



COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF HOUSING, BUILDINGS AND CONSTRUCTION
ADMINISTRATIVE ACTION NO. 2015-0032-FM

DEPARTMENT OF HOUSING, BUILDINGS
AND CONSTRUCTION

COMPLAINANT

V.

FINAL ORDER

BRIAN CARTER

RESPONDENT

PROCEDURAL BACKGROUND

This case is an appeal of an emergency order issued by the State Fire Marshall requiring that property owned by Respondent (hereinafter "Carter") and located at 426 Main Street, Hazard, Kentucky, be vacated by its occupants until Respondent corrects conditions violating the Kentucky Building Code (815 KAR 7:120), Kentucky Standards of Safety (815 KAR 10:060), and applicable codes adopted thereunder, including various codes and standards of the National Fire Protection Association (NFPA) that were cited in the emergency order.

The emergency order to vacate was issued on June 18, 2015. The order made findings of fact identifying fifty (50) conditions that the State Fire Marshall determined make the structure at 426 Main Street a distinct fire hazard. A separate order requiring Carter to remedy those conditions also was entered, but that order was not appealed in this case.

Under 815 KAR 10:060, Section 1(2), a building is a distinct fire hazard one or more of certain dangerous conditions enumerated in the regulation exist. The emergency order found that the violations on Carter's property created the dangerous conditions that are enumerated in 815 KAR 10:060, Section 1(2)(b),(e),(f), (h) and (i). Those conditions are a ready fuel supply that

would augment the spread or intensity of a fire; required exits or fire protection not present or not in working order; objects placed or installed that interfere with exits or exit routes; electrical or mechanical systems or installations create a hazardous condition; and operations, conditions, processes, use, or materials being used fail to afford adequate safety to the public.

Using authority granted under KRS 227.330(6), the State Fire Marshall issued an emergency order because he concluded that the violations made the property especially susceptible to fire loss, and that there was such hazard to human life and limb that public safety imperatively required emergency action. The property in question has a restaurant and also has residential areas. The order required that all residential-use areas of the property be evacuated of all occupants and closed to entry by the public within 24 hours of service of the order and that it remain vacated until violations were corrected to the satisfaction of the State Fire Marshall.

On June 24, 2015, Complainant (hereinafter "the agency") received Carter's request for a hearing within 10 working days as permitted under KRS 227.330. The requested hearing was held on July 1, 2015 at the offices of the Department of Housing, Buildings and Construction (DHBC) at 101 Sea Hero Dr., Frankfort, Kentucky. Mr. Carter represented himself and sought to have the emergency order revoked. The agency was represented by Cary Howard, Jr.

KRS 13B.125(3) provides that a decision at an emergency hearing may affirm, modify or revoke an emergency order. It also states that "[t]he emergency order shall be affirmed if there is substantial evidence of a violation of law which constitutes an immediate danger to the public health, safety, or welfare." For reasons set forth below, the hearing officer finds that there is substantial evidence of violations that constitute such immediate danger and affirms the emergency order.

WITNESSES AND EXHIBITS

The State Fire Marshall, the Director of Building Code Enforcement, and the two individuals who conducted inspections referenced in the emergency order all testified on behalf of the agency. Carter called Steve Hammock, a building inspector, as a witness. The hearing officer finds that each of these witnesses are qualified to give expert testimony regarding matters that fall within their respective fields. Carter also testified on his own behalf. There was no proof that Carter is qualified as an expert in fire safety, building codes, electrical inspection, or the like.

The following exhibits were introduced by the agency.

Complainant #1: Inspection report of Kenneth Browning, Deputy Fire Marshall

Complainant #2: Electrical inspection report of Wes Hacker, Electrical Inspector.

Although the date stated on the report is April 15, 2015, Hacker testified that the correct date was May 1, 2015. This exhibit also contains a "stop work order" that indicates that the condition of the property is "imminently dangerous" and consumer complaints.

Complainant #3: A complaint for an injunction filed by the State Fire Marshall in Perry Circuit Court;

Complainant #4: An injunction entered by the Perry Circuit Court on June 29, 2015, mandating immediate evacuation of the residential use portions of Carter's property and restraining Carter from interfering with or delaying such evacuation. The injunction specifically finds that "[s]ome or all tenants still remain in the building in violation of the emergency Order and therefore remain in real danger of suffering immediate and irreparable injury, loss, or damage."

