

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF REMANDING)
PROPOSED ORDER NO. 89-21 TO) RESOLUTION NO. 89-1096
THE HEARINGS OFFICER FOR THE)
PURPOSE OF RECEIVING NEW) INTRODUCED BY EXECUTIVE OFFICER
EVIDENCE AND ORAL ARGUMENT) RENA CUSMA
AND REBUTTAL ARGUMENT)

WHEREAS, The Venetian Blind Co. has been relocated from the site of the Oregon Convention Center; and

WHEREAS, Relocation Benefits were administered for Metro by the Portland Development Commission; and

WHEREAS, Venetian Blind Co. submitted a claim to Metro for additional relocation payments, under procedures specified in Metro's relocation regulations; and

WHEREAS, The claim is handled under Chapter 2.05 of the Metro Code, contested case procedures; and

WHEREAS, A hearings officer was appointed, a hearing held, and report issued; and

WHEREAS, Venetian Blind Co. has submitted exceptions to that report, and have requested that new evidence be considered; and

WHEREAS, Under Chapter 2.05 of the Metro Code, the Council may remand the case to the Hearings Officer to receive the new evidence and oral argument and rebuttal argument; now therefore

BE IT RESOLVED,

That the matter of the contested case hearing on the relocation claim of Venetian Blind Co. be remanded to the hearings officer for the purpose of receiving the new evidence and oral argument and rebuttal arguments, and to return to the Council with a proposed order revised accordingly.

ADOPTED by the Council of the Metropolitan Service District this ____ day of _____, 1989.

NOT ADOPTED
Mike Ragsdale, Presiding Officer

Exhibit A

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

IN THE MATTER OF) FINDINGS OF FACT,
CONTESTED CASE HEARING ON) OPINION, AND
THE APPLICATION ON THE) RECOMMENDATION OF
VENETIAN BLIND CO.) HEARING OFFICER
DISTRICT RELOCATION CLAIM)

This matter came for hearing on February 15, 1989 in Conference Room A of Benjamin Franklin Plaza, One SW Columbia, Portland, Oregon 97258-2013. Samuel J. Nicholls served as the Hearings Officer. Present at the hearing were: W. Stanley Jones, Chief, Property Management and Relocation, Portland Development Commission (hereinafter "PDC"); James C. Crolley, Relocation Specialist, PDC; Jeannette M. Launer, legal counsel for PDC; Neil McFarlane, Senior Analyst, Convention Center Project, of Metropolitan Service District ("MSD"); Judy Post, President of the Venetian Blind Co., Inc.; and Konvall M. Enebo, of the Venetian Blind Co., Inc. A verbatim record of the hearing was kept by tape recorder. The hearing record was held open until February 22, 1989, for the submission of Exhibits No. 19 and 20, and those exhibits were timely filed.

FINDINGS OF FACT

1.

The Venetian Blind Co., Inc., ("claimant") is an Oregon corporation in good standing and operated its business at 707 NE Union Avenue, Portland, Oregon from 1935 until January 31, 1988. Thereafter, claimant operated its business at 535 NE Union Avenue, Portland, Oregon. Claimant was entitled to certain payments from

Page

1 the Portland Development Commission because the move of claimant's
2 business was necessitated by the construction of the Portland
3 Convention Center.

4
5 2.

6 The payments to which claimant was entitled from the Portland
7 Development Commission are governed by the MSD Relocation
8 Regulations ("The Regulations"). The regulations were provided to
9 claimant on December 1, 1986, and on June 17, 1987.

10 3.

11 On December 22, 1988, claimant timely filed a claim seeking
12 relocation payments of \$47,922.63. That claim was timely denied
13 by PDC. Thereafter, the claimant timely filed an appeal pursuant
14 to the contested case procedures contained in Section 3.3 of the
15 regulations.

16 4.

17 Claimant was given notice of the hearing held in this matter
18 and has stipulated that the notice was timely and proper.

19 5.

20 Prior to the general claim for additional relocation payments
21 dated December 22, 1988, claimant filed five separate claims for
22 various classes of reimbursable expense.

23 6.

24 On January 22, 1988, claimant filed a claim for moving basic
25 equipment in the amount of \$25,736.00 ("Claim No. 1"). Claimant
26 received a \$10,000.00 payment on January 26, and a \$15,736.00
payment on February 3, 1988, for Claim No. 1.

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7.

