STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MICHIGAN COMMISSION FOR THE BLIND,

Petitioner,

vs. Case No.: 2010-376

RICHARD KENT,

Respondent.

/

DIGITALLY RECORDED HEARING

BEFORE JUDGE ROBERT J. MEADE

Lansing, Michigan - Monday, November 8, 2010

TRANSCRIBED BY: **REGENCY COURT REPORTING**

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**TERRY EAGLE,**

Appearing on behalf

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\* \* \* \* \*

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Lansing, Michigan

Monday, November 8, 2010 - 9:00 a.m.

**P R O C E E D I N G S**

JUDGE MEADE: And we’ll go on the record in the matter of Michigan Commission for the Blind, Petitioner, versus Richard Kent, Respondent. It’s docket number 2010-376. It’s November 8th, 2010 at nine a.m., although that still says ten. This hearing’s being held at the State Office of Administrative Hearings and Rules, we’re on the second floor of the Ottawa Building, and I am Robert Meade, the Administrative Law Judge assigned to hear this matter, and I’m looking for your name, is it Mr. Denner?

MR. DENNER: Yes.

JUDGE MEADE: Mr. Denner’s here on behalf of the Petitioner, and Mr. Eagle’s here on behalf of the Respondent, and Mr. Eagle, it looks like you filed a motion on Friday; is that correct?

MR. EAGLE: Correct.

JUDGE MEADE: And give me the gist of that, I - - I’m just seeing it for the first time.

MR. EAGLE: It’s a motion to dismiss the complaint based on three legal grounds. First of all, that the complaints that were made against Mr. Kent were based on disputes between the federal building grantor and the SLA, the State Licensing Agency, who are parties to a permit, and Mr. Kent is not a party to that permit and therefore they should have had their grievances taken up in arbitration according to federal law under the Randolph-Sheppard Act. The second ground is that in each one of those situations where they say that Mr. Kent is out of compliance they are required by Administrative Rule 3.3.16 to first give him a written notice of how he is out of compliance and to give him a thirty-day window of opportunity to show that he is in compliance and in every situation that they made in the complaint there was none of that done, and then the third is that his suspension, summary suspension was not an emergency based on the fact that they expected him to stay there for an additional four days after they served him the suspension and therefore if they were alleging that he was a threat to the public health and welfare of the public or the safety and health of it that couldn’t be possible if they were going to expect him to be there another four days.

JUDGE MEADE: I don’t recall the summary suspension action here; was there one?

MR. EAGLE: Yes.

JUDGE MEADE: Who handled that, what judge?

MR. EAGLE: It’s all part of this.

JUDGE MEADE: Well, I don’t have much - - the only documents that we have in the file is the Request for Hearing from the Commission for the Blind dated April 13th, 2010; is that - - did Mr. Kent continue on in his capacity or?

MR. EAGLE: No, he was served a letter, the summary suspension letter on November 16th and they expected him to stay on till the 20th so they could do an inventory and he said that was not agreeable and he left.

MR. DENNER: Your Honor, I can maybe shed some light on this.

JUDGE MEADE: Okay, please.

MR. DENNER: It’s my understanding that there was no summary suspension hearing because - - and this will be borne out at the hearing today as a factual matter - - that Mr. Kent had in fact quit so no hearing was necessary, and in response to the motion I would just add that it’s our position that this motion is untimely, that it raises various issues of fact which would be better addressed at an evidentiary hearing such as we’re here for today and that I maintain that the hearing today is still appropriate and ask that the motion be denied. In the alternative, we would request a reasonable amount of time to respond to the motion in writing noting that we had just received the motion on Friday.

JUDGE MEADE: All right, and I think Mr. Eagle, it’s not really timely especially since the original Notice of Hearing was back in - - sent out back in April - -

MR. EAGLE: Well, I’d like to add if I may, Your Honor, that - -

JUDGE MEADE: Hmm, hmm.

MR. EAGLE: - - that it’s - - the state agency was not willing voluntarily to turn over any documents and in fact after the subpoena was issued Mr. Hull avoided service of the subpoena and then once it was served at the request of their counsel - - sixteen hundred pages - - hundreds of which were not even legible because of format codes being in there were - - made it impossible to understand what the - - what was in his file and what had been done and therefore it’s only been since October 11th that I’ve received anything on this case.

JUDGE MEADE: All right, well - - and I understand your issue with the serving of the subpoena and the documents that you received but as far as your motion goes since it was - - looks like it was received here at about three-forty on Friday - - like I said, I just saw it this morning when I came in, so it’s not timely in the sense that even if I were inclined to grant your motion there was not time to notify the parties involved and everyone is here so we’re just going to proceed.

MR. EAGLE: I’d like to renew also our motion having to do with the adjournment. For the record, we believe that you are biased having to do with this because in June you had granted the same kind of motion for the other side having to do with the unavailability of a key witness and our problem was not created by ourself, it was created by your office not providing subpoenas in a sufficient amount of time to properly - - to properly secure them and to serve them, and then once the - - they were secured the persons that were on our witness list - - and they had no notice that we wanted to have them and they avoided service so we are renewing our motion to - - for an adjournment pending the service of the subpoenas.

JUDGE MEADE: And as I had my secretary indicate to you in our voice mail last week I’m not going to prevent you from issuing those subpoenas or calling those witnesses. Obviously if they’re out of town we may need to continue the hearing in order to do that but again the point is we’re all here - -

MR. EAGLE: We have no intention of moving ahead without guarantees that our client can have his day in court with the witnesses that he has and the only way we can have that is to be secure that they have been subpoenaed and that has not been done and it’s not our fault, it’s your office’s fault.

JUDGE MEADE: All right, I’ve already answered your question and your motion, so - -

MR. EAGLE: I finally would like to make a motion to disqualify you. I’m submitting this to the director, the executive director today, and we will not stay here for the rest of the day. We’ll seek to have this heard.

