Frank Bright
21 Hartwell Street
New Brunswick, NJ 08901
848-391-3373
Fbright123@aol.com
Pro Se Appellant

Department of Community Affairs, Bureau of Housing Inspection Respondent, vs. Frank Bright, Appellant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-3108-23 ON APPEAL FROM Department of Community Affairs

BRIEF FOR PRO SE APPELLANT FRANK BRIGHT

ON THE BRIEF:
Frank Bright

TABLE OF CONTENTS

Page

TABLE OF JUDGMENTS ORDERS AND RULINGS

RULES AND STATUTES

Page

INTRODUCTORY STATEMENT

The Appellant in this case, Frank Bright asks the Court to reverse a $525 penalty issued by the respondent Department of Community Affairs, Bureau of Inspections and to reverse the Final Agency Decision which affirmed the initial decision of ALJ Carl Buck III due to the testimony of unreliable witnesses, the witnesses not being sequestered, discovery not being timely produced and several other due process violations.

STATEMENT OF FACTS

Bureau of Housing Inspections (BHI) conducted an inspection of property located at 218 George Street, New Brunswick, New Jersey on July 19, 2019 and found violations. BHI issued an order to pay inspection fees on July 25, 2019.

Appellant requested an appeal on August 6, 2019 by going in person to the BHI office in Trenton. (Da 27)[1] (1T19-2)[2]. This appeal was not acknowledged by BHI.

Reinspection was conducted on November 10, 2022 and some violations

[1] Da= Defendant /Appellant Appendix
[2] 1T= Transcript of ALJ Hearing Dated 8/15/2023

were found to be unabated. Appellant was issued a penalty of $ 525.

Appellant appealed the penalty and requested a hearing on November 18, 2022. This second appeal was acknowledged by the DCA-BHI.

PROCEDURAL HISTORY

DCA-BHI transmitted the contested case to the Office of Administrative Law (OAL) on May 12. 2023. The matter was received by the OAL on May 18, 2023.

Appellant sent in a discovery request on July 6, 2023 (Da 52).

A settlement conference was scheduled remotely for July 6, 2023 (Da 54). Appellant timely joined the conference. However, the host hung up on the meeting without any introduction, discussion or reason for ending the call. (Da 53).

An in-person hearing was held before Administrative Law Judge Carl Buck III on August 15, 2023.

The record closed on December 11, 2023.

An order extending time to complete the initial decision due to voluminous caseload was issued on January 25, 2024 (Da 1-2)

ALJ Carl Buck III issued the initial decision on March, 11, 2024 (Da 3-23)

Appellant filed Written Exceptions on March 20, 2024 (Da 24-39)

Respondent filed a response to the written exceptions on March 28, 2024 (Da 40-42)

Final Agency Decision was issued on April 24, 2024 (Da 43-45)

Appellant filed Notice of Appeal to this Court on June 7, 2024 (Da 46-51)

LEGAL ARGUMENT

I. APPELLANT IS ENTITLED TO DUE PROCESS: DUE PROCESS WAS VIOLATED IN NUMEROUS WAYS (Raised Below: 1T)

Material witnesses were not produced for the hearing. Appellant was not provided with ability to face and cross examine the inspectors who conducted the inspection and who had personal knowledge of the violations that were found. No photographic evidence was produced for many of the violations. Inspectors who did not personally find the violations testified about the alleged violations. Discovery was not timely provided to Appellant. Witnesses were not sequestered. Judge appeared late to the hearing.

II. INSPECTORS WHO PERSONALLY INSPECTED THE PROPERTY AND FOUND VIOLATIONS WERE NOT PRODUCED AS WITNESSES (Raised Below: 1T10-11; Da 28)

Material witnesses Inspector Brown and Inspector Carliese at cell number 609-577-0425 were never produced for the hearing, despite being the inspectors who conducted the original inspection and saw the original violations.

At the hearing, BHI Compliance Officer Carolyn Long testified that the alleged violations of 2019 were found by Inspector Sean Brown (1T10-11). Sean Brown did not appear at the hearing on August 15, 2023. Appellant was not provided with the ability to face and cross examine this witness.

Joe C. at cell number 609-633-6227 was the inspector throughout the process in 2022 (Da 28) . Joe C. had represented to Appellant that all items were abated and had requested a walk through on September 6, 2022. Joe C. was not produced as a witness for the hearing on August 15, 2023 despite being the inspector with personal knowledge of the condition of the property in 2022. Appellant was not provided with the ability to face and cross examine this witness.

III. WITNESSES WERE UNRELIABLE (Raised Below: 1T28-14; 1T29-16)

Inspector Sean Daly was never on location despite his testimony that he did the inspection on November 10, 2022. (1T28-14) . Inspector Daly testified that he entered through the front door to the common area because the front door at issue was not self closing or self locking. (1T29-16). This is not an accurate statement as a brand new front door costing approximately $10,000 had been installed in 2020 which was self closing.

IV. DCA VIOLATED CIVIL RIGHTS OF APPELLANT BY VISITING PROPERTY DAYS BEFORE THE HEARING (Raised Below: 1T99-9)

Inspector Costanzo who testified at the August 15, 2023 hearing was never a material witness. He never performed an inspection at the property in question. Instead Mr. Costanzo went "On his own volition" to the property in question, without verifying the actual property is the property except by entering the address in an uncalibrated maps computer application (1T99-9). Mr. Constanzo also unlawfully tried and succeeded in entering the premises by his own testimony (1T99). DCA has stated that refusing an Inspector to enter premises while an appeal is pending is acceptable. DCA violated their own policy, which was provided to the Appellant in writing, by entering the

property. No violations were written from unauthorized visits, but were being used to backdate alleged violations from years prior. No evidence exists of unabated violations except for pictures from 2023 – more than 6 (months) after the violations were alleged to be found.

V. DISCOVERY WAS NOT TIMELY PRODUCED (Raised Below: Da 52; 1T21-1; 1T4-15; 1T7-2; 1T111-13; 1T69-7; 1T78-15)

DCA-BHI failed to provide exculpatory evidence and witnesses. Appellant made a timely discovery request on July 6, 2023 (Da 52) but was not provided any discovery until a couple of days before the hearing. At the August 15, 2023 hearing, BHI compliance officer Carolyn Long stated that exculpatory evidence required an interrogatory (1T21-1) . Long also stated that she gave to Judge three packets of information before the hearing. (1T4-15) Evidence is to be entered individually and numbered at the hearing. Evidence should not be provided to the court prior to the hearing.

Long stated that Discovery was sent to Appellant five (5) days before trial. Long then admitted to not sending Discovery in a timely manner. (1T7-2)

VI. ALJ JUDGE ERRED BY NOT SEQUESTERING WITNESSES
(Raised Below: 1T; 1T104-13)

The DCAs witnesses were not removed after their testimony and were allowed to stay in the courtroom for the entire hearing and were allowed to hear each other's testimony. (1T104-13) At the request of a party or on the court's own motion, the court may, in accordance with the law, enter an order sequestering witnesses. NJRE 615. The purpose of the sequestration rule is to prevent witnesses from shaping their testimony to match another's and to discourage fabrication and collusion.

