

COMMONWEALTH OF MASSACHUSETTS

WESTERN DIVISION, SS.

HOUSING COURT
DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION
No. 13-CV-494

CITY OF SPRINGFIELD
CODE ENFORCEMENT DEPARTMENT
BUILDING DIVISION,

Plaintiff

v.

EUGENIO BERMUDEZ (owner) and
YAHAIRU BERMUDEZ a/k/a YAHAIRA BERMUDEZ (owner)

Defendants

Re: Premises: 59 Genesee Street, Springfield, Massachusetts

ORDER ON PETITION TO ENFORCE THE STATE
SANITARY CODE AND FOR APPOINTMENT OF A RECEIVER
AT 59 GENESEE STREET, SPRINGFIELD, MASSACHUSETTS

Pursuant to the general equity powers of this Court and G.L. Chapter 111, Sections 127F-I, following hearing(s) on October 24, 2014, the Court hereby finds with respect to 819 Genesee Street, Springfield, MA (“Property”):

1. **Background:** On or about October 19, 2013, the Plaintiff observed conditions at the subject property, which are in violation of Chapter II of the State Sanitary Code, “Minimum Standards of Fitness for Human Habitation”, or Standards of the Board of Health and/or in violation of the Revised Ordinances of the City of Springfield, 1986, §7.16.120 as amended with regard to; § 7.16.130 with regard to an unregistered motor vehicle; and/or §12.16.030 with regard numbering of buildings.

On or about October 22, 2013, the Plaintiff served a Notice to the Defendant. This

document orders that the subject property be boarded and secured pursuant to the minimum specifications set out by the Code Enforcement Housing Division and required by the State Sanitary Code and/or City Ordinances. Specifically, to board and secure the dwelling as it is currently open and attracting vandalism and/or illegal activity and clear the property of all litter, trash, debris and overgrowth. On or about November 2, 2012, the Plaintiff re-inspected the property and the violations remained.

On or about June 14, 2013 the Plaintiff filed a petition with the Western Division Housing Court, Docket No. 13-CV-494. On or about June 20, 2013 and June 24, 2013, the Defendant Owners was served a copy of the petition by Hampden County Sheriff Department. After a hearing on September 8, 2014, for which the defendants did not appear. The Defendants EUGENIO BERMUDEZ and YAHAIRU BERMUDEZ a/k/a YAHAIRA BERMUDEZ were ordered to clean the property of all litter, trash, debris and overgrowth and to board and secure the property on or before September 22, 2014. On or about June 23, 2014, the City re-inspected the property and found it unoccupied and unsecured. The City inspector also observed vagrants are entering after school and found a heavy and excessive amount of overgrowth, trash, debris and litter.

2. **Description and Conditions of the Premises.** The Property is a three (3) unit dwelling is currently unoccupied. The Petitioner performed inspections of the Property on at least three (3) occasions, during which the Petitioner found the existence of conditions that violate the State Sanitary Code; These include, *inter alia*, dumping, trash, property was vacant and not secured.¹ The Respondent CUNNINGHAM has been unable or unwilling to complete the necessary Code repairs.

¹ An exhaustive list of the outstanding violations can be found in the inspection reports attached to the Petitioner's complaint in Exhibit A.

3. **Available remedies.** G.L. c. 111, §127I authorizes appointment of a receiver where violations of the State Sanitary Code will not be promptly remedied unless a receiver is appointed, and where such appointment is in the best interest of future occupants and of public safety. The Respondent has failed to manage and maintain the Property in compliance with the Code and the violations will not be promptly remedied unless a receiver is appointed. The Respondent's failure to manage and maintain the Property, and failure to promptly come into compliance with the Code, endangers or materially impairs the health and safety of the current and/or future occupants of the Property, as well as the surrounding community. Appointment of a Receiver is in the best interest of all future occupants of the Property and of public safety.

THEREFORE, following hearing(s) on October 24, 2014, with notice to the mortgagees and lienors, the Court hereby **ORDERS** as follows:

4. **Receiver.** **WITMAN PROPERTIES, INC, located at**, c/o of Anthony Witman, 26 Camden Street, South Hadley, MA 01075 ("Receiver") is hereby appointed receiver of the Property. At any time, any party to these proceedings or the Housing Specialist Department may request a review or modification of this appointment and the terms thereof, as set forth below. Upon completion of the necessary repairs, the Receiver shall immediately notify the court. **Until the review date, the Receiver's powers and duties are limited to, evaluating and securing the property and cleaning the property of all litter, trash, debris and overgrowth. After the review date, the receiver's authority and duties shall be as set out in paragraph 5, below.**

5. **Authority and Duties of the Receiver.** The authority and duties of the Receiver shall be as follows:

- (a) To employ companies, persons or agents to perform duties hereunder.

(b) To receive and collect all rental revenues due from any tenants/occupants of the Property as an agent of the Court for and after the first rental period following the effective date of the Receiver under this paragraph:

(i) to account for all receipts according to the standards set forth in subparagraph 5(f) below. The Receiver shall not be authorized to raise rents without further leave of Court.

