

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARING

CHURCHILL COMMUNITY DEVELOPMENT, LP; RAMESH JAIN; VIKAS JAIN; PARADIGM CONSULTANTS, LLC,	:	In Re: 1310 Beulah Road Buildings #401 and 501 Churchill, PA 15235
Appellants,	:	<u>Copies Sent To:</u>
v.	:	<i>Counsel for Appellants:</i>
ALLEGHENY COUNTY HEALTH DEPARTMENT,	:	Maurice A. Nernberg, Esq.
Appellee.	:	MAURICE A. NERNBERG & ASSOCIATES
	:	301 Smithfield Street
	:	Pittsburgh, PA 15222
	:	
	:	<i>Counsel for ACHD:</i>
	:	Jason K. Willis, Esq.
	:	301 39 th Street, Building 7
	:	Pittsburgh, PA 15201

I. INTRODUCTION

On August 7 and 29, 2017, a two-part administrative hearing was held in this matter to address whether Appellants¹ have the ability to post the assessed civil penalty issued by the Allegheny County Health Department (“ACHD”) before a ruling on the merits of their appeal. During this hearing, the parties objected to the admissibility of several or each other’s exhibits. The parties agreed to brief the admissibility (or lack thereof) of the exhibits. The ACHD objected to the admission of Appellants’ exhibits A10 (a financial statement prepared for the Jains) and A13 (a bond denial letter).

¹ Throughout this Administrative Decision, Churchill Community Development, LP, Ramesh Jain, Vikas Jain, and Paradigm Consultants, LLC are collectively referred to as “Appellants.” Ramesh Jain and Vikas Jain are collectively referred to as the “Jains.”

Appellants objected to the admission of ACHD exhibits D9 (a spreadsheet calculating the civil penalty), D10 (ACHD’s summary of Appellants’ assets), D11 (ACHD’s summary of Appellants’ properties), and D12 (Indipay² results).

After reviewing the briefs and the disputed exhibits, I find that exhibits D9, D12 and the portions of D10 and D11 that are not based on property assessment³ or appraisal⁴ values are **ADMITTED**. Exhibits A10, A13 and the portions of D10 and D11 that are based on assessment or appraisal values are **EXCLUDED**.

II. DISCUSSION

a. Legal Standard

In administrative proceedings, the rules of evidence are more relaxed than they would be in Pennsylvania or federal courts. *See* 2 Pa.C.S.A. § 554 (“Local agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonably probative value may be received.”).

However, Pennsylvania courts have held that in administrative proceedings, hearsay evidence is not competent evidence if it is properly objected to. In *Walker v. Unemployment Comp. Bd. of Review*, a case relied on by both sides, the Commonwealth Court ruled that in an administrative proceeding, “(1) Hearsay evidence, properly objected to, is not competent evidence to support a finding of the

² Indipay is a model used by the U.S. Environmental Protection Agency to determine a party’s ability to pay a civil penalty.

³ Under Pennsylvania law, property assessment values are generally inadmissible hearsay. *See Mehalic v. Westmoreland County Tax Claim Bureau*, 534 A.2d 157 (Pa. Cmwlth. Ct. 1987) *infra* p.5.

⁴ Appellants own several properties in Mississippi, and the term “appraisal” has the same meaning under Mississippi law as “assessment” does under Pennsylvania law. *See, e.g.,* Miss. Code Ann. § 27-1-23; *see also Appellants’ Brief* at 2 n. 2.

[fact-finder]; (2) Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding of the [fact-finder], if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand.” *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. Ct. 1976) (citations omitted).

b. Appellants’ Exhibits:

A10: A10 is a financial statement prepared for the Jains by “Clark Shaefer Hackett: CPAs & Business Consultants.” At the Hearing, the ACHD objected to the financial statement’s admissibility on hearsay grounds. The ACHD argues that A10 “fails to contain any signatures and fails to identify any individual who prepared the document.” (*ACHD Brief* at 2). Appellants counter that the financial statement is admissible because “Ramesh Jain testified that he provided all the information for the statement and that it was true and correct and verified by him.” (*Appellants’ Brief* at 4).

The problem with Appellants’ argument is that they do not address the underlying issue: the fact that the person or persons who prepared the financial statement were not available to testify to its accuracy and be subject to cross-examination. Although Ramesh Jain was the recipient of the financial statement, he did not prepare it. Therefore, I will exclude D10 as inadmissible hearsay.

A13: A13 is a bond denial letter sent to Vikas Jain from the Jains' longtime insurance agent. Appellants admit that A13 is hearsay. (*Appellants' Brief* at 4). Therefore, I will exclude A13.

c. ACHD's Exhibits:

D9: D9 is a spreadsheet calculating the civil penalty assessed against Appellants, prepared by Shannon Sandberg, an Air Quality Engineer III for the ACHD. At the Hearing, Ms. Sandberg testified as to the methodology for how she calculated the penalty assessment. She explained her reasoning behind the numerical values on the spreadsheet. She also described how she determined the "Calculation of Economic Benefit" of alleged non-compliance with ACHD asbestos regulations, using contractor estimates for removal of asbestos-containing tile and insulation. (*ACHD Brief* at 3).

Appellants objected to the admission of the penalty calculation spreadsheet that Ms. Sandberg prepared on the grounds that it lacked a foundation. But Ms. Sandberg provided sufficient foundation for her findings. She explained the numerous codes inputted into her spreadsheet and how she applied these codes based on her first-hand observations. Although Appellants may question (and have questioned) the accuracy of Ms. Sandberg's calculations and findings, it is clear that she established a sufficient foundation for them. Therefore, I will admit Exhibit D9.

D10 and D11: D10 is the ACHD's summary of Appellants' assets. D11 is the ACHD's summary of Appellants' properties. Appellants object to the admission of

D10 and D11, arguing that the ACHD's calculations are based on assessed value, and are therefore hearsay. (*Appellants' Brief* at 3). Appellants contend that these asset and property summaries thus "cannot be considered in the decision of whether the Jains can pay the penalty in order to appeal." (*Id.*). In support of their argument, Appellants cite *Mehalic v. Westmoreland County Tax Claim Bureau*, 111 Pa. Commonwealth Ct. 398, 534 A.2d 157 (Pa. Cmwlth. Ct. 1987) for the proposition that a property's assessed valuation is hearsay. (*Appellants' Brief* at 2-3).

In *Mehalic*, the Commonwealth Court held that a property's assessed valuation "is clearly hearsay," and "represent[s] nothing more than *ex parte* statements of the opinion of the assessor." 111 Pa. Commonwealth Ct. at 402 (citing *Girard Trust Co. v. Philadelphia*, 93 A. 947, 948 (Pa. 1915)).

I concur. A property assessment meets the definition of hearsay in Pennsylvania, in that it is a statement "(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Pa. R.E. 801. Here, the property values from the county's assessment website are hearsay because the assessor did not testify at the hearing, and the property values are used to prove the truth of the matter asserted—the value of the property.

The ACHD counters Appellants' hearsay argument by citing the Supreme Court of Pennsylvania's decision in *Deitch Company v. Board of Property Assessment, Appeals and Review of Allegheny County*, 209 A.2d 397 (Pa. 1965) for the proposition that assessments may be admissible evidence. (*ACHD Brief* at 7-8).

In *Deitch*, the Supreme Court held that in assessment proceedings, “the taxing authority presents its record into evidence. Such presentation makes out a *prima facie* case for the validity of the assessment in the sense that it fixes the time when the burden of coming forward with evidence shifts to the taxpayer.” 209 A.2d at 402.

The problem with the ACHD’s argument is that the evidentiary procedure described in *Deitch* is restricted to assessment appeals, not administrative proceedings like this one. The Commonwealth Court in *Mehalic* distinguished assessment appeal cases such as *Deitch*, in which property assessments could be admissible evidence, from other types of cases in which these assessments would be considered hearsay. *Mehalic*, 111 Pa. Commonwealth Ct. at 401.

The ACHD, however, does make a strong point that even if the assessment values are inadmissible, the rest of Exhibits D10 and D11 should still be admitted because not all the values are attributable to assets found in the county’s property records. (*ACHD Brief* at 8-9). Therefore, I will redact the portions of D10 and D11 that reference or are based on county-assessed values, and admit the remainder of these documents.

D12: D12 is a document containing the results of the Indipay calculation performed by Dean DeLuca, ACHD’s Air Quality Enforcement Chief. Appellants contend that D12 is inadmissible because it was based on inadmissible property assessment values from D10 and D11. (*Appellants’ Brief* at 3).

But as Mr. DeLuca testified, Indipay results are not based on the assessed value of a party's property. Rather the results are based on tax returns that the Appellants provided. Although Appellants question (and have questioned) the accuracy of Mr. DeLuca's calculations, I find that they are admissible, as they are not based on hearsay.

III. CONCLUSION

For the reasons discussed above, Exhibits D9, D12 and the portions of D10 and D11 that are not based on assessment or appraisal values are **ADMITTED**, and Exhibits A10, A13 and the portions of D10 and D11 that are based on assessment or appraisal values are **EXCLUDED**.

_____/s/_____

Max Slater
Administrative Hearing Officer
Allegheny County Health Department

September 15, 2017

Dated: