

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE DECISION

RONALD YOCCA, : In Re: 828 Maple Avenue
: Turtle Creek, PA 15145
Appellant, :
: Docket no. ACHD-22-001
v. :
: Copies Sent To:
ALLEGHENY COUNTY HEALTH : *Counsel for Appellant:*
DEPARTMENT, : Brian V. Gorman, Esq.
: Southwestern Legal Aid
Appellee. : 45 East Main Street, Suite 200
: Uniontown, PA 15401
: *Counsel for ACHD:*
: Brendan Turley, Esq.
: 301 39th Street, Building 7
: Pittsburgh, PA 15201

DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH
DEPARTMENT HEARING OFFICER

I. INTRODUCTION

At issue in this case is whether a residence for men recovering from addiction is exempt from Health Department permitting requirements. Ronald Yocca (“Mr. Yocca”) is the Executive Director of the non-profit residence My Brother’s House (“MBH”), a property in Turtle Creek, PA for men recovering from drug and/or alcohol addiction.

Mr. Yocca argues that MBH does not need to comply with Allegheny County Health Department (“ACHD” or the “Department”) regulations concerning rooming house permits. Specifically, he contends that MBH is a single-family home rather than a rooming house, and that requiring MBH to apply for a rooming house permit would violate the Fair Housing Act.

The Department retorts that MBH is clearly a rooming house under applicable law, and that the Fair Housing Act allows local governments to impose reasonable regulations for purposes such as enforcing maximum occupancy limits and ensuring resident safety.

After reviewing the evidence and testimony from the hearing, the briefs submitted by the parties, and the applicable law, this tribunal holds that Mr. Yocca failed to prove by a preponderance of the evidence that MBH is exempt from ACHD permitting requirements. Mr. Yocca's appeal is therefore dismissed.

II. EVIDENCE

The following exhibits were introduced by the ACHD and admitted into evidence¹:

- D1: My Brother's House Membership Agreement
- D2: My Brother's House Website
- D3: Notices from ACHD to My Brother's House
- D4: Memorandum dated September 27, 2021
- D5: Letter dated December 9, 2021
- D6: History Report
- D7: Rooming House Application

III. FINDINGS OF FACT

The following facts are established:

- 1) Ronald Yocca ("Mr. Yocca") is the Executive Director of My Brother's House ("MBH"), a house for men recovering from drug and/or alcohol addiction, at 828 Maple Avenue in Turtle Creek, PA. (Hearing Transcript ("H.T.") at 12-13, 29, 38).
- 2) MBH has six bedrooms, which currently house five residents, but can accommodate up to seven residents. (H.T. at 13, 68).

¹ Mr. Yocca did not offer any exhibits into evidence.

- 3) Mr. Yocca personally screens each resident based on his experience and guidelines set by the Western Pennsylvania Association of Recovery Residences. (H.T. at 18-20).
- 4) In addition to shared goals—notably, but not exclusively, sobriety—residents share chores, food, meals, entertainment, and community activities. (H.T. at 14-15, 29-31).
- 5) Residents pay a monthly fee of \$450 to MBH for expenses. (H.T. at 31-32).
- 6) Lengths of stays for MBH residents vary but can sometimes last for several years. (H.T. at 18).
- 7) Mr. Yocca has not completed a rooming or boarding house application with the ACHD. (H.T. at 52).
- 8) On September 29, 2021, after several inspections, the Department sent Mr. Yocca a letter warning him that he was operating MBH in violation of ACHD permit requirements for rooming houses. The remedy section of this letter instructed Mr. Yocca to submit a rooming house application so that a plan review inspection could be conducted. (Ex. D3).
- 9) On December 9, 2021, the Department issued Mr. Yocca a notice of violation for failing to complete a rooming or boarding house application. (Ex. D5).
- 10) On January 7, 2022, Mr. Yocca filed a notice of appeal in this matter.

IV. DISCUSSION

A. Burden of Proof

A threshold issue in this case is which party bears the burden of proof. ACHD Rules and Regulations, Article XI (“Hearings and Appeals”), states in relevant part:

“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.”

Art. XI, § 1105.C.7.

The preponderance of evidence standard “is tantamount to a ‘more likely than not’ standard.” *Agostino v. Twp. of Collier*, 968 A.2d 258, 269 (Pa. Cmwlth. Ct. 2009) (citing *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Cmwlth. Ct. 2002)).

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 Servs.*, 936 A.2d 1218, 1227 (Pa. Cmwlth. Ct. 2007). In this case, Mr. Yocca admits that he did not obtain the required rooming house permit from the ACHD. (H.T. at 51; Ex. D3). Instead, he argues that MBH is exempt from this requirement under the Fair Housing Act, thus raising a new argument which, if true, would defeat the Department’s claim. The burden of proof therefore rests with Mr. Yocca to demonstrate by a preponderance of the evidence that the Fair Housing Act exempts him from the Department’s permitting requirement.

B. Relevant Regulations

The first regulation at issue here is Article VI of the ACHD’s Rules and Regulations (Housing and Community Environment) § 611(a), which requires a recovery home such as MBH to obtain a “Rooming House” permit to ensure its safe operation as a rooming house.

The other relevant regulation is Article VI § 604, which 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.”

C. MBH is a Rooming House, Not a Single-Family Home

Mr. Yocca’s initial argument is that MBH is a single-family home, not a rooming house, and is thus not subject to ACHD regulations concerning rooming houses. (*Appellant’s Brief* at 3-4). In support of his claim, Mr. Yocca notes that in determining whether a residence is a single-family unit, the Pennsylvania Supreme Court looks to “whether the unit functions as a family unit [and that] the composition of the group must be sufficiently stable and permanent so as not to be fairly characterized as purely transient.” *Albert v. Zoning Hearing Bd. of N. Abington Twp.*, 854 A.2d 401, 410 (Pa. 2004); *Slice of Life, LLC v. Hamilton Twp. Zoning Hearing Bd.*, 207 A.3d 886, 891 (Pa. 2019).

