

ALLEGHENY COUNTY HEALTH DEPARTMENT
HEARING OFFICER

BRENDA TRAVILLION, : In re: 421 Lemon Street
: :
Appellant : Docket No.: ACHD 23-006
: :
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 Brenda Travillion’s (“Appellant”) Notice of Appeal of Department’s Notice of Violation, and, in support thereof, presents as follows:

1. On October 6, 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 certain leased property located at 421 Lemon Street, McKeesport, PA, 15132 (the “subject property”), at which Appellant had at one point resided. Exhibit A.
2. The Department later learned that Appellant no longer resided at the subject property and identified the correct tenant. *See* ACHD Memo dated 10/17/2022 attached hereto as “Exhibit B.”
3. On January 20, 2023, the Department received Appellant’s Notice of Appeal of the NOV. Exhibit C.
4. On January 26, 2023, the Department reinspected the property, and noted that all violations had been corrected. Exhibit D.

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. 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 found that the current tenant fixed the violative condition, and, as such, there is no ongoing enforcement related to the property. 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. Additionally, Appellant’s Notice of Appeal should be dismissed on two separate procedural grounds: (1) the appeal was not timely filed, and (2) the appeal is incomplete on its face.

16. Absent a showing of “fraud, deception, coercion, or duress,” Pennsylvania courts strictly apply time periods for filing appeals. *Riley Stoker Corp. v. Workmen's Compensation Appeal Bd.*, 308 A.2d 205, 206 (Pa. Commw. Ct. 1973) (quotations and citations omitted).

17. Failure to timely file an appeal deprives the tribunal of jurisdiction over the matter. The Commonwealth Court has opined that “It is well established that the failure to timely appeal an administrative agency’s action is a jurisdictional defect. The time for taking an appeal therefore cannot be extended as a matter of grace or mere indulgence.” *V.S. v. Dep’t of Pub. Welfare*, 131 A.3d 523, 527 (Pa. Cmwlth. Ct. 2015) quoting *J.C. v. Dep’t of Pub. Welfare*, 720 A.2d 193, 197 Pa. Cmwlth. Ct. 1998).

18. Failure to timely file an appeal prohibits a person from later appealing the same matter and issues. *Com., Dept. of Env’l Resources v. Wheeling-Pittsburgh Steel Corp.*, 348 A.2d 765, 766 – 67 (Pa. Commw. Ct. 1975) *affirmed in part, remanded in part by Com., Dept. of Env’l Resources v. Wheeling-Pittsburgh Steel Corp.*, Pa., July 8, 1977 (citations omitted).

19. ACHD Article XI, Section 1104A states: “The Notice of Appeal shall be filed no later than thirty (30) days after receipt of written notice or issuance of the action by which the Appellant is aggrieved.” Art. XI § 1104A.

20. Article XI, Section 1104D states that an agency action becomes final if an appeal is not perfected within the 30-day period following issuance of the action giving rise to the appeal. Art. XI § 1104D. Even if the NOV is considered a department “action”, this appeal must still be dismissed, because the “action” became final when it was not appealed within the 30-day period following its issuance.

21. In the instant action, the NOV was issued on October 6, 2022, and the Appeal was not filed with the Department until January 20, 2023, a period of over 100 days, and, therefore, was not timely filed. Art. XI §§ 1104A, 1104D.

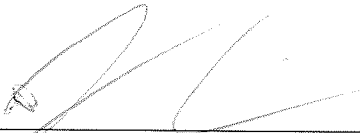
22. Lastly, Appellant's Notice of Appeal should be dismissed because it is incomplete on its face. Article XI, Section 1104 requires an appeal to contain the "names, addresses, and telephone numbers of the Appellant." Art. XI § 1104B.

23. Appellant's Notice of Appeal correctly identifies that Appellant no longer resides at the property. However, the Notice of Appeal does not provide an updated address and does not provide a telephone number or email address to allow the Department or the Hearing Officer to contact them. *Contra*. Art. XI § 1104B. The undersigned Counsel will attempt to perfect service of this motion at the last known address that the Department has on file for the Appellant, 421 Lemon Street, McKeesport, PA, 15132, with the hope that mail forwarding will ultimately deliver the motion. It may be appropriate to continue the hearing in this action to allow Appellant time to respond to this motion.

