

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex rel.)	CASE NO. CV 10 742390
RICHARD CORDRAY)	
OHIO ATTORNEY GENERAL)	JUDGE PAMELA A. BARKER
)	
Plaintiff,)	<u>JOURNAL ENTRY AND</u>
)	<u>OPINION</u>
vs.)	
)	
EMANUAL HADGIGEORGIU,)	
dba, SOCIETY DRY CLEANERS)	
)	
Defendant)	
)	

By Journal Entry dated November 21, 2011, this Court granted summary judgment in favor of Plaintiff, State of Ohio, ex rel. Richard Cordray Ohio Attorney General (hereinafter “the plaintiff”) and against Emanuel Hadgigeorgiou, dba Society Dry Cleaners (hereinafter “the defendant”), finding that the defendant, by intentionally failing to obtain permits, intentionally failing to prepare reports and intentionally failing to maintain the required records associated with his ownership and operation of two dry cleaning machines, violated R.C. 3704.05(G) and R.C. 3704.05(C). This matter came before the Court on January 17, 2012 for a hearing to determine the amount of the civil penalty to be imposed upon the defendant for his violations of these statutes.

The plaintiff called two witnesses: 1.) Valerie Shaffer, who at all times relevant to this matter has been employed by the City of Cleveland Division of Air Quality, which acts as an agent for the Ohio EPA in the Cleveland area; and 2.) John Paulian, who at all times relevant has been employed by the Ohio EPA as a Compliance Monitoring

Supervisor with the Division of Air Pollution Control. Nine (9) exhibits were offered into evidence and properly authenticated by Ms. Shaffer and Mr. Paulian and therefore were admitted into evidence.

Valerie Shaffer testified that there are 150 dry cleaning operations in Cuyahoga County and once the permits are issued for these operations, they are expected to stay compliant and are self-regulated.

Exhibit 1 is a six-page Cleveland Division of Air Quality Facility Inspection Report incorporating Valerie Shaffer's findings relative to her inspection of Society Dry Cleaners on 3/13/2008.

Exhibit 2 is a three-page Notice of Violation dated March 18, 2008 directed to the defendant and notifying him that the operation of two dry cleaning machines without a permit to install and permit to operate, and failure to keep visual leak inspection results records and annual PERC usage records constituted violations of Ohio law (hereinafter "the First Notice"). The First Notice also advised the defendant that his response to it was due within 14 days of his receipt of it. The certified mail receipt included as part of Exhibit 2 indicates that the defendant received the First Notice on 3/27/08.

Exhibit 3 is a second Notice of Violation dated April 17, 2008 directed to the defendant, reiterating the violations set forth in the First Notice and advising him that a response to the First Notice had not been received (hereinafter "the Second Notice"). Included with Exhibit 3 is a certified mail receipt indicating that the defendant received the Second Notice on 4/23/08.

Exhibit 4 is a 12/16/08 letter directed to the defendant providing him with an Air Pollution Permit-to-Install and Operate ("PTIO").

Exhibit 5 is a Notice of Violation dated July 13, 2010 directed to the defendant and advising him that he was in violation of Ohio law because he had failed to keep permit-required records and he had failed to submit annual permit evaluation reports for 2008 and 2009 (hereinafter “the Third Notice”). The Third Notice advised the defendant that a response was due within 14 days. The certified mail receipt included with Exhibit 5 demonstrates that the defendant received the Third Notice on 7/16/10.

Exhibit 6 is a Notice of Violation dated October 1, 2010 directed to the defendant and advising him that he had not responded to the Third Notice and by continuing to fail to keep permit-required records and submit annual permit evaluations reports he remained in violation of Ohio law (hereinafter “the Fourth Notice”). The certified mail receipt included with Exhibit 6 demonstrates that the defendant received the Fourth Notice on 10/5/10. However, as was the case with regard to the first three Notices, the defendant did not respond to the Fourth Notice.

Indeed, according to Ms. Shaffer, since the defendant never responded to the Notices of Violations, the matter was referred to the Ohio EPA Central Office.

