

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No. 00-11733-RWZ

SANG VO, PHUOC TRAN,
OANH XUAN VU, HOA TRAN and KHAI VO,

Plaintiffs,

v.

CITY OF BOSTON, through its INSPECTIONAL
SERVICES DEPARTMENT, the LICENSING
BOARD OF THE CITY OF BOSTON, KEVIN
JOYCE, Commissioner of Inspectional Services
Department, DANIEL POKASKI, Chairman of
the Licensing Board of the City of Boston, and
CHANH LY,

Defendants.

CONSENT DECREE

1. This action raised claims by three Plaintiff Vietnamese immigrant families ("Plaintiffs") challenging the notice, entry and inspection practices of Defendant City of Boston, through its Inspectional Services Department ("ISD") and the notice and hearing procedures of Defendant Licensing Board of the City of Boston (the "Licensing Board") (collectively, "Defendants" or "agencies"), and challenging both agencies' statutory interpretations related to lodging houses, pursuant to the state and federal constitutions, the Fair Housing Act and other statutory provisions. Upon the Court's Summary Judgment Memorandum of Decision and Order dated September 22, 2003,

Sang Vo et al. v. City of Boston et al., 2003 U.S. Dist. Lexis 16519; 2003 WL 22174432 (D. Mass. 2003), Plaintiffs, the Licensing Board, and ISD (the "Parties") undertook mediation, and now wish to resolve this litigation under terms which fully comport with this Court's Decision and Order, and which afford specified substantive and procedural rights to residents of the City of Boston. This Consent Decree reflects the Parties' desire to avoid further costs of litigation and their agreement that this action should be resolved by settlement, without trial or other evidentiary hearing. Accordingly, the Parties agree to the entry of this Decree. By entering into this Decree, neither ISD nor the Licensing Board admits to engaging in any unlawful conduct. This Decree is binding on the Parties and on all successors and any successor agencies.

PURPOSES OF THIS DECREE

2. The Parties have agreed to the entry of this Decree for the following purposes:
 - a. To promote effective enforcement of health and safety laws through proper utilization of the limited resources of the City of Boston;
 - b. To enable residents of Boston to afford housing in the City of Boston in the face of a housing market which threatens to price low and moderate income families out of the City market;

- c. To allow families and individuals to choose suitable living arrangements;
- d. To promote neighborhood stability within the City of Boston;
- e. To establish rules for the interpretation and application of G.L. c. 140, §22 et seq. (the "Lodging House Statute") and other applicable lodging house provisions in a manner consistent with federal and state constitutions and fair housing laws;
- f. To preserve the ability of the City of Boston to regulate lodging houses in a manner that promotes health, safety and neighborhood stability;
- g. To establish rules for the conduct of residential housing inspections, to enforce statutes and regulations in a manner that: provides for proper notice to affected occupants; provides occupants the opportunity to make an informed decision about consenting to an inspection; provides for communication in the occupants' primary language where feasible; and, respects the privacy of the occupants and is sensitive to the culture of the occupants; and,
- h. To provide reasonable compensatory relief to Plaintiffs.

RELIEF SPECIFIC TO PLAINTIFFS

3. The Parties stipulate that based upon the undisputed affidavits of Sang Vo (dated 2/18/02), of Hoa Tran and of Phuoc Tran (dated 2/19/02), filed with this Court on 2/21/02, neither Plaintiffs nor their landlord, Defendant Chanh Ly, have been conducting lodging houses in violation of the Lodging House Statute, and that no further prosecution of administrative actions or proceedings is appropriate.

4. Plaintiffs have agreed with Defendants to a full and final settlement of any and all claims, known or unknown, made or that could have been made by them against said Defendants, including any claims related to the transactions or occurrences referenced in this action and including any and all claims for compensatory relief, attorneys' fees and costs. The terms of such settlement are contained in a separate, enforceable document that shall not be filed with the Court unless its terms are not met within the time period allowed therein, in which case this Court shall have full authority to enforce its terms.

RELIEF AS TO AGENCIES' ADMINISTRATIVE
PROCEDURES AND PRACTICES

5. Interpretation of G.L. c. 140, §22, of Licensing Board rules and of regulations applicable to boarding/lodging houses under the Building Code and Zoning Code.

a. The following definition and interpretation will govern actions by ISD and by the Licensing Board to apply or to enforce the Lodging House Statute and any other provision of the Building Code or Zoning Code applicable to boarding/lodging houses:

i. The term "lodgings" in the Lodging House Statute, and similar terms in other laws or regulations enforced by the Defendants, shall be limited to: single rooming units or sleeping accommodations rented individually, or occupants living together in a single dwelling unit, but not as a single housekeeping unit (with or without common kitchen facilities). Shared living situations (i.e., unrelated roommates or housemates with equal rights to the entire dwelling, whether under a tenancy-at-will, lease or other permission), shall not constitute a lodging house.

ii. A family shall be considered as one "person," "lodger" or "boarder" for all purposes of lodging house requirements and enforcement under the Lodging House Statute and applicable Building and Zoning Code provisions. (This provision shall not apply to square footage or similar generic occupancy restrictions.) For purposes of lodging house requirements and enforcement, "family" shall mean two or more persons related by blood, marriage, adoption or analogous family union and living as a single, nonprofit housekeeping unit.

iii. When a tenant, under a lease or at will, allows another person or persons to reside in the dwelling unit occupied by the tenant in exchange for a financial contribution toward the rent, utilities and/or household expenses (or otherwise), the tenant and the tenant's family shall be considered the operator or "person conducting it" for purposes of the Lodging House Statute and other Code provisions applicable to lodging houses.

iv. The provisions herein shall continue in full force and effect unless superseded by amendment(s) to relevant laws which render(s) these provisions inconsistent or incompatible with such change(s).

b. "Actions... to apply and to enforce the Lodging House Statute under Section 5(a) *supra* shall include: training and supervision of staff, responding to complaints and inquiries, conduct of inspections, issuance of notices of violation, referrals to the Boston Licensing Board and the Zoning Board of Appeals, enforcement proceedings, or the filing of any enforcement action before a court of other adjudicatory body.

c. In addition to the policy changes to which the Licensing Board has agreed (within such timeframes set forth elsewhere herein), the Licensing Board agrees, within sixty (60) days from the entry of this Decree, to amend its Rules to incorporate the relevant portions of this Decree, including but not limited to the definitions set forth above.

d. The terms set forth above are intended only to apply to lodging house definitions and requirements and not otherwise to supersede other code provisions of general and separate applicability.

CONDUCT OF INSPECTIONS

6. ISD shall take the following measures in order to ensure that its enforcement of the State Building Code, the Boston Zoning Code, the State Sanitary Code, the Lodging House Statute and all other laws and regulations is consistent with the purposes of this decree enumerated in Section 2, *supra*:

Within thirty (30) days from the entry of this Decree, ISD shall notify all field personnel and their supervisors, and other personnel reasonably identified who have responsibility for requests for and scheduling of inspections, by written policy memorandum/a or Commissioner's bulletin(s), of the terms and conditions set forth below and elsewhere herein with respect to inspections:

- a. Where the occupant of a residential dwelling does not speak English proficiently, entry shall not be made without an interpreter, except in situations governed by 780 CMR 121, or unless the ISD inspector speaks the occupant's primary language. An interpreter shall be provided at no cost to the occupant where reasonably available. Where an interpreter is not reasonably available, ISD may, at its option, use a telephonic interpreting language line at its expense;
- b. ISD's employees shall not photograph or videotape an occupant's interior living quarters without the specific written consent of the authorized, adult occupant of such quarters, obtained in advance. The occupant shall be specifically informed of the right to refuse such photographing or videotaping, and written consent must be separately and specifically provided for on ISD's consent form, or other official form. This provision shall not apply where such activities are authorized by warrant or where the dwelling is subject to condemnation order or is an unsafe structure within the meaning of 780 CMR 121. This provision shall not be construed to require

occupant consent for the photographing or videotaping of common or exterior areas.

- c. No more than two (2) inspectors, employees or agents of ISD shall approach the doorway of a dwelling when requesting initial entry for the purposes of an inspection. In addition, excepting in situations governed by 780 CMR 121, no more than four (4) inspectors, employees or agents of ISD shall enter a residential dwelling unit at any one time or on any one occasion.

CONSENT FORMS

7. Within thirty (30) days from the entry of this Decree, ISD shall require, prior to entry, for all residential inspections, the use of revised consent forms as follows:

- a. In instances where the occupant has not requested the inspection, the use of the Consent For Inspection form attached hereto as Exhibit A shall be required; and

b. In instances where the occupant has requested the inspection, the use of the Consent for Inspection (Occupant-Requested) form attached hereto as Exhibit B shall be required.

