

20161004.02ack

1. Your honor: I represent myself as appellant in this controversy.
The issue in this appeal is the interpretation of an order issued by this Court three years ago in 2013-P-1536.

2. The Appeals Court ruled as follows:

"The judgment is reversed.

We remand this case to the Superior Court for entry of a new judgment that directs the board to conduct a hearing to determine whether the order that the plumbing must be completely removed is justified by the specific violations that are noted in the inspection report and substantiated by photos.

Both parties are required to provide competent evidence to the board concerning the effect of the deficiencies and whether they support an order to completely remove the plumbing. The board shall be directed to make specific findings about why the entire system needs to be removed or, if that is not necessary, what needs to be fixed by a plumber."

3. With this order the Appeals Court was responding to an effort, now of 8 years standing, by the Board and by the Town, to secure the destruction of plumbing I installed 10 years ago without a plumbing permit at 3 Red Barn Road on Nantucket.

4. This controversy is now before the Court for the third time.

a. The first appeal was from a destruction order in the absence of any inspection at all.

b. The second appeal was from a Superior Court judgment that confirmed a destruction order in which the Board stated that it had not reached a decision as to whether destruction was necessary.

c. This third appeal concerns the Hearing which the Appeals Court then ordered; at which the Hearing it required the parties to correlate specific deficiencies, if any, listed in the plumbing inspector's Inspection Report and Condemnation Order with specific deficiencies demonstrable on one or more of the 35 photographs.

5. Subsequent to the Hearing, the Board issued a report which identified "poor workmanship" as the only deficiency cited in the Inspection Report, claiming that poor workmanship was a specific deficiency.

6. I argue that poor workmanship is not a specific deficiency because poor workmanship is a description insufficient to enable a licensed plumber to identify repairs required to make the system code compliant. Poor workmanship is a non-specific deficiency which can be remedied only by replacing the entire system, the need for which the Appeals Court would not permit to be taken for granted. Since poor workmanship is the only deficiency cited and in the context of the Appeals Court order, poor workmanship does not qualify as a specific deficiency, the defendant's claim that „poor workmanship“ is the (only) „specific“ deficit

serves as a concession that there is no case.
No further argument is required.

7. However, given the Superior Court's imperviousness to that argument, I must continue: I argue that the August 6, 2014 Hearing was invalid, because the Board ignored all testimony at the Hearing. The Board did not „hear“, but made its ruling on reliance of a secret re-interpretation of an exhibit which had been in its possession for two and a half years, a secret re-interpretation which I, as appellant, never had an opportunity to rebut. I assert that the Board's Final Decision and Order is not responsive to testimony at the Hearing.

8. Assuming arguendo, as the Superior Court found, that the Board was indeed responding to testimony given at the Hearing, then that testimony becomes relevant and so do the procedural irregularities.

Meyer's first witness was Christopher Gordon, a licensed plumber who had paid the Town \$560 for a plumbing permit but was prohibited by the Inspector from doing any work on Meyer's installation either in preparation for or subsequent to the Inspection. Gordon testified that he found a few deficiencies which could be easily rectified, none of which required removal of the entire system, and which would not affect the functioning of the system if left unchanged. Gordon's testimony was partially lost, because the audio recording furnished Meyer by the Board lacked the sound track from the microphone closest to Gordon. Both the Board and the Town failed to cross-examine Gordon or otherwise challenge his testimony.

My second witness Anthony Esposito, a Massachusetts registered civil engineer was prohibited from testifying for me because he was not a plumber, circumstance which did not disqualify him from being asked to testify against me.

Nantucket's only witness was Mr. Edmund Ramos, who was presented to the Board as an "Assistant Inspector" although the General Laws make no provisions of "assistant plumbing inspectors", although his name is not listed on the roster of Nantucket officials and although he testified that he is concurrently engaged in the plumbing trade on Nantucket, (presumably controlling his 24 competitors on the Island if not indeed inspecting his own work. Mr. Ramos testified to seeing "faulty pitch" on 33 of the 35 photos. He dismissed the Inspection Report and the Plumbing Code as "paperwork". He quoted no specific deficiencies cited in the Inspection Report. He admitted concerning Photo #1, that he couldn't tell from looking at the photo which pipe was pitching the wrong way, but he knew that faulty pitch was present. Mr. Kilb, the attorney for the Board, clarified Mr. Ramos' testimony to the effect that Mr. Ramos was testifying not only what he saw on the photos but what he remembered from the inspection four years previously, an hypothesis which Mr. Ramos confirmed. Chairman Kennedy cautioned Mr. Ramos not to report seeing too much on the photos, since one can't really see many deficiencies unless one is in their presence. And Mr. Pucci, his lawyer, who obviously didn't believe Mr. Ramos' testimony either, restrained Mr. Ramos' fantasy by interrupting him: „You've testified to No 1. let's go on to No. 2.“

My rejoinder is that "faulty pitch" cannot be assessed with the unaided eye even in physical presence, much less on a photograph. I argue that Mr. Ramos' report of seeing faulty pitch unaided is spectral evidence,

evidence from dreams, fantasy or imagination, which has been banned in Massachusetts since October 1692.

9. The testimony was subject to serious procedural irregularities, specifically,
a. that Meyer's witness Gordon was not permitted to rebut the testimony of Nantucket's witness, Mr. Ramos,
b. that Meyer's witness Mr. Esposito was found unqualified to testify for Meyer, but was qualified to testify against Meyer.

10. The Superior Court's finding that these irregularities did not prejudice Meyer because they properly excluded cumulative evidence reflects the assumption that the Board had the authority to make a ruling independent of all evidence presented at the Hearing, i.e., arbitrarily.

11. Turning now to the Board's secret re-interpretation of what it claimed to see in the photos,

I note that there were before the Board three contradictory interpretations, those of Gordon, Ramos, and its own prior interpretation, to which, in order to support its order that the plumbing be destroyed, it then added a fourth.

To support my assertion that what the Board purported to see in the 35 photos is untruthful, irresponsible and malicious fantasy, I motioned the Superior Court for permission to file an appendix consisting:

- a) of a synopsis of four contradictory interpretations of the 35 photos, given in sworn testimony or on file at the Hearing, to which I added my own comments on the Board's second and final photo-interpretation which had been concealed from me,
- b) a set of publically available documents concerning
 - i) visual perspective,
 - ii) projective visual tests such as the familiar Rorschach ink blot test,
 - iii) the definition of "full S-trap"
 - iv) Appeals Court opinions in the two previous appeals, and
 - v) the U.S. Supreme Court Decision in *FTC v. North Carolina Board of Dental Examiners*.

The circumstance that the Superior Court denied my motion to file this appendix and gave to the Attorney for Nantucket verbal assurances, documented in the transcript of the Superior Court Hearing, that it would take no notice of items in the Appendix, raises the question to what extent, if any, the trial court is obligated to take notice of relevant publically available information, where such notice would be determinative of the outcome of a proceeding.

12. The Board's assertion that the installation must be destroyed because the large number of alleged deficiencies makes the repair impossible is incongruous. Assuming, as Mr. Ramos claimed, 90 percent of the installation required removal, then the remaining 10 percent which would not require removal would, by definition, be code compliant and would differ in no way from the initial 10 percent of a new code compliant installation. If Meyer's 10 percent code compliant installation could not be completed for what ever reason, then neither could a new installation hypothetically code compliant but only 10 percent complete. In fact, if my hypothetically 10 percent code compliant installation could not be completed, then no other plumbing installation at the same 10 percent stage could ever be completed.

13. I argue that *FTC v. NC Board of Dental Examiners* is on all fours with my assertion that where a majority of the plumbing board and its chairman are competing in the trade that they regulate, and where the Commonwealth

flagrantly fails to enforce the Boards prohibition of do-it-yourself plumbing, and where there is no precedent of interposition to Federal law by Massachusetts, the Appeals Court should declare that do-it-yourself plumbing is not illegal.

14. Unless it dismisses my appeal, then when the Appeals Court fashions relief, the following facts, documented in the record before it, become relevant:

- a) that in the Nantucket plumbing inspectors office there is posted a list of addresses for which the routine issuance of plumbing permits is prohibited,
- b) that the Nantucket plumbing inspector refused for 50 days to issue a permit to Christopher Gordon to perform the plumbing at 3 Red Barn Road, even when the issuance of such a permit was mandated by the Appeals Court.
- c) the Plumbing Board regularly revokes the license of a plumber who does plumbing without a permit.
- d) Plumbing permits are issued by the Inspector at his pleasure and the Inspector's refusal to issue a plumbing permit may destroy a plumber's business.
- e) The fact that of more than 20,000 licensed plumbers in the Commonwealth each of whom is prohibited on pain of losing his license from not even replacing a defective faucet without a permit – there are not more than one or two appeals from an inspector's decision each year, is persuasive evidence that for a licensed plumber appeals from an inspector's decision are not feasible.
- f) Therefore a plumber who is not a fool, - to use the Chairman's word for Mr. Gordon, will curry the Inspector's favor, and will not risk the inspector's displeasure by testifying adversely to the inspector's interests.
- g) The Nantucket plumbing inspector's order to plumbers under his jurisdiction to boycott my installation made it impossible for me to hire any plumber except Mr. Gordon who could afford to disobey the inspector only because Gordon, about to move to Florida, was immune to retribution.
- h) The Town resorted to fictitious evidence in legal actions against me for the past 12 years.
- i) The plumbing inspector is an employee of the Town of Nantucket.
- j) The Town has used, is using, and will continue to use legal process against me as an instrument of attrition.
- k) The Town has consistently flaunted the Appeals Court directives and misused judicial procedure
 - k1) by failing to provide an Inspection of Integrity and Fairness with a report of detailed findings and reasoning,
 - k2) by filing as an Inspection Report a tract of fictitious propaganda, where propaganda is technically defined as "the deliberate, systematic attempt to shape perceptions, manipulate cognitions, and direct behavior to achieve a response that furthers the desired intent of the propagandist."
 - k3) by making no attempt at all to identify specific deficiencies cited in the Inspection Report and demonstrated on photos but presenting only one witness who dismissed the plumbing code and the inspection report as paperwork.