

VIRGINIA:

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

MELISSA D. SCIANNA,)
)
 Appellants,)
)
 v.)
)
 VIRGINIA DEPARTMENT OF HEALTH,)
)
 Appellee.)

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 May 11, 2011 hearing, the Board finds as follows:

FINDINGS OF FACT

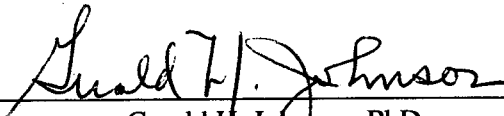
- This case is an administrative appeal of the decision of the State Health Commissioner for the Virginia Department of Health (“Department”) to deny an indemnification award, pursuant to Virginia Code § 32.1-164.1:01, to Melissa D. Scianna. Ms. Scianna appeared at the May 11, 2011 hearing with counsel, and the Department was present with counsel. Both parties presented testimony, documentary evidence and argument.
- Ms. Scianna is the current owner of Lot 13, Block I, Section E, Physic Hill Subdivision located in Chesterfield County, Virginia with a physical address of 14441 Rosebud Road, Chesterfield, Virginia (the “Property”).
- Prior to Ms. Scianna’s ownership of the Property, on August 26, 2003, the Chesterfield County Health Department (“CCHD”) approved a sewage system on the Property.
- The prior owner of the Property made adjustments to the sewage system, and it was returned to proper, normal function in March 15, 2004.
- Ms. Scianna purchased the Property on April 16, 2004.
- Ms. Scianna first contacted CCHD about her sewage system’s failure to work properly in March 2008. However, the evidence indicated that the sewage system was actually not working properly from about the time Ms. Scianna purchased the Property in 2004.
- Ms. Scianna requested indemnification from the Department’s indemnification fund on May 14, 2009.
- The evidence demonstrated that the sewage system on the Property failed within three (3) years of its construction.
- The evidence further indicated that Ms. Scianna failed to file a request for indemnification with a year of the date of the sewage system’s failure.

CONCLUSIONS OF LAW

- 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.
- Because Ms. Scianna failed to file a request for indemnification from the Department within one year of the sewage system's failure, the Board denies Ms. Scianna's request for indemnification.

WHEREFORE, for the foregoing reasons, the Board hereby *upholds* the decision of the State Health Commissioner to *deny* any indemnification award to Melissa D. Scianna.

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.



Gerald H. Johnson, PhD.
Chairman

Dated: June 2, 2011

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