DOCKET NO: CV12-5036404

LISA F. DZIS	:	SUPERIOR COURT
V	:	HARTFORD/NEW BRITAIN
CITY OF HARTFORD	:	JANUARY 30, 2015

PLAINTIFF'S TRIAL BRIEF

Description of the Case

In March 2012, the plaintiff's three-family residence in Hartford was cited by the defendant for blight, resulting, several weeks thereafter and following a clean-up effort by the plaintiff and helpers, in the imposition of fines of $100 per day and the recording of liens to secure them. The plaintiff appealed the citation, unsuccessfully, to a hearing officer and appealed the hearing officer's decision to this court, in which proceeding the liens were discharged and the fines rescinded by stipulation of the parties.

The plaintiff complains that the citation was without foundation and that the process used to cite her was arbitrary and capricious, in violation of the Constitution of the United States and the Constitution of the State of Connecticut. The plaintiff complains that the citation and consequent liens resulted in the sudden diminution in the value of her property, forcing her to sell it at a depressed price, and, further, that the citation and liens caused her to incur expenses for legal services and to be disturbed in the quiet enjoyment of her property.

The action was tried to the court. The plaintiff offered her own testimony and the testimony of one witness. The defendant offered no testimony. The plaintiff has attached portions of the testimony as an appendix. The full transcript is posted online and linked from www.guy2k.com/dzis.

Plaintiff's Evidence

At trial, the plaintiff offered proof in support of three principal points:

- Her property was not blighted
- The defendant denied her equal protection of the laws in citing and fining her for blight, causing her injury.
- The procedures followed by the defendant in citing and fining the plaintiff deprived her of due process of law, causing her injury.

The complaint (Second Amended Complaint) is stated in two counts, charging the defendant with a policy and process that caused a sudden diminution in the value of the plaintiff's property, along with multiple breaches of its constitutional obligations, causing injury.

The defendant has raised the issue of the legal sufficiency of Count One. That issue can be readily settled, and the claim can be simplified if the complaint is considered as a single count charging a denial of due process and equal protection causing a diminution in the value of the plaintiff's property. The complaint should be considered amended to merge the two counts, renumbering Paragraph 38 of the Count Two as Paragraph 38a of the merged count.

The material allegations of the complaint, considered paragraph-by-paragraph, are supported by ample evidence, summarized below. The text of each paragraph of the complaint is printed in bold and numbered as in the complaint.

> **1. At all times relevant hereto, the plaintiff Lisa F. Dzis, resided at and owned premises known as 541-543 Maple Avenue (541 Maple**

Avenue), Hartford, Connecticut, a three-story, three-family wood-frame house.

This allegation is admitted by the defense.

2. The defendant City of Hartford (City) is a municipal corporation chartered under the laws of the State of Connecticut and has been duly notified of this action pursuant to Section 7-101a of the Connecticut General Statutes.

This allegation is admitted by the defense.

3. In June 2011, the defendant City adopted the Livable and Sustainable Neighborhoods Initiative (LSNI), allotting to its mayor and corporation counsel authority over its implementation.

This allegation is admitted in material part by the defense. The history of LSNI is discussed at length in the Six-Month Assessment of the project (Exhibit 9) dated September 10, 2012. That document was retrieved by the plaintiff, along with a document entitled "Livable and Sustainable Neighborhoods Initiative Quarterly Meeting with City-Wide Neighborhood Leaders/Stakeholders" (Exhibit 8), the 200-page Neighborhood Conditions Report (Exhibit 7), and the "First Annual Report" (Exhibit 15), from the City's Livable and Sustainable Neighborhoods website, which is dedicated to LSNI. The plaintiff moved the court to admit these documents as full exhibits and as admissions of the defendant.

4. As part of LSNI, the defendant caused 20,000 properties to be inspected, identifying 771 as potentially blighted.

This allegation is admitted by the defense**.** The process is outlined in Exhibit 8, the first

quarterly assessment of the project. This exhibit was part of the public presentation included in a series of stakeholder's meetings conducted to publicize the first assessment, as the document indicates. The City's Chief Operating Officer is required by the Ordinance (Exhibit 1) to issue a report every quarter. Conspicuous by its absence from this report and from every subsequent report is a description of the process by which properties were targeted for inspection and identified as potentially blighted.

5. In May 2012, as part of LSNI, the defendant identified 703 vacant properties, some but not all of which were also identified as potentially blighted.

This allegation is denied. As is the case with each of the defendant's denials, this denial is supported by no testimony or documentation, leaving the fact-finder with nothing to specify or explain the City's adverse position.

The plaintiff refers the court to Exhibit 8 in support of the first clause of this allegation. The total number of vacant properties itemized in the table on page 14 is 703.

At this early stage of the project, May and June of 2012, the emphasis seems to have been on vacant properties. In line with the common understanding of blight, which the plaintiff described in her testimony (Appendix, transcript page 70) , the Ordinance refers repeatedly and explicitly in its Declaration of Policy (Exhibit 1, Section 9-91A) to "properties that are vacant and in blighted condition." In common understanding, the two go together.

