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LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

March 29, 2018

Via Regular Mail
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Via Electronic Mail
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Re: DCA, Sandy Recovery Division v. Roseanne Borges
OAL Docket No. CAF 7543-16

Dear Parties:

Enclosed please find a copy of the Final Decision in the matter referenced above. Should you wish to appeal from this Decision, you have the right to take an appeal with the Appellate Division of the Superior Court [Rules Governing the Courts of New Jersey, 2:2-3(a)(2)]. You must do so, however, within 45 days from the date of service of this Decision.

Sincerely,

Donald Palombi
Director of Policy and Regulatory Affairs

Enclosure

STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS

FINAL DECISION

DEPARTMENT OF COMMUNITY AFFAIRS, SANDY RECOVERY DIVISION
Petitioner,

v.

ROSEANNE BORGES,
Respondent.

OAL DKT. NO. CAF 7543-16
AGENCY DKT. NOs. RSP0041309
and RRE0041475

Having reviewed the Initial Decision of the Administrative Law Judge ("ALJ") in this matter, as well as the exceptions, reply and sur-reply filed by the parties, I hereby REJECT the Initial Decision for the reason set forth at length below. This decision will constitute the Department of Community Affairs' FINAL AGENCY DECISION in this case.

The relevant facts are not in dispute. By way of background, Respondent Roseanne Borges initiated this matter by filing with the Department an application for Resettlement Program ("RSP") and Reconstruction, Rehabilitation, Elevation and Mitigation Program ("RREM") benefits, for damages which Respondent stated were caused by Superstorm Sandy to premises at 75 Twilight Avenue, Keansburg. Respondent was originally found eligible for both programs and received program funds accordingly. Subsequently, the Department determined that Respondent was in fact not eligible for either program, and issued letters to Respondent to that effect, which sought the return of funds paid. Respondent then appealed those determinations.

The only eligibility criteria at issue here (for both programs) is whether Respondent has shown that the premises in question sustained a sufficient amount of damages so as to satisfy the program requirements. The applicable standard for both programs is the same. An applicant must show that the property has sustained, as a result of the storm, either: 1) a full verified loss of at least $8,000; or 2) one foot or more of water on the first floor. Initial Decision, pages 14-15.

With regard to the first option, the ALJ correctly found that Respondent had failed to establish the necessary amount of $8,000 in damages. Initial Decision at page 15. The record fully supports this conclusion. Evidence submitted by the parties demonstrated that Respondent had filed claims with her insurance carrier, Allstate. Allstate approved payment of the homeowner's claim, but only in the amount of $351.60, which was less than Respondent's deductible under the policy. Initial Decision, page 5; P25, pages SRD60-66. Respondent's flood

insurance claim was denied; the basis for the decision was an engineering report prepared by SDII Global Corporation ("Global"). Ibid.

The ALJ notes that the Global report states that pre-existing cracks in the foundation may have been worsened by the storm. Initial Decision, page 15; P29, page SRD89. The ALJ goes on to cite an estimate of $4,500 for the cost of foundation repairs, but admits that without knowing if that covered any and all damage that may have been caused by the storm, that estimate was "not helpful." Initial Decision, page 16. And, more importantly, that amount is still significantly below the programs' threshold. Thus, the ALJ correctly found that Respondent had not satisfied this part of the test.[1]

As noted, the second option is that an applicant show that a property have experienced at least one foot of water on the first floor. The ALJ found that Respondent had met this standard, based on a FEMA report that the premises "had two feet of water." Initial Decision, pages 15-16; P20. The problem with this conclusion is that the existence of a level of two feet of water in and of itself is not sufficient to meet the programs' standard - it must also be on the first floor.

By Respondent's husband's admission in his testimony, the water had come up two feet into the crawl space, just short of the electrical system. He further stated that outside of the crawl space and foundation, the house was intact and sustained no serious damage. Initial Decision, page 5. The ALJ found this testimony to be credible and accepted it as fact. Initial Decision, page 6.

Respondent and her husband were consistent on this point throughout the process. In the Global Report, it states that Respondent's husband advised the Global inspector that "the floodwaters had risen to just under the top of the foundation wall and that nothing had reached inside the house." P29, page SRD85. And, in a letter to the Department dated July 26, 2016, Respondent stated that "[w]hen we returned to our home, we noticed that the floodwaters had reached a maximum height of our crawlspace. We were lucky in the sense that the waters did not damage anything in our living space; however, the floodwaters sitting on our foundation did cause damage." P12, page SRD41.

Thus, the crucial facts are not in dispute that while the storm's flood waters impacted the crawlspace, they did not reach the first floor. These facts clearly do not meet the programs' standard that an applicant show at least one foot of water on the first floor. Despite this fact, the ALJ found that Respondent had satisfied the program requirement, based on the two feet of water in the crawlspace. Initial Decision, pages 15-16. To support this conclusion, the ALJ states that nothing in the program guidelines requires that the water level be in the first floor or first floor of living space. Initial Decision, page 16.

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[1] It should also be noted that the Global report, when discussing the cracks to the foundation, concludes that "[t]he presence of the cracks is not a cause for concern in regard to the safety or structural integrity of the residence." P29, page SRD89.

However, as described above, that is precisely what the guidelines do say: that a premises must sustain "one foot or more of water on the first floor." The Initial Decision in fact cites this language on pages 14-15. The suggestion that the crawlspace constitutes a "floor" of the premises is inconsistent with the standard definition of that term, cited by the Division in its exceptions at page 6 (a space beneath the first floor or under the roof of a building), as well as the Department's consistent application of the guidelines since the start of the RSP and RREM programs. The Initial Decision recognizes the property at issue here is a "single family [house]; one floor; non-elevated without basement." Initial Decision, page 7. That floor was by Respondent's admission not impacted by the storm waters. Thus, I REJECT the ALJ's conclusion that the two feet of water experienced by Respondent's home satisfied the program guidelines.

The ALJ finds that Respondent did not pursue any remedy she might have had against Allstate, such as an appeal of its decisions, relying instead on the Department's approval of her applications. Even if this were true, it would not change the ultimate result, that the premises do not satisfy program standards and are thus ineligible. However, it should be noted that in the Division's Exceptions, it lays out in detail a timeline that demonstrates that the ALJ's conclusion in this regard is in error. Division Exceptions, pages 9-11.

In her Reply to the Division's Exceptions, Respondent argues that Hossain v DCA, Docket No. A-0921-15T4 (Appellate Division, August 9, 2017) supports her position. I believe that she intends reference to Hossain v DCA, A-3497-15T2 (Appellate Division, August 15, 2017). I do not find that decision to be applicable here. In that decision, FEMA had mistakenly performed an inspection of the wrong property (although that property was owned by the appellant, it was not the premises that were the subject of the application for funding). The court remanded the case and instructed the Department to contact FEMA and see if there was a willingness to do an inspection of the correct property to assess damages. This is not the situation that exists in this case. In fact, according to the record below, FEMA issued to Respondent a Determination, dated November 17, 2012, advising her that "based on your FEMA inspection" the property at issue here was ineligible due to insufficient damages. P24, SRD57.

Accordingly, Respondent is ineligible for the RSP and RREM programs, for all of the reasons set forth at length above.

Date: 3/29/2018

Sheila Y. Oliver

Lt. Governor Sheila Y. Oliver
Commissioner