

APPENDIX TABLE OF CONTENTS

Order Denying Petition for Certification, Supreme Court of New Jersey (Signed May 18, 2026; Filed May 22, 2026)	1a
Opinion, Superior Court of New Jersey Appellate Division (November 21, 2025)	2a
Final Agency Decision, State of New Jersey Department of Community Affairs (April 24, 2024)	13a
Initial Decision, State of New Jersey Office of Administrative Law (March 11, 2024)	16a

App.1a

**ORDER DENYING PETITION FOR
CERTIFICATION, SUPREME COURT
OF NEW JERSEY
(SIGNED MAY 18, 2026; FILED MAY 22, 2026)**

SUPREME COURT OF NEW JERSEY
C-545 September Term
091525

Department of Community Affairs,
Bureau of Housing Inspection,

Petitioner-Respondent,

v.

Frank Bright,

Respondent-Petitioner.

FILED, Clerk of the Supreme Court,
22 May 2026, 091525

ORDER

A petition for certification of the judgment in A-003108-23 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 18th day of May, 2026.

/s/ Heather Baker
Clerk of the Supreme Court

**OPINION, SUPERIOR COURT OF NEW
JERSEY APPELLATE DIVISION
(NOVEMBER 21, 2025)**

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

This opinion shall not “constitute precedent or be binding upon any court.” Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1 :36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

**DEPARTMENT OF COMMUNITY AFFAIRS,
BUREAU OF HOUSING INSPECTION,**

Petitioner-Respondent,

v.

FRANK BRIGHT,

Respondent-Appellant.

Docket No. A-3108-23

On appeal from the New Jersey Department of
Community Affairs, Docket No. 200646/1214010986.

Before: SUSSWEIN, CHASE
and AUGOSTINI, Judges.

PER CURIAM

Frank Bright appeals an April 24, 2024 final agency decision of the Department of Community Affairs (“DCA”), which upheld a Notice of Statutory Violation and Order to Pay Penalty issued by the Bureau of Housing Inspection (“Bureau”). We affirm.

I

The subject property is a multiple dwelling property located on George Street in New Brunswick and is registered by Bright with the Bureau under the Hotel and Multiple Dwelling Law (“HMDL”), N.J.S.A. 55:13A-1 to -31.

On July 19, 2019, the Bureau inspected the property and issued an Inspection Report and Orders of the Commissioner, citing nineteen violations. However, no fines were issued. This report advised Bright that a reinspection would take place after sixty days and that he could request an extension of time to abate or contest the violations. He did not contest the report or seek an extension.

When the Bureau reinspected the property on November 10, 2022, it determined that, of the nineteen violations previously cited, eight violations remained unabated, five violations were undetermined, and six had been abated. Consequently, the Bureau issued a Commissioner’s Notice of Statutory Violation and Order to Pay Penalty of \$525. Bright promptly filed an administrative appeal and the matter was transferred to the Office of Administrative Law for a hearing by an Administrative Law Judge (“ALJ”).

The hearing commenced in August 2023. The Bureau provided testimony from Inspector Sean Daly and Senior Inspector Neil Costanzo. Bright cross-

examined these witnesses but chose not to testify himself or to present other witnesses. The Bureau submitted several exhibits, including photographs documenting the violations; Bright offered a single exhibit—an April 2023 email with attachments.

The ALJ found the Bureau’s witnesses to be credible and determined the eight violations remained unabated as of November 2022. The ALJ concluded there were no mitigating or aggravating circumstances and found the penalties assessed by the Bureau complied with N.J.A.C. 5:10-1.17. The ALJ affirmed the \$525 penalty and ordered that Bright abate the interior violations within thirty-days and the exterior violations within sixty-days of the decision.

Bright submitted exceptions to the ALJ’s initial decision. On April 24, DCA issued its final agency decision adopting the All’s findings. This appeal followed.

II

We begin our analysis by acknowledging the legal principles that govern this appeal. Our review of an agency’s final decision is limited. *Hayes v. Bd. of Trs., Police & Firemen’s Ret. Sys.*, 421 N.J. Super. 43, 51 (App. Div. 2011). Our function is to review “agency decisions under an arbitrary and capricious standard.” *Zimmerman v. Sussex Cnty. Educ. Servs. Com’n*, 237 N.J. 465, 475 (2019). We will uphold an agency’s determination “unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record.” *Saccone v. Bd. of Trs., Police & Firemen’s Ret. Sys.*, 219 N.J. 369, 380 (2014) (quoting *Russo v. Bd. of Trs., Police & Firemen’s*

Ret. Sys., 206 N.J. 14, 27 (2011)). In determining whether the agency's decision is arbitrary, capricious, or unreasonable, we must examine:

- (1) whether the agency's decision offends the State or Federal Constitution;
- (2) whether the agency's action violates express or implied legislative policies;
- (3) whether the record contains substantial evidence to support the findings on which the agency based its action; and
- (4) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[*In re Taylor*, 158 N.J. 644, 656 (1999) (quoting *Brady v. Bd. of Rev.*, 152 N.J. 197, 210-11 (1997)).]