The word "blight" refers literally to a contagious disease of plants and is used metaphorically to describe buildings and neighborhoods. The analogy to contagious disease is appropriate because building abandonments tend to proliferate. The neighbors

of a boarded-up hovel seem more likely to neglect or abandon their property.

A cursory examination of Exhibit 7, the Neighborhood Conditions Report, with photos of the nearly 200 properties targeted for enforcement during the first months of the project, depicts many that are obviously not vacant and whose defective conditions are not visible from the street, including 541 Maple Avenue, which is pictured on page 87.

Exhibit 17, entitled "First Fines: From Six-Month Assessment," lists the first 33 properties fined under LSNI with a reference to the page number of Exhibit 7 on which each property is pictured. A comparison of this small subgroup of fined properties with the great number not subjected to enforcement discloses that, in Hartford, blight may take in a much broader range of conditions than most people would consider symptomatic of neighborhood deterioration, not necessarily including vacancy, even as properties that are clearly and obviously blighted are excused from enforcement.

A careful examination of the properties depicted in Exhibit 7 suggests no rational basis for distinguishing between properties cited for fines, on the one hand, and properties selected for monitoring or even considered abated, on the other.

It was during the first months of the LSNI project, when the Quarterly Assessment and Neighborhood Conditions Report were in preparation, that the plaintiff was cited and fined. As of June 2012, when the two reports came out, she was a awaiting a hearing on her three citations.

Plaintiff's counsel expected to discover statistics showing that some but not all of the 703 vacant properties were designated as potentially blighted, but the defendant disclosed no such statistics, and that clause of paragraph 5 remains unproved. This portion of the allegation is not a material element of the plaintiff's claim.

6. As part of LSNI, the defendant adopted a strategy of targeted enforcement of Chapter 9, Article V of the Hartford Municipal Code, the so-called "Anti-blight Ordinance." (the Ordinance).

7. As part of LSNI, the defendant announced an intention to effect widespread compliance by targeting a sub-group of potentially blighted properties for aggressive enforcement.

The defendant denies these two related allegations despite its own public pronouncements. As stated in the first sentence of the Executive Summary of the Six-Month Assessment (Exhibit 9, page 4), the Mayor directed City officials to restore and revitalize Hartford's neighborhoods through "targeted enforcement of property maintenance standards." This is a clear and unambiguous statement of a policy of targeted enforcement, confirmed a few pages later in this same document (Exhibit 9, page 10) by this statement: "LSNI also produced less measurable results that are nonetheless significant. LSNI's influence has reached property owners who, although not directly targeted for enforcement, have responded to the City 's renewed emphasis on property maintenance and have voluntarily initiated remediation of potential violations before being subject to enforcement."

The overall impression from reading Exhibit 9 in its entirety is that the defendant intended to make an example of a small group of homeowners by targeting them for aggressive enforcement, all for the purpose of gaining widespread compliance. As things stood in June 2012, the plaintiff was one of a tiny contingent of South End homeowners who had been targeted to serve as examples for landlords across the city.

Exhibit 17 shows the first few waves of citations resulting in fines, with the plaintiff

among the first to be cited. Many of the first few properties targeted by LSNI, appearing occupied back in 2012, are vacant now, as Paula Zeiner testified (Appendix, transcript page 119).

8. As part of LSNI, the defendant implemented the following aggressive enforcement measures:

a. The assessment of fines of $200 per day or more for noncompliance, secured by liens in favor of the City.

The defendant denies this allegation, but the evidence fully supports it. To cite a property for blight, the inspector has to notice at least two violations. Violations are punishable at a rate of $100 per day per violation. The assessment of fines of $200 per day must certainly be reckoned an aggressive enforcement measure. The allegation is confirmed in fact by the Table at the end of Exhibit 9 on page 32. The table shows almost all cited properties accruing fines at rates of $200 per day or more.

b. Notifications to mortgagees and other lien-holders of instances of alleged noncompliance.

The allegation is admitted by the defendant.

c. No formal procedure for inspections and reinspections.

The defendant denies this allegation. The only evidence disclosed to suggest a procedure for inspections is outlined in Appendix 1 of the Six-Month Assessment (Exhibit 9, page 27). There is no procedure in that document indicating how or on what basis properties are targeted for inspection as potentially blighted. There is no procedure for inspections after the 30-day reinspection. There is no procedure for regular periodic reinspection during the accrual of fines and no procedure to accommodate changes of season. There is

no procedure for inspection in advance of a hearing on an appeal.

d. Appeals to a hearing officer employed by and serving at the pleasure of the defendant‘s Corporation Counsel.

