

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

VIA EMAIL PDF AND FIRST-CLASS MAIL

3/24/2023

Re: ACHD's Motion to Dismiss 527 El Court appeal

Dear Mr. McGowan:

Enclosed with this letter, please find for your consideration the Department's motion to dismiss the appeal in the 527 El Court matter. A copy of this motion has been sent via First Class mail to the Appellants at the address listed in their appeal and their last known address.

Sincerely,

/s/ John Cronin

Assistant Solicitor

Allegheny County Health Department

Phone: 412-578-2392

cc: R.S.F. Investment Inc. via first class mail



PATRICK DOWD, ACTING DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
LEGAL SECTION

301 39TH STREET • CLACK HEALTH CENTER • BUILDING 7

PITTSBURGH, PA 15201-1811

PHONE (412) 578-8103 • FAX (412) 578-8144

24-HR (412) 687-ACHD (2243)

WWW.ALLEGHENYCOUNTY.US/HEALTHDEPARTMENT



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ALLEGHENY COUNTY HEALTH DEPARTMENT
HEARING OFFICER

R.S.F. Investment Inc. : In re: 527 El Court
: :
Appellant : Docket No.: ACHD 23-004
: :
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 R.S.F. Investment Inc.’s (“Appellant”) Notice of Appeal of Department’s Penalty Assessment, and, in support thereof, presents as follows:

1. On October 20, 2022, Department transmitted a Notice of Violation (the “NOV”) to Appellant, apprising it of violations of Article VI of the ACHD’s Rules and Regulations (“Article VI”), concerning certain leased property owned by Appellant and located at 527 El Court, Pittsburgh, PA 15208 (the “subject property”). *See* Exhibit A.

2. The NOV set a re-inspection date of October 27, 2022, for the emergency violations included therein and November 24, 2022, for all other noted violations. *See* Exhibit A.

3. On November 8, 2022, the Department sent Appellant a Penalty Assessment Warning (“PAW”) pertaining to the emergency violations noting that a November 7, 2022 follow-up inspection revealed the emergency violations had not been corrected. *See* Exhibit B.

4. The PAW stated that if the condition was not abated by November 15, 2022, a civil penalty would be levied. *See* Exhibit B.

5. On December 6, 2022, the Department sent Appellant a Penalty Assessment letter pertaining to the emergency violations and levied a penalty in the amount of \$6,036.00 against Appellant. *See* Exhibit C.

6. The Penalty Assessment letter specifically states that an aggrieved party has “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.” *See* Exhibit C.

7. On January 13, 2022, Appellant submitted its Notice of Appeal of the Penalty Assessment. *See* Exhibit D.

8. Section 1104 (D) of Article XI of ACHD’s Rules and Regulations pertaining to Hearings and Appeals states:

All actions of the Department shall become final thirty (30) days after receipt of written notice or issuance if no appeal has been perfected under the provisions of this Section.

Art. XI § 1104(D).

9. In this case, Appellant’s Notice of Appeal was received more than 30 days after the issuance of the penalty. As such, the appeal should be dismissed for lack to timeliness, as it was received after the Department’s action was final.

10. Alternatively, Section 1108.1 of Article XI of ACHD’s Rules and Regulations pertaining to Hearings and Appeals also states:

The Department, an appellee-intervenor, or the permittee in a third party appeal, may file a motion to dismiss the appeal. The Director or Hearing Officer shall evaluate motions to dismiss in the light most favorable to the appellant, and may only grant the motion against the appellant when there are no material facts in dispute and appellant is incapable of demonstrating a right to relief with respect to issues raised by the moving party.

Art. XI § 1108.1.

11. Further, Section 1104 of Article XI states:

The Notice of Appeal shall set forth with particularity the manner in which the Appellant is aggrieved by the action of the Department, the extent to which the Appellant has a direct interest in the action and the grounds for his or her appeal.

Art. XI § 1104(B).

12. 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.Cmwlt. 2015) (quoting *Horsehead Resource Development Co. v. Department of Environmental Protection*, 780 A.2d 856, 858 (Pa.Cmwlt. 2001)).

13. 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.Cmwlt. 2007)).

14. In the instant action, no such controversy exists, as Appellant’s notice of appeal does not state any grounds for appeal, as required by Article XI.

15. Specifically, Appellant’s notice of appeal states: “There have’nt [sic] been water to this property every [sic] since Feb of 2022...” *See* Exhibit D.

16. In its PAW [Exhibit B], the Department alleges violation of Section 630 of Article VI, which specifically states as follows:

Every dwelling unit and rooming house shall be supplied with piped running potable water provided in an adequate amount to every required fixture connected with the water supply and drainage system as provided in Section 615B. Every dwelling within two hundred and fifty (250) feet of a public water supply shall be connected to that public water supply.

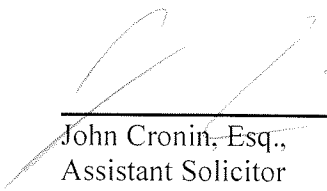
Art. VI § 630.

17. In the Department's inspection report, the Department specifically states: "No water supplied to dwelling unit." *See* Exhibit A. Appellant's notice of appeal states that no water has been supplied to the dwelling unit since February of 2022. *See* Exhibit D.

18. Thus, the Department and Appellant appear to agree to the underlying facts supporting the violation. Because the Appellant does not dispute the Department's findings in the investigation report and states no grounds for appeal, no controversy exists here.

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

Date: March 24, 2023



John Cronin, Esq.,
Assistant Solicitor
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 **APPELLEE ALLEGHENY COUNTY HEALTH DEPARTMENT'S MOTION TO DISMISS** was served by mail this 23rd day of March, 2023, as follows:

R.S.F. Investment LLC
c/o Alma Hicks
518 El Court
Pittsburgh, PA, 15208

and

R.S.F. Investment LLC
c/o Hersel Hezghia
5526 Soto Street
Vernon CA 90056

Date: March 24, 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

Exhibit A

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

October 20, 2022

R F S Investments Inc
C/O Hersel Hezghia
5526 S Soto Street
Vernon CA 90058

RE : SR# HCE-20220829-4138

Property 527 EL COURT
Address : Pittsburgh, PA 15208
Census Tract : 31304

Dear Sir/Madam:

An inspection of the property listed above was conducted on 10/18/2022 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.

1 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 10/27/2022 for checked emergency.

1 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 11/24/2022 .

4 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 11/24/2022 .

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

Angela Wilson
Environmental Health Specialist II

AW:Kd

Attachment

cc: Occupant

PHAB COPY

OCT 20 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



Allegheny County Health Department

Inspection Report - Complaint Housing

SR#: HCE-20220829-4138

Owner Violations

Property Address : **527 El Court , Pittsburgh 15208**

Inspection # 1 Census Tract : 31304 Property Type : (Multi-Family 19Units)

Inspector : Angela Wilson Inspection Date : October 18, 2022 Time : 14:00

Contacts:

Mr. DWIGHT DWYER Tenant
527 El Court
Pittsburgh , PA 15208

(412) 403-1371

R F S INVESTMENTS INC Owner
C/O Hersel Hezghia
1741 E 7th Street
Brooklyn , NY 11223

(917) 771-5841

R F S INVESTMENTS INC Owner
C/O Hersel Hezghia
5526 S Soto Street
Vernon , CA 90058

(323) 277-2941

R F S INVESTMENTS INC Owner
C/O Alma Hicks, Property Manager
7505 Hamilton Avenue
Pittsburgh , PA 15208

(412) 478-7725

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

No Specific Level

Apartment

Section 630 001 (O)(D)

Class 1

EMERGENCY

Location : None

Violation Status : **First**

Violation : No water supplied to dwelling unit.

Remedy : Provide piped, running, potable water to dwelling.

Below Ground Level

Basement

Section 628 A 068 (O)(S)

Class 4

Location : None

Violation Status : **First**

Violation : Missing coverplate on junction box(es).

Remedy : Provide coverplate.

Property Address : **527 El Court , Pittsburgh 15208**

Inspection # 1 Census Tract : 31304 Property Type : (Multi-Family 19 Units)

Inspector : Angela Wilson Inspection Date : October 18, 2022 Time : 14:00

Below Ground Level

Basement

Section 631 028 (O)(S)

Class 4

Location : None

Violation Status : **First**

Violation : Water heater lacks drip tube.

Remedy : Provide drip tube no higher than 6 inches above the floor.

Below Ground Level

Basement

Section 641 A 004 (O)(S)

Class 3

Location : None

Violation Status : **First**

Violation : No smoke detector(s) on each story within the dwelling unit, including basement or cellar.

Remedy : Provide single or multiple-station smoke detector on each story within the dwelling unit, including basement or cellar.

Comments : No smoke detector seen in basement

Below Ground Level

Basement

Section 624 027 (O)(S)

Class 4

Location : None

Violation Status : **First**

Violation : Exterior door(s) not weathertight.

Remedy : Repair, seal gaps.

Comments : Exterior basement door not weathertight, gaps around the bottom of the door.