JUDGE MEADE: If you leave now, Mr. Eagle, we’re going to proceed - -

MR. EAGLE: Well, go ahead, you’ll have to deal with the consequences of it with the Ethics Board in the state.

JUDGE MEADE: Okay.

MR. EAGLE: You’re a biased judge, you’ve proved it in the past and you’re proving it now so we will take it up with the appropriate authorities.

JUDGE MEADE: Okay.

MR. EAGLE: So proceed if you wish.

JUDGE MEADE: We certainly will.

MR. DENNER: And Your Honor, unless you request we don’t feel the need to respond to Mr. Eagle’s comments unless the Court so orders.

JUDGE MEADE: No, there’s no need to respond.

MR. EAGLE: We don’t even have an opportunity to have this motion heard which is required by law and you’re being unfair in that also.

JUDGE MEADE: And I wouldn’t even serve it at the hearing, Mr. Eagle, it’s untimely as was your motion.

MR. EAGLE: Your - - excuse me - - your decisions were made on Friday. We didn’t have an opportunity to do anything until you violated the law on Friday, that’s all I have to say.

JUDGE MEADE: All right, and Mr. Denner, I think as we had established earlier in this case the Commission is actually the petitioner here.

MR. DENNER: That’s correct.

JUDGE MEADE: It does appear incorrectly on a couple of the orders but - - so you do have the burden of proof. How did you want to proceed this morning?

MR. DENNER: Your Honor, with the Court’s permission I would request a ten-minute recess so I can confer with my client, the recent discussion this morning.

JUDGE MEADE: Okay, we’ll go off the record, then meet back at about twenty after nine.

MR. DENNER: Thank you very much.

(At this time, off the record, and back on the record at 9:23 a.m.).

JUDGE MEADE: And we’re back on the record in the matter of Richard Kent versus Michigan Commission for the Blind - - or I’ll reverse that - - Commission for the Blind versus Richard Kent, docket number 2010-376. It’s now nine-twenty-three. The petitioner has had an opportunity to confer and I think Mr. Denner - - I think the petitioner need only put forth a prima facie case here. I don’t think you need to get into a lot of detail.

MR. DENNER: I would agree.

JUDGE MEADE: Okay.

MR. DENNER: Hopefully we’ll be out of here by lunch.

JUDGE MEADE: Maybe the complaint and whoever filed the complaint can testify which shouldn’t take too long. Anything else that you wanted to add before we get started?

MR. DENNER: No, Your Honor, I think we’re ready to proceed.

JUDGE MEADE: Okay, and your first witness then?

MR. DENNER: I call Mr. Joseph Pelle.

JUDGE MEADE: All right.

MR. DENNER: Straight ahead to the chair.

JUDGE MEADE: And Mr. Pelle, if you could raise your right hand. Do you swear that the testimony you’re about to give will be the truth, the whole truth, and nothing but the truth?

MR. PELLE: I do.

JUDGE MEADE: And please state and spell your full name for the record, please.

THE WITNESS: Joseph - - J-o-s-e-p-h - - Pelle - - ‘P’ as in Paul - - e-l-l-e.

JUDGE MEADE: Thank you.

Go ahead, Mr. Denner.

MR. DENNER: Thank you, Your Honor.

Good morning, Mr. Pelle.

DIRECT EXAMINATION

BY MR. DENNER:

Q Could you state your name again for the record?

A My name is Joseph Pelle.

Q And what is your occupation?

A I’m a promotional agent.

Q And how long have you been in that occupation?

A Approximately nine and three-quarter years.

Q Could you provide the Court a description of your job duties?

A I - - many of my tasks encompass working with operators and following the rules and guidelines for our program. I wear - - I am the liaison between the building managers of the facilities and the operators. I work - -

Q If I could stop you right here, you say the facilities; what facilities, what sort of facilities are we talking about?

A The facilities I’m talking about are the facilities that operators manage in their businesses.

Q Okay, and you mentioned operators, could you just give us a brief rundown of what you mean by operators; who are these people?

A The operators are people that are blind or visually impaired that have a license to operate a food service in federal and/or state buildings.

Q Okay, and are you familiar with what’s known as the Business Enterprise Program?

A Yes, I am.

Q Could you provide us with a description of this Business Enterprise Program?

A Primarily the Business Enterprise Program provides a business opportunity for people that are blind or visually impaired to operate a food service in federal and state buildings.

Q Okay, are you familiar with the Randolph-Sheppard Act?

A I am.

Q And what is that?

A The Randolph-Sheppard Act is the - - are federal guidelines to - - that we follow, that the program follows. It’s our basic guidelines that - - for our program for our operators to work in these federal facilities.

Q Okay, are you familiar with Mr. Richard Kent?

A I am.

Q And how is it that you’re familiar with Mr. Kent?

A Mr. Kent was an operator in my region.

Q Would that - - is that Mr. Kent’s title - - operator?

A It was his title.

Q Was his title, okay, can we garner from that that he was a member of the Business Enterprise Program?

A Yes, he was an operator. We use the word operator in our program.

Q Okay, is he still an operator?

A He is not.

Q Do you know why that is?

A Yes.

Q Could you explain to us why that is; what your understanding of that is?

A Due to some circumstances his license was suspended and therefore revoked.

Q Mr. Pelle, I’d like to present you with what’s marked as Petitioner Exhibit - -

MR. DENNER: Are we using numbers or letters?

JUDGE MEADE: If you could use letters, please.

MR. DENNER: Letters, okay, Petitioner’s Proposed Exhibit A, it’s titled “Vending Facility Agreement” - - does anyone need to - - I should also note that a copy of these exhibits have been provided to opposing counsel.

JUDGE MEADE: All right.

BY MR. DENNER:

Q Are you familiar with the Vending Facility Agreement?

A Yes, I am.

Q What is the Vending Facility Agreement?

