

08/14/2025

COMMONWEALTH OF MASSACHUSETTS

HAMD PEN, ss.

SUPERIOR COURT
DEPARTMENT OF
THE TRIAL COURT
HAMPDEN DIVISION
Civil Action No. 25CV572

WHITING BUILDING, LLC,)
Plaintiff)
)
v.)
)
MICHAEL BOUCHER, FIRE PREVENTION)
CAPTAIN FOR THE CITY OF HOLYOKE and)
CITY OF HOLYOKE FIRE DEPARTMENT,)
Defendants)

COMPLAINT

NOW COMES the plaintiff, Whiting Building, LLC, by its attorney, Jeffrey R. Lindequist, Esq., and, pursuant to M.G.L.c. 249 § 4, asserts this civil action in the nature of certiorari complaining of the defendants, Michael Boucher, Fire Prevention Captain for the City of Holyoke and the City of Holyoke Fire Department, as follows:

1. The plaintiff, Whiting Building, LLC, (hereinafter "Whiting"), is a foreign limited liability company with a principal office at 142 Main Street, Suite 300, Nashua, New Hampshire 03060.
2. The defendant, Michael Boucher, acts as the Fire Prevention Captain for the City of Holyoke (hereinafter "Captain"), and maintains his principal office at 600 High Street, Holyoke, Massachusetts 01040. The Captain is named as a defendant in his capacity as the Fire Prevention Captain for the City of Holyoke and not individually.

3. The defendant, City of Holyoke Fire Department (hereinafter the "Department"), is a municipal organization within the City of Holyoke with a principal address at 600 High Street, Holyoke, Massachusetts 01040.

4. Whiting owns the commercial office building located at and locally known as 52-54 and 56-58 Suffolk Street, Holyoke, Massachusetts 01040 (hereinafter the "Premises").

5. The Premises are leased solely to commercial tenants, which commercial tenants are overwhelmingly artists and musicians.

6. On December 23, 2024, a fire at the Premises rendered the boiler servicing the Premises inoperable.

7. Following the fire, Whiting took immediate steps to remove the inoperable boiler and to begin remedial work to restore heat to the Premises.

8. These steps include the installation of temporary electrical heating units throughout the Premises in an effort to keep the building at sufficient temperature to prevent the water and sprinkler pipes from freezing and to provide sufficient temperatures to install a new boiler.

9. Whiting also purchased new boilers on December 26, 2024 and, as soon as the old boiler was removed, sought permission to begin installation.

10. The City of Holyoke's Building Commissioner took some time to act upon Whiting's request in this regard and, due to the threat to the building systems posed by the extreme cold and the reasonable belief that the work would be permitted – if only on a temporary basis – Whiting took steps to install the new boilers.

11. The Commissioner ultimately denied Whiting's request for a building permit to install these boilers – even on a temporary basis – leaving the Premises without a source of heat during a period of extreme cold.

12. Due to this extreme cold, and the lack of a sufficient heating source, Whiting was forced to drain all pipes, including the pipes associated with the sprinkler system, to prevent the pipes from freezing and causing further damage to the Premises.

13. To this end, Whiting's contractor submitted a permit application to the Department on January 21, 2025, requesting permission to drain the sprinkler system until heat was restored.

14. While it seems that the Department did not act on the application by issuing a written permit, an agent of the Department contacted Whiting's contractor by phone to authorize the contractor to drain the sprinkler system.

15. On January 31, 2025, the City of Holyoke Building Commissioner issued a Notice of Violations citing lack of heat and the disabling of the sprinkler system.

16. The Building Commissioner's Notice of Violations dated January 31, 2025, notes that the Fire Department was notified that the sprinkler system at the Premises was disabled.

17. Following the January 31, 2025 Notice of Violations, the City of Holyoke, by and through its Building Department and Board of Health, took a number of actions adverse to Whiting with respect to the premises including, but not limited to, the revocation of the Certificate of Occupancy for the Premises and the Emergency Condemnation of the Premises.

18. As a result of these adverse actions, the City of Holyoke, by and through its Building Department and Board of Health, has been in sole physical possession of the Premises since February 3, 2025.

19. The City of Holyoke has significantly restricted Whiting's access to the Premises since February 3, 2025, and has not allowed Whiting access to the Premises without City approval and escort.

