

Due Process Civil Complaint Press Release from Sewer Fairness Alliance

August 28, 2019 For immediate release

Judge Denise J. Casper of the United States District Court has denied the Town of Chelmsford's motion to dismiss a civil lawsuit brought against it by Chelmsford homeowners and the Sewer Fairness Alliance (SFA) of Chelmsford. The lawsuit alleges that the Town denied the homeowners basic due process rights.

In a 2016 decision the homeowners had been charged for the cost of a grinder pump repair in violation of the Town by-law which requires the Town to provide the repair when the failure of the pump is not attributable to the negligent use of the grinder pump by the homeowner. The ordinance prohibits homeowners from flushing things down the drain which could damage the pump. A list of these items is included in the Town by-law as constituting negligence in the use of the grinder pump.

The grinder pump is powered by electricity and during power outages the pump stops. This means no water usage and no flushing toilets unless the homeowner has a generator to power the grinder pump.

According to the grinder pump repair report the homeowners had operated the grinder pump during a power outage with a generator set to an incorrect voltage. The homeowners presented evidence to the Town that their generator had only one voltage setting making it impossible to set it to an incorrect voltage. The homeowners also reported that the technician had not even looked at the generator while he was on site repairing the grinder pump. The homeowners requested that the technician be invited to a meeting before the Department of Public Works so that he could either correct or defend his repair report. The Town denied the homeowners' request and provided him with no means to correct the demonstrably erroneous grinder pump repair report.

The Town claimed that the homeowners had received all of the due process that was due to them. The Judge ruled "A determination of the adequacy of such process may be determined best on a fuller record". The Town further claimed that the homeowners had no plausible due process claim since they had not appealed their adverse grinder pump sewer charge to the Town's board of assessors. The Judge ruled "the Court cannot conclude at this juncture that even if such post-deprivation process would be sufficient here, whether such remedy was available to the Markhams for the grinder pump repair cost"

The Town also claimed that the Sewer Fairness Alliance had no standing in the civil lawsuit. The Judge ruled that the Sewer Fairness Alliance has "standing at least as to the claims asserted by the Markhams"

The Town also claimed that the Chelmsford Board of Selectmen should be removed as a defendant in the lawsuit. In oral arguments, attorney for the plaintiffs, Alan Jay Rom had argued that the Chelmsford Board of Selectmen would be important in implementing any declaratory and injunctive relief that the plaintiffs were requesting. In her order Judge Casper did not remove the Board of Selectmen as a defendant.

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