

ALLEGHENY COUNTY HEALTH DEPARTMENT
HEARING OFFICER

Mars Rooming House, : In re: 1502 Lincoln Ave
: :
Appellant : Docket No.: ACHD 23-007
: :
v. : :
: :
ALLEGHENY COUNTY HEALTH : :
DEPARTMENT : :
Appellee. : :

**APPELLEE ALLEGHENY COUNTY HEALTH DEPARTMENT'S
MOTION TO DISMISS**

AND NOW comes Appellee Allegheny County Health Department (“Appellee,” “ACHD,” or the “Department”) and files this Motion to Dismiss Appellant Mars Rooming House’s (“Appellant”) Notice of Appeal of Department’s Notice of Violation, and, in support thereof, presents as follows:

1. On November 23, 2022, Department transmitted a Notice of Violation (the “NOV”) to Appellant, apprising them of Violations of ACHD’s Article VI Rules and Regulations pertaining to Housing and Community Environment (“Article VI”) at a rooming house property located at 1502 Lincoln Ave Pittsburgh, PA 15206 (the “subject property”). Exhibit A.

2. The NOV alerted the Appellant that two Emergency violations existed and were to be corrected by November 29, 2022. The remaining violations were to be corrected by December 12, 2022. *See* Exhibit A.

3. At the follow up inspection on January 5, 2023, the two emergency violations were corrected. The Appellant received a letter dated January 6, 2023 that extended the compliance period until February 10, 2023, for the remaining violations. Exhibit B.

4. In response to the letter dated January 6, 2023, the Appellant filed a Notice of Appeal on January 18, 2023.

5. Section 1102 of Article XI of ACHD's Rules and Regulations pertaining to Hearings and Appeals defines "Action" as: "Any order, notice, decision, determination or ruling by the Department affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any person." Art. XI § 1102 "Definitions".

6. Section 1103 of Article XI defines the right to appeal, stating "Any person aggrieved by an **action** of the Department and who has a direct interest in such **action** may file a Notice of Appeal." Art. XI § 1103 "Right to Appeal" (emphasis added).

7. While not controlling on this tribunal, the Environmental Hearing Board for the Commonwealth of Pennsylvania ("EHB") has considered what constitutes agency action in their decision for the case *Frank T. Perano v. Commonwealth of Pennsylvania, Department of Environmental Protection*, 2011 WL 5825825 (Pa.Env.Hrg.Bd.).

8. In *Perano*, the EHB stated the following:

As a general rule, informal Departmental communications such as inspection reports, notices of violation (NOVs), and letters are not appealable. However, such communications may become subject to Board review in two ways: first, if they are the equivalent of a compliance order, and second, if they are the equivalent of a permit (or similar benefit) denial. A communication is the equivalent of compliance order if it requires the recipient to do something; it is prescriptive or imperative, not merely descriptive or advisory.

Id.

9. In the instant action, the Department's enforcement never progressed past the Notice of Violation. The Notice of Violation itself does not require any action on behalf of the Appellant – rather, it simply informs the tenant that a violation was found at inspection. *See*

Exhibit A and B. For this reason, the NOV is merely “descriptive or advisory,” and should not be considered an appealable “action” as defined by Article XI and the EHB. Because there was no “action” undertaken by the Department, the Notice of Appeal should be dismissed.

10. Further, Appellant’s Notice of Appeal should be dismissed because there is no active “case or controversy.”

11. Generally, a Court “will dismiss an appeal as moot unless an actual case or controversy exists at all stages of the judicial or administrative process.” *Consol Pennsylvania Coal Co., LLC v. Department of Environmental Protection*, 129 A.3d 28, 38-39 (Pa.Cmwlth. 2015) (quoting *Horsehead Resource Development Co. v. Department of Environmental Protection*, 780 A.2d 856, 858 (Pa.Cmwlth.2001)).

12. Such controversy must be real and affect a party “in a concrete manner so as to provide a factual predicate for reasoned adjudication, with sufficiently adverse parties to sharpen the issues for judicial resolution.” *Id.* (quoting *City of Philadelphia v. Southeastern Pennsylvania Transportation Authority (SEPTA)*, 937 A.2d 1176, 1179 (Pa.Cmwlth.2007)).

13. In the instant action, no such controversy exists. The Department’s enforcement against Appellant never progressed past the level of a Notice of Violation, and the Department is not actively pursuing any further action against the Appellant.

14. Further, the Department closed the case due to vacancy and a new operator. Thus, because there is no case or controversy that can be adjudicated, the Hearing Officer lacks jurisdiction to hear this appeal, and the Notice of Appeal should be dismissed.

