

## ASPEN-PITKIN COUNTY HOUSING AUTHORITY

Case No. 2025-0001

IN RE PEGGY BRISCOE GRIEVANCE

---

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

---

This matter came before the Hearing Officer Thomas W. Snyder for public hearing on April 30, 2025 upon the grievance submitted by Peggy Briscoe (the “Grievance”). The hearing was held at the Aspen-Pitkin County Housing Authority (“APCHA”) offices, 18 Truscott Road, Aspen, CO.

Present at the hearing were: 1) the grievant Peggy Briscoe; 2) Jackie Marinaro representing APCHA; and 3) Charlie Weaver, as witness for Ms. Briscoe. The hearing was conducted in accordance with APCHA Employee Housing Regulations (“APCHA Regulations”) Part VI Section 5.E.3.

The Grievance asserts that APCHA Staff did not follow the APCHA Regulations when they informally informed Ms. Briscoe that she would not be eligible for maintaining her rental housing as a retiree, which requires (among other things) a showing of continuous full-time work for the previous ten years. In response, APCHA asserts that this matter is not ripe for determination because no housing unit has been offered to Ms. Briscoe, which is a prerequisite for applying for a unit under APCHA regulations. APCHA further states that it appropriately applied the APCHA Regulations in informing Ms. Briscoe that she would not qualify for rental housing as a retiree.

Based on the evidence and testimony received at hearing, the Hearing Officer denies the Grievance because it is not ripe for determination, as no housing unit has been offered to Ms. Briscoe. However, given the likelihood of this matter arising again, the Hearing Officer offers nonbinding guidance in *obiter dictum* below.

### FINDINGS OF FACT

#### I. Procedural Matters

1. Ms. Briscoe formally initiated the Grievance on April 4, 2025 by submission of a summary statement. Ex. I. With her statement, Ms. Briscoe submitted several exhibits. *See* Exs. J, K, L, M, N, O, P, and Q.

2. The Hearing Officer conducted a prehearing conference on April 15, 2025, following which the Hearing Officer issued a prehearing order with deadlines for submission of a prehearing statement and exhibits, and the April 30<sup>th</sup> hearing date was set.

3. On April 23, 2025, APCHA submitted its prehearing statement with Exhibits A through S. Exhibits I through R consisted of the documents Ms. Briscoe submitted with her April 4<sup>th</sup> position statement and in several emails thereafter.

4. On April 23, 2025, Ms. Briscoe submitted her position statement with documentation she originally had submitted with her summary statement. Ex. T. She later submitted additional documentation, labeled Exhibits U and V.

## **II. Hearing Testimony and Exhibits**

5. Exhibits A through V were admitted at hearing without objection.

6. The parties agreed Ms. Briscoe has rented an APCHA unit since 2009.

7. Ms. Briscoe testified that the owner of the unit wants to remodel and she must leave.

8. Ms. Briscoe testified that she made initial application for an apartment at Aspen Community Inn (“ACI”) in approximately January 29, 2025, and specifically sought a senior housing classification so that she would be given priority. Ex. A.

9. Ms. Marinaro testified that, per APCHA Regulations, Ms. Briscoe’s application was not considered because Ms. Briscoe had not received an offer to rent any ACI units. This was confirmed to Ms. Briscoe in several emails. *See* Exhibits B, C, and D.

10. APCHA nevertheless agreed, at Ms. Briscoe’s request, to provide what APCHA termed a “courtesy review” of Ms. Briscoe’s documentation as to eligibility for APCHA housing to assist her in planning. *See* Exhibit D.

11. In a February 19, 2025 email, APCHA informed Ms. Briscoe that she likely would not qualify for ACI because her income was too high under APCHA regulations and the income limits applicable to that complex.

12. APCHA then analyzed Ms. Briscoe’s submitted documentation for eligibility as a retiree. It appears APCHA applied the criteria for retiree eligibility under the APCHA Regulations because Ms. Briscoe had indicated that she would soon retire. *See* Exhibits A and D.

13. To qualify as an eligible retiree, an applicant must, among other things, show she has worked full-time in Pitkin County for a minimum of ten years immediately prior to retirement age and resided in APCHA housing for a minimum of four years immediately prior to

retirement. *See* APCA Regulations Part III Section 2.B.3. To work “full-time” means to work a minimum of 1,500 hours in a calendar year. *See* APCA Regulations Part III Section 1.

14. In the February 19<sup>th</sup> email, APCA identified several years in which records submitted by Ms. Briscoe failed to establish she had earned the equivalent of minimum wage times 1500 hours in a calendar year. Most of these years fell outside the ten-year look-back period. However, these years also included 2019 and 2021, which were within the ten-year look-back period. *See* Exhibit D.

