

**ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARINGS**

Ronald Yocca)	In re:	828 Maple Avenue
)		Turtle Creek, PA 15145
Appellant,)		
)	Docket. No.	ACHD-22-001
vs.)		
)		
ALLEGHENY COUNTY HEALTH)		
DEPARTMENT,)		
)		
Appellee.)		

ALLEGHENY COUNTY HEALTH DEPARTMENT’S POST-HEARING BRIEF

AND NOW comes the Appellee, the Allegheny County Health Department (the “ACHD” or “Department”), by and through its counsel, and files this Post-Hearing Brief in support of its position in the appeal filed by Appellant, Ronald Yocca (“Appellant”).

I. Burden of Proof

Article XI of ACHD’s Rules and Regulations (“Article XI”), which govern procedure at administrative hearings, states:

The burden of proceeding and the burden of proof shall be the *same as at common law*, in that the burden shall normally rest with the party asserting the *affirmative of an issue*. It shall generally be the burden of the party asserting the affirmative of the issue to establish it by a preponderance of the evidence. In cases where a party has the burden of proof to establish the party’s case by a preponderance of the evidence, the Hearing Officer may nonetheless require the other party to assume the burden of proceeding with the evidence in whole or in part if that party is in possession of facts or should have knowledge of facts relevant to the issue.

Art. XI, Section 1105.C.7 (*emphasis added*). Though it is within the Hearing Officer’s discretion to allow the party that does not ultimately bear the burden of proof to question witnesses first during a hearing, this discretion should not extend to the briefing stage.

An affirmative defense is one which “raises new facts and arguments that, if true, defeat the plaintiff’s claim, even if all the allegations contained in the complaint are true.” *R.H.S. v.*

Allegheny County Dept. of Human Services, Office of Mental Health, 936 A.2d 1218 (Pa. Cmwlth. 2007). Here, Appellant does not deny that it did not obtain an occupancy permit. Rather, he argues that his facility is exempt from such requirements under the Fair Housing Act, hence bringing in arguments extrinsic to the issue of whether a permit should have been issued pursuant to the criteria outlined in the Department's regulations. It is well-established that "the burden of proof...rests upon the party who...asserts the affirmative of an issue." *V.W. v. Department of Public Welfare*, 51 A.3d 282, 285 (Pa. Cmwlth. 2012) citing *Lincoln Intermediate Unit #12 v. Bermudian Springs Sch. Dist.* 441 A.2d 813, 815 (Pa. Cmwlth. 1982), quoting *Hervitz v. New York Life Ins. Co.*, 52 A.2d 368, 369 (Pa. Cmwlth. 1987). Thus, the burden of proving that the Fair Housing Act has some role in whether the Department determination was correctly implemented rests with the Appellant. This is the only logical approach given that Appellant would presumably be "in possession of fact or should have the knowledge of facts relevant to the issue" on which it relies for relief. *See* Section 1105.C.7, *supra*. This posture agrees with the spirit of the Fair Housing Act, which places the burden of proof on the party seeking to show a disparate impact on a protected class. 24 CFR § 100.500(b).

II. Argument

The Department action that is the subject of this appeal concerns property at 828 Maple Avenue in Turtle Creek, Allegheny County ("property" or "subject property"). The sole issue is whether Appellant must obtain and operate pursuant to a permit in accordance with the Department's Rules and Regulations Article VI, Housing and Community Environment, ("Article VI").

Appellant Ronald Yocca ("Mr. Yocca") is the President and Treasurer of Jaguar Investments, Inc. ("Jaguar Investments"), a Pennsylvania corporation. Jaguar is the general partner in Rachel Estates L.P., a Pennsylvania limited partnership ("Rachel Estates"). No limited

partners are listed on the Pennsylvania Secretary of State's website and Mr. Yocca testified that he was not familiar with the exact structure of the limited partnership despite it being named after his daughter. H.T. 36:4-37:3. Rachel Estates owns the subject property, which, in turn, is rented by the nonprofit, My Brother's House, a recovery home operated by Mr. Yocca in his capacity as Executive Director. H.T. 4:7-9, 38:9-11. This arrangement essentially means that My Brother's House pays rent to Rachel Estates. H.T. 41:3-4.

The Department's regulations require Appellant's recovery home obtain a "Rooming House" permit in order to ensure its safe operation as a rooming house. Art. VI 611(a). Article VI defines a "Rooming House" as:

Any dwelling or part of any dwelling that contains one (1) or more rooming units, which space the operator has let to four (4) or more persons who are not related by blood, marriage or adoption, exclusive of usual servants, including boarding homes, whether or not operated for profit.