The defendant admits this allegation in material part. The anti-blight ordinance refers explicitly to this officer in Section 9-95 (Exhibit 1, page 2). This is a remarkable provision. It invites recommendations from the City Council on the hiring of anti-blight attorney hearing officers. One of the richest sources of corruption in the public sector--the hiring of politically connected officials--is memorialized by the City in an ordinance sanctioning the practice, conferring authority to issue fines of tens of thousands of dollars on political appointees. Hired and paid by the corporation counsel to hear claims lodged by the corporation counsel and prosecuted by the corporation counsel, an attorney hearing officer so situated might be expected to favor the corporation counsel.

e. Accumulation of liens to facilitate foreclosure.

This allegation is denied. The plaintiff refers the court to Exhibit 8, and a reference on page 5, to a fund for the deposit of "fines, penalties and lien repayments" leading, at the bottom of the page, in bold, to "Target: a Self sustaining Initiative." Liens and fines seem also to be implicit in the plea on page 15 of Exhibit 8 for "incentivizing redevelopment by changing the economic calculation on letting property go unoccupied or deteriorated." There is every indication in the evidence that the fines were meant to have two purposes: to punish non-complying property-owners and to sustain the project financially. Without stiff fines, one infers from the description of the project in Exhibit 9, the project fails.

f. **Displacement of long-term residents by developers and redevelopers.**

This allegation is denied by the defendant. Although this objective is never acknowledged in so many words, it is a fair inference from a close reading of Exhibit 9 that the City intended to displace homeowners with fines and liens as a means of turning their property over for rehabilitation. Costs would be borne by the delinquent homeowner's loss of equity.

9. On February 21, 2012, as part of LSNI, the defendant cited the plaintiff's residence as blighted property, one of the first 41 properties to be so cited, charging her with three violations of the Ordinance, to wit:

The defendant denies this part of the allegation, but the table at the end of the Six-Month Assessment (Exhibit 9, page 32) supports it unambiguously, as does the Neighborhood Conditions Report (Exhibit 7) which shows the date of citation for each of the properties depicted. Exhibit 17 shows the status of the first 33 properties cited for fines, beginning in April and May of 2012.

The rest of this allegation, consisting of the verbatim text of each of the citations issued to the plaintiff, is admitted, as are paragraphs 10, 11, 12, 13, and 14.

a. Exterior walls, roof, stairs, porches, floors or chimneys are damaged, collapsing or deteriorating or permit the interior of the building to be open to the weather;

The deteriorated or rotten components of the second floor front porch on the Eastern side of the building need to be repaired and or replaced, The trim on the Eastern side of the building third floor left window needs to be repaired and or replaced. The deteriorating

siding on the Northern side of the building needs to be repaired and or replaced.

b. The property is a factor creating substantial and unreasonable interference with the reasonable and lawful use and enjoyment of other space within the building or premises or within the neighborhood as documented and reported to the Licenses and Inspections by neighborhood complaints;

The Department of Licenses and Inspections has a history of complaints related to the above referenced property documented and recorded in their Munis computer software system. To correct this violation incoming new complaints must cease.

c. Other conditions exist that reflect a level of maintenance which is not in the (sic) keeping with community standards including, but not limited to, graffiti that is clearly visible from the street;

The overall condition of the property (paint, lack of maintenance) is not in keeping with the community standards. Abating all other violations of the Hartford Municipal Code Anti-Blight Section will, in turn, abate this violation.

10. An owner must be in violation of at least two sections of the Ordinance to be subject to fines.

11. Fines accrue at the rate of $100 per day per violation.

12. On March 3, 2012, the defendant notified the plaintiff by mail of the three notices of violation, allowing her 30 days from receipt of the

notices to abate the violations.

13. On and after March 3, 2012, the defendant referred to 541 Maple Avenue as blighted property.

14. On March 5, 2012, before the expiration of 30 days as provided in the notices for abatement, the defendant caused the three notices to be recorded in the Hartford Land Records.

15. The three notices were intended to operate and did operate as liens against 541 Maple Avenue to secure the imposition of such fines as might in the future be imposed on the plaintiff under the Ordinance.

The defendant denies Paragraph 15 without explanation or rebuttal. If the notices (Exhibits 2, 3, and 4) were not intended to operate as liens, the true intent of their recordation has yet to be disclosed. Any creditor or prospective creditor would consider them encumbrances, and it may be inferred that such was the City's purpose.

16. The recording of the notices created by the defendants to encumber 541 Maple Avenue and to encumber the equity of the plaintiff in those premises was not authorized by any Connecticut statute and was contrary to law.

This allegation is denied without comment. Appendix 1 of the Six-Month Assessment (Exhibit 9, page 30) supports the allegation. LSNI procedures provide explicitly for the filing of anti-blight liens after judgment in Superior Court. There can be no legitimate authority for the filing of notices like these, which are meant to secure payment of fines that are imposed in no certain amount without a hearing. The defendant should be estopped from claiming these are not liens.

17. The three notices of violation were vague and imprecise, lacking specific factual allegations or any guidance or instruction on the measures that might be taken to abate the violations.