A separate consent form (of either type, as applicable) shall be required to gain access to each separately-occupied living quarters. Within one hundred and twenty (120) days from the entry of this Decree, ISD shall cause both such forms to be translated into: Spanish, Vietnamese, Haitian/Cape Verdean/French Creole, Chinese (and any other such languages as may be identified as necessary on an annual basis by the City of Boston's Office of New Bostonians); and shall require that such translated forms be provided to non-English-speaking occupants in their primary language.

The requirements of this section shall not apply to:

1. Inspections pursuant to 780 CMR 115.2;
2. Required Minimum Inspections and Certifications for Specified Use Groups pursuant to 780 CMR 106.5 (except that the requirements of this section shall apply to those inspections pursuant to 780 CMR 106.5 of lodging houses and multi-family residences).

Nothing in the above-noted exceptions to the requirements of this section shall be construed to alter or to limit legal rights and obligations with respect to consent for entry of occupied residential premises.

8. Defendants shall, within sixty (60) days from the entry of this Decree, devise with input from the Plaintiffs' counsel and make publicly available (including through its website) an informational handout describing: a) when an owner or occupant must obtain a lodging house license; b) the minimum occupancy standards under the State Sanitary Code necessary to avoid overcrowding; and c) how to bring an illegal dwelling unit into compliance with the law. Within sixty (60) days thereafter, the handout shall be translated as described in Section 7, *supra*.

NOTICE OF VIOLATIONS

9. Notice of Violations

- a. ISD. Within one hundred and twenty (120) days from the entry of this decree, ISD shall, in consultation with the Plaintiffs' counsel, adopt and implement specific policies and practices to provide separate notice to affected occupants of residential dwellings

in the City of Boston (addressed to "Occupant" and mailed by first-class mail or delivered by hand) of each of the following:

1. Any notice of violation issued to the owner of an occupant's residential dwelling involving the interior and/or occupancy of such dwelling;
2. Any request for hearing and scheduling of hearing on an administrative appeal by an owner of any violation cited by ISD as set forth in paragraph 1 immediately above, with notice to the occupant of the subject property that the occupant is permitted but not required to attend;
3. Any administrative appeal decision;
4. Any legal complaint (civil or criminal) filed in court by ISD against an owner of an occupant's residential dwelling, with notice to the occupant that: 1) the occupant is permitted but not required to attend (except that ISD shall not be required to give such notice in circumstances where the public is barred from such proceedings by law or court order) and that the occupant may seek to intervene in the proceedings; and 2) if the occupant wishes to

be updated on the proceedings, the occupant can contact the Court clerk's office;

5. Any referral of suspected lodging/boarding houses to the Licensing Board and/or to the Zoning Board of Appeals;
6. In cases of dwellings deemed unfit for human habitation, the notice provisions described in G. L. c. 111, §127(b) shall control.

The providing of notice to occupants set forth above shall be documented by ISD in its files. The provisions for notice to occupants set forth above are not intended to limit any additional notice requirements that may be required by law.

- b. Licensing Board. Commencing no later than two (2) weeks from entry of this Decree, the Licensing Board agrees to provide notice and opportunity to be heard to the occupants of residential premises, the occupancy of which is subject to Licensing Board proceedings related to Lodging House Statute requirements. The Licensing Board shall adopt and follow specific procedures for ensuring that copies of notices of hearings (on violations of the Lodging

House Statute or on applications for lodging house licenses), of any continuances, and of hearing decisions (or other action taken by the Licensing Board) with respect to occupied residential premises be sent to occupants, as follows:

i. The Licensing Board shall send one (1) copy of its notice of hearing (and notice of any continuance date thereof) by first-class mail to the premises subject to the proceedings addressed to the "Occupant of [insert address of the premises]," simultaneously with the provision of notice of hearing to the owner or operator. This notice requirement shall apply both to Lodging House Statute enforcement proceedings and to applications for lodging house licenses. Hearing notices regarding Lodging House Statute violations shall be accompanied by a copy of the applicable rules and/or an informational hand-out regarding lodging houses (see Paragraph 8 above) and shall include the following language in bold print:

****** Notice to Tenants or Occupants ******
You have the right, but are not required, to attend this public hearing and if you wish, to give testimony and/or to present documents to the Licensing Board.