Mr. Yocca asserts that residents of MBH function as a family by living together, sharing chores, meals and expenses, and having a “shared mission to live a productive, clean and sober lifestyle.” (*Appellant’s Brief* at 4-5).

The Department counters by pointing to its definition of a Rooming House:

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.” ACHD Art. VI § 611(a).

The ACHD argues that MBH meet all of these criteria. (*ACHD Brief* at 3).

This tribunal concurs with the Department here. As the testimony in the hearing bore out, MBH contains six bedrooms with space for seven occupants, and

none of the four current residents are related by blood, marriage or adoption. (H.T. at 48, 68). MBH is clearly a rooming house, as that term is defined by ACHD regulations.

D. The Fair Housing Act Allows for ACHD Occupancy Regulations.

Mr. Yocca also argues that the ACHD requiring MBH to apply for and obtain a rooming house permit would violate the Fair Housing Act. (*Appellant's Brief* at 3). Specifically, Mr. Yocca argues that requiring MBH to apply for a rooming house permit constitutes unlawful housing discrimination against individuals with disabilities under the Fair Housing Act.² (*Appellant's Brief* at 5-9).

The Fair Housing Act “prohibits local governments from applying land use regulations in a manner that will exclude people with disabilities entirely from zoning neighborhoods, particularly residential neighborhoods, or that will give disabled people less opportunity to live in certain areas than people without disabilities.” *Lapid-Laurel, LLC v. Zoning Bd. of Adjustment of Scotch Plains Twp.*, 284 F.3d 442, 457 (3d Cir. 2002).

Mr. Yocca further quotes the Third Circuit’s opinion in *Lapid-Laurel*, emphasizing that the Fair Housing Act prohibits local governments from applying land use regulations that “will give disabled people less opportunity to live in certain neighborhoods than people without disabilities.” (*Appellant's Brief* at 8 (quoting *Lapid-Laurel*, 284 F.3d at 459-60)).

² The issue of whether drug and/or alcohol dependence constitutes a disability was not discussed either at the hearing or in the parties’ briefs. This tribunal does not take a position on that issue here.

The Department responds by drawing a distinction between its regulations and zoning regulations. In its brief, the ACHD explains, “[Z]oning 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[.]” (*ACHD Brief* at 5 (emphasis added)). The Department concludes that its 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.” (*Id.* at 7).

This tribunal finds that the Department has the stronger argument here. There is a clear distinction between zoning regulations, which compare a property to its neighboring community, and the applicable ACHD regulations, which cover the interior conditions of the property. While the Fair Housing Act prohibits discriminatory zoning regulations, it explicitly allows for “any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.” 42 U.S.C. § 3607(b)(1). As the regulations at issue here are clearly local regulations concerning maximum occupancy, the ACHD’s actions here are valid under the Fair Housing Act.

E. The ACHD’s Regulatory Actions are Justified.

The Department justifies its rooming house regulations by detailing how Article VI rooming house permitting requirements ensure that facilities like MBH are safe for occupation. The ACHD explains that the purpose of its permitting and

associated inspections is to “ensure that there are no health and safety risks that may pose a risk to the occupants of these rooming houses.” (*ACHD Brief* at 5). These health and safety risks include issues with fire safety, ventilation, egress, communicable diseases, sanitation, and mental health considerations. (*Id.*; H.T. at 62). The ACHD concludes that completely exempting facilities like MBH from permitting requirements would undercut the public health purpose of preventing overcrowding by “essentially create a carve-out for certain facilities, effectively undermining the purpose of Article VI.” (*ACHD Brief* at 4).

The Department also notes that the Fair Housing Act does not exempt properties from health and safety regulations. In *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995), the Supreme Court proclaimed, “Rules that cap the total number of occupants in order to prevent overcrowding of a dwelling plainly and unmistakably[...] fall within [the Fair Housing Act’s] absolute exemption from the FHA’s governance[.]” 514 U.S. at 735.

The ACHD asserts that its goal of preventing overcrowding through rooming house permits falls squarely within the Fair Housing Act’s allowance of local health and safety regulations that the Supreme Court illustrated in *Edmonds*. The Department states, “[O]ne 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 permitting process.” (*ACHD Brief* at 6).

Mr. Yocca does not contest the validity of the ACHD’s regulations. Rather, he contests that they don’t apply here because MBH “consists of disabled people who

are living as a family and must be granted a reasonable accommodation [under the Fair Housing Act] from the otherwise-applicable Health Department regulations.” (*Appellant’s Brief* at 9).

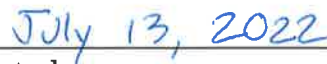
This tribunal sides with the Department here. The ACHD’s rooming house regulations are necessary to ensure occupant safety and to prevent overcrowding. Furthermore, as detailed in Section IV(D), above, the Fair Housing Act specifically allows for local regulations concerning maximum occupancy, which is what the ACHD’s rooming house regulations address.

V. CONCLUSION

Based on the evidence and testimony presented at the hearing, as well as the relevant Rules and Regulations, this tribunal finds that that Mr. Yocca failed to show by a preponderance of the evidence that My Brother’s House is exempt from ACHD Rules and Regulations requiring operators to obtain a rooming house permit. Mr. Yocca’s appeal is therefore dismissed. This administrative decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.



Max Slater
Administrative Hearing Officer
Allegheny County Health Department



Dated: