

1 Lance E. Armo, Bar No. 176561
2 **LAW OFFICE OF LANCE E. ARMO**
3 550 W. Alluvial Ave, Ste 102
4 Fresno, California 93711
5 (559) 324-6527 telephone
6 (559) 324-6526 facsimile

E-FILED
3/5/2018 1:14 PM

FRESNO COUNTY SUPERIOR COURT
By: S. Garcia, Deputy

Attorney for: Petitioner, **BDHOV, LP**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF FRESNO-CENTRAL UNLIMITED**

10 BDHOV, LP,

11 Petitioners,

12 vs.

13 CITY OF FRESNO, COMMUNITY OF
14 RIVITALIZATION DIVISION OF THE
15 DEVELOPMENT AND RESOURCE
16 MANAGEMENT DEPARTMENT,
DOES 1-10,

17 Respondents.

Case No. **18CECG00790**

**PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS**

[CCP 1094.6 et. seq.]

Date:
Time:
Dept:

3545 E. Hammond, Fresno, CA

18 By this verified petition Petitioner BDHOV, LP ("Petitioner"), brings this petition
19 seeking a peremptory writ of administrative mandamus, pursuant to Code of Civil Procedure
20 Section 1094.6, et seq., and declaratory relief to compel Respondent Agency to set aside its
21 decision and the resulting abatement billing in the sum of \$220.00 imposed by the
22 Respondent Agency's decision upholding the abatement billing. Petitioner requested at the
23 underlying hearing to set aside such due to Petitioner's reasonable and diligent conduct and
24 compliance to repair the access to the wood sub-floor, which was completed in a timely
25 manner but later re-opened by homeless persons, and the failure of the Respondent Agency
26 to allow Petitioner ample time to secure the wood sub-floor access again (if needed) prior to
27 the Respondent Agency doing so itself and causing Petitioner to incur the expense of the
28

1 Respondent's contractor crew, and further that Petitioner was not contacted by the
2 Respondent Agency as promised pursuant to the vacant building registry process recently
3 enacted by the Respondent Agency.

4 1. Petitioner, BDHOV, LP ("Petitioner"), hereby files the herein Petition for Writ of
5 Administrative Mandamus to set aside the respondent agency's decision and resulting
6 abatement billing in the amount of \$220.00 imposed by Respondent, CITY OF FRESNO,
7 COMMUNITY OF REVITALIZATION DIVISION OF THE DEVELOPMENT AND
8 RESOURCE MANAGEMENT DEPARTMENT, as against Petitioner.

9 2. A Notice and Order to Remove Public Nuisance ("Notice and Order") was issued
10 to Petitioner on September 29, 2017, for various issues including 1) tall grass and weeds, 2)
11 rubbish and junk, 3) unapproved manner of boarding some of the windows and doors, and 4)
12 failing to list the property on the City's vacant building registry. The deadline for the repairs
13 as stated in the Notice and Order was October 30, 2017. The alleged "access through the
14 wood sub-floor" was not listed therein although Respondent testified he had called
15 Petitioner's office and spoken with Jovanna on two instances prior to boarding up the sub-
16 floor access. Petitioner immediately and promptly, as it generally does in response to a call
17 from Code Enforcement, made the repairs and corrections as set forth in the Notice and
18 Order which were later re-inspected by the Respondent. The Respondent however testified at
19 the Administrative Hearing that the wood sub-floor access was not corrected although such
20 was not specifically listed in the Notice and Order even though the Respondent had contacted
21 Petitioner and verbally asked for the wood sub-floor access to be closed. Petitioner contends
22 the wood sub-floor access was closed as requested (along with all other corrections) but the
23 homeless persons re-opened it to gain access to the residence. Petitioner contends between
24 September 14, 2017 and September 28, 2014, the wood sub-floor access along with "all other
25 items" as listed in the Notice and Order were in fact corrected and repaired, and that by the
26 time Respondent's staff re-inspected the subject property the wood sub-floor access had been
27 re-opened by the homeless persons. Petitioner testified that the wood sub-floor access was
28 temporarily (not permanently) secured by a 2 X 4 wood and two ply-wood panels because

1 the property was actively being marketed for renting as is Petitioner's business, and that the
2 new tenants would need access to the area beneath the sub-floor. Prior to allowing Petitioner
3 30 days to "again" secure the sub-floor access as provided in the Notice and Order allowing
4 Petitioner 30 days to make the corrections, Respondent Agency then hired its crews to secure
5 the wood sub-floor opening without providing Petitioner further notice prior to such, thereby
6 causing the herein billing abatement charge to be incurred by Petitioner.