2nd Floor

Bedroom, Right

Section 622 032 (O)(D)

Class 4

Location : Ceiling

Violation Status : **First**

Violation : Hole(s) in ceiling.

Remedy : Repair.

Property Address : **527 El Court , Pittsburgh 15208**

Inspection # 1 Census Tract : 31304 Property Type : (Multi-Family 19 Units)

Inspector : Angela Wilson Inspection Date : October 18, 2022 Time : 14:00

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

All Violations Verified by the Inspector : _____

Exhibit B

COUNTY OF



ALLEGHENY

• RICH FITZGERALD
COUNTY EXECUTIVE

R F S Investments Inc
C/O Hersel Hezghia
5526 S Soto Street
Vernon CA 90058

November 8, 2022

RE : SR# HCE-20220829-4138

Property 527 EL COURT
Address : Pittsburgh, PA 15208
Census Tract : 31304

Dear Sir/Madam:

Re: Violation of Section(s) 630 of Article VI Allegheny County Health Department Rules and Regulations entitled Houses and Community Environment at the above mentioned property.

You are hereby notified that you are in violation of Section(s) 630 of Article VI of the Allegheny County Health Department Rules and Regulations. Said violations, see inspection report dated 11/07/2022 occurred on or about 10/18/2022 and continue to the present time.

On behalf of the Director of the Allegheny County Health Department, it is hereby ordered that you shall abate the above situation by 11/15/2022. In the event that the condition is not abated by 11/15/2022, you are hereby notified that the Department is authorized to levy a civil penalty of up to \$10,000.00 for the violation of the within sections. In the event that violations are not corrected by the next compliance date, an additional civil penalty of up to \$2,500.00 per day may be levied.

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 regarding this matter, you may feel free to contact the undersigned at 412-350-4046.

Sincerely,

Jeff O'Brien
Environmental Health Supervisor
JOB:Kd
Attachment
cc: Occupant



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



Exhibit C

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

R F S Investments Inc
C/O Hersel Hezghia
5526 S Soto Street
Vernon, CA 90058

December 6, 2022

RE : Service Request # **HCE-20220829-4138**

Property Address : 527 EL COURT
Pittsburgh, PA 15208
Census Tract : 31304

Dear Sir/Madam:

Pursuant to our letter dated 11/08/2022 this shall serve as notice that a civil penalty in the amount of \$6036.00 was levied against you by virtue of the authority vested in the Director of the Allegheny County Health Department conferred by the Law of the Commonwealth of Pennsylvania. Said penalty shall be paid in the form of a cashier's check, certified check, or money order made payable to the "Environmental Health Fund."

This sum is to be paid within 30 days of the date of this letter to:
Allegheny County Health Department c/o Housing Program
542 4th Ave
Pittsburgh, Pennsylvania 15219

This penalty has been levied as a RESULT OF YOUR FAILURE TO TAKE ACTION specified in the letter dated 11/08/2022.

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.

Sincerely,

Jamie Sokol
Operations Manager
Housing & Community Environment Program

JS:Kd

Attachment

cc: Jason Willis, Esquire, ACHD Solicitor
Otis Pitts, Deputy Director, Food Safety, Housing, and Policy Bureau
Kim Joyce, Deputy Director, Administration



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



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Exhibit D



Notice of Appeal

This form is used to file an appeal of an order, notice, decision, determination, or ruling by the Allegheny County Health Department. Please complete this form (use additional pages as necessary). If more than one person or entity is filing this appeal, please attach a separate form for each additional appellant. **A copy of the order, notice, decision, determination, or ruling must be attached to the Notice of Appeal.**

Name R.S.F. Investment LLC
Mailing Address 518 - El Court
City Pgh State Pa Zip 15208 Email _____
Phone 412-478 7725 Fax (optional) _____

If you are represented by an attorney, please provide contact information for your attorney:

Name _____
Mailing Address _____
City _____ State _____ Zip _____ Email _____
Phone _____ Fax (optional) _____

Describe your objections to the Department's actions and a statement describing the relief you want the Hearing Officer to grant. *(The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Use additional pages if necessary.)*

There have not been water to this property every since Feb of 2022, And I have evidence from the water company also. there is not a permit for electricity on this house.

By filing this Notice of Appeal with the Allegheny County Health Department, I hereby certify that the information submitted is true and correct to the best of my information and belief.

Signature _____ Date _____

Appeals should be submitted in person or by mail to:
**Allegheny County Health Department
Attention: Hearing Officer
542 4th Avenue
Pittsburgh, PA 15219**