The defendant denies the allegation, but the notices announce their own insufficiency. One notice is self-abating on the nonoccurrence of further complaints. One abates upon the abatement of another and seems to be based on the same defect involving maintenance of the outer surface of the building. There is no consideration of the damaging winter in any of the notices, all issued in March, nor any accommodation for the weather in the notice to correct, which expired while the weather was still cold. Notice also the frequent use of the word "or" in describing physical conditions. The references are so imprecise as to be misleading.

18. Notwithstanding the property's state of compliance with applicable laws and regulations and notwithstanding defects in the notices, the plaintiff attempted to abate and did abate the conditions cited in the notice sufficiently to cure any alleged violation of the Ordinance.

The defendant denies the allegation, which is supported by the unrebutted testimony of both witnesses, as well as photos taken of the property by the defendant on separate occasions (February 21 and April 17, 2012), grouped together as Exhibit 16. The photographs are dated. Some are out of focus, but none shows any condition that could reasonably be considered blighted. As Paula Zeiner said (Appendix, transcript page 108), "The house basically needed some paint." She gave a brief account of the work done to remedy any possible defects on transcript page 112. Lisa Dzis gave a more detailed

account of the defects and remedial efforts beginning on transcript page 49. The defendant's disposition not to present testimony on the conditions at 541 Maple Avenue during the period at issue should raise a corroborative presumption that the conditions were as described by the witnesses and as pictured in the photos.

19. On or about April 17, 2012, the defendant, acting through its employee, circulated a bar graph to the plaintiff illustrating the accrual of fines over various periods.

The defendant's denial of this allegation should be sustained. The plaintiff testified that she had not seen this graph, Exhibit 5, before counsel showed it to her in 2012, after it was disclosed by way of discovery on the appeal of the citations to this court. Notwithstanding the plaintiff's testimony, the graph should be seen as an admission of the defendant, characteristic of the aggressiveness of its targeted enforcement regime.

20. On April 17, 2012, the defendant, acting through its employee, offered the plaintiff the services of a crew of immigrants employed by a neighboring property owner to abate the conditions cited in the three notices, advising the plaintiff that the work could be done in a weekend for $2,000.

A finder of fact might reasonably expect the subject of an accusation like this one to answer the charge. It is reasonable to infer from the inspector's absence that he cannot answer. It may also be reasonable to infer that among the unspecified issues of "isolation" and "stagnation" cited by the Mayor in his introduction to the Six-Month Assessment (Exhibit 8, page 2) were lax procedures that allowed this inspector behave as he did.

The plaintiff's testimony on the inspector's offer stands unimpeached. The court will recall her narrative and the offer made by the inspector of an immigrant work-crew to abate any fine-generating violation. That testimony is on transcript page 67 of the appendix, along with testimony in support of paragraph 21, which allegation was neither admitted nor denied by the defendant.

> **21. The plaintiff refused the offer made to her by the defendant, as stated in paragraph 20.**
>
> **22. The conditions on the plaintiff's property were at no time out of compliance with the Ordinance or any other applicable law or regulation, and the notices of violation were without foundation.**

The allegation is denied, but the testimony of the two witnesses stands unchallenged. The City never had a basis for the charge of "graffiti visible from the street" or the charge of "a history of complaints." Both were altogether false charges, whose invalidation should have been sufficient to remove the property from the operation of the Ordinance. The photographs of 541 Maple Avenue and the testimony of the plaintiff and her witness Paula Zeiner was offered in strong support of this allegation. Juxtaposed to the silence of the defendant, the testimony on this point and in support of paragraph 23, which the defendant denies, should be taken as offered.

> **23. At no time did conditions on the plaintiff's property amount to blight or a blighted condition**.
>
> **24. On April 17, 2012, fines began accruing on 541 Maple Avenue at the rate of $100 per day per violation, for violations of subsection 2 and subsection 7 of the Ordinance**.

This paragraph and paragraphs 25-28 are admitted by the defendant.

25. On April 23, 2012, 541 Maple Avenue was cited for violations of subsection 2 and subsection 7 of the Ordinance, one of the first 41 properties to be cited for daily fines.

26. On May 4, 2012, the petitioner appealed the assessment of fines.

27. On July 12, 2012, the petitioner's appeal was heard by Matthew Forrest, designated by the defendant as attorney hearing officer.

28. The defendant, acting through its hearing officer, made the following finding:

The City provides proper evidence that there was violation of 9-91(7) and 9-91(2). The evidence shows rot and deterioration in violation of 9-91(2). They also show substantial painting which has pealed (sic) and been removed in violation of 9-91(7). I therefore find the defendant in violation of these two code sections. I consider a house to be properly painted or sided as a community standard. Evidence did not prove violation of 9-91(10) . . . The defendant is therefore liable for fines accruing at 100/day/violation, starting on July 13, 2012. I find the defendant in violation of two code sections and therefore will be fined 200 per day until both violations are abated.

This was one of 20 decisions rendered by attorney hearing officers during the first six months of LSNI. The defendant concedes on page 9 of Exhibit 9, that the "overwhelming majority of citation decisions resulted in a favorable decision for the city." This is so egregious an understatement as to be misleading. The table on pages 31 and 32 of Exhibit

9 discloses a win rate of 100 percent for the City as of September 10, 2012.