20. Upon information and belief, the City of Holyoke has shut off the electrical service to the Premises and only restores electricity to the Premises in connection with approved access to the Premises.

21. Whiting sought permission to restore the sprinkler system from the City of Holyoke as soon as temperatures exceeded freezing on a consistent basis, however, Whiting was not afforded the opportunity to do so for some time.

22. On June 16, 2025, the Captain, acting on behalf of the Department, issued a Notice of Violation to Whiting with respect to the inoperable sprinkler system and alleged problems with the fire alarm system at the Premises. A copy of the Notice of Violation is attached hereto as Exhibit A.

23. The June 16, 2025 Notice of Violation relies solely upon M.G.L.c. 148 § 27A which prevents the disabling of fire suppression systems without written approval of the head of the fire department of the city or town in which a building is situated.

24. M.G.L.c. 148 § 27A also provides, in pertinent part, that “[t]his section shall not prevent the temporary shutting off...of [a fire suppression system] for the purposes of making necessary repairs or *preventing freezing or other property damage*; provided, however, that the head of the fire department is notified immediately of such emergency action.”

25. The June 16, 2025 Notice of Violation requires restoration of the sprinkler system and alarm system on or before August 16, 2025, and threatens civil and criminal penalties if Whiting fails to do so.

26. The June 16, 2025 Notice of Violation is unfounded in that the sprinkler system was disabled in order to prevent freezing and other property damage, as permitted by M.G.L.c. 148 § 27A.

27. Moreover, Whiting sought written permission from the Captain and the Department to disable the sprinkler system and, while a written permit was apparently not issued, oral permission was granted.

28. Whiting's efforts to restore the sprinkler system were frustrated by the fact that it has been dispossessed of the Premises by the City of Holyoke and was not afforded access to restore the sprinkler system until after the Captain and the Department issued its Notice of Violations.

29. Whiting has since temporarily restored the sprinkler system at the Premises, however, the Captain and the Department have not acknowledged that restoration in writing or otherwise rescinded the June 16, 2025 Notice of Violations with respect to the sprinkler system.

30. While Whiting continues to make efforts to restore the fire alarm system at the Premises, that work will ultimately be futile as the City of Holyoke has not permitted continuous electrical service to the Premises since it took possession of the Premises, and the fire alarm will not function even if repaired.

31. Whiting brings this action pursuant to M.G.L.c. 249 § 4 to appeal the June 16, 2025 Notice of Violations as that action is founded upon substantial and material errors of law, unsupported by substantial evidence, not based upon legally tenable grounds, an abuse of discretion, arbitrary and capricious, or not otherwise in accordance with the law.

WHEREFORE, the plaintiff, Whiting Building, LLC, demands:

1. That this Honorable Court enter judgment for the Plaintiff, Whiting Building, LLC, and against the defendants, Michael Boucher, Fire Prevention Captain for the City of Holyoke and the City of Holyoke Fire Department, to the effect that the June 16, 2025 Notice of Violations issued was in error as it was founded upon substantial and material errors of law, unsupported by

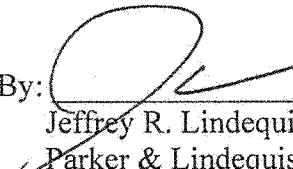
substantial evidence, not based upon legally tenable grounds, an abuse of discretion, arbitrary and capricious, or not otherwise in accordance with the law; and

2. That this Honorable Court award the plaintiff, Whiting Building, LLC, such other and further relief as may be equitable and just.

THE PLAINTIFF DEMANDS A TRIAL BY JURY.

Plaintiff,
Whiting Building, LLC

By:


Jeffrey R. Lindequist, Esq.

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DATED: August 14, 2025

Exhibit A



CITY OF HOLYOKE
FIRE DEPARTMENT HEADQUARTERS

CAPTAIN MICHAEL BOUCHER
FIRE PREVENTION BUREAU

June 16, 2025

Dimity Zhivotovsky
Whiting Building, LLC.
75 Concord Street
Nashua, NH 03064

RE: 56 Suffolk Street

Mr. Zhivotovsky,

In January 2025 the sprinkler system in your building located at 56 Suffolk Street Holyoke, MA 01040 was shut off. The Holyoke Fire Department was not made aware, nor did we approve this action. The fire alarm system located in the same building is also not functioning properly. You are in violation of the Fire Code. Documentation is provided informing you of the sections being violated.