15. APCA stated in the February 19<sup>th</sup> email that, “Per the APCA Regulations, in absence of documentation, APCA [relies] on the minimum wage x 1500 to verify full time employment for prior years.” *Id.* The February 19<sup>th</sup> email concluded, “From the information submitted APCA is unable to verify a full-time employment from 2015-2025 and would not be able to qualify you as a qualified retiree at this time.” *Id.*

16. In response, Ms. Briscoe sent several emails protesting the conclusion. *See* Exhibits E and F. In Exhibit F, which was a March 10, 2025 email, Ms. Briscoe stated, among other things, that in 2019 and 2021 she had received advances on commissions from Charlie Weaver, who is the proprietor of the real estate company, Weaver & Briscoe, Inc., with which she has been affiliated for many years.

17. The exhibits submitted at hearing do not show any further correspondence between APCA and Ms. Briscoe on the subject matter. At some point, Ms. Briscoe requested that she be allowed to invoke the grievance process in APCA Regulations, which led to this hearing.

18. At the hearing, Ms. Briscoe presented documentation supporting her contention that she had indeed received advances on commissions from Mr. Weaver for the years 2019 and 2021. *See* Exhibits L and M. Ms. Briscoe testified that Mr. Weaver had issued her regular checks over this period, with the agreement that the amounts would be deducted from the next commission check she received.

19. Ms. Briscoe testified that the advances on commission payments she received in 2019 were deducted from her commission payments in 2020. She testified that the IRS Form 1099 submitted for 2020 reflected the total commission earned, which is what she paid taxes on, but the actual check she received from Weaver & Briscoe reflected a deduction of the advance commissions.

20. Ms. Briscoe testified that this same procedure was followed for 2021. Specifically, the advances on commission payments she received in 2021 were deducted from her commission payments in 2022. She testified that the IRS Form 1099 submitted for 2022 reflected the total commission earned, which is what she paid taxes on, but the actual check she received from Weaver & Briscoe reflected a deduction of the advance commissions.

21. Mr. Weaver confirmed Ms. Briscoe's testimony.

22. The testimony from Ms. Briscoe and Mr. Weaver on the issue of advance commissions was credible, and it was supported by the documentation submitted. *See Exhibits J, L, M.*

23. In further support of her contention that she had worked full-time for the years 2019 and 2021, Ms. Briscoe presented documents reflecting clients with whom she had worked and contracts that had been drafted. *See Exhibits N, O, P, and Q.*

24. Ms. Marinaro testified that APCHA's position is that this grievance is not ripe, as Ms. Briscoe has not been offered a rental unit. Ms. Marinaro testified that APCHA's communications with Ms. Briscoe were provided solely as a courtesy and at Ms. Briscoe's request. The documents support that testimony. *See Exhibits A through D.* Ms. Marinaro testified that no decision therefore was final and that Ms. Briscoe was free to apply for APCHA support if and when a housing unit is offered her.

25. As to the issue of meeting the full-time working requirements for 2019 and 2021, Ms. Marinaro testified that it would have been improper for APCHA to have considered the advance commissions received in 2019 and 2021 as income received in those years, as the income was not reported and taxed until the following years. Ms. Marinaro also noted the absence of documentation showing that the 2019 and 2021 commission advances had been deducted from the commission payments Ms. Briscoe received in 2020 and 2022.

## CONCLUSIONS OF LAW

### I. The Grievance is not ripe.

1. A dispute must be "ripe" for there to be an adjudication. As the court stated in *Zook v. El Paso Cnty.*, 2021 COA 72, ¶ 9:

Ripeness tests whether an issue is real, immediate, and fit for adjudication. *Olivas-Soto v. Indus. Claim Appeals Off.*, 143 P.3d 1178, 1180 (Colo. App. 2006). We should "refuse to consider uncertain or contingent future matters that suppose a speculative injury that may never occur." *Bd. of Dirs., Metro Wastewater Reclamation Dist. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 105 P.3d 653, 656 (Colo. 2005); *see also Robertson v. Westminster Mall Co.*, 43 P.3d 622, 628 (Colo. App. 2001) ("A court has no jurisdiction ... to decide a case on a speculative, hypothetical, or contingent set of facts.").

2. The APCHA Regulations specify how eligibility for rental units is determined. Under Part III, Section 2.A.1 of the APCHA Regulations, "A rental applicant must submit a Long-Term Rental Application with all required information, documentation, and fees *after a rental unit is offered to him/her and prior to signing a lease or occupying a unit.*" (emphasis

added). *See also* Part IV Sections 2.A and 2.B (explaining the process for obtaining an offer for a unit *before* submitting application to APCA).