The First Annual Report, admitted as Exhibit 15, contains nothing comparable to the Table in the Six Month Assessment, and so it is not possible to determine whether the City maintains its 100 percent success rate or even whether it continues to impose fines.

29. On August 24, 2012, the plaintiff appealed the decision of the hearing officer by way of a petition to the Superior Court.

The defendant corrects the date to August 16, 2012, to which correction the plaintiff demurs.

30. As of September 10, 2012, fines levied against 541 Maple Avenue totaled over $25,000.

The defendant denies this allegation. In the Table on page 32 of Exhibit 9, the entry for 541 Maple Avenue shows accrued fines totaling $26,964.

31. As of October 12, 2012, fines continued to accrue against 541 Maple Avenue.

This allegation is denied, but there is nothing in any disclosure made by the defendant to indicate that it caused an inspection to be made before October 16, 2012, or otherwise found 541 Maple Avenue to be in compliance with its requirements so as to cause the fines to stop accumulating.

32. On October 16, 2012, the defendant caused an inspection to be made of 541 Maple Avenue and made the following finding: "It appears that the owner has abated violations by painting the first floor of the property and by encasing the porch on the second floor with vinyl siding among other items. Since it appears that progress

has been made at the property. I am recommending that the City release its Notices of Violations from the land records and waive its fines. The City does not want to interfere with the scheduled sale of the property and appreciates the work that has been performed. "

The defendant admits this allegation in material part.

33. On October 22, 2012, the plaintiff and the defendant consented to a stipulated judgment on the appeal of the assessment, as set forth in Paragraph 34, in which the plaintiff referred to a contract to sell her house, and the defendant agreed to waive all fines and release all liens and notices encumbering 541 Maple Avenue.

The defendant denies this allegation but the stipulation, admitted as Exhibit 12, speaks for itself. It was the product of negotiations between counsel. An earlier version, admitted as Exhibit 13, was pressed by the defendant but rejected by the plaintiff.

As of October 22, 2012, when the stipulation was adopted, the petition to discharge the citations had been pending for almost two months. The defendant had notice at this point that a homeowner was charging its inspector with misconduct, challenging its policy as unfair, and branding its process as unconstitutional, and yet it insisted on its status as lienor and demanded concessions in return for its release of the encumbrances. This is a matter of record and not deniable.

34. The sale referred to in the stipulation provides for a purchase price of $72,000.

The plaintiff was left to her proof. Her proof, supported by defendant's Exhibit B, was that the actual purchase price was $70,400.

35. As of September 10, 2012 , the City's estimate of the fair market value of 541 Maple Avenue was $152,200.

The plaintiff was left to her proof. Her proof is in the Table at the end of Exhibit 9, page 32. The entry for 541 Maple Avenue, taken from the city assessor's roll, shows the fair market value as $152,200. The plaintiff relies on this as an admission of the defendant.

36. The actions of the defendant in labeling 541 Maple Avenue a blighted property diminished the monetary value of 541 Maple Avenue from $152,200 to $72,000.

The defendant denies this allegation, but the evidence supports it without qualification. The policy was aggressive, and it was meant to be. It was targeted to afflict a few unfortunate examples, and it was meant to intimidate. Fines were calibrated to make the project self-sustaining. This plaintiff was intimidated into selling at a depressed price and moving away from family and friends after half a lifetime in Barry Square. Her testimony and that of her cousin and supporter Paula Zeiner was compelling and moving and spontaneous. If she'd had the money, this unfortunate Hartford native said, she'd have had the work done in good time and paid any fines, but she didn't have the money, and the pressure was draining her, as Paula noticed. Paula suggested a way out, maybe a life-saving escape, and Lisa decided to bail out at the lowest possible cost.

37. In diminishing the value of 541 Maple Avenue, the defendant acted in furtherance of the objective of LSNI to make the property attractive to potential investors.

This allegation is denied. It cannot be proved by direct evidence. It is never stated outright that the intent of the LSNI regime was to depress property values to make

selected parcels attractive to potential investors. This can be inferred from circumstantial evidence, however, and it is corroborated by the experience of the parties with 541 Maple Avenue, which would be reckoned a success by the City, whose gain was the plaintiff's loss.

38. The plaintiff was injured to the extent of the diminution in the value of 541 Maple Avenue, and the defendant is liable for her injury.

The defendant denies this allegation but offers no fact or circumstance in rebuttal. The court is bound to credit her claim.

38a. The defendant has, under color of law, acted to deprive the plaintiff of her rights to equal protection of the laws and due process of law under Amendment XIV of the Constitution of the United States, in violation of Section 1983 of the Civil Rights Act of 1871, in that:

a. It was the stated policy of the defendants to target selected property owners, including the plaintiff, for aggressive enforcement, with the explicit purpose of making an example that might bring others into compliance.