(c) To deposit all amounts received on account of the Property into a separate account under the control of the Receiver;

(d) To inspect the Property to determine what “Emergency Repairs” are needed to correct violations of the Code and of applicable fire safety, electrical building, and plumbing codes existing at the Property, and to perform or cause to be performed, if necessary such Emergency Repairs.² For purposes of this section, “Emergency Repairs” are repairs necessary to eliminate violations which materially endanger or materially impair the health or safety of the occupants of the Property, or which may materially endanger or materially impair the health or safety of the tenants/occupants or public safety in the near future if corrective action is not taken;

(e) To disburse funds received by the Receiver on account of the Property as follows, in the following order of priority:

First- To reimburse the Receiver for actual out-of-pocket expenses incurred in the capacity as Receiver, including without limitation

² For purposes of this section, “Emergency Repairs” are repairs necessary to eliminate violations which materially alter the health or safety of the occupants of the Property, or which may materially endanger or materially impair the health or safety of the occupants in the near future if corrective action is not taken.

reasonable legal fees, allocable overhead and labor costs, and costs of liability insurance (“Receiver Out-Of-Pocket Expenses”);

Second- To secure any vacant units;

Third- To make Emergency Repairs to occupied and vacant units of the Property.³

Fourth- To pay the Receiver for incurred in the capacity of Receiver, as set forth below:

- (a). A reasonable management fee consistent with industry standards in the area; and
- (b) A reasonable hourly rate consistent with industry standards for maintenance work performed by the Receiver, or agents thereof, in repairing or maintaining the Property.⁴ Rental fees shall be determined by the Chief Housing Specialist, subject to review by the Court upon the request of the Receiver or any party.

Fifth- To make repairs, to the extent possible, of conditions that may violate the Code or applicable fire safety, electrical or building codes or ordinances, but which do not rise to the level of “Emergency Repairs” as defined above.

Sixth- To make payments, to the extent possible, toward any unpaid taxes, assessments, penalties or interest.

³ Any dispute regarding the priority of expenditures for Emergency Repairs shall be referred to the Housing Specialist, whose determination shall be binding on the parties unless modified by the Court, upon motion of any affected party;

⁴ Any dispute regarding the maintenance and management fees shall be referred to the Housing Specialist, whose determination shall be binding on the parties unless modified by the Court, upon motion of any affected party.

Seventh- To make payments, to the extent possible, due any mortgagee or lienor of record.

- (f) The Receiver shall file periodic reports with the Court, setting forth all expenses and disbursements of the Receivership, with attached receipts, and an accounting of all funds received by the Receiver during the period covered by such report, including a list of all tenants/occupants residing at the Property, together with a list of current rental amounts and the status of their rent payments to date and funds from other sources. On or before **November 10, 2014** the receiver shall file its first report, and shall in that report include a detailed list of what repairs need to be performed, along with a schedule prioritizing the order in which such repairs shall be completed. The Receiver shall also file a motion to approve a rehab plan at that time. The Receiver shall file with the Court and serve upon all parties a copy of this report **no later than November 10, 2014 and every eight (8) weeks thereafter**, unless a different schedule is authorized by the Court. *The Receiver shall forthwith determine what outstanding Real Estate Taxes are due to the City and shall include that information in its first report. Copies shall also be sent to any mortgagees or lienors as well as all parties to this action each time any report is filed with the court in this matter, and each report will be accompanied by a certificate of service documenting that the reports have been forwarded as called for herein.*
- (g) The Receiver shall complete such documentation and perform such functions as may be necessary in order for tenants to receive public benefits

and housing subsidy benefits (such as fuel assistance, food stamps, Section 8, and the MRVP Program), provided that the Receiver's obligations shall not exceed those customarily performed by residential landlords of low/moderate income tenants. The Receiver is hereby authorized to execute any documents necessary to be executed by the tenants' landlord in connection with such benefits programs.

- (h) The Receiver may rent vacant apartments already in compliance with the Code, and may repair vacant units so as to bring them in compliance with the Code.
- (i) **Evictions for Nonpayment of Rent.** Evictions for non-payment of rent shall be governed by the Uniform Summary Process Rules, and G.L. Chapters 186 and 239, and the Receiver shall not collect rent for the period of time prior to his appointment.
- (j) **Evictions for Cause.** The Receiver is granted the right to bring evictions for cause. The Receiver shall not have the right to terminate tenancies at will without cause, or bring summary process actions without cause.
- (k) The Receiver shall be represented by an attorney at future proceedings relative to this receivership. The receiver has identified *Attorney Katharine Higgins-Shea* as their attorney in this matter.

6. **Bond and Inventory.** The Receiver shall not be required to file a bond, nor shall the Receiver be required to file an inventory, list of encumbrances, list of creditors or any other report required to be filed by Rule 66 of the Massachusetts Rules of Civil Procedure, except as otherwise specifically provided herein.