Complainant #5: Photographs of the property taken by Kenneth Browning

The following exhibits were introduced by Carter:

Respondent's #1: An email sent by Carter's wife, on his behalf, to Kenneth Browning, and copies of the first page of what presumably were identical emails sent to William Swope, the State Fire Marshall, and Alan Walters on May 29, 2015. The parties stipulated that Mrs. Carter would testify that she sent these emails on that date. There was not evidence regarding whether they were received by the recipients via email on that date, but the State Fire Marshall testified that he had seen the email addressed to him. The significance of the emails is that copied into them was Carter's "Plan of Correction," Respondent's Exhibit #2 below.

Respondent's #2: Carter's "Plan of Correction," dated May 11, 2015, a response to violations identified in Browning's inspection report. The Plan variously claims some deficiencies had been corrected, some deficiencies did not exist, and some deficiencies will be corrected in the future.

Respondent's #3: An advertisement of a fire-resistant door. The advertisement states that the door is a 90-minute fire-rated door. Carter testified that he had installed such doors on doors of the apartments at the subject property.

Respondent's #4: Copy of a label for fire-retardant ceiling panels and a fire resistance assembly chart. Carter testified that he had installed these fire-retardant ceiling panels in the subject property.

Respondent's #5: Photographs of the subject property taken by Carter.

Respondent's #6: A "fire inspection report" dated January 30, 2013, performed on the 6 apartments at the subject property by a "certified" inspector (apparently an independent contractor rather than an employee of DHBC). This exhibit was introduced by Carter to show that at that date, the inspection did not list the same deficiencies that were listed in the 2015 inspections by DHBC upon which the emergency order is based. However, this independent

inspector was not called as a witness. The preparer of the report did not testify and neither the agency's witnesses nor the building inspector called by Mr. Carter were examined regarding the report.

Respondent #7: Emails to Carter from Josh Smith and Randy Dikeman in 2011, as well as notes and papers presumably related to the work or conditions discussed in the emails. The emails reflect that Josh Smith works for Master Dry, LLC and that Randy Dikeman is the territorial manager for Foundation Supportworks, Inc. Neither appeared as a witness and neither the agency's witnesses nor the building inspector called by Mr. Carter were examined regarding the report.

Respondent #8: A request for a variance concerning sprinklers at the subject property that was submitted by Carter to DHBC in 2013. Carter testified that DHBC had not responded to his request. The exhibit includes a narrative statement by Carter of his understanding of the history of different uses of the building, describes repairs Carter has made as of that date, details concerning sprinkler systems and costs, and a request for a variance from otherwise applicable regulations. Included in the document is an argument that due to the age of the building certain code provisions do not apply.

Respondent #9: 2011 report from a structural engineering inspection by Buel Fryer McReynolds Jahed, Inc. The preparer of the report did not testify and neither the agency's witnesses nor the building inspector called by Mr. Carter were examined regarding the report.

DISCUSSION OF THE PROOF

The hearing officer liberally allowed Carter to introduce exhibits that were hearsay. However, Respondent's #6, #7 and #9 cannot be given any weight. First, they relate observations made several years ago. Carter testified that "nothing's changed" but such a conclusion would

only be competent if it was supported by an inspection by a qualified expert performed at or near the time of the emergency order. In point of fact, the agency itself performed such inspections at or near the time the emergency order was issued and found the violations that are the subject of this case. Second, absent expert testimony, either by calling as witnesses the persons who prepared the reports from several years ago or through testimony of witnesses with appropriate expert knowledge who were at the hearing, the hearing officer cannot determine the relevance of what is contained in these exhibits to the cited violations in the emergency order. Third, to the extent such exhibits do not mention the problems identified in the emergency order, such an omission does not mean that the persons who prepared the report looked for those problems but did not see them. For example, during Carter's examination of Steve Hammock, Carter asked Hammock, who had visited the property, if he had seen a certain condition. When Hammock testified that he had not, the hearing officer asked Hammock if Hammock had actually looked for that condition and Hammock said that he had not. Finally, if there were a dispute between experts regarding whether a condition constitutes a violation, less weight must be given to hearsay testimony (which is what Respondent #6, #7 and #9 are) not subject to cross-examination. Respondent's #3 and #4 are similarly of little value without appropriate testimony relating them to the violations in the emergency order. While the exhibits show that during the past several years Carter was attempting to identify problems, fix them, and renovate the property, the exhibits do not show that the violations cited in the 2015 emergency order are bogus or invalid.

The pictures introduced by both sides, Complainant's #5 and Respondent's #5, were admitted but are not helpful because there was not sufficient testimony establishing the relevance and significance of the pictures to the violations in the emergency order. The hearing officer

cannot tell by looking at the pictures the significance of what is depicted. The agency did not elicit testimony from Mr. Browning sufficient to establish much more than that Mr. Browning believed the pictures, or some of them, corroborated the violations, or some of them. When Carter examined Browning concerning pictures Carter took, Browning testified that he could not tell from looking at Carter's pictures whether the violations had been fixed.

Respondent's #8 is relevant to Carter's legal argument regarding applicability of regulations to his old building and will be addressed in the Conclusions of Law below.

Complainant's #3 and #4 concern the injunction obtained by the State Fire Marshall. Both parties to this emergency order appeal indicated to the hearing officer during our hearing, and the State Fire Marshall also testified, that the Perry County injunction proceeding included a lengthy evidentiary hearing. The Perry Circuit Court's found that that "[s]ome or all tenants still remain in the building in violation of the emergency Order and therefore remain in real danger of suffering immediate and irreparable injury, loss, or damage." This finding is relevant to the emergency appeal.

The remaining exhibits – Complainant's #1 and #2 and Respondent's #1 and #2 – are writings or reports by witnesses who have personal knowledge and testified. Complainant's #1 and #2 are the reports by Browning and Hacker and can be considered part of their respective testimonies depicting the violations they saw. Respondent's #1 and #2 are Carter's own statements and can be considered part of his testimony. Steve Hammock, the witness called by Carter, and Paul Craig and William Swope, called by the agency, also were witnesses with personal knowledge who testified.

FINDINGS OF FACT

1. **The conditions identified in the Emergency Order were in existence at the time**

the property was inspected in May of 2015.

The inspection reports describe what the inspectors saw and reference the relevant code provisions violated. Browning and Hacker testified that the reports were accurate and reflected what they observed. The “stop work order” issued by Hacker on May 1, 2015, states that the electrical conditions at Carter’s property are “imminently dangerous.” (Complainant #2).

Carter testified that violation #12 in the order was in error. The violation is “[f]ailure to install doors leading to an exit corridor with a minimum 20 min fire rating in violation of 2012 NFPA 1, Sections 14.2, 12.73.” Carter testified he installed appropriate doors to the apartments in 2011 and introduced Complainant’s #3 as evidence of the fire rating of the doors. However, though he had the opportunity to do so, Carter did not ask Browning, who identified this violation, regarding whether Browning agreed that such doors were in place and that they satisfied the requirements of the code or otherwise addressed all of the requirements relevant to the code provisions referenced.

Regarding violation #15, Carter testified that he installed fire resistant panels in the ceiling (see Complainant #4). However there was no evidence that doing so would be sufficient to remedy the violation, which was “[f]ailure to provide adequate separation between occupancies in violation of 2012 NFPA 1, Section 6.1 14.4.” The hearing officer observes that occupancies are separated by walls as well as ceilings. There was not testimony that fire resistant ceiling panels suffice to provide separation between occupancies. The agency’s witnesses were not questioned by Carter regarding whether such ceiling panels would be sufficient to alleviate the code violation at issue.

Carter’s “Plan of Correction,” Complainant’s #2, in part argues that some violations are not violations. Carter had the opportunity to cross-examine the inspectors who found the

violations. Carter's questioning did not elicit any evidence that would support Carter's conclusion that the conditions found to be violations were not violations. Respondent's exhibits #6, #7 and #9, for the reasons set forth elsewhere hereinabove, did not constitute evidence that the conditions described in the emergency order did not exist or were not violations.

Browning and Hacker are experts in their respective fields and qualified to opine regarding whether the technical requirements of applicable codes. Carter is not such an expert. By a preponderance of the evidence, the conditions identified in the Emergency Order existed as of May of 2015.

2. Some of the conditions identified in the emergency order may be remedied now.

Carter called Steve Hammock, a building inspector, as a witness. Hammock visited the property after the May 1 inspections but has never formally inspected the property. Hammock testified that he observed that exit signs were working. He expressed an opinion that he did not think the fire escape was unstable, but that it could be a matter of opinion. Carter testified that he had made efforts to correct some of the conditions and he introduced into evidence his "plan of correction" (Respondent #1 and #2). The State Fire Marshall testified that he would not be surprised if some of the violations that were more easily remedied, what he called "the low-hanging fruit," had indeed been remedied.

However, the order to remedy violations is not appealed in this case and the hearing officer will not make findings regarding whether and which specific violations have been remedied. The key factual issue in this appeal of the emergency order is whether there remained violations, not remedied at the time the emergency order issued, sufficient to constitute a distinct fire hazard posing immediate and serious danger to human life.

3. At the time the emergency order issued, there were conditions not remedied that

sufficient to create a distinct fire hazard that poses immediate and serious danger to human life.

This appeal concerns whether violations posing immediate danger to human life existed at the time the emergency order was issued. The State Fire Marshall, William Swope, testified that he has read Carter's response, Complainant's Exhibits #1 and #2. He also testified that after receiving the May 1 reports, he subsequently visited and personally viewed the property before issuing the emergency order. In addition to walking through the property not long before issuing the emergency order, he also visited the property, along with other DHBC officials, on June 18, to personally deliver the emergency order and the order to remedy. Swope, along with the Deputy Fire Marshal and the Building Inspector, all met with Carter on June 18 at the subject property. Browning also visited the property on June 19.

These additional visits after May 1 were not complete or formal inspections. However, Swope testified that at the time he visited the property what he called "the bigger issues" clearly had not been resolved. He testified that the third, fourth and fifth floors (where residential areas are located) had no legitimate exits. He testified that the open interior stairway was not a sufficient exit and would actually function like a chimney flue if there were a fire in the floors below. He testified that the fire escape may be too rickety to be safe. He reported that the Deputy Commissioner accompanying him observed and reported to him that the apartments do not have emergency escape windows sufficient in size, under applicable regulations, to permit residents to escape and firefighters to enter. He testified that the building did not have a fire alarm panel to notify tenants and someone monitoring who can call the fire department. (Carter testified that there were security cameras and the persons monitoring those could call the fire department but there was not testimony that this was a permissible alternative to the fire panel). He testified that

there was a 30 inch drop below the fire escape door, in violation of code provisions requiring that it be at the same level as the door, which creates a danger that persons attempting to escape will fall. He testified that the empty elevator shaft also would serve as a flue to accelerate a fire. He testified that there are potential exits on the opposite side of the building where the residences are and residents, to get to those exits, would have to go through the interior stairwell, which in effect requires the residents to go past an "open flue" to escape). Swope testified that all of the "big issues" violate code provisions and pose immediate danger to safety. He said the conditions are "highly dangerous" and that if there were ever a fire "some people would not make it out of the building."

Phil Craig, Director of Building Code Enforcement, who accompanied Swope during a walk-through testified he remembered observing the emergency escape window violation. He testified that if a fire were to start in the stairwell there would be no way to exit, commenting "if I can't get out of a building my safety is blown." He testified that if a plan to building a structure like this one were submitted to his office, such plans would never be approved and an occupancy certificate would never be issued.

Steve Hammock, called by Carter, has never done a formal inspection or written up a report but has been on the property. He is a building inspector and testified that "I don't use this [fire] code. There will be things in the fire code that are not in the building code." However, he confirmed many of the violations agency witnesses testified about. He did not see a fire alarm panel or sprinkler system. He said the elevator was only sealed with plywood and appeared to agree with the agency on the wall separation issue. He observed grouting on a crack but testified that it just covered up the crack and didn't resolve the structural problem. While he testified that a few of the conditions at issue had been resolved or might not be dangerous (see fact findings

above concerning conditions that may be remedied), he did not testify that conditions still existing do not pose a fire hazard that is a significant danger to human life. Had he expressed such an opinion, it would not have been admissible because he is a building inspector, not a fire marshal or fire safety expert.

Carter testified that he does not believe the conditions are dangerous enough to require evacuation of tenants. However, he did not present evidence to support that inference. In addition, the Perry Circuit Court, on June 29, 2015, found that “[s]ome or all tenants still remain in the building in violation of the emergency Order and therefore remain in real danger of suffering immediate and irreparable injury, loss, or damage.”

Weighing all of the evidence, the hearing officer finds that there is substantial evidence that conditions exist, not remedied, that create a fire hazard that poses immediate and serious danger to human life.

4. Conditions that are the subject of the emergency order have not been approved or waived by DHBC or the Fire Marshall or by other authority superseding the authority of DHBC or the Fire Marshall.

Regarding violation #14, Carter testified that at some point in time the Fire Marshall told him that he did not have to fix the doors. The Fire Marshall testified that he does not recall making such a statement to Carter. Regardless, the emergency order issued by the Fire Marshall speaks for itself and would supersede any prior verbal statement to the contrary.

Carter argued that Steve Hammock, a building inspector, made statements to the effect that certain conditions described in the emergency order were not violations or that he had remedied such conditions. Carter testified that Hammock told Carter that the interior stairway was fine and that Carter should not fix the doors. However, the testimony of Hammock was to

the contrary. Hammock testified that he posted a "stop work" order on the property at the instruction of his superiors but that he never made any formal inspection of the property. The hearing officer finds that at most Hammock made some suggestions about how Carter might go about fixing some of the problems. Hammock testified that he never told Carter he did not have to comply with any portion of the emergency order and testified with regard to compliance that "it's not my call." Hammock also testified that he told Carter as early as 2013 that Carter needed to submit applications to the State Building Inspector to make needed changes to the property.

Carter testified that a deceased city building inspector at some point in time told Carter he could make certain improvements and changes to the property without obtaining permits from the state as long as he had "certified stamped documents" from licensed professionals (see Respondent #8). Were that true, there is no evidence to indicate why such a decision by a city building inspector would be binding upon DHBC or the State Fire Marshall. Carter testified that he "wish I'd known to go through the state instead of the city."

5. There was not evidence that the construction, use as a residence, or occupancy by residents of the subject property was approved by a state agency under law applicable prior to the KBC or under a prior fire code.

Carter argues that because the building is old, there are "grandfather" provisions that allow such buildings to not comply with current building and fire codes. However, a prerequisite of such "grandfather" clauses, as discussed in the conclusions of law below, would be prior approval. He testified he thought he had seen a certificate of occupancy issued to a prior user of the property.

However, Carter admits he has no certificate of occupancy. Carter produced no certificate of occupancy issued to any prior owner or user of the property. Carter produced no evidence that

this property was ever inspected and approved by any state authority under current or prior fire codes or building laws.

6. The property has undergone numerous changes in use and alterations since it was constructed many decades ago.

See Respondent's exhibit #8. By Carter's estimate, the building was constructed in 1924, and has, among other uses, been home to a funeral home, a courthouse holding area, business offices, a warehouse, four restaurants, a tanning salon, and an aerobics studio.

CONCLUSIONS OF LAW

KRS 227.330(6) provides that

[w]henver the state fire marshal or any deputy state fire marshal designated by him for that purpose finds that a violation or violations of the provisions of this chapter or any administrative regulations promulgated thereunder render any property especially susceptible to fire loss, and there is present such hazard to human life or limb that the public safety imperatively requires emergency action, a fire inspector or other state fire marshal employee may be authorized in writing by the state fire marshal to issue an emergency order pursuant to KRS 13B.125 that directs the property to be closed to the public or vacated by its occupants until the violation is corrected.

KRS 13B.125 provides that "[t]he emergency order shall be affirmed if there is substantial evidence of a violation of law which constitutes an immediate danger to the public health, safety, or welfare."

1. The State Fire Marshall had authority to issue the emergency order.

The Kentucky Standards of Safety apply to all buildings except single and two-family dwellings. 815 KAR 10:060, Section 2,(1) The property in this case is neither. The State Fire Marshall has primary jurisdiction "unless a local government has established a fire inspection program by ordinance adopting this administrative regulation pursuant to KRS 227.320." 815 KAR 10:060, Section 2,(2)(a), There was no evidence that Hazard has such a program or asserts

jurisdiction in this matter. Carter argued that the State Building Inspector has jurisdiction superseding the State Fire Marshall, in connection with his argument that building inspectors made representations that some of the violations were not violations, but the regulation indicates that the State Fire Marshall had authority to issue the order.

There was testimony from Craig, the State Building Inspector, that “a change of use” gives the building inspector jurisdiction. However, Carter did not begin the process of seeking approval of a construction change until after the emergency order was issued. Additionally, the State Building Inspector accompanied the State Fire Marshall on the walk-through and the two agencies appear to be working cooperatively. Whether or not there may be some overlapping jurisdiction, the hearing officer finds that the State Fire Marshall had authority to issue the emergency order.