Art. VI 604. (***emphasis added***). Critically, all permitted rooming houses are subject to routine inspections to ensure that the accommodations are being adequately maintained. H.T. 61:12-14. The subject property contains four bedrooms with space for seven occupants: a large room containing three beds, a medium-sized room containing two beds, and two smaller rooms with one bed each. H.T. 68:15-20. The subject property also includes a shared kitchen and two shared bathrooms that are accessible to all residents. H.T. 69:18-21, 69:24-70:11. None of the residents are related by blood, marriage or adoption. H.T. 48:15-49:2. Minors, women, and pregnant individuals are not allowed to live at the property. H.T. 13:17-19; 49:3-10.

ACHD's permit application for Rooming Houses asks applicants to choose from a list of various classifications of rooming house that best describe their facility. Ex. D-7. Choices include boarding homes, personal care homes, and "other." Ex. D-7. This "other" category encompasses, *inter alia*, bed and breakfast facilities, recovery homes, three-quarter houses, halfway houses, and

group homes. H.T. 80:7-14. Despite “Rooming House” being a separate option under the “type of facility” portion of the application, all these arrangements are subject to the same permitting requirements. Section 611(J) or Article VI states: “All public service rooming houses shall be fee exempt. Any rooming house seeking exemption pursuant to this Section shall make written application to the Director and shall provide proof of their qualification for exemption.” Art. VI 611(J). Article VI defines a “Public Service Rooming House” as:

Any rooming house as defined in this Article operated by any school, hospital, government, or any benevolent, educational, philanthropic, humane, patriotic, religious, scientific or eleemosynary organization which offers its services or facilities for free or at a nominal rate to the public in order to act in relief of the public burdens or for the advancement of the public good. This definition does not include any association whose benefits and benevolence are restricted to its members or to a particular person or donor, rather than to the public at large.

Art. VI 604. The public service of providing addiction support while collecting a nominal fee (in this case intended to secure overhead costs and teach residents responsibility) potentially qualifies the subject property as a Public Service Rooming House. H.T. 44:3-13; 8515-20. Waiving fees for such purposes helps advance the Department’s mission of ensuring the health of the residents of Allegheny County by lessening the financial burden on non-profit enterprises. However, to completely exempt these facilities from permitting requirements would essentially create a carve-out for certain facilities, effectively undermining the purpose of Article VI.

On September 29, 2021, after numerous inspections, the Department sent a letter warning Appellant that he was operating subject property in violation of the Section 611 permit requirements for rooming houses. The Remedy section of the Inspection Report directed Mr. Yocca to submit a rooming house application so that a plan review inspection could be conducted. Ex. D-3. The Department transmitted a subsequent Penalty Assessment letter on December 9, 2021. Ex. D-5. At no point did Mr. Yocca submit a plan to the Department in order to obtain a valid ACHD permit. H.T. at 51:19-23; Ex. D-3. Despite the numerous resources available to help

facilitate the plan review process, Mr. Yocca did not visit the ACHD website, look at the plan review packet, or call ACHD for assistance. H.T. at 51:19-52:11.

In his Notice of Appeal, Appellant does not argue that the subject property is operating in such a way that it does not meet the permitting criteria outlined in Article VI. Rather, he claims to be exempt under the Fair Housing Act due to the subject property's purported status as a "single-family residence." However, the aspects of the subject property that would exempt it from certain zoning requirements under the Fair Housing Act do not exempt it from the Article VI regulations at issue here. Appellant admits this in its own Notice of Appeal, which states:

The residence in question is a drug and alcohol recovery residence whose residents are protected under the Fair Housing Act as disabled people in recovery from Alcohol or Substance Use Disorder. Therefore, reasonable accommodations from ordinances, rules and regulations – *aside from health and safety rules directly related to maximum occupancy* – should be granted, including here.

Appellant's Notice of Appeal (*emphasis added*). The principal purpose of both permitting and the associated inspections undertaken pursuant to such permits is to ensure that there are no health and safety risks that may pose a risk to the occupants of these rooming houses. H.T. 62:1-3. The granting of such permits is contingent on a finding that the number of occupants does not exceed the total area of the property. This is to ensure that there are no health and safety issues related to overcrowding. These issues include problems with ventilation, fire safety, egress, sanitation, communicable diseases, as well as mental health considerations. H.T. 62: 4-17. The case law Appellant cites expressly excludes any exemption from the kinds of permitting requirements articulated in Article VI.