The defendant denies this allegation, which is a restatement, in constitutional terms, of paragraphs 6 and 7. The evidence is the same in both instances.

b. There was no rational basis for targeting 541 Maple Avenue as a blighted property.

The defendant denies this allegation, which is a restatement, in constitutional terms, of paragraphs 22 and 23, and the evidence is the same in both instances.

c. There was insufficient notice of the specific character of the alleged defective conditions at 541 Maple Avenue and no notice of the measures necessary to abate them.

This allegation is denied. The three notices, Exhibits 2, 3, and 4, speak for themselves. Exhibit 2 opens with the altogether inaccurate statement that "exterior walls, roof, stairs, porches, floors or chimneys are damaged, collapsing or deteriorating or permit the interior of the building to be open to the weather." This is followed by a specification, the most nearly coherent statement in any of the three citations, that "deteriorated or rotten components of the second floor front porch on the Eastern side of the building need to be repaired and or replaced, The trim on the Eastern side of the building third floor left window needs to be repaired and or replaced. The deteriorating siding on the Northern side of the building needs to be repaired and or replaced." Both the plaintiff and her witness testified to the details of this condition, which was at least partly attributable to the normal wear and tear of a harsh winter, and both testified to the measures taken to abate it.

Exhibit 3 is impossible to explain. It characterizes the property as "a factor creating substantial and unreasonable interference with the reasonable and lawful use and enjoyment of other space within the building or premises or within the neighborhood as documented and reported to the Licenses and Inspections by neighborhood complaints" and refers to a "history of complaints related to the above referenced property documented and recorded in their Munis computer software system," all without ever mentioning the specific problems complained of.

"To correct this violation incoming new complaints must cease," the notice announces. Is

it possible to remedy a violation that is deemed abated upon the non-occurrence of an event? In fact, incoming new complaints had already ceased upon the issuance of this citation, and so the violation could not, logically or legally, be said to exist.

Exhibit 4 refers to "(o)ther conditions" that reflect "a level of maintenance which is not in the keeping with community standards including, but not limited to, graffiti that is clearly visible from the street." There never was graffiti at 541 Maple Avenue, and the level of maintenance was at all times in keeping with community standards, as contemporaneous photos of 541 Maple Avenue (Exhibit 16) and other houses in the South End (Exhibit 14) clearly show. Nothing could be more vague and imprecise than this reference in Exhibit 4: "The overall condition of the property (paint, lack of maintenance) is not in keeping with the community standards."

Exhibit 4 states that "Abating all other violations of the Hartford Municipal Code Anti-Blight Section will, in turn, abate this violation." This is shocking but not surprising. The conditions alleged as violations in Exhibit 4 include the conditions alleged as violations in Exhibit 2, and so both would naturally by abated by the same corrective measures.

Also worth noting is the repeated use of the word "or" to characterize defective conditions. By this semantic maneuver, the notices are made to suggest the presence of defective conditions that never existed at 541 Maple Avenue and exaggerate the seriousness of trivial defects.

d. The plaintiff was charged twice for the same allegedly defective condition, satisfying the Ordinance's requirement of two violations to support the imposition of fines but bypassing the subsection 7

requirement of "other" conditions.

The defendant denies the allegation, but a careful examination of Exhibits 2 and 4 discloses that both are based on the same defect involving the outer surface of the house. There was no graffiti. The inspector imported the graffiti violation from the text of the Ordinance for reasons unknown. Once the graffiti charge is eliminated, all that remains of the violation of community standards is the problem with the external surface of the house, which is the subject of Exhibit 2. The defendant offers no rebuttal of this allegation nor any explanation for the use of this tactic to support the enforcement action against the plaintiff.

e. Immediately following plaintiff's refusal to accept the defendant's offer of April 17, as alleged in paragraph 20, above, the defendant commenced to impose fines on the plaintiff, and the imposition of fines was in direct retaliation for the plaintiff's refusal to accept the said offer.

The allegation is denied, but the plaintiff's testimony was compelling on this point. Retaliation cannot often be proved by direct evidence, but all the circumstances here point to retaliation, which would explain the inspector's premature recordation of the notices. The inspector's non-appearance at trial tends to corroborate the plaintiff's interpretation of events.

f. The hearing on the plaintiff's appeal was not impartial, in that : The hearing officer assessed fines of $200 per day on a record bereft of fact

The allegation is denied. Exhibit 10 speaks for itself. It is the only record of the

proceeding. Its reasoning is as disreputable as its presentation. It would not be an exaggeration to call it an embarrassment to the legal profession.

The plaintiff never saw this document until it was disclosed to counsel by way of discovery in the appeal of the citation. As the plaintiff alleges, there is no reference in this document to any fact, no citation to any photo, no description of any physical condition, no narrative of work performed or work remaining to be done, and no trace of reasoned deliberation whatsoever. Among patent denials of due process, the record of this proceeding ranks with the Inquisition and the Star Chamber.