Exhibit 7 is a February 12, 2009 letter from Ohio EPA directed to then Ohio Attorney General Richard Cordray requesting that all necessary legal and/or equitable civil actions be initiated against the defendant for his violations of ORC Chapters 3704 and 3734 and the regulations adopted thereunder.

Exhibit 8 is an October 3, 2008 letter to the defendant from the Ohio EPA enclosing a “Proposed Director’s Final Findings and Orders for the violations of Ohio EPA’s air pollution control requirements” (hereinafter “Proposed Director’s Final Findings and Orders”). In relevant part, the Proposed Director’s Final Findings and

Orders included an Air Civil Penalty Worksheet (hereinafter “the First Worksheet”) that set forth the bases for the calculation of the civil penalty associated with the defendant’s violations and an offer to settle the Ohio EPA’s claims with the defendant by his payment of a civil penalty calculated at \$48,780.

This proposed civil penalty was calculated as follows. The Total Gravity Component and therefore, the Preliminary Deterrence Amount was assessed at \$167,000 which included: \$150,000 associated with or for the length of time of the record keeping violations (from February, 1996 to July 2010 or 172 months); \$15,000 for failure to maintain visible leak inspection records and records of PERC purchased and used; and \$2,000 associated with the “Size of violator” whose net worth was assessed at under \$100,000. The Flexibility-Adjustment Factor was calculated as a negative \$125,250 or 75% of the Preliminary Deterrence Amount “due to the low level of emissions associated with dry cleaning facilities”. The Administrative component was assessed at \$7,030 which included \$2,500 for installation of the two dry cleaning machines without applying for and receiving permits to install and \$4,530 for their operation by the defendant from February 1, 1996 to the present or 4,530 days at \$1.00 per day. The testimony elicited at the hearing demonstrated that the defendant did not make any payment(s) to resolve the Ohio EPA’s claims.

Exhibit 9 is an Air Civil Penalty Worksheet that was completed by the Ohio EPA for purposes of the hearing (hereinafter “the Second Worksheet”). John Paulian testified regarding the bases for the calculations included therein. Key factors or considerations for assessing a civil penalty for violation of air pollution laws and regulations include the significance, the duration and the impact on the environment of the violations. Mr.

Paulian also testified that the defendant's violations placed him at an advantage over his competitors in terms of the costs of permits and applications the defendant's competitors, or 149 of the 150 dry cleaning operations that Ms. Shaffer testified existed within Cuyahoga County, would have paid or did pay. However, no evidence was offered as to the costs of permits and applications.

The Second Worksheet included a Total Gravity Component or factor assessed at \$207,000 which in turn included: \$150,000 associated with or for the length of time of the record keeping violations (from February 1996 to July 2010 or 172 months); \$35,000 associated with or for the length of time of the failure to submit annual Permit Evaluation Reports (from 2/15/09 to the present or 35 months which would equate to \$1,000 per month); \$15,000 associated with or for the failure to maintain visible leak inspection logs and failure to keep records of PERC purchased and used; \$5,000 associated with or for the failure to submit annual Permit Evaluation Reports for 2008 and 2009 by February 15 in 2009 and 2010; and \$2,000 for the "size of the violator". Mr. Paulian testified that the defendant's "net worth under \$100,000" as related to the "size of the violator" was determined by obtaining information through a records/computer search of the defendant.

A five percent (5%) augmentation of \$10,350 was added "for recalcitrance and lack of cooperation"; but a 75% mitigation factor "due to the low level of air emissions associated with dry cleaning facilities" was applied to the Total Gravity Component, leaving a negative total of \$144,900 for the Flexibility-Adjustment Factor.

The Administrative Component was assessed at \$7,104, or \$2,500 for installation of the two dry-cleaning machines without applying for and receiving permits to install and \$4,604 for operation of the two dry cleaning machines from February 1, 1996 to

December 16, 2008 or 4,604 days at \$1.00 per day. The proposed settlement amount or civil penalty set forth in the Worksheet totaled \$69,204, or the sum of the preliminary deterrence amount (\$207,000), minus the flexibility adjustment factors (\$144,900) plus the administrative component (\$7,104). Mr. Paulian testified that since completion of the Second Worksheet, additional administrative costs had been incurred, to include his attendance at a pretrial in this lawsuit and at the civil penalty hearing. However, besides the testimony of Mr. Paulian that additional administrative costs had been incurred for his two court appearances, no evidence as to the dollar amount(s) associated with these costs was provided.

