

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARING

VILKA BISTRO, : In re: Vilka Bistro, 4607 Library Road,
: Bethel Park, PA 15102
Appellant, :
: Docket No. ACHD-18-003
v. :
: Copies Sent To:
ALLEGHENY COUNTY HEALTH : Edward Shvarts, Manhattan Concepts
DEPARTMENT, : 125 Tuscany Estates Drive
: Finleyville, PA 15132
Appellee. :
: *Counsel for Allegheny County Health*
: *Department:*
: Vijya Patel, Esq.
: 301 39th Street, Building 7
: Pittsburgh, PA 15201

**DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH
DEPARTMENT HEARING OFFICER**

I. INTRODUCTION

At issue in this case is whether a restaurant owner or a plumbing contractor is responsible for violations of Allegheny County Health Department (“ACHD”) Food Safety program regulations. The ACHD assessed a \$1,150 civil penalty against Vilka Bistro, a restaurant in Bethel Park, for failing to submit plans and specifications to the Food Safety program for approval before construction begins.

Edward Shvarts (“Mr. Shvarts”), the owner of Vilka Bistro, appealed the civil penalty, contending that the penalty should have been levied against Marco Construction, a company that did plumbing work for Vilka Bistro. Mr. Shvarts argues that Marco Construction failed to obtain a permit from the ACHD Food Safety program in a timely manner. The ACHD retorts that it is Mr. Shvarts’s

responsibility as the owner of Vilka Bistro to obtain the required Food Safety permits and comply with all ACHD Food Safety-related regulations.

This tribunal finds that the ACHD has the better argument. ACHD Rules and Regulations, Article III—Food Safety (“Article III”) clearly indicates that the restaurant owner or operator is responsible for all Food Safety regulatory requirements. Therefore, Mr. Shvarts, rather than Marco Construction, was responsible for failing to comply with Article III’s requirement that plans and specifications be submitted to the ACHD before construction begins. The civil penalty was thus properly assessed, and Vilka Bistro’s appeal is dismissed.

II. EVIDENCE

The following exhibits were offered by Vilka Bistro and admitted into evidence:

A1: Emails

The following exhibits were offered by the ACHD and admitted into evidence:

D1: Plan review checklist

D2: Email chain

D3: Service request

D4: Food Safety assessment report

D5: Email chain

III. FINDINGS OF FACT

Based on my review of the evidence and having resolved all issues of credibility, I find the following facts:

- 1) On December 21, 2017, the ACHD issued a civil penalty of \$1,150 to Edward Shvarts, the owner of Vilka Bistro. (Hearing Transcript (“H.T.”) at 8).

- 2) The penalty was for failure to submit plans and specifications for approval prior to construction and failure to provide 10-day notice for pre-operational inspection, pursuant to ACHD Rules and Regulations Article III—Food Safety (“Article III”), § 334.
- 3) Construction at Vilka Bistro began in late August or early September of 2017. (H.T. at 8-9).
- 4) The plans for construction, however, were not submitted until November 21, 2017. (H.T. at 23, 27; Ex. D5).
- 5) Amanda Mator, an ACHD Food Safety Administrator, reviewed the plans, and stated that the plans were incomplete, and that the pre-operational inspection took place with less than ten days’ notice and before the final plumbing inspection was conducted. (H.T. at 27-29; Exs. D3, D4).
- 6) On January 18, 2018, Mr. Shvarts filed a timely appeal of the ACHD Order.
- 7) Mr. Shvarts asserted that the penalty should be directed toward a company called Marco Construction because of a misunderstanding with the ACHD and because Marco Construction did not obtain a permit from the ACHD’s food safety program in a timely manner. (H.T. at 8).
- 8) On September 25, 2018, an administrative hearing was held in this matter.

IV. DISCUSSION

Pursuant to ACHD Rules and Regulations Article XI—Hearings and Appeals (“Article XI”), § 1105.C.7, the ACHD bears the burden of proof in an administrative appeal when it assesses a civil penalty. To prevail in its appeal, the ACHD must prove by a preponderance of the evidence that the penalty was properly assessed against Vilka Bistro because violations were present, and that Mr. Shvarts is the responsible party.

The ACHD makes two related arguments as to why the penalty was properly assessed. First, that Mr. Shvarts, not Marco Construction, was liable for the Article

III violations here. Second, that Mr. Shvarts's professed lack of knowledge of Article III regulations is not an excuse.

Marco Construction is not responsible for violations of Article III here.

Mr. Shvarts's primary contention is that the real party responsible for regulatory violations is not him, but rather Marco Construction, a company that did plumbing work at Vilka Bistro. He asserted at the hearing, "So we're sitting here discussing all the rules and regulations and everything else when we're not really attacking the people that are at fault, which is Marco Construction, for not doing their job." (H.T. at 19). Mr. Shvarts argued at the hearing that Jason Wroblewski ("Mr. Wroblewski"), the project manager for Marco Construction, failed to submit the proper plans to the ACHD. (H.T. at 6-8). Mr. Shvarts noted at the hearing that he contacted the ACHD in late September or October 2017 and was told that his contractor should contact the ACHD and that the plumber had already reached out. (H.T. at 6, 10, 13). Mr. Shvarts emphasized the importance of emails between himself, Mr. Wroblewski, and the ACHD in which Mr. Wroblewski indicates that he did not obtain a permit from the Food Safety Program. (Exs. A1, D5).

The ACHD responds that although Marco Construction could possibly be in violation of ACHD Article XV—Plumbing and Building Drainage, it is the responsibility of the owner or operator of the food facility to comply with Article III, the applicable set of regulations here. (*ACHD Brief* at 2).

This tribunal finds that the ACHD has the better argument. Mr. Shvarts is the owner of Vilka Bistro, not Mr. Wroblewski. Under Article III, it is the *owner's*

responsibility to obtain the proper Food Safety permits in a timely manner. *See* Article III § 330.1 (“It shall be unlawful for any person to operate a food facility in the County of Allegheny without first obtaining a valid health permit from the director.”); *see also* Article III § 330.2 (“At the time of the application, each person who applies for a permit shall be required to pay fees applicable to his particular business as set forth in the fee schedule.”). Article III clearly places the responsibility of complying with Food Safety requirements on the restaurant owner or operator, which in this case is Mr. Shvarts, not Marco Construction.

Restaurant owners are responsible for complying with Article III.

According to Article III § 334, plans and specifications must be submitted to the Food Safety program for approval before construction begins. (Art. III § 334; H.T. at 15). Additionally, operators of food establishments must provide at least ten days’ notice for scheduling a pre-operational inspection, which would be scheduled after the construction and the final plumbing inspection are complete. (Art. III § 334; H.T. at 16-17).

Construction at Vilka Bistro began in late August or early September of 2017, but the plans were not filed until November 21, 2017. (H.T. at 8-9, 23, 27; Ex. D5). At the hearing, ACHD Food Safety administrator Amanda Mator testified that she reviewed the plans and stated that not only were the plans incomplete, but the pre-operational inspection took place with less than ten days’ notice and before the final plumbing inspection was conducted. (H.T. at 27-29; Exs. D3, D4).

Mr. Shvarts does not deny these violations of Article III § 334. Rather, he argues that his lack of knowledge of food safety regulations relieve him of legal responsibility here. At the hearing, he declared, “I know how to run a business and how to run