24. In summation, the Notice of Appeal should be dismissed for four separate reasons: 1) the Department's NOV is not an "action" within the definition of Article XI, and thus is not appealable; (2) there is no active "case or controversy" for the Hearing Officer to adjudicate; (3) the appeal was not filed in a timely fashion; and (4) the appeal is incomplete on its face.

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

Date: May 26, 2023



John Cronin, Esq.,

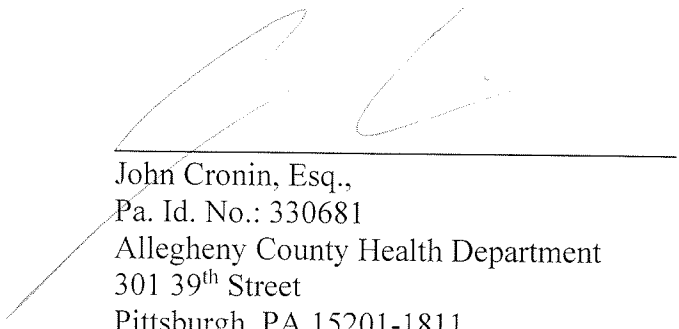
Pa. Id. No.: 330681
Allegheny County Health Department
301 39th Street
Pittsburgh, PA 15201-1811
Email: john.cronin@alleghenycounty.us
Telephone: (412) 578-2392

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Motion to Dismiss** was served by mail at the last known address of Appellant this 26th of May 2023 as follows:

Brenda Travillion
421 Lemon Street
McKeesport, PA, 15132

Date: 5/26/23



John Cronin, Esq.,
Pa. Id. No.: 330681
Allegheny County Health Department
301 39th Street
Pittsburgh, PA 15201-1811
Email: john.cronin@alleghenycounty.us
Telephone: (412) 578-2392

Ex. A

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

October 6, 2022

Ms Brenda Travillion
421 Lemon Street
McKeesport PA 15132

RE : SR# HCE-20220913-4259

Property 421 LEMON STREET
Address : McKeesport, PA 15132
Census Tract : 55513

Dear Ms Travillion:

An inspection of your residence was conducted on 10/04/2022 by inspector Currier Wolfe. The following violations of Article VI, "Houses and Community Environment," were verified at that time. Attached is an inspection report listing these violations.

1 Unclassed violation(s) exist(s). An Unclassed violation designates occupant, community environment, or vacancy violations. These violations are to be corrected by 11/10/2022 .

Failure to comply will result in a complaint filed before the Magistrate and/or civil penalties.

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,

Currier Wolfe
Environmental Health Specialist I

CW:Sb
Attachment

ALLEGHENY COUNTY
DEPT. OF ELECTIONS
22 DEC - 1 AM 11:33



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



Ex. B

To Whom it May Concern,

I'm writing this letter in response to the Unclassed Violation letter #SR HCE-20220913-4259, I received by way of mail forwarding to my current address..

I'm appealing, refuting and disputing any violations that occur at 412 Lemon Street Mckeesport PA, 15132 as my responsibility on the bases that I am no longer a tenant at this address and have not been a tenant since May 31, 2021.

Please redirect letter to the party/party's who may be responsible for this property.

Thank you

Brenda Travillion



ALLEGHENY COUNTY
DEPT OF ELECTIONS
22 DEC - 1 AM 11:33

RECEIVED
JAN 20 2023
BY: Director's Office

History Report

SR # HCE-20220913-4259**Old SR #**

421 LEMON STREET

Mckeesport, PA, 15132

CT: 55513

Event Description :

MEMO TO FILE

Event Date :

10/17/2022

Memo to File October 17,2022

Found old tenant, not current tenant. Mail was forwarded to old tenant who contacted us. Tenant has been removed from case and gave 2 possible numbers for owners that I will try to contact to find current tenant info. CW

Allegheny County Health Department **Ex. D**
Inspection Report

SR#: HCE-20220913-4259

West Nile

COMPLAINT

Property Address : **421 Lemon Street , Mckeesport 15132**

Inspection # 2 Census Tract : 55513 Property Type : (Single-Family Units)

Inspector : Eric Lindgren Inspection Date : January 26, 2023 Time : 11:35

Ms KIARA BROWNER Tenant
421 Lemon Street
MCKEESPORT , PA 15132 - 0000

All PREVIOUSLY CITED VIOLATIONS HAVE BEEN CORRECTED.

Comments :

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

All Inspections Verified by the Inspector : _____