

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Janett Fisher Pakravan
Appeal No. 19-03

DECISION OF THE REVIEW BOARD

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 (§ 2.2-4000 et seq. of the Code of Virginia).

Case History

On January 25, 2019, City of Virginia Beach, Department of Housing and Neighborhood Preservation, (Virginia Beach), conducted an inspection of the property leased by Janett Fisher Pakravan, located at 309 Cedarwood Court 102 in the City of Virginia Beach. On January 28, 2019, in enforcement of the HUD Housing Quality Standards and Part III of the Uniform Statewide Building Code (Virginia Maintenance Code or VMC), Virginia Beach issued a Notice of Violation (NOV) to Ms. Pakravan. The NOV cited three violations of the VMC for Sections 605.1 Electrical components, 305.1 General, and 702.1 General; the NOV did not contain a statement of right of appeal.

Ms. Pakravan filed an appeal to the City of Virginia Beach Local Board of Appeals (local appeals board) in February of 2019; however, in a March 2019 letter, Virginia Beach informed Ms. Pakravan that the city would not pursue enforcement under the VMC but confirmed the cited

violation remained fully enforceable under the HUD Housing Quality Standards and that she could not appeal the cited violation under HUD's Housing Quality Standards to the local appeals board. Ms. Pakravan filed an appeal to the Review Board.

After review of Ms. Pakravan's application for appeal, Review Board staff contacted Virginia Beach to discuss the appeal; subsequently, a local appeals board hearing was conducted in August of 2019 where the appeal was denied due to lack of jurisdiction because the cited violations had been rescinded. On August 12, 2019 Review Board staff received a copy of the local appeals board decision; thus, began to process Ms. Pakravan's application for appeal to the Review Board.

A Review Board hearing was held on November 15, 2019. Appearing at the Review Board hearing for Virginia Beach were Robert Lee Etheredge, Randy Blake, Wells Freed and Kay Wilson, legal counsel. Ms. Pakravan did not attend; however, she was given proper notice of the hearing.

Findings of the Review Board

- A. Whether to dismiss the appeal as not properly before the Board since Virginia Beach rescinded the violations to the VMC, based on previous rulings of the Review Board which hold that no right of appeal exists where the violations have been resolved.¹

Virginia Beach argued that the appeal was not properly before the Review Board because the cited violations in the January 28, 2019 NOV were rescinded in the March 8, 2019 letter.

107.5 Right of appeal; filing of appeal application. *Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA.*

¹ See Review Board Case Nos. 14-11, 17-9, and 18-14. See also Review Board Case Nos. 98-8, 98-16, 00-2, 00-14, 03-3, 11-9&10, and 16-6.

The Maintenance Code clearly states that the right of appeal is for applications of the code and being aggrieved by those applications of the code. The Review Board consistently interpreted that the right to appeal is tied to applications of the code and the aggrievement by applications of the code.² In other words, without applications of the code or being aggrieved by applications of the code, there is no right to appeal.

When Virginia Beach rescinded the violations, which is the application of the code, it removed the application of the code. The removal of the application also ended whatever aggrievement there was against Ms. Pakravan. Therefore, without the cited violations there is no right to appeal. The Review Board finds that by rescinding the violations, Virginia Beach rescinded the application of the code. So, Ms. Pakravan no longer has a right to appeal in this case.

Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the appeal to be dismissed.

² *Id.*



Chairman, State Building Code Technical Review Board

Date entered: _____ January 24, 2020 _____

Certification

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 W. Travis Luter, Sr., Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.