15. Thus, the Notice of Appeal should be dismissed as the Department’s NOV is not an “action” within the definition of Article XI, and therefore is not appealable; and (2) there is no active “case or controversy” for the Hearing Officer to adjudicate.

Wherefore, Appellee respectfully requests that the Hearing Officer enter an order dismissing Appellant's Appeal.

Date: May 31, 2023

Elizabeth Rubenstein, Esq.
ACHD Assistant Solicitor
Attorney for Appellee
PA ID: 323254
301 39TH Street, Bldg 7
Pittsburgh PA 15201
Elizabeth.rubenstein@allegHENYcounty.us
(412)-578-8361

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Motion to Dismiss** was served by email and First-Class mail of Appellant this May 31, 2023 as follows:

Marilyn Haley
436 Hochberg Rd
Pittsburgh, PA 15235
marilynhaley4@gmail.com

Date: May 31, 2023

Elizabeth Rubenstein, Esq.
ACHD Assistant Solicitor
Attorney for Appellee
PA ID: 323254
301 39TH Street, Bldg 7
Pittsburgh PA 15201
Elizabeth.rubenstein@allegHENYcounty.us
(412)-578-8361

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

RH 12

Ms Marilyn Haley
Mars Rooming House
436 Hochberg Road
Pittsburgh PA 15235

November 23, 2022

RE : SR# HCE-20220106-1222

MARS ROOMING HOUSE

Property 1502 LINCOLN AVENUE #3A

Address : Pittsburgh, PA 15206

Census Tract : --

Dear Ms Haley:

An inspection of the property listed above was conducted on 11/22/2022 by Angela Wilson. The following violations of Article VI, "Housing and Community Environment," were verified at that time. Attached is an inspection report listing these violations.

2 Checked Emergency Class 1 violation(s) exist(s). A Class 1 violation is defined as a condition which poses a real and immediate threat to life, health and safety of the occupant. These violations are to be corrected by 11/29/2022 for checked emergency.

5 Class 3 violation(s) exist(s). A Class 3 violation is defined as a condition which represents an actual or potential health hazard or nuisance. These violations are to be corrected by 12/12/2022 .

3 Class 4 violation(s) exist(s). A Class 4 violation can contribute to substandard housing, but is not used to determine fitness for human habitation. These violations are to be corrected by 12/12/2022 .

The above conditions qualify the property as eligible for Rent Withholding. See attached eligibility letter.

Failure to comply will result in a complaint filed before the Magistrate and/or civil penalties. Under Section 660, should the dwelling become vacant prior to correction of these violations, the dwelling must be inspected and corrections verified by this Department prior to reoccupancy.

Pursuant to Article XI entitled "Hearings and Appeals," you are hereby notified that you have thirty (30) days after issuance of this written notice to file an appeal. The appeal shall be made in writing and must set forth with particularity all issues to be raised. The notice of appeal shall be submitted to the Allegheny County Health Department, Office of the Director, 542 4th Ave, Pittsburgh, Pennsylvania 15219. In the event that an appeal is not filed within thirty (30) days after issuance of this written notice, the within action shall become final.

If you have any questions, you may contact this office at (412)350-4046.

Sincerely,

Angela Wilson
Environmental Health Specialist II

AW:Kd

EXHIBIT A

m. FILE COPY

NOV 23 2022



DEBRA BOGEN, MD, FAAP, FABM, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
HOUSING & COMMUNITY ENVIRONMENT PROGRAM
3190 SASSAFRAS WAY (NEAR 32ND ST. AT LIBERTY AVE.)
PITTSBURGH, PA 15201-1443
PHONE: 412.350.4046 • FAX: 412.350.2792
WWW.ALLEGHENYCOUNTY.US/HEALTHDEPARTMENT





Housing & Community Environment

Inspection Report - Rooming Houses (priority)

SR#: HCE-20220106-1222

Facility : **MARS ROOMING HOUSE
ROOMING HOUSE (PRIORITY)
1502 Lincoln Avenue #3a, Pittsburgh 15206**

CT:

Inspection # 1

Ward: 112

Inspector : Angela Wilson

Inspection Date : November 22, 2022

Time : 10:00

Contacts :

Ms MARILYN HALEY Owner
MARS ROOMING HOUSE
436 Hochberg Road
Pittsburgh , PA 15235 - 0000

Listed below are the Article 6 violations that require corrective action:

761488 Section 629 A (035 O D) Class: 1

Violation Status : **FIRST** **EMERGENCY**

Violation : Inoperable furnace/boiler: heating season, winter conditions.

Remedy : Repair.

Level : No Specific Level Gen Location : Building Spec Location : None

761489 Section 629 B (001 O D) Class: 1

Violation Status : **FIRST** **EMERGENCY**

Violation : NO HEAT: majority of habitable rooms and bathroom(s) at 60 degrees Fahrenheit or less. (Outside temperature is 10 degrees Fahrenheit or above).