VII. ALJ JUDGE CONDUCTED A PRIVATE INVESTIGATION OF APPELLANT
(Raised Below: Da 32-39; Da 13)

DCA Witnesses did not prove that the property at issue is the property of appellant. ALJ judge investigated property ownership (Da 32-39) or C-1 from the Judge's ruling (Da 13). ALJ Judge violated Rules of Court by performing a private investigation of Appellant's property. Evidence must be presented to Landlord before the trial and by the parties and not the judge per the Court Rules or it is inadmissible.

VIII. ALJ JUDGE VIOLATED FIFTH AMENDMENT BY DEMANDING FOR APPELLANT TO TESTIFY (Raised Below: 1T72-5; 1T73-1; 1T143-1)

The ALJ Judge violated the Fifth Amendment by demanding for Appellant to testify (1T72-5). The Appellant is a pro se litigant and simply wanted to enter his documents and evidence on the record as an attorney would do since he was acting as his own attorney. An attorney would not be sworn in as a witness simply for the purpose of entering evidence on the record.

The ALJ Judge interpreted the Fifth Amendment incorrectly (1T73-1) (1T143-1).

CONCLUSION

For the reasons set forth above, Appellant Frank Bright respectfully requests that this Court reverse the Final Decision of the DCA, the Initial Decision of ALJ Carl Buck III and reverse the $525 penalty issued to appellant by the Bureau of Housing Inspection.

By: 
Frank Bright

Dated: November 5, 2024

DEPARTMENT OF COMMUNITY AFFAIRS, BUREAU OF HOUSING INSPECTION, Respondent, v. FRANK BRIGHT, Appellant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-003108-23 CIVIL ACTION ON APPEAL FROM: Department of Community Affairs Agency Docket No.: 2000646/1214010986 OAL Docket No.: CAF 04457-23

BRIEF ON BEHALF OF RESPONDENT DEPARTMENT OF COMMUNITY AFFAIRS, BUREAU OF HOUSING INSPECTION

Date Submitted: January 14, 2025

SOOKIE BAE-PARK
Assistant Attorney General
Of Counsel

CHARLES A. SHADLE (ID# 250252018)
Deputy Attorney General
On the Brief

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
P.O. Box 112
25 Market Street
Trenton, New Jersey 08625-0112
(609) 292-8866
Attorney for Defendant Department of Community Affairs, Bureau of Housing Inspection

TABLE OF CONTENTS

TABLE OF APPENDIX

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Regulations

PRELIMINARY STATEMENT

Appellant, Frank Bright, appeals from an April 24, 2024 Final Agency Decision by Respondent, the Department of Community Affairs (Department), upholding a November 11, 2022 Notice of Statutory Violation and Order to Pay Penalty issued to Bright by the Division of Codes and Standards, Bureau of Housing Inspection (Bureau). Bright's main contention on appeal is that, for a variety of reasons, he was not afforded due process. Bright's arguments, however, are not only largely devoid of citation to any legal source that would support his right to relief, but the few legal sources upon which he relies are not applicable to contested hearings in the Office of Administrative Law (OAL) generally or, specifically, with regard to the facts of this matter. Regardless, Bright was afforded all the process he was due through the provision of a full judicial mechanism with which to challenge the administrative decision in question. Moreover, the Department's Final Agency Decision was not arbitrary, capricious, or unreasonable given the substantial evidence in the record to support the Department's findings and, therefore, should accordingly be affirmed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

Bright, is the owner of 218 George Street, New Brunswick, New Jersey 08901 ("the Property"). (Ra008-014).[2] The Property is registered with the Bureau under the Hotel and Multiple Dwelling Law (HMDL), N.J.S.A. 55:13A-1 to -31. Ibid.

Under the HMDL, the Commissioner of DCA is authorized "[t]o enter and inspect, without prior notice, any hotel or multiple dwelling . . . and to make such investigation as is reasonably necessary." N.J.S.A. 55:13A-6(b). The Commissioner is further authorized to establish, through regulations, a schedule for required inspections. N.J.S.A. 55:13A-13(a). Those regulations, which delegate the authority to conduct those inspections to the Bureau of Housing Inspection, provide that an inspector shall "enter upon and examine and inspect at all reasonable times any building, enclosure, or premises, or any part thereof . . . for the purpose of determining compliance with" the HMDL and its implementing regulations. N.J.A.C. 5:10-1.10(a). "Each multiple dwelling and each hotel shall be inspected once in every five years." N.J.A.C. 5:10-1.10(b).

---

[1] Because the Procedural History and Statement of Facts are closely intertwined, they are being combined and summarized to avoid repetition and for the convenience of the court.

[2] "Ra" refers to Respondent's Appendix.

On July 19, 2019, the Bureau inspected the Property. (Ra008-014). On July 25, 2019, the Bureau issued Bright an Inspection Report and Orders, listing nineteen violations of the HMDL (Notice 1). Ibid. No fines were issued with Notice 1. Ibid. Notice 1 also noted that a reinspection of the property would take place on or after sixty days from the receipt of the inspection report and informed Bright that he could request an extension of time to abate or contest the violations. (Ra012-013). Bright did not contest Notice 1 nor did he request an extension. (Da5-6).

On November 10, 2022, a reinspection of the Property was conducted. (Ra019-025). As a result of the reinspection, on November 10, 2022, the Bureau issued a Commissioner's Notice of Statutory Violation and Order to Pay Penalty (Notice 2). Ibid. Notice 2 found that, of the nineteen violations cited in Notice 1, eight violations remained unabated, five violations were undetermined, and six had been abated. Ibid. As a result, Bright was issued a penalty in the amount of $525. (Ra019-020). On November 18, 2022, Bright appealed all aspects of Notice 2. (Ra026). On May 12, 2023, the Bureau acknowledged Bright's request for an administrative hearing and the matter was transferred to the Office of Administrative Law (OAL) for a hearing. (Ra027).

A hearing on the matter was held in the OAL before the Honorable Carl V. Buck III, A.L.J. on August 15, 2023. (Da3-23).[3] Carolyn Long, Compliance Officer 2, and Adam Black, Compliance Officer 1, appeared at the hearing on behalf of the Bureau and Bright appeared pro se. (1T). During the hearing, the Bureau presented testimony from Sean Daly, Inspector Multiple Dwelling 2, and Neal Costanzo, Inspector 2, Senior Inspector. (Da5-12; 1T).

Daly conducted the November 10, 2022 reinspection and testified as to same. Specifically, Daly testified regarding Violation ID # 4208061 – the lack of a self-closing and self-locking exterior entrance door as required by N.J.A.C. 5:10-19.2(a)8[4] – which was unabated at the time of the reinspection as evidenced

[3] "Da" refers to Appellant's Appendix and "Db" refers to Appellant's Brief.

[4] Under N.J.A.C. 5:10-19.2(a)8, "[e]very exterior entrance door leading to interior common areas which provide access to two or more interior dwelling unit entrance doors shall be a self-closing and self-locking door, shall be kept closed at all times except when in actual use and shall be equipped with a viewing device if it would not otherwise be possible to see a person seeking to enter without opening the door. In addition, the main entrance door shall be either attended at all times by a doorman or equipped with an electrically operated buzzer and latch-release system, individual exterior door bells connected to each dwelling unit, or an approved alternative security and entrance system. However, no building shall be equipped with an electrically operated latch-release system if such building is not also equipped with an intercommunication system allowing effective communication between a person in any dwelling unit and a person standing outside of the main entrance door."

by Daly's ability to enter the Property through the front door. (1T28:24-29:4; Ra010; Ra022).

Daly also testified regarding six unabated violations related to the Property's front porch: (1) Violation ID # 4208073 – paint wood trim with appropriate coating as required by N.J.A.C. 5:10-7.3(c)[5]; (2) Violation ID # 4208072 – paint window frame with appropriate coating as required by N.J.A.C. 5:10-7.3(b)[6]; (3) Violation ID # 420875 – paint exterior door frames with an appropriate coating as required by N.J.A.C. 5:10-7.3(c); (4) Violation ID # 420874 – paint exterior doors with an appropriate coating as required by N.J.A.C. 5:10-7.3(c); (5) Violation ID # 4208071 – paint railing to be free of rust, peeling, and chipping paint as required by N.J.A.C. 5:10-7.3(c); and (6) Violation ID # 4208076 – paint exterior woodwork with an appropriate coating as required by N.J.A.C. 5:10-7.3(c). (1T33:3-20). These violations had been identified during the July 19, 2019 inspection and were not abated at the time of

[5] Under N.J.A.C. 5:10-7.3(c), "[t]he exterior surfaces shall be maintained to eliminate conditions reflective of deterioration or inadequate maintenance, such as broken glass, loose shingles, crumbling stone or brick or excessive peeling of paint."

[6] Under N.J.A.C. 5:10-7.3(b), "[a]ll exterior windows and window frames shall be painted with at least one coat of suitable exterior paint or other preservative as needed except where constructed of an approved atmospheric corrosion-resistant metal or other equivalent material."

the reinspection. (Ra009; Ra022; 1T33:21-23). Daly also testified regarding Violation ID # 4208079 – replace broken glass as required by N.J.A.C. 5:10-7.3(c). (1T33:24-34:2). This violation had been identified during the July 19, 2019 inspection and was not abated at the time of the reinspection. (Ra011; Ra022; 1T33:24-34:2). Bright did not call any witnesses during the hearing, but did cross-examine the Bureau's witnesses. (1T).

At the conclusion of the hearing, the ALJ made a series of evidentiary rulings regarding the parties' exhibits. (1T147:3-153:15). Specifically, the Bureau presented the following exhibits during the hearing: P-1 – Commissioner's Notice of Statutory Violation and Order to Pay Penalty, dated July 19, 2019 (Notice 1); P-2 – Commissioner's Notice of Statutory Violation and Order to Pay Penalty, dated November 11, 2022 (Notice 2); P-3 – email dated August 11, 2023, with photographs attached; P-4 – email with attachment photographs 4A-4G; P-5 – exhibit list with attachments. (1T147:16-151:23; Da22). While Bright objected to the introduction of exhibit P-3 during the hearing based on having not received a copy of same, (1T4:15-7:25; 1T69:3-80:5), the ALJ concluded that Bright waived his earlier objection to the introduction of P-3 at the conclusion of the hearing, (1T147:16-152:19). Accordingly, all of the Bureau's exhibits were introduced into evidence. (1T153:10-12). Bright presented a single exhibit – an April 4, 2023 email with

attachments – which was marked as R-1 and introduced into evidence. (1T152:20-153:4).

The ALJ found the Bureau's witnesses to be credible and Bright not to be a credible witness based in part on Bright calling into question whether he owned the Property. (Da13). The ALJ further found that as of November 10, 2022[7], there were eight (8) open violations at the Property. (Da13-Da15). The ALJ therefore concluded that eight (8) violations existed at the Property as of November 10, 2022. (Da18-Da20). The ALJ further concluded that there were no mitigating or aggravating circumstances presented and the penalties assessed by the Bureau complied with N.J.A.C. 5:10-1.17. (Da20). As such, the ALJ affirmed the Bureau's penalty of $525 and ordered the violations regarding the interior of the Property be abated within thirty (30) days of the decision and the exterior violations be abated within sixty (60) days of the decision. Ibid.

On March 20, 2024, Bright submitted exceptions to the Initial Decision to the Acting Commissioner of the Department. (Da24-Da26). On April 24, 2024, the Department issued a Final Agency Decision adopting the Initial Decision. (Da44-Da45). Bright's appeal of the Department's Final Agency Decision now follows.

[7] While the Initial Decision uses the date of November 10, 2023, the reinspection of the Property occurred on November 10, 2022. (Ra019-Ra025).

ARGUMENT

AS THE DEPARTMENT'S DECISION IS REASONABLE AND BASED ON SUBSTANTIAL CREDIBLE EVIDENCE, IT SHOULD BE AFFIRMED

The court should affirm the Department's April 24, 2024 Final Agency Decision as it is reasonable, based on substantial credible evidence in the record, and issued at the culmination of an administrative process in which Bright was afforded all the process he was due.

It is well established that "[a]ppellate courts have a 'limited role' in the review" of administrative agency decisions. In re Stallworth, 208 N.J. 182, 194 (App. Div. 2011) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980)). "In order to reverse an agency's judgment, an appellate court must find the agency's decision to be 'arbitrary, capricious, or unreasonable, or not supported by substantial credible evidence in the record as a whole.'" Ibid. (quoting Henry, 81 N.J. at 579-80) (internal alterations omitted).

The determination of whether an agency's action is arbitrary, capricious, or unreasonable, a court examines the following factors:

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

> [Ibid. (quoting In re Carter, 191 N.J. 474, 482-83 (2007)).]

"A reviewing court 'may not substitute its own judgement for the agency's, even though the court might have reached a different result.'" Ibid. (quoting Carter, 191 N.J. at 483). Bright has not established a basis to disturb the Department's decision.

A. Bright Received Due Process (Addressing Appellant's Points I and V)

Bright asserts that he was denied due process during the administrative process below, including during the August 15, 2023 hearing at the OAL. (Db3). Specifically, Bright alleges the following constituted deprivations: the Department's failure to produce material witnesses for the hearing; his inability to face and cross examine the inspectors who conducted the inspections; the absence of photographic evidence to support specific violations; the Bureau's alleged failure to provide timely discovery; witnesses not being sequestered during other witnesses' testimony; and the ALJ arriving late to the hearing. (Db3-4). These complaints do not rise to the level of due process violations.

"The concept of procedural due process assures that the government will not deprive citizens of certain rights without notice and an opportunity to be heard." Morison v. Willingboro Bd. of Educ., 478 N.J. Super. 229, 247 (App. Div.), certif. denied, 258 N.J. 143 (2024). However, "[a]dministrative hearings

in contested cases may conform to procedural due process standards that are less restrictive than those imposed in court proceedings." In re Kallen, 92 N.J. 14, 26 (1983). So long as the "state affords a full judicial mechanism with which to challenge the administrative decision in question, the state provides adequate procedural due process." Hospital Ctr. at Orange v. Guhl, 331 N.J. Super. 322, 340-41 (App. Div. 2000) (quoting DeBlasio v. Zoning Bd. of Adjustment of W. Amwell, 53 F.3d 592, 597 (3d Cir. 2000)). "Due process is satisfied if there has been a 'full and fair hearing' before an administrative law judge." Moiseyev v. N.J. Racing Com'n, 239 N.J. Super. 1, 10 (App. Div. 1989) (quoting De Vitis v. N.J. Racing Com'n, 202 N.J. Super. 484, 501 (App. Div. 1985).

