

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-451

Erskine E. Chaffin,)
Appellant)
v.)
City of Springfield,)
Appellee)

BOARD'S RULING ON APPEAL

This matter came before the State Building Code Appeals Board ("Board") on Appellant's appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellant has petitioned the Board to grant him relief from 780 CMR §§121 *et seq.* of the Sixth Edition of the Massachusetts State Building Code ("Code"). For the following reasons, this appeal is hereby **DISMISSED**.

Analysis

The Appellant, Erskine E. Chaffin ("Chaffin"), petitioned the Board to prevent the Appellee, City of Springfield, from demolishing his building located at 208-210 Hancock Street, Springfield, MA ("the structure"). He also requested that the Board allow him to keep the original building permit that was issued for the property in effect so that he may improve the structure. This appeal is now dismissed as this Board does not have jurisdiction over this matter. Pursuant to G.L. c.143, §10, the proper venue for appeal of the issues raised by this case is to the superior court. In fact, prior to filing the present appeal, Chaffin actually did appeal this matter to the superior court. Apparently dissatisfied with the result of that case, he now seeks relief from this Board. This Board declines to entertain this attempted forum shopping.

A review of the documentation submitted by Chaffin with his appeal application form reveals the following facts. On December 13, 2006 the Springfield Structural Survey Board recommended that the structure be demolished as it was dangerous to life and limb. On December 19, 2006 an Order of Condemnation was issued for the structure by Steve Desilets ("Desilets") the Springfield Building Commissioner. On December 21, 2006, Desilets sent a letter to Chaffin ordering that the structure be demolished. On January 17, 2007, Chaffin filed a motion for a preliminary injunction at the Hampden County Superior Court. The motion was filed pursuant to G.L. c.143, §9 and G.L. c.139, §2. After Chaffin was given an opportunity to rectify the situation and failed to do so, the judge denied the motion. On June 12, 2007, Desilets issued a Stop Work Notice for the structure, revoked the outstanding building permit, and ordered that demolition of the structure be commenced. The instant appeal was filed with the Board on June 29, 2007.

The demolition order at issue in this case was issued pursuant to G.L. 143, §9. A cursory review of the documentation indicates that the city appears to have complied with all of the requirements of G.L. c.143, §§6-9 in issuing the order. Regardless, it is not this Boards function to make that determination. Pursuant to G.L. c.143, §10 and G.L. c.139, §2, a person aggrieved by a destruction order of the sort at issue in this case may appeal to the superior court. The appeal is not to this Board. To find otherwise would be to give the appellant an unwarranted second bite at the apple.

The fact that the Building Code has restated G.L. c.143, §§6-10 in its own pages in the form of 780 CMR 121.0 does make the Building Code Appeals Board the proper venue for an appeal of a destruction order. Those provisions are laid out in the Code solely for ease of reference. Additionally, 780 CMR 121.6 makes clear that the appeals route in cases driven by section 121 orders remains in superior court.

Conclusion

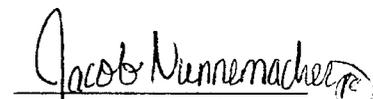
A motion was made by Brian Gale and seconded by Jacob Nunnemacher that for the forgoing reasons the appeal be dismissed. By unanimous vote, the appeal is hereby **DISMISSED.**¹



Brian Gale



Robert Anderson



Jacob Nunnemacher

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws.

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: October 23, 2007



Patricia Barry, Clerk

¹ The Board declines to address the issue raised relative to the revocation of the building permit as it is rendered moot by the existence of the destruction order.

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the recording are available from the Board for a fee of \$10.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

Patricia Barry, Coordinator
State Building Code Appeals Board
BBRS/Department of Public Safety
One Ashburton Place – Room 1301
Boston, MA 02108