Remedy : Provide temperatures of at least 68 degrees Fahrenheit to dwelling.

Level : No Specific Level Gen Location : Building Spec Location : None

Comments : Inside temperature was 45 degrees fahrenheit at time of inspection. Outside temperature was 42 degrees fahrenheit at time of inspection

761484 Section 622 (021 O D) Class: 4

Violation Status : **FIRST**

Violation : Opening for plumbing access lacks cover.

Remedy : Provide secure access cover for plumbing.

Level : 2nd Floor Gen Location : Bathroom Spec Location : Wall

Comments : 2nd Floor bathroom. Violation remaining from 11/22/2021 inspection.



Housing & Community Environment

Inspection Report - Rooming Houses (priority)

SR#: HCE-20220106-1222

Facility : **MARS ROOMING HOUSE
ROOMING HOUSE (PRIORITY)
1502 Lincoln Avenue #3a, Pittsburgh 15206**

CT:

Inspection # 1

Ward: 112

Inspector : Angela Wilson

Inspection Date : November 22, 2022

Time : 10:00

761481 Section 622 (022 O D) Class: 3

Violation Status : **FIRST**

Violation : Water-stained/spongy wall(s).

Remedy : Repair any leaks, replace damaged section(s).

Level : 3rd Floor Gen Location : Hallway Spec Location : Wall

Comments : 3rd floor hallway wall severely water damaged and warped. Violation remaining from 11/22/2021 inspection.

761482 Section 622 (037 O D) Class: 4

Violation Status : **FIRST**

Violation : Missing suspended ceiling panel(s) or tile(s).

Remedy : Provide.

Level : No Specific Level Gen Location : Hallway Spec Location : Ceiling

Comments : Ceiling tile in hallway of 3rd floor missing.

Ceiling tile in hallway of 2nd floor missing.

Violation remaining from 11/22/2021 inspection.

761480 Section 623 (017 O D) Class: 3

Violation Status : **FIRST**

Violation : Missing or damaged baluster(s) in handrail or railing.

Remedy : Repair/install baluster(s) as needed.

Level : 3rd Floor Gen Location : Stairway Spec Location : None

Comments : Balusters missing in railing to 3rd floor



Housing & Community Environment

Inspection Report - Rooming Houses (priority)

SR#: HCE-20220106-1222

Facility : **MARS ROOMING HOUSE
ROOMING HOUSE (PRIORITY)
1502 Lincoln Avenue #3a, Pittsburgh 15206**

CT:

Inspection # 1

Ward: 112

Inspector : Angela Wilson

Inspection Date : November 22, 2022

Time : 10:00

761487 Section 628 A (040 O D) Class: 3

Violation Status : **FIRST**

Violation : Unapproved or improperly installed electrical convenience outlet(s).

Remedy : Replace with approved outlet(s).

Level : 3rd Floor Gen Location : Rooming Unit Spec Location : Wall

Comments : Outlets in room A read "OPEN NEUTRAL" using a 3-prong outlet tester

761483 Section 632 A (071 O D) Class: 4

Violation Status : **FIRST**

Violation : Toilet not secured to floor.

Remedy : Make secure.

Level : 3rd Floor Gen Location : Bathroom Spec Location : None

761486 Section 632 A (080 O D) Class: 3

Violation Status : **FIRST**

Violation : Broken shower/bathtub faucet(s) or knob(s).

Remedy : Replace.

Level : 3rd Floor Gen Location : Bathroom Spec Location : None

Comments : Right knob in shower broken

761485 Section 631 (003 O D) Class: 3

Violation Status : **FIRST**

Violation : No hot water to dwelling unit.

Remedy : Provide hot water of at least 110 degrees Fahrenheit to all fixtures as required.

Level : No Specific Level Gen Location : Building Spec Location : None



Housing & Community Environment

Inspection Report - Rooming Houses (priority)

SR#: HCE-20220106-1222

Facility : **MARS ROOMING HOUSE**
ROOMING HOUSE (PRIORITY)
1502 Lincoln Avenue #3a, Pittsburgh 15206

CT:

Inspection # 1

Ward: 112

Inspector : Angela Wilson

Inspection Date : November 22, 2022

Time : 10:00

----- END OF REPORT -----

All Inspections Verified by the Inspector :

Angela Wilson

RH 12

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

Ms Marilyn Haley
Mars Rooming House
436 Hochberg Road
Pittsburgh PA 15235

January 6, 2023

RE : SR# HCE-20220106-1222

MARS ROOMING HOUSE

Property 1502 LINCOLN AVENUE #3A

Address : Pittsburgh, PA 15206

Census Tract : --

Dear Ms Haley:

Based on the progress made on our last inspection of the subject property, an extension is being granted to complete repairs. Listed below are all the remaining violations. Please note the new compliance dates for each class.

4 Class 3 Violation(s) Remains.

These Violation(s) are to be corrected by : 02/10/2023

2 Class 4 Violation(s) Remains.

These Violation(s) are to be corrected by : 02/10/2023

Pursuant to Article XI entitled "Hearings and Appeals," you are hereby notified that you have thirty (30) days after issuance of this written notice to file an appeal. The appeal shall be made in writing and must set forth with particularity all issues to be raised. The notice of appeal shall be submitted to the Allegheny County Health Department, Office of the Director, 542 4th Ave, Pittsburgh, Pennsylvania 15219. In the event that an appeal is not filed within thirty (30) days after issuance of this written notice, the within action shall become final.

If you have any questions, please call me at (412)350-4046.

Sincerely,

Angela Wilson
Environmental Health Specialist

AW:Kd
Attachment

EXHIBIT B

FILE COPY
JAN 06 2023



DEBRA BOGEN, MD, FAAP, FABM, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
HOUSING & COMMUNITY ENVIRONMENT PROGRAM
3190 SASSAFRAS WAY (NEAR 32ND ST. AT LIBERTY AVE.)
PITTSBURGH, PA 15201-1443
PHONE: 412.350.4046 • FAX: 412.350.2792
WWW.ALLEGHENYCOUNTY.US/HEALTHDEPARTMENT





Housing & Community Environment

Inspection Report - Rooming Houses (priority)

SR#: HCE-20220106-1222

Facility : **MARS ROOMING HOUSE
ROOMING HOUSE (PRIORITY)
1502 Lincoln Avenue #3a, Pittsburgh 15206**

CT:

Inspection # 2

Ward: 112

Inspector : Angela Wilson

Inspection Date : January 4, 2023

Time : 13:00

Contacts :

Ms MARILYN HALEY Owner
MARS ROOMING HOUSE
436 Hochberg Road
Pittsburgh , PA 15235 - 0000

Listed below are the Article 6 violations that require corrective action:

763729 Section 622 (021 O D) Class: 4

Violation Status : **REMAINS**

Violation : Opening for plumbing access lacks cover.

Remedy : Provide secure access cover for plumbing.

Level : 2nd Floor Gen Location : Bathroom Spec Location : Wall

Comments : 2nd Floor bathroom. Violation remaining from 11/22/2021 inspection.

763726 Section 622 (022 O D) Class: 3

Violation Status : **REMAINS**

Violation : Water-stained/spongy wall(s).

Remedy : Repair any leaks, replace damaged section(s).

Level : 3rd Floor Gen Location : Hallway Spec Location : Wall

Comments : 3rd floor hallway wall severely water damaged and warped. Violation remaining from 11/22/2021 inspection.

763725 Section 623 (017 O D) Class: 3

Violation Status : **REMAINS**

Violation : Missing or damaged baluster(s) in handrail or railing.

Remedy : Repair/install baluster(s) as needed.

Level : 3rd Floor Gen Location : Stairway Spec Location : None

Comments : Balusters missing in railing to 3rd floor



Housing & Community Environment

Inspection Report - Rooming Houses (priority)

SR#: HCE-20220106-1222

Facility : **MARS ROOMING HOUSE
ROOMING HOUSE (PRIORITY)
1502 Lincoln Avenue #3a, Pittsburgh 15206**

CT:

Inspection # 2

Ward: 112

Inspector : Angela Wilson

Inspection Date : January 4, 2023

Time : 13:00

763732 Section 628 A (040 O D) Class: 3

Violation Status : **REMAINS**

Violation : Unapproved or improperly installed electrical convenience outlet(s).

Remedy : Replace with approved outlet(s).

Level : 3rd Floor Gen Location : Rooming Unit Spec Location : Wall

Comments : Outlets in room A read "OPEN NEUTRAL" using a 3-prong outlet tester

763728 Section 632 A (071 O D) Class: 4

Violation Status : **REMAINS**

Violation : Toilet not secured to floor.

Remedy : Make secure.

Level : 3rd Floor Gen Location : Bathroom Spec Location : None

763731 Section 632 A (080 O D) Class: 3

Violation Status : **REMAINS**

Violation : Broken shower/bathtub faucet(s) or knob(s).

Remedy : Replace.

Level : 3rd Floor Gen Location : Bathroom Spec Location : None

Comments : Right knob in shower broken

----- END OF REPORT -----

All Inspections Verified by the Inspector :

Angela Wilson