A Primarily the Vending Facility Agreement is the signed - - is an agreement that is signed and it is the contract or agreement of responsibilities of the operator and the Commission.

Q Okay, are you able to tell us whether that document that I placed before you is the Vending Facility Agreement as it related to Mr. Kent?

A I’m not sure I understand - - is it related - - I - - explain - - are you asking me to explain the - - can you rephrase that question?

Q I’m sorry, Mr. Pelle, I’m asking you - - I’m asking if you can validate that document, that it is what it says it is, and if you like I could - - with the Court’s permission I could read the first couple of lines of that for you, there’s - - the first text box which reads name of operator and it appears to be Richard Kent, the third, his name affixed in that box, and the date appears to be April 15th, 2006; would it make sense to you that that is - - with that knowledge would it make sense to you that that document is the Vending Facility Agreement as related to Mr. Kent, in other words, was that - - is that Mr. Kent’s Vending Facility Agreement?

A Yes.

MR. DENNER: Okay, Your Honor, with that foundation I would move that - - I would ask that that exhibit be entered into evidence.

JUDGE MEADE: All right, I’ll accept Exhibit A.

MR. DENNER: May I approach?

JUDGE MEADE: Yes, thank you.

BY MR. DENNER:

Q As related to Mr. Kent what type of facility was he in charge of?

A Mr. Kent was in charge of a cafeteria.

Q Okay, and where was this cafeteria?

A The cafeteria was located in Detroit. The building name is called - - referred to as the McNamara Building.

Q Do you know how many employees Mr. Kent had working for him approximately?

A I do.

Q How many?

A According to his reports submitted to the Commission for the Blind he had reported anywhere from zero to twelve employees.

Q In a course of - - as a part of Mr. Kent’s responsibilities as a operator of this cafeteria was Mr. Kent responsible for hiring staff?

A Yes.

Q Was he responsible for firing staff?

A Yes.

Q Would you agree that he was responsible for general managing of the staff?

A Yes.

Q Okay, was he responsible for purchasing and maintaining inventory?

A Yes.

Q Was he responsible for the quality of the product being sold?

A Yes.

Q And while we’re on that point what sort of product was Mr. Kent selling?

A Mr. Kent sold a variety of product from prepared foods, soups and salads, Pizza Hut products, Subway, packaged products, pop, milk, cookies, and even magazines.

Q Okay, and was Mr. Kent responsible for the quality of the customer service that was provided at that facility?

A Yes.

Q Was Mr. Kent responsible for the cleanliness of the facility?

A Yes.

Q What is a royalty?

A Are you referring to this case - - the cafeteria?

Q Yes?

A A royalty is a fee associated that the operator would pay back to a franchise.

Q Okay, would Mr. Kent have been responsible for paying such royalties?

A Yes.

Q To your knowledge were these royalties always paid?

A No.

Q When such a royalty is not paid what if anything are the consequences of not paying such royalties?

A There are a couple of steps. The first step is a compliance review. After such time under the guidelines of that particular program they have a - - their own license revocation process.

Q Okay, what is an action plan?

A In reference to Mr. Kent an action plan was agreed responsibilities by parties to move forward in the facility in order for - - to accomplish specific goals.

Q And was such an action plan generated as related to Mr. Kent?

A Yes.

Q Did you have any responsibilities related to the action plan?

A Yes.

Q What responsibilities would have fallen on you?

A Such responsibility was to implement a new product called Krispy Crunchy (ph) working - - to work with Mr. Kent and to provide new venues.

Q I’d like to back up a minute, why was it necessary to design and implement an action plan for Mr. Kent?

A Because generally speaking the quality of service and the maintenance and the cleanliness had declined to such a manner that the building management, in this case GSA, had some deep concerns.

Q And how were you made aware of these problems?

A Oftentime by General Services Administration and sometimes by my personal observations.

Q Do you have a recollection of what items were on the August 3, 2009 action plan?

A Not total recollection but some items, action items I do recall.

Q Okay, could you discuss the ones that you do recall?

A To assist Mr. Kent in setting up standard operating procedures for the food court, to set up and implement the Krispy Crunchy program that I stated before - -

Q Hmm, hmm?

A - - to provide a floor scrubber for Rich to clean the floors, professional floor scrubber, to provide - - to assist Rich with some new menu boards. I don’t recall the other tasks.

Q Did the action plan call on any - - ask for any actions of Mr. Kent to complete?

A Yes.

Q Okay, do you recall what such actions it did ask of Mr. Kent?

A Mr. Kent and I were to - - well, Mr. Kent was to deliver on a weekly basis in accordance to the standard operating procedures - - reports - - this report was generated - - a checklist of - - provide for him - - he did not provide that. The cleanliness issues were sporadically maintained in accordance to the action plan.

Q At anytime did you decline to work with Mr. Kent in efforts to improve his facility?

A Repeat that, I didn’t - -

Q Did you ever decline to work with Mr. Kent to improve his facility?

A Never.

Q Okay, could you describe the working relationship that you had with Mr. Kent?

A Professional.

Q Okay, in your view were you always willing to work with Mr. Kent?

A Yes.

MR. DENNER: Your Honor, I think that’s all I have for this witness.

JUDGE MEADE: All right.

Okay, Mr. Pelle, you can have a seat.

And your next witness.

MR. DENNER: Miss Anndrea Greer.

JUDGE MEADE: Okay, and Miss Greer, please raise your right hand. Do you swear that the testimony you’re about to give will be the truth, the whole truth, and nothing but the truth?

MS. GREER: Yes.

JUDGE MEADE: And please state and spell your full name for the record, please.

THE WITNESS: Anndrea Greer - - A-n-n-d-r-e-a - Greer - - G-r-e-e-r.

JUDGE MEADE: Go ahead, Mr. Denner.

MR. DENNER: Thank you, Your Honor.

Good morning, Miss Greer.

THE WITNESS: Good morning.

DIRECT EXAMINATION

BY MR. DENNER:

Q Again, could you state your name for the record?

A Anndrea Greer.

Q Thank you, and what’s your occupation?

A I’m a property manager.

Q Is that your title, property manager?

A Yes, it is.

Q And what property do you manage?

A I manage at the McNamara Federal Building in Downtown Detroit.

Q And how long have you been the building manager there?

A Oh, seven years.

Q Okay, and just for background what was your occupation prior to that?

A Property manager for our leasing locations.

Q And - - okay - -

A This was still with GSA but just not at the McNamara Building.

Q Okay, so how long in total have you been with GSA?

A Twenty-six years.

Q Okay, and just for clarity what is GSA?

A General Services Administration with the - - it’s a U.S. government agency and we handle property and vehicles for General - - for the government.

Q Okay, and again, you’re currently located in Detroit; is that correct?

A Yes.

Q And are you familiar with Mr. Richard Kent?

A Yes, I am.

Q How is it that you’re familiar with Mr. Kent?

A Richard was the operator for our cafeteria in the building.

Q Did that cafeteria have a name?

A Yes, Fountain View Cafeteria (ph), actually, we changed it to Rich’s Fountain View Cafeteria.

Q Okay, so you are familiar - - where - - would you have also been considered a tenant in that building?

A Yes.

Q So you were familiar with Mr. Kent on two fronts, as a building manager and a tenant; is that fair to say?

A Yes, that’s fair.

Q Do you know when Mr. Kent first became operator at the Fountain View Cafeteria?

A Oh, probably - - maybe two, two to three years prior to me taking over the responsibility of managing the cafeteria.

Q Okay, are you familiar with the facilities that he was in charge of?

A Yes.

Q Do you inspect them as a part of your normal job duties?

A Yes.

Q And when you do such inspections what does that consist of?

A Well, it consists of - - we have a checklist and what we do is we check the facility for cleanliness. We also have to keep up with pricing of the items that are for sale. We check just to make sure that the employees are properly cleared, we have to check and make sure that they have their government security clearances, that’s pretty much it.

Q Okay - -

A You know, quality food, quality of food - -

Q And that - -

A - - make sure that the cafeteria is running properly.

Q Okay, and could you tell us how many times you had inspected those facilities?

A Well, I inspected - - I’m required to inspect monthly - -

Q Okay?

A - - but over time the inspections needed to be done a little more frequently so sometimes maybe two, three times a month depending on the month.

Q And two to three times a month, does that encompass the entire time that you were in that role as building manager of the McNamara Building?

A Yeah, it started off monthly but then as time went on it was a need to do it a little bit more frequently.

Q Why was there such a need?

A Because the facility was not being kept up according to GSA’s standards.

Q What sort of - - what if any problems did you see?

A There was severe cleanliness issues. There was constant issues with pricing - -

Q Could you explain - -

A - - employment issues.

Q - - pricing?

A The operator is required to give GSA two weeks at least to let us know before there are any price changes, in other words, if you’re going to sell milk for twenty-five cents, if you’re going to change it to thirty cents then you need to let us know at least two weeks ahead of time before that pricing changes so that we can notify the employees so that they’re prepared.

Q Okay, did you see anything that you would consider a threat to health?

A Yes.

Q Did you see anything that you would consider a threat to the safety or welfare of the customers?

A Yes.

Q Could you explain specifically what you saw in that regard?

A Well, health-wise, I checked dates - - I also checked dates on food. A lot of times the date had passed, expired, in the refrigerated areas. I’m talking about milk, cheese, things like that as well as inside the kitchen area in the refrigerator there’s certain refrigerated foods that had to be labeled as to the date that they were put into the refrigerator and there was so much time that that food was able to stay there before it had to be discarded and those dates were often expired.

Q And did you notify Mr. Kent of these problems?

A Absolutely.

Q Okay, did you notice these problems - - was this an isolated incident or did these happen on more than one occasion?

A More than one occasion.

Q Do you have an idea of how many occasions?

A Well, to be quite honest with you probably one out of every two visits.

MR. DENNER: Your Honor, may I approach the witness?

JUDGE MEADE: Yes.

MR. DENNER: Thank you.

BY MR. DENNER:

Q I’d like to show you what’s identified as Petitioner’s Exhibit - - Proposed Exhibit B; can you identify that document?

A This is an e-mail from myself to my Commission contacts, James Hull, Joe Pelle, and Connie Zanger, and it is referring to a U.S.D.A. inspection that was performed.

Q Are you familiar with that inspection?

A Yes.

Q Would you have been present during that inspection?

A No, unfortunately I was not present for this particular inspection but - - you know - - prior inspections - - but I was actually off that day.

Q I believe that e-mail makes reference to some pictures, does it?

A Yes.

Q And I - - could you describe to the Court what the first picture shows?

A Okay, the first picture is depicting the condition of the vinyl flooring showing that it has dirt on it, it’s full of dirt.

Q And backing up a little bit did you take that picture?

A Yes, I did.

Q Okay, and if you could flip to the next picture, please; could you describe what that one shows?

A The next one is a coat rack but it’s being used for - - to hold mop - - mop paraphernalia. It looks like there’s some cleaning chemicals, there’s hangers, there’s shoes, and pants hanging off of them.

Q Why did you feel it was necessary to take a picture of this?

A Because this is not - - first of all, this is - - a coat rack is not where you need to keep your supplies, your cleaning supplies, and then also it’s unsightly, and I had asked Richard to remove these items several times.

Q Okay, and then again did you take these - - did you take this picture?

A Yes, I did.

Q Okay, and the next one?

A The next one is the men’s restroom inside the cafeteria.

Q And can you describe what that picture shows?

A It shows the disrepair of the waste basket and that it’s overflowing. It’s completely filled with trash. The floor is dirty but you really can’t see the sinks from this picture but I think what I was trying to show was the condition of the trash.

Q Okay, whose responsibility would it have been to ensure that that trash was removed?

A Richard.

Q And whose responsibility would it have been to ensure that the floor is clean and the bathroom is generally clean?

A Richard.

Q Okay, and you took this picture?

A Yes.

Q And on to the next one?

A That is a picture of the men’s urinal and it was depicting the uncleanliness of the urinal.

Q Okay - -

A The stains.

Q Okay, and you took this picture?

A Yes.

Q And on to the next one?

A And the next one is a picture of a toilet, I can’t remember if it was the women’s room or the men’s room, but it shows that the - - that there are rust and ring stains inside the toilet as well as toilet paper completely covering the floor.

Q Okay, can you approximate the date that these pictures were taken?

A I don’t know exactly what day but it was - - it had to have been shortly prior to September 16th when I sent them.

Q Okay - -

A So I could have taken them that actual day or the day before.

Q Was Mr. Kent still the operator of the - - that facility on that day?

A Yes, he was, yes.

MR. DENNER: All right, with that foundation, Your Honor, I would move for that exhibit’s admission.

JUDGE MEADE: Okay, I’ll accept Exhibit B.

BY MR. DENNER:

Q Over the period that you were the building manager did the condition of the facility improve or deteriorate or stay the same?

A It didn’t stay the same. It improved a bit when it was brought to his attention. Certain items were called out on the - - we do an inspection form - - inspection sheet and on that inspection sheet I would note deficiencies. I would give it to Richard and he would make a few of the corrections to the deficiencies and then things would go along for maybe a week or two, maybe even a month, and then the same conditions would appear again. After a while it just became constant with no change.

Q Okay, anytime that there was a problem did you bring that to Mr. Kent’s attention?

A Absolutely.

Q When was the last time you did an inspection - - well, I’m sorry, when was the last time you performed an inspection on that facility?

A I would imagine it’s probably - - I’m trying to remember when he left - - it had to have been maybe a week or two prior to him leaving. I think it - - I can’t remember - - was it May of 2000 maybe or 2010. I can’t remember when he left but it was about a week or so prior to him leaving.

MR. DENNER: Okay, I’m going to show you what’s been marked as Petitioner’s Exhibit C.

MR. DENNER: Your Honor, may I approach the witness?

JUDGE MEADE: Yes.

BY MR. DENNER:

Q Can you identify that document?

A Yes, this is one of our cleaning inspection reports.

Q Okay, could you describe what that document says?

A Okay, it’s a checklist of exactly what I would inspect when I would go down to the cafeteria.

Q What if anything does it say about the condition of the facility?

A Well, I’ve got approximately twenty items and out of those twenty items only three were satisfactory so it was pretty much considered unsatisfactory.

Q Okay, well, which items were satisfactory?

A The trash was pulled in the dining area. The coolers were wiped out, and the ice cream cooler was cleaned out.

Q How many items are on that, other than those three you just mentioned, how many items are on the list, total?

A Two – - four - - six - - eight - - ten - - twelve - - fourteen - - sixteen - - eighteen - - twenty - - twenty-two.

Q Okay, and of those twenty-two is it your testimony that three were satisfactory?

A Yes.

MR. DENNER: Your Honor, with that foundation I move for that exhibit’s admission.

JUDGE MEADE: All right, I’ll accept Exhibit C.

MR. DENNER: Thank you.

BY MR. DENNER:

Q Miss Greer, in your position do you receive customer service complaints or comments?

A Yes, I do.

Q Is there a suggestion box or complaint box, any manner, for customers to leave their comments?

A Yes, a suggestion box in the cafeteria right at the exit, the cashier, in the exit out.

Q Okay, and as a part of your job do you review those comments?

A Yes.

Q And again, you were also a tenant in this building yourself, correct?

A Correct.

Q So did you yourself utilize the facility that Mr. Kent was in charge of?

A Yes, I did utilize it.

Q Okay, did you ever have lunch there?

A Yes.

Q Okay, can you give us - - as related to the notes can you give us your impression of the notes that you reviewed?

A They were all - - and I can safety say all unsatisfactory remarks.

Q Okay, anything specific that caught your eye?

A Concern about the quality of food, concern about the customer service.

Q Do you have any direct knowledge of any customer - - any other customer service problems?

A Yes.

Q Could you describe what those problems were?

A Just unwillingness to listen to the customers, unwillingness to make changes as the customers would ask for certain items, unwillingness to assist. We had constant issues with making change at the cash registers. Those are things that I deemed myself but also were written on the complaint forms.

Q Okay, and when you would receive such complaints would you bring these to Mr. Kent’s attention?

A Yes.

Q Okay, at any point did you express any dissatisfaction to the Michigan Commission for the Blind with Mr. Kent’s performance?

A Yes.

Q Okay, when did that happen?

A Oh, several times, I won’t say monthly, maybe quarterly we would talk, Joe and I would talk and we’d talk about some of the issues and what needed to be corrected or attention needed to be taken.

Q Okay, and what steps if any were taken to correct the problems that you’re aware of?

A I know that we had meetings where all of us would speak at the same time and we would talk about changes that needed to be taken and it was all agreed upon in the meeting but Richard rarely held up his end of the agreement after the meeting.

Q Okay, I’d like to present to you what’s been marked as Petitioner’s Proposed Exhibit D; can you identify that?

A This is a food service discrepancy plan. This was put together as a result of our U.S.D.A. inspection that was done.

Q Is that your signature on the first page of that?

A Yes, it is.

Q Okay, what’s the date of that; is there a date next to - -

A September 16th, 2009.

Q Okay, and what is the rest of that; what does the rest of that exhibit discuss?

A Okay, it’s - - the discrepancy is an action plan as a result of what the inspector - - the U.S.D. inspector found when he did his inspection, and then GSA had to come up with an action plan on how to address the deficiencies that showed up in the U.S.D.A. inspection.

Q Okay - -

A Hmm, hmm.

Q - - do any of the action items in that document speak to the health, safety or welfare of the customers?

A Yes, there were some garbage disposal issues here. Let’s see - - cleanliness, sanitation, food surfaces, food storage issues.

Q To your knowledge were those discrepancies or line items completed by Mr. Kent; were they corrected?

A Yes, we took interim action and then the completion dates are not on this particular form but these were things that I would go through with Richard to make sure that they were corrected.

Q Okay, and this was a result of a U.S.D.A. inspection; is that right?

A Yes.

Q And that was on - - again, on - - when did that inspection occur?

A In - - September 9th of 2009.

Q Does the U.S.D.A. perform those inspections as a matter of course?

A Yes, every year, hmm, hmm.

MR. DENNER: I would move for that exhibit’s admission.

JUDGE MEADE: All right, I’ll accept Exhibit D.

MR. DENNER: Thank you.

BY MR. DENNER:

Q At anytime did you have a meeting with Mr. Kent and the people from the Michigan Commission for the Blind?

A Yes.

Q And what was the date of that most recent meeting?

A I - - honestly, I cannot remember the date but - -

Q Do you remember what month or year?

A - - it was shortly before - - well, it was the last meeting that we had with Richard when he quit during the meeting.

Q Okay, well, let’s start with that, you indicated that he quit; what makes you say that he quit?

A Well, we were in the meeting and we were talking about the deterioration, the customer complaints, and where we were going to go, and it was a pretty uncomfortable meeting because at this point we had asked for corrections and asked for corrections to be made and it wasn’t happening, so this was more or less a meeting to talk about where we go from here because we had action plan after action plan and Richard still was not performing his agreed upon action in the action plan.

Q If I could stop you right there, you just discussed a U.S.D.A. generated action plan; is that correct - -

A Hmm, hmm.

Q - - and I believe that was admitted into evidence, this meeting that you’re describing did that occur before or after that U.S.D.A. inspection occurred?

A After.

Q Okay - -

A And the meeting wasn’t necessarily because of that inspection. It was - - encompassed - - it was pretty much what - - we talked about everything. This kind of brought things to a head because it - - because it was the same corrective actions that needed to be taken over and over and over again so this meeting was to talk about, you know, okay, we’ve got this action plan, we’ve got action plan number two, number three, number four, how much longer are we going to go with action plans until we get something regular, till we get him to understand that these things are to be done as a norm, not because it was an action plan.

Q And who was at this meeting; do you recall?

A Myself, my supervisor Maneer (ph) Mohammed (ph), Connie was there with the Commission.

Q Connie who?

A Connie Zanger.

Q Okay?

A Joe Pelle, James Hull, I think he was on a conference call, my deputy director Sylvia Hermann (ph), and my coworker Nick Huss (ph).

Q And was Mr. Kent there?

A Oh, and Mr. Kent, sorry.

Q That’s fine, and who called that meeting?

A Actually I set it up.

Q You did, what if anything was resolved at the conclusion of that meeting?

A Well, well, the conclusion of the meeting - - Mr. Kent got up and just said - - he threw his hands up in the air and said he was tired of it. He didn’t want to be bothered any longer.

Q Okay, and that’s what led you to believe that he had quit?

A Yes, that led me to believe that he had quit.

Q To your recollection did Mr. Kent ever use the word quit, to the best of your recollection?

A I don’t remember him saying that word quit - -

Q Okay - -

A - - but I remember him saying I’m sick of this, that type of thing, I’m done, I’m sick of this, so he - - I don’t remember if he used the word quit.

Q In that sense, as a result of Mr. Kent’s actions at that meeting, was this meeting cut short?

A Yes.

Q Okay, what’s the current status of the Fountain View Cafeteria today?

A The cafeteria is closed right now.

Q Does the McNamara Building have any plans for it?

A Yes, we do. We’re in the process of - - we just got our solicitation approved by our regional office and we are going to out – - full and open competition - - to get a new (inaudible).

Q Has it been closed since Mr. Kent left?

A Yes.

Q It hasn’t been operating at all since then?

A No.

Q What steps if any has GSA had to take to bring it slowly up to standards?

A Well, we had to get it cleaned professionally. We have been doing - - we took this time while the cafeteria was closed to do some renovations. We put in new floor, new ceiling. We purchased new equipment.

MR. DENNER: Your Honor, I had originally intended on submitting additional exhibits; however, in light of the events that occurred today and the witness’s testimony I feel that those exhibits would be redundant - -

JUDGE MEADE: Okay.

MR. DENNER: - - so at this time I have no further questions for Miss Greer.

JUDGE MEADE: All right, thank you.

And your next witness?

MR. DENNER: Miss Constance Zanger.

JUDGE MEADE: Good morning, please raise your right hand. Do you swear that the testimony you’re about to give will be the truth, the whole truth, and nothing but the truth?

MS. ZANGER: I do.

JUDGE MEADE: And please state and spell your full name for the record, please?

THE WITNESS: My name is Constance Zanger - - the last name is ‘Z’ as in zebra - - a-n-g-e-r.

JUDGE MEADE: Thank you.

Go ahead, Mr. Denner.

MR. DENNER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. DENNER:

Q What is your occupation?

A I’m the Commission for the Blind’s administrative services acting manager.

Q And what does your job duty - - or what are your job duties?

A I’m responsible for the administrative functions of the Commission of the Blind, responsible for facilities and events, vehicles, equipment, budget, tracking expenditures, those kind of issues.

Q Okay, and how long have you been in that capacity?

A Since June 14th of 2010.

Q What was your - - what was your job prior to that time?

A Prior to that I was the Business Enterprise Program manager.

Q And how long have you - - had you been the Business Enterprise Program manager?

A About three years.

Q Okay, and what were your job duties as the DEP manager?

A As DEP manager I was generally responsible for the program, providing training for potential operators as well current operators, managing the staff, overseeing the budget of the program, the program’s expenditures, overseeing the development of new sites and new facilities.

