

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations of Articles 15, 25, and 27 of the New York State Environmental Conservation Law (ECL), and Parts 360, 608, and 661 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) by

Ruling on Staff's Motion to Compel Disclosure of the First Set of Document Requests dated July 7, 2021

AAA & G Equipment Rental Co., LLC;

DEC File No.
R2-20181211-439

Pile Foundation Construction Company, Inc.;

Anthony Rivara Contracting, LLC;

Anthony Rivara, Jr. (a/k/a Anthony F. Rivara, a/k/a/ Tony Rivara) personally and as managing member/manager of AAA & G Equipment Rental Co., LLC; and as president/executive corporate officer of Pile Foundation Construction Company, Inc.; and

Anthony Rivara, III (a/k/a Anthony E. Rivara), personally and as managing member/manager of Anthony Rivara Contracting, LLC

Respondents

January 17, 2023

Ruling Granting Department Staff's Motion to Compel Disclosure

I. Proceedings

Staff from the New York State Department of Environmental Conservation commenced the captioned enforcement proceeding with service of a notice of hearing and complaint dated December 29, 2020, upon the following: (1) AAA & G Equipment Rental Co., LLC; (2) Pile Foundation Construction Company, Inc.; (3) Anthony Rivara Contracting, LLC; (4) Anthony Rivara, Jr. (a/k/a Anthony F. Rivara, a/k/a/ Tony Rivara) personally and as managing member/manager of AAA & G Equipment Rental Co., LLC, and as president/executive corporate officer of Pile Foundation Construction Company, Inc.; and (5) Anthony Rivara, III (a/k/a Anthony E. Rivara), personally and as managing member/manager of Anthony Rivara Contracting, LLC.

In 12 causes of action, staff alleges in the December 29, 2020 complaint that respondents violated various provisions of the Environmental Conservation Law of the State of New York (ECL) Articles 15, 25, and 27, and implementing regulations at Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (6 NYCRR) Parts 360, 608, and 661, when respondents filled property located at 75-02 Amstel Boulevard (Queens County Tax Block 1607 Lot 120), and portions of Vernam Basin, a regulated tidal wetland and navigable water of the State. The fill consisted of construction and demolition (C&D) debris, among other things, including three dilapidated barges. Other alleged violations include

removing vegetation and regrading areas located adjacent to the regulated tidal wetlands. According to Department staff the alleged violations continued from September 2018 to the date of the complaint (December 29, 2020). Staff seeks remediation of the impacted area, and a civil penalty.¹ Respondents answered the complaint, generally denying the allegations, and asserted various affirmative defenses.

Subsequently, staff served the first set of document requests, dated July 7, 2021, upon counsel for respondents, Anthony E. Rivara, Anthony F. Rivara, Anthony Rivara Contracting, LLC, and Pile Foundation Construction Company, Inc. Then, with a cover letter dated December 8, 2022, Department staff filed a motion to compel disclosure dated November 14, 2022. Staff's motion papers included the motion, and Exhibits 1 through 12, inclusive.

By letter from Udo Drescher, Esq., Assistant Regional Attorney, dated December 8, 2022, Department staff requested that an administrative law judge from the DEC Office of Hearings and Mediation Services (OHMS) be assigned to rule on the motion to compel. In a letter from Chief Administrative Law Judge Michele Stefanucci, dated December 12, 2022, the parties were advised that the motion had been assigned to me.

With an email from Anthony E. Rivara (Senior) dated December 20, 2022, Mr. Rivara provided documents concerning his finances, housing circumstances, and health condition. To date, OHMS has not received any response to staff's motion from the other respondents. Attached to this ruling as Appendix A is a list of the papers filed concerning this motion.

II. Discussion and Ruling

A party against whom disclosure is demanded may move for a protective order, in general conformance with CPLR 3103. Such a motion must be filed within 20 days from the receipt of the disclosure demand. (*See* 6 NYCRR 622.7[c][1].)

When, as here, a party does not comply with a disclosure demand without having made a timely objection, the proponent may move to compel disclosure. The motion must include documentation about the good faith efforts made to resolve the dispute without resort to the motion. (*See* 6 NYCRR 622.7[c][2].)

Pursuant to 6 NYCRR 622.6(c)(3), all parties have five days after a motion is served to serve a response. Thereafter, no further responsive papers will be allowed without the permission of the ALJ. In addition, five days is added to the prescribed period if service of a motion is by first class mail (*see* 6 NYCRR 622.6[b][2][i]).

