

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Milari Madison  
Appeal Nos. 13-3, 13-7 and 14-2

Hearing Date: March 21, 2014

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

Ms. Milari Madison (Madison), a resident of Loudoun County, entered negotiations to purchase and have erected a modular home on her property at 40153 Janney Street, in or around the spring of 2011, with Integrity Building Systems (Integrity), a Pennsylvania-based manufacturer.

Construction drawings for the home, dated May 24, 2010, identify it as a custom two-story model and identify the builder/dealer involved in the project as Convenient Installation, from Ranson, West Virginia.

The home consisted of a number of units, or modules, which, in July of 2011, were delivered to the Madison site and installed upon a pre-erected foundation constructed by others for Ms. Madison.

During and after the erection of the home, Madison identified numerous problems. Convenient Installation, which had performed much of the work in setting the home, ceased involvement in the project, and Integrity allegedly went out of business. Madison contacted the Loudoun County Department of Building and Development (local building department) for assistance since a local building permit had been obtained for the project and Madison also contacted the Virginia Department of Housing and Community Development's State Building Codes Office (SBCO), the state agency responsible for administering the Virginia Industrialized Building Safety Regulations, which provides oversight of the modular home manufacturing industry.

In April of 2012, representatives of the local building department and the SBCO conducted a site inspection. In subsequent correspondence, the SBCO informed Madison it could not take any action due to Integrity being out of business.

Madison filed an appeal of the SBCO's determination to the Review Board and a hearing was held in March of 2013. The appeal was withdrawn by Madison at the hearing based on written assurances that Milton Home Systems, Inc. (Milton), a successor in name to Integrity, would fulfill Integrity's contractual obligations.

In March and July of 2013, Madison filed Industrialized Building Consumer Complaint forms with the SBCO outlining problems with the home and its installation. After investigation, the SBCO responded with decisions dated April 15 and September 23, 2013. Both decisions were appealed to the Review Board by Madison; the April 15th decision appeal being assigned Appeal No. 13-3 and the September 23rd decision appeal being assigned Appeal No. 13-7 by Review Board staff.

Review Board staff conducted informal fact-finding conferences in July of 2013 and January of 2014 to clarify the issues in the appeals. At the January 2014 conference it was noted that Madison had filed a third consumer complaint form concerning the length of the floor joists under the kitchen and an issue of the state seals on the home being applied prior to the home being approved by NTA, Inc., the third party compliance assurance agency used by the manufacturer for monitoring the construction of the home under the IBSR. The parties were informed that if the SBCO made a decision concerning those

issues and if Madison appealed those decisions, then that appeal would be heard at the same hearing before the Review Board which would be scheduled for Appeal Nos. 13-3 and 13-7. That did in fact occur and the third appeal was assigned Appeal No. 14-2 by Review Board staff.

Review Board staff compiled the record for the three appeals, distributed it to the parties, and the hearing before the Review Board was held with Madison and representatives of the SBCO and its legal counsel present.

### III. FINDINGS OF THE REVIEW BOARD

#### Appeal No. 13-3

The issue in this appeal is whether the SBCO should have issued any notices of violation under the IBSR to NTA, Inc.

Madison asserts that NTA, Inc. violated the IBSR by (i) permitting certification labels to be affixed to the modules of the home while violations of the IBSR existed, (ii) not resolving all complaints, (iii) not having installation instructions applicable to the home, (iv) failing to keep a list of certification labels issued, and (v) allowing inaccurate information to be on the manufacturer's data plate for the home.

Madison argues that both § 13VAC5-91-90 of the IBSR, which references the statutory language addressing violations of the

IBSR in § 36-83 of the Code of Virginia, and states in pertinent part that "any person, firm or corporation violating any provisions of this chapter shall be considered guilty of a misdemeanor[,] " and the sections of the IBSR addressing the authority of the SBCO as administrator of the IBSR require the SBCO to take action against NTA, Inc. by issuing a notice of violation and then pursuing prosecution if the violations are not remedied.

The SBCO argues that the statutory and regulatory scheme for the SBCO's enforcement of the IBSR is to compel manufacturers to correct any violations discovered, through prosecution, if necessary; however, the regulation of compliance assurance agencies is through the administrative procedures outlined in §§ 13VAC5-91-40 B and 13VAC5-91-180 through 13VAC5-91-200 of the IBSR, which requires the SBCO to approve compliance assurance agencies, to maintain a list of approved agencies and to require such agencies to submit assurances and documentation to the SBCO in the approval process.

The SBCO submits that as a result of Madison's complaints, it has initiated a review of the procedures NTA, Inc. used in the oversight of the construction of Madison's house and in the policies and procedures that NTA, Inc. has in place to serve as a compliance assurance agency for any manufacturer, and, that

NTA, Inc.'s approval as a compliance assurance agency may be revoked or suspended if warranted.

The Review Board finds that some of Madison's allegations relate to the actual construction of the home and have been determined by the Review Board to not be violations of the IBSR, as outlined in the findings of the Review Board under Madison's Appeal No. 13-7, below. With respect to other allegations in Madison's complaint involving procedures or actions of NTA, Inc. in their responsibilities as the compliance assurance agency for the manufacturer of Madison's home, the Review Board finds, as the SBCO argues, that the SBCO's use of the IBSR's administrative procedures for the review and continued approval of compliance assurance agencies is the proper application of the IBSR in response to Madison's complaint.

Appeal No. 13-7

In a number of complaints listed by Madison, a preliminary issue of whether the aspects of construction in question were subject to the IBSR or to the Virginia Uniform Statewide Building Code (USBC), as site work, was considered, since her appeal to the Review Board would be invalid if the SBCO had no enforcement authority concerning those aspects of construction. Madison would have to obtain decisions from the local building department on those aspects of construction in question and file

an appeal through the USBC's appeals procedures if disagreeing with such decisions of the local building department.

Accordingly, arguments were presented concerning whether the ISBR was applicable to those aspects of construction.

Madison argues that § 13VAC5-91-80 of the IBSR, which states that "[t]he manufacturer of a registered industrialized building shall not be required to remedy violations caused by on-site work by others not under his control or violations involving components and materials furnished by others and not included with the registered industrialized building[]" must be read inversely to say that the manufacturer is required to remedy on-site violations caused by any work under the control of the manufacturer and that the manufacturer is required to remedy violations involving any components or materials furnished by the manufacturer.

The SBCO argues that § 13VAC5-91-80 must be read in conjunction with § 13vac5-91-20 C, which addresses the general application of the IBSR and states in pertinent part that "[i]n accordance with § 36-99 of the Code of Virginia and in accordance with the USBC, the installation or erection of industrialized buildings and alterations, additions, or repairs to industrialized buildings are regulated by the USBC and not [the IBSR]" and in conjunction with § 13VAC5-91-100 C which addresses the duties and responsibilities of local building

officials and states in pertinent part that "[i]n accordance with § 36-99 of the Code of Virginia and the USBC, all site work associated with the installation or erection of an industrialized building is subject to the USBC."

The Review Board finds that the foregoing provisions of the IBSR may be read without conflict and provide that the local building official regulates all site work involved in the installation of an industrialized building under the USBC and may cite any responsible party but the manufacturer if the site work is not under the control of the manufacturer, and further that the local building official may not cite the manufacturer for violations of the USBC for site work involving components or materials not included with the industrialized building.

Accordingly, Madison's complaints concerning the panelized sunroom addition; the positioning of the modules on the foundation creating overhangs without blocking; the connection of the modules together; the lack of or improper installation of collar ties; the positioning of the hinged portions of the roof; and, the cutting of the roof rafters to create access to a storage space are all site work which is subject to the USBC and not the IBSR and Madison must address those issues with the local building department.<sup>1</sup>

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<sup>1</sup> These issues correlate with decisions made by the SBCO in the September 23, 2013 letter identified as response numbers 1, 3, 5, 9, 10, 11 and 12, respectively.



In the five remaining issues, Madison argues that certain aspects of the construction of her home do not meet the technical standards set out in the IBSR or that certain procedural requirements of the IBSR were not met. The SBCO argues that no violations of those technical standards exist and proper procedures were used. Both parties provided evidence and testimony to support their position.

The Review Board finds as follows:<sup>2</sup>

The size of the joist hangers on the first floor joists: End nailing of the joists was used in addition to the use of joist hangers which prevents the concern raised by Madison of rotation of the joists. No violation of the IBSR exists.

Placement of labels on the modules: The modules were red-tagged by NTA, Inc. until the plans were approved, which is an acceptable practice in the industry.

Correctness of the data plate: The data plate correctly matches the factory built modules and is not required to be altered due to modifications of the home made at the site. No violation of the IBSR exists.

Deviations from the plans and roof unevenness: Deviations from the plans involving the factory built modules were documented by NTA, Inc. and will remain with the records of the manufacturer. The roof unevenness does not indicate any structural or functional problem, so it is a contractual issue only. No violation of the IBSR exists.

Electrical service: The service panel and wiring for the factory built modules fully comply with the IBSR. Modifications to the system occurring at the site are subject to the USBC.

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<sup>2</sup> These issues correlate with decisions made by the SBCO in the September 23, 2013 letter identified as response numbers 4, 6, 7, 8 and 13, respectively.

Appeal No. 14-2

Madison argues that the floor joists in the kitchen floor are undersized and provides a letter from a Virginia-registered professional engineer. The SBCO relied on measurements and calculations performed by NTA, Inc., also submitted by a Virginia-registered professional engineer, in its determination that the joists comply with the IBSR.

The Review Board finds that the evidence confirms that the floor joist size and length comply with the 2009 edition of the International Residential Code, the technical standard referenced by the IBSR. Therefore, no violation of the IBSR is present.

Madison raised additional issues concerning the approval of the plans and the placement of the seals and labels on the home. The Review Board finds those issues to have been addressed in Appeal No. 13-3 and in the findings of the Review Board in this order.

IV. FINAL ORDER

Madison's appeals having been given due regard, and for the reasons set out herein, the Review Board orders the decisions of the SBCO to be, and hereby are, upheld.

/s/\*

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Chairman, State Technical Review Board

June 20, 2014

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Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are add to that period.