We examine whether the findings of the agency could have been reached on the credible evidence in the record, considering the proofs as a whole. *Close v. Kordulak Bros.*, 44 N.J. 589, 598-99 (1965). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." *In re Arenas*, 385 N.J. Super. 440, 443-44 (App. Div. 2006) (citing *McGowan v. N.J. State Parole Bd.*, 347 N.J. Super. 544, 563 (App. Div. 2002)). In reviewing an agency's decision, we "must be mindful of, and deferential to, the agency's 'expertise and superior knowledge of a particular field[.]'" *Circus Liquors, Inc. v. Governing Body of Middletown Twp.*, 199 N.J. 1, 10

(2009) (quoting *Greenwood v. State Police Training Ctr.*, 127 N.J. 500, 513 (1992)), and “may not substitute [our] own judgment for the agency’s,” *In re Stallworth*, 208 N.J. 182, 194 (2011) (quoting *In re Carter*, 191 N.J. 474, 483 (2007)). We defer to an agency’s interpretation of its own regulations and applicable statutes. *In re M.M.*, 463 N.J. Super. 128, 137-38 (App. Div. 2020).

III

Before considering petitioner’s substantive arguments, it is important to review the HMDL. The purpose of the HMDL is to “protect[] . . . the health and welfare of the residents of this State in order to assure the provision therefor of decent, standard and safe units of dwelling space.” N.J.S.A. 55:13A-2. In enacting the HMDL, the Legislature intended to provide “stronger and more detailed measures . . . for the protection of tenants.” *Trentacost v. Brussel*, 82 N.J. 214, 230 (1980). The HMDL is liberally construed and grants broad authority to the Department to regulate hotels and multiple dwellings throughout New Jersey. *Rothman v. Dep’t of Cmty. Affairs*, 226 N.J. Super. 229, 231-32 (App. Div. 1988) (citing N.J.S.A. 55:13A-2).

The HMDL expressly grants to the Department’s Commissioner “all the powers necessary and appropriate to carry out and execute the purposes of [the HMDL].” N.J.S.A. 55:13A-6. Those powers include the Department’s authority to protect occupants of hotels and multiple dwellings with respect to the issuance, suspension, or revocation of HMDL licenses. *Ibid.*; see also N.J.A.C. 5:10-1B.1. To achieve those goals, the HMDL empowers the Department to promulgate

regulations “deem[ed] necessary to assure that any hotel or multiple dwelling will be maintained in such manner as is consistent with, and will protect, the health, safety, and welfare of the occupants or intended occupants thereof, or of the public generally.” N.J.S.A. 55:13A-7. Further, DCA Bureau inspectors are authorized to “enter upon and examine and inspect at all reasonable times any building, enclosure, or premises, or any part thereof . . . for the purpose of determining compliance with” the HMDL and its implementing regulations. N.J.A.C. 5:10-1.10(a); *see also* N.J.S.A. 55:13A-6(b) (authorizing the DCA “[t]o enter and inspect, without prior notice, any hotel or multiple dwelling . . . and to make such investigation as is reasonably necessary”). The Department’s Commissioner has the power to carry out the purposes of the HMDL pertaining to assessing penalties. In particular, under N.J.S.A. 55:13A-6(g), the Department’s Commissioner may “assess penalties and to compromise and settle any claim for a penalty for any violation . . . in such amount in the discretion of the commissioner as may appear appropriate and equitable under all of the circumstances of said violation.”

IV

On appeal, petitioner’s main contention is that, for a variety of reasons, he was not afforded due process. We are not persuaded.

The Due Process Clause of the Fourteenth Amendment provides that a State may not “deprive any person of life, liberty, or property, without due process of law.” U.S. Const., amend. XIV, § 1. The concept of “procedural due process” places “constraints on governmental decisions which deprive individuals of

‘liberty’ or ‘property’ interests within the meaning of this clause. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

The United States Supreme Court has held that “some form of hearing is required before an individual is finally deprived of a property interest.” *Id.* at 333. “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Ibid.* (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). However, beyond this basic obligation, “due process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). “[N]ot all situations calling for procedural safeguards call for the same kind of procedure.” *Ibid.*

First, Bright asserts material witnesses who conducted inspections and had direct knowledge of the alleged violations were not produced at trial, depriving him of the opportunity to confront and cross-examine them. He also objects to the lack of photographic evidence for some of the violations. These arguments are without merit. The Bureau had the burden of proving the violations by a preponderance of the evidence. *Liberty Mut. Ins. Co. v. Land*, 186 N.J. 163, 169 (2006). How it meets its evidentiary burden is properly left to the Bureau’s discretion. Bright’s due process rights were not violated by how the Bureau’s decided to present its case. Moreover, Bright had the opportunity to call any witness or present any photographs that he deemed necessary to rebut the Bureau’s proofs.

Next, Bright argues that Inspector Daly was never on location despite his testimony that he inspected the property on November 10, 2022. We must “give due regard to [an] agency’s credibility findings.” *Ardan v.*

Bd. of Rev., 444 N.J. Super. 576, 584 (App. Div. 2016); see also *Parsells v. Bd. of Educ. of Borough of Somerville, Somerset County*, 254 N.J. 152, 159 (2023). We will “not disturb the factual findings . . . unless we are convinced that they are so manifestly unsupported by[,] or inconsistent with[,] the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice.” *D’Agostino v. Maldonado*, 216 N.J. 168, 182 (2013) (fourth alteration in original) (quoting *Seidman v. Clifton Say. Bank, S.L.A.*, 205 N.J. 150, 169 (2011)). Additionally, we defer to credibility determinations because the judge “hears the case, sees and observes the witnesses, and hears them testify,’ affording [the judge] ‘a better perspective than a reviewing court in evaluating the veracity of a witness.’” *Gnall v. Gnall*, 222 N.J. 414, 428 (2015) (quoting *Cesare v. Cesare*, 154 N.J. 394, 412 (1998)). The ALJ determined that Daly was a credible witness and was present at the inspection. The ALJ’s determination is supported by sufficient evidence in the record.

We next address Bright’s contention that it was improper for Costanzo to visit the Property weeks before trial to take photographs and to familiarize himself with the case in anticipation of his hearing testimony. Here, no additional violations were issued as a result of Costanzo’s visit. Moreover, Bright’s claim that the photographs taken were “being used to backdate alleged violations from years prior” is belied by the record.

With respect to Bright’s contention regarding discovery, we see no impropriety by DCA having provided “packets of information” to the ALJ prior to the hearing. Nor are we persuaded that petitioner is

entitled to a new hearing or other relief on the grounds that discovery was not provided to him in a timely manner. Bright waived these assertions when discussing DCA's exhibits; the ALJ asked him, "do you have any objection to any of these [e]xhibits?" Bright answered, "[n]o, no [be]cause it actually worked out in my favor." As such, we see no reason for our intervention.

Bright also contends that the ALJ improperly conducted a private investigation to determine who owned the property. The New Brunswick Tax Assessors Office was the source of the information concerning ownership of the Property. Under N.J.A.C. 1:1-15.2(a), an ALJ may take official notice of judicially noticeable facts consistent with N.J.R.E. 201. N.J.R.E. 201(b)(3) provides that a court may judicially notice "specific facts and propositions of generalized knowledge which are capable of immediate determination by resort to sources whose accuracy cannot reasonably be questioned." We are satisfied that the information kept by the Tax Assessor's Office was reliable. Moreover, Bright admitted the property was his in the April 2023 emails that he admitted into evidence. In one of those emails Bright told Daly that he was "not welcomed not invited to enter my property at 218 George Street, New Brunswick, New Jersey 08901."

Bright also contends the ALJ violated his Fifth Amendment rights by compelling him, a self-represented litigant, to testify in order to enter documents into the record. The Fifth Amendment provides in pertinent part, "[n]o person shall be . . . compelled in any criminal case to be a witness against [themselves]." U.S. Const. amend. V. Under New Jersey law, the privilege is codified at N.J.S.A. 2A:84A-19.

That privilege extends to administrative proceedings, N.J.A.C. 1:1-15.4; see *State, Dept of Law & Pub. Safety, Div. of Gaming Enft v. Merlino*, 216 N.J. Super. 579, 587 (App. Div. 1987). However, “[p]rotection against self-incrimination ‘applies only when the accused is compelled to make a testimonial communication that is incriminating.’” *Borough of Franklin v. Smith*, 466 N.J. Super. 487, 499 (App. Div. 2021) (quoting *Fisher v. United States*, 425 U.S. 391, 408 (1976)). N.J.R.E. 502 makes clear, moreover, that a “matter will not be held to incriminate if it clearly appears that the witness has no reasonable cause to apprehend criminal prosecution.”

Nothing in the administrative matter before us suggests that Bright reasonably apprehended that his answer would expose him to criminal prosecution. And in any event, the record shows, despite Bright’s contention, the ALJ did not compel him to answer, considering that when he refused, the ALJ simply proceeded with the hearing. Consequently, there was no violation of Bright’s right against self-incrimination.

Finally, we only briefly address Bright’s contention that the ALJ erred by not sequestering the witnesses. Bright’s reliance on N.J.R.E. 615 is misplaced. That rule states, “[a]t the request of a party or on the court’s own motion, the court may, in accordance with law, enter an order sequestering the witnesses.” N.J.R.E. 615. Our review of the record shows that Bright never requested that witnesses be sequestered. In any event, N.J.A.C. 1:1-15.1(c) makes clear that “[p]arties in contested cases shall not be bound by statutory or common law rules of evidence or any formally adopted in the New Jersey Rules except as specifically pro-

App.12a

vided in these rules." Under N.J.A.C. 1:1-15.8, witnesses are not required to be sequestered.

After a thorough review of the record, we are satisfied the final agency decision is supported by credible evidence, and the assessment of penalties was lawful and appropriate. Any remaining arguments raised by petitioner do not require further discussion, as they lack sufficient merit. R. 2:11-3(e)(1)(D).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

/s/ M.C. Hanley
Clerk of the Appellate Division

**FINAL AGENCY DECISION,
STATE OF NEW JERSEY DEPARTMENT OF
COMMUNITY AFFAIRS
(APRIL 24, 2024)**

STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS

DEPARTMENT OF COMMUNITY AFFAIRS,
BUREAU OF HOUSING INSPECTION,

Petitioner,

v.

FRANK BRIGHT 218 GEORGE STREET,
NEW BRUNSWICK, MIDDLESEX COUNTY,

Respondent.

Final Agency Decision
Oal Dkt. No: CAF 04457-23
Agency Dkt. No: 200646/1214010986

FINAL AGENCY DECISION

This case is an appeal by Respondent Frank Bright, of a \$525 penalty issued to him by Petitioner Bureau of Housing Inspection. The Bureau performed an inspection on Respondent's property at 218 George Street, New Brunswick on July 19, 2019, and subsequently issued an Inspection Report and Orders of the

Commissioner. Exhibit P-1. That Report identified violations of the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq., including several life safety violations. *Ibid*; Initial Decision, page 3.

Due to COVID, a reinspection was not done until November 10, 2022. Initial Decision, page 4. That reinspection resulted in the issuance by the Bureau of a Commissioner's Notice of Statutory Violation and Order to Pay Penalty. Exhibit P-2. The reinspection identified eight violations that had not been corrected, and Respondent was thus fined the total of \$525. *Ibid*; Initial Decision, page 4. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law, where a hearing was held before Administrative Law Judge ("ALJ") Carl V. Buck III on August 15, 2023.

The record closed on December 12, 2023, and an Initial Decision was issued on March 11, 2024. In that Initial Decision the ALJ found that the testimony of the Bureau's witnesses was credible. Initial Decision, page 11. In contrast, the ALJ found Respondent not credible. *Ibid*. The ALJ determined that, as testified by the Bureau representatives and set forth in the documents described above, the reinspection identified violations that had not been abated (and were in fact still not abated as of November 10, 2023). Initial Decision, pages 16-17. The ALJ thus concluded that the \$525 penalty was appropriate under the circumstances. Initial Decision, page 18.

App.15a

I have reviewed the Initial Decision, as well as the Exceptions filed by Respondent and the reply filed by the Bureau. For all of the reasons set forth in the Initial Decision, and the Bureau's reply, I HEREBY AFFIRM the Initial Decision.

/s/ Jacquelyn A. Suarez
Acting Commissioner

Date: 4/24/24

App.16a

**INITIAL DECISION, STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
(MARCH 11, 2024)**

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

DEPARTMENT OF COMMUNITY AFFAIRS,
BUREAU OF HOUSING INSPECTION,

Petitioner,

v.

FRANK BRIGHT — 218 GEORGE STREET
NEW BRUNSWICK, MIDDLESEX COUNTY,

Respondent.

OAL DKT. No. CAF 04457-23

Agency APL No. 200646/1214010986

Record Closed: December 12, 2023

Decided: March 11, 2024

Before: Carl V. BUCK III, ALJ.

INITIAL DECISION

STATEMENT OF THE CASE

Respondent, Frank Bright (Bright or respondent), with business address of 218 George Street, New Brunswick, New Jersey (property), appeals from a “Commissioner’s Notice of Statutory Violation and Order to Pay Penalty” dated November 11, 2022, (Notice 2) in the amount of \$525 issued by the Bureau of Housing Inspection of the Department of Community Affairs (DCA) for alleged failure to abate violations of Section 19(a) of the Hotel and Multiple Dwelling Law N.J.S.A. 55:13A-1, et seq.

PROCEDURAL HISTORY

On July 19, 2019, the Bureau of Housing Inspection (Bureau) of the Department of Community Affairs (DCA) issued to respondent an (sic) “Commissioner’s Notice of Statutory Violation and Order to Pay Penalty” (Notice 1), ordering that the violations listed in the Inspection Report be corrected by six months from the date of violation notice. On November 10, 2022, the Bureau re-inspected the property and issued to respondent Notice 2, which stated that respondent was in violation of Section 19(a) of the Hotel and Multiple Dwelling Law (N.J.S.A. 55:13A-1 et seq.) for failure to comply with the previous order, dated July 19, 2019.

