

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL O'HANLON, <u>et al.</u>	:	CIVIL ACTION
	:	
v.	:	
	:	
CITY OF CHESTER, <u>et al.</u>	:	NO. 00-0664

MEMORANDUM AND ORDER

HUTTON, J.

March 27, 2002

Presently before the Court are Defendants City of Chester, the Honorable Dominic Pileggi, Peter Seltzer, Calvin Joyner, Monir Z. Ahmed, Joseph Farrell, Glenn Holt, Robert Leach, Thomas Boden, Irvin Lawrence, Edward Brown, Joseph Cliffe, Thomas Groch, Robert Wilson and Richard Griffin's Motion for Summary Judgment (Docket No. 48), Defendants' Praecipe to Attach Exhibit to Defendants' Motion for Summary Judgment (Docket No. 53), Plaintiffs' Answer to Chester Defendants' Motion for Summary Judgment (Docket No. 54), Plaintiffs' Praecipe to Attach Exhibit to Plaintiffs' Answer to Defendants' Motion for Summary Judgment (Docket No. 58), Defendants' Reply to Plaintiffs' Answer (Docket No. 60), and Plaintiffs' Supplemental Response to Defendants' Reply Memorandum (Docket No. 61).

I. BACKGROUND

On February 4, 2000, several property owners in the City of Chester, Pennsylvania, filed a Complaint against nineteen different

defendants,¹ including the City of Chester, the Honorable Dominic Pileggi, Mayor of the City of Chester, Peter Seltzer, Director of the Department of Public Safety, Calvin Joyner, Director of License and Inspections, Monir Z. Ahmed, Joseph Farrell, Glenn Holt, Robert Leach, Thomas Boden, Irvin Lawrence, Edward Brown, Joseph Cliffe, Thomas Groch, Robert Wilson and Richard Griffin (collectively the "Defendants").² The mainstay of the Complaint is that these Chester City officials violated Plaintiffs' civil rights when Defendants took action against various city rental properties for violations of the City's health, fire and safety ordinances. Five distinct rental properties in the City are the focus of the Complaint.

A. Meadow Lane Property

Plaintiffs Janette and Michael O'Hanlon and CAP A.M. Corporation³ (the "O'Hanlons") own a forty-two unit apartment complex located at 1000 Meadow Lane in Chester, Pennsylvania. On

¹ Two other Defendants, Leo A. Hackett and Allen F. Gosnell, filed separate motions for summary judgment and are not the subject of the instant motion.

² Plaintiffs concede that the evidence is insufficient to establish liability against Defendants Monir Z. Ahmed, Robert Wilson and Glenn Holt. See Pls.' Answer to Defs.' Mot. Summ. J. at 1. Accordingly, Defendants' Motion for Summary Judgment is granted as to Defendants Monir Z. Ahmed, Robert Wilson and Glenn Holt.

³ Plaintiffs Janette and Michael O'Hanlon, who own the parcel of land at Meadow Lane, are the shareholders in CAP A.M. Corporation, which owns the apartment complex. "'An individual plaintiff cannot bring a civil rights claim for damages suffered by a corporation.' This is true even where the plaintiff is the sole shareholder of the corporation . . ." Grimm v. Borough of Norristown, Civ. A. No. 01-431, 2002 WL 386714, at *15 (E.D. Pa. March 11, 2002) (citations omitted). Therefore, CAP A.M. Corporation is not a proper plaintiff to this lawsuit.

September 17, 1998, Defendant Calvin Joyner, the Director of Licenses and Inspections, Deputy Fire Commissioner Joseph Cliffe, License and Permit Officer Thomas Groch and other City officials conducted an inspection of the Meadow Lane property. The O'Hanlons had been operating the property without the appropriate Multi-Family Dwelling License since November 4, 1994. In a letter dated September 22, 1998, Defendant Joyner informed the O'Hanlons that the property was unsafe for human occupancy. The letter listed the violations and requested that the O'Hanlons provide a plan for rehabilitating the property by noon on September 24, 1998. The O'Hanlons did not receive the letter until September 25, 1998 one day after the proposed plan for rehabilitation was due. On that same day, Joyner, having not received a plan, ordered the Meadow Lane property to be closed and vacated by October 9, 1998.

Counsel for the O'Hanlons contacted the City on September 29, 1998 to inform the City that the property owners had a plan for rehabilitation. On October 2, 1998, Mrs. O'Hanlon and her attorney met with City officials to discuss the plan. Defendant Joyner rejected the plan on October 8, 1998. The City proceeded to post notices on the property. In a letter dated November 2, 1998, counsel for the O'Hanlons requested that the notices be taken down on the Meadow Lane property. The City complied with the request and the notices were removed on November 6, 1998. As a result of the City's actions, the O'Hanlons complain that tenants left the

apartment complex at 1000 Meadow Lane.

B. Morton Avenue Properties

Plaintiffs Felix and Ronald Roma were the owners of the properties located at 806, 808, 810 and 812 Morton Avenue (the "Morton Avenue properties"). On June 3, 1998, Defendant Edward Brown, a Building Official for Chester City, informed the owners of 810 Morton Avenue that the property was uninhabitable due to ten specific health, fire and safety code violations. According to Defendant Brown's letter, the property would be posted unfit for human habitation on June 4, 1998. On June 25, 1998, the Romas, through their son Thomas Jerome Roma, requested a hearing regarding the Morton Avenue properties. Defendant Peter Seltzer, Director of the Department of Public Safety, scheduled a hearing for July 22, 1998, but by letter dated July 13, 1998, Seltzer rescinded the hearing date until Thomas Jerome Roma could provide documentation establishing that he had legal authorization to act on behalf of Felix and Ronald Roma, the owners of the property.

