



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

**354 BROADWAY, LLC AND DARIAN  
FLATLEY**

v.

**COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

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**EHB Docket No. 2024-139-B**

**Issued: March 18, 2025**

**OPINION AND ORDER  
ON THE DEPARTMENT’S MOTION FOR SANCTIONS IN THE FORM OF A  
DISMISSAL AGAINST APPELLANTS**

**By Steven C. Beckman, Chief Judge and Chairperson**

**Synopsis**

The Board grants in part and denies in part the Department’s motion for sanctions in the form of dismissal. The Board dismisses the appeal of appellant limited liability company for its failure to obtain counsel and to abide by Board rules and orders. The Board denies the dismissal of individual appellant’s appeal where the individual appellant has filed a list of objections, demonstrated an intent to participate in proceedings, and the Department has not suffered prejudice.

**OPINION**

**Background**

This matter involves an appeal filed by 354 Broadway, LLC (“Broadway”) and Darian Flatley (“Mr. Flatley”) (collectively, “Appellants”) of an Administrative Order issued on September 23, 2024 by the Department of Environmental Protection (“Department”). The Appellants own and operate a mobile home park located at 126 Kerr Road, Shenango Township, Lawrence County (the “Site”). The Site sits near Big Run, a stream, that borders a portion of the



Site. The Administrative Order requires the Appellants to take corrective actions in order for the Site to achieve compliance with The Clean Streams Law and the Dam Safety and Encroachments Act. The Appellants filed their Notice of Appeal on October 22, 2024 (“Appeal”) with the Environmental Hearing Board (the “Board”). The Appeal did not include a list of Appellants’ objections, prompting the Board to issue an Order to Perfect, directing Appellants to file a list of objections by November 12, 2024. Additionally, because no attorney entered an appearance on behalf of Broadway, the Board issued an order requiring Broadway to retain counsel to represent it in this matter by December 2, 2024.

The Appellants failed to file a list of objections by the ordered deadline, and on November 19, 2024, the Board issued a Rule to Show Cause (“Rule”) requiring the Appellants to submit their objections by December 6, 2024. The Rule further provided that the Appellants’ failure to file objections could result in the dismissal of their Appeal. In addition to Appellants missing the deadline to perfect, Broadway also failed to retain counsel by December 2, 2024. On December 5, 2024, the Appellants filed a letter with the Board requesting a thirty-day extension to file objections and for Broadway to retain counsel. The Board granted the request, setting January 9, 2025 as the deadline for Broadway to acquire counsel and for Appellants to file objections. On the day of the deadline, the Board received a second request from Appellants, this time asking for an additional sixty-day extension. The Board ordered the Department to respond to the Appellants’ request and on January 16, 2025, the Department filed its Response to Request for 60-day Extension and Motion for Sanctions in the Form of a Dismissal Against 354 Broadway, LLC and Darian Flatley (“Motion”). On February 13, 2025, the Appellants filed their response to the Department’s Motion and, in addition, submitted a list of objections and also filed a discovery request on the docket directed at the Department. The next day, the Appellants docketed their

responses to the Department's discovery request which included, amongst other things, email correspondence between Mr. Flatley and the Department. On February 28, 2025, the Department filed its reply. We are now ready to rule on the Motion.

The Department asks the Board to dismiss the Appellants' Appeal as a sanction pursuant to Rule 161 of the Board's Rules of Practice and Procedure. The Department puts forth two positions that it argues are grounds for dismissal. First it asserts that we should sanction Broadway by way of dismissal for its failure to obtain counsel. In its second argument, the Department asserts that dismissal is appropriate for both Broadway and Mr. Flatley due to their ongoing failure to perfect their Appeal. The Board's rule on sanctions provides that:

[t]he Board may impose sanctions upon a party for failure to abide by a Board order or Board rule of practice and procedure. The sanctions may include dismissing an appeal, entering adjudication against the offending party, precluding introduction of evidence or documents not disclosed, barring the use of witnesses not disclosed, or other appropriate sanctions including those permitted under Pa.R.C.P. 4019 (relating to sanctions regarding discovery matters).

25 Pa. Code § 1021.161.

The Board evaluates a motion to dismiss in the light most favorable to the non-moving party and only grants the motion where the moving party is entitled to judgment as a matter of law. *Protect PT v. DEP*, 2024 EHB 154, 155; *Scott v. DEP*, 2023 EHB 138, 139 (citing *Muth v. DEP*, 2022 EHB 262, 264); *Ritsick v. DEP*, 2022 EHB 283, 284. When resolving a motion to dismiss, the Board accepts the non-moving party's version of events as true. *Clean Air Council v. DEP*, 2023 EHB 203, 206 (citing *Pa. Fish and Boat Comm'n v. DEP*, 2019 EHB 740, 741); *Downingtown Area Regional Authority v. DEP*, 2022 EHB 153, 155.

In the Department's first argument, it asserts that by failing to secure legal representation, Broadway has committed multiple violations of the Board's orders and of its Rules of Practice and Procedure and, as such, we should dismiss its Appeal as a sanction. Section 1021.21(a) of our

Rules provide “[p]arties, except individuals appearing on their own behalf, shall be represented by an attorney.” 25 Pa. Code § 1021.21(a). Further, our rules require that corporations "shall be represented by an attorney of record admitted to practice before the Supreme Court of Pennsylvania." 25 Pa. Code § 1021.21(b). In considering the mandatory language of our rule, we have consistently held that corporations may not proceed with an appeal without legal representation. *L.A.G. Wrecking, INC. v. DEP*, 2015 EHB 338, 241; *Falcon Coal and Constr. Co. v. DEP*, 2009 EHB 209, 210; *R. J. Rhodes Transit, Inc. v. DEP*, 2007 EHB 260, 261; *Potts Contracting Co. v. DEP*, 1999 EHB 958, 960; *Bucket Coal Co. v. DEP*, 1999 EHB 288, 289-90. Broadway is a registered limited liability company in the state of Pennsylvania, hence, subject to Section 1021.21(b).<sup>1</sup> Almost five months have passed since the Appeal was initially filed. To date, Broadway has not been represented by legal counsel over the course of this matter’s proceedings.

On October 23, 2024, after Broadway filed its appeal, the Board ordered Broadway to obtain counsel by December 2, 2024. No attorney entered an appearance on behalf of Broadway by that deadline. The Appellants submitted their first request for extension on December 5, 2024, stating that, “[w]e are currently in the process of trying to obtain counsel.” (Appellants’ Letter Requesting Extension at Dkt. No. 7). The Board granted this request and ordered Broadway to acquire legal representation by January 9, 2025. Rather than an attorney entering an appearance before or on that date, the Appellants submitted another extension request on January 9<sup>th</sup> that provides in relevant part as follows:

Our current attorney recommended an environmental atto[r]ney after speaking with David Hall from the D.E.P for this case and

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<sup>1</sup> The decision to form and operate as an LLC creates both rights and responsibilities for the entity. It provides liability protection to its members but also requires that corporate formalities be observed including the requirement to be represented in legal proceedings in front of the Board by an attorney.

after speaking to the recommended attorney we are asking for a sixty day extension to secure the necessary funds to obtain that council.

(Appellants' Letter Requesting Second Extension at Dkt. No. 10).

In its Memorandum in Support of the Motion ("Memorandum"), the Department argues that Broadway concedes in its second extension request that it does not have the financial ability to retain counsel and, as such, there is no guarantee it will have the financial means to acquire counsel moving forward. Additionally, the Department takes issue with the content of Broadway's second request, or rather, lack thereof, asserting, in essence, that Broadway did not convincingly demonstrate in its request it is indeed earnestly seeking legal representation. The Department states that the Appellants "have not stated what efforts they have made to obtain counsel, what efforts they have made to raise the necessary funds, and when they plan to secure the necessary funds, among other things." (Department's Memo at 5).

Broadway addresses the Department's Section 1021(b) challenge in Paragraph two of its Response, entitled "Legal Representation" which provides in its entirety as follows:

Darian Flatley, as the sole member of 354 Broadway, LLC, is actively seeking legal counsel. Financial limitations have delayed securing representation, but efforts are ongoing, and an attorney will be retained before the hearing. Under 25 Pa. Code § 1021.21(b), LLCs must be represented by counsel, and Appellants are making every effort to comply.

(Response at ¶ No. 2).

In its Reply, the Department argues that the Board does not recognize an appellant's financial constraints as a defense to the requirement set forth in Section 1021.21(b). Further, the Department is concerned that if Broadway is allowed to remain in the case and retains representation at some unknown point in the proceedings, it could lead to further delays and continuances if an attorney enters his or her appearance at the eleventh hour in this matter.

We agree with the Department that dismissal of Broadway’s appeal is warranted at this juncture. As the Department points out, the Board has given Broadway several opportunities to obtain counsel since filing its Appeal. In our Order dated October 23, 2024, we first gave Broadway forty-days to acquire counsel. After missing that deadline, the Appellants filed their first request for extension several days later. The Board freely granted this request, allotting Broadway thirty more days to secure representation. On the day of the deadline for counsel to enter an appearance on Broadway’s behalf, Broadway submitted its second request, this time seeking an additional sixty-day extension. Section 1021.21(b) is clear in its requirement that Broadway be represented by counsel and, furthermore, Broadway has failed to comply with two Board orders directing it to obtain legal representation to conform with this Rule. Moreover, Broadway filed its sixty-day extension request on January 9, 2025. We ordered the Department to file a response to this request which it did in the form of the Motion. Hence, we have yet to formally act on the 60-day request. Due in part to the designated timeframe under our Rules for Broadway to file its Response to the Motion and for the Department to submit its Reply, more than 60 days has in fact passed since Broadway made its second request and still no attorney has entered an appearance on Broadway’s behalf.

We agree with the dissent that this is not a case where communication with the Board has ceased resulting in the abandonment of the Appeal. But despite the case not being abandoned, the communications from Mr. Flatley do not present a compelling argument on behalf of Broadway. First, while Mr. Flatley may be the sole member of Broadway, legally, it is a separate entity and he cannot act as the attorney for Broadway in front of the Board and file documents on its behalf.<sup>2</sup>

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<sup>2</sup> We have no knowledge of whether Mr. Flatley is a licensed attorney in the Commonwealth of Pennsylvania but, if he is not, continuing to file legal documents on behalf of Broadway, arguably constitutes the unauthorized practice of law.

A *pro se* corporation does not and cannot exist as a legal party in front of the Board. The Board may exercise its discretion to allow that situation to be corrected, as we have done here, and in many other cases, but that discretion does not alter the fact that our rules require that corporations be represented by attorneys and that such representation is required from the beginning of the case.

The dissent highlights Mr. Flatley's statement that he will retain an attorney for Broadway before the hearing in front of the Board. That, of course, ignores the ongoing case activities that must take place before a matter in front of the Board even reaches a hearing. Our pre-hearing order No. 1 requires that parties consult about settlement within 45 days and file a statement certifying those discussions took place within 60 days (December 23, 2024 in this case). The Department filed a letter with the Board on December 13, 2024 stating that it had been unable to hold settlement discussions with Broadway because it did not have counsel. Discovery is to be completed in 6 months by April 21, 2025 in this case and written discovery is to be served no later than March 21, 2025. Without counsel, Broadway will not be able to meet any of the discovery deadlines and the Department will be hindered in the discovery process. Once discovery is completed, our prehearing order calls for the filing of dispositive motions. Absent counsel, this cannot take place. Finally, before a hearing can take place, pre-hearing memos are exchanged and other hearing preparation steps must be completed, all of which cannot be done by Mr. Flatley on Broadway's behalf. As should be evident, a statement that Broadway will obtain counsel before the hearing is problematic and is not a position that the Board should endorse. The failure to have counsel to represent Broadway has a real impact on the parties by preventing the proceedings in front of the Board from moving forward in an orderly fashion. All parties to a Board proceeding, including the Department, have a right to expect the Board's rules to be followed and for matters to proceed in a proper manner. Considering Broadway's failure both to obtain counsel in

accordance with our Rules and to comply with our orders after it has had ample time to retain counsel, and the clear impact that failure has had on these proceedings, we find it appropriate to dismiss Broadway's Appeal as a sanction.

We now turn to the question of whether Mr. Flatley in his individual capacity can pursue his appeal. Mr. Flatley filed the Appeal using the Board's Notice of Appeal form. Paragraph four of the form directs filers to describe their specific objections, both factual and/or legal, to the challenged Department action. The requirement for an appellant to set forth their objections is codified in Section 1021.51 of the Board's Rules. See 25 Pa Code § 1021.51(e). Mr. Flatley did not file a list of his objections at the outset of his Appeal and, in addition, continued in his failure to submit his legal challenges even when ordered to do so by the Board in its Order to Perfect, the Rule to Show Cause, and the Order extending the deadline to submit his objections by January 9, 2025. Only recently has Mr. Flatley finally filed his objections in this matter.