Mr. Paulian also testified that he was aware or had been made aware that the defendant had been dealing with his wife's illness and death. Indeed, at his deposition on June 28, 2011, the defendant had testified that between 2007 and 2009 he had been dealing with his wife's illness of lymphoma and her death. (Deposition of Emmanual Hadgigeorgiou taken June 28, 2011, at page 21, lines 18-22, attached as Exhibit "C" to Plaintiff's Motion for Summary Judgment.) This fact did not alter Mr. Paulian's opinion regarding the appropriate civil penalty to be imposed since the proposed penalty fell within what he opined was in the low to moderate range of civil penalties for the type and extent of the defendant's violations. Mr. Paulian also testified that the defendant stopped operating the dry cleaning machines in July of 2010. The plaintiff prayed for \$70,000 as a civil penalty.

The defendant did not appear at the hearing, despite having been notified by the Court of the date and time of the hearing. Indeed, the defendant has not submitted any

evidence to this Court for consideration in determining the civil penalty associated with the defendant's violations of Ohio law.

As the plaintiff has acknowledged at page 4 of its Pretrial Statement filed with this Court on August 5, 2011, the language of R.C. 3704.06(A) gives a trial court broad discretion to determine the amount of the civil penalty mandated by that statute. Factors the trial court should consider and those factors that have been considered by this Court are: (1) the harm or threat of harm posed to the environment; (2) the level of recalcitrance, defiance or indifference demonstrated by the violator; (3) the economic benefit gained by the violation; and (4) the extraordinary costs incurred in enforcement of R.C. Chapter 3704. *State ex rel. Brown v. Dayton Malleable* (1982), 1 Ohio St.3d 151, 153. Since a civil penalty is an economic sanction designed to deter violations of R.C. Chapter 3704, the penalty must be large enough to hurt the offender. *State ex rel. Brown v. Howard* (1981), 3 Ohio App.3d 189, 191. Applying these factors to the undisputed evidence submitted at the hearing, the Court finds as follows.

The \$35,000 figure assessed in the Second Worksheet under the Total Gravity Component for "failure to submit annual Permit Evaluation Reports for 2008, and 2009 (2/1/09 to present 35 months)" was not included in the First Worksheet. In the Court's opinion, this \$35,000 figure is in effect a duplication of the \$5,000 assessed in the Second Worksheet for "failure to submit annual Permit Evaluations Reports for 2008 and 2009 by February 15th in 2009 and 2010" and/or the recalcitrance and lack of cooperation augmentation of 5% included in the calculation. Any argument that the defendant should be penalized for continually failing, or for his ongoing failure, to provide the Permit Evaluation Reports for 2008 and 2009, is negated by the argument that since he did not

track or collect the information to include in the Reports, he cannot complete and submit the Reports. In other words, it is not that the defendant will not complete the Reports, but that he apparently cannot complete the Reports. Indeed, it is undisputed that the defendant stopped operating the machines in 2010. Accordingly, when calculating the civil penalty, this Court did not include that \$35,000 figure.

When subtracting the \$35,000 from the proposed “Gravity Component” of \$207,000, this Court finds that the “Gravity Component” is or should be \$172,000. Multiplying that figure by the 75% mitigation factor leaves \$129,000, which when subtracted from \$172,000 equates to \$43,000. Adding to this amount the sum of \$10,350 or the proposed augmentation for recalcitrance and lack of cooperation leaves a total of \$53,350. When the administrative costs of \$7,104 are added to \$53,350, the total is \$60,454.

Therefore, it is the Order of this Court that the defendant pay to the plaintiff, the sum of \$60,454 as a civil penalty associated with his violations of Ohio law as more fully set forth in this Court’s Order granting summary judgment in favor of the plaintiff.

JUDGE PAMELA A. BARKER