3. Ms. Briscoe has not obtained an offer to rent any particular rental unit. Accordingly, the application processes set forth in the Regulations have not begun. Indeed, APCA Staff were consistent in their communications with Ms. Briscoe that they were providing a “courtesy review” of her qualification materials. APCA’s conclusion that Ms. Briscoe fails to qualify as a retiree has no immediate significance because Ms. Briscoe has not been injured by the determination, since no unit has been offered to her.

4. While this may seem like a technicality given that Ms. Briscoe will be injured if a unit is offered to her and her APCA application is denied, there are strong reasons to adhere to the ripeness doctrine. For instance, the Regulations note that qualifications may differ based on the housing unit for which the applicant applies. Further, Ms. Briscoe’s personal circumstances may change by the time she formally applies for alternate housing. Or perhaps APCA’s regulations will change. There are many reasons why courts refrain from issuing advisory decisions when there are no immediate consequences.

5. For these reasons, the Hearing Officer denies the Grievance because it is not ripe for determination, as no housing unit has been offered to Ms. Briscoe. *See e.g., Zook*, ¶ 15 (“At this time, any injury to Rita is uncertain and speculative, not real and immediate. We therefore conclude that Rita’s claims are not ripe for adjudication and were not ripe when they were filed.”).

## **II. Nonbinding guidance in *obiter dictum*.**

6. Given the likelihood of this matter arising again, the Hearing Officer offers the following nonbinding guidance in *obiter dictum*. As recited by the Colorado Supreme Court, “*obiter dictum*” means “[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive).” *People v. Silva-Jaquez*, 2025 CO 11, ¶¶ 33-34 (citing Black’s Law Dictionary (12th ed. 2024) (defining “*obiter dictum*”)).

### **A. APCA’s denial of eligibility likely would be reviewed under a “reasonable person” standard.**

7. First, there is the issue of the scope of review of APCA’s determination. According to APCA Regulation Part II Section II.B, “The applicant has the burden to credibly demonstrate to APCA’s satisfaction that the applicant meets all qualification requirements for workforce housing contained in these Regulations and any applicable deed restriction.”

8. Given that the Regulations require documentation to meet APCA’s “satisfaction,” there is a question whether APCA’s determination could ever be reviewed at all, given that a denial of eligibility necessarily would reflect APCA’s dissatisfaction and thus

prevent any further inquiry. However, courts in similar contexts, where a party's "satisfaction" is the standard by which contractual obligations must be met, have held that such satisfaction is reviewable under either a subjective or objective standard:

When a contract is to be completed to the satisfaction of a party, the satisfaction provision implicates either a subjective or an objective standard for performance. If the contract's subject matter involves questions of "commercial value, operative or mechanical fitness, or quality," an objective "reasonable person" standard generally applies. Where the contract involves "matters of fancy, taste, sensibility and judgment," a subjective standard generally applies. In cases implicating the subjective standard, the party reserving its rights is the sole judge of its own satisfaction, without regard to the reasonableness of its decision and is limited only by the duty of good faith.....In the absence of explicit language in the contract providing for a subjective standard or evidence of impracticability of application, an objective reasonable person standard is to be applied.

*Crum v. April Corp.*, 62 P.3d 1039, 1040–41 (Colo. App. 2002)

9. Here, APCA Regulation Part III Section 2.B does not contain explicit language that a "subjective" standard would be used and, quite logically, such a subjective standard would not apply, given APCA's mission to provide affordable housing to residents on an equitable and non-discriminatory basis. Accordingly, review of APCA's denial of eligibility likely would proceed under the objective test of satisfaction, *i.e.*, whether a reasonable person would be satisfied with the level of documentation provided by the applicant to determine eligibility.

**B. There likely are no minimum income requirements for eligibility under the APCA Regulations.**

10. As discussed above, in opining Ms. Briscoe was not eligible for rental housing as a retiree, APCA placed heavy emphasis on Ms. Briscoe's failure to establish that she made minimum wage for the years 2019 and 2021.

11. However, there does not appear to such a requirement in the APCA Regulations. It is true that Title III, Section 2.B.6.b provides, "APCHA will determine, in the absence of other information, an individual's income must equal at least Colorado minimum wage times 1,500 (hours). IN 2024, THAT MINIMUM VALUE IS 1500 x \$14.42 PER HOUR OR \$21,630." However, this provision fairly clearly does not impose a *minimum* income requirement, as APCA seems to suggest. Rather, when read in context, this section appears to provide the methodology used when calculating income to determine the units for which an otherwise qualified applicant would be eligible without exceeding income *limitations*. This is confirmed by the absence of any specific income requirements in Part III Section 1, which sets forth requirements for eligibility and says an applicant must "meet the applicable income and asset *limits*" (emphasis added); the statement in Part III Section 2.B.2 saying "Individual and household income must be verified to establish eligibility for housing categories."; reference in

Part III Section 6 to housing categories and *maximum* gross income; the statement in Part III Section 6.b that the applicant “has the burden to credibly demonstrate to APCHA’s satisfaction that the applicant has satisfied applicable income *limitations*.” (emphasis added); and reference in Part III Section 6.b.2 that APCHA only determines income for the “year immediately preceding the year in which the application is made.”

12. The Hearing Officer acknowledges that, in determining whether an applicant has worked 1,500 hours in a particular year, the compensation received by the individual could be an instructive factor. The fact that an applicant made below minimum wage x 1,500 hours on an annualized basis could be an indication that the applicant did not work 1,500 hours for the year. However, minimum wage only applies to employees, and thus the failure to receive minimum wage on an annualized basis would not be dispositive as to whether an independent contractor or self-employed individual, such as Ms. Briscoe, worked 1,500 hours.

13. The documentary evidence appears to treat the alleged failure of Ms. Briscoe to have earned minimum wage for the calendar years 2019 and 2021 as dispositive on the issue as to whether she worked 1,500 hours. In any future consideration of Ms. Briscoe’s eligibility for housing as a retiree, the Hearing Officer would encourage APCHA not to treat minimum wage as a dispositive factor in the determination as to whether Ms. Briscoe worked 1,500 in any particular year, as that does not appear to be a requirement under the APCHA Regulations.

**C. There is evidence worth considering by APCHA of full-time employment in 2019 and 2021.**

14. Finally, the Hearing Officer notes that the evidence presented by Ms. Briscoe at hearing demonstrates that her contention of having worked full-time in 2019 and 2021 should be closely scrutinized.

15. As an initial matter, the Hearing Officer does not conclude that any documentation submitted by Ms. Briscoe was ignored by APCHA. It is not clear from the record the degree to which APCHA received the documentation submitted as exhibits before the grievance was filed. Moreover, APCHA was clear in stating that it was not making a formal determination because the issue was not yet ripe.

16. In the event the issue does become ripe, however, and APCHA reviews Ms. Briscoe’s qualifications as a retiree, the Hearing Officer finds that there is evidence worth considering. As noted above, Ms. Briscoe provided documentation concerning clients and contracts on which she worked for each of the years 2019 and 2021. These were not closely scrutinized at hearing but should be closely reviewed if this matter becomes ripe.

17. Further, to the extent that APCHA believes Ms. Briscoe’s compensation for those years to be relevant, the testimony at hearing did support Ms. Briscoe’s contention that the payments from Mr. Weaver constituted commission advances. It would be helpful, as noted, if Ms. Briscoe could provide documentary evidence showing the deductions of these amounts from

her compensation in the years 2020 and 2022. However, the Hearing Officer notes that, even if the amounts were classified as “gifts” rather than commission advances, the APCA Regulations appear to contemplate including compensation from “ongoing gifts” when computing annual compensation. *See* APCA Regulations Part III Section 2.B.6.b.1 (“Gift Received on an ongoing basis.”)

18. Having said all this, the Hearing Officer makes no conclusion as to whether APCA should determine Ms. Briscoe to be eligible as a retiree and, in particular, whether APCA should conclude Ms. Briscoe worked full-time in 2019 and 2021. The Hearing Officer is confident that, if such determination needs to be made, APCA will work with Ms. Briscoe to gather and submit all documentation APCA requires to make such determination. If there remains a dispute, the grievance process utilized here would again be available.

## **CONCLUSION**

The Hearing Officer appreciates the parties’ efforts in this grievance proceeding. These Findings of Fact and Conclusions of Law are issued pursuant to APCA Regulations Part VI Section 5.C and Section 5.E.4. Pursuant to APCA Regulation Part VI Section 5.E.4, this decision shall be deemed final after 15 days of the date of the decision unless appealed to the APCA Board as provided in APCA Regulation Part VI Section 5.F. Under APCA Regulation Part VI, Section 5.F.b, any notice of appeal must be submitted to the APCA executive director within 15 days of the date of this decision.

Dated: May 1, 2025

### **KUTAK ROCK LLP**

*s/ Thomas W. Snyder*

Thomas W. Snyder, Hearing Officer

2001 16<sup>th</sup> Street, Suite 1800

Denver, CO 80202

Telephone: (303) 297-2400

Facsimile: (303) 292-7799

Email: Thomas.snyder@kutakrock.com