

BEFORE THE ELEVATOR SAFETY BOARD
STATE OF ARKANSAS

IN RE: RUEBEL FUNERAL HOME
AS/EV #1172

CONSENT ORDER

This matter comes before the Arkansas Elevator Safety Board on Thursday, January 12, 2012. The petitioner, Ruebel Funeral Home (Ruebel), seeks a variance for the above-referenced conveyance located at 6313 West Markham Street, Little Rock, AR 72205.

FINDINGS OF FACT:

1. The petitioner, Ruebel, submitted a variance request to the Arkansas Department of Labor on November 3, 2011 for AS/EV #1172, located at 6313 West Markham Street, Little Rock, AR 72205.
2. Ruebel seeks a variance for the above-referenced conveyance from hydraulic jack replacement pursuant to Regulation 010.05-013(A)(3) and ASME A17.3-2005.
3. That the Agency and Ruebel agree that there is an undue hardship in this matter and that reasonable safety will be secured with the following conditions:
 - a. Ruebel will maintain on premises a maintenance log of all maintenance or service calls on the elevator, if any, including any in which

hydraulic fluid is added. (this log will be checked annually at the pressure test described in 3(b); and

b. The Agency will perform an annual pressure test with normal testing fees as described in Regulation 010.05-014; and

c. Sale of building, significant change in building/elevator use, or loss of hydraulic fluid that cannot be traced will result in revocation of variance (with proper notice and/or hearing as described by Board regulations); and

d. An Agency inspector will perform an initial pressure test within thirty (30) days of a final agreement to observe the current hydraulic fluid levels and establish a benchmark hydraulic fluid level for the above-referenced maintenance log.

CONCLUSIONS OF LAW:

1. Ark. Code Ann. § 20-24-106(d) provides that “[t]he board shall also have the power in any particular case to grant exceptions and variations which shall only be granted where it is clearly evident that they are necessary in order to prevent undue hardship or where the existing conditions prevent compliance with the literal requirements of the rules and regulations. In no case shall any exception or variation be granted unless, in the opinion of the board, reasonable safety will be secured thereby.”

2. In the present case, the Board concludes that an undue hardship is present in this matter and that reasonable safety will be secured if this request is granted pursuant to the conditions contained in Paragraph 3 above.

THEREFORE, the board grants the variance request from Ruebel Funeral Home.

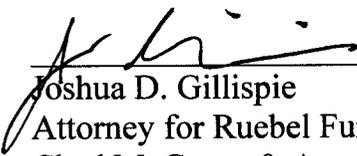
IT IS SO ORDERED.

ELEVATOR SAFETY BOARD
STATE OF ARKANSAS

By: 
James L. Salkeld, Chairman

Date: 1-19-2012

Approved:  12/14/11
Daniel Knox Faulkner, 2002-168 DATE
Staff Attorney
Arkansas Department of Labor
10421 West Markham Street
Little Rock, AR 72205
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 12/14/11
Joshua D. Gillispie DATE
Attorney for Ruebel Funeral Home
Chad M. Green & Associates
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Little Rock, AR 72201
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BEFORE THE ELEVATOR SAFETY BOARD
STATE OF ARKANSAS

IN RE: FORT SMITH ART CENTER, INC.
FORT SMITH REGIONAL ART MUSEUM
AS/EV #206

ORDER

This matter comes before the Elevator Safety Board on Thursday, January 19, 2012. The petitioner, Fort Smith Art Center, Inc./Fort Smith Regional Art Museum (FSM) requests a variance for AS/EV #206.

FINDINGS OF FACT:

1. FSM, a non-profit corporation, 701 Rogers Avenue, Fort Smith, Arkansas 72902, requests a variance for AS/EV #206, located at 1601 Rogers Avenue, Fort Smith, Arkansas 72901.

2. Specifically, FSM submitted a request on September 19, 2011 seeking a variance from Regulation 010.05-013(B) which requires that:

Any conveyance which is out of operation or without an operating permit for twelve (12) months or more shall have a safety test or leak down test and a pressure test performed in the presence of a licensed elevator inspector in the employ of the department or its authorized representative before a new operating permit can be issued or before such can operate. Additionally, such conveyance shall conform to the standards established by Rule 010.05-011 or have a variance issued pursuant to Rule 010.05-016 before an operating permit can be issued or before it can operate.

3. The current standard established by Rule 010.05-011 is the American Society of Mechanical Engineers Safety Code for Elevators and Escalators, ASME A17.1 - 2007.

4. There is no dispute that the conveyance has been out of service longer than the twelve (12) months referenced in Regulation 010.05-013(B), and that it was red-tagged August 25, 2011.

5. That the applicable Code had the conveyance been properly permitted would be the standards for existing elevators found in Regulation 010.05-013(A):

All conveyances shall be maintained by the owner or lessee in a condition that conforms to the standards established by the board which were in effect on the date of installation or the provisions of ASME A17.3-2005, whichever are more stringent.

6. Larry Smothers (Smothers), Chief Elevator Inspector, Arkansas Department of Labor, made a report to the board on October 14, 2011 and recommended denial of the variance since the elevator had been out of service longer than the twelve (12) months referenced in Regulation 010.05-013(B).

7. That Lee Ortega, Executive Director, appeared on behalf of FSM and testified that FSM acquired the building from Arvest Bank in January 2009, and that it has since been a construction site; that FSM has maintained a service contract with Otis Elevator the entire time in questions and had maintenance and repairs performed on the conveyance. She further testified that she did not realize the owner of the conveyance was responsible for permitting, rather that the elevator company or elevator inspection company was responsible for maintain the permit.

