

ALLEGHENY COUNTY HEALTH DEPARTMENT

F&Y PROPERTIES, LLC,)	Docket No. ACHD-21-036
)	
Appellant,)	Re: 931 Woodward Avenue
)	Apartment 1/2
v.)	McKees Rocks, PA 15136
)	
ALLEGHENY COUNTY HEALTH)	
DEPARTMENT,)	
)	
Appellee.)	

F&Y PROPERTIES, LLC’S RESPONSE TO THE ALLEGHENY COUNTY HEALTH DEPARTMENT’S MOTION FOR RECONSIDERATION

F&Y Properties, LLC (“F&Y” or “Appellant”), by and through its attorneys, Andrew M. Gross, Esq. and Gross & Patterson, LLC, files this response to the Allegheny County Health Department’s (“ACHD” or “Appellee”) Motion for Reconsideration.

I. ACHD’S RULES AND REGULATIONS PROVIDE TWO OPTIONS FOR POST-HEARING RELIEF

The Allegheny County Health Department’s Rules and Regulations provide two methods in which post-hearing relief can be obtained. First, a party can apply for rehearing pursuant to Rule 1109. Second, a party can appeal to the Court of Common Pleas pursuant to Rule 1110. The Motion for Reconsideration filed by the Appellee does not constitute an application for rehearing or an appeal to the Court of Common Pleas. The issues Appellee raises constitute either abuse of discretion or an error of law claims committed by the Hearing Officer, which are both issues that should be raised on appeal.

Instead of citing to Rule 1109 or 1110 of the ACHD Rules and Regulations, Appellee cites to 42 Pa.C.S.A. § 5505 as grounds for reconsideration. However, 42 Pa.C.S.A. § 5505 allows a *court* to modify or rescind an order. Appellant does not believe the ACHD constitutes a “court” within the definition set forth in 42 Pa.C.S.A. § 102. This section defines a court to be “any one or more

of the judges of the court who are authorized by general rule or rule of court, or by law or usage, to exercise the powers of the court in the name of the court.” This definition does not extend to administrative hearings, such as the one before the Allegheny County Health Department. A judge is further defined in 42 Pa.C.S.A. § 102 as follows, “Includes a justice of the Supreme Court. Except with respect to the power to select a president or administrative judge, to appoint and remove the administrative staff of the court and to adopt rules of court and other similar matters, the term includes a senior judge.” It is clear from a plain reading of 42 Pa.C.S.A. § 5505 that it does not apply to the within proceeding. It is also telling that Appellee has not cited to any caselaw that suggests the 42 Pa.C.S.A. § 5505 applies to the within proceeding. Accordingly, Appellant requests that Appellee’s Motion for Reconsideration be denied.

Respectfully submitted,

/s/ Andrew M. Gross
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ORDER

AND NOW, to wit, this _____ day of _____, 2022, upon review of Appellee's Motion for Reconsideration and the Response of Appellant, it is hereby ORDERED that said motion is denied.

Max Slater, Esquire
Administrative Hearing Officer
Allegheny County Health Department