The reasoning for the distinction between the regulations enforced by the Department and zoning regulations is clear. That is, zoning laws look at a property in relation to the surrounding community and neighboring properties. The County's regulations, on the other hand, pertain to conditions inside the property, namely those impacting the health and safety of the people residing

therein. The United States Supreme Court recognizes this distinction in *City of Edmonds v. Oxford House, Inc.*, where it states in no uncertain terms that the Fair Housing Act does not exempt properties from health and safety regulations:

Rules that cap the total number of occupants in order to prevent overcrowding of a dwelling ‘plainly’ and unmistakably’...fall within [the Act’s] absolute exemption from the FHA’s governance; [but] rules designed to preserve the family character of a neighborhood, fastening on the composition of households rather than the total number of occupants living quarters can contain, do not.

514 U.S. 725, 735 (1995). While it is true that the trigger for the Article VI regulations on Rooming Houses involves an inquiry as to whether the occupants are related, the regulations themselves are so clearly aimed to prevent overcrowding that the controversy here is easily distinguishable from a zoning dispute. In case there was any doubt about whether Article VI permit requirements constitute exempted regulations related to occupancy, the Supreme Court in *City of Edmonds* further specifies that “Maximum occupancy restrictions” are those that

cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms; these restrictions ordinarily apply uniformly to all residents of all dwelling units and are intended to protect health and safety by preventing dwelling overcrowding.

Id. at 733. As stated above, one of the central purposes of the Department’s permitting requirements is to prevent overcrowding, meaning that it must take square footage and occupancy into account during the initial permitting process. H.T. 72:7-15 The Department may also issue penalties for violations of its “Habitable Room” regulations. Art. VI 645-646.

Although the Fair Housing Act does not control in this case, applying the law in such a way is very much in accordance with the spirit of the Fair Housing Act’s concept of reasonable accommodations. The Fair Housing Act requires that accommodations be offered to disabled persons if the accommodation is both (1) reasonable, and (2) necessary (3) to afford disabled persons an equal opportunity to use and enjoy housing. *Kennedy House, Inc. v. Philadelphia*

Com'n on Human Relations, 143 A.3d 476, 486 (Pa. Cmwlth. 2016); *Citing, Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Twp. of Scotch Plains*, 284 F.3d 442 (3d Cir.2002); *See also, Bryant-Woods Inn, Inc. v. Howard Cty., Md.*, 124 F.3d 597, 603 (4th Cir 1997). The accommodation Appellant seeks, namely exempting Mr. Yocca from ACHD's permit requirement, is not reasonable. It places the occupants at risk by preventing the Department from making the necessary safety inspections. Nor is it necessary, as obtaining a permit does not prevent it from using the subject property for its intended use. Furthermore, the "necessary" requirement is interpreted as "meaning that, without accommodation, the [complainant] will be denied an equal opportunity to obtain the housing of her choice." *Kennedy House, Inc*, 143 A.3d 476, 486, quoting *Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 749 (7th Cir.2006). To this point, denying a permit would equally impact those seeking to use the subject property as a recovery home in addition to those seeking to occupy it as a standard boarding house. Further, Appellant's failure to obtain a permit would require the Department to shut down the operation, thus causing current residents to find housing elsewhere. That is to say, "the proposed accommodation provides no direct amelioration of a disability's effect." *Kennedy House, Inc*, 143 A.3d 476, 486, quoting *Bryant Woods Inn*, 124 F.3d at 604.

III. Conclusion

It is crucial to recognize that these regulations and permit requirements do not exist to prevent individuals in recovery from living in a particular neighborhood. Rather, they exist to ensure the health and safety of the individuals living in these kinds of group homes by preventing overcrowding. ACHD has no problem with the operation of recovery homes. It finds the Appellant's apparent desire to help those who have struggled with substance abuse admirable, and in line with the Health Department's own mission and initiatives. This is why it needs to properly permit this facility and ensure that it is operating without risk of injury to those seeking treatment.

This position finds an abundance of support in the relevant case law, including that cited by Appellant. Appellant has not met its burden in showing that it should be exempt from these permitting requirements under the Fair Housing Act. Conversely, the Department has met its burden of demonstrating the criticality, and more importantly the legality of its permit requirements. Based on the foregoing, the Hearing Officer must dismiss Appellant's appeal and issue a decision and order in favor of the Department.

Respectfully Submitted,

/S/ Brendan Turley

Brendan Turley, Esq.
Attorney for the Appellee
PA ID: 326538
301 39TH Street, Bldg 7
Pittsburgh, PA 15201

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2022, I served a true and correct copy of the Allegheny County Health Department's Post-Hearing Brief on the following individual by electronic mail as follows:

Brian Gorman, Esq.
Southwestern Legal Aid
45 East Main Street, Suite 200
Uniontown, PA 15401
Tel.: (724) 225-6170
Email: brian.gorman@splas.org

/S/ Brendan Turley

Brendan Turley, Esq.
Attorney for the Appellee