Q Are you familiar with Mr. Richard Kent?

A I am.

Q And how is it that you’re familiar with Mr. Kent?

A Mr. Kent was an operator in the Business Enterprise Program.

Q While you were manager?

A Yes.

Q Do you know how long he was an operator in the DEP program?

A He began his DEP career in either late 2004 or early 2005.

Q Okay, now, the Business Enterprise Program, does it - - it has a number of rules; is that fair to say?

A That’s fair.

Q Okay, are you familiar with those rules?

A I am.

Q Specifically, are you familiar with Rule 151(b)?

A Yes.

Q And what does that rule entail or provide for?

A That rule provides for the revocation of a DEP operator’s license if they voluntarily leave the Business Enterprise Program.

Q Okay, did Mr. Kent voluntarily withdraw from the program in your view?

A Yes.

Q Why do you say that?

A I was at a meeting with Mr. Kent where he said repeatedly I quit, I’m done with the Business Enterprise Program. I don’t need to know about the grievance process.

MR. DENNER: Okay, I would like to present to you Petitioner’s Exhibit - -

‘E’, Your Honor?

JUDGE MEADE: Okay, yes, hmm, hmm.

MR. DENNER: Trying to keep my letters straight.

BY MR. DENNER:

Q Can you identify that document?

A The document is actually comprised of two documents. It’s comprised of a letter dated November 25th, 2009 to Richard Kent stating the circumstances of his voluntarily withdrawal - - voluntary withdrawal from the program and outlining his continuing responsibilities to the program and it’s covered by a memo from Carla Haynes (ph) of the Commission for the Blind to the State Office of Administrative Hearings and Rules in regards to a hearing for him.

Q Okay, is that - - if you flip to the final page of that is that your signature at the bottom there?

A It is my signature.

Q Okay, if I were to ask you the appropriate questions about that document would your answers conform to it?

A Yes.

Q I believe the letter makes reference to a number of outstanding obligations of Mr. Kent; can you identify those obligations?

A Hmm, hmm, I can.

Q Please do?

A The Business Enterprise Program rules require operators to submit periodic reports and one of those obligations is the vending facility monthly report and when Mr. Kent voluntarily withdrew from the program his November and October monthly reports were still outstanding. The promulgated rules also require operators to pay a monthly set aside fee and at the time Mr. Kent voluntarily withdrew from the program his September, October and November set aside fees were outstanding. Mr. Kent had outstanding obligations to his suppliers and the program rules also require operators to pay their suppliers within the suppliers’ terms and conditions. When Mr. Kent - - oh, when Mr. Kent voluntarily withdrew he left and did not pay outstanding wages to his employees.

Q Okay, are you aware of whether those obligations have been satisfied?

A I can’t speak to his obligations of his suppliers and his employees but I can speak to the fact that he has not submitted the monthly report or paid the set aside fees yet.

Q Okay, and you indicated that there was a cover memo on this; that is a cover memo?

A Yes.

Q Okay, and that - - who was that from?

A That’s from Carla Miller-Haynes (ph). She’s the Commission for the Blind administrative hearings coordinator.

MR. DENNER: Okay, Your Honor, I’d move for that exhibit’s admission.

JUDGE MEADE: All right, I’ll accept Exhibit E.

BY MR. DENNER:

Q Have you ever had occasion to - - well, let me ask you this, do you know who Miss Jean Norles (ph) is?

A I do.

Q Who is she?

A Jean Norles was the General Services Administration’s concession expert and she was responsible for generally overseeing the Business Enterprise Program facilities in Ohio, Michigan, Illinois, Indiana and Wisconsin.

Q Okay, did you ever have occasion to receive a letter from Miss Norles dated October 30th, 2009?

A Yes.

MR. DENNER: Your Honor, I’m going to show the witness Petitioner’s Proposed Exhibit - - F?

JUDGE MEADE: ‘F’, yes.

MR. DENNER: Thank you.

BY MR. DENNER:

Q Do you know what that is?

A I recognize this as the letter that the Commission for the Blind received from Jean Norles.

Q Okay, have you seen that letter before?

A Yes.

Q Could you describe what that letter tells us?

A Hmm, hmm, the letter tells us generally about their dissatisfaction with Richard Kent’s service at the McNamara Federal Building. They identify plans of actions that have been established to try to assist Mr. Kent in bringing this facility up to the standard and it outlines the steps that they took and the instances where they were - - they felt that Mr. Kent was not compliant with the plan of action.

Q Did you use that letter as a basis for any disciplinary actions that the Commission - - that you may have taken with regard to Mr. Kent?

A Yes.

Q So would it be fair - - this may sound redundant but would it be fair to say that you relied on that in your decision making process as related to Mr. Kent?

A Yes.

MR. DENNER: Okay, Your Honor, with that foundation I would move for that exhibit’s admission.

JUDGE MEADE: All right, I’ll accept Exhibit F.

BY MR. DENNER:

Q Miss Zanger, you - - going back to the rules you indicated that you have a familiarity with the various program rules; is that correct?

A That’s correct.

Q Okay, are you familiar with the Rule 393.261, if you need to - -

A I could use a little refreshment. Rule 26 outlines the operator’s responsibilities to the Commission.

Q Okay?

A I don’t know which specific responsibility it speaks to.

Q That’s fine, are you familiar with Rule 24?

A Yes, Rule 24 again speaks to operator’s obligations to Commission and to the program and to the customers and one component in that is that the operator will maintain a safe environment, working environment and food service environment.

Q In your experience was Mr. Kent in compliance with that rule relative to maintaining a safe environment?

A No, he was not in compliance with that rule.

Q What makes you say that?

A Based on the documentation that the General Services Administration forwarded to the Commission Mr. Kent was not following basic health standards in terms of dating food and removing it from the shelves when it was past its sell-by- date. Mr. Kent was not correctly and fully cleaning his food service equipment, for example, he would leave in the evening and there would still be bits of meat in the slicer, the bathrooms were not kept clean.