The results of this hearing could affect your tenancy or occupancy. NOTE: This is NOT a court process. A landlord cannot evict a tenant without first successfully completing the judicial process for eviction and obtaining a court order.

ii. The Licensing Board shall send one (1) copy of its decision, or other action taken, by first class mail to the premises subject to the proceedings addressed to the "Tenant/Occupant of [insert address of the premises]," simultaneously with the provision of notice of such decision or other action to the owner or operator.

iii. The Licensing Board's procedures for ensuring notice to occupants shall include, at a minimum, a written certification maintained in the file for such premises that such copies were sent on [x] date.

iv. If there is more than one unit in a building or other premises subject to proceedings under the Lodging House Statute, then a separate copy shall be sent to the occupants of each unit, addressed in the manner set forth above.

TRAINING

10. Within one hundred and twenty (120) days from the entry of this Decree, ISD shall sponsor training regarding the terms of this Decree and its relevance to applicable law for all field personnel, their supervisors, and other personnel reasonably identified who have responsibility for requests for and scheduling of inspections.

11. Within thirty (30) days of the entry of this Decree, the Licensing Board shall ensure, in consultation with Plaintiffs' counsel, that all members of its staff have been informed of and have received training regarding the Licensing Board's obligations herein.

MONITORING OF PERFORMANCE

12. For a period of two years from the date of this Decree, Defendants shall each maintain a computerized or comprehensive written record of all "actions" as defined in Section 5(b), *supra*, pertaining to lodging houses. Such information shall be maintained in a format to be agreed to by the Parties within sixty (60) days of the entry of this Decree. Defendants will make such data available to Plaintiffs' attorneys, without cost, on a quarterly basis.

IMPLEMENTATION AND ENFORCEMENT

13. ISD and the Licensing Board agree that Plaintiffs and similarly-situated residents are entitled to due process with respect to government proceedings affecting them, and stipulate for the purposes of this Decree and its enforcement (whether by its own terms, under G.L. c.231A § 5, or otherwise), that this Decree and all its provisions constitute and shall be entered as permanent injunctive relief as well as declaratory relief under 28 U.S.C. §§2201-2202. Further, the Parties agree that the provisions of this Decree are specifically intended to benefit occupants and owners of residential housing in the City of Boston in addition to the Plaintiffs. The provisions set forth herein are binding upon Defendants in any court with jurisdiction over the subject matter of the action.

14. The Parties agree to take, within thirty (30) days of the date of entry of this Decree, the steps necessary for the entry of this Consent Decree in appropriate form in the Boston Housing Court in ISD's pending civil action against Chanh Ly (Docket No. 00-CV-00558), with Plaintiffs

and the Licensing Board as stipulated intervening parties, so that the Decree may be on record and enforceable in Boston Housing Court as well as this Court.

15. The Licensing Board agrees to dismiss its enforcement actions pending at the Licensing Board against Defendant Chanh Ly regarding 998/998A Dorchester Avenue and 2-4 Romsey Street (Violation Nos. 21720 and 200800).

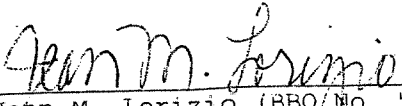
16. Neither ISD nor the Licensing Board shall alter substantively the changes to its rules and to its procedures required by this Decree without leave of this Court to do so (unless expressly stipulated by the Parties in writing), and Defendants shall provide notice to Plaintiffs' counsel of any request for leave to alter the provisions herein.

17. If any term or provision of the Decree shall, to any extent, be invalid or unenforceable, the remainder of the Decree shall not be affected thereby, and each term and provision of this Decree shall be valid and enforceable to the fullest extent permitted by law.


18. This Decree shall be entered as a final judgment on all claims between the Parties. Any claims not addressed by this Decree are hereby dismissed and released.

Licensing Board of the City of Boston
Daniel Pokaski, Chairman
By their attorneys,

Sang Vo, Phuoc Tran, Hoa Tran
Oanh Xuan Vu, and Khai Vo,
By their attorneys,




Jean M. Lorzio (BBO No. 542811)
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City of Boston, through its Inspectional
Services Department,
and its Commissioner,

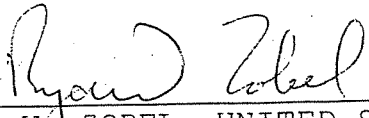
By their attorneys,



James M. Chernetsky (BBO No. 638152)
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(617) 635-4048

ORDER

ENTERED THIS 24th DAY OF JANUARY 2005 AS FINAL JUDGMENT, AS
SET FORTH ABOVE, ON ALL CLAIMS BETWEEN THE PARTIES HERETO:



RYA W. ZOBEL, UNITED STATES DISTRICT JUDGE

CONSENT FOR INSPECTION

I, _____, understand that I have the RIGHT TO REFUSE to allow an inspection of my home without a warrant (an order signed by the Court).