The defense declined to bring the attorney responsible for this aberration to court to defend it, nor did the City provide counsel with other examples of the 20 citations that were decided in its favor, as requested by way of discovery. It is not unreasonable to infer from the nondisclosure that this decision was exemplary. According to the Table at the end of Exhibit 9, not a single appeal was decided in favor of a homeowner.

The hearing officer found, without evidence and contrary to common knowledge, that "properly painted" surfaces are standard in the community

The allegation is denied. If there is a factual basis for the hearing officer's determination, it is not evident from Exhibit 10. Plaintiff's trial evidence (Exhibit 14), consisting of photos of homes in the plaintiff's neighborhood taken in September 2012, indicates that properly painted surfaces are far from standard in the Barry Square/South End community.

The hearing officer made no mention of any abatement undertaken by the plaintiff or of any evidence or argument presented in her defense

This allegation is denied, notwithstanding the absence of any mention of the plaintiff's efforts in Exhibit 10. The plaintiff testified as to the evidence she offered at the hearing (Appendix, transcript page 64). If the hearing officer saw the photos admitted as Exhibit 16, the later of which are dated two months before the hearing and none showing any condition that could be characterized as blighted, it is not evident from Exhibit 10. Possibly, the plaintiff's abatement efforts escaped the hearing officer's notice, but equally likely is that they were consciously disregarded to facilitate a decision in favor of the City. Attorney Forrest did not appear at trial to tell us why he omitted crucial facts from his opinion.

The hearing officer ruled that the conditions deemed to be in violation of subsection 2 also gave rise to a violation of subsection 7, thereby providing a basis for the two violations required to impose anti-blight sanctions but bypassing the subsection 7 provisions calling for "other" conditions

The defendant denies this allegation, but the opinion speaks for itself. Two violations were sustained, generating fines of $100 per day each, for what amounted to peeling paint. The allegation involving complaints was abandoned by the City. Since the two remaining violations both involved the same condition (and not "other" conditions as stated in the Ordinance), the property did not satisfy the Ordinance's requirement for the imposition of fines.

The hearing officer gave no account of the abandoned allegations of a history of complaints, as recited in paragraph 15b

The allegation is denied, even though there is no indication that the hearing officer ever

inquired into the status of the alleged complaints. Whether there might have been an abuse of the complaint process should certainly have been a matter of concern to the hearing officer on appeal, with fines of hundreds of dollars per day hanging in the balance. The plaintiff explicitly requested by way of discovery any record of complaints involving 541 Maple Avenue and received nothing from the defendant. Was this violation fabricated by the inspector? The attorney hearing officer could have appeared to explain why this citation was not pursued. From his nonappearance we may reasonably infer that the purpose was corrupt.

The hearing officer was without proper authority to rule.

This allegation is denied, but it is undeniable that the attorney hearing officer in this regime has an inherent and incurable conflict of interest that would compel a responsible professional to decline the position and compel an irresponsible one to rule for his boss. The latter course was followed in every case.

Fines of $200 per day were excessive.

This allegation is denied. The plaintiff leaves the issue to the sound discretion of the court.

39. The plaintiff was obliged to incur legal fees and costs, was disturbed in the quiet enjoyment of her property, and suffered physical and emotional injury as a result of the defendants' violations of law.

This allegation is denied. Although the plaintiff makes no claim of present physical and emotional injury, her testimony supports the allegation without qualification. Because of pressure from the City spanning months and threatening dire consequences, the plaintiff

was forced to sell her property at a big loss, at least $80,000 by the City's own reckoning. All this after months of legal wrangling in a case that could and should have been compromised by the City at the outset. Even though counsel never billed the plaintiff for legal services--Stephen and Lisa are brother and sister--she feels an obligation to him as her attorney, and it is one she is unable to satisfy under current circumstances. If the City had canceled the fines and released the liens when the plaintiff first challenged them, she would still be in Hartford, as she testified, and this case would not exist. Money damages cannot compensate for the loss occasioned by her displacement from home and family.

Argument

The plaintiff's property was singled out for aggressive enforcement for reasons unknown and decidedly not because of the condition of the house, which was occupied, intact, and in compliance with all laws and regulations, as contemporaneous photos and trial testimony clearly indicate. Like so many of the South End properties targeted in the first wave of citations and fines, it was never a blighted property within the generally understood meaning of that term. Many of the others, two years later, have since fallen victim to decay. How could it be otherwise with a regime conceived to treat property owners unequally?

The documents published by the City touting the program refer unambiguously to targeted enforcement. Of 771 potentially blighted properties identified in Autumn of 2011--one in 30 of the 20,000 properties surveyed--the City selected 541 Maple Avenue and five dozen others to serve as an example to other property-owners.

The plaintiff was among the first 103 owners to receive a preliminary notice of violation and among the first 41 properties receiving a citation imposing daily fines. A

cursory comparison of the photo of 541 Maple Avenue in the City's Neighborhood Conditions Report with photos of properties not burdened with fines--including many subject to non-punitive “Monitoring”-- discloses no rational basis for distinguishing between properties subject to fines and properties excused from enforcement. A detailed examination of that same June 2012 report clearly indicates that the imposition of two-hundred-dollar-a-day fines could not have been targeted to gain compliance from the most serious cases. The most serious cases were not among those burdened with fines, and many of the properties burdened with fines were not blighted.