On October 7, 1987, claimant filed a claim for cost of substitute personal property (an outdoor neon sign) in the amount of \$5,356.00 ("Claim No. 2"). Claim No. 2 was paid in full on March 3, 1988, by issuance of a warrant to Oregon Sign Corporation.

8.

On April 4, 1988, claimant filed a claim for moving and search expenses in the amount of \$15,165.90 ("Claim No. 3"). Claimant received a \$9,561.00 payment for Claim No. 3 on April 7, 1988. The balance of Claim No. 3 was denied.

9.

On June 28, 1988, claimant filed a claim for moving expenses in the amount of \$10,430.00 ("Claim No. 4"). Claim No. 4 was paid in full, in two installments: \$7,350.00 was paid on July 8, 1988 and \$3,080.00 was paid on July 13, 1988.

10.

On July 6, 1988, claimant filed a claim for moving expenses that related to the cost of reprinting obsolete stationery, in the amount of \$10,094.87 ("Claim No. 5"). That claim remains unpaid.

11.

On December 22, 1988, claimant filed a claim for additional reimbursement in the amount of \$47,922.63 ("Claim No. 6"). Claim No. 6 was denied.

12.

The parties stipulated that the hearing officer could continue the hearing and render these findings, despite his participation

1 in the settlement conference held off the record, during the
2 hearing.

3 OPINION

4 I. Introduction

5 The Venetian Blind Company operated at a location for fifty
6 years before being compelled to move, by the construction of the
7 Portland Convention Center. Negotiations for acquisition of the
8 real property, and for reimbursement of the moving expenses
9 associated with the personnel property of the business have not
10 been smooth. Long and occasionally heated negotiations extended
11 from March 7, 1986, until the hearing. Exhibit 1, (Claim No. 6),
12 is a general claim seeking compensation for the portions of
13 claimant's first five claims which were not paid, and for
14 additional expenses. This opinion will address each claim in the
15 order that it was filed. Two preliminary matters need to be
16 addressed. First, it was stipulated by claimant that all notices
17 relating to the acquisition of the real property, to the move, and
18 to this hearing, were legally sufficient and timely filed. It
19 should also be noted that the parties stipulated during the hearing
20 to a settlement conference in the presence of the hearings officer,
21 which did not successfully resolve this matter.

22 II. Evidentiary Rulings

23 21 Exhibits were received, all without objection:

- 24 1. Claim of Venetian Blind Company dated December 22, 1988;
25 2. PDC letter to Venetian Blind Company dated January 24,
26 1989;
Page 3. Claim No. 1;

- 1 4. Photocopy of warrant for ten thousand dollar payment on
- 2 Claim No. 1;
- 3 5. Photocopy of warrant for payment on Claim No. 1;
- 4 6. Claim No. 2;
- 5 7. Photocopy of warrant for payment on Claim No. 2;
- 6 8. Internal document of PDC showing summary of bids obtained
- 7 in evaluating Claim No. 3;
- 8 9. Claim No. 3;
- 9 10. Photocopy of warrant for payment on Claim No. 3;
- 10 11. Claim No. 4;
- 11 12. Photocopy of warrant for payment on Claim No. 4;
- 12 13. Photocopy of warrant for payment on Claim No. 4;
- 13 14. Two page itemization of Claim No. 6 prepared by claimant
- 14 on December 22, 1988;
- 15 15. Claim No. 5;
- 16 16. April 14, 1988 letter from PDC to claimant regarding
- 17 Claim No.'s 1 - 4;
- 18 17. May 25, 1988 letter from PDC to claimant;
- 19 18. Chronology of PDC-Venetian Blind Company contacts;
- 20 19. Bids regarding work for elements of Claim No. 3;
- 21 20. Delta Electric bid regarding Claim No. 3;
- 22 21. Real Estate Option on the real property located a 707 NE
- 23 Union Avenue

24 III. Claim No. 1

25 Claim No. 1, signed by Judy Post, the President of the

26 claimant, was for the amount of \$25,736.00. As that amount has

been paid, it would seem on its face that claimant is precluded

from seeking further reimbursement for those expenses. However,

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1 Claim No. 6 includes additional moving expenses, and from the
2 testimony adduced at hearing, it appears that claimant originally
3 sought \$26,285.00 for the expenses included in that claim, based
4 upon a bid it received from Metro Machinery Rigging, Inc. PDC
5 obtained a lower bid for the move from Wilhelm Trucking Co. in the
6 amount of \$25,736.00, and indicated to claimant before it filed
7 Claim No. 1 that only the low bid amount would be approved.
8 Exhibit 3 indicates that the claim is based on "low-bid". (Page 2,
9 Section B, line(1)). However, PDC's witness Jones testified that
10 Wilhelm prepared the bid but was unwilling to actually perform the
11 move for the bid amount. For that reason, the Wilhelm Trucking bid
12 is not reliable, and not "an acceptable low bid or estimate",
13 pursuant to the provisions of paragraph 5.3.1.A of the Relocation
14 Regulations. Therefore, the additional sum of \$549.00 should be
15 allowed to claimant for moving expenses.