On July 6, 1998, Defendant Brown again declared 806, 808, 810 and 812 Morton Avenue unfit for human habitation. Approximately three months after the notice, the Morton Avenue properties suffered a fire. On September 10, 1998, Defendant Joyner declared the Morton Avenue properties unfit for human habitation. In a letter dated September 29, 1998, counsel for Felix and Ronald Roma informed Peter Seltzer that, "[i]n light of the severe damage

caused by the fire, my clients agree that the buildings should be demolished." Pls.' Supp. Mem. at Ex. YY. The properties were eventually demolished in February of 1999.

C. East 9th Street Properties

Along with the Morton Avenue properties, Felix and Ronald Roma were the owners of the properties located at 404 and 606 East 9th Street, while Felix and Marie Roma owned the property located at 608 East 9th Street (the "9th Street properties"). Defendant Glenn Holt, a Building Inspector for the City, declared 404 East 9th Street unfit for human habitation on August 13, 1998. Previously, Defendant Robert Leach, a City Housing Inspector, had declared 606 and 608 East 9th Street unfit for human habitation on June 12, 1998 and discontinued the utilities. On October 1, 1998, counsel for the Romas wrote to Defendant Seltzer to state that the Romas contested the violations attributed to the properties and therefore requested a hearing. The Romas claim that they never received a response to their request. While the Romas still own the property at 404 East 9th Street, the property has been boarded up since September of 1998. The Romas sold the 606 and 608 East 9th Street properties sometime in 1999.

D. Swartz Street Property

Plaintiff John Birl owns property located at 2726 Swartz Street (the "Swartz Street property"). On January 26, 1998,

Defendant Thomas Boden, a Housing Inspector for the City, declared the Swartz Street properties unfit for human habitation and ordered the tenants to vacate the property. One year later, on January 20, 1999, Defendant Joyner declared the property unfit for human habitation and ordered that the property be demolished within ten days. The Notice further informed Plaintiff Birl that he had the right to request a hearing, which Plaintiff Birl did request in a letter dated February 3, 1999. In August of 1999, the City issued another Notice to Birl that his Swartz Street property was deemed unfit for human habitation, and that the property should be demolished, and again, in a letter dated September 15, 1999, Birl requested a hearing regarding his property. According to Birl, both requests for a hearing went unanswered.

E. Culhane Street Property

In addition to owning the Swartz Street property, Plaintiff Birl owns property located at 1405 Culhane Street. In April of 1999, Defendant Robert Leach ordered the electric service to the Culhane Street properties cut off without prior notice to the owner. On April 16, 1999, Defendant Irvin Lawrence, a Housing Inspector for the City of Chester, notified Plaintiff Birl that his Culhane Street property was in violation of the City ordinance pertaining to overhang extensions. The overhang had been damaged by fire and needed to be repaired. In this letter, Defendant Lawrence informed Plaintiff Birl that he had five days to comply

with the City ordinance which required "all metal awnings and similar overhang extension shall be maintained in good condition." Id. Plaintiff claims he was not granted a reasonable time in which to make the necessary repairs.

F. Procedural History

No hearings or administrative proceedings took place regarding any of the properties. Nor did the Plaintiffs challenge the actions in state court. Rather, the Plaintiffs filed the instant lawsuit in February of 2000. On May 11, 2000, Plaintiff filed a three-count Amended Complaint alleging that Defendants, in violation of 42 U.S.C. § 1983, deprived the property owners of their rights under the Fourth and Fourteenth Amendments to the United States Constitution. Count I of Plaintiffs' Amended Complaint, alleging a violation of the Fourth Amendment, was dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure. In Counts II and III, Plaintiffs contend that Defendants violated their right to due process by failing to provide any meaningful notice or an opportunity for a hearing regarding their respective properties. Defendants now move for summary judgment on the remaining due process counts.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912, 113 S.Ct. 1262, 122 L.Ed.2d 659 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than just rest upon mere allegations, general denials or vague statements. Saldana v. Kmart Corp., 260 F.3d 228, 232 (3d Cir. 2001).

III. DISCUSSION

A. Section 1983

Section 1983 imposes civil liability upon any person who, acting under the color of state law, deprives another individual of any rights, privileges, or immunities secured by the Constitution or laws of the United States. 42 U.S.C. § 1983; see also Conn v. Gabbert, 526 U.S. 286, 289, 119 S.Ct. 1292, 143 L.Ed.2d 399 (1999); Gruenke v. Seip, 225 F.3d 290, 298 (3d Cir. 2000). Thus, to prevail under section 1983, a plaintiff must establish (1) that the defendants were "state actors," and (2) that they deprived the plaintiff of a right protected by the Constitution. Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). In the instant case, Defendants do not contest that they, as officials for the City of Chester, are state actors for the purposes of section 1983. Thus, the pertinent inquiry becomes whether the Defendants deprived Plaintiffs of their federal rights.

Plaintiffs complain that Defendants deprived them of their right to due process under the Fourteenth Amendment to the United States Constitution. The Due Process Clause of the Fourteenth Amendment confers both substantive and procedural rights. Albright v. Oliver, 510 U.S. 266, 272, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994). "To establish a substantive due process claim, a plaintiff must prove that it was deprived of a protected property interest by arbitrary or capricious government action." Samerica Corp. of

Delaware v. City of Phila., 142 F.3d 582, 590 (3d Cir. 1998). Procedural due process, on the other hand, requires a plaintiff to establish that the "state procedure for challenging the deprivation does not satisfy the requirements of procedural due process." DeBlasio v. Zoning Bd. of Adjustment for Township of West Amwell, 53 F.3d 592, 597 (3d Cir. 1995). In other words, the relevant inquiry is whether the state "'affords a full judicial mechanism with which to challenge the administrative decision.'" Id.

