices of violation issued based on inspections from June 21, September 18, and October 24 of 2013, by the Department of Streets and Sanitation (79356L, 87263L, 89292L). The Department then fined Shachter.

¶ 3 On appeal, Shachter does not argue that the Department's findings were against the manifest weight of the evidence, nor does he dispute that he violated the City's weed ordinance. Rather, he argues the fact that the Department hearing officers deciding such cases are also paid by the City violates due process. He also argues that the notices of violation were not properly signed, thus depriving the Department and court of jurisdiction.

¶ 4 We affirm while noting that Shachter is no stranger to this court. Somewhat reminiscent of the movie *Groundhog Day*'s time-loop, where the characters relive the same day, Shachter has had overgrown weeds in his yard, and the City has issued citations for weed overgrowth for some 15 years, while this court has affirmed the administrative decisions or otherwise disposed of the cases. See *Shachter v. City of Chicago*, 2016 IL App (1st) 151209-U; *Shachter v. City of Chicago*, 2016 IL App (1st) 150442; *Shachter v. City of Chicago*, 2014 IL App (1st) 140079-U; *Shachter v. City of Chicago*, 2013 IL App (1st) 123566-U; *Shachter v. City of Chicago*, 2013 IL App (1st) 120986-U; *Shachter v. City of Chicago*, 2011 IL App (1st) 103582. A simple search of our docket reveals 12 additional past appeals involving Shachter and the City of Chicago. To put it mildly, Shachter is a litigious party, and this case offers no break in the repeat time-loop.

¶ 5 ANALYSIS

¶ 6 As to Shachter's first contention, the City argues it is barred by collateral estoppel. In *Shachter v. City of Chicago*, 2013 IL App (1st) 123566-U, ¶ 5, this court wrote:

> "The *pro se* plaintiff [Shachter] sought recusal of the administrative hearing officer arguing that he was employed and paid by the City of Chicago. Based on long-

> standing precedent, this bias-type argument is insufficient to show actual bias. *Van Harken v. City of Chicago*, 305 Ill. App. 3d 972, 974 (1999); *Caliendo v. Martin*, 250 Ill. App. 3d 409, 421 (1993); see also *Amundsen v. Chicago Park District*, 218 F. 3d 712, 716 (7th Cir. 2000) (A "bald accusation based solely on the fact that the hearing officer was employed by the Park District, *** by itself is insufficient to establish actual bias."); *Van Harken v. City of Chicago*, 103 F. 3d 1346 [*sic*], 1352-53 (1997). An allegation that the decision maker in a municipal administrative hearing is paid by the municipal body is not the "rare," "extreme," or "extraordinary" facts necessary to require recusal. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 886-87, 890 (2009)."

¶ 7 Shachter now argues hearing officers in his case cannot legitimately decide cases like his because they are contract employees paid by the City and thus depend on the City for their "daily bread." He asserts they have a pecuniary interest and natural tendency to favor the City which undermines fairness. Because the issue that Shachter now cultivates was decided in the above-quoted prior case, which constituted a final judgment on the merits, and the parties are the same, the doctrine of collateral estoppel applies to bar Shachter's claim. See *DuPage Forklift Service, Inc. v. Material Handling Services, Inc.*, 195 Ill. 2d 71, 77 (2001) (defining collateral estoppel); see also *Shachter v. City of Chicago*, 2014 IL App (1st) 140079-U, ¶ 36 (rejecting Shachter's motion to recuse the administrative law officer where Shachter argued that the law officer had a pecuniary interest in the outcome of the hearing because he was an employee of the Department). We agree with the circuit court's ruling that we need not relitigate this well-rejected issue. See also *Van Harken v. City of Chicago*, 103 F. 3d 1346, 1352-53 (1997); see generally *Van Harken v. City of Chicago*, 305 Ill. App. 3d 972 (1999).

¶ 8 Regardless, Shachter forfeited any claim of bias or accompanying claim of constitutional infirmity by failing to request a different hearing officer on that basis or detail his claim during the administrative proceedings. See *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212 (2008); *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 278-79 (1998); *Marozas v. Board of Fire and Police Commissioners of City of Burbank*, 222 Ill. App. 3d 781, 791-92 (1991).

¶ 9 We similarly reject Shachter's second contention on appeal that the notices of violation were not "signed," as required by the weed ordinance because they lacked a handwritten signature. We read the ordinance in its plain and ordinary meaning, in accordance with the drafter's intent. *Nolan v. Hillard*, 309 Ill. App. 3d 129, 143 (1999). The law has consistently interpreted "signed" to embody not only the act of subscribing a document, but also anything which can reasonably be understood to symbolize or manifest the signer's intent to adopt a writing as his or her own and be bound by it. *Just Pants v. Wagner*, 247 Ill. App. 3d 166, 173-74 (1993). This may be accomplished in a multitude of ways, only one of which is a handwritten subscription. *Id.*; see also *Knolls Condominium Association v. Czerwinski*, 321 Ill. App. 3d 916, 919 (2001) (accord); Black's Law Dictionary (10th ed. 2014) ("sign" means "[t]o identify (a record) by means of a signature, mark, or other symbol with the intent to authenticate it as an act or agreement of the person identifying it."); 5 ILCS 175/5-120 (West 2012). As the City notes, Shachter's argument is meritless given that the notices of violation appear certified with the electronic signature of the inspector who issued them. See Black's Law Dictionary (10th ed. 2014) ("electronic record" means "[a]n electronic symbol, sound, or process that is either attached to or logically associated with a document (such as a contract or other record) and executed or adopted by a person with the intent to sign the document."); see also 80 CJS

Signatures § 17 ("One who alleges want of due signature has the burden to prove that claim."). Also, given that the notice of violation bears the inspector's badge number, the inspector is readily identifiable, contrary to Shachter's argument.

¶ 10 CONCLUSION

¶ 11 For the reasons stated, and having weeded out all arguments to the contrary, we affirm the decision of the circuit court affirming the decision of the Department. Shachter is persistent, prolific, and competes for space in our already verdant judicial field, thus reducing our crop yield of cases. This order is entered in accordance with Illinois Supreme Court Rule 23(c)(2) (eff. Apr. 1, 2018).

¶ 12 Affirmed.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JAY F. SHACHTER,

Plaintiff,

v.

CITY OF CHICAGO; CITY OF CHICAGO DEPARTMENT OF ADMINISTRATIVE HEARINGS; and DEPARTMENT OF STREETS & SANITATION,

Defendants.

No. 14 CH 03749
Judge Celia Gamrath
Calendar 6

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ORDER AND OPINION

This matter is before the court on plaintiff Jay Shachter's specification of errors pursuant to section 3-101 *et seq.* of the Illinois Code of Civil Procedure. 735 ILCS 5/3-101 *et seq.* After reviewing the parties' briefs, and considering the record and oral arguments, the court DENIES the specification of errors and finds as follows:

BACKGROUND FACTS

(1) Mr. Shachter's specification of errors seeks reversal of three Orders of Administrative Law Judge Yolaine Dauphin ("ALJ Dauphin") finding that Mr. Shachter was liable for three separate violations of Municipal Code of Chicago § 7-28-120(a). ("MCC") (R. 461–63.)

(2) Mr. Shachter owns property at 6424 N. Whipple St. in Chicago, Illinois, and between August and November 2013 received three Administrative Notices of Violation ("ANOV") for violations of the Chicago Weeds Ordinance, MCC § 7-28-120(a), regarding his property.

(3) On January 29, 2014, the City of Chicago Department of Administrative Hearings ("DOAH") conducted a consolidated administrative hearing and found that Mr. Shachter was liable for all three ANOVs. (R. 91–93.)

(4) Mr. Shachter filed a Complaint for Declaratory Judgment and Administrative Review on March 4, 2014. On September 30, 2015, this court granted Defendants' motion to dismiss Plaintiff's declaratory judgment claims, wherein he challenged the entire administrative process on the basis of a violation of *Caperton v. Massey*. (Compl., 4.)

(5) On March 3, 2016, by agreement of the parties, the court remanded the three administrative hearings under review for a re-hearing on July 11, 2016, "with instructions not to consider the condition of the parkway." (R. 94–96.) The agreed order also specified that "no new evidence or arguments regarding the ordinance violation may be presented unless requested by the ALJ." (R. 94–96.)

(6) At the remand hearing, Mr. Shachter requested the opportunity to present new evidence and arguments about whether there was a valid City inspector signature on the ANOVs. If not, he argued, the administrative tribunal lacked jurisdiction to hear the case.

(7) ALJ Dauphin gave Mr. Shachter leeway in arguing his points, and allowed him to make an offer of proof as to the lack of signatures on the ANOVs. (R. 105-137.) The ALJ ruled against Mr. Shachter on these points, albeit agreeing with him that the City inspector signature on the ANOVs is "not a handwritten signature." (R. 238–239.) Nonetheless, "Whether it's a digital signature or an electronic signature...Looking to the City's ordinance, I [the ALJ] don't believe[] that it requires anymore than what is provided in this particular case." (R. 239.) The ALJ ultimately found that the City presented a *prime facie* case and the evidence supported the City inspector's determination that the weeds were greater than 10 inches in height in violation of MCC § 7-28-120(a).

(8) Mr. Shachter filed his specifications of errors with this court on March 30, 2017. For the reasons stated below, the court DENIES the specification of errors and affirms the decision of DOAH.

ANALYSIS

(9) Section 3-110 of the Illinois Code of Civil Procedure mandates that the court's "hearing and determination shall extend to all questions of law and fact presented by the entire record before the court." 735 ILCS 5/3-110. The court "may not overturn an administrative decision unless the authority of the administrative body was exercised in an arbitrary or capricious manner or the decision is against the manifest weight of the evidence." *Godinez v. Sullivan-Lackey*, 352 Ill. App. 3d 87, 90 (1st Dist. 2004). The court reviews "an agency's conclusions of law *de novo*, its factual findings to ascertain whether they are against the manifest weight of the evidence, and review[s] its decisions on mixed questions of law and fact for clear error." *Moore v. Bd. of Educ. of City of Chicago*, 2016 IL App (1st) 133148, ¶ 23, *citing Cinkus v. Village of Stickney Mun. Officers Electoral Bd.*, 228 Ill.2d 200 (2008).