Bright was afforded a full judicial mechanism to challenge the decisions of the Bureau at issue in this matter – first through the de novo hearing in the OAL, consideration by the agency before it issued its final agency decision, and now as of right before this court. (1T; Da3-Da23). Bright takes issue with certain Bureau witnesses not being "produced" at the hearing. However, Bright fails to point to any evidence in the record to support an assertion that he requested the Bureau produce these witnesses at the hearing, indicated his intention to call these witnesses at the hearing, or that he subpoenaed these witnesses' appearance at the hearing pursuant to N.J.A.C. 1:1-11.1 and these witnesses subsequently failed to appear in violation of the subpoena. Rather,

Bright appears to take issue with how the Bureau presented its case during the hearing. But so long as the Bureau meets its evidentiary burden, how it does so is properly left to the Bureau's discretion. Further, to the extent that Bright appears to invoke the Confrontation Clause of the Sixth Amendment to the Constitution of the United States, (Db3-4), same applies only to criminal matters. See U.S. Const. amend. VI ("**In all criminal prosecutions**, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . .").

Bright also objects to the lack of photographic evidence being produced for certain violations. "A preponderance of the evidence is . . . 'the usual burden of proof for establishing claims before state agencies in contested administrative adjudications." Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006) (quoting In re Polk License Revocation, 90 N.J. 550, 560 (1982). As noted in the Initial Decision, Daly testified at the hearing as to the November 10, 2022 reinspection and his report from same was entered as an exhibit. (1T27:18-37:12; Ra019-025). The only evidence offered by Bright during the hearing was an email from April 4, 2023 with attachments. (Da23).

Bright does not state which violations lacked photographic evidence nor why such evidence was necessary for the Bureau to prove such violations. Moreover, Bright has cited to no statute, regulation, or caselaw that would require the Bureau to establish that the violations remained open on November

10, 2022 through photographic evidence. The Initial Decision found the Bureau's witnesses to be credible and found Bright not to be credible. (Da13). Further, the Initial Decision's finding that eight open violations remained open as of November 10, 2022 was based on the testimony presented by Daly. (Da13-Da15). As such, the Bureau met its burden of proving by a preponderance of the evidence that the eight violations remained open on November 10, 2022 through Daly's testimony and the reinspection report. In contrast, Bright failed to produce any evidence that would support a contention that the eight violations were not open at the time of the reinspection. As such, the ALJ's finding that the eight violations remained open at the time of the reinspection was not arbitrary, capricious, or unreasonable as it was supported by substantial evidence in the record.

Bright also contends that his right to due process was violated by the Bureau's failure to timely provide discovery. Specifically, Bright contends that he made a timely discovery demand on July 6, 2023 but was not provided any discovery until a few days prior to the hearing. (Db6). On July 6, 2023, Bright sent the following email to two DCA representatives:

> Ms. Hess and Barksdale,
>
> Please accept this letter as a request for discovery under the Rules of Court. I demand all evidence, including exculpatory, for any and all accusations against me regarding 218 George Street in New Brunswick NJ 08901.

> Please remember, all evidence must be complete and what the State expects to prove my Guilt beyond a reasonable doubt.
>
> [Da52.]

The OAL hearing was held on August 15, 2023 – a little more than a month after Bright sent this email demand for discovery.

N.J.A.C. 1:1-10.2(a) provides the methods by which discovery may be accomplished in administrative hearings: written interrogatories; production of documents or things; inspection; and requests for admission. Parties must respond to a request for discovery within fifteen days from receiving same, N.J.A.C. 1:1-10.4(c), and the parties must complete discovery ten days prior to the hearing, N.J.A.C. 1:1-10.4(e).

Bright's July 6, 2023 email, to the extent that it can be considered a discovery demand, was a request for all evidence that the Bureau intended to use against him at the forthcoming hearing. However, to the extent that Bright now objects to the introduction of evidence that he asserts was not timely provided to him, Bright waived his objection at the time of the hearing. Specifically, while Bright objected to the introduction of exhibit P-3 (an August 11, 2023 email with attached photographs of the Property) during the hearing based on not having received a copy of same, (1T4:15-7:25; 1T69:3-80:5), at the conclusion of the hearing Bright waived his earlier objection to the

introduction of P-3, (1T147:16-152:19). In fact, Bright was directly asked if he had any objection to the introduction of any of the Bureau's exhibits, to which Bright replied that he did not. (1T152:16-19). As such, even if Bright did have a colorable claim that he was not timely provided with discovery, he waived same at the conclusion of the August 15, 2023 hearing.

Moreover, even assuming arguendo that P-3 should not have been introduced into evidence, the ALJ did not rely upon same to support the finding that eight (8) open violations remained open as of November 10, 2022. Rather, that finding was based on the testimony presented by Daly. (Da13-Da15). Therefore, even if P-3 was not admitted during the hearing, it would not have altered the ALJ's findings.

Additionally, Bright takes issue with "exculpatory" evidence not being provided to him. (Db6). Bright raised this issue at the hearing in regard to the identification of certain Bureau employees to whom he asserted he made an in-person verbal appeal request of Notice 1, (1T18:25-22:15), and not being provided a "copy" of a phone conversation he asserted he had with Daly, (1T45:11-46:18). Again, N.J.A.C. 1:1-10.2(a) provides the methods by which discovery can be had in contested administrative hearings. If Bright wanted the identification of Bureau employees to whom he allegedly made an in-person verbal appeal request, Bright could have sought this information through an

interrogatory. See N.J.A.C. 1:1-10.2(a)1. Likewise, if Bright wanted the Bureau to admit or deny that he had a phone call with Daly, he could have sought to do this through a request for admission. See N.J.A.C. 1:1-10.2(a)4. The Bureau was under no obligation to produce this discovery absent a demand from Bright.

Bright also appears to invoke the Brady[8] Rule under which a prosecutor must provide exculpatory evidence to the accused. (Db6). However, same is only applicable to criminal proceedings – not administrative proceedings. See State v. Nelson, 155 N.J. 487, 497 (1998). Moreover, even if the Brady Rule was applicable to administrative proceedings, there is no indication in the record below that the "evidence" Bright claims exculpates him existed or was in the Bureau's possession. If Bright desired information and documents from the Bureau that he believed would aid his appeal then he was required to seek same through the discovery process as set forth in N.J.A.C. 1:1-10.2.

Finally, Bright takes issue with the Bureau providing its exhibits to the ALJ prior to the hearing and the ALJ allegedly showing up late to the hearing. (Db6). Again, Bright cites no any statute, regulation, or caselaw that would support that providing the ALJ with a copy of the proposed exhibits to be

[8] Brady v. Maryland, 373 U.S. 83 (1963) ("In every **criminal case** the prosecution must disclose to the defendant all evidence that is material to either guilt or to punishment.").

introduced during the hearing is violative of his due process rights. Regardless of whether the proposed exhibits were provided to the ALJ prior to the hearing or at the hearing's start, Bright was given the opportunity to object to the introduction of each of the Bureau's exhibits on which the ALJ made individual evidentiary rulings as to their admission. (1T3:15-20; 1T8:2-11; 1T13:4-16:11; 1T68:14-83:24; 1T110:18-115:9; 1T148:13-152:3; 1T152:4-153:15). Likewise, Bright does not cite to any statute, regulation, or caselaw that would support that an ALJ's purported late arrival to a contested hearing would be violative of his due process rights.