B. Procedural Due Process

Plaintiffs allege that various Chester City officials violated their Fourteenth Amendment right to procedural due process by using the authority vested in the City to deprive them of a property interest without prior notice and an opportunity to be heard. Under the Fourteenth Amendment, a state may not deprive a citizen of property without first affording the property owner due process of law. U.S. Const. amend. XIV, § 1; see also Brown v. Muhlenberg Township, 269 F.3d 205, 213 (3d Cir. 2001). "At the core of procedural due process jurisprudence is the right to advance notice of significant deprivations of liberty or property and to a meaningful opportunity to be heard." Abbott v. Latshaw, 164 F.3d 141, 146 (3d Cir. 1998) (citations omitted). Moreover, a violation of procedural due process occurs when a state fails to provide an adequate process to remedy errors or irregularities. See Zinermon

v. Burch, 494 U.S. 113, 125-26, 100 S.Ct. 975, 108 L.Ed.2d 100 (1990) (no actionable section 1983 procedural due process claim "unless and until the State fails to provide due process").

In the instant case, the undisputed evidence of record shows that the City Code and state law provide adequate procedures to challenge a directive that property owners abate unsafe conditions on their property. The Building and Housing Code adopted by the City of Chester provides that:

Whenever a Code official finds that an emergency exists on any premises, or in any structure or part thereof, or on any defective equipment which requires immediate action to protect the public's health and safety or that of the occupants thereof, he may, with proper notice and service in accord with the provisions of Section ES-107.0, issue an order reciting the existence of an emergency and requiring the vacating of the premises or such an action taken as he deems necessary to meet such emergency. Notwithstanding other provisions of this Code, such order shall be effective immediately, and the premises involved shall be placarded immediately upon service of the order.

BOCA subsection ES 109.1. The Code further provides that:

Any person to whom such an order is directed shall comply therewith. He may thereafter, upon petition to the Director of Public Safety, be afforded a hearing as prescribed in this Code. Depending upon the findings of the Director at such hearing as to whether the provisions of this Code and the rules and regulations adopted pursuant thereto have been complied with, the Director shall continue such order or modify or revoke it.

BOCA subsection ES-109.2. However, the mere existence of such an ordinance does not automatically prompt the conclusion that the City conformed with procedural due process requirements when it took action against the various properties. Rather, the Court must

examine the actions taken against each property to see if, under the facts presented, Defendants provided notice and an opportunity to be heard.

1. East 9th Street and Swartz Street Properties

The evidence of record, if credited by a reasonable finder of fact, is sufficient to set forth a claim of a denial of procedural due process regarding the East 9th Street and Swartz Street properties. It is clear that the notice issued by the City of Chester informed the property owners that they "may make arrangements with the Director of Public Safety at any time within the said (10) days of this notice, for a hearing . . ." See Pls.' Supp. Mem., Ex. EE; Defs.' Reply Mem., Ex. C. However, Plaintiffs have presented sufficient evidence that, in the case of the East 9th Street and Swartz Street properties, the property owners' requests for a hearing went unanswered. See Pls.' Supp. Mem., Ex. FF, Ex. JJ, Ex. RR, Ex. ZZ. In each case, Plaintiffs wrote letters to the City requesting a hearing regarding their respective properties. Plaintiffs allege that their requests went unanswered by the City. There is no evidence presented to the contrary.

Pennsylvania law provides that, in the context of an action by a municipality, notice is afforded "to give owners of the property the opportunity for a hearing to litigate the question of whether the property is actually a danger to public safety and provide a reasonable opportunity for the owners to make repairs in order to

eliminate the dangerous condition.” Commw. of Pa. v. Borriello, 696 A.2d 1215, 1217-18 (Pa. Commw. Ct. 1997) (citing Keystone Commercial Prop. v. City of Pittsburgh, 347 A.2d 707 (Pa. 1977)). There is no evidence of record to suggest that the owners of the East 9th Street or Swartz Street properties were afforded such an opportunity. Drawing all reasonable inferences in the light most favorable to Plaintiffs, the owners of the East 9th Street and Swartz Street properties may state a claim for a deprivation of procedural due process. Accordingly, summary judgment is denied as to these properties. However, the Court notes that with regards to the East 9th Street properties, any claim for damages is limited by the sale of the properties in 1999.

2. Meadow Lane Property

a. Statute of Limitations

With regards to the Meadow Lane property, Defendants point out that Plaintiffs complain of actions taken by the City against their property as early as 1994. See Defs.’ Mot. Summ. J. at 7-8. As Defendants indicate, any actions taken prior to February 1998 are barred by the statute of limitations. Federal courts apply the state’s statute of limitations for personal injury to claims under section 1983. See Sameric Corp. of Delaware v. City of Phila., 142 F.3d 582, 598 (3d Cir. 1998) (citing Wilson v. Garcia, 471 U.S. 261, 276-78, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985)). Therefore, because Pennsylvania’s statute of limitations for personal injury

actions is two years (see Pa. Cons. Stat. Ann. § 5524), Plaintiffs' due process claims are subject to a two-year statute of limitations. See Sameric, 142 F.3d at 598.⁴ Although Plaintiffs concede that all acts prior to February 1998 are barred by the statute of limitations, they nonetheless barrage this Court with facts and documents concerning actions taken by the City in 1994 and 1995. None of this evidence shall be considered by the Court since any claims that could potentially arise from this time period are untimely and thus barred. Therefore, the Court will consider Plaintiffs' section 1983 claim only as it pertains to actions taken by Defendants against the various rental properties after February of 1998.

b. Procedural Due Process

The Court finds that the Meadow Lane property owners are unable to sustain a claim for a procedural due process violation. Under the Fourteenth Amendment, a state may not deprive a citizen of his property without affording him due process of law. See U.S. Const. amend. XIV, § 1; see also Brown v. Muhlenberg Township, 269 F.3d 205, 213 (3d Cir. 2001). In order to assert a violation of

⁴ Moreover, the "continuing violation" doctrine, which tolls the statute of limitations in certain situations, is inapplicable in the case at bar. Plaintiffs complain that the City denied the Meadow Lane property a license to operate as a multi-family dwelling. The Third Circuit has held that "the denial of the permit [gives] rise to an independent cause of action and should [be] pursued as such. Thus, . . . the continuing violations doctrine could not be applied to revive the claim involving the permit denial." Cowell v. Palmer Township, 263 F.3d 286, 294 (3d Cir. 2001).

due process, a plaintiff must at least demonstrate the deprivation of a protected "property interest" established through "some independent source such as state law." Bd. of Regents v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972). Under this analysis, the "hallmark of property . . . is an individual entitlement grounded in state law, which cannot be removed except 'for cause.'" Logan v. Zimmerman Brush Co., 455 U.S. 422, 430, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982) (quoting Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 11-12, 98 S.Ct. 1554, 56 L.Ed.2d 30 (1978)). Drawing all reasonable inferences in favor of Plaintiffs, the Court finds that, with regards to the Meadow Lane property, the City did not interfere with a protected property interest.

The first, and most elemental, property interest that the O'Hanlons might claim the City interfered with is that of ownership. While it is axiomatic that ownership is a protected property interest which entitles the plaintiff to due process of law, there is no evidence or allegation that the City interfered with the O'Hanlons' actual ownership of the Meadow Lane property. Section 402(a) of the Eminent Domain Code provides in pertinent part:

(a) Condemnation . . . shall be effected only by the finding in court of a declaration of taking . . . and thereupon the title which the condemnor acquires in the property condemned shall pass to the condemnor on the date of such filing.

26 P.S § 1-402(a) (emphasis added). In the instant case, the properties were not condemned, as the title to 1000 Meadow Lane remained at all times with the O'Hanlons and never passed to the City. Rather, the facts of record indicate that the O'Hanlons continue to operate the property as a Multi-Family Dwelling. Since, at all times relevant to the instant complaint, the O'Hanlons clearly owned 1000 Meadow Lane and the City took no action which affected to title to the property, Plaintiffs' cannot sustain a due process claim based on the allegation that the City interfered with their right of ownership.

Next, Plaintiffs' might support a due process claim by alleging that they have a protected property interest in receiving a Multi-Family Dwelling License from the City. It is clear that, under a certain set of facts, a property owner may have a constitutionally protected property interest in obtaining a license needed to operate a property in a particular manner. See e.g., Midnight Sessions, LTD v. City of Phila., 945 F.2d 667, 679 (3d Cir. 1991). However, the facts of the instant case reveal that the O'Hanlons' Multi-Family Dwelling License, which was necessary to legally operate 1000 Meadow Lane as a rental property, was revoked in 1994. See Defs.' Mot. Summ. J. at 3, Ex. C; Pls.' Supp. Mem. at Ex. N. Again, any claim arising from the City's revocation of this license arose six years before the instant suit was filed and is therefore barred by the statute of limitations. See Sameric

Corp. of Delaware v. City of Phila., 142 F.3d 582, 598 (3d Cir. 1998).

Finally, Plaintiffs' seemingly contend that the O'Hanlons had a constitutionally protected property interest in the rents they received from tenants residing at the Meadow Lane property, and the City's actions during the 1998 inspections of the property interfered with that right. "[T]he fee in real estate is the total bundle of rights held by the owner with respect to the land . . . [including] the right to receive rents . . ." Sullivan v. U. S., 461 F.Supp. 1040, 1044 (W.D. Pa. 1978). While the O'Hanlons' staunchest complaint against the City and its officials is that some of their tenants left the Meadow Lane property as a result of the City's inspections, the O'Hanlons cannot sustain a claim for lost rental income, or for contractual interference, because they have been operating 1000 Meadow Lane as a multi-family rental unit since 1994 without the proper license to legally do so. The City cannot be responsible for a landowners lost rent when the landowner was not authorized to operate the property as a rental unit in the first place.

Moreover, Defendants contend that Plaintiffs may not state a valid cause of action for a due process violation against the Meadow Lane property because the property owners never requested a hearing. The Third Circuit has held that "property owners' constitutional claims based upon land-use decisions [are] premature

where the owners or tenants were denied permits by the initial decision-makers but did not avail themselves of available, subsequent procedures." Sameric, 142 F.3d at 597. The Court agrees with Defendants that "a party that fails to avail himself of procedures established to remedy legal errors does not constitute a deprivation of due process." See Bailey v. Richard, Civ. A. No. 95-9632, 1996 WL 754298, at *1 (E.D. Pa. Dec. 23, 1996). While Plaintiffs seemingly do not contest that they failed to request a hearing regarding the Meadow Lane property, they allege that such a request would have been futile. See Pls.' Answer at 2. With regards to the Meadow Lane property, the facts of record indicate otherwise.

After counsel for the O'Hanlons contacted City officials to discuss a plan to rehabilitate the Meadow Lane property on September 29, 1998, the City scheduled and held a formal meeting within three days of Plaintiffs' request. See id. at Ex. S, Ex. V. On October 2, 1998, Plaintiff Janette O'Hanlon, her attorney, the Solicitor for the City of Chester, and various officers from the Department of License and Inspections met in City Counsel Chambers to discuss the proposed rehabilitation. See id. at 11. Thus, Plaintiffs allegation that a request for a hearing would have been futile is unsupported by the evidence and the history of the interactions between the parties. Rather, the facts indicate that when the O'Hanlons' attorney requested a meeting with the City to

discuss plans for rehabilitating the property, a meeting was held within three days; when the O'Hanlons' attorney requested that the notice be removed from the property, the City complied within four days.

Accordingly, the Court grants Defendants summary judgment on all claims arising from the Meadow Lane property.

3. Morton Avenue Properties

With regards to the Morton Avenue properties, the Court finds that Plaintiffs are unable to maintain a cause of action for a violation of procedural due process. The undisputed facts of record show that, on June 25, 1998, Thomas Jerome Roma, son of property owner Felix Roma, requested a hearing regarding the Morton Avenue properties. The City of Chester responded to this request and scheduled a meeting for July 22, 1998. See Pls.' Supp. Mem., Ex. TT. However, the City rescinded the hearing date because the City requested assurances that the individual who requested the hearing, Thomas Roma, who was not an owner of the property, had legal authority to act on behalf of the property owners, Felix and Ronald Roma. See id. As a matter of law, this action does not establish a violation of due process. The City has a legitimate interest in assuring that those to whom a hearing is provided have lawful authority over the property at issue. No evidence has been provided to establish that Thomas Roma provided the City with information that established he was the legal representative of the

property owners.

Plaintiffs further allege that their procedural due process rights were violated when the City demolished the Morton Avenue properties after a fire occurred in early September of 1998. On September 10, 1998, following the fire, the City declared the properties structurally unsound. See Pls.' Supp. Mem. at Ex. XX. The notice the City issued with regards to the properties informed the property owners of their right to a hearing. See id. Plaintiff did not request a hearing to contest the City's findings that the properties were structurally unsound after the fire. See id. at Ex. YY. Rather, on September 29, 1998, the property owners' attorney wrote to Defendant Seltzer, Chester's Director of Public Safety, to state that "[i]n light of the severe damage caused by the fire, my clients agree that the building should be demolished." Id. at Ex. YY. The only hearing the parties requested in this correspondence was one regarding the cost of demolition. See id. There is no allegation that such a request was not met.

In addition to the letter from the attorney, the City received a handwritten letter from property owner Ronald Roma asking that the City demolish the buildings. See id. at Ex. CCC. Subsequently, the properties were demolished in February of 1999. A deprivation of due process does not result from a City demolishing a building when the property owners were notified of

both the code violations and their right to a hearing and, rather than contest the notice through a hearing, acquiesced to the City's findings and agreed that the property should be demolished. Therefore, summary judgment is granted in favor of Defendants with regards to claims arising from the Morton Avenue properties.⁵

4. Culhane Street Property

Plaintiff Birl's allegations regarding the Culhane Street property also fail to state a valid claim for a violation of procedural due process. With regards to Culhane Street, Birl complains of two discrete actions taken against the property. First, on April 13, 1999, Defendant Robert Leach ordered the electric service to the vacant Culhane Street property discontinued without notice. Second, on April 16, 1999, Defendant Irvin Lawrence, a Housing Inspector for the City of Chester, notified Plaintiff Birl that his Culhane Street property was in violation of the City ordinance pertaining to overhang extensions. See Defs.' Mot. Summ. J., Ex. K. Plaintiff was informed that he had five days to comply with the City ordinance which required "all metal awnings and similar overhang extension shall be maintained in good condition." Id. Plaintiffs make no further allegations regarding actions by the City against 1405 Culhane Street.

⁵ Plaintiffs' allegations against Defendant Edward Brown, Building Official, stem solely from actions taken against the Morton Avenue properties. Accordingly, since such claims fail to state a cause of action for a violation of procedural due process, Edward Brown is dismissed from the instant action.

Before a claim may be brought before a federal court, the case-or-controversy requirements of Article III must be satisfied, including ripeness and standing requirements. See Joint Stock Society v. UDV N. Am., Inc., 266 F.3d 164, 174 (3d Cir. 2001). As the Third Circuit recently explained, the two doctrines of ripeness and standing "are related and to some degree overlap." Id. "[W]hereas ripeness is concerned with when an action may be brought, standing focuses on who may bring a ripe action.'" Id. (quoting Thomas v. Anchorage Equal Rights Comm'n, 220 F.3d 1134, 1138-39 (9th Cir. 2000)). "[I]n measuring whether the litigant has asserted an injury that is real and concrete rather than speculative and hypothetical, the ripeness inquiry merges almost completely with standing." Id. (quoting Thomas, 220 F.3d at 1138-39 (quoting Erwin Chemerinsky, A Unified Approach to Justiciability, 22 Conn. L. Rev. 677, 681 (1990))).

It is clear that, in order to have standing to present a claim, a "plaintiff must have suffered an 'injury in fact' - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not conjectural or hypothetical.'" See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (citations and internal quotations omitted). In the instant case, Plaintiff admits that he was not aggrieved by the notice pertaining to the overhang extension. See Dep. John Birl, June 27, 2001, at 79.

Birl testified that the overhang at the Culhane Street property had sustained some fire damage. Id. at 80. According to Birl, the overhang "did need to be repaired. I couldn't argue. It was a valid request to have it repaired." Id. Rather, Birl alleges that his complaint regarding 1405 Culhane Street steamed from "the form of the letter and that it did not provide for a hearing if I was aggrieved . . ." See Dep. John Birl, June 27, 2001, at 79 (emphasis added). It is not the role of federal courts to entertain such hypothetical claims. See Joint Stock Soc'y, 266 F.3d at 174.

The undisputed evidence indicates that Birl's property at Culhane Street was unoccupied at the time the alleged actions were taken by the City. See Pls.' Supp. Mem., Ex. NN. Accordingly, there can be no allegation of lost rents as a result of the City discontinuing electrical services in April of 1999. Moreover, the property was not condemned, nor was it scheduled for demolition. It is not at all clear how the City's request to repair an overhang damaged by fire deprived Plaintiff of a right to property, particularly when Plaintiff himself admits that the request was legitimate and therefore he had no cause to challenge the action. See Dep. John Birl, June 27, 2001, at 79. Accordingly, summary judgment is granted in favor of Defendants with regards to the

Culhane Street property.⁶

C. Substantive Due Process

As stated above, in order to prevail on a substantive due process claim under section 1983, Plaintiffs must demonstrate that an arbitrary and capricious act by the Defendant City officials deprived Plaintiffs of their protected property interest. See Taylor Inv., LTD. v. Upper Darby Township, 983 F.2d 1285, 1292 (3d Cir. 1993); Midnight Sessions, LTD v. City of Phila., 945 F.2d 667, 682 (3d Cir. 1991). In Count III of their Complaint, Plaintiffs contend that the City Defendants "arbitrarily singled out plaintiffs and sought to harass plaintiffs and deprive them of the tenants and income necessary to continue as landlords in the City of Chester." Pls.' Am. Compl. at ¶ 87. Furthermore, Plaintiffs complain that the actions taken against the various properties were "arbitrary and capricious, and done in bad faith and for improper motives." Id. at ¶ 88. Defendants counter that all of the complained-of behavior was in response to the City officials enforcing building codes and that none of the allegations in Plaintiffs' Complaint are sufficiently "egregious" to rise to the level of a substantive due process violation. See Defs.' Mot. for Summ. J. at 7. The Court agrees.

⁶ Plaintiffs' allegations against Defendant Irving Lawrence, Housing Inspector, stem solely from actions taken against the Culhane Street property. Accordingly, since such claims fail to state a cause of action for a violation of procedural due process, Irving Lawrence is dismissed from the instant action.

The hallmark of a substantive due process claim in the land-use context is “the deliberate and arbitrary abuse of government power . . .” Sameric Corp., 142 F.3d at 595 (quoting Bello v. Walker, 840 F.2d 1124, 1129 (3d Cir. 1988)). “Government conduct is arbitrary and irrational where it is not rationally related to a legitimate government purpose.” Id. Therefore, the question becomes whether the City of Chester, “could have had a legitimate reason for its decision.” Id. (quoting Pace Resources, Inc. v. Shrewsbury Township, 808 F.2d 1023, 1034-35 (3d Cir. 1987)).

In the instant case, the City of Chester clearly has a rational interest in promoting the health and safety of its community by citing buildings that it has determined to be a safety hazard for code violations. Plaintiffs can point to no evidence that the actions against these various properties were in the least bit arbitrary or capricious. In accordance with the requirements to issue and maintain a Multi-Family Dwelling License, the City is required to perform an annual inspection rental properties. In the instant case, the results of such inspections yielded upwards of ten health, safety and fire code violations per property. Pursuant to Pennsylvania law, it is within a municipalities police powers to cite a structure that poses a danger to the health, safety or welfare of the public, and the municipality may do so on an emergency basis. King v. Township of Leacock, 552 A.2d 741, 744 (Pa. Commw. Ct. 1989). Therefore, the City of Chester’s actions

were rationally related to a legitimate governmental interest.

Nor is there any evidence beyond Plaintiffs' bald assertions to support a finding that the City's actions were motivated by bias, bad faith or improper motive. The Third Circuit has held that ill-motivated governmental action which deprives an owner of the use of his land may support a substantive due process claim. See DeBlasio v. Zoning Bd. of Adj. for the Township of West Amwell, 53 F.3d 592, 601-02 (3d Cir. 1995) (zoning decision motivated by participant's personal and financial interests); Parkway Garage, Inc. v. City of Phila., 5 F.3d 685, 688 (3d Cir. 1993) (abuse of governmental power to terminate lease on pretext for improper economic motive); Midnight Sessions, 945 F.2d at 683 (alleged racially and politically motivated denial of business license); Bello, 840 F.2d at 1129-30 (denial of building permit because of partisan political and personal animus). The case at bar is devoid of any such evidence that the Defendants were motivated by an economic interest, a political agenda or any partisan political or personal reasons unrelated to the merits of the housing inspections.

With regards to the Meadow Lane property, what Plaintiffs characterize as a "raid" was a scheduled annual inspection of which the property owners were notified about a month in advance. See Pls.' Supp. Mem. at 9. The date for the inspection, September 17, 1998, was mutually agreed-upon and the tenants were notified of the

inspectors arrival in advance by the property owners. See id. On September 11, 1998, one week before the scheduled inspection, Defendant Joyner wrote to the O'Hanlons to remind them of the team inspection, inform them that the team would need access to all units and common areas, and request the O'Hanlons' attendance. See id. at Ex. N. This is hardly the kind of surprise and sudden attack that may properly be classified as a "raid." Moreover, the evidence of record indicates that the O'Hanlons had been operating the Meadow Lane property without the appropriate Multi-Family Dwelling License since 1994. See Defs.' Mot. Summ. J. at 3, Ex. C; Pls.' Supp. Mem. at Ex. N.

After the inspection, the property owners requested a list of violations on September 21, 1998. See Pls.' Supp. Mem. at 9. One day later, a letter arrived from Defendant Joyner detailing the Code violations. See id. On September 29, 1998, counsel for the property owners contacted the City officials to discuss a plan to rehabilitate the property. See id. at Ex. S. In turn, the City scheduled a meeting to with officials to discuss the specifics of the proposed plan. See id. at Ex. V. On October 2, 1998, Plaintiff Janette O'Hanlon, her attorney, the attorney for the City of Chester, and various officers from the Department of License and Inspections met in City Counsel Chambers to discuss the proposed rehabilitation. See id. at 11. Moreover, on November 2, 1998, counsel sent a letter to the City to have the notices removed, and

the City did so within four days of the date of the letter. See id. at 12-13, Ex. Z. Rather than demonstrate that the City acted with malice or ill will against the Meadow Lane property, these facts indicate that the City consciously responded to property owners in an effort to ensure the multi-family dwelling conformed with fire, health and safety standards.

Likewise, the allegations that the City acted arbitrarily or in bad faith when it demolished the Morton Avenue properties are unfounded. The undisputed evidence of record shows that the properties sustained a fire in September of 1998. According to the incident report, the fire originated in the stairway of 810 Morton Avenue and then "spread rapidly from the first floor . . . to [the] second floor and throughout." See Pls.' Supp. Mem., Ex. VV. Following the fire, on September 10, 1998, the City declared the properties structurally unsound. See id. at Ex. XX. The notice the City issued with regards to the properties informed the property owners of their right to a hearing. See id. On September 29, 1998, Defendant Seltzer, Chester's Director of Public Safety, received a letter from the property owners' attorney which stated "In light of the severe damage caused by the fire, my clients agree that the building should be demolished." Id. at Ex. YY. In addition to the letter from the attorney, the City received a handwritten letter from property owner Ronald Roma asking that the City demolish the buildings. See id. at Ex. CCC. Again, the

undisputed facts of record clearly demonstrate a lack of any arbitrary, ill motivated action by the City against these properties, or any of the properties listed in the Complaint.

In order to survive a motion for summary judgment on a substantive due process claim, Plaintiffs must present sufficient evidence from which a finder of fact could reasonably conclude that the Defendants committed an arbitrary and capricious government action and that it was motivated by bias, bad faith or improper motive. Sameric, 142 F.3d at 590; DeBlasio, 53 F.3d at 600; Parkway Garage, 5 F.3d at 692. Drawing all reasonable inferences in favor of the Plaintiffs, the Court finds that the Plaintiffs have presented no evidence which creates a genuine issue of material fact that Defendants lacked a rational basis or possessed an ill motive for citing the properties at issue for code violations. See Sameric Corp., 142 F.3d at 595. Accordingly, summary judgment is granted in favor of Defendants on Count III of Plaintiffs' complaint for a violation of substantive due process.

D. Individual Defendants Sued in Their Official Capacities

With regards to individual defendants sued in their official capacities, the United States Supreme Court has held "[t]here is no longer a need to bring official-capacity actions against local government officials, for under Monell, local government units can be sued directly for damages and injunctive or declaratory relief." Kentucky v. Graham, 473 U.S. 159, 169 n.14, 105 S.Ct. 3099, 87

L.Ed.2d 114 (1985); see also Satterfield v. Borough of Schuylkill Haven, 12 F.Supp.2d 423, 432 (E.D. Pa. 1998). By naming the various Chester City officials as defendants to this suit in their official capacities, Plaintiff has in essence named the City of Chester as a defendant fourteen times. See Satterfield, 12 F.Supp.2d at 432. The Court grants Defendants' Motion for Summary Judgment as to Defendants in their official capacities.

E. The Individual Defendants Sued in Their Personal Capacities

Plaintiff have also sued the named Defendants in their individual capacities. In order for liability to attach to an individual governmental official under section 1983, he or she must have been personally involved with the alleged constitutional violations. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). A defendant's "[p]ersonal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence." Id. However, allegations of participation or actual knowledge and acquiescence must be made with appropriate particularity. Id. Plaintiffs have provided sufficient facts from which a reasonable fact finder could conclude that the remaining Defendants⁷ had either personal involvement or actual knowledge of

⁷ Again, Plaintiffs concede that summary judgment should be issued in favor of named Defendants Monir Z. Ahmed, Robert Wilson and Glenn Holt. See Pls.' Answer to Defs.' Mot. Summ. J. at 1. These individuals were therefore dismissed as Defendants to the instant action. Moreover, since the Court granted summary judgment in favor of Defendants with regards to all claims concerning the Morton Avenue and Culhane Street properties, Edward Brown and Irvin Lawrence are also dismissed as named Defendants.

the alleged constitutional violations. Therefore, summary judgment will not be granted on this count.

1. Qualified Immunity

Defendants argue that the Chester City officials should not be held personally liable for any violation of Plaintiffs' constitutional rights because they are protected by qualified immunity. See Defs.' Mot. Summ. J. at 19. Public officials performing discretionary functions are shielded from personal liability under the doctrine of qualified immunity so long as their conduct does not violate clearly established constitutional rights known to a reasonable person. See Wilson v. Layne, 526 U.S. 603, 615, 119 S.Ct. 1692, 143 L.Ed.2d 818 (1999). "'Clearly established' for the purposes of qualified immunity means that '[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" Id., 526 U.S. at 616 (citations omitted). As the United States Supreme Court recently explained:

In order to prevail in a § 1983 action for civil damages from a government official performing discretionary functions, the defense of qualified immunity that our cases have recognized requires that the official be shown to have violated "clearly established statutory or constitutional rights of which a reasonable person would have known." Thus a court must first determine whether the plaintiff has alleged the deprivation of an actual constitutional right at all, and if so, proceed to determine whether that right was clearly established at the time of the alleged violation.

Conn v. Gabbert, 526 U.S. 286, 289, 119 S.Ct. 1292, 143 L.Ed.2d 399

(1999) (citations omitted).

The Court finds that the Building and Housing Inspectors are entitled to qualified immunity. Qualified immunity is appropriately applied to a building inspector who "undoubtedly was not responsible for the content of the [notices]," and who was "not the official designated to advise [the property owner] of his legal right to a hearing." McGee v. Bauer, 956 F.2d 730, 737 (7th Cir. 1992). Plaintiffs in the instant case point to "no case [that] indicate[s] that a building inspector or other similar official must provide notice of a right to a hearing." Id. In addition, the initial action of posting a notice is not constitutionally problematic. Id. Accordingly, Housing Inspectors Robert Leach and Thomas Boden are entitled to qualified immunity.

With regards to the other remaining defendants, the Court declines to grant summary judgment based on qualified immunity. The Court has already determined that a reasonable jury, if they choose to credit Plaintiffs' evidence, could find a violation of Plaintiffs' procedural due process rights for the East 9th Street, Swartz Street and Meadow Lane properties. Moreover, the right to notice and a hearing in actions against properties for code violations is "clearly established" and should be known to the Director of Licence and Inspections, as well as the Director of Public Safety. Because a fact finder could conclude that a reasonable person in Defendant Joyner's and Defendant Seltzer's

positions would be aware that property owners are entitled to notice and a hearing, and that, in the instant case, certain property owners may have been denied those rights, the Court will not grant summary judgment as to the remaining Defendants on the issue of qualified immunity.

F. Punitive Damages

Finally, Defendants seek summary judgment on Plaintiffs' claims for punitive damages. It is well established that municipal entities are immune from punitive damages under section 1983. City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981). Thus, the Court grants summary judgment in favor of the City of Chester on Plaintiffs' claim for punitive damages. Punitive damages are also not available under Section 1983 against local officials in their official capacity. Leipziger v. Township of Falls, Civ. A. No. 00-1147, 2001 WL 111611, at *9 (E.D. Pa. Feb. 1, 2001). Therefore, to the extent that Plaintiffs' seek such damages, the Court also grants summary judgment in favor of the remaining named Defendants on Plaintiffs' claim for punitive damages against them in their official capacity.

