

Advisory Neighborhood Commission 3D

Government of the District of Columbia



January 6, 2021

Board of Zoning Adjustment
Office of Zoning
District of Columbia
441 4th Street NW
Washington, DC 20001

RE: Case Number: 20380

Property Address: 4457 MacArthur Boulevard N.W.

Applicant: Polygon Holdings LLC

Members of the Board:

On January 6, 2021 at its duly-noticed regular meeting, Advisory Neighborhood Commission 3D heard presentations from the applicant and members of the community about the merits of this case. In addition, the Commission found that the Applicant, Polygon Holdings LLC, did not possess authority from the District of Columbia Department of Consumer and Regulatory Affairs to transact business as a Limited Liability Company and did not possess a Basic Business License with a Single Family Home Rental endorsement, which is required due to the fact that the home at issue is currently by a third party tenant.

Advisory Neighborhood Commission 3D therefore asks that the Board of Zoning Adjustment cancel the February 10, 2021 hearing and require Applicant to come into compliance with DC law before it is allowed to begin the application process anew.

District of Columbia Law Regarding Registration of Limited Liability Companies

D.C. Code § 29-105.02 states

- (a) A foreign filing entity or foreign limited liability partnership shall not do business in the District until it registers with the Mayor under this chapter.
- (b) A foreign filing entity or foreign limited liability partnership doing business in the District may not maintain an action or proceeding in the District unless it is registered to do business in the District.”¹

¹ See also *HVAC Specialist, Inc. v. Dominion Mechanical Contractors, Inc.*, 201 A.3d 1205, 1208 (D.C. February 28, 2019).

. . .

(f) A foreign filing entity that does business in the District without being registered under D.C. Code § 29-105.03 shall be liable for all fees, penalties, and other charges for which the entity would have been liable if it had registered and had filed all reports required by this chapter for the period during which it did business in the District. The Attorney General for the District of Columbia may bring an action in the Superior Court of the District of Columbia to recover these fees, penalties, and other charges. A foreign entity shall not be registered under this chapter until it has paid these fees, penalties, and other charges.

D.C. Code § 29-105.12 states that “[t]he Attorney General for the District of Columbia may maintain an action to enjoin a foreign filing entity or foreign limited liability partnership from doing business in the District in violation of this title.”

District of Columbia Law Regarding Basic Business Licenses Regarding Lease of Residential Property

D.C. Code § 47-2828 (a) states that “owners of residential buildings in which one or more dwelling units or rooming units are offered for rent or lease shall obtain from the Mayor a license to operate such business.”

D.C. Code § 47-2851.01 (1B) (A) defines the term “business” as “any trade, profession, or activity which provides, or holds itself out to provide, goods or services to the general public or to any portion of the general public, for hire or compensation in the District of Columbia.”

D.C. Code § 47-2851.02 (a) states that [a] person which is required under law to obtain a license issued in the form of an endorsement to engage in a business in the District of Columbia shall not engage in such business in the District of Columbia without first obtained a basic business license and any endorsements in accordance with this subchapter.”

D.C. Code § 47-2851.03 (a) states that “[e]ndorsements to a basic business license shall be issued in the following license endorsement categories: . . . (6) (B) Housing: Residential.”

D.C. Code § 47-2851.04 (a) states that “[a]ny person requiring a license in accordance with this subchapter shall file an application for a basic business license with the business license center, as provided in this section, and shall pay the required fee or fees.”

D.C. Code § 47-2862 (a) states that “[n]otwithstanding any other provision of law, the District government shall not issue or reissue a license or permit to any applicant for a license or permit if the applicant: (1) Owes the District more than \$100 in outstanding fines, penalties, or interest assessed pursuant to the following acts or any regulations promulgated under the authority of the following acts, the: (D) Department of Consumer and Regulatory Affairs Civil Infraction Act of 1985; . . . (2) Owes the District more than \$100 in past due taxes; . . . (7) Owes the District more than \$100 in outstanding fines, penalties, or interest; [or] (8) Has failed to file required District tax returns.”

D.C. Code § 47-2828 (a) states that “[a]ny person violating any of the provisions of this chapter, or additions thereto made from time to time by the Council of the District of Columbia, where no specific penalty is fixed, or the violation of any regulation made by the Council under the authority of this chapter, shall upon conviction be fined not more than the amount set forth in D.C. Code § 22-3571.01 or

imprisoned for not more than 90 days,” however, “[c]ivil fines, penalties, and fees may be imposed as alternative sanctions.”

In *Sturdza v. United Arab Emirates*, 11 A.3d 251, 257-58 (D.C. January 6, 2011) an architect who lacked a District of Columbia architect’s license, was not permitted to recover in an action that she brought to enforce an alleged contract for her services since she did not possess a District of Columbia architect’s license. In so ruling, the *Sturdza* court found that

The rule is well-established in the District of Columbia that a contract made in violation of a licensing statute that is designed to protect the public will usually be considered void and unenforceable, and that the party violating the statute cannot collect monies due on a quasi-contractual basis either. Although the operation of this rule may appear to be harsh and disproportionate in some cases, we have uniformly rejected appeals to deviate from or mitigate it; the potential unfair applications of the rule at the margins have not persuaded us to sacrifice the benefits of a clear-cut, unmistakable requirement, with equally clear consequences for noncompliance, in this area of consumer protection. Architects who practice without a license are not exempted from the general rule. We have held that one who engages in the practice of architecture in this jurisdiction without having secured the necessary District of Columbia license is barred from recovering for his or her services in an action for breach of contract or quantum meruit. *See also HVAC Specialist, Inc. v. Dominion Mechanical Contractors, Inc.*, 201 A.3d 1205 (D.C. 2019).

ANC 3D’s Request for Board of Zoning Adjustment to Cancel February 10, 2021 Hearing

As indicated above, Advisory Neighborhood Commission 3D asks that the Board of Zoning Adjustment cancel the February 10, 2021 hearing and require Applicant Polygon Holdings LLC to begin the application process anew once, and only if, it properly registers its Limited Liability Company with the District of Columbia Department of Consumer and Regulatory Affairs and obtains the authority to transact business in the District of Columbia and also if Applicant Polygon Holdings LLC obtains a Basic Business License with a Single Family Home Rental Endorsement since it is currently leasing the subject property to residential tenants.

It is Advisory Neighborhood Commission 3D’s recommendation that the Board of Zoning Adjustment refuse to provide adjudicatory services to any applicant who is out of compliance with the business entity registration and license requirements required of all businesses in the District of Columbia.

Advisory Neighborhood Commission 3D believes that applicants who have failed to obtain the required permissions and licenses from the District of Columbia Department of Consumer and Regulatory Affairs and who threaten the health and welfare of residential tenants by avoiding the inspection and associated requirements for residential rental properties, should not be permitted to avail themselves of the right to request benefits such as licenses, permissions or exceptions from District of Columbia departments, boards, commissions or agencies.

Advisory Neighborhood Commission 3D recognizes that the Board of Zoning Adjustment is not the enforcement authority for business licenses and the District of Columbia Department of Consumer

and Regulatory Affairs is the authority for such licenses. However, the Board of Zoning Adjustment should not, we believe, be an enabler to those who flout District of Columbia laws that are directly related to ownership of the property that are the subject of proceedings before the Board of Zoning Adjustment. Allowing Applicant Polygon Holdings LLC to proceed with its application before the Board of Zoning Adjustment prior to obtaining authority to transact business in the District of Columbia and while it leases the subject property to residential tenants without obtaining a license to rent this property thereby undermines the clear and unambiguous intent of the City Council in these matters.

In other circumstances, the District requires parties to have "clean hands" before they can do business with the District. By analysis, as is shown in the *Sturdza* and *Dominion Mechanical Contractors* cases cited above, a court of law will not allow a party that does not have proper corporate status to petition the in court for relief. Advisory Neighborhood Commission 3D believes that by failing to obtain authority to transact business in the District of Columbia and by failing to obtain a license to lease its residential real property, Applicant Polygon Holdings LLC does not have the "clean hands" required to seek relief from a District of Columbia governmental entity. In summary, the District of Columbia Government should act as one government and not undermine the regulatory authority of a sister governmental entity.

Therefore, Advisory Neighborhood Commission 3D respectfully requests that the Board of Zoning Adjustment cancel the hearing scheduled for cancel the February 10, 2021 hearing and require Applicant Polygon Holdings LLC to begin the application process anew once, and only if, it properly registers its Limited Liability Company with the District of Columbia Department of Consumer and Regulatory Affairs and obtains the authority to transact business in the District of Columbia and also if Applicant Polygon Holdings LLC obtains a Basic Busienss License with a Single Family Home Rental Endorsement since it is currently leasing the subject property to residential tenants.

Sincerely yours,

A handwritten signature in black ink that reads "Chuck Elkins". The signature is written in a cursive, flowing style.

Chuck Elkins, Chair

cc: Mr. Ernest Chrappah, Director, DCRA
Council Chair Phil Mendelson, Committee of the Whole
Mr. Karl Racine, Attorney General