Simply put, none of the allegations made by Bright, even if true, would support that he was not afforded a full judicial mechanism to challenge the decisions of the Bureau at issue in this matter. See Hospital Ctr. at Orange, 331 N.J. Super. at 340-41. As such, Bright's due process rights were not violated in this matter.

B. The ALJ's Witness Credibility Findings Were Supported by Ample Evidence in the Record (Addressing Appellant's Point III)

Bright also contends that certain Bureau witnesses were unreliable and, specifically, Daly's testimony that he entered the Property through the front door to the common area was unreliable. (Db5). Bright contends that this aspect of Daly's testimony was not accurate based on the purported installation of a self-

closing door at the Property in 2020. Ibid. Although Bright does not cite to it in support of his allegation that this aspect of Daly's testimony was not accurate, Bright's appendix includes a photograph of a receipt for a new self-locking, self-closing door that was purportedly installed at the Property in 2020. (Da29-Da31). However, Bright did not introduce this receipt as an exhibit during the OAL hearing. The only exhibit Bright introduced during the hearing was an email chain from April 4, 2023 between himself and various Department representatives. (Da23; 1T152:20-153:4; Ra034-Ra038).

Under Rule 2:5-4(a), the record on appeal

> consist[s] of all papers on file in the court or courts or agencies below, with all entries as to matters made on the records of such courts and agencies, the stenographic transcript or statement of the proceedings therein, and all papers filed with or entries made on the records of the appellate court.

As such, New Jersey "appellate courts will not ordinarily consider evidentiary material that is not in the record below." Liberty Surplus Ins. Corp. v. Nowell, 189 N.J. 436, 452 (2007). Given that Bright did not introduce the receipt during the hearing below, same should not be considered by this court on appeal.

Regardless, even if Bright had introduced the receipt as an exhibit during the OAL hearing, and even if the receipt does support that the purported self-closing, self-locking door was installed at some point in 2020, that alone does not undermine this aspect of Daly's testimony. As the Initial Decision makes

clear, the ALJ found that certain violations were open at the time of the reinspection. (Da13-Da15). That a self-closing, self-locking door was purportedly installed at some point in 2020 between the initial July 15, 2019 inspection and the November 10, 2022 reinspection does not mean that on the date of the reinspection the door was secured. As Daly testified, on the date of the reinspection, he was able to gain access to the interior of the Property through the front door which was not secure. (1T28:16-29:4).

Appellate courts must "give due regard to [an] agency's credibility findings." Ardan v. Bd. of Review, 444 N.J. Super. 576, 584 (App. Div. 2016); see also Parsells v. Bd. of Educ. of Borough of Somerville, Somerset County, 254 N.J. 152, 159 (2023); Matter of Brown, 458 N.J. Super. 284, 289-90 (App. Div. 2019). Therefore, even accepting as true that a self-closing and self-locking door was installed at the Property in 2020, this standing alone does do not prove that Daly's testimony was inaccurate or otherwise lacked credibility, nor does it render the Department's adoption of the ALJ's credibility findings arbitrary, capricious, or unreasonable given the ALJ's reliance on the Daly's testimony and reinspection report. (Da13-Da15).

C. Bright's Civil Rights were not Violated Due to Costanzo's Visit to the Property (Addressing Appellant's Point IV)

Bright also takes issue with Costanzo testifying that on August 9, 2023 he went to the Property on his own accord to familiarize himself with the matter

and take photographs of the Property. (1T68:5-68:13). Bright concedes that no additional violations were issued as a result of Costanzo's visit, but alleges that the photographs from this visit were used to "backdate" the violations issued as a result of the November 10, 2022 reinspection. (Db5-6).

Under the HMDL, the Commissioner of the Department is authorized "[t]o enter and inspect, without prior notice, any hotel or multiple dwelling . . . and to make such investigation as is reasonably necessary." N.J.S.A. 55:13A-6(b). Under the Department's regulations, inspectors with the Bureau of Housing Inspection are authorized to "enter upon and examine and inspect at all reasonable times any building, enclosure, or premises, or any part thereof . . . for the purpose of determining compliance with" the HMDL and its implementing regulations. N.J.A.C. 5:10-1.10(a). As Costanzo's testimony makes clear, he visited the Property as part of his employment with the Bureau of Housing Inspection. (1T68:5-68:13). Moreover, the photographs Costanzo took during that visit were related to his purpose with being at the Property – ensuring compliance with the HMDL and its implementing regulations. (1T81:2-88:21). Therefore, Costanzo's visit to the Property was lawful.

As to Bright's contention that the photographs taken by Costanzo were used to "backdate" the violations at issue in this matter, a review of the Initial Decision dispels any contention that the ALJ relied in any way upon either

Costanzo's testimony or the photographs he took in support of the findings. Rather, the ALJ relied upon the testimony of Daly – the individual who conducted the reinspection – in support of the findings. (Da13-Da15). As such, even assuming Costanzo conducted an unauthorized inspection of the Property, the ALJ did not rely upon the results of this inspection in support of the findings in this matter and therefore should not serve as a basis to overturn the Department's adoption of the Initial Decision.

D. The ALJ Did Not Err in Not Sequestering the Witnesses (Addressing Appellant's Point VI)

Bright also alleges that the ALJ erred by not sequestering the witnesses during the hearing and cites to N.J.R.E. 615.[9] (Db7). However, N.J.A.C. 1:1-15.1(c) makes clear that "[p]arties in contested cases shall not be bound by statutory or common law rules of evidence or any formally adopted in the New Jersey Rules except as specifically provided in these rules." As such, Bright's reliance on the New Jersey Rules of Evidence is misdirected. Under N.J.A.C. 1:1-15.8, witnesses are not required to be sequestered. Regardless, even if the Rules of Evidence governed the hearing, Bright does not cite to any point of the transcript wherein he made a request to sequester the witnesses as required under N.J.R.E. 615. Rather, Bright cites to a portion of the transcript wherein he asked

[9] Under N.J.R.E. 615, "[a]t the request of a party or on the court's own motion, the court may, in accordance with law, enter an order sequestering witnesses."

Costanzo during cross-examination whether he was in the room and heard Daly's testimony, to which Costanzo confirmed that he was and did. (Db7; 1T104:13-21). This in no way was a request to the ALJ for the witnesses to be sequestered. Moreover, as N.J.R.E. 615 makes clear, sequestration of witnesses is not mandatory and is left to the court's discretion. Therefore, even if N.J.R.E. 615 had applied to the hearing in this matter – and it does not – there is no error because Bright never made the request.

E. There is Ample Evidence in the Record to Support Bright's Ownership of the Property (Addressing Appellant's Point VII)

Bright also alleges the Department failed to prove that he owned the Property and the ALJ impermissibly investigated the Property's ownership. (Db7). Under N.J.A.C. 1:1-15.2(a), an ALJ may take official notice of judicially noticeable facts consistent with N.J.R.E. 201. Under N.J.R.E. 201(b)(3), a court may judicially notice "specific facts and propositions of generalized knowledge which are capable of immediate determination by resort to sources whose accuracy cannot reasonably be questioned." Though it is unclear the source from which C-1, (Da32-Da39), was obtained, the source of the information about the Property is noted as coming from the New Brunswick Tax Assessors Office, (Da37). As such, the accuracy of the source cannot be reasonably questioned given that the collection of such information by the New Brunswick Tax Assessors Office is part of the routine business of that office.

Moreover, even disregarding Exhibit C-1, the Property is registered with the Bureau under the HMDL. (Ra008). An owner of a hotel or multiple dwelling is required to annually submit a certificate of registration to the Bureau. N.J.S.A. 55:13A-12(a). Each certificate of registration must include the owner's name, address, and telephone number. N.J.A.C. 5:10-1.11(c)(1). An owner must also file an amended certificate of registration within twenty days after any change in the information required to be included on the certificate. N.J.S.A. 55:13A-12(a)(3). By submitting a certificate of registration for the Property, Bright represented that he was the Property's owner and was accordingly listed as same in the inspection reports. (Ra008; Ra019). Therefore, by the virtue of the fact that Bright applied for and was issued a certificate of registration by the Bureau under the HMDL, he necessarily conceded that he was the Property's owner. Indeed, not only would it be illogical for Bright to appeal the inspection reports if he was not the Property's owner, but Bright presented no evidence during the hearing that would support an assertion that he is not the Property's owner. As such, not only did the ALJ not err in taking judicial notice of Bright's ownership of the Property, but even without same, there was sufficient evidence in the record to support a finding that Bright was the owner of the Property.

F. Bright's Fifth Amendment Rights Were Not Violated (Addressing Appellant's Point VIII)

Finally, Bright contends that, in demanding he testify, the ALJ violated the Fifth Amendment to the United States Constitution. (Db8). Under the Fifth Amendment, "[n]o person shall be . . . compelled in any **criminal case** to be a witness against himself . . . ." U.S. Const. amend. V (emphasis added). While the New Jersey Constitution does not contain a similar privilege against self-incrimination, same existed in common law and is now codified at N.J.S.A. 2A:84A-19.[10] The privilege as codified in N.J.S.A. 2A:84A-19 extends to administrative proceedings. N.J.A.C. 1:1-15.4; see also State, Dep't of Law & Pub. Safety, Div. of Gaming Enforcement v. Merlino, 216 N.J. Super. 579, 587 (App. Div. 1987), aff'd, 109 N.J. 134 (1988). However, "[p]rotection against self-incrimination 'applies only when the accused is compelled to make a testimonial communication that is incriminating.'" Borough of Franklin v. Smith, 466 N.J. Super. 487, 499 (App. Div. 2021) (quoting Fisher v. United States, 425 U.S. 391, 408 (1976)). The privilege "is not a blanket immunity" that allows an individual to refuse to answer all questions posed to them and requires the court to consider whether individual questions may elicit an

[10] Under N.J.S.A. 2A:84A-19, "every natural person has a right to refuse to disclose in an action or to a police officer or other official any matter that will incriminate him or expose him to a penalty or a forfeiture of his estate . . . ."

incriminatory answer. Id. at 499-500. Under N.J.R.E. 502, a "matter will not be held to incriminate if it clearly appears that the witness has no reasonable cause to apprehend criminal prosecution."

Here, Bright cites to a portion of the transcript wherein the ALJ asked Bright to confirm whether the property shown in the photographs taken by Costanzo was owned by Bright. (Db8; 1T71:21-72:10). Bright also invoked the Fifth Amendment at the conclusion of the Bureau's presentation of its case upon the ALJ's attempt to ascertain whether Bright would be calling any witnesses or testifying on his own behalf. (1T141:25-145:1). Neither during the hearing nor now on appeal has Bright identified how confirming or denying his ownership of the Property or testifying on his own behalf would subject him to criminal punishment.

Moreover, following Bright's invocation of the privilege against self-incrimination, the ALJ did not compel him to answer the question but instead proceeded with the hearing. (1T72:8-73:16; 1T143:1-11). As such, not only was the privilege against self-incrimination not applicable at the points during the hearing wherein Bright invoked it, but even if it was, Bright's privilege was not violated as he was not compelled to provide incriminating testimony. Therefore, Bright's privilege against self-incrimination was not violated during the hearing.

CONCLUSION

For these reasons the Department's final agency decision should be affirmed.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/Charles A. Shadle
Charles A. Shadle
Deputy Attorney General
Attorney ID No. 250252018
Charles.Shadle@law.njoag.gov

Frank Bright
21 Hartwell Street
New Brunswick, NJ 08901
848-391-3373
Fbright123@aol.com
Pro Se Appellant

Department of Community Affairs,
Bureau of Housing Inspection

Respondent,

vs.

Frank Bright,

Appellant.

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION
DOCKET NO. A-3108-23

ON APPEAL FROM

Department of Community Affairs

REPLY BRIEF FOR PRO SE APPELLANT FRANK BRIGHT

ON THE BRIEF:
Frank Bright

TABLE OF CONTENTS

Page

TABLE OF JUDGMENTS ORDERS AND RULINGS

RULES AND STATUTES

Page

INTRODUCTORY STATEMENT

The Appellant in this case, Frank Bright asks the Court to reverse a $525 penalty issued by the respondent Department of Community Affairs, Bureau of Inspections and to reverse the Final Agency Decision which affirmed the initial decision of ALJ Carl Buck III due to contradictory testimony of unreliable witnesses, no evidence submitted, witnesses not being sequestered, discovery not being timely produced, discovery that was produced not being related to the date of alleged violations, ALJ being his own investigator and several other due process violations. The ownership of 218 George Street in New Brunswick was never proven. The inspection being at 218 George was never proven. A settlement hearing was not held.

STATEMENT OF FACTS

Bureau of Housing Inspections (BHI) conducted an inspection of property allegedly located at 218 George Street, New Brunswick, New Jersey on July 19, 2019 and found alleged violations. BHI issued an order to pay inspection fees on July 25, 2019.

Appellant requested an appeal on August 6, 2019 by going in person to the BHI office in Trenton. (Da 27)[1] (1T19-2)[2]. This appeal was not acknowledged by BHI.

Reinspection was conducted on November 10, 2022 and some violations were found to be unabated. Appellant was issued a penalty of $ 525.

Appellant appealed the penalty and requested a hearing on November 18, 2022. This second appeal was acknowledged by the DCA-BHI.

PROCEDURAL HISTORY

DCA-BHI transmitted the contested case to the Office of Administrative Law (OAL) on May 12. 2023. The matter was received by the OAL on May 18, 2023. Appellant sent in a discovery request on July 6, 2023 (Da 52).

A settlement conference was scheduled remotely for July 6, 2023 (Da 54). Appellant timely joined the conference. However, the host hung up on the meeting without any introduction, discussion or reason for ending the call. (Da 53). An in-person hearing was held before Administrative Law Judge Carl Buck III on August 15, 2023.