The Department asserts that Mr. Flatley's repeated disregard for Board orders and the failure to comply with Board Rules should result in the dismissal of his appeal. At the time the Department filed its Motion, Mr. Flatley had not yet perfected his appeal which, it argues, demonstrates his lack of intention to prosecute the Appeal. The Department also claims that Mr. Flatley refused to participate in the settlement meeting required by the Board's Pre-Hearing Order No. 1 and that he has not complied with the Department's discovery requests, further evidencing that he has no interest in pursuing his Appeal. Additionally, the Department argues that Mr. Flatley's failure to provide his objections "has prejudiced the Department in its preparation for a trial in this matter, as the Department does not even know what is allegedly objectionable about its order [...]" and that the Department is handicapped "in its ability to attempt to settle or



otherwise resolve this matter, as it does not know which terms of the Department's Order are acceptable to Appellants and which are not." (Department's Memo at 6).

We do not disagree with the Department in that Mr. Flatley has on multiple occasions failed to comply with our Rules and Orders. However, we do not agree that Mr. Flatley is disinterested in pursuing this matter or that the Department is particularly prejudiced by his failure to file his objections. In several cases in front of the Board, appellants have become entirely dormant and unresponsive to the proceedings of their appeals and to Board outreach, making it clear that they have abandoned their legal pursuits. That is not the case here. While there is no doubt that Mr. Flatley has been dilatory in filing his objections, an approach we do not condone, he has not ceased his engagement in this matter. He has submitted two requests to extend the deadline for submitting his objections and timely filed his Response to the Department's Motion. Although long overdue, Mr. Flatley also filed his list of his objections the same day he filed his Response. Additionally, while not the standardized practice and procedure of this Board, Mr. Flatley also filed his requests for discovery and his responses to discovery on the docket. To us, such activity does not suggest a lack of interest on Mr. Flatley's part in prosecuting his appeal.

Moreover, we do not believe the Department is unduly prejudiced by the late arrival of Mr. Flatley's objections. The Department asserts that it can neither prepare for a hearing nor potentially settle this matter because it has no sense as to what Mr. Flatley objects to or what he finds unacceptable about its Administrative Order. However, in the discovery responses that Mr. Flatley filed on the docket, he provides email correspondence between him and the Department, including communication involving negotiations of a consent order and agreement that took place prior to this Appeal. Within that exchange, Mr. Flatley lists the terms of the proposed consent order and agreement that he takes issue with. The list of objections Mr. Flatley ultimately filed in

this matter are, for the most part, like the issues he wished to address with the Department during their prior negotiations. Based on this information, it appears that the Department has likely had at least general idea as to what Mr. Flatley found objectionable in the Administrative Order. Further, we are still within the initial discovery period set by the Board and a hearing in this matter is not imminent. Given the timing and the responses that have been filed, we conclude that under these facts, the Department has not suffered significant prejudice in its ability to proceed in this matter. Overall, we do not think the Department has demonstrated a sufficient basis for the Board to apply the serious sanction of dismissing Mr. Flatley's appeal. At the same time, we caution Mr. Flatley that if he continues to fail to comply in a timely manner with the Board's Orders and Rules, sanctions, including dismissal, may be warranted in the future.

Therefore, we issue the following Order:



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EHB Docket No. 2024-139-B

**ORDER**

AND NOW, this 18th day of March, 2025, the Department’s Motion to Dismiss is **granted in part and denied in part**, and it hereby ORDERED as follows:

1. The Department’s motion to dismiss as it pertains to 354 Broadway, LLC is **granted**.
2. The Department’s motion to dismiss as it pertains to Mr. Flatley is **denied**.

**ENVIRONMENTAL HEARING BOARD**

s/ Steven C. Beckman  
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**STEVEN C. BECKMAN**  
**Chief Judge and Chairperson**

s/ Bernard A. Labuskes, Jr.  
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**BERNARD A. LABUSKES, JR.**  
**Judge**

s/ MaryAnne Wesdock  
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**MARYANNE WESDOCK**  
**Judge**

s/ Paul J. Bruder, Jr.  
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**PAUL J. BRUDER, JR.**  
**Judge**

**\* Judge Sarah L. Clark files an Opinion Concurring in Part and Dissenting in Part, which is attached.**



**DATED: March 18, 2025**

**c: DEP, General Law Division:**  
Attention: Maria Tolentino  
*(via electronic mail)*

**For the Commonwealth of PA, DEP:**  
David Hull, Esquire  
Dearald Shuffstall, Esquire  
*(via electronic filing system)*

**For Appellants, *Pro se*:**  
354 Broadway, LLC  
Darian Flatley  
*(via electronic filing system)*



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**OPINION OF JUDGE SARAH CLARK  
DISSENTING IN PART AND CONCURRING IN PART**

**By Sarah L. Clark, Judge**

Although appellants who file appeals *pro se* are subject to the same Rules of Practice and Procedure as those represented by counsel, it is often the case that some leniency is granted to Commonwealth citizens appealing actions of the Department unassisted. *Perrin v. DEP*, 2008 EHB 82 (“Although we often have said that *pro se* parties will be given no special consideration, as we in fact did earlier in this very Opinion, in many (if not most or all cases) this simply is not true.”) The actions of the Department can have very real financial and practical consequences for these citizen appellants, who face an uphill battle to often even understand what is being asked of them and why, as well as what processes they must adhere to in order to avoid procedural dismissal, let alone make it to, or prevail at, a hearing. Indeed, even attorneys who are not seasoned practitioners before this Board are sometimes flummoxed by the particularities of our procedural Rules, but they at least have the training to work out what is expected of them. The reality is that many *pro se* appellants do not understand that the initiation of an appeal to the Board is akin to filing a lawsuit; rather, many seem to believe that the Board is the Department’s complaint box and simply do not understand that their continued participation in the appeal and compliance with our Rules is necessary to protect their rights. And even for those more sophisticated *pro se*

appellants who do understand that they have initiated a legal process, understanding and complying with the intricacies of our Rules can be a procedural minefield, often resulting in dismissal of their appeals before the merits can be reached. While this is often justified as *pro se* appellants frequently file an appeal and then completely disappear, where they are actively engaged and it is within the Board's discretion to dismiss the appeal or not, I believe it is prudent and in the interest of due process to exercise that discretion with benevolence. As the Board stated in *Hrivnak Motor Company v. DEP*, "...there is an absolutely fundamental, deep-seated right grounded in our federal and state constitutions that parties should have access to the courts and be afforded due process of law." 1999 EHB 437, 440.

While I concur with my esteemed colleagues in denying the dismissal of Mr. Flatley's appeal, I respectfully dissent in granting the dismissal of Broadway's appeal. First, it appears that Mr. Flatley is the sole owner and member of Broadway. Therefore, if we dismiss Broadway's appeal, even if Mr. Flatley should prevail in his individual appeal, the Department could simply enforce the Administrative Order against Broadway, which is Mr. Flatley for all intents and purposes.

It is true that the Board has consistently dismissed appeals as a sanction for failure to obtain counsel when an appellant has been unresponsive to Board Orders or motions to dismiss for failure to obtain counsel. In *Waroquier Coal Co. v. DEP*, we dismissed the Appellant company that filed its appeal *pro se* only after issuing an Order to Obtain Counsel and two subsequent Rules to Show Cause that all went unanswered, followed by nearly a month of email communication between Board staff and the Appellant company in which the Appellant company initially indicated that counsel had been obtained but stopped responding in any way when Board staff instructed that the alleged counsel must enter an appearance, and no attorney did enter an appearance. 2024 EHB

396, 397-398. In *Earth First Recycling, LLC v. DEP*, we only dismissed the Appellant LLC that filed its appeal *pro se* for failure to obtain counsel following the issuance of a letter advising the LLC to obtain counsel that went unanswered, a Rule to Show Cause to explain why it had not obtained counsel that was likewise not responded to, a conference call with the Parties explaining the Board appeal process and requirement that businesses be represented by counsel, a thirty day stay of proceedings while the LLC attempted to obtain counsel and subsequently missed the deadline to do so following the lifting of the stay, and, finally, the LLC's failure to respond to the Department's Motion to Dismiss for failure to obtain counsel. 2018 EHB 819, 820-821. In *L.A.G. Wrecking, Inc. v. DEP*, the incorporated Appellant's appeal was filed by counsel, but counsel withdrew due to a potential conflict of interest. Following the Board's grant of counsel's Motion for Leave to Withdraw Appearance as Counsel, the Board held a conference call with the Parties, stayed the matter for thirty days and ordered the incorporated Appellant to obtain new counsel. 2015 EHB 338, 339. Then Board staff contacted the Appellant's president to confirm her receipt of the Opinion and understanding of the requirement to obtain new representation. *Id.* When no counsel entered an appearance, we issued a Rule to Show Cause, made further attempts to reach the Appellant by telephone, and sent a letter reiterating the requirement to obtain counsel, none of which the Appellant responded to. *Id.* The appeal was dismissed only after the Department filed a Motion to Dismiss that likewise went unanswered. *Id.* at 340. Indeed, a review of our Opinions on this issue indicates that this Board tends to dismiss appeals for failure to obtain counsel where the non-individual Appellant that files its appeal *pro se* has either never responded to or has ceased responding to letters, Orders, Rules to Show Cause, and other communications from this Board on the issue of required representation, or where the Appellant's failure to respond generally demonstrates a disinterest in pursuing its appeal. See *Citizens Advocating a Clean Healthy*