8. Kimberly Cornwall testified that she received the 5/3/2011 inspection report on this conveyance. When she entered this inspection in to the database, it became clear that

no inspection has been performed on this conveyance since August 2009. She then contacted the third party inspection company and was unable to determine the reason for this gap in inspections. Upon investigation, it was determined that the permit expired in December 2009. She further explained that the Agency does not bill for permits until the annual inspection is received, and that this gap in inspections is the reason no bill was sent to FSM. Finally, she testifies that the Agency does not send reminders that a permit has expired, that it relies upon the inspection report to trigger the bill.

9. Smothers testified that he had no safety concerns if the elevator was allowed to return to with Regulation 010.05-013(A) and its referenced elevator Codes (ASME A17.3-2005) in Paragraph 5 if this variance is granted. He further stated that there could be further required repairs such as fire service under ASME A17.3-2005 that have not yet been noted on previous inspections.

CONCLUSIONS OF LAW:

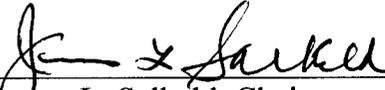
1. Ark. Code Ann. § 20-24-106(d) provides that “[t]he board shall also have the power in any particular case to grant exceptions and variations which shall only be granted where it is clearly evident that they are necessary in order to prevent undue hardship or where the existing conditions prevent compliance with the literal requirements of the rules and regulations. In no case shall any exception or variation be granted unless, in the opinion of the board, reasonable safety will be secured thereby.”

2. In the present case, the Board concludes that an undue hardship exists to FSM because of the facts listed in Paragraphs 7 and 8 above. Further, the Board concludes there

is no safety risk present in granting this request. The Board concludes that FSM shall receive a variance from Regulation 010.05-013(B).

IT IS SO ORDERED.

ELEVATOR SAFETY BOARD
STATE OF ARKANSAS

By: 
James L. Salkeld, Chairman

Date: 1-20-2012

Prepared by:
Daniel Knox Faulkner, 2002168
Staff Attorney
Arkansas Department of Labor
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Little Rock, AR 72205
(501) 682-4504

BEFORE THE ELEVATOR SAFETY BOARD
STATE OF ARKANSAS

IN RE: RIVER MARKET SOUTH LLC
AS/EV # #1235 & 1236

ORDER

This matter comes before the Arkansas Elevator Safety Board on Thursday, December 1, 2011. The petitioner, River Market South LLC (RMS) seeks a variance for the above-referenced conveyances, located at 200 S Commerce Suite 300 Little Rock, AR 72201.

FINDINGS OF FACT:

1. The petitioner submitted a variance request to the Arkansas Department of Labor on September 16, 2011 through Chris Thomas (Thomas), Senior Operations Manager, Moses Tucker Real Estate. Moses Tucker Real Estate is a member of RMS.
2. RMS seeks a variance for the above-referenced conveyances from ASME A17.3-2005, Section 3.11.3 requiring the installation of Firefighter's Phase I and Phase II Service. The request is for a time period of twenty-four (24) months.
3. Thomas testified on behalf of RMS. His testimony and Petitioner's Exhibit #1 describes the issues with installing fire service on these conveyances: there is currently only one tenant in this building with a lease to expire in twenty-one (21) months; after the lease terminates, RMS will likely demolish the property, thus making it impractical to update the Firefighter's Phase I and Phase II Service. Further, in the event the building is not demolished

in that time period, then the owners intend to update the conveyances with the current fire service requirements.

4. Larry Smothers (Smothers), Chief Elevator Inspector, Arkansas Department of Labor, made a report to the board and recommended approval of the variance for twenty-one (21) months.

5. Thomas also testified that RMS would be able to report back to the Board with a more definite plan for the building in one (1) year.

CONCLUSIONS OF LAW:

1. Ark. Code Ann. § 20-24-106(d) provides that “[t]he board shall also have the power in any particular case to grant exceptions and variations which shall only be granted where it is clearly evident that they are necessary in order to prevent undue hardship or where the existing conditions prevent compliance with the literal requirements of the rules and regulations. In no case shall any exception or variation be granted unless, in the opinion of the board, reasonable safety will be secured thereby.”

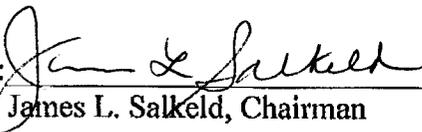
2. In the present case, the Board concludes that compliance with ASME A17.3-2005, Section 3.11.3 requiring the installation of Firefighter’s Phase I and Phase II Service would be an undue hardship because of the likelihood that the building will ultimately be demolished. However, the Board concludes that a twenty-four (24) month variance is too lengthy. The Board concludes that a one (1) year time period is more reasonable given prior Board decisions in similar fact patterns.

3. The Board further concludes that, based on the facts presented and the opinion of the board, reasonable safety will be assured since the length of the extension is only an additional year.

THEREFORE, the board denies River Market South LLC's twenty-four (24) month variance request from ASME A17.3-2005, Section 3.11.3 requiring the installation of Firefighter's Phase I and Phase II Service. However, the Board grants a one (1) year variance from the same requirements until December 1, 2012. The Board has the authority to revoke this variance if there is a material change in condition upon proper notice and opportunity for hearing.

IT IS SO ORDERED.

ELEVATOR SAFETY BOARD
STATE OF ARKANSAS

By: 
James L. Salkeld, Chairman

Date: 1-19-2012

Approved:  12/8/11
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