

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

<b>RAXON RESTAURANT, INC., et al,</b>	:	<b>Case No. 13CV006608</b>
	:	
<b>Appellants,</b>	:	<b>Administrative appeal of state</b>
	:	<b>Board of Building Decision in</b>
<b>v.</b>	:	<b>Case No. 13-0055</b>
	:	
<b>OHIO DEPT. OF COMMERCE,</b>	:	
<b>DIV. OF STATE FIRE MARSHAL,</b>	:	
	:	<b><u>JUDGMENT ENTRY</u></b>
<b>Appellee.</b>	:	

On November 25, 2013, the Court ruled in the matter of *Raxon Restaurant, Inc. v. Ohio Dept. of Commerce, Div. of State Fire Marshal* in favor of Appellee Ohio Department of Commerce, Division of State Fire Marshal. The Court held that it lacks subject-matter jurisdiction over this administrative appeal of the Board of Building Appeals' Decision upholding State Fire Marshal Citation and Order No. 44-25-2012-0131. Court's Decision attached as Exhibit A. The Court therefore **GRANTS** the Motion to Dismiss of the Ohio Department of Commerce, Division of State Fire Marshal filed on July 11, 2013.

Costs to Appellant. This is a final appealable order.

\_\_\_\_\_  
David W. Fais, Judge

Approved by:

MICHAEL DEWINE (0009181)  
Attorney General of Ohio

/s/ Hilary R. Damaser  
Hilary R. Damaser (0059190)  
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Counsel for Appellants Raxon Restaurant, Inc.  
and Columbus Inn and Suites

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **Proposed Judgment Entry** with the Clerk of the Court by using the e-Filing system which will send a notice of electronic filing to the following this 13<sup>th</sup> day of December, 2013:

Bryan O. Steward, Esq.  
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Counsel for Appellants Raxon Restaurant, Inc.  
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Columbus, Ohio 43215  
Counsel for the state Board of Building Appeals

/s/ Hilary R. Damaser  
Hilary R. Damaser

Franklin County Court of Common Pleas

**Date:** 12-17-2013  
**Case Title:** RAXON RESTAURANT INC ET AL -VS- STATE FIRE  
MARSHALL LARRY FLOWERS  
**Case Number:** 13CV006608  
**Type:** JUDGMENT ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "D. W. Fais", is written over a circular, textured seal. The seal is partially obscured by the signature.

/s/ Judge David W. Fais

Court Disposition

Case Number: 13CV006608

Case Style: RAXON RESTAURANT INC ET AL -VS- STATE FIRE  
MARSHALL LARRY FLOWERS

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

RAXON RESTAURANT INC., ET AL.,	:	
Appellants,	:	Case No. 13CVF06-6608
	:	
vs.	:	JUDGE FAIS
	:	
LARRY FLOWERS, STATE FIRE	:	
MARSHALL, OHIO DEPARTMENT OF	:	
COMMERCE, DIVISION OF STATE	:	
FIRE MARSHALL,	:	
Appellee.	:	

**DECISION GRANTING APPELLEE,**  
**OHIO DEPARTMENT OF COMMERCE, DIVISION OF STATE FIRE**  
**MARSHALL’S MOTION TO DISMISS,**  
**FILED JULY 11, 2013**

This matter is before the Court upon the Motion to Dismiss, filed by Appellee, Ohio Department of Commerce, Division of State Fire Marshall (hereinafter “Defendant Fire Marshall”), on July 11, 2013. No Memorandum Contra has been filed.

**I. Background**

On June 14, 2013, Appellants, Raxon Restaurant Inc. and Columbus Inn and Suites (hereinafter “Appellants”), filed a Notice of Appeal to the Board of Building Appeals from the Citation No. 44-25-20212-0131, dated May 15, 2013. Appellants contend that the Agency’s order was not supported by reliable, probative and substantial evidence and was not in accordance with law.

On July 11, 2013, Appellee Fire Marshall filed the Motion to Dismiss, which is now before the Court.

## II. Discussion

Appellee Fire Marshall contends that because Appellants have failed to comply with the requirements of R.C. 119.12, this Court lacks jurisdiction and should dismiss Appellants' Appeal. Specifically, Appellee Fire Marshall contends that Appellants failed to file a copy of their Notice of Appeal with the State Board of Building Appeals. R.C. 119.12, states in pertinent part:

*Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal shall also be filed by the appellant with the court. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice. Unless otherwise provided by law relating to a particular agency, notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section. [Emphasis provided.]*

In addition, R.C. 3737.43 states in pertinent part:

*If the responsible person is aggrieved by an order of the board, the person may appeal to the court of common pleas where the property that is the subject of the citation is located, within thirty days after the board renders its decision. [Emphasis provided.]*

R.C. 3737.43(B).

In the case at hand, Appellee Fire Marshall contends that it sent to Appellants by certified mail, Citation No. 44-25-2012-0131, on February 1, 2013. Appellee Fire Marshall further contends that upon Appellants' request, the Board held a hearing on May 13, 2013 and issued its decision on May 15, 2013. The Court finds that Appellants filed their Notice of Appeal with the Court on June 14, 2013, within the required thirty

days of the Board's decision. See, R.C. 3737.43(B). However, under R.C. 119.12, Appellants were also required to file a copy of their Notice of Appeal with the Board of Building Appeals. Appellee Fire Marshall contends that Appellants did *not* file a copy of their Notice of Appeal with the Board of Building Appeals, and instead only directed the Clerk of Court to serve a copy of the Notice of Appeal upon Appellee Fire Marshall, *not* upon the Board of Building Appeals.

In a similar case, the Franklin County Court of Appeals stated:

This court has previously held that the requirement that the notice of appeal be filed with the agency and a copy with the court is mandatory and jurisdictional. *Carnes, supra*. See, also, *Harrison v. State Med. Bd. of Ohio* (June 15, 1995), Franklin App. No. 94APE10-1457, unreported (on motion for reconsideration); *In re Namey* (1995), 103 Ohio App.3d 322, 659 N.E.2d 372, discretionary appeal not allowed (1995), 74 Ohio St.3d 1408, 655 N.E.2d 187.

*Smith v. Ohio DOC* (Aug. 21, 2001), Franklin Cty. App. No. 00AP-1342, 2001 Ohio App. LEXIS 3660. See also, *Hughes v. Ohio DOC*, 2007-Ohio-2877, ¶¶ 17-18.

Therefore, pursuant to *Smith, supra*, and *Hughes, supra*, the Court finds that because Appellants failed to also file their Notice of Appeal with the Board of Building Appeals, Appellants' Notice of Appeal was not filed in compliance with R.C. 119.12. As such, this Court lacks jurisdiction over Appellants' appeal, and the Court accordingly hereby **GRANTS** Appellee Fire Marshall's Motion to Dismiss.

Counsel for Appellee Fire Marshall shall submit the appropriate Judgment Entry pursuant to Loc.Rs. 25.01 and 25.02.

**IT IS SO ORDERED.**

**Copies to:**

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*Counsel for Appellee, Ohio Department of Commerce, Division of State Fire Marshal*



Franklin County Court of Common Pleas

**Date:** 11-25-2013  
**Case Title:** RAXON RESTAURANT INC ET AL -VS- STATE FIRE  
MARSHALL LARRY FLOWERS  
**Case Number:** 13CV006608  
**Type:** DECISION

It Is So Ordered.

A handwritten signature in black ink, appearing to read "D. W. Fais", is written over a circular, textured seal. The seal is partially obscured by the signature.

/s/ Judge David W. Fais

Court Disposition

Case Number: 13CV006608

Case Style: RAXON RESTAURANT INC ET AL -VS- STATE FIRE  
MARSHALL LARRY FLOWERS

Motion Tie Off Information:

1. Motion CMS Document Id: 13CV0066082013-07-1199980000  
Document Title: 07-11-2013-MOTION TO DISMISS  
Disposition: MOTION GRANTED