

Cleveland Housing Judge Raymond Pianka requiring negligent property owners to pay victim restitution to neighbors

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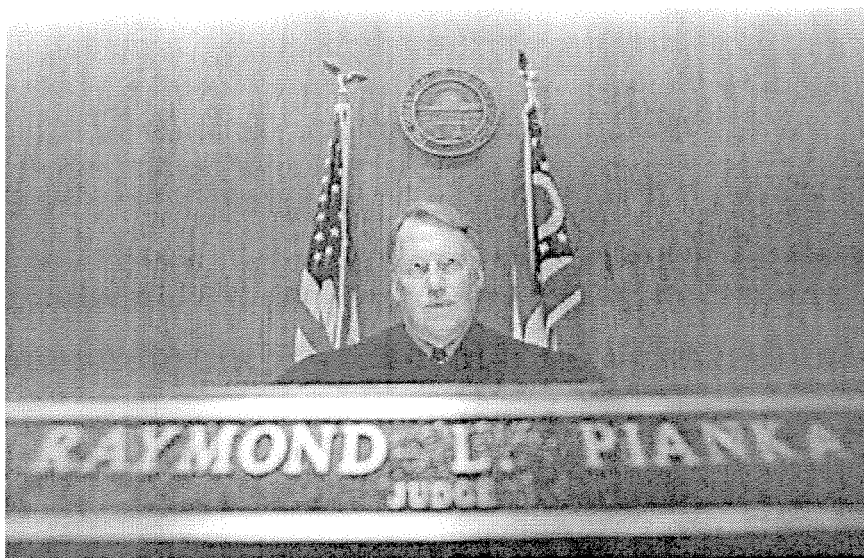


Sandra Livingston, The Plain Dealer

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Scott Shaw, The Plain Dealer, FileCleveland Housing Court Judge Raymond Pianka has ordered victim restitution be paid to neighbors of neglected properties.

Cleveland Housing Court Judge Raymond Pianka is ratcheting up the costs for absentee property owners who spread the damage from the foreclosure crisis. They will have to pay neighbors for economic losses caused by their neglect.

Pianka plans to hold his first restitution hearings on the issue this month.

The move comes as Cleveland's lone housing judge contends with the fallout from the foreclosure mess.

A troubling number of homes have become vacant, neglected commodities bought and sold -- often by out-of-state companies -- for dirt-cheap prices and left to languish. That can undermine safety and nearby property values.

"What is happening there is certainly at the forefront of initiatives seeking to impose liability upon the owners of substandard properties," said Frank S. Alexander, a professor at Emory University School of Law and general counsel for the Center for Community Progress, a national nonprofit that provides assistance to local and state governments on the reuse of vacant and abandoned property.

In prior rulings involving companies that dealt in distressed properties and routinely defied local law, Pianka levied substantial fines. His aim: to deter illegal practices and make fines more than just a cost of doing business. Now he is broadening the lens on financial liability.

To be sure, restitution is not new -- nor is holding property owners responsible for nuisance conditions.

But Pianka's strategy is considered unique because he has determined that neighbors could be victims under state law and he's giving them the chance to make a financial claim as part of the prosecution of another property owner.

Alexander said Pianka's approach with the restitution hearings is both novel and intriguing.

"It certainly invites a discussion about not only the magnitude of the harms and who is responsible, but secondly how to compensate for those harms and then most importantly, how to avoid the harms in the future," he said.

The upcoming hearings stem from two cases in which Pianka has already issued fines for code violations.

In one, Pianka fined Go Invest Wisely LLC of Utah \$915,000 for violations at an East 141st Street house that were so severe the city condemned the place last year and now plans to demolish it.

The company had pleaded not guilty.

In the other case, Pianka fined Fannie Mae -- a government-sponsored enterprise -- \$25,000 for exterior violations at a house on East 173rd Street. The company had entered a plea of no contest.

County records show that title to both properties transferred earlier this year to new owners. But Go Invest Wisely and Fannie Mae are being held liable for violations and economic losses sustained by neighbors during the time when public records show the companies owned the properties.

Fannie Mae said it transferred title to another company in June of 2008, but that the company didn't record the transfer with Cuyahoga County until April of this year.

Fannie Mae said it pleaded no contest since it had been listed as the owner, but that the other company would pay the \$25,000 fine.

And Fannie Mae declined to comment on the restitution hearing because it only recently learned about it.

For his part, Go Invest Wisely President Brad Hess said in a text message that his lawyer had advised him to say: "I have no comment other than we are pursuing all legal remedies available to us."

Cleveland Law Director Robert Triozzi called Pianka's approach innovative. He described Go Invest Wisely as the kind of company that came into Cleveland with a get-rich scheme and didn't want to play by community rules.

And Triozzi expects that with the Fannie Mae restitution hearing, Pianka is signaling his intent to be consistent.

"This isn't just about Go Invest Wisely," Triozzi said. "He's probably sending a message that this is how he intends to do business moving forward. Whether you're a Utah company or whether you're Fannie Mae or whoever you might be, he is giving notice that that's the expectation in his court. I think that's appropriate."

Pianka declined to comment because the cases are pending.

But the judge has sent letters to potential victims telling them they have a right to present their claims in court.

Owners who live near the property and can show they suffered economic loss as a direct result of the defendant's criminal failure to maintain the property may be eligible for restitution under state law.

For instance, a person may be able to recover costs associated with maintaining the cited property to lessen its impact on their property, such as for mowing the lawn or picking up garbage.

And former owners who sold their nearby home during a certain time period and can show that the property lost value because of the condition of the house in question may seek restitution.

The companies can challenge any claims, with the victim having the burden of proving the amount of the claim.

"I don't know that I've ever heard of this being done before," said Frank Ford, senior vice president for research and development for Neighborhood Progress Inc. in Cleveland. "I commend the judge for doing this; I think it's very creative."

Go Invest Wisely has told Pianka in separate cases that it has had a positive impact in city neighborhoods and that the judge should be lenient because its business in Cleveland was failing.

In an April ruling, Pianka wasn't moved by either argument. He said the company freely chose to buy properties and thus took on the obligation to repair them, but instead was a neglectful neighbor.

And Pianka said if company investors lose money "because Defendant was badly operated and violated the laws of Cleveland, then they must lose that money."

Whether current and former neighbors will show up for the restitution hearing and be able to make a case for direct economic loss isn't yet clear.

A court presentence report says the former Go Invest Wisely house is the worst one on the street, remains a hazard and that the violations that existed when the court case was filed still have not been addressed.

The report said the upstairs windows are missing, there's no porch steps, and the garage roof has caved in. In contrast, the house next door is in overall good condition. It notes neighborhood concerns about the property and that it doesn't appear Go Invest Wisely made any effort to repair the property or sell it to someone who would.

The company that bought it earlier this year, Home Solutions Partners III REO LLC in Texas, declined to comment on the conditions.

The stretch of East 141st Street where the house sits has a number of vacant lots and distressed-looking houses.

A challenge for other property owners will be showing that this one particular house is causing economic harm as opposed to other properties that may be detrimental.

"It becomes a much more complex calculation when there are multiple properties causing the decline in the values," Alexander said. "But that doesn't undercut the basic proposition that that one house that is bad is causing harm."