A plaintiff may, however, seek punitive damages against Defendants in their individual capacity. "In order to obtain such damages, plaintiff must establish facts of record that prove that the individuals knowingly and maliciously deprived plaintiffs of

their civil rights." Ruiz v. Phila. Hous. Auth., Civ. A. No. 96-7853, 1998 WL 159038, at *10 (E.D. Pa. March 17, 1998). As the Third Circuit has noted:

for a plaintiff in a § 1983 case to qualify for a punitive award, the defendant's conduct must be, at a minimum, reckless or callous. Punitive damages might also be allowed if the conduct is intentional or motivated by evil motive, but the defendant's action need not necessarily meet this higher standard.

Savarese v. Agriss, 883 F.2d 1194, 1204 (3d Cir. 1989) (citing Smith v. Wade, 461 U.S. 30, 56, 103 S.Ct. 1625, 75 L.Ed.2d 632 (1983)). "The punitive damage remedy must be reserved . . . for cases in which the defendant's conduct amounts to something more than a bare violation justifying compensatory damages or injunctive relief." Cochetti v. Desmond, 572 F.2d 102, 106 (3d Cir. 1978); see also Feldman v. Phila. Hous. Auth., 43 F.3d 823, 842 (3d Cir. 1994).

As discussed above, the Court has already found that there is no evidence of ill motive on behalf of the City of Chester and their officials. Rather, drawing all reasonable inferences in the light most favorable to Plaintiffs, the facts support a finding that the City's actions amount to "bare violation" of procedural due process. Therefore, punitive damages are not recoverable under the facts of this case. Accordingly, Defendants are granted summary judgment on the issue of punitive damages.

IV. CONCLUSION

In conclusion, Defendants' Motion for Summary Judgment as to

Plaintiffs' claims of a violation of procedural due process are denied as to the East 9th Street, Swartz Street and Meadow Lane properties. However, summary judgment is granted in favor of Defendants regarding the Morton Avenue and Culhane Street properties. As a result, Defendants Brown and Lawrence are dismissed as defendants to the instant case since the sole allegations against them relate to either the Morton Avenue or Culhane Street properties. Furthermore, Plaintiffs concede that summary judgment should be entered in favor of Defendants Monir Z. Ahmed, Robert Wilson and Glenn Holt.

Summary judgment is also entered in favor of Defendants on Count III of Plaintiffs' Complaint for a violation of substantive due process as it pertains to all of the properties. With regards to the individual Defendants named in their individual capacities, the Housing and Building Inspectors for the City of Chester are entitled to qualified immunity. Finally, Defendants' are also granted summary judgment on the issue of punitive damages.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL O'HANLON, <u>et al.</u>	:	CIVIL ACTION
	:	
v.	:	
	:	
CITY OF CHESTER, <u>et al.</u>	:	NO. 00-0664

O R D E R

AND NOW, this 27th day of March, 2002, upon consideration of Defendants City of Chester, the Honorable Dominic Pileggi, Peter Seltzer, Calvin Joyner, Monir Z. Ahmed, Joseph Farrell, Glenn Holt, Robert Leach, Thomas Boden, Irvin Lawrence, Edward Brown, Joseph Cliffe, Thomas Groch, Robert Wilson and Richard Griffin's Motion for Summary Judgment (Docket No. 48), Defendants' Praecipe to Attach Exhibit to Defendants' Motion for Summary Judgment (Docket No. 53), Plaintiffs' Answer to Chester Defendants' Motion for Summary Judgment (Docket No. 54), Plaintiffs' Praecipe to Attach Exhibit to Plaintiffs' Answer to Defendants' Motion for Summary Judgment (Docket No. 58), Defendants' Reply to Plaintiffs' Answer (Docket No. 60), and Plaintiffs' Supplemental Response to Defendants' Reply Memorandum (Docket No. 61), IT IS HEREBY ORDERED that:

(1) Summary Judgment is **GRANTED** as to Defendants Monir Z. Ahmed, Robert Wilson and Glenn Holt.

IT IS FURTHER ORDERED that Judgment is entered in favor of Defendants Monir Z. Ahmed, Robert Wilson and Glenn Holt.

(2) Summary Judgment is **DENIED** as to Count II of Plaintiffs' Complaint for a violation of procedural due process as to the East 9th Street and Swartz Street properties.

(3) Summary Judgment is **GRANTED** in favor of Defendants on Count II of Plaintiffs' Complaint for a violation of procedural due process as to the Meadow Lane, Morton Avenue and Culhane Street properties; Defendants Edward Brown and Irving Lawrence are hereby **DISMISSED** as defendants to this case.

IT IS FURTHER ORDERED that Judgment is entered in favor of Defendants on Count II of Plaintiffs' Complaint for a violation of procedural due process as to the Meadow Lane, Morton Avenue and Culhane Street properties. Judgment is entered in favor of Defendants Edward Brown and Irving Lawrence.

(4) Summary Judgment is **GRANTED** in favor of Defendants on Count III of Plaintiffs' Complaint for a violation of substantive due process on all properties.

IT IS FURTHER ORDERED that Judgment is entered in favor of Defendants on Count III of Plaintiffs' Complaint for a violation of substantive due process on all properties.

(5) Summary Judgment is **GRANTED** as to Defendants Robert Leach and Thomas Boden under the doctrine of Qualified Immunity.

IT IS FURTHER ORDERED that Judgment is entered in favor of Defendants Robert Leach and Thomas Boden.

(6) Summary Judgment is **GRANTED** in favor of Defendants on the issue of punitive damages.

IT IS FURTHER ORDERED that Judgment is entered in favor of Defendants on the issue of punitive damages.

BY THE COURT:

HERBERT J. HUTTON, J.