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2 **HEARING OFFICER ADMINISTRATIVE APPEAL HEARING**

3 **CITY AND COUNTY OF SAN FRANCISCO**

4 IN THE MATTER OF

Case No. HCSO-642

5 OFFICE OF LABOR STANDARDS
6 ENFORCEMENT, CITY AND COUNTY OF
7 SAN FRANCISCO,

**DECISION AND STATEMENT OF FINDINGS OF
HEARING OFFICER**

7 v.

8 VAN NESS CARE CENTER INC. DBA THE AVENUE
9 ASSISTED LIVING.

Hearing Date: June 20, 2018
Hearing Officer: Nancy Hutt, Esq.

10 **INTRODUCTION AND BACKGROUND**

11
12 Van Ness Care Center Inc. dba The Avenue Assisted Living (“The Avenue”) appeals from a
13 Determination of Violation (“DOV”) from the Office of Labor Standards Enforcement (“OLSE”) finding that The Avenue violated the Health Care Security Ordinance (“HCSO”), Administrative Code
14 Chapter 14, by failing to make timely payments of required health care expenditures for each of the six
15 quarters between January 1, 2015 and June 30, 2016. OLSE imposed a penalty of \$10,899.95. On June
16 15, 2017, The Avenue filed an appeal with the City Controller’s Office. As required by the HCSO
17 Regulations, The Avenue submitted the penalty amount with the appeal.

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19 The undersigned held a hearing on the appeal on June 20, 2018. The Avenue disclosed no
20 witnesses or evidence in advance of the hearing and did not submit a pre-hearing statement, despite the
21 requirement that they do so and several opportunities to correct the deficiency. (*See e.g.*, July 25, 2017
22 Letter re. Pre-hearing Filing Requirements.) Nonetheless, the undersigned allowed The Avenue’s
23 representative, Teresa Wong, to testify on behalf of The Avenue. The Avenue submitted no
24 documentary evidence at the hearing. OLSE submitted a pre-hearing statement, a witness list, and
25 exhibits in advance of the hearing. The undersigned admitted OLSE Exhibits 1-25 into evidence without
26 objection from The Avenue.

1 As explained below, The Avenue failed to carry its burden of proving that the DOV was
2 incorrect. As a result, the undersigned finds that OLSE properly issued the DOV, and The Avenue is
3 liable for the \$10,899.95 in penalties imposed by OLSE.
4

5 DISCUSSION AND FINDINGS

6 Section 14.4(e)(1) of the HCSO provides that OLSE “shall impose administrative penalties on
7 Covered Employers who fail to make Required Health Care Expenditures on behalf of their Covered
8 Employees within five business days of the quarterly due date. . . . The amount of the penalty shall be
9 up to one-and-one-half times the total expenditures that a Covered Employer failed to make, but in any
10 event the total penalty for this violation shall not exceed \$100 for each Covered Employee for each
11 quarter that the required expenditures were not made within five business days of the quarterly due
12 date.” (S.F. Administrative Code § 14.4(e)(1).)

13 OLSE issued the DOV on May 31, 2017, following an audit that covered the period January 1,
14 2015 through June 30, 2016 (“the Audit Period”). (OLSE Ex. 6.) OLSE found that while The Avenue
15 made the required health care expenditures during the Audit Period, it failed to make them within five
16 business days of the quarterly deadline for each quarter. OLSE further found in the DOV that The
17 Avenue had 51 employees who were entitled to \$105,601.50 in health care expenditures required by the
18 HCSO. At the hearing, OLSE provided a spreadsheet detailing how it calculated the \$10,899.95 penalty
19 based on the late payments. (OLSE Ex. 25.)

20 The Avenue argued in its appeal letter (OLSE Ex. 7) and through the testimony of Ms. Wong
21 that The Avenue resolved the DOV through a settlement agreement dated January 20, 2015 between
22 OLSE and The Avenue that arose from a separate HCSO Determination of Violation dated November
23 24, 2014. (OLSE Ex. 7, 9, 10.) But the violations at issue in the 2015 settlement agreement and the
24 2014 Determination of Violation resulted from an audit that covered the period April 1, 2011 through
25 March 31, 2014. (OLSE Ex. 10.) As stated, the Audit Period for the DOV in this case is January 1,
26 2015 and June 30, 2016, so the 2015 settlement agreement could not have resolved the current violations.
27 Thus, the 2015 settlement agreement does not support a finding that the DOV is incorrect.
28

1 The HCSO Regulations promulgated by OLSE under Section 14.4(a) of the HCSO provide that
2 the “appellant shall have the burden of proving that the basis for the Determination of Violation is
3 incorrect” (HCSO Reg. 10.2), and that a “valid Determination of Violation shall be prima facie evidence
4 of the violation” (HCSO Reg. 10.1(F)(1)). (OLSE Ex. 3.) The Avenue presented no evidence disputing
5 OLSE’s conclusion in the DOV that The Avenue failed to make timely health care expenditures for each
6 quarter of the Audit Period.

7 The undersigned finds that the DOV constitutes prima facie evidence that The Avenue
8 committed the violations asserted. The undersigned further finds that The Avenue has failed to meet its
9 burden of proving that the basis for the DOV is incorrect.

10 Accordingly, the undersigned **DENIES** The Avenue’s appeal and **UPHOLDS** the May 31, 2017
11 Determination of Violation.

12 This Decision is final, and the sole means of review shall be made by filing a petition for writ of
13 mandate in the San Francisco Superior Court under Section 1094.5 of the Code of Civil Procedure. (S.F.
14 Administrative Code § 14.4(a); HCSO Regulation 10.3(D).)

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16
17 Dated: July 1, 2018

Nancy Hutt
Nancy Hutt, Hearing Officer