Respondent requested a hearing on November 18, 2022, and the DCA transmitted the contested case to the Office of Administrative Law (OAL) by letter, dated May 12, 2023, where it was filed on May 18, 2023. The matter was received by the OAL on May 18, 2024. The hearing was held on August 15, 2023. The record closed on December 12, 2023, upon receipt of supplemental documentation and closing summations

from the parties. An extension for issuance of this Initial Decision was requested and granted.

BACKGROUND

On July 19, 2019, the State of New Jersey, Department of Community Affairs, Bureau of Housing Inspection conducted an inspection of 218 George Street, New Brunswick, Middlesex County (property) per the provisions of the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq. (Law). Bright received the Inspection Report (report) citing nineteen violations to the property and Orders of the Commissioner (Orders) for the July 19, 2019, five-year cyclical inspection pursuant to the Law on or about July 29, 2019. Six of the violations were characterized as "Life Safety" violations. Per N.J.S.A. 55:13A-1 et seq., the notice stated that a reinspect on or (sic) the property would take place on or after sixty days from receipt of the inspection report. No fine was issued with this notice. The owner also had the opportunity to request an extension of time to abate the violations or contest the violations upon receipt of said orders. No extension of time nor appeal was received by the Bureau. (Exhibit P-1.)

On November 10, 2022, a reinspection of the cited violations was conducted with eight violations deemed unabated, five violations deemed undetermined, and five violations abated. Due to the eight violations having been found unabated in three areas of the building a penalty was issued in the amount of \$525. (Exhibit P-2.)

TESTIMONY AND FINDINGS OF FACT

The following is not intended to be a verbatim report of the witnesses' testimony, but rather is a summary of same regarding the most relevant matters.

Petitioner:

Carolyn Long (Long) is employed as a Compliance Officer 1 for petitioner, Bureau of Housing Inspection (Bureau), DCA. She testified to the first inspection conducted by Sean Daly (Daly), an Inspector for the DCA. The first inspection of July 2019 revealed nineteen violations (4208061 through 4208079 inclusive¹) as detailed in Notice 1 (P-1.) Six of these are noted as "Life Safety" violations. Notice 1 stated that the owner had sixty days to fix or contest the violations and the owner could also request an extension. Notice 1 reflects that Daly conducted the initial inspection of the Property on July 19, 2019. (P-1.) The owner did not contest the report, nor did he request an extension.

Due to restrictions on inspections imposed by COVID-19 constraints a reinspection did not occur within the 60 days noted in Notice 1. On November 10, 2022, a reinspection of the nineteen cited violations was conducted with eight violations deemed unabated, five violations deemed undetermined, and five violations abated. One of the violations was issued as installation of a self-closing, self-locking door on the exterior entrance. The penalty for that violation was \$175. There were six unabated violations to the exterior which generated a \$175 violation and a non-

¹ The witnesses referred to eighteen violations although the notice cites nineteen violations.

life safety issue of broken glass that generated a \$175 violation. Due to the violations having been found unabated in three areas of the building a penalty was issued in the amount of \$525. (Exhibit P-2.)

On cross-examination, Long was questioned by Bright regarding an alleged appeal filed by him in 2019. She replied that she had no information on such an appeal and explained the appeal process. Bright stated he had gone to the office and spoke with “somebody behind a desk”. Bright asked if the employees who worked behind the desk in 2019 were still employed but did not have the name of a particular employee. Bright became entrenched in a query as to how he could have obtained the name of employees from 2019 through an interrogatory process and the lack of information on that process. Bright stated that there was a possibility that one of the employees had information that may absolve him in this matter.

Sean Daly (Daly) is employed as Inspector Multiple Dwelling 2 for petitioner. He is licensed as a residential building inspector, to do multiple dwellings, a housing code official and as a fire inspector.

Daly’s re-inspection of November 10, 2022, reflected those violations he determined to be either abated or open. He was able to enter the property as violation closings of the world was unabated. The door was open, and he entered the building. On the same day, the Bureau issued a “Commissioner’s Notice of Statutory Violation and Order to Pay Penalty” in the amount of \$525 (Penalty Order) and “Inspection Report and Orders of the Commissioner” for failure to comply with the conditions contained in report 1. (P-2.)

App.21a

Daly reviewed the Inspection Report and testified that the following five violations remained open at the Property as of the November 10, 2022, re-inspection:

Violation ID 4208061, Common Area Entrance

Provide self-closing and self-locking exterior entrance door(s) leading to interior common areas of a multiple dwelling. (N.J.A.C. 5:10:19-2(a)8).

Daly stated the door was open and that a self-closing and self-closing exterior door was not present.

Violation ID 4208073, Exterior Porch

Painting wood trim with an appropriate coating. (N.J.A.C. 5:10:7.3(c))

Daly stated the wood had not been painted with an appropriate paint.

Violation ID 4208072, Exterior Porch

Paint window frame trim with an appropriate coating. (N.J.A.C. 5:10:7.3(b))

Daly stated the area had not been painted with an appropriate paint.

