

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JUDD E. TUBERG

FILE NO. H-78-001

from an Order of the Superintendent  
of Buildings

The appeal is DENIED and the Findings  
and Decision of the Superintendent of  
Buildings are affirmed.

#### Introduction

Judd E. Tuberg filed an appeal from an Order of the Superintendent of Buildings following reconsideration of Notice of Violation of Habitable Building relating to property at 7211 5th Avenue N.W.

This matter was heard before the Hearing Examiner on March 13, 1978.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. The subject property is a tenant occupied single-family dwelling at 7211 5th Avenue N.W. The appellant is the vendee of the property under a real estate contract dated December 9, 1976, and is the lessor under a rental agreement with the tenants now occupying the house.

2. On September 9, 1977, the building was inspected by an inspector, Mr. Perry, with the permission of the tenant. A Notice of Violation of a Habitable Building, dated October 26, 1977, was served on Judd E. Tuberg on November 28, 1977, after a title search disclosed that he was vendee under the real estate contract and the tenant identified him as the landlord.

3. A hearing was held on appellant's request for reconsideration of the Notice of Violation on January 4, 1978. The Order of the Superintendent of Buildings which resulted was served and posted January 13, 1978. The instant appeal was filed February 10, 1978.

4. At hearing the appellant withdrew all but his contention that service of the Notice of Violation on him did not satisfy Sections 3.35 and 4.21 of the Seattle Housing Code and the due process requirements of the Washington State Constitution.

### Conclusions

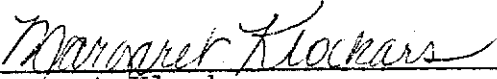
1. The appellant argues that, at the time of service of notice upon him, the Superintendent of Buildings knew only of the executory contract from their title search and that this knowledge alone was not sufficient for them to determine whether he was the person responsible for the condition of the building. He also contends that as vendee under the contract he is not an "owner", as defined by Section 3.35, relying upon Cascade Security Bank v. Butler, 88 Wn.2d 777, 567 P.2d 631 (1977). That case overruled Ashford v. Reese, 132 Wn 649, 233 P.29 (1925) which held that an executory contract of sale conveys no interest, legal or equitable, to the vendee. For many years prior to Cascade, however, Ashford was virtually ignored in a long series of cases where the vendee was treated as having a definite interest, usually a real property interest. Given the status of the vendee in Cascade and these earlier cases a vendee is an "owner", that is a person who "has title or interest". Therefore, knowing only that appellant was the vendee, the Superintendent could serve him and satisfy the notice requirement of Section 4.21. In fact, however, the Superintendent knew both that appellant was an "owner" under Section 3.35 and also that he was the person responsible, from statements of the tenant.

2. It should be pointed out that the appellant did not contend, at hearing, that he was not the proper party to be served and the record does not show whether or not the vendor was also served. A situation could arise where a vendor, having control of the property, should be served instead of, or in addition to, the vendee. This is not such a case so service on the appellant was proper and satisfied the notice requirement of the ordinance.

### Decision

For each of the above reasons, the appeal is DENIED.

Entered this 24th day of March, 1978.

  
Margaret Klockars  
Deputy Hearing Examiner

### Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination and any further appeal must be made to the courts.