

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

DOUGLAS and CHERI TURNER,)
)
 Appellants,)
)
 v.)
)
 VIRGINIA DEPARTMENT OF HEALTH,)
)
 Appellee.)

AMENDED ORDER

This matter comes before the Sewage Handling and Disposal Appeal Review Board (“Board”) pursuant to Virginia Code § 32.1-164.1:01 and § 2.2-4000, et seq. Based upon the entirety of the record of this matter presented at the February 24, 2010, hearing, the Board finds as follows:

PROCEDURAL MATTERS

On February 11, 2010, the Virginia Department of Health (the “Department”) filed a Motion to Dismiss Douglas and Cheri Turners’ (“the Turners”) appeal of the State Health Commissioner’s denial of an indemnification award. The Department based this motion on two grounds: 1) the Turners are no longer owners of the real property upon which the failed sewage systems exist; and 2) the Turners sold their home in 2007 for a profit of \$284,039.00.

At the hearing held on February 24, 2010, the Chairman of the Board denied the Motion to Dismiss and found: 1) that the Turners were the owners of the real property

and filed an application for indemnification during the period of time that is relevant for statutory purposes, and 2) that any alleged profit from the sale of the Turners' home is irrelevant.

FINDINGS OF FACT

1. This case is an administrative appeal of the decision of the Commissioner for the Department to deny an indemnification award, pursuant to Virginia Code § 32.1-164.1:01, to the Turners. Cheri Turner appeared at the February 24, 2010 hearing without counsel, and the Department was present with counsel. Both parties presented testimony, documentary evidence and argument.

2. The Turners were at all times pertinent to this matter the owners of 9095 Groundhog Lane, Marshall, Virginia in Fauquier County (the "Property").

3. The Turners moved into their new home on the Property in March 2000. A sewage disposal system was installed by an independent contractor, and an operation permit was granted by the Fauquier County Health Department ("FCHD") on March 23, 2000.

4. The Turners noticed wet spots and standing effluent in their back yard beginning in March 2002. Several representatives from the FCHD visited the Property over the course of the following several months, and FCHD issued a repair permit for the existing sewage disposal system on June 10, 2002. The sewage disposal system was replaced, but the new system continued to present problems, and FCHD representatives visited the Property several additional times to try and determine the problem.

5. FCHD issued a second repair permit for the second sewage disposal system on February 20, 2004, and a third sewage disposal system was installed on the Property.

6. The third system also failed, and FCHD conducted tests of the soils on the Property, which revealed that each sewage disposal system was installed incorrectly and that they should not have been permitted as they were by the FCHD.

7. The evidence further indicated that the sewage system failed within three (3) years of their permits.

8. The Turners replaced the failed sewage systems at a total cost of \$3,988.00 and attorneys' fees of over \$1,100.00.

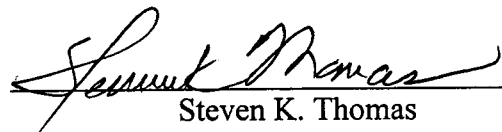
CONCLUSIONS OF LAW

9. The Board is authorized to determine whether a decision of the State Health Commissioner to refuse payment from the indemnification fund complies with the requirements contained in Va. Code § 32.1-164.1:01.

10. Because there was evidence of negligence on the part of the Department in permitting the Turners' sewage disposal systems without a proper inspection, the Board grants the Turners' request for indemnification and orders payment to Douglas and Cheri Turner in the amount of \$1,994.00 and \$550.00 for a total amount of \$2,544.00.

WHEREFORE, for the foregoing reasons, the Board hereby *overturns* the decision of the State Health Commissioner to deny any indemnification award to Douglas and Cheri and grants the Turners' request for indemnification.

If the Appellants wish to appeal this ORDER, they may do so pursuant to Va. 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 service 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: March 30, 2010