

Benimovich & Currie^{LLP}

41 Flatbush Ave, Brooklyn, New York 11217
Main: 929-779-6656 | email: office@bcbclaw.com

Press Release

For Immediate Release
NEW YORK, NY – September 2019

Benimovich | Currie LLP comments on the NY Times breaking expose entitled "The Law Was Aimed at Deadly Machinery. It Hit Her Washer" by NY Times' Investigative Reporter Grace Ashford.

The last two mayors, Messrs. Bloomberg and DeBlasio have poured hundreds of millions of dollars into the Department of Buildings ("DOB"), invigorating it and giving it life beyond inefficiency and the continuous plague of media shame. Past DOB Commissioner LiMandri, co-opting the best ideas from his former boss, trailblazing but beleaguered Building's Patricia Lancaster, expanded and implemented a prowess path of using data and technological innovations to squarely place DOB in the 21st century. The Michael Bloomberg era of quantification had arrived and it was good.

Former Commissioner Chandler continued the innovations but to some of the 18 enforcement attorneys that left the DOB in the last three years, he seemingly allowed or unwittingly allowed the unchecked consolidation of power by a few individuals in charge of the DOB's regulatory, compliance, and enforcement mechanism.

Those individuals merged mindless data into an unhealthy marriage with enforcement. That reckless and sophomoric union created the inequities described in Ms. Ashford's article. The lines between regular mom-and-pop homeowners and Goliath construction became non-existent. It was not just in penalties as discussed by Ms. Ashford's article but also in the very processes of enforcement. Mom-and-pop were the low hanging fruit as a section of the article is pointedly titled.

How best to enforce in an honest and ethical way got trampled by selective and moronic processes anchored by thoughtless data. The vision of eras past became lost and as Ms. Ashford's article accurately conveyed; New Yorkers and small building owners, which comprised a vast swat of ethnic New Yorkers, suffered. That is Bad.

Deputy Commissioner Fisher who was mentioned in the article and her Assistant Commissioner, Mr. Wax, knew or should have known that this enforcement system that they helped create and were ultimately responsible for and regularly curated was unfairly affecting and having a disparate impact on communities of color, long term residents, and small business owners. But they continued to push their policies, shamelessly highlighting their successes of punishing small homeowners in their monthly enforcement bulletins ([which may still be found on DOB's website](#)).

Their claimed successes were always followed by an exorbitant penalty amount that small building owners, like Mr. Olufemi and Ms. Harrow had to pay. They knew, for a long time, the suffering of these ordinary New Yorkers. I told them, but they ignored it then, as they continue to ignore it now. Mr. Olufemi and Ms. Harrow are only a few faces of the thousands that suffered because of the mentioned wayward enforcement mechanism.

For the most part, most homeowners are not savvy contractors and most contractors are small businesses, not the big behemoth boogeyman that the Department of Buildings manufactures and claim to slay in its monthly press releases and enforcement bulletins. To Speaker Corey Johnson, I say this; it is time to reform some of these mechanisms of enforcement mentioned in Ms. Ashford's article. A regular homeowner paying \$60,000 in fines and penalties for creating an illegal bathroom or placing a bed in a basement (the very arrangement and conduct that City Hall currently is [subsidizing some homeowners](#), like Mr. Olufemi to legalize) is unconscionable.

The Department's excuse that it has no discretion is also shameful evasion because as these mentioned overseers of enforcement knows, laws are created by people and can always be changed. This craven and apathetical response should not be the final word on this matter. The NYC Construction Codes are the most complex and extensive building code in the world spanning thousands of pages and yet the DOB only CHOOSES to enforce its favorite few, which boils down to the easiest to enforce and hammer the denizens of New York with.

No one would realistically claim the solution is to not enforce the codes, to not inspect to see if there are hazardous conditions, to not require an un-permitted gas line to have a full inspection and seal of approval from both a licensed professional and the City. However, the answer cannot be to endlessly and continuously fine people who are stuck on the spiral of trying to deal with the bureaucracy of correcting a violation. Excessive fines and penalties have not reduced construction and building related [fatalities and accidents](#). Doable and reasonable solutions as listed in the mentioned CBSA memo do exist. The memo highlights several ways to curb the excessive penalties issued to homeowners and businesses as well as using the vast resources that the DOB possesses to reach out into the communities and create ways to educate the public. If the city is really concerned with safety and not their coffers, there are mechanisms to take repeating bad actors to task by issuing them criminal summonses or in the most severe cases criminal indictments (such as what was done in the deadly 2015 Second Ave Gas explosion which is currently on [trial](#)).

Even the mentioned attorney union CSBA was stymied by DOB's brass looking to protect their own individual interests instead of the collective good of New Yorkers. As the article revealed, the DOB bled attorneys and with it experience, competency, grit, and an impressive brain trust. These very attorneys, the unwilling faces of bad enforcement policies, became active targets by management and were even told that they will risk their careers if they made any noise. These enforcement attorneys were brave and nevertheless made noise. They understood that ethics trumps bad policy and that bad law does not make good law.

Ms. Ashford's article creates an opportunity for the Department. As I stated in my good-bye letter to my former colleagues at the agency "the Department does have the potential and human resource to do better and to be outstanding," and all New Yorkers should join me and hope for the Department's success.

But that success will always be elusive unless Mr. DeBlasio, a true Park Slope progressive, and arguably the most progressive of our democratic presidential contenders does some house cleaning. The architects of the DOB's "punish the people" campaign should be fired and held accountable.

To Mr. DeBlasio, I remember as a resident of Windsor Terrace, a tiny hamlet that you represented as a council member, that you were for the people, including the little guy. As Mayor, you successfully made Universal Preschool a reality in NYC and help ushered in \$15 minimum wages. Bringing in an outsider as the Department of Buildings' Commissioner was a good first step, but the house (or building if I may) still needs to be swept to be considered clean.

Vivian Currie, ESQ & Petr Benimovich, ESQ.
Former Agency Attorneys for Department of Buildings

Benimovich | Currie LLP