(10) First, Mr. Shachter argues ALJ Dauphin erred in not allowing new evidence or argument concerning the purported invalidity of the City inspector signature on the ANOVs. The court disagrees. The agreed order allowed remand for a limited purpose, and expressly disallowed new evidence or

arguments "regarding the ordinance violation." Notwithstanding, ALJ Dauphin permitted Mr. Shachter to argue his points and considered the evidence presented through the offer of proof. (R.238–239.) Indeed, she found the signature on the ANOVs "is not a handwritten signature" (R.238), which is precisely what Mr. Shachter intended to prove through his witnesses. However, she determined the lack of an original handwritten signature was neither fatal nor required. Rather, a digital or electronic signature was sufficient to comply with the ordinance in this particular case. (R. 239.) Nonetheless, Mr. Shachter contends DOAH lacked jurisdiction to hear the case based on the supposed technical violation of the signature requirement.

(11) The record is clear Mr. Shachter received adequate notice of the proceeding, was able to argue his points and make an offer of proof, and ALJ Dauphin took this into consideration in making her ruling. (R. 238–239.)

(12) The court finds DOAH did not lack jurisdiction to hear this case merely because the signature may not have comported with the technical requirements of the Code. *See Shachter v. Chicago*, 2011 IL App (1st) 103582, ¶ 44, *citing* 735 ILCS 5/3-111(b) (holding that the failure to observe the technical requirements shall not constitute grounds for reversal unless such error or failure materially affected the rights of any party and resulted in substantial injustice). Just as Mr. Shachter was unable to show prejudice or injustice in the 2011 Appellate Court case (*id.*), he is unable to show it here.

(13) Mr. Shachter did not raise the issue of the legitimacy of the signature on the ANOVs in his first hearing, but only raised it for the first time on remand, two years later. The March 3, 2016 agreed remand order specified that the parties would not present new argument or evidence regarding the ordinance violation. Any new argument or evidence presented at the remand hearing was waived.

(14) Waiver aside, Mr. Shachter does not credibly allege any prejudice resulting from the digital, electronical, or pixilated signatures with a bitmap pattern. Taken to the extreme, he asserts, for all he knows, the person who signed may be dead. Yet, this is pure conjecture on his part without one iota of corroboration. To the contrary, next to the signature is the inspector's star/badge number, which the Appellate Court in *Shachter* found significant. The notice in this case contained all the information needed for Mr. Shachter to determine the identity and question the inspector the about his signature and certification. As such, ALJ Dauphin did not err in finding the City established a *prima facie* case and DOAH had jurisdiction to hear the case.

(15) Next, Mr. Shachter raises factual questions regarding the state of his lawn and ALJ Dauphin's findings. The ALJ carefully reviewed the evidence and made findings of fact regarding the plant life

on Mr. Shachter's property based upon photographs and witness testimony. (R. 241–45.) Mr. Shachter attempts to reargue his case before the court, but has not met his lofty burden of proving the ALJ's findings are against the manifest weight of the evidence.

(16) Lastly, Mr. Shachter raises due process and constitutional arguments that were not presented to DOAH. "Failure to raise an issue before an administrative body—even a question of constitutional due process rights—waives the issue for review." *Lehmann v. Dep't of Children & Family Servs.*, 342 Ill. App. 3d 1069, 1078 (1st Dist. 2003).

(17) Mr. Shachter argues that the circuit court *may* consider such arguments for the first time on review, citing to *Hunt v. Daley*, 286 Ill. App. 3d 766, 771 (1st Dist. 1997). While waiver may be "an admonition to litigants, not a limitation upon the jurisdiction of a reviewing court," the court declines to invoke any discretion here, especially when these same issues of the constitutionality of the ordinance as applied to him, and Mr. Shachter's due process rights have already been litigated by a previous court. *See Shachter*, 2011 IL App (1st) 103582 (noting Mr. Shachter is a repeat offender of the weeds ordinance, and rejecting his constitutional challenges); *see* Judge Mikva's Order September 30, 2015 (dismissing Mr. Shachter's declaratory judgment claims alleging a due process violation, and rejecting his reading of *Caperton*).

(18) Further, *Shachter* is clear on the point that "a party in an administrative proceeding should assert a constitutional challenge on the record before the administrative tribunal, because administrative review is confined to the evidence offered before the agency." 2011 IL App (1st) 103582 at ¶ 88.

CONCLUSION

IT IS ORDERED: Jay Shachter's specification of errors is DENIED. The decision of DOAH as to all three separate violations is AFFIRMED.

ENTERED:

Judge Celia Gamrath

JUN 23 2017

Circuit Court - 2031

Judge Celia Gamrath, #2031
Circuit Court of Cook County, Illinois
County Department, Chancery Division

Appendix C

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
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September 25, 2019

In re: Jay Shachter, petitioner, v. City of Chicago, etc., respondent.
Leave to appeal, Appellate Court, First District.
125015

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 10/30/2019.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court