16 IV. Claims 2 and 4

17 Claim 2 has been paid in full, and the parties stipulated that
18 this claim is resolved. Claim 4, for moving a washer/dryer, was
19 paid in full in the amount of \$10,430.00, the amount sought in the
20 claim. Judy Post, the President of the claimant testified that
21 she did not sign that claim under duress, though she did so
22 unhappily. No further payment is due claimant on Claim 4.

23 V. Claim No. 3

24 A. Telephone and Search Expenses

25 Claim No. 3 was for expenses relating to moving telephone
26 service, electrical work, plumbing, and reasonable search expenses.

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1 The telephone expenses, totaling \$893.00, were paid in full and are
2 not at issue in this proceeding.

3 The reasonable search expenses, listed as \$1,020.00, exceeded
4 the \$1,000.00 limit allowable provided by Section 5.3.9.2 of the
5 regulations. The maximum amount of \$1,000.00 was paid, and no
6 further payment for search expenses is due claimant.

7 B. Electrical Expenses

8 The dispute on Claim No. 3 centers on electrical and plumbing
9 expenses.

10 The claimant employed Delta Electric, Inc. to perform
11 electrical work related to its move, at a cost of \$9,865.00. Delta
12 was to: "furnish and install wiring for all machinery from service
13 panel breaker boxes, and wire for 20, 115 volt wall plugs."
14 Claimant sought reimbursement of that \$9,865.00 expense in Claim
15 No. 3, but only \$5,128.00 was allowed and paid by PDC. PDC
16 obtained a bid from the Electric Service Division of W.R. Gragle
17 Co. to perform the same work, for \$5,128.00. Because of the
18 limitation on reimbursement for expenses for "self-moves" contained
19 in Section 5.3.8.2 of the regulations, the lowest bid amount was
20 paid. Under the regulations, the Electric Service bid amount is
21 the maximum amount to which claimant is entitled, provided that the
22 Electric Service bid is an "acceptable low bid."

23 The range of bids submitted for the electrical work by the
24 four contractors who were contacted was surprising. The bid of
25 Metro Machinery was \$18,953.00, more than three times the low bid.
26 ABC Electric submitted an oral bid of 7,500.00.

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1 Part of the difficulty in comparing bids was caused by the
2 failure of the claimant to submit a written scope of work to be
3 performed for the move, as required by Section 5.3.10.5 of the
4 regulations. The specifications for the electrical work to be
5 performed is not identical in the three written bids for electrical
6 work which are contained in Exhibit 19. The descriptions of the
7 work in all three bids are quite brief, but appear to be for
8 approximately the same services. The testimony of Mr. Jones, that
9 the work to be performed by each bidder was in fact, the same,
10 bears great weight. In the absence of evidence to the contrary,
11 it must be presumed that the bids are for identical work, that the
12 Electric Service bid is an "acceptable low bid", and that payment
13 of that amount was proper. Claimant is due no further payment for
14 the electrical work portion of Claim No. 3.

15 C. Plumbing Expenses

16 Claimant engaged George A. Morlan Plumbing Co. to perform
17 plumbing work connected with the move, for the sum of \$3,387.90,
18 the amount listed in Section B, part 4 of Claim No. 3. PDC paid
19 only the sum of \$2,540.99, based on a bid from Jack Howk Plumbing,
20 Inc., the lowest bid received on this portion of the work. (See
21 Exhibits 8 & 19.) As with the electrical work, the comparison of
22 the written bids are difficult because the descriptions on the bids
23 of the work to be performed are not identical. From the face of
24 the bids, however, the work appears to be approximately the same,
25 and, in the absence of evidence to the contrary, it must be
26 presumed that the bids were for the identical work. For that

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1 reason, the Howk bid is an "acceptable low bid" pursuant to Section
2 5.3.8.2 of the regulations. Payment of that sum was appropriate
3 and no further sum is due for the plumbing portion of Claim No. 3.

4 VI. Claim No. 5

5 The parties stipulated at the hearing that the sum of
6 \$1,094.87 would be paid on Claim No. 5. Payment on this claim had
7 been delayed, pending an inventory of stationery supplies on hand
8 at the time of the move. Such an inventory is impossible, because
9 a fire at claimant's premises destroyed the stationery on June 20,
10 1988. The PDC deemed the testimony of Post, combined with the
11 previously submitted cost estimates, acceptable proof of the amount
12 of stationery on hand at the time of the move and the cost of its
13 replacement.

14 VII. Claim No. 6

15 A. Introduction

16 Claim No. 6, which is contained in a letter dated December 22,
17 1988, seeks \$47,922.63 in additional compensation. (See Exhibit
18 1, page 5.) It is difficult to determine with specificity the
19 exact breakdown of the items which compose that claim, as it is
20 based, in part on inaccurate figures, and because the only evidence
21 offered in support of Claim No. 6 contains contradictory
22 information.

23 Page 4 of Exhibit 1 contains an itemization of claims filed
24 to date (totalling \$58,026.77) and the amounts paid thereon
25 (totalling \$51,077.00). From Exhibits 3, 6, 9, 11, and 15, it
26 appears that, in fact, the total of claims 1 through 5 is

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1 \$57,782.77. (See Exhibit 2, page 1.) In fact, PDC has paid
2 claimant the sum of \$51,083.00 on claims 1 through 5. (See
3 Exhibits 2, 4, 7, 10, 12, and 13.) From the record, it must be
4 concluded that the unpaid portion of claims 1 through 5 totals
5 \$6,699.77, not \$6,949.71 as alleged by claimant in Claim 6.

6 Exhibit 1 claims expenses for "seek and search" of \$2,848.71.
7 Exhibit 14, offered in support of claim 6, contains two line items
8 for "seek and search": \$2,868.71 and \$2,848.71. As both Exhibits
9 1 and 14 total \$47,922.63, it must be presumed that claimant is
10 seeking reimbursement search expenses of \$5,717.42. These are
11 apparently in addition to the \$1,000.00 search expense which was
12 actually paid as part of Claim No. 3, plus the \$20.00 unpaid
13 portion of the search expense on Claim No. 3.

14 Claimant seeks the sum of \$665.90 for additional stationery
15 costs, on Exhibit 14.

16 When the above sums (\$6,699.77 for unpaid portions of earlier
17 claims, \$5,717.42 for search expenses, and \$665.90 for stationery)
18 are subtracted from the gross claim of \$47,922.63, the balance must
19 be allocated to the claim for the woodworking and paint room areas:
20 \$34,839.54. This amount differs from the itemization on Exhibit
21 1 page 5 of \$38,124.15 for the woodworking and paint rooms. The
22 specific items composing Claim No. 6 shall be addressed
23 individually.

24 B. Unpaid Balances

25 The unpaid balance of claims 1 through 5, whether it be
26 \$6,699.77 or \$6,949.77, is not due the claimant, for the reasons

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1 discussed above in this opinion.

2 C. Search Expenses

3 The "seek and search" expenses, whether they be \$2,848.71 or
4 \$5,717.42, are clearly not due the claimant, pursuant to the
5 provisions of paragraph 5.3.9.2 of the regulations. In addition,
6 it appears that some of the seek and search expense item includes
7 consulting and attorney fees, which are not compensable pursuant
8 to Section 5.3.3.L of the regulations.

9 D. Stationery

10 The claim of \$665.90 for additional stationery was waived by
11 the claimant during the hearing, when it became apparent to Ms.
12 Post that it was for the cost of the "new" stationery supplies, in
13 excess of the amount of stationery rendered obsolete by the move.

14 E. Woodworking Room

15 The claim for expenses relating to the woodworking room is not
16 compensable, as the woodworking room was real property, and not
17 personal property. The woodworking room was acquired by MSD with
18 the real property. (See Exhibit 21, page 2.) Section 5.3.1.B of
19 the regulations excludes items obtained during real property
20 acquisition from eligibility for relocation benefits. Claimant
21 vehemently contends that additional expenses for the woodworking
22 room were made necessary during the move because the building code
23 required features in the new location that had not been necessary
24 in the old location. These expenses are not compensable, pursuant
25 to of Section 5.3.3.I of the regulations, which provides that
26 changes required by a building code or by OSHA are not compensable.

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1 Finally, some of the expenses related to the woodworking room were
2 apparently made necessary by modification of the new location to
3 accommodate the woodworking room. Such expenses are ineligible for
4 compensation pursuant to Section 5.3.6.3 of the regulations.

5 For those reasons, the expenses related to the woodworking
6 room are not be compensable under the cited regulations. The
7 claimant has failed to provide any evidence that the expenditures
8 on the woodworking room fall within any regulation of MSD which
9 would permit reimbursement. The only documentary evidence
10 submitted by claimant was Exhibit 14. Exhibit 14, a list of names
11 of individuals and companies, accompanied by a column of dollar
12 amounts apparently were paid to those individuals and companies,
13 is of no help in determining the nature of the expenditures and the
14 way those expenditures might apply to existing regulations. The
15 failure of the claimant to present evidence in support of its
16 claim, in the presence of the testimony and documents submitted by
17 the PDC, leaves room for no conclusion other than that the claimant
18 has failed to sustain its burden of proof by a preponderance of the
19 evidence in support of any claim on the woodworking room.

20 F. Paint Room

21 The balance of Claim No. 6 is for expenditures in connection
22 with the paint room. Unlike the woodworking room, the paint room
23 was designated as an item of personal property, making it eligible
24 for reimbursement of moving costs. (See Exhibit 21, page 2.)
25 Claimant received \$3,510.00 for moving and reinstalling the paint
26 booth, as part of the cost of the self-move, in its Claim No. 1.

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1 It was apparent from the testimony and documents presented that the
2 paint booth was not moved; rather, claimant constructed a new paint
3 room at its new location, as the old paint room did not meet OSHA
4 and building code requirements. The improvements made necessary
5 by OSHA or the building code are not compensable pursuant to
6 Section 5.3.3.I of the regulations. It was also apparent from the
7 testimony that the paint room is a larger and better structure than
8 the old paint booth, and was an addition or improvement to the
9 existing structure at the new location. Expenses incurred in
10 connection with physical improvements to the new location are not
11 eligible for reimbursement under Section 5.3.6.3 of the
12 regulations. For those reasons, and for the failure of the
13 claimant to present any evidence or argument that the expenditures
14 relating to the paint room fall within the categories of
15 reimbursable expenses outlined in the regulations, the claim for
16 the paint room portion of Claim No. 6 must be denied.

17 RECOMMENDATIONS

18 1. That the counsel of the Metropolitan Service District
19 adopt the Findings of Fact, Opinion and Recommendations contained
20 herein.

21 2. That the Metropolitan Service District pay to the Venetian
22 Blind Company the sum of \$549.00 for additional move expenses,
23 pursuant to Claim No. 1 and Claim No. 6.

24 3. That the Metropolitan Service District pay to the Venetian
25 Blind Company the sum of \$1,094.87, pursuant to Claim No. 5.

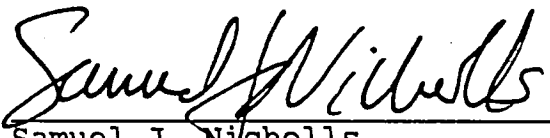
26 4. That the Metropolitan Service District deny the balance

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of the claims of the Venetian Blind Company.

Respectfully submitted this 27th th day of March, 1989.



Samuel J. Nicholls
Hearings Officer

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Exhibit B

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

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3 IN THE MATTER OF) EXCEPTIONS TO FINDINGS
4 CONTESTED CASE HEARING ON) OF FACT, OPINION, AND
5 THE APPLICATION ON THE) RECOMMENDATION OF
6 VENETIAN BLIND CO.) HEARING OFFICER
7 DISTRICT RELOCATION CLAIM)

8 The Venetian Blind Co. hereby submits the following
9 Exceptions to the Findings of Fact, Opinion, and Recommendation of
10 the Hearing Officer herein:

11 1. Plumbing and Electrical Costs

12 The Venetian Blind Co. objects to the hearing officer's
13 findings, opinion and recommendation with respect to claim numbers
14 3(b) and 3(c) for electrical and plumbing expenses. On a claim of
15 \$9,865.00 for electrical expenses, the sum of \$4,737.00 was
16 disallowed on the basis of PDC's "lower bid" from the Electric
17 Service Division of W.R. Grasle Co. Of the Venetian Blind Co.'s
18 claim of \$3,387.90 for plumbing expenses, the sum of \$846.91 was
19 disallowed on the basis of PDC's "lower bid" from Jack Howk
20 Plumbing, Inc.