I understand my right to refuse to allow an inspection without a warrant as explained to me and I voluntarily agree to permit members of the City of Boston Inspectional Services Department to inspect my residence, located at _____, Unit # _____ in _____, Massachusetts.

I represent that:

- I am the (circle one) owner/tenant/other: _____ of the above-described residence.
- I am 18 years of age or older.
- I do ___ do not ___ speak English.

For persons who do not speak English:

- _____ is my primary language, and an interpreter who speaks this language has read this form and explained my rights to me.

I understand that this inspection is to be conducted under the authority of, and for compliance with, the ordinances, codes, regulations, and statutes that the Boston Inspectional Services Department is authorized to enforce. **This consent form authorizes ONLY members of the City of Boston Inspectional Services Department to enter and/or to inspect the above residence.**

I am signing this form VOLUNTARILY, without threats or promises of any kind, and BEFORE any inspection has taken place.

Signature: _____ Date: _____

Print name: _____

TO BE SIGNED BY INSPECTOR:

I have explained to the occupant his/her right to refuse to allow an inspection and/or photography/videotaping in the absence of a warrant and have read this form to the occupant. If the occupant does not speak English, ISD has provided an interpreter to read this form and to explain this right to refuse to the occupant (*see reverse for interpreter's signature*).

Signature: _____ Date: _____

Print name and inspector #: _____

For Housing Inspectors Only:

I have also explained to the occupant his/her right to a full inspection of the residence as defined in the State Sanitary Code (105 CMR 410.822(B)(1)).

Signature: _____ Date: _____

For persons who do not speak English:

TO BE SIGNED BY INTERPRETER:

Interpreter (if applicable) affirms that s/he has read this form to the occupant and explained the occupant's rights to him/her in _____ (specify language) .

Interpreter's Signature: _____ Date: _____

Print name: _____ Affiliation: _____

SEPARATE CONSENT FOR PHOTOGRAPHY AND/OR VIDEOTAPING OF RESIDENCE:

I understand my right to refuse to allow photography and/or videotaping without a warrant (a Court order) as explained to me and I agree VOLUNTARILY to permit members of the City of Boston Inspectional Services Department to photograph and/or to videotape my residence.

Occupant's Signature: _____ Date: _____

Interpreter's Signature (if applicable): _____ Date: _____

CONSENT FOR INSPECTION (OCCUPANT-REQUESTED)

I, _____, have requested that members of the City of Boston Inspectional Services Department inspect my residence, located at _____, Unit # _____ in _____, Massachusetts.

I represent that:

- I am an occupant of the above-described residence.
- I am 18 years of age or older.
- I have been explained my right to a full inspection as defined in the State Sanitary Code and I do _____ do not _____ request a full inspection.
- I do _____ do not _____ speak English.

For persons who do not speak English:

Interpreter (if applicable) affirms that s/he has read this entire form to the occupant and explained its contents to him/her in _____ (specify language) .

Interpreter's Signature: _____ Date: _____

Print name: _____ Affiliation: _____

I understand that this inspection is to be conducted under the authority of, and for compliance with, the ordinances, codes, regulations, and statutes that the Boston Inspectional Services Department is authorized to enforce. **This consent form authorizes ONLY members of the City of Boston Inspectional Services Department to enter and/or to inspect the above residence.**

I am signing this form VOLUNTARILY, without threats or promises of any kind, and BEFORE any inspection has taken place.

Occupant's signature: _____ Date: _____

Print name: _____

TO BE SIGNED BY INSPECTOR:

Signature: _____ Date: _____

Print name and inspector #: _____

For Housing Inspectors Only:

I have also explained to the occupant his/her right to a full inspection of the residence as defined in the State Sanitary Code (105 CMR 410.822(B)(1)).

Signature: _____ Date: _____

CONSENT FOR PHOTOGRAPHY AND/OR VIDEOTAPING OF RESIDENCE:

I understand my right to refuse to allow photography and/or videotaping without a warrant (a court order) as explained to me and I agree VOLUNTARILY to permit members of the City of Boston Inspectional Services Department to photograph and/or to videotape my residence.

Occupant's Signature: _____ Date: _____

Interpreter's Signature (if applicable): _____ Date: _____