In the September 10 report, the makers of the policy celebrate having “reached property owners who, although not directly targeted for enforcement, have responded to the City ‘s renewed emphasis on property maintenance.” This statement acknowledges that the purpose of aggressive enforcement targeting this petitioner and a few dozen others was to scare the owners of other blighted properties--hundreds of them--into compliance by openly confiscating the targeted owners’ equity in their homes. The City’s statements indicate that it abandoned all pretense of consistent and even-handed enforcement in an effort to gain widespread compliance. It is a regime that could not provide equal protection of the laws and that did not provide due process of law, as the plaintiff’s evidence demonstrates conclusively. There is no evidence to indicate that the selective enforcement regime effected substantial compliance anywhere at any time.

It may be that the inherent unfairness of the selective enforcement regime served to facilitate the corruption of so many other aspects of LSNI, starting with the malfeasance of the inspector in March of 2012. He may have believed he was doing the plaintiff a favor by hooking her up with somebody that could abate the violations he had cited for

$2000 in a weekend. One is reluctant to guess whether the plaintiff would have received a first-class job or whether the inspector's price estimate was guaranteed or whether some portion of the bill would go toward a finder's fee or commission of some kind. The inspector's corrupt conduct alone is sufficient to find a failure of due process. His recordation of the notices, contrary to prescribed procedures and authorized by no law, compounded his fault.

If not for the shoddy work of the attorney hearing officer, the malfeasance of the inspector might seem much worse. The "opinion" of this official--invested with authority that, in the aggregate, generated over three million dollars in uncollectible fines--is legal work of such poor quality as to be punishable. Consider the thought and judgment that are brought to bear by a judge in the imposition of a $100 fine in a Superior Court proceeding, and compare with what this officer brought to this proceeding, a hearing that resulted in the assessment of fines exceeding the maximum fine for murder.

It is possible for the court to find for the plaintiff solely on the grounds of denial of due process of law and not reach the issue of equal protection. The plaintiff urges the court most energetically to resist this resolution. The targeted enforcement regime challenged here invites mischief and should be explicitly sanctioned.

The prospect of huge fines gives inspectors inordinate power over property owners. The potential for malfeasance--in the form of recommendations from the inspector to use a particular contractor, for example--is considerable.   The enforcement initiative's emphasis on complaints could and probably did spur at least one prospective absentee landlord shopping for bargains to lodge a blight complaint and, expecting foreclosure of thousands of dollars in liens, as announced by the policy, pick up a property like 541

Maple Avenue for much less than its value. Whether or not the displacement of resident owners by absentee owners was an unstated objective of this initiative, that turned out to be its inevitable consequence.

There may be some novel aspects to a complaint charging the purposeful destruction of the value of property by a city, but that is what this defendant did, and it is something that authorities believe they may do without restriction. This defendant boasted in the Six-Month Assessment (Exhibit 9, Page 8) that only one property-owner (this plaintiff) had appealed her citations to the Superior Court. Lawyers know it is the rare citizen who has the stuff to challenge corrupt authority. If we rebuff this claim, we encourage municipalities to engage in this sort of abuse and worse.

If LSNI actually produced any positive results, the fact-finder might reasonably expect the defendant to have presented evidence to that effect. None was offered, because there is none. Enforcement by example doesn't work. This may be why executions and floggings are no longer conducted in public. The authorities in the old days thought they could maintain order by letting people know what was in store for the non-compliant, reserving the harshest public punishments for the worst offenders. It didn't work then, and it doesn't work now. Even in the days of public floggings, the torturers did not pick people at random to be punished, as the City seems to have done with Lisa Dzis and others.

Property-owners like Lisa Dzis are the heart and soul of the city of Hartford. It is worth the expenditure of an hour to read the whole of her examination (linked from www.guy2k.com/dzis), direct and cross, because it tells a story of productive urban life, rude comforts and harmony among ordinary people in Barry Square.

Suddenly, the plaintiff's quiet enjoyment of her property was brutally interrupted by thuggish municipal enforcers. Her confusion and awe at the process she was subjected to are evident throughout her testimony, most starkly under counsel's cross examination. With the mayor and corporation counsel and their minions brandishing new, seemingly limitless powers, Lisa became collateral damage. Most people would say that pressure applied by the City forced her to sell her property.

It is worth noting that the harshly punitive boastfulness of the Quarterly Report and the Six-Month Assessment is absent from the last annual report (Exhibit 15), which was published after this action was lodged, perhaps a tacit admission that the blight was not on Lisa's property but on the souls of the predators that hatched this policy of public flogging of vulnerable people. By this ill-conceived and irresponsibly administered regime, the City of Hartford ran a contributing member of the community out of town.

Respectfully submitted

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This will certify that a true copy of the foregoing was emailed to counsel for the defendant on January 30, 2015.