

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

DEAN F. WILT,)
)
 Appellant,)
)
 v.)
)
 VIRGINIA DEPARTMENT OF HEALTH,)
)
 Appellee.)

IN THE APPEAL OF THE DECISION BY THE VIRGINIA DEPARTMENT OF HEALTH RE: Indemnification for Sewage System Failure of Lot 197, Eagle Cove, also known as 9312 West Oak River Drive, Matoaca, Virginia in Chesterfield County.

ORDER

Based upon the entirety of the record of this matter, including documents, imagery presentation, other evidence, oral testimony, argument and authorities offered by the parties pursuant to the January 17, 2007 hearing before the Sewage Handling and Disposal Appeal Review Board (the "Board") herein, the Board finds the following:

BACKGROUND

1. This case is an appeal of the award by the Virginia Department of Health ("Department") to Mr. Dean F. Wilt ("Wilt") for indemnification from the Onsite Sewage Indemnification Fund ("Fund").

2. Mr. Wilt is the owner of record of Lot 197, Eagle Cove, also known as 9312 West Oak River Drive, Matoaca, Virginia (“Property”). An onsite sewage disposal system (“System”) was installed on the Property and subsequently failed within three years of installation.

3. On January 17, 2007, Mr. Wilt appealed to the Board from the Department’s granting of an award of Nine Thousand Three Hundred and Thirty Dollars (\$9,330.00) from the Fund.

4. The Department stipulates the System failed within three (3) years of installation.

5. The Department stipulates Mr. Wilt filed a timely application for indemnification from the Fund within one (1) year of failure of the System.

6. The Department stipulates Department negligence caused the failure of the System within the contemplations of Virginia Code § 32.1-164.1:01.

APPLICABLE LAWS AND REGULATIONS

1. Va. Code § 32.1-164.1:01 established the Fund to receive monies generated by a portion of the fees collected by the Department pursuant to the permitting of onsite sewage disposal systems.

2. The purpose of the Fund is to assist any Virginia real property owner holding a valid septic tank permit when such owner’s system fails within three years of construction and the failure results from the negligence of the Department.

3. Pursuant to Va. Code § 32.1-164.1:01, the owner of the septic tank system permitted by the Department may request the Commissioner to review the circumstances of the onsite system failure and grant indemnification from the Fund if the septic system is permitted by the Department and it has failed within three years of construction.

4. Pursuant to the authority of Va. Code § 32.1-164, the Regulations of the Board of Health govern the collection, conveyance, transport, treatment, and disposal of sewage within the Commonwealth.

5. Under Va. Code § 32.1-164.1:01, the Commissioner of the Department of Health regulates the use and disbursement of monies in the Fund.

6. Regarding matters within the Board of Health's jurisdiction, Va. Code § 32.1-20 vests the State Health Commissioner with all the authority of the Board when it is not in session, subject to such rules and regulations as may be prescribed by the Board.

7. Pursuant to Va. Code § 32.1-164.1:01, the Sewage Handling and Disposal Appeal Review Board hears appeals from the denial of an application to the State Health Commissioner for indemnification from the Fund.

FINDINGS OF FACT

1. The System has failed.

2. Any warranty claims against the System manufacturer have been denied because of the failure of the System due to improper soil conditions as opposed to mechanical malfunction of defect.

3. Mr. Wilt submitted to the Department written proposals for the System repair.

4. The Department has evaluated Mr. Wilt's Application for Indemnification of September 7, 2005, and determined he does qualify for payment from the Fund.

5. The Board has determined that definitive and sufficient evidence has been presented to the Board for the failed System.

CONCLUSIONS OF LAW


1. The Board is authorized to determine whether a decision of the State Health Commissioner to refuse an application for indemnification from the Fund complies with the requirements of Va. Code § 32.1-164.1:01.

2. A majority of the Board, convened to consider this appeal, finds that the monetary financial caps imposed by the policy under GMP #123 are sufficient for the purposes of indemnification in this case.

3. The Board finds the Department's decision consistent with Va. Code § 32.1-164.1:01 because the amount awarded adequately indemnify Mr. Wilt for the cost of the System.

THEREFORE, for the foregoing reasons, the Board hereby upholds the Department's award of indemnification in the amount of \$9,330.00, and *remands* the case back to the Virginia Department of Health and *orders* the Commissioner of the Department to indemnify Mr. Wilt in accordance with this Order in the amount of Nine Thousand Three Hundred and Thirty Dollars (\$9,330.00) and pay said amount forthwith.

If the Appellants wish to appeal this ORDER, they may do so pursuant to Virginia Code §§ 2.2-4000, et seq. and the Rules of the Supreme Court of Virginia by: (1) filing a Notice of Appeal with the Secretary of the Board within thirty (30) days of receipt of this ORDER as required by Rule 2A:2; and (2) filing a Petition for Appeal in the Circuit Court within (30) days of filing the Notice of Appeal in accordance with Rule 2A:4 of the Rules of the Supreme Court of Virginia.



Steven K. Thomas
Chairman

Dated: 2-22-07