

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 0028

LOUIS J. BRAQUET and TONI G. BRAQUET

VERSUS

**THE OFFICE OF COMMUNITY DEVELOPMENT, AN AGENCY OF THE
STATE OF LOUISIANA, DIVISION OF ADMINISTRATION**

Judgment rendered: JUN 11 2010

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Suit Number: 575,724; Section: 24
The Honorable R. Michael Caldwell, Judge Presiding**

**Frank A. Silvestri
New Orleans, Louisiana**

**Counsel for Plaintiff/Appellant
Louis J. Braquet and
Toni G. Braquet**

**Erin C. Day
Baton Rouge, Louisiana**

**Counsel for Defendant/Appellee
The Office of Community
Development, an Agency of the
Division of Administration, State of
Louisiana**

**Renee Culotta
New Orleans, Louisiana**

**Allen J. Krouse, III
New Orleans, Louisiana**

BEFORE: DOWNING, GAIDRY AND McCLENDON, JJ.

McCleendon, J. CONCURS

DOWNING, J.

Louis J. Braquet and Toni G. Braquet (hereinafter the Braquets) appeal a judgment rendered in district court pursuant on their request for judicial review of a determination made by the Office of Community Development, an agency of the Louisiana Division of Administration (hereinafter OCD). We conclude that the district court did not err in sustaining OCD's exception of no right of action because persons aggrieved under the Road Home Program have no right to judicial review pursuant to the Louisiana Administrative Procedures Act (hereinafter LAPA). Plaintiffs have shown no property interest in the grant money, nor has there been an adjudication within the meaning of the LAPA.^{1, 2} Accordingly, the district court judgment is affirmed.³

The Braquet's residence located in Jefferson Parish was damaged during Hurricane Katrina. They timely filed an application with the Road Home Program claiming they were entitled to a Type I evaluation because the damage to their home exceeded 50% of its pre-storm value. OCD determined that the home did not exceed 50% of its pre-storm value and, therefore, calculated the loss under a Type II evaluation. The disparity in the calculation occurred because OCD placed a higher value on the property than the Braquets appraisals, resulting in a lower percentage of damage.⁴

After exhausting OCD's administrative appeal processes, the Braquet filed a petition for judicial review, claiming that OCD's arbitrary and capricious use of

¹ See also *Bowers v. Firefighters' Retirement System*, 08-1268, p. 4 (La. 3/17/09), 6 So.3d 173, 176, where the court stated that the scope of judicial review of administrative agencies in the performance of a discretionary duty is restricted to a determination of whether the agency's action can be deemed to have been unreasonable, arbitrary or capricious, or whether it amount to an abuse of power. ... Under the arbitrary and capricious standard, an agency decision is entitled to deference in its interpretation of its own rules and regulations. ...

² *Bowers* was filed as an ordinary proceeding and was not a petition for judicial review.

³ We make no determination as to whether the Braquets can bring an ordinary action against the State of Louisiana raising legal or constitutional claims. An ordinary action however, cannot be brought in the same pleading as an action for judicial review because no evidence is allowed under the LAPA when the district court is functioning in an appellate capacity. See *Delta Bank & Trust Company v. Lassiter*, 383 So.2d 330, 333-34, (La. 1980).

⁴ Under the action plan, payment to recipients is based upon (1) pre-storm value of home, (2) estimated cost of damage, (3) amount of FEMA assistance, and (4) amount of insurance payments to homeowner.

property value figures was plainly wrong in calculating their appraisal and percentage of damage. The Braquets argue that OCD should not be allowed to circumvent due process rights when they, as grant recipients, are entitled to the grant money.

The thrust of the Braquet's appeal is that they should not be improperly prohibited from seeking judicial review of OCD's decision.⁵ We conclude that, in this regard, no mechanism exists to invoke review in the district court under the LAPA. In **Denham Springs Economic Development District v. All Taxpayers, Property Owners and Citizens of Denham Springs Economic Development District**, 05-2274, p. 23 (La. 10/17/06), 945 So.2d 665, 681, the court explained that the range of interests protected by procedural due process is not infinite, and the Supreme Court has rejected the notion that any grievous loss visited upon a person by the state is sufficient to invoke the procedural protections of the Due Process Clause. Only when protected interests are implicated does the right to some kind of notice and hearing attach. **Id.**

Here, there is no vehicle under the LAPA for the Braquets to show a property interest in the grant money. No evidence is admissible pursuant to judicial review under the LAPA. *See* LSA-R.S. 49:964(F). As such, since there was nothing admitted into the record in the administrative proceeding below, the Braquets are unable to show that OCD's actions were arbitrary and capricious.

In the absence of a right of judicial review, neither the trial court nor an appellate court has jurisdiction to rule on the merits of a claim. **Carter v. State of Louisiana**, 03-2728, pp. 4-5 (La.App. 1 Cir. 10/29/04), 897 So.2d 149, 152. As this court explained in **Dandridge v. Office of Community Development**, 09-1564 (12/7/09) 2009 WL 4724237 (unpublished), *writ denied* 10-0037 (La. 3/12/10), 28 So.3d 1029, plaintiffs do not have a right of action for judicial review

⁵ We note that the Braquets filed a motion to supplement the record on May 11, 2010. Having no objection to the supplementation, we hereby grant the motion.

as provided for in La. R.S. 49:964 to challenge the amount they received from the grant through a judicial review process, because they cannot show their entitlement to the grant money. Therefore, unless there is some provision in the constitution or statutes requiring a hearing, an agency disposition is not a “decision or order” within the meaning of LAPA. **Id.**

In this case there has been no adjudication to review, nor is there a process under the LAPA to force the agency to hold a hearing and to render a decision that can be reviewed by the district court. **Id.** Consequently, the trial court did not err in finding that the Braquets have no right to judicial review under the APA.

DECREE

Accordingly, for the above reasons, the district court judgment is hereby affirmed. The costs of this appeal in the amount of \$688.00 are assessed to the plaintiffs-appellants, Louis J. Braquet and Toni G. Braquet.

AFFIRMED