This letter is to inform you that you have until August 16, 2025, to have the sprinkler system and fire alarm system repaired and operating properly. You SHALL have an acceptance test inspection conducted by this office in coordination with the Building Department prior to this date. Failure to do so will result in fines and further legal action.

If you have any questions or concerns, feel free to contact me.

Respectfully,

Captain Michael Boucher
Fire Prevention Captain



CITY OF HOLYOKE
FIRE DEPARTMENT HEADQUARTERS

Fire Prevention Bureau



Mayor Joshua Garcia

NOTICE OF VIOLATION

M.G.L. Chap. 148: Fire Prevention Regulations
527 CMR 1.00 Comprehensive Fire Safety Code

Location of Violation(s): Business Building Address: 56 Suffolk Street Holyoke, MA 01040

Attention: Dimtry Zhivotosky, Whiting Building, LLC

Owner/Occupant: Owner

Address: 75 Concord Street City/Town, Zip: Nashua, NH 03064 Telephone #: (603) 459-9737

On February 2025, Fire Inspector Captain Michael Boucher from the Holyoke Fire Department Fire Prevention Bureau inspected your building/property/facility and found the following violation(s) of the above referenced laws and regulations:

Section 27A. Except as hereinafter provided, no person shall shut off, disconnect, obstruct, remove or destroy, or cause or permit to be shut off, disconnected, obstructed, removed or destroyed, any part of any sprinkler system, water main, hydrant or other device used for fire protection or carbon monoxide detection and alarm in any building owned, leased or occupied by such person or under his control or supervision, without first procuring a written permit so to do from the head of the fire department of the city or town wherein such building is situated, which permit such head is hereby authorized to issue subject to such terms and conditions as, in his judgment, protection against fire and the preservation of the public safety may require. This section shall not prevent the temporary shutting off or disconnection or partial removal of such a system, main, hydrant or other device for the purpose of making necessary repairs or preventing freezing or other property damage; provided, however, that the head of the fire department is notified immediately of such emergency action. The head of the fire department shall also be notified when the system, main, hydrant or other device is placed back in service. Violation of this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or both. The supreme judicial and superior courts shall have jurisdiction in equity to enforce compliance with the provisions of this section.

When all the listed violation(s) have been corrected, notify the fire inspector above. Failure to correct any violations will result in civil and/or criminal penalties.

Fire Inspector Signature: Michael Boucher Date: June 16, 2025



Mayor Joshua Garcia

CITY OF HOLYOKE
FIRE DEPARTMENT

Fire Prevention Bureau



ORDER OF NOTICE

Owner: Dimitry Zhivotovsky, Whiting Building, LLC.

Address: 75 Concord Street

City/Town: Nashua

State: NH

Zip: 03064

Inspection Date: February 1, 2025

Location Inspected: Business Building

Address: 56 Suffolk Street Holyoke, MA 01040

Revealed a violation of fire laws as herein specified:

Section 27A. Except as hereinafter provided, no person shall shut off, disconnect, obstruct, remove or destroy, or cause or permit to be shut off, disconnected, obstructed, removed or destroyed, any part of any sprinkler system, water main, hydrant or other device used for fire protection or carbon monoxide detection and alarm in any building owned, leased or occupied by such person or under his control or supervision, without first procuring a written permit so to do from the head of the fire department of the city or town wherein such building is situated, which permit such head is hereby authorized to issue subject to such terms and conditions as, in his judgment, protection against fire and the preservation of the public safety may require. This section shall not prevent the temporary shutting off or disconnection or partial removal of such a system, main, hydrant or other device for the purpose of making necessary repairs or preventing freezing or other property damage; provided, however, that the head of the fire department is notified immediately of such emergency action. The head of the fire department shall also be notified when the system, main, hydrant or other device is placed back in service. Violation of this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or both. The supreme judicial and superior courts shall have jurisdiction in equity to enforce compliance with the provisions of this section.

ORDER: In accordance with Chapter 148 of Massachusetts General Laws, and the Massachusetts Comprehensive Fire Safety Code 527 CMR 1.00 you are hereby ordered to correct the conditions enumerated above by Saturday, August 16, 2025

EXECUTED BY: Captain Michael Boucher
an officer delegated by the Head of the Fire Department.

This Order of Notice was served upon Dimitry Zhivotovsky, Whiting Building, LLC..
on Monday, June 16, 2025