[1] Da= Defendant /Appellant Appendix
[2] 1T= Transcript of ALJ Hearing Dated 8/15/2023

The record closed on December 11, 2023. An order extending time to complete the initial decision due to voluminous caseload was issued on January 25, 2024. (Da 1-2). ALJ Carl Buck III issued the initial decision on March, 11, 2024. (Da 3-23) .

Appellant filed Written Exceptions on March 20, 2024. (Da 24-39). Respondent filed a response to the written exceptions on March 28, 2024. (Da 40-42). Final Agency Decision was issued on April 24, 2024. (Da 43-45). Appellant filed Notice of Appeal to this Court on June 7, 2024 (Da 46-51)

LEGAL ARGUMENT

I. APPELLANT IS ENTITLED TO DUE PROCESS: DUE PROCESS WAS VIOLATED IN NUMEROUS WAYS (Raised Below: 1T)

The Constitution is very clear. Any taking must be under due process. There were several violations of due process in the instant case.

Material witnesses were not produced for the hearing. Appellant was not provided with ability to face and cross examine the inspectors who conducted the inspection and who had personal knowledge of the violations that were found. No photographic evidence was produced for many of the violations. Inspectors who did not personally find the violations testified

about the alleged violations. Discovery was not timely provided to Appellant. Witnesses were not sequestered. Judge appeared late to the hearing. A scheduled settlement conference did not take place as the host ended the call without any explanation.

Respondent's attorney argues that Appellant's due process rights were not violated "so long as the state affords a full judicial mechanism with which to challenge the administrative decision in question". (Rb10). Respondent also argues that "Due process is satisfied if there has been a 'full and fair hearing' before an administrative law judge." (Rb10)

It is Appellant's contention that the hearing was not full and fair. The settlement conference was not held. The ALJ 's decision was based on the testimony of unreliable witnesses, where the rules of evidence were relaxed. The DCA commissioner basically rubber stamped the ALJ's initial decision.

Respondent's attorney argues that "Administrative hearings in contested case may conform to procedural due process standards that are less restrictive than those imposed in court proceedings". (Db10).

The online information regarding the Office of Administrative Law states that "all relevant evidence may be presented, including hearsay". The fact that some evidence rules apply in Administrative Court and some do not per N.J.A.C.

1:1-15.1(c) is not only confusing, especially for a pro se litigant, but it is also arbitrary.

Per the Respondent, the "Appellate Courts have a limited role in the review of administrative agency decisions" (Rb8) and "In order to reverse an agency's judgment, an appellate court must find the agency's decision to be arbitrary capricious or unreasonable or not support by substantial credible evidence in the record as a whole." (Rb8). Per this logic, although Appellant has a right to appeal DCA's decision, the role of the Appellate Court is limited.

The decision from the ALJ is arbitrary as it took into consideration testimony about an inspection that was allegedly performed on November 10, 2022 and that was, at best, performed in an incomplete manner. The ALJ also took into consideration photographic evidence taken on or around July 10, 2023, months after the inspection, by somebody other than the original inspector, and while an appeal was pending. All photos taken on or around July 9, 2023 show compliance except for construction of a new porch. All photos taken on or around July 9, 2023 show no broken glass. The ALJ found Appellant not to be credible based in part on Appellant insisting that the Bureau prove ownership by Appellant of the property at issue.

II. INSPECTORS WHO PERSONALLY INSPECTED THE PROPERTY AND FOUND VIOLATIONS WERE NOT PRODUCED AS WITNESSES (Raised Below: 1T10-11; Da 28)

Material witnesses Inspector Brown and Inspector Carliese at cell number 609-577-0425 were never produced for the hearing, despite being the inspectors who conducted the original inspection and who saw the original alleged violations. Instead, the BHI produced Inspector Daly whose presence at the alleged location on the day of inspection November 10, 2022 is questionable and Inspector Costanzo who was never tasked with the inspection.

At the August 15, 2023 hearing, BHI Compliance Officer Carolyn Long testified that the alleged violations of 2019 were found by Inspector Sean Brown (1T10-11). Sean Brown did not appear at the hearing on August 15, 2023. Appellant was not provided with the ability to face and cross examine this witness.

Joe C. at cell number 609-633-6227 was the inspector throughout the process in 2022. (Da 28). Joe C. was not produced as a witness for the hearing on August 15, 2023 despite being the inspector with personal knowledge of the condition of the property in 2022. Appellant was not provided with the ability to face and cross examine this witness.

III. WITNESSES WERE UNRELIABLE (Raised Below: 1T28-14; 1T29-16)

It is questionable whether Inspector Daly was on location on November 10, 2022, despite his testimony that he did the inspection on said date. (1T28-14). Inspector Daly never contacted landlord or tenants. Inspector Daly did not provide any photographic evidence of his inspection. The photographs used by the Bureau were all taken at a later date, roughly six months later, by Inspector Costanzo. Daly's testimony that there was no self-closing self-locking door also tends to indicate that he was not at the property in 2022. The contradictory testimony by Costanzo also indicates that Daly was never there.

Inspector Daly testified that he entered through the front door to the common area because the front door at issue was not self-closing or self-locking. (1T29-16) and that the same door was there in 2019. This is not an accurate statement as a brand new front door costing approximately $10,000 had been installed in 2020 which was self-closing. This is a Provia steel door made in the United States, four hinges with an automatic closure. (1T-55)

218 George is an old historic house and, as such, has some features no longer present in modern house such as a mud room. There is an old door with glass panes under the 218 sign that leads into a little mud room. This is not the "front door" and this old door does not lead into the interior common area of the

multiple dwelling. This is evident as soon as one looks inside the window panes. Once inside the mud room, one then finds the front door. This is an expensive Provia Steel Door installed in 2020 that leads to common area where the doors to the various apartments are. At best, Daly might have looked at the old door under the 218 sign from afar, but did not even peek inside the glass panes. If he had looked through the glass panes, he would have realized that the 1) mud room is not the common area; 2) he would have seen the Provia Steel Door; 3) he would have seen that the Provia steel door was self closing and self locking and 4) he would not have found a violation for common area entrance.

IV. DCA VIOLATED CIVIL RIGHTS OF APPELLANT BY VISITING PROPERTY DAYS BEFORE THE HEARING (Raised Below: 1T99)

Inspector Costanzo who testified at the August 15, 2023 hearing was never a material witness. He was never tasked to perform an inspection of 218 George. Instead on or around July 10, 2023, Mr. Costanzo on went "on my own accord and took some pictures of the property to familiarize myself with the case" . (1T68). Additionally, Mr. Costanzo did not verify that the property that he visited was the actual property except by entering the address in an uncalibrated maps computer application (1T99-9). Mr. Costanzo never contacted Appellant. (1T136). When Mr. Costanzo visited the property, the

case was on appeal. The Bureau admitted that it has no right to enter the premises before the appeal had ended. Mr. Costanzo admitted that he trespassed. (1T103).