7 The work involved a dwelling commonly known as 3545 E. Hammond, Fresno,
8 California; APN 453-272-16 ("Property"). Thereafter, Petitioner appealed the Billing
9 Abatement whereby the hearing was held on December 8, 2017. The appeal was denied and
10 a written Decision and Order was issued by the Respondent on December 29, 2017. The
11 herein Petition for Writ of Mandate is thus being timely filed with this court. Attached
12 hereto as Exhibit "1" is a true and correct copy of the Decision and Order of Administrative
13 Hearing Officer.

14 3. Petitioner is a Family Ltd Partnership organized under the laws of the State of
15 California, with its principle place of business located in Fresno, Fresno County, California,
16 along with the subject property being located in the City of Fresno, County of Fresno, State
17 of California.

18 4. Respondent CITY OF FRESNO, COMMUNITY OF REVITALIZATION
19 DIVISION OF THE DEVELOPMENT AND RESOURCE MANAGEMENT
20 DEPARTMENT, an agency of the City of Fresno authorized to administer and enforce its
21 local governmental ordinances and regulations, is the agency that has taken the action by
22 which Petitioner is aggrieved and of which Petitioner seeks review by this Court.

23 5. This Court has jurisdiction to issue writs of mandate pursuant to Code of Civil
24 Procedure Section 1094, et seq.

25 6. Venue is proper in this Court because Petitioner's business is located in Fresno
26 County, and Petitioner's property which was imposed the fine by the respondent agency also
27 is located in Fresno County.

28 //

1 7. Petitioner has a clear, present and beneficial right to the relief being sought hereby.

2 8. Petitioner has no plain, speedy and adequate remedy at law.

3 9. Petitioner has exhausted all available administrative remedies, as alleged herein.

4 **FIRST CAUSE OF ACTION**

5 (Writ of Administrative Mandamus Against Respondent)

6 10. Petitioner realleges and incorporates herein by this reference the allegations of
7 paragraphs 1-9, above.

8 11. At the appeal hearing as alleged above, Petitioner argued they acted reasonably
9 and prudently under the circumstances to repair the alleged substandard conditions in a
10 timely manner, including the five alleged conditions in the Notice and Order dated
11 September 29, 2017. Further, Petitioner alleged all corrections were timely made including
12 the securing of the wood sub-floor access (as other openings were corrected so there is no
13 reason the sub-floor opening also would not have been corrected at same time) however
14 homeless persons re-opened such to gain access to the inside of the home during the two
15 weeks between September 14 and September 28, 2017, and that the re-opening of the sub-
16 floor access would be a "new violation" as the previous alleged violations had been
17 corrected.

18 12. Petitioner further contends there was no imminent threat of "harm, danger, or
19 public safety" due to any of the alleged substandard conditions. No prior instances of neglect
20 by Petitioner, or danger or harm were identified by the Respondent other than simply vague
21 and general allegations that "a public nuisance can summarily be abated" that "access to the
22 home causes an imminent danger to life, health, safety or adjacent property," which would
23 warrant Respondent's actions in boarding up the access without providing Petitioner ample
24 time as stated in the Notice an Order, or further by contacting Petitioner again (in the field)
25 and having their personnel come board the opening as opposed to hiring a contractor to do so
26 at the spur of the moment.

27 13. Respondent Agency committed prejudicial abuse of discretion in that its decision
28 is not supported by the findings and the findings are not supported by the law.

1 17. Accordingly, this Court must make a declaration that the decision and order of the
2 Respondent Agency is or is not enforceable concerning the imposition of an abatement
3 billing in the amount of \$220.00.

4 WHEREFORE, Petitioner respectfully prays as follows:

5 1. Under the First Cause of Action, that a peremptory writ of administrative
6 mandamus issue under seal of this Court commanding Respondent Agency to set aside its
7 decision and the resulting billing of \$220.00;

8 2. Under the Declaratory Relief Cause of Action that this Court issue an order
9 declaring Respondent Agency set aside its decision and resulting abatement billing;

10 3. Under each Cause of Action, that this court award Petitioner its costs of suit
11 herein, including out-of-pocket expenses and reasonable attorney's fees; and

12 4. Under each Cause of Action, that this Court grant Petitioner such other, different,
13 or further relief as the Court may deem just and proper.

14
15 Dated: 2-28-18

By:  _____

Lance E. Armo, Attorney for Petitioner

EXHIBIT 1