Q Okay, did you attend a meeting at the McNamara Building in October of 2009 relative to Mr. Kent?

A Yes.

Q Okay, and what was the purpose of that meeting?

A The purpose of the meeting was for the Commission of the Blind and the General Services Administration and Richard Kent as a DEP operator to meet together and to see if we could come to some agreement about steps to be taken to improve the service and assist Richard in meeting his obligations.

Q Okay, and what was the outcome of that meeting?

A It was not a satisfactory outcome. Mr. Kent was not willing to participate. He didn’t feel that he needed to participate. He didn’t see that there was anything amiss with his operation.

Q How did that meeting conclude?

A I believe Mr. Kent walked out of the meeting before it was formally concluded.

Q Okay, you had previously offered testimony indicating that Mr. Kent had quit; was this the meeting that that had taken place?

A No.

Q Oh, it was not?

A No.

Q Okay, that was a separate meeting?

A Correct.

Q Okay, okay, fair enough, are there any provisions in the rules that you’re aware of dealing with license revocation and voluntary withdrawal from the program?

A Yes, Rule 15 speaks to that and permits the Commission for the Blind to revoke an operator’s license if they voluntarily withdraw from the program.

MR. DENNER: Okay, Your Honor, I believe we’re concluded. With the Court’s permission, if you’d indulge me, can I have five minutes to confer with my client before we conclude?

JUDGE MEADE: We need the - - something signed by the director, it looks like, that was read at the November 16 meeting; do we have that document?

MR. DENNER: I’m sorry, which one again, I’m sure we do.

THE WITNESS: The November 16.

JUDGE MEADE: The suspension letter.

MR. DENNER: November 16, I believe we have that.

JUDGE MEADE: Okay, I think that would be helpful.

MR. DENNER: If I could have a few minutes to - -

JUDGE MEADE: Certainly, we’re going to take a short break and then you guys can confer if there’s anything else you want to propose as well.

MR. DENNER: Okay, thank you very much.

JUDGE MEADE: We’ll go off the record. It’s about ten-twenty-one.

(At 10:21 a.m., off the record, and back on the record at 10:36 a.m.).

JUDGE MEADE: We’re back on the record. It’s now ten-thirty-six and Mr. Denner, are we ready to proceed?

MR. DENNER: Yes, Your Honor, thank you. I would like to present to the witness Petitioner’s Exhibit F.

JUDGE MEADE: ‘G’.

MR. DENNER: ‘G’, I’m sorry.

JUDGE MEADE: Hmm, hmm.

MR. DENNER: ‘G’, I believe the witness already has a copy of the exhibit so with the Court’s permission - -

JUDGE MEADE: Okay.

MR. DENNER: - - I’ll just refer to the Court’s copy.

JUDGE MEADE: Okay.

BY MR. DENNER:

Q Miss Zanger, could you identify that document?

A This is the Order of Suspension.

Q And what’s the date on the top?

A It is - - it was issued the 16th of November, 2009.

Q Okay, and what is encompassed in that Order of Suspension?

A The Order of Suspension notifies Mr. Kent that the Commission is summarily suspending his license to operate a Business Enterprise Program facility in the state of Michigan. It sets forth the legal basis for doing so and the reason for suspending the license, and also included with this document is a notice that we are commencing the license revocation proceedings for Mr. Kent.

Q Okay, and the notice of commencement of license revocation proceedings, is that what you’re referring to?

A Yes.

Q And what’s encompassed in that notice?

A That notice also sets out the legal basis for the Commission’s ability to be able to issue a license revocation notification and states the reasons why the Commission is doing so and then in conclusion it notifies Mr. Kent of his rights in terms of a hearing and representation.

Q Okay, and who signed this document?

A The director of the Commission for the Blind Patrick Hannon (ph) signed it.

Q Are you familiar with Mr. Hannon?

A I am.

Q So in order - - in addition to there being an Order of Suspension there was also a license revocation proceedings commencement taking place?

A That was our intention.

MR. DENNER: Okay, Your Honor, with that I would move for this exhibit’s admission.

JUDGE MEADE: All right, and I just want to make sure we have a good summary of the alleged violation, so all right, I’ll accept Exhibit G.

MR. DENNER: And I have no further questions for this witness.

JUDGE MEADE: All right, thank you, Miss Zanger.

THE WITNESS: You’re welcome.

JUDGE MEADE: And any other witnesses?

MR. DENNER: No, Your Honor.

JUDGE MEADE: Okay, anything you want to say in closing?

MR. DENNER: No, Your Honor, I believe the evidence speaks for itself and I believe that we’re on the right side of this position - - or this matter, and with that I really have no concluding remarks. I would ask, does the Court wish trial briefs or anything along those lines?

JUDGE MEADE: No, it won’t be necessary at this point. What I’ll do is issue a recommended decision and you should have that shortly. Okay, we’ll go off the record. It’s ten-forty.

MR. DENNER: Oh, I’m sorry, Your Honor, as a housekeeping matter I know that we are technically scheduled for tomorrow also.

JUDGE MEADE: Oh, correct, yes, we’ll - - obviously there won’t be a need to appear tomorrow, so.

MR. DENNER: Okay, thank you.

JUDGE MEADE: Okay, thank you all.

(At 10:40 a.m., proceedings concluded).

C E R T I F I C A T E O F R E P O R T E R

STATE OF MICHIGAN )

) SS.

COUNTY OF OAKLAND )

I hereby certify that this transcript, consisting of fifty-nine (59) pages, represents the complete, true and correct rendition of the proceedings and testimony taken in this case as recorded on November 8, 2010.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible or unintelligible responses by any party or parties that are not discernible during the proceedings.

Date: November 22, 2010

***Edna Zaid***

Edna Zaid (CER-3934)

Certified Electronic Court Reporter