Respondent's attorney argues that under the HDML, the Commissioner of the Department is authorized "to enter and inspect, without prior notice, any hotel or multiple dwelling, … and to make such investigation as is reasonably necessary. " N.J.S.A. 55:13A-6(b). Leaving aside the fact the above is arbitrary and unreasonable and overload broad (1T136), Respondent's attorney does not address the fact that Mr. Costanzo visited the property just days before the hearing, while an appeal was already pending. DCA stated that refusing an Inspector to enter premises while an appeal is pending is acceptable. DCA thus violated their own policy, which was provided to the Appellant in writing, by entering the property.

Although no violations were written from the visit by Costanzo, the photographs that Costanzo took on the day of his visit, were taken into consideration by the ALJ. (Da18). No photographic evidence exists of alleged unabated violations except for Costanzo's pictures from July 2023 – more than 6 (months) after the violations were alleged to be found. As such, it is not unreasonable for Appellant to infer that these pictures from July 2023 were used to backdate the alleged violations from prior years.

Respondent's attorney asserts that the ALJ did not rely upon the results of Costanzo's inspection in support of his findings. (Rb20) and as such should not serve as a basis to overturn the Department's adoption of the Initial Decision. (Rb20). This however does not appear to be the case. The ALJ discusses Costanzo in his opinion (Da 10-11). In fact, on p.16 of his opinion (Da 18) the ALJ states that "from the information provided, the testimony of the witnesses and the parties and the photographs, I conclude that violations existed as of November 10, 2023 "

V. DISCOVERY WAS NOT TIMELY PRODUCED (Raised Below: Da 52; 1T21-1; 1T4-15; 1T7-2; 1T111-13; 1T69-7; 1T78-15)

It is Appellant's contention that his due process rights were violated by the Bureau not providing timely evidence. The N.J.A.C. is very confusing, especially to a pro se litigant, in that it incorporates certain rules of evidence but not others.

The Respondent's attorney argues that appellant should have asked for interrogatories, request for production of documents, inspection and request for admission (Rb13-15).

Appellant made a discovery request on July 6, 2023 which clearly stated that it was a discovery request and which requested exculpatory material. (Da52).

While it may not have been in the exact format complying with the rules, it clearly conveyed the request and it should have been timely honored.

Even the ALJ states during the hearing (1T: 25) that "requesting information by Interrogatories is a formal matter. Anyone can request information by letter or by OPRA request from an agency if they wish to. It's not necessarily a formal legal request and you don't need an attorney to request information"

Respondent's attorney also argues that Appellant waived his claim that discovery was not timely provided by accepting the introduction of the Bureau's evidence at the conclusion of the hearing.

Appellant disagrees with this logic. Just because Appellant accepted something into evidence, does not negate the fact it was not timely provided and that appellant's rights to timely discovery were violated.

VI. ALJ JUDGE ERRED BY NOT SEQUESTERING WITNESSES (Raised Below: 1T; 1T104-13)

The DCAs witnesses were not removed after their testimony and were allowed to stay in the courtroom for the entire hearing and were allowed to hear each other's testimony. (1T104-13). At the request of a party or on the court's own motion, the court may, in accordance with the law, enter an order sequestering witnesses. N.J.R.E. 615. The purpose of the sequestration rule

is to prevent witnesses from shaping their testimony to match another's and to discourage fabrication and collusion. Respondent's attorney states that per N.J.A.C. 1:1-15.8. witnesses are not required to be sequestered and that parties in contested cases, in administrative hearings, shall not be bound by rules of evidence except as specifically provided. Even if sequestration is not required, the ALJ in this case should have sequestered the witnesses as this was the fair and equitable thing to do. Even if Appellant did not formally request sequestration, he raised a concern about witnesses hearing each other's testimony during Costanzo's testimony. (1T104-13). Despite hearing each other's testimony, the witnessed contradicted the facts of the case.

VII. RESPONDENT DID NOT ESTABLISH OWNERSHIP OF PROPERTY (Raised Below: 1T)

It is Appellant's contention that the Bureau needed to establish 1) that Appellant was the owner of 218 George and 2) that the pictures that were presented at the August 15, 2023 hearing were taken at 218 George.

Both Respondent's attorney for this appeal (Rb22) and Supervisor of Enforcement James Amici who submitted the Bureau's response to Appellant's written exceptions (Da 40-41) argue that Appellant would not have appealed if he were not owner. That is an invalid argument and it was not raised at the August 15, 2023 hearing by any of the Respondent's witnesses or representatives.

Additionally, how can a defendant overturn an unbased charge except by appealing?

Respondent's attorney also argues that Appellant's ownership could be established from Tax Assessor Records and by submitting a certificate of registration to the bureau. (Rb2). Ms. Long, while presenting the Bureau's case, never provided a search from the Tax Assessor's office nor any other documentation evidencing ownership by Appellant of 218 George. No evidence was presented that the property is registered with the Bureau. It is the Bureau that must prove the case of ownership. It was never established by the Bureau that Appellant was the owner of 218 George at any or all times throughout the timeline of this case.

There was some back and forth discussion regarding ownership during Costanzo's testimony (1T97- 99) which could have been an opportunity for Costanzo to bring up any of the above arguments, but they were not. Costanzo was a hostile witness. Costanzo consistently avoided questions and made a mockery of the court. Costanzo was shaking once it was apparent that he committed perjury.

Respondent's attorney also suggests that ALJ Buck may have taken judicial notice of the tax assessor's information, which C-1 appears to be. (Rb21-22). Per the transcript, there is no indication that a property search of C-1 was conducted. It

was clearly done after the hearing, as no mention of this search was made during the hearing. The ALJ simply states in his opinion that a rudimentary search provided information on ownership of the property. (Da 13). C-1 shows a search date of March 14, 2024, several months after the hearing. The judge became an investigator while performing an unthorough or rudimentary search. Under the Napoleonic Code a judge can be an investigator. Under Common Law a judge must rule on the evidence provided, excluding exculpatory evidence.

N.J.A.C. 1:1-15.2 (c) states that:

(c) Parties must be notified of any material of which the judge intends to take official notice, including preliminary reports, staff memoranda or other noticeable data. The judge shall disclose the basis for taking official notice and give the parties a reasonable opportunity to contest the material so noticed.

If judicial notice, was indeed taken by the ALJ, he should have notified the parties of any material of which he intended to take judicial notice and should have given the parties an opportunity to contest the material so noticed. This did not occur at the hearing on August 15, 2023.

VIII. ALJ JUDGE VIOLATED FIFTH AMENDMENT BY DEMANDING FOR APPELLANT TO TESTIFY (Raised Below: 1T72-5; 1T73-1; 1T143-1)

The ALJ Judge violated the Fifth Amendment by demanding for Appellant to testify (1T72-5). Appellant did not testify.

This is a Catch 22. If Appellant explains why he is taking the Fifth Amendment, this colors the court's perception of Appellant. This is the very definition of why we have the Fifth Amendment.

Appellant has a constitutional right to defend himself. Appellant defended himself by asking that the respondent prove that Appellant owns the property at issue. By defending himself, Appellant was found not credible.

CONCLUSION

For the reasons set forth above, Appellant Frank Bright respectfully requests that this Court reverse the Final Decision of the DCA, the Initial Decision of ALJ Carl Buck III and reverse the $525 penalty issued to appellant by the Bureau of Housing Inspection.

Dated: 4/20/2025

By: _____
Frank Bright