2. The subject property is not exempted from Kentucky Standards of Safety under “grandfathering” clauses.

Carter argued that current codes do not apply to his old building due to “grandfathering” provisions. 815 KAR 10:060, Section 3,(1) states that

[t]he standards for the construction pursuant to 815 KAR 7:120, Kentucky Building Code, in effect at the time of construction, and for which there has been issued a lawful certificate of occupancy, shall supersede different construction standards regarding the requirements for egress facilities, fire protection, and built-in fire protection equipment established in this administrative regulation or conflicting local ordinances.

Carter admitted that he has no certificate of occupancy and introduced no certificate of occupancy applicable to the building. Carter’s property is not exempted under this provision.

Another provision applies to buildings and conditions that were approved under other codes. 815 KAR 10:060, Section 3,(3), states as follows:

- (3) Buildings and conditions approved under other codes.
 - (a) Buildings constructed prior to promulgation of the uniform state building code. A building, or portion thereof, which was constructed and approved prior to the effective date of the uniform state building code shall be maintained as constructed and approved.
 - (b) Previous fire code. A building, or portion thereof, which was inspected, approved or accepted pursuant to the 1996 Kentucky Fire Prevention Code shall:
 1. Be maintained as previously approved or accepted; and
 2. Not be required to make a modification or change for so long as the building is maintained and used as previously accepted or approved.

There was no proof that the construction has ever been approved nor has the property been inspected and approved for fire safety by any state agency in its history. Additionally, the property has undergone numerous changes of use, which changes would terminate a prior approval had ever there been one.

3. Were exemptions applicable, they would not prevent the State Fire Marshall from requiring that a distinct fire hazard be remedied.

Even if it were true that certain conditions would not be violations under another code, and even if such code applied to Carter's property, such exemptions would not prevent the State Fire Marshall from taking action with regard to a "distinct fire hazard" and applying current standards to identify such conditions and order their correction. The regulations explicitly give the State Fire Marshall such authority. 815 KAR 10:060, Section 3, (4) "Distinct Fire Hazards," states as follows:

- (a) If the State Fire Marshal or local fire chief determines that a distinct fire hazard exists, the fire hazard shall be remedied so as to render the property safe.
- (b) The State Fire Marshal shall use the standards specified in this paragraph to identify and to order the correction of a distinct fire hazard acting in accordance with the procedures established in KRS Chapter 227 and Section 5 of this administrative regulation. In exercising authority granted, the following shall be applicable [reference to 2012 NFPA 1].

4. There are violations that make the property a distinct fire hazard as set forth in

the emergency order; the property is especially susceptible to fire loss and presented such hazard to human life and limb that public safety imperatively required emergency action through issuance of the emergency order; there is substantial evidence of an there is substantial evidence of a violation of law which constitutes an immediate danger to the public health, safety, or welfare that requires, pursuant to KRS 13B.125, that the emergency order be affirmed.

The State Fire Marshall and the State Building Inspector both testified convincingly and clearly regarding how existing conditions pose a distinct fire hazard and pose an immediate danger to safety. The Perry Circuit Court, in a proceeding to which Carter was a party and in which Carter was permitted to introduce evidence to the contrary, found immediate danger to the tenants. Whether or not Carter is collaterally estopped from contesting this finding of fact by the Perry Circuit Court, based upon evidence presented in this proceeding it is clear that the requisite danger exists justifying an emergency order and that all of the prerequisite conditions for an emergency order exist.

5. The emergency order is appropriate and lawful in all respects and is affirmed.

NOTICE OF APPEAL RIGHTS

Pursuant to KRS 13B.125(4), the decision rendered at the hearing of an emergency order shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to Circuit Court in the same manner as provided in KRS 13B.140, which states:

(1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin

Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

(2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

Dated July 6, 2015.

A handwritten signature in blue ink, appearing to read 'Mike Wilson', written over a horizontal line.

MIKE WILSON, HEARING OFFICER

CERTIFICATION:

The original of the foregoing was mailed to Tiffany West, Docket Clerk, DHBC, 101 Sea Hero Road, Suite 100, Frankfort KY 40601, with copies mailed to Brian Carter, 446 Main Street, Hazard, KY 41701 and to Michael Davis and Cary Howard, Jr., DHBC, 101 Sea Hero Road, Suite 100, Frankfort KY 40601, on July 6, 2015. An electronic copy was emailed to the parties as well on the same date.

A handwritten signature in blue ink, appearing to read 'Mike Wilson', written over a horizontal line.

MIKE WILSON, HEARING OFFICER