

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA, et al.,
Plaintiffs,

vs.

BOARD OF HAMILTON COUNTY
COMMISSIONERS, et al.,
Defendants.

Case No. 1:02-cv-107
Spiegel, J.
Litkovitz, M.J.

**ORDER RE: REQUEST
FOR REVIEW BY
ROBERT MEYER**

This matter is before the Court on the Request for Review of the denial of a Sewer Backup (“SBU”) claim by Robert Meyer. (Doc. 561). Mr. Meyer seeks compensatory damages from the Metropolitan Sewer District of Greater Cincinnati (“MSD”) for sewer water backup into his basement.

Mr. Meyer’s request for review is filed under the Sewer Backup¹ program (formerly known as the Water-in-Basement [WIB] Claims Process Plan) (Doc. 131, Consent Decree, Exhibit 8). The Plan states in relevant part:

Subject to the requirements of this Plan, occupants who incur damages as a result of the backup of wastewater into buildings due to inadequate capacity in MSD’s Sewer System (both the combined and the sanitary portions) can recover those damages. This plan also provides a means for occupants to recover damages arising from backups that are the result of MSD’s negligent maintenance, destruction, operation or upkeep of the Sewer System. The Claims Process is not intended to address water in buildings caused by overland flooding not emanating from MSD’s Sewer Systems or caused by blockages in occupants’ own lateral sewer lines.

(Doc. 131, Consent Decree, Exhibit 8 at 1). In determining the cause of SBU, MSD must

¹The “Water-In-Basement” program has been renamed the “Sewer Backup” program to more accurately reflect MSD’s responsibility for sewage backups caused by inadequate capacity in MSD’s sewer system. *See* Doc. 452 at 4; Doc. 454 at 16.

exercise its good faith reasonable engineering judgment and consider the following non-exclusive factors: amount of precipitation, property SBU history, condition of the sewer system in the neighborhood, results of a visual inspection of the neighborhood to look for signs of overland flooding, neighborhood SBU history, capacity of nearby public sewer lines, and topography. (Doc. 131, Consent Decree, Exhibit 8 at 2). Damages arising from basement backups for which MSD is responsible are limited to documented real and personal property. *Id.*

Mr. Meyer is the owner of the property located at 2614 Montana Avenue, Cincinnati, Ohio. Mr. Meyer is claiming \$3,475.62 for property and other damages sustained from December 11, 2011 through February 21, 2012, due to alleged sewer backup into his property. He has attached an itemized list to his request for review detailing these damages, which include lost rent and costs associated with plumbing, cleaning, and repair of certain fixtures. (Doc. 561 at 2).

MSD states that Mr. Meyer contacted MSD on February 7, 2012 to report a sewer backup on that date. That same day, a crew from MSD investigated and determined there was no mainline sewer trouble causing the backup. The following day, MSD conducted a TV inspection of the lateral sewer line and discovered that the portion of the building lateral sewer line within the public right-of-way was in need of repair. A work order for the repair was scheduled.

On February 21, 2012, Mr. Meyer experienced another backup at his property and reported it to MSD. MSD investigated and found no problems with the mainline sewer. On February 23, 2012, MSD performed the previously scheduled repair work on the building lateral sewer line in the public right-of-way.

Mr. Meyer submitted a claim for damages to MSD on March 21, 2012. MSD offered Mr.

Meyer a portion of his expenses associated with the backup that occurred after Mr. Meyer reported sewer backup to his property to MSD on February 7, 2012, but not before. (Doc. 579-1 at p. 1). MSD offered Mr. Meyer a total of \$687.50 to settle the claim, which Mr. Meyer rejected.

Under the Consent Decree, property owners may recover damages to personal or real property arising from “backups that are the result of MSD’s negligent maintenance, destruction, operation or upkeep of the Sewer System.” (Doc. 131, Consent Decree, Exhibit 8 at 1). Property owners are responsible for backups in the building lateral sewer lines, which are owned by the property owner and not MSD. (*Id.*). Occupants of properties damaged as a result of a basement backup must notify MSD within 24 hours of the time the backup is discovered to recover damages under the Claims Process Plan. (*Id.*).

The evidence in this case establishes that on February 7, 2012, Mr. Meyer reported to MSD a sewer backup into his property. The following day, MSD discovered a collapsed lateral in the public right-of-way which MSD was responsible for repairing. Therefore, any damages to the homeowner as a result of the collapsed lateral are compensable under the Consent Decree. As Mr. Meyer reported the backup within 24 hours as required under the Consent Decree, he is entitled to compensation for the February 7 and 21, 2012 backups.

However, there is no evidence that Mr. Meyer reported to MSD any alleged sewer backups in December 2011 or January 2012, the additional months that he incurred plumbing and repair expenses for which he seeks compensation. Under the Consent Decree, Mr. Meyer was required to report sewer backups within 24 hours to claim compensation for damages. (Doc. 131, Consent Decree, Exhibit 8 at 1). In addition, there has been no evidence presented to the

Court to establish that the December 2011 and January 2012 repair and plumbing expenses incurred by Mr. Meyer were caused by inadequate capacity in MSD's Sewer System or as a result of MSD's negligent maintenance or upkeep of the Sewer System. Under the SBU program governed by the Consent Decree, homeowners who seek review of the denial of an SBU claim bear the burden of proof of showing that the backup of wastewater into their property was due to inadequate capacity in MSD's sewer system, and not due to blockages in the occupant's own lateral sewer lines, or as a result of MSD's negligent maintenance or upkeep of the Sewer System. (Doc. 131, Consent Decree, Exhibit 8 at 1). Because Mr. Meyer did not report any sewer backups to MSD within 24 hours of their occurrence in December 2011 and January 2012, and because the Court is unable to infer from the scant evidence presented by Mr. Meyer that the December and January plumbing expenses were causally related to the February 2012 lateral collapse, Mr. Meyer is not entitled to compensation for the December 2011 and January 2012 expenses under the Consent Decree.

The Court awards damages of \$807.50 for the plumbing and repair expenses incurred on February 10, 12, and 21, 2012, and \$175.00 for the final clean-up for a total award of \$982.50. Mr. Meyer's request for reimbursement of lost rental income is denied as the Consent Decree covers damage to real or personal property only, and not lost income.

IT IS SO ORDERED.

Date: 12/18/12


Karen L. Litkovitz, Magistrate Judge
United States District Court