Violation ID 4208075. Exterior Porch

Paint exterior door frames with an appropriate coating (N.J.A.C. 5:10:7.3(c))

Daly stated the area had not been painted with an appropriate paint.

Violation ID 4208074, Exterior Porch

Paint exterior door(s) with an appropriate coating. (N.J.A.C. 5:10:7.3(c))

Daly stated the area had not been painted with an appropriate paint.

Violation ID 4208071. Exterior Porch

Paint railing to be free of rust, peeling, chipping paint. (N.J.A.C. 5:10:7.3(c))

Daly stated the area had not been abated to resolve the issues.

Violation ID 4208076. Exterior Porch

Paint exterior woodwork with an appropriate coating. (N.J.A.C. 5:10:7.3(c))

Daly stated the area had not been painted with an appropriate paint.

Violation ID 4208079, Unit 2L. Floor 2, Bathroom

Replace broken glass. (N.J.A.C. 5:10:7.3(c))

Daly stated the glass had not been repaired or replaced.

On cross-examination Daly was asked by Bright about his memory of the cited violations in 2019 and the dates of submission of the August photographs. Bright again mentioned the ethics charge to be filed against the tribunal.

Bright also questioned Daly on the emails and the email addresses and their accuracy. Bright questioned the DCA's office telephone(s) and if they worked.

App.23a

Neal Costanzo (Costanzo) is employed by the DCA Inspector 2, Senior Inspector. He is also licensed as a housing code official and is licensed to inspect multiple dwelling properties. He took pictures of the property on August 9, 2023, and testified to a number of those pictures and the condition of the property to which they corresponded. (P-4, A-G.)

Information related to the individual pictures is as follows:

- a. Purported to be cracked window in bathroom.
- b. Purported to be a bathroom window.
- c. Front porch area to the right as looking at property. Costanzo, after questioning by both parties, stated this did not look to be painted.
- d. Portion of railing on the front porch of the property. Costanzo, after questioning by both parties, stated this did not look to be painted.
- e. Alternate view of that railing. Costanzo, after questioning by both parties, stated this did not look to be painted.
- f. Costanzo, after questioning by both parties, stated this did not look like it was abated.

Costanzo was cross examined on whether he had accosted a woman walking a dog while at the property on August 11, 2023, and denied that he had. He had spoken with the woman and determined that she lived in a downstairs unit where no violations existed.

At the time Costanzo was at the property he was speaking to Daly to ascertain the units where violations existed.

Costanzo was also cross examined on whether there was any evidence that any work had been done to the property. Costanzo said it showed no evidence that any work was done. Costanzo was also questioned about pictures that had not originally been marked for identification due to an objection by Bright as Bright stated he had not received those pictures five days before the hearing. However Bright questioned Costanzo about the pictures which were subsequently marked as 4 h, 4 i and 4 j. 4 h showed a picture from the street showing an entry, foyer, and some side porch areas of a property with the numbers "218" above the door lintel. Costanzo identified this as 218 George Street, the subject property. Bright would not state whether or not this was his property yet persisted in questioning Costanzo about the pictures of the property and possessed a purported knowledge of the property in the pictures. Costanzo "(sic) should be Bright not Costanzo" would not state whether or not these were pictures of 218 George Street, neither would he state if he was the owner of the property — citing his Fifth Amendment² right against

² Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property,

self-incrimination.³ When asked by me of the photographs presented were of his property he stated “Oh, oh. You’re not making me violate the Fifth Amendment. What are you crazy?” Bright also stated, “That’s an ethics case right there.”

Bright was provided copies of a number of these photographs in an email dated August 10, 2023. (P-4, A-G.)

Costanzo testified that these violations were old and had existed previously. Both the testimony and report 1 reflect that Daly conducted the initial inspection of the Property on July 19, 2019, (P-1) and conducted the re-inspection of the property on November 10, 2022, and issued report 2. (P-2.) The initial inspection resulted in citations for nineteen alleged violations. Eight remained unabated as of the November 10, 2022, re-inspection.

Respondent:

Frank Bright, the respondent, declined to testify. He did reiterate his concern about violation of his Fifth Amendment rights and constitutionality of the proceedings. Bright also asked questions about entertaining motions and did not pursue that issue.

without due process of law; nor shall private property
be taken for public use, without just compensation.

³ Bright was told, several times, that a Fifth Amendment right to self-incrimination was applicable in criminal proceedings. As this was not a criminal proceeding, the Fifth Amendment right was not applicable. He was also informed that he need not say anything if he did not want to. However, his compulsion to spew invective against the tribunal and members of the petitioner’s representatives overcame any potential ability to remain silent.

FINDINGS

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also must be credible. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See *Spagnuolo v. Bonnet*, 16 N.J. 546 (1954); *Gallo v. Gallo*, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story in light of its rationality or internal consistency and the manner in which it "hangs together" with other evidence. *Carbo v. United States*, 314 F.2d 718, 749 (9th Cir. 1963). Also, "the interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." *State v. Salimone*, 19 N.J. Super. 600, 608 (App. Div.), *certif. denied*, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. *Congleton v. Pura-Tex Stone Corp.*, 53 N.J. Super 282, 287 (App. Div. 1958).

I accept the testimony of the state's witnesses as credible, notwithstanding some confusion which arguably could have been as a result of their being badgered by Bright. Bright was not credible and went so far as to place in question whether the property in question was actually his house. A rudimentary search provided information on ownership of the prop-

erty. (C-1.) Based upon the credible evidence and testimony submitted, I FIND:

Violation ID 4208061, Common Area Entrance

Provide self-closing and self-locking exterior entrance door(s) leading to interior common areas of a multiple dwelling. (N.J.A.C. 5:10:19-2(a)8)

Daly stated the door was open and that a self-closing and self-closing exterior door was not present.

Accordingly, I FIND that this violation was open as of November 10, 2023.

Violation ID 4208073 Exterior Porch:

Painting wood trim with an appropriate coating. (N.J.A.C. 5:10:7.3(c))

Daly stated the wood had not been painted with an appropriate paint.

Accordingly, I FIND that this violation was open as of November 10, 2023

Violation ID 4208072, Exterior Porch

Paint window frame trim with an appropriate coating. (N.J.A.C. 5:10:7.3(b))

Daly stated the area had not been painted with an appropriate paint.

Accordingly, I FIND that this violation was open as of November 10, 2023.

Violation ID 4208075, Exterior Porch

Paint exterior door frames with an appropriate coating. (N.J.A.C. 5:10:7.3(c))

Daly stated the area had not been painted with an appropriate paint.

Accordingly, I FIND that this violation was open as of November 10, 2023.

Violation ID 4208074, Exterior Porch

Paint exterior door(s) with an appropriate coating. [N.J.A.C. 5:10:7.3(c)]

Daly stated the area had not been painted with an appropriate paint.

Accordingly, I FIND that this violation was open as of November 10, 2023.

Violation ID 4208071. Exterior Porch

Paint railing to be free of rust, peeling, chipping paint. (N.J.A.C. 5:10:7.3(c))

Daly stated the area had not been abated to resolve the issues.

Accordingly, I FIND that this violation was open as of November 10, 2023.

Violation ID 4208076. Exterior Porch

Paint exterior woodwork with an appropriate coating. (N.J.A.C. 5:10:7.3(c))

Daly stated the area had not been painted with an appropriate paint.

Accordingly, I FIND that this violation was open as of November 10, 2023.

**Violation ID 4208079. Unit 2L. Floor 2
Bathroom**

Replace broken glass. (N.J.A.C. 5:10:7.3(c))

Daly stated the glass had not been repaired or replaced.

Accordingly, I FIND that this violation was open as of November 10, 2023.

I further FIND that Bright's demeanor and temperament prior to the proceedings and at the hearing necessitate (sic) numerous reprimands from the Tribunal during the hearing. His abusive nature in the correspondence and at the hearing was not taken into consideration by the Tribunal but documents the lack of civil discourse displayed by Bright.

ANALYSIS AND LEGAL CONCLUSIONS

The Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq., is remedial legislation which confers broad authority upon the Commissioner of the Department of Community Affairs to adopt regulations to assure that multiple dwellings are maintained "in such a manner as is consistent with, and will protect, the health, safety and welfare of the occupants." *Ruiz ex rel. Ruiz v. Kaprelian*, 322 N.J. Super. 460 (App. Div. 1999) (quoting N.J.S.A. 55:13A-7); N.J.S.A. 55:13A-2; N.J.S.A. 55:13A-7. Pursuant to N.J.S.A. 55:13A-7, regulations for maintenance of hotels and multiple dwellings were issued and promulgated, as set forth in N.J.A.C. 5:10-1.1 to -28.1. These regulations are administered and enforced by the Bureau of Housing

App.30a

Inspection or local enforcing agency. N.J.A.C. 5:10-1.3.

In accordance with N.J.A.C. 5:10-1.10, the Bureau of Housing Inspection or an authorized representative in the discharge of their duties shall have authority to enter upon and examine and inspect at all reasonable times any building, enclosure, or premises, or any part thereof or service equipment attached thereto or contained therein for the purpose of determining compliance with the provisions of Chapter 10.

N.J.S.A. 55:13A-16(a) states:

If the commissioner shall discover any violation of the provisions of this act or any rules and regulations promulgated there under upon any inspection of any hotel or multiple dwelling, then the commissioner shall issue and cause to be served on the owner thereof a written order requiring said owner to terminate, or cause to be terminated, any such violation. Such written order shall state the nature of any such violation and a reasonable specified time within which any such violation must be terminated. Such written order shall also require and direct the owner to whom it is issued to take, or cause to be taken, such affirmative actions as may be necessary to correct any such violation.

Pursuant to N.J.S.A. 55:13A-19(a), no person shall violate, or cause to be violated, any of the provisions of P.L. 1967, c. 76 (C.55:13A-1 et seq.), and, pursuant to N.J.S.A. 55:13A-19(b), any person who violates, or causes to be violated, any provision of N.J.S.A. 55:13A-19(a) shall be liable to a penalty of not less than \$50

App.31a

nor more than \$500 for each violation, and a penalty of not less than \$500 nor more than \$5,000 for each continuing violation. Where any violation of N.J.S.A. 55:13A-19(a) is of a continuing nature, each day during which such continuing violation remains unabated after the date fixed by the commissioner in any order or notice for the correction or termination of such continuing violation, shall constitute an additional, separate and distinct violation, except during the time an appeal from said order may be taken or is pending. N.J.S.A. 55:13A-19(b).

In pertinent part, N.J.A.C. 5:10-1 17 sets forth the violation penalties as follows:

- (a) For purposes of this section, a "life hazard violation" shall be any violation of this chapter, or of any violation of the Uniform Fire Code, N.J.A.C. 5:70, that is incorporated into this chapter by reference, that presents a hazard to the life safety of occupants of the building or of the public generally.
- (b) Except as otherwise provided in (f) and (g) below, penalties shall be assessed for each area in which one or more violations are found. Violation areas shall be:
 - 1. Each dwelling unit;
 - 2. Interior common areas; and
 - 3. Building exterior.
- (c) Absent any mitigating or aggravating circumstances, the initial penalty for each violation area shall be as follows:

App.32a

1. In a dwelling unit for which a life hazard violation is cited: \$325;
2. In an interior common area or building exterior for which a life hazard violation is cited: \$500; and
3. In any area for which none of the violations cited is a life hazard violation: \$175.

The \$525 penalty was calculated by the Bureau based upon whether the open violations were life-safety violations or non-life-safety violations. The exterior was assessed at \$175 for one non-life-safety violation; the common areas were assessed at \$175 for six non-life-safety issues and the units were assessed at \$175 for one non-life-safety violation. No other penalties were assessed.

From the information provided, the testimony of the witnesses and the parties and the photographs I CONCLUDE that violations existed as of November 10, 2023, for the following:

Violation ID 4208061, Common Area Entrance

Provide self-closing and self-locking exterior entrance door(s) leading to interior common areas of a multiple dwelling. (N.J.A.C. 5:10:19-2(a)8)

Violation ID 4208073. Exterior Porch

Painting wood trim with an appropriate coating. (N.J.A.C. 5:10:7.3(c))

Violation ID 4208072 Exterior Porch

Paint window frame trim with an appropriate coating. (N.J.A.C. 5:10:7.3(b))

Violation ID 4208075, Exterior Porch

Paint exterior door frames with an appropriate coating. (N.J.A.C. 5:10:7.3(c))

Violation ID 4208074, Exterior Porch

Paint exterior door(s) with an appropriate coating. (N.J.A.C. 5:10:7.3(c))

Violation ID 4208071. Exterior Porch

Paint railing to be free of rust, peeling, chipping paint. (N.J.A.C. 5:10:7.3(c))

Violation ID 4208076, Exterior Porch

Paint exterior woodwork with an appropriate coating. (N.J.A.C. 5:10:7.3(c))

**Violation ID 4208079, Unit 2L, Floor 2
Bathroom**

Replace broken glass. (N.J.A.C. 5:10:7.3(c))

No mitigating or aggravating circumstances were presented. Thus, I **CONCLUDE** that the penalties assessed by the Bureau for the violations complied with N.J.A.C. 5:10-1.17, at \$525 are affirmed.

Based upon the regulations, I **CONCLUDE** that the penalty of \$525 for the open violations at the Property is affirmed and that interior violations shall be abated within thirty days of this decision and exterior

violations to be abated within sixty days of this decision.

ORDER

Based upon the foregoing, **I ORDER** the “Commissioner’s Notice of Statutory Violation and Order to Pay Penalty”, dated November 11, 2022, (Notice 2) is **AFFIRMED**. Respondent must abate the open violations at the Property and pay to the Bureau of Housing Inspection a penalty of \$525 and that interior violations shall be abated within thirty days of this decision and exterior violations to be abated within sixty days of this decision.

I hereby **FILE** my initial decision with the COMMISSIONER OF THE DEPARTMENT OF COMMUNITY AFFAIRS for consideration.

This recommended decision may be adopted, modified or rejected by the COMMISSIONER OF THE DEPARTMENT OF COMMUNITY AFFAIRS, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Community Affairs does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the COMMISSIONER OF THE DEPARTMENT OF COMMUNITY AFFAIRS, South Broad and Front Streets, PO Box 800, Trenton, New Jersey 08625-0800, marked “Attention:

App.35a

Exceptions.” A copy of any exceptions must be sent to the judge and to the other parties.

/s/ Carl V. Buck III, ALJ

Date Received at Agency: March 11, 2024 (via email)

Date: March 11, 2024