



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 800
TRENTON, NJ 08625-0800
(609) 292-6420

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

December 21, 2017

Via Regular Mail

Ronald A. Rosa, Esq.
Jacobs & Barbone, P.A.
1125 Pacific Avenue
Atlantic City, New Jersey 08401

Via Electronic Mail

Valentina M. DiPippo
Deputy Attorney General
25 Market Street
P.O. Box 112
Trenton, New Jersey 08625-0112

Re: New Jersey Division of Fire Safety v. The Irish Pub and the Inn of the Irish Pub
Docket No. CAF 17035-14

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.

Very truly yours,

Donald Palombi
Director of Policy

Enclosure



**STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS**

FINAL DECISION

OAL DKT. NO. CAF 17035-14
AGENCY DKT. NO. 010251618

NEW JERSEY DIVISION OF FIRE SAFETY,
Petitioner,

v.

**THE IRISH PUB AND THE
INN OF THE IRISH PUB,**
Respondent.

Having reviewed the Initial Decision of the Administrative Law Judge (ALJ) in this matter, which upheld the Notice of Violation dated December 2, 2014 issued to Respondent Irish Pub by the Division of Fire Safety, together with the exceptions and reply submitted, I hereby ADOPT the Initial Decision as the Department's FINAL AGENCY DECISION, for the reasons set forth in the Initial Decision, as well as the reasons set forth below.

The facts in this matter are fully set forth in the Initial Decision and discussed at length by the ALJ, and I hereby ADOPT the findings of fact.

The issue in this matter centers on whether the Division was correct in its determination that the Respondent Irish Pub constituted a "high-rise structure" at the time of the Division's November 14, 2014 inspection. Classification as a high-rise structure implicates the need for the installation of various fire safety measures.

The definition of a high-rise structure is not in dispute: under the Uniform Fire Code rules it means "any building or structure having floors used for human occupancy located either more than six stories or more than 75 feet above the lowest level accessible to a fire department vehicle." N.J.A.C. 5:70-1.5.

The ALJ heard the case based on cross motions for summary decision. The Division submitted certifications from the two individuals who conducted the 2014 inspection; these certifications established that at that time the seventh floor of the Irish Pub was arranged for human occupancy; that an individual was interviewed who was currently residing there; and that the manager of the Irish Pub had confirmed that use. Respondent submitted no evidence relating to the status of the seventh floor at the time of the inspection, relying instead on certifications and

a report from later time periods. The ALJ thus correctly concluded that “the undisputed facts demonstrate that the seventh floor was used for human occupancy” at the time of the inspection at issue (Initial Decision, page 19). The property was thus properly classified by the Division as a high-rise structure.

Respondent in its exceptions takes issue with the Division’s certifications, on the ground that they constitute expert reports. However, the certifications for the key time period - the November 14, 2014 inspection - are clearly factual in nature, setting forth in detail what Glenn Smyth and Michael Versaggi observed on the seventh floor, and the discussions they had with a resident of that floor and with Irish Pub Manager Frank Pileggi.

It is important to recognize, as the ALJ did, that the issue in this matter is whether the premises constituted a high-rise structure at a particular point in time - November 14, 2014. The Irish Pub qualified as a high-rise structure because at that time the seventh floor was arranged for human occupancy (and was in fact being used for that purpose). Those conditions are of course not immutable; Respondent was certainly free in the future to reconfigure the seventh floor so that it was not arranged for human occupancy. However, that does not change the fact that at the time of the November 14, 2014 inspection the premises were in violation of the Uniform Fire Code. Respondent’s certifications and report, which, as noted, address later time periods, are not relevant to the issue here.

It must also be noted that the Irish Pub would have qualified as a high-rise structure even if no one was residing on the seventh floor on the day of the inspection, because the floor was arranged for human occupancy. The reason for this is obvious; when premises are arranged in this manner, occupancy can occur at any time. An inspection could reveal that a building was currently unoccupied, only for someone to move in the next day. Thus, as long as the seventh floor at the Irish Pub is arranged for human occupancy, the building qualifies as a high-rise structure.

The ALJ also correctly rejected Respondent’s argument that the premises did not constitute a high-rise structure because there was no “habitual occupancy.” This is a phrase, based on a 1900 insurance case, does not appear in the rules and thus does not reflect the appropriate standard to be applied here.

Respondent also contends that the Department should “vacate” the Initial Decision, even if the facts as found by the ALJ are accepted, due to “changed circumstances.” Respondent bases this argument on its certifications and report, and argues that they demonstrate that the Initial Decision is no longer “equitable.” This argument must be rejected. Even if subsequent to November 14, 2014 the premises were rearranged in a manner that did not constitute a high-rise structure, this would not change the fact that it was in violation on the date of that inspection (the issue of later time periods has not yet been the subject of an administrative hearing and is not before me now).

Finally, Respondent asks that any Final Agency Decision affirming the ALJ be stayed until it has been permitted to appeal any violations for the years 2015 through 2017. However,

Respondent provides no analysis to support this application. Pursuant to the traditional test for injunctive relief set forth in Crowe v DeGioia, 90 N.J. 126 (1982), Respondent bears the burden of showing that: (1) it has a reasonable likelihood of success on the merits; (2) the threatened harm is irreparable if the relief is not granted; (3) the public interest and the relative hardship to the parties favors a stay; and (4) the legal rights underlying the claim are settled. Respondent does not meet that test. For the reasons set forth above and in the Initial Decision, Respondent does not have a likelihood of success on the underlying issue; the only “harm” faced by Respondent is that it comply with the requirements of the Uniform Fire Code statute and regulations, like all other high-rise buildings in the State; and, finally, a balancing of the harms clearly favors the public interest, as compliance with the rules is necessary for the safety of any residents of the Irish Pub, the public in general, and potentially firefighters. For these reasons Respondent’s request for a stay must be denied.

Date: 12/21/17



CHARLES A. RICHMAN
Commissioner