*Environment v. DEP*, 2017 EHB 1077, 1078; *KH Real Estate, LLC v. DEP*, 2012 EHB 155, 156-157; *Falcon Coal and Constr. Co. v. DEP*, 2009 EHB 209, 210; *R. J. Rhodes Transit, Inc. v. DEP*, 2007 EHB 260, 261; *Potts Contracting Co. v. DEP*, 1999 EHB 958, 960, 962; *Bucket Coal Co. v. DEP*, 1999 EHB 288, 289.

This appeal is different in that the Appellants have remained active in the appeal – albeit on a delayed schedule – and indicated to the Board their intention to obtain counsel, citing financial limitations as the reason for the delay in compliance with our rules. While we recently dismissed an LLC Appellant that filed its appeal *pro se* for failure to obtain counsel where that Appellant was actively engaged in the appeal process in *Lizabella Mining, LLC v. DEP*, that dismissal came only after the Appellant indicated in its Response to the Department’s Motion to Dismiss that it did not have the funds to obtain counsel and that it would therefore not obtain counsel. 2024 EHB 783, 784, 786. Here, the Appellants have filed a Response to the Department’s Motion for Sanctions in the Form of a Dismissal which mentions several times the Appellants’ ongoing attempts to comply with the Boards Rules and Orders and obtain counsel, referencing only financial limitations as the cause of the delay. (A. Response at ¶¶ 1, 2.) In fact, the Department’s Motion was filed at least in part in response to the Appellants’ January 9, 2025 request for a sixty day extension specifically to raise the necessary funds to engage counsel in the form of a letter to Presiding Judge Beckman, which is being addressed by the Board for the first time in the majority’s dismissal of the LLC’s appeal. That letter states in its entirety:

Our current attorney recommended an environmental attorney [sic] after speaking with David Hall from the D.E.P. for this case and after speaking to the recommended attorney we are asking for a sixty day extension to secure the necessary funds to obtain that council [sic].

(A. Extension Request at 1.) To me this indicates that these Appellants are actively seeking representation and, importantly, taking specific steps to secure that representation, clearly



distinguishing this matter from the vast majority of our Opinions addressing failure to obtain counsel.

Unfortunately, financial constraints do not relieve an appellant from complying with our Rule requiring that non-individuals be represented by counsel. However, Broadway is not seeking to be relieved from complying with that Rule. In fact, the Appellant's most recent communication to the Board stated:

Darian Flatley, as the sole member of 354 Broadway, LLC, is **actively seeking legal counsel**. Financial limitations have delayed securing representation, but efforts are ongoing, and **an attorney will be retained before the hearing**. Under 25 Pa. Code § 1021.21(b), LLCs must be represented by counsel, and Appellants are **making every effort to comply**.

(A. Response at ¶ 2 (emphasis added).) According to this statement, Broadway is actively seeking counsel and intends to do so prior to the hearing on the merits, but has been delayed due to financial limitations. Additionally, I do not find the Department's argument that allowing Broadway to retain representation at some unknown point in the proceedings could lead to further delays and continuances at the eleventh hour persuasive because Mr. Flatley is proceeding *pro se*, and is the sole member of Broadway, so Mr. Flatley could choose to obtain counsel in his individual appeal at any point during the proceedings.

For these reasons, while it is entirely within the Board's discretion to dismiss Broadway's appeal at this juncture, and I respect the majority's decision to do so, I believe that granting a further extension to comply with the Board's Order to Obtain Counsel, or, in the alternative, first providing the Appellants with an opportunity to justify the extension through a request for documentation of the Appellants' attempts to obtain counsel, would be harmonious with our prior Opinions on this issue and a generally judicious approach to ensure that Mr. Flatley receives true



due process. Therefore, I would have denied the Department's Motion to Dismiss Broadway's appeal for failure to obtain counsel at this time.

**ENVIRONMENTAL HEARING BOARD**

s/ Sarah L. Clark

**SARAH L. CLARK**

**Judge**

**DATED: March 18, 2025**