7. **Rent Payments.**

- (a) Once necessary repairs are made and a certificate of occupancy is obtained, the Receiver may begin locating suitable tenants and begin collecting rent at the current fair market rate. Rent payments may be timed so as to coincide with the receipt of public benefits checks.
- (b) If, thereafter, any tenant/occupant believes that the amount of rent required to be paid hereunder should be increased or decreased with respect to any unit because of the conditions in or affecting that unit, the tenant/occupant shall make a written request for modification to the Housing Specialist, with copies to all parties. Upon receipt of any such request, the Housing Specialist shall inspect the unit and associated common areas, and shall thereafter provide a recommendation to the Court. Such recommendations shall be based solely upon the condition of the Property. The recommendations of the Housing Specialist shall be binding upon the parties.

8. **Notice of Receivership.** The Receiver shall forthwith complete and post the Notice of Receivership, attached hereto as Exhibit A, in an area visible to the public.

9. **Liability and Agency**

- (a) The Receiver shall forthwith acquire general liability insurance in the amount of \$1,000,000.00, or such other amount as is consistent with industry standards, and casualty loss insurance and provide proof of coverage to the court no later than **November 10, 2014**. The cost of insurance shall be given first priority under paragraph 5 of this order.

- (b) The Receiver shall have no responsibility whatsoever to make any advances on account of the Property, except as approved by the Court.
- (c) The receiver's liability for injuries to persons and property shall be subject to the limitations set forth in G.L. c. 111, section 127I.

10. **Right to Resign.** The Receiver shall have the right to resign at any time by giving seven (7) days prior written notice to the Court and to the parties. The notice of resignation shall include a copy of any rent roll and rental history the Receiver has compiled and an accounting of all funds received and disbursed during its term as Receiver. Such resignation shall be effective on the date specified in such notice, provided, that the Court may require the Receiver to take such actions after the date specified if the Court determines that such actions are required to protect the health or safety of the tenants/occupants and that the Receiver has the capacity to perform such functions consistent with the terms of this Order. Unless otherwise ordered, on the effective date of such resignation, the Receiver shall assign any and all amounts received by it to the Court or to a successor receiver.

11. **Priority Liens and Mortgages.** The Receiver shall have a priority lien on the Property pursuant to the “super-priority” provision of G.L. c. 111 § 127I, as amended, third paragraph, upon the recording of this Order.

12. **Notice to Creditors.** The Receiver shall cause a title exam to be conducted and shall send a copy of this Order to all mortgagees and lienors of record.

13. **Sale of the Property.** The Property shall not be transferred, foreclosed upon, sold, encumbered or placed under contract for sale without prior leave of the court.

14. **The Respondent(s).** To the extent not already completed, the Respondent(s) shall: (i) within 48 hours of the signing of this Order, the Respondent(s) shall transfer to the Receiver all

keys to apartments and common areas of the premises and their rent roll for all apartments at the Property; (ii) within seven (7) days of the signing of this Order, the Respondent(s) shall provide to the Receiver copies of all documents necessary to manage and maintain the Property and shall provide at least the following information:

- (a) Residential Units: the name, address, and telephone number of the owner and contact person for each of the units at the Property; the amount and due date of the rent; and copies of any leases or written tenancy agreements.
- (b) Mortgages and Liens: the name and address of all mortgagees and lienors of record; the amount of the lien or mortgage.
- (c) Insurance: the name, address, and telephone number of all insurance companies and their agents providing insurance coverage for the Property; the amount and type of coverage; and the amount and due dates of premiums.
- (d) Utilities: the amount of the most recent water, sewer, gas, and electric bills; the amount of any outstanding balance; and the date and amount of the last payment.
- (e) Real Estate Tax: the amount of the most recent real estate tax bill; the amount of any outstanding balance; and the date and amount of the last payment.
- (f) Contracts: copies of all warranties for prior work done, service contracts for ongoing maintenance (e.g. for extermination), and all contracts or bids for repairs.
- (g) Other: all information relevant to any outstanding expenses relating to the property.

The Respondent(s) shall not enter any part of the Property without prior approval of the Receiver, the Court or a Housing Specialist.

The Respondent(s) shall not terminate any insurance coverage to the Property without first seeking leave of this Court.

15. **Motions and Notices.** Any interested party or the Housing Specialist Department shall have the right to request from the Court, by motion and with advance notice, further orders consistent with G.L. c. 111, § 127I, common law, or the terms of this Order. In the event of emergencies, service of motions to parties on this action by facsimile transmission shall be acceptable.

16. **Recording.** The Receiver shall forthwith record a copy of this Order at the Registry of Deeds.

17. **Review by Court.** The foregoing Order shall remain in effect until the further order of the Court. The Receiver and all other affected parties shall report on the Receiver's progress to the Court on **November 18, 2014** at Two **O'Clock p.m.**

18. **Effective Date.** This Receivership shall take effect on **October 24, 2014** at 5 o'clock p.m.

So entered this _____ day of _____, 2014

Dina Fein, First Justice
Western Division Housing Court