If a party does not comply with the ALJ's order to produce material or information demanded in disclosure, the ALJ may exclude the material or information from the hearing record. In addition, the ALJ or the Commissioner may draw an adverse inference regarding the non-producing party with respect to the material or information the party did not produce. (*See* 6 NYCRR 622.7[c][3].)

Exhibit 6 to Department staff's November 14, 2022 motion is a copy of staff's disclosure demands for the production of documents dated July 7, 2021. Staff sent the July 7, 2021

¹ The complaint, however, does not provide any civil penalty calculation.

disclosure demands to Helen Mauch, Esq. (Mintzer Mauch PLLC [New York, New York]), who was counsel to respondents, Anthony E. Rivara, Anthony F. Rivara, Anthony Rivara Contracting, LLC, and Pile Foundation Construction Company, Inc.²

Among other things, staff's disclosure demands seek information concerning the formation, operation, membership, and current legal status of the respondent business enterprises, AAA & G Equipment Rental Co., LLC; Pile Foundation Construction Company, Inc.; and Anthony Rivara Contracting, LLC, as well as the nature of the interactions of Anthony E. Rivara and Anthony F. Rivara with these corporate respondents. In addition, staff seeks information about the ownership of the property located at 75-02 Amstel Boulevard, Far Rockaway (Queens County), New York, as well as any associated leases, and easements. Staff inquired about the equipment located on the site, and on the barges located offshore from the site in Vernam Basin. Finally, staff seeks additional information related to the affirmative defenses asserted in the February 15, 2021 answer from AAA & G Equipment Rental Co., LLC, and in the joint amended answer dated March 12, 2021, from Pile Foundation Construction Company, Inc., Anthony Rivara Contracting, LLC, Anthony F. Rivara, Jr, and Anthony Rivara. (*See* Exhibit 6 to staff's motion.)

As noted above, staff's first set of document requests is dated July 7, 2021, and staff served the disclosure demands upon respondents by email and first class mail. Exhibits 7 and 8 to staff's motion are a series of emails dated July 7, 2021 through July 26, 2021, in which respondents' attorneys requested additional time to respond to the July 7, 2021 discovery demands. With an email from Mr. Drescher dated July 26, 2021, Department staff agreed to extend the time to respond to the July 7, 2021 disclosure demands to September 24, 2021.

Subsequently, in an email dated September 21, 2021, Ms. Mauch advised that her firm no longer represents respondents, Anthony E. Rivara, Anthony F. Rivara, Anthony Rivara Contracting, LLC, and Pile Foundation Construction Company, Inc. (*see* Exhibit 9 to staff's motion). With an email from Mr. Drescher dated November 15, 2021, Department staff reminded respondents, Anthony E. Rivara, Anthony F. Rivara, Anthony Rivara Contracting, LLC, and Pile Foundation Construction Company, Inc., of their obligation to respond to staff's disclosure demands regardless of whether they are represented by counsel (*see* Exhibit 10 to staff's motion).

From November 15 and 16, 2021, Mr. Drescher, Anthony E. Rivara, and Anthony F. Rivara exchanged a series of emails concerning the pending responses. In an email from Anthony Rivara, Jr., dated December 16, 2021, Mr. Rivara acknowledged his responsibility to respond to the disclosure demands, and stated that he had renegotiated an agreement with his former counsel, Mintzer Mauch, PLLC. (*See* Exhibits 11 and 12 from staff's motion.)

With a cover letter from Mr. Drescher dated November 14, 2022, Department staff served respondents, Pile Foundation Construction Company, Inc., Anthony Rivara Contracting, LLC, Anthony F. Rivara, Jr, and Anthony Rivara, with copies of the motion to compel by certified mail return receipt requested. The receipts from the US Postal Service demonstrate that these respondents received the motion on November 17, 2022. The email exchanges identified as

² In addition, Department staff sent a copy of the July 7, 2021 document requests to Adam Stolorow, Esq. (Sive, Paget & Riesel, PC [New York, New York]). Mr. Stolorow filed an answer dated February 15, 2021, on behalf of AAA & G Equipment Rental Co., LLC (*see* Exhibit 4 to staff's motion to compel). Staff's motion does not seek to compel a response to the July 7, 2021 document requests from AAA & G Equipment Rental Co., LLC.

Exhibits 10, 11, and 12 to staff's motion demonstrate the good faith efforts made to resolve the dispute without resort to the motion (*see* 6 NYCRR 622.7[c][2]).