21 The Venetian Blind Co. takes exception with this result in
22 that the above bids obtained by PDC were not bona fide bids. In
23 fact, the "bidders" will testify that they are PDC 'captives'
24 retained for the purpose of providing low bids, with no
25 expectation of actually receiving any of the work in question.

26 Pursuant to § 2.05.035(c) of the Metro Code, the Venetian
Blind Co. requests that the record be reopened at the Council's
Page hearing of this matter to take the above evidence from the

1 contractors in question. This evidence would meet all the
2 requirements of §2.05.030 and would result in a different decision
3 herein because of the defect it would reveal in the procedures
4 following by PDC.

5 2. Woodworking and Paint Rooms

6 The Venetian Blind Co. also takes exception to the findings,
7 opinion and recommendation of the the hearing officer in denying
8 its claim for \$34,839.54 for bringing the woodworking and paint
9 room areas of the new premises up to OSHA and code requirements.
10 The Venetian Blind Co. makes three seperate arguments with respect
11 to this exception:

12 a. Metro's Relocation Regulations are far more ambiguous
13 with respect to the expenses in question than the hearings officer
14 found. This ambiguity must be construed against Metro and not
15 against the Venetian Blind Co.

16 The hearings officer relies upon §5.3.3.I for the
17 proposition that changes required by building codes of OHSA are
18 not compensable. However, §5.3.2.C. expressly states that
19 "disconnecting, dismantling, removing, reassembling and installing
20 relocated machinery, equipment and other personal property,
21 including connection to utilities available at the replacement
22 location and modifications necessary to adapt such property to the
23 replacement location which or to adapt such utilities to the
24 personal property" shall be compensable. The work performed with
25 respect to both the paint room and the workworking room in this
26 case fall directly within the above category.

1 In addition, §5.3.6.1.A. provides that "a relocation payment
2 for moving expenses may include necessary and reasonable costs for
3 the installation of relocated machinery, equipment or other
4 personal property at the replacement location. The term
5 'replacement location' is defined as only the replacement
6 structure, not the surrounding premises." In this instance, both
7 the woodworking room and the paint room fall within the definition
8 of the replacement structure, and the not the surrounding
9 premises.

10 b. PDC acted arbitrarily and capriciously in rejecting these
11 specific claims of the Venetian Blind Co. In the past PDC has
12 honored claims for code-related improvements stemming from
13 relocations on other projects. Specific examples include Semler
14 Optical and one of the downtown furriers.

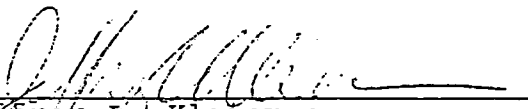
15 c. The Venetian Blind Co. further contends that the
16 provision of Section 5.3.3.I allegedly prohibiting payment for
17 changes required by building codes or OHSA is unconstitutional,
18 and denies the Venetian Blind Co. equal protection under the law
19 and both procedural and substantive due process of law. At its
20 prior business location, the Venetian Blind Co. enjoyed the
21 ability to operate a nonconforming woodworking room and paint room
22 because they predated the applicable codes and hence were
23 considered to be "grandfathered". This was a valuable right, the
24 uncompensated taking of which has put the Venetian Blind Co. in
25 danger of going out of business. There is no basis in the law for
26 drawing the distinction made by Metro's regulations herein and
denying compensation for this most valuable asset. Should this

1 matter proceed, the Venetian Blind Co. will seek a judicial
2 determination that this section of the regulations is void.

3 3. Notice Of Tort Claim.

4 Pursuant to ORS 30.275, the Venetian Blind Co. hereby gives
5 Metro notice of tort claim with respect to the actions of Metro's
6 agent, the Portland Development Commission, herein. In support of
7 this claim, the Venetian Blind Co. relies upon the entire record
8 and file, including the record of any hearing herein, and
9 including that portion dealing with the use by PDC of captive
10 bidders to establish artificially low bids. Plaintiff's theories
11 of recovery include but are not limited to outrageous conduct and
12 interference with business relations.

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14 Respectfully submitted,

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16 _____
17 Jeffrey L. Kleinman
18 Attorney for the Venetian Blind Co.
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(3) If the nature of the new evidence to be submitted is such that remand would serve no useful purpose, the Council may proceed to hear and consider the evidence and argument and rebuttal from the parties on the evidence.

Proposed Action

Remand the proceeding to the Hearing Officer for the purpose of receiving the new evidence and oral argument and rebuttal argument.

Executive Officer's Recommendation

The Executive Officer recommends that the Council remand the issue to the Hearings Officer.