

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged Violation
of Article 17 of the Environmental
Conservation Law ("ECL") of the State of
New York and Title 6 of the Official
Compilation of Codes, Rules and
Regulations ("6 NYCRR") of the State of
New York,

ORDER

DEC Case No.
2-290793

- by -

MG REALTY CO.,

Respondent.

By notice of hearing and complaint dated April 30, 2004, staff of the New York State Department of Environmental Conservation ("Department") commenced an administrative enforcement proceeding against MG Realty Co. ("respondent") pursuant to 6 NYCRR 622.3.

The notice of hearing and complaint was mailed via certified mail, return receipt requested, on April 30, 2004, and received by respondent on May 5, 2004. Service was accomplished in accordance with 6 NYCRR 622.3(a)(3).

The complaint alleges that respondent is the owner of a petroleum bulk storage facility ("facility") located at 34-57 73rd Street, Jackson Heights, Queens, New York. The complaint further alleges that respondent failed to timely register its facility as required by ECL 17-1009 and 6 NYCRR 612.2. The facility's registration expired on August 24, 2002, and no renewal registration has been filed to date.

Respondent failed to answer or move with respect to the complaint or otherwise appear in this proceeding. Pursuant to 6 NYCRR 622.4(a), respondent's time for serving an answer to the complaint expired on May 25, 2004 and such time has not been extended.

Department Staff filed a motion for default judgment dated July 7, 2004 with the Department's Office of Hearings and Mediation Services. The matter was assigned to Administrative Law Judge ("ALJ") P. Nicholas Garlick. The ALJ's summary report, which is attached, is adopted as my decision in this matter, subject to the comments in this order.

Department staff requests that respondent be assessed a civil penalty in the amount of seven thousand five hundred dollars, which penalty is reasonable given the nature of the violation and its duration. Furthermore, the violation is ongoing, and, pursuant to ECL 71-1929, respondent may properly be enjoined from continuing such violation.

NOW, THEREFORE, having considered this matter and being duly advised, it is ORDERED that:

I. Department Staff's motion for a default judgment against respondent is granted. Pursuant to 6 NYCRR 622.15, respondent is adjudged to be in default and to have waived its right to a hearing in this proceeding. Accordingly, respondent is deemed to have admitted the factual allegations in the complaint.

II. Respondent is found to have violated ECL 17-1009 and 6 NYCRR 612.2 by failing to timely register its facility.

III. A. Respondent is assessed a civil penalty in the amount of seven thousand five hundred dollars (\$7,500.00), which is due and payable within 30 days of service of a copy of this order upon respondent. Such payment shall be made in the form of a certified check, cashier's check or money order payable to the order of the "New York State Department of Environmental Conservation" and delivered to the Department at the following address: New York State Department of Environmental Conservation, Division of Legal Affairs, 14th Floor, Attn: Benjamin A. Conlon, Esq., 625 Broadway, Albany, New York 12233-5500.

B. Within 30 days of the service of a copy of this order upon respondent, respondent shall submit to the Department a completed application to register its petroleum bulk storage facility located at 34-57 73rd Street, Jackson Heights, Queens, New York, as well as a certified check, cashier's check or money order in the amount of the registration fees required under 6 NYCRR 612.3.

C. Respondent shall cease and desist from any further violation of ECL 17-1009 and 6 NYCRR 612.2.

IV. All communications from respondent to Department staff concerning this order shall be made to Benjamin A Conlon, Esq., Associate Attorney, New York State Department of Environmental Conservation, 625 Broadway, 14th floor, Albany, New York 12233-5500.

V. The provisions, terms and conditions of this order shall bind respondent and its successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

/s/

By: _____
Denise M. Sheehan
Acting Commissioner

Dated: Albany, New York
May 31, 2005

To: (via regular mail)
Benjamin A. Conlon, Esq.
Associate Attorney
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, N.Y. 12233-5500

(via certified mail)
MG Realty Co.
2412 21st Street
Astoria, NY 11102

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged Violation of Article 17 of the Environmental Conservation Law ("ECL") of the State of New York and Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") of the State of New York,

**Summary
Report**
DEC Case No.
2-290793

- by -

MG REALTY CO.,

Respondent.

Proceedings

By notice of motion dated July 7, 2004, staff of the Department of Environmental Conservation ("DEC" or "Department") sought a judgment by default against MG Realty, the respondent, concerning alleged violations of Article 17 of the Environmental Conservation Law ("ECL"). It is alleged by DEC Staff that respondent violated Article 17 of the ECL by failing to register its petroleum bulk storage facility at 34-57 73rd St., Jackson Heights, New York, N.Y. In support of its motion, DEC submitted an affirmation of Associate Attorney Benjamin A. Conlon, a proposed order and proof of service of the notice of hearing and complaint on the respondent, by certified mail, return receipt requested on May 5, 2004.

As of the date of the motion, respondent has failed to appear and serve an answer or otherwise move, although the time to do so expired on or about May 25, 2004.

On March 16, 2005, it was brought to my attention that the respondent MG Realty Co. was not the owner/operator of the facility listed in DEC's Petroleum Bulk Storage Program's Facility Information Report. This report listed Nick Mellisinos as the owner/operator. On March 17, 2005, I wrote to DEC Staff requesting an explanation. By letter dated April 20, 2005, DEC Staff member Josephine James provided an explanation. The information contained in the report is derived from information supplied by members of the regulated community on their registration applications. In this case, the registration listed Nick Mellisinos as the owner. However, DEC Staff checked three

additional databases, including the official New York City website, and found that M&G Realty Co. is, in fact, the owner of the subject property. Nick Melissinos is listed in at least one of these databases as the Head Officer, Managing Agent and Emergency Contact. With this clarification from DEC Staff, DEC Staff have shown that M&G Realty Co. is the proper respondent in this case.

DEFAULT PROCEDURES:

Section 622.15 of 6 NYCRR, "Default Procedures," provides, in pertinent part: "(b) The motion for a default judgment . . . must contain: (1) proof of service upon the respondent of the notice of hearing and complaint or such other document which commenced the proceeding; (2) proof of the respondent's failure to appear or failure to file a timely answer; and (3) a proposed order."

The following findings are based upon the papers submitted, as identified above.

FINDINGS

1. On May 5, 2004 DEC Staff served a notice of hearing and complaint on respondent MG Realty Co. The time to answer or otherwise move expired on May 25, 2004. No answer has been served to date.
2. Respondent has failed to comply with the registration requirements set forth in 6 NYCRR 612.2 for its petroleum bulk storage facility located on 34-57 73rd St., Jackson Heights, New York, N.Y.
3. The requirements for a default judgment have been adequately met as prescribed by 6 NYCRR 622.15(b).

CONCLUSION

The motion for default judgment should be granted.

DATED: April 27, 2005
Albany, New York

/s/

P. Nicholas Garlick
Administrative Law Judge

To: Benjamin A. Conlon, Esq.
NYS Department of Environmental Conservation
625 Broadway
Albany, N.Y. 12233-5500

MG Realty Co.
2412 21st Street
Astoria, NY 11102