

*Office of Adjudications*

***IN THE MATTER OF*** : ***APPLICATION #201410755-KZ***  
***ORDER #LIS-2012-3443-V***

***NUSSBAUM, BERNARD W.*** : ***February 20, 2018***

***FINAL DECISION REGARDING ORDER***

On November 30, 2015, a Removal Order (“Order”) was issued to Bernard W. Nussbaum (“Respondent”), ordering him to remove two post and wire fences located waterward of the seawall in front of his property at 100 and 104 Sea Beach Drive in Stamford (“Property”). Mr. Nussbaum had previously been issued a Notice of Violation dated July 16, 2012, and, on October 30, 2014, had applied for an after-the-fact permit to retain the post and wire fences (“Application”). On December 17, 2015, following publication of a Notice of Tentative Determination to deny the Application, Mr. Nussbaum requested hearings on both the Order and the Application and this proceeding commenced. The two matters were consolidated for the purposes of developing an evidentiary record. In a Final Decision dated February 6, 2018, the Department denied the Application, and I therefore turn my attention to adjudication of the Order.

I have reviewed the Order, the Respondent’s Answer and Request for Hearing dated December 17, 2015 (“Answer”) and the evidence in the record. I hereby adopt the findings of fact set out in the Proposed Final Decision on the Application, which were subsequently incorporated into the February 6, 2018 Final Decision on the Application. No additional facts are necessary to adjudicate this matter.

Department staff bears the burden of proving the allegations in the Order by a preponderance of the evidence – namely that the post and wire fences were installed without a necessary permit. This issue was resolved by the Department’s Final Decision denying the Respondent an after-the-fact permit to retain the fences. Following the issuance of that decision, a status conference was held via conference call, at which time the Respondent was offered the opportunity to file a brief regarding any claims identified in his Answer that were not resolved by the Department’s denial of the permit application. The Respondent waived the opportunity to file a brief. Any claims raised in the Answer not resolved by the Final Decision regarding the Application are now deemed abandoned.<sup>1</sup>

I therefore conclude that the Department has satisfied its burden of proving the allegations in the Order that the post and wire fences were installed without the required permit. The Order is affirmed, and its effective date shall be the date of this Final Decision.<sup>2</sup>



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Brendan Schain, Hearing Officer

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<sup>1</sup> See, e.g., *Ellington v. Town and City of Stamford*, 130 Conn. 418 (1943) (If a claim is not briefed, it is regarded as abandoned.)

<sup>2</sup> The Commissioner has delegated authority to the Office of Adjudications, and its hearing Officers to issue final decisions in matters such as this matter, which concern enforcement. *Delegations of Authority*, July 28, 2006, Part VII, Paragraph F (4)(c)(i).

*S E R V I C E   L I S T*

In the matter of Nussbaum

Order No.: LIS-2012-3443-V – Application No.: 201210755-KZ

PARTY

REPRESENTED BY

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