A response to the staff's motion to compel was due by November 24, 2022 (*see* 6 NYCRR 622.6[b][2][i] and 622.6[c][3]). The respondents did not file a timely reply. Anthony E. Rivara's December 20, 2022 email and attachments do not address the merits of staff's motion. In addition, the attachments are not responsive to the pending disclosure requests. Rather, the attachments to Mr. Rivara's December 20, 2022, email may be relevant to his ability to pay civil penalties. However, Mr. Rivara will have the opportunity at the hearing to develop a record about whether he could pay any civil penalty.

Based on the motion papers, it is not clear whether respondents, Pile Foundation Construction Company, Inc., Anthony Rivara Contracting, LLC, Anthony F. Rivara, Jr, and Anthony Rivara, have successfully retained the legal services of Mintzer Mauch, PLLC. Nevertheless, respondents have an obligation to respond to staff's July 7, 2021 disclosure demands. No respondent filed a timely objection to staff's July 7, 2021 disclosure demands.

Absent any other reply to staff's motion to compel, the motion is unopposed. Accordingly, I grant the motion. I direct respondents to respond to staff's July 7, 2021 disclosure demands within 40 days from the date of this order, which will be served by first class mail upon respondents. Respondents' failure to comply with this order will result in the sanctions outlined at 6 NYCRR 622.7(c)(3). The parties shall provide me with a preliminary update, via email, about the collection of information responsive to the disclosure demands by Friday, February 10, 2023.

Unless advised otherwise, I presume that respondents, Pile Foundation Construction Company, Inc., Anthony Rivara Contracting, LLC, Anthony F. Rivara, Jr, and Anthony Rivara, are currently not represented by any legal counsel. In the event that respondents retain legal counsel, the respondents shall immediately provide the contact information for their attorneys.

I understand further that Sive, Paget & Riesel, PC, continues to represent AAA & G Equipment Rental Co., LLC in the captioned matter.

/s/

Daniel P. O'Connell
Administrative Law Judge

Dated: Albany, New York
January 17, 2023

To: Attached Service List dated January 13, 2023

Attachment: Appendix A

Appendix A

Matter of AAA & G equipment Rental Co., LLC, et al.
DEC File No. R2-20181211-439

Staff's Motion to Compel Disclosure

Department Staff's Motion Papers

- a. Cover letter dated November 14, 2022 from Udo Drescher, Esq., Assistant Regional Attorney, to respondents, Anthony E. Rivara, Anthony F. Rivara, Anthony Rivara Contracting, LLC, and Pile Foundation Construction Company, Inc.,
- b. Motion to Compel Disclosure (Production of Documents) dated November 14, 2022.
- c. Exhibit 1 - Cover letter from Mr. Drescher dated December 29, 2020, as well as copies of the notice of hearing, and complaint, also dated December 29, 2020. Department staff served the December 29, 2020 notice of hearing and complaint upon the following: (1) AAA&G Equipment Rental Co., LLC; (2) Pile Foundation Construction Company, Inc.; (3) Anthony Rivara Contracting, LLC; (4) Anthony Rivara, Jr. (a/k/a Anthony F. Rivara, a/k/a/ Tony Rivara) personally and as managing member/manager of AAA & G Equipment Rental Co., LLC, and as president/executive corporate officer of Pile Foundation Construction Company, Inc.; and (5) Anthony Rivara, III (a/k/a Anthony E. Rivara), personally and as managing member/manager of Anthony Rivara Contracting, LLC.
- d. Exhibit 2 - Affidavits of service upon the corporate respondents filed with the Secretary of the New York State Department, Division of Corporations, by Drew Wellette, sworn to January 5, 2021.
- e. Exhibit 3 - Answer dated February 5, 2021, from Pile Foundation Construction Company, Inc. by its attorney, James P. Rigano, Esq. (Rigano, LLC [Melville, New York]).
- f. Exhibit 4 - Answer dated February 15, 2021, from AAA & G Equipment Rental Co., LLC by its attorney, Adam Stolorow, Esq. (Sive, Paget & Riesel, PC [New York, New York]).
- g. Exhibit 5 - Joint amended answer dated March 12, 2021, from Pile Foundation Construction Company, Inc., Anthony Rivara Contracting, LLC, Anthony F. Rivara, Jr, and Anthony Rivara by their attorney, Helen C. Mauch, Esq. (Mintzer Mauch PLLC, [New York, New York]).
- h. Exhibit 6 - Department staff's disclosure demands for the production of documents dated July 7, 2021. Staff served the July 7, 2021 disclosure demands upon respondents, Anthony E. Rivara, Anthony F. Rivara, Anthony Rivara Contracting, LLC, and Pile Foundation Construction Company, Inc.
- i. Exhibits 7 and 8 - Emails dated July 7, 2021 through July 26, 2021, exchanged among the attorneys requesting additional time to respond to Department staff's July 7, 2021

discovery demands, and staff's consent. With an email from Mr. Drescher dated July 26, 2021, Department staff agreed to extend the time to respond to the July 7, 2021 disclosure demands to September 24, 2021.

