



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

January 16, 2018

Via Regular Mail

Robert P. Rue, Esq.
PO Box 1200
125 E. Main Street, Suite 1
Tuckerton, New Jersey 08087

Via Electronic Mail

Nicole Colon
Sandy Recovery Division
101 S. Broad Street
Post Office Box 823
Trenton, New Jersey 08625

Re: Department of Community Affairs, Sandy Recovery Division v. Trotta
OAL Docket No. CAF 17662-16 (on remand)

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

OAL DKT. NO. CAF 17662-16 (on remand)
AGENCY DKT. NO. RSP 0026891

**DEPARTMENT OF COMMUNITY AFFAIRS,
SANDY RECOVERY DIVISION**

Petitioner,

v.

JOAN TROTTA,

Respondent.

This case represents Respondent Joan Trotta's appeal of the decision of the Sandy Recovery Division denying her participation in the Resettlement Program ("RSP"); seeking the return of the RSP funds previously provided to her; and denying her application to the Reconstruction, Rehabilitation, Elevation and Mitigation Program ("RREM"). Respondent has since withdrawn her RREM application, and thus the only remaining issues concern RSP.

In an Office of Administrative Law ("OAL") Initial Decision dated August 17, 2016, the Honorable Edward J. Delaney, Jr. concluded that Respondent had established her eligibility for RSP; in particular, he found that she had demonstrated that the damaged property at issue, located at 239 North 10th Street in Surf City, was Respondent's primary residence on the date of Superstorm Sandy, October 29, 2012. The issue of primary residence arose due to the fact that Respondent admittedly also owned a home in Arizona at that time, and the Division had submitted evidence pointing to that address as her primary residence.

In an Order dated November 16, 2016 I remanded the case to the OAL for further proceedings. Specifically, I requested that Respondent "produce her federal and State tax returns for years 2009-2015." I also provided Respondent with the opportunity to provide whatever other evidence she believed relevant to the issue of her primary residence in New Jersey, and gave her examples of such evidence. Finally, I asked that

the OAL consider the separate issue of whether Respondent had met the RSP requirement that she maintain a primary residence in the county of the damaged residence for three consecutive years from the date of signing of the RSP grant agreement and promissory note (signed in this case by Respondent's son, as her power of attorney, on August 12, 2013). This issue had not been dealt with in the Initial Decision.

In a second Initial Decision dated December 15, 2017, Judge Delanoy once again concluded that Respondent satisfied the requirement that the damaged property constitute her primary residence at the time of Superstorm Sandy. However, the ALJ found that Respondent had failed to demonstrate that she had maintained a primary residence in Ocean County for the required three year period, and was thus ineligible for RSP funding.

With regard to the issue of Respondent's residence at the time of Superstorm Sandy, I noted in my remand that Respondent actually satisfies the preferred RSP verification documentation (driver's license) and alternate documentation (voting registration and insurance). The ALJ bases his conclusion that Respondent has demonstrated primary residence on these documents, which he describes as creating a presumption of primary residence.

The problem in this case is that despite the evidence relied on by the ALJ, the other evidence presented casts serious doubt as to his conclusion. Tax bills for the damaged property for 2012 were sent to Arizona; car registrations for that period were renewed from Arizona; the homeowners insurance for the damaged property for the period of the storm was sent to Respondent in Arizona; and various 2012 financial documents, including 1099s, were likewise sent to Arizona (Initial Decision, pages 5 to 6). And, Respondent testified that she did not reside in Surf City for the majority of 2012; rather, she was either in Arizona or travelling (Initial Decision page 6). This does not present the appearance of a "snowbird" as the ALJ found, but instead suggests someone who had relocated her primary residence. While she continued to maintain her documents with New Jersey addresses, she was effectively managing that process from Arizona.

It was for this reason that I requested in my remand that Respondent provide copies of her tax returns for the years 2009-2015. Those documents would, of course, reflect the home address that Respondent provided to the federal and State governments. Of particular interest are the returns for 2011, which would have been filed in calendar year 2012. However, Respondent chose not to comply with that request. She did provide her federal return for 2012, which listed the Arizona address; with regard to the 2012 State return, Respondent produced a letter from her accountant, dated September 1, 2015, which indicated that Respondent had requested in 2013 that those taxes be filed using the New Jersey address (Initial Decision page 5). Thus, to the extent she complied with my request and provided the tax returns, they are not helpful to her position.

For these reasons, I conclude that Respondent has simply failed to carry her burden of demonstrating that the damaged property was in fact her primary residence on the date of Superstorm Sandy. Although the ALJ says that the burden in this case rests on the Division (Initial Decision page 15) this is in error. A review of the full record shows that Respondent had, in 2012, effectively relocated to Arizona, despite the maintenance of the New Jersey address on certain of her documents. I cannot ignore the persuasive evidence pointing to Respondent actually residing in Arizona since before the storm. For these reasons, I REJECT the ALJ's conclusion that Respondent has carried her burden of demonstrating that the damaged property was her primary residence on that date, as well as his statement as to the legal issue of the burden of proof. Respondent is thus ineligible for the receipt of RSP benefits for this reason.¹

As noted above, the second issue in this case concerns whether Respondent has met the separate requirement under the RSP program that she maintain a primary residence in the county of the damaged property for three consecutive years from the date of signing of the RSP grant agreement and promissory note (in this case commencing on August 12, 2013). Here, the ALJ reached the conclusion that Respondent had failed to demonstrate that she satisfied that requirement, and thus found her ineligible for RSP benefits on this basis.

It is important to recognize that this is a separate and distinct program requirement from the issue of primary residence on the date of the storm, covering by definition a different period of time. Of course, the types of proofs that are relevant to the issue of primary residence on the date of the storm are the same as for primary residence during the three year period.

With regard to that time period following the signing of the grant agreement and promissory note, the starting point for analysis is that the damaged property had been rendered uninhabitable by the storm, and thus Respondent needed to identify another address where she had been residing in Ocean County after that event (Initial Decision

¹ It must be noted that in the Initial Decision the ALJ also finds that Respondent subjectively intended that the Surf City property constitute her "domicile" on the date of the storm (Initial Decision pages 11 and 13). The requirements for eligibility for the RSP program are spelled out in detail in the guidelines. The program does not make any reference to the concept of domicile, and does not permit an applicant's subjective intention to be considered as proof of primary residence.

pages 18 to 19). Respondent testified that she spent some time at the home of a friend, but could not recall the address or how long she stayed there (Initial Decision page 7). She apparently returned to Surf City in the spring of 2013, but was “unsure how long she stayed or where” (Ibid.). She was candid that she was not in New Jersey following the signing of the grant agreement and promissory note, and she spent “most of her time” for 2014 and 2015 in Arizona (Ibid.).

In addition, Respondent also testified that she does not go to doctors in New Jersey, that her primary care physician is in Arizona, and that her prescriptions are filled there (Ibid.). Her social security checks are sent to a bank in Arizona (Ibid.). With regard to her tax returns, despite the request in the remand, no New Jersey taxes were supplied for 2013; the federal taxes for that year listed Arizona as the address. For 2014, only an IRS e-file Signature Authorization, without address, was provided. And, for 2015, the New Jersey filing incorrectly included both addresses, and no federal filing was provided. (Initial Decision page 5). The 2016 returns use New Jersey (Initial Decision page 6).

As the ALJ found, this falls far short of proof of any residency in Ocean County, New Jersey - much less continued primary residency - during the three year period. No alternate address of residency was identified and no residential leases or receipts for hotel or motel rooms were produced. No testimony was presented from other individuals to support her alleged residency in the County. No receipts for any form of travel to New Jersey during this period were provided. There are no receipts for any purchases made in the County. The tax returns (when they were provided) are at best ambiguous (Initial Decision pages 18 to 19). Where the alleged residency occurred is completely unknown.

In her exceptions, Respondent argues that, having met the requirements for primary residence on the date of Superstorm Sandy, she has thus established primary residence for the three year period as well. Even if I agreed with the ALJ on the issue of primary residence on October 29, 2012, this argument would need to be rejected. The fact that primary residence can be shown at a particular date in 2012 does not demonstrate that the same thing is true for the subsequent three year period. The most obvious reason that argument must be rejected in this case is that the damaged property had been rendered uninhabitable by the storm. And, as described above, Respondent was unable to provide any evidence to support her primary residency in Ocean County during the three year period.

Respondent’s other arguments must also be rejected. She contends that the Division is improperly creating a new definition of primary residence for the three year period, which differs from the test applied to the date of the storm. In reality, the test for primary jurisdiction, and the proofs that are relevant, are the same - the only thing that changes is the time period being reviewed. Respondent also mischaracterizes the issue by

stating in her exceptions that the Division is requiring that she be physically present in the county for the entire three year period. This is obviously untrue; what is required is maintenance of a primary residence in the County, not physical presence every moment for the entire period, or for a certain percentage of time during that period.

Respondent suggests that as long as she continued to own the damaged property, she had fulfilled the RSP requirements. Under her logic, she could maintain ownership of the uninhabitable property, and reside outside the County and even the State, and still collect RSP funds. This interpretation makes a mockery of the program, which was designed to encourage homeowners whose property had been damaged in the storm to continue to reside in the County in which their property was located. It was not intended to create a class of absentee property owners. Respondent also alleges that she was told at some point in the process that ownership of the property was sufficient. The bottom line is that the RSP program is clear as to its requirements (as is the grant agreement and promissory note that was signed), and the Department does not have the ability to deviate from the program's requirements in the manner Respondent proposes. The Department is responsible to the federal government as to how program funds are spent.

Thus, for these reasons, as well as those set forth in the Initial Decision, I ADOPT the findings of fact and the ALJ's conclusion on the issue of whether Respondent has met the three year RSP residency requirement, and thus find that Respondent has failed to carry her burden of proving compliance with such requirement, and is thus ineligible to receive RSP benefits for this reason.

Date:

1/16/18



CHARLES A. RICHMAN
Commissioner