- j. Exhibit 9 - Email from Ms. Mauch dated September 21, 2021, in which she states that she and her firm no longer represent respondents, Anthony E. Rivara, Anthony F. Rivara, Anthony Rivara Contracting, LLC, and Pile Foundation Construction Company, Inc.
- k. Exhibit 10 is a copy of an email from Mr. Drescher dated November 15, 2021, in which Department staff reminds respondents, Anthony E. Rivara, Anthony F. Rivara, Anthony Rivara Contracting, LLC, and Pile Foundation Construction Company, Inc., of their obligation to respond to staff's disclosure demands regardless of whether they are represented by counsel.
- l. Exhibits 11 and 12 - Emails dated November 15 and 16, 2021, between Mr. Drescher, Anthony E. Rivara, and Anthony F. Rivara concerning the pending responses. In an email from Anthony Rivara, Jr., dated December 16, 2021, Mr. Rivara acknowledged his responsibility to respond to the disclosure demands, and stated that he had renegotiated an agreement with his former counsel, Mintzer Mauch, PLLC.

Anthony E. Rivara's Papers

- a. Email from Tony Rivara Sr. (Anthony E. Rivara) dated December 20, 2022, to Chief ALJ Stefanucci and Mr. Drescher. Among other things, Mr. Rivara offered information about his financial circumstances, and asked staff to provide him with the forms related to a respondent's ability to pay civil penalties.
- b. Undated correspondence from Anthony and Antonella Rivara to Erik A Steinbach, US Department of the Treasury, IRS, Small Business/Self-Employed Division, concerning an appeals hearing about federal tax returns for years 2007-2017.
- c. Email exchange among Anthony E. Rivara, Anthony F. Rivara and Mr. Drescher dated November 16, 2021, concerning responses to the July 7, 2021 disclosure demands (*see* Exhibit 11 to staff's motion).
- d. Notice of Petition, Index No. LT-00199222, District Court of the County of Nassau, First District, Landlord-Tenant Part. 3 Elm Ct. LLC, Petitioner (Landlord) and Anthony Rivara and Antonella Rivara, Respondent (Tenant). The notice scheduled a hearing on June 28, 2022 concerning a final judgment of eviction for owing back rent in excess of \$25,000. (One page provided.)
- e. Notice of Petition, Index No. LT-00199222, District Court of the County of Nassau, First District, Landlord-Tenant Part. 3 Elm Ct. LLC, Petitioner (Landlord) and Anthony Rivara and Antonella Rivara, Respondent (Tenant) by Anthony R. Filosa, Esq. (attorney for Petitioner/Landlord). The notice scheduled a hearing on June 28, 2022 concerning a final judgment of eviction for owing back rent in excess of \$25,000. Petition to Recover Possession of Real Property for non-payment dated June 3, 2022. (Two copies provided.)

- f. Exhibit A – Email from New York State Emergency Rental Assistance Program (ERAP), Office of Temporary and Disability Assistance, dated April 22, 2022, approving partial payment of back rent owed from June 2020 to May 2021.
- g. Exhibit B – Rental Assistance Program Appeal Form prepared by Anthony Rivara and sent on May 15, 2022, filed with Nassau County Clerk on May 17, 2022.
- h. Exhibit D – Letter from Anthony R. Filosa, Esq. (Rosenberg, Fortuna & Laitman, LLP [Garden City, New York]) dated May 6, 2022, attorney for 3 Elm Ct., LLC (landlord), seeking payment of back rent in excess of \$60,000.
- i. Letter dated November 10, 2022 from Brian P. Chaimers, MD, Hospital for Special Surgery, which states that Anthony F. Rivara is scheduled for total joint replacement surgery on December 1, 2022.
- j. Notes 1, and 2 – Relate to the Rental Assistance Program Appeal Form, and request for appeal hearing.
- k. Aerial photograph of Mr. Rivara’s former residence prior to 2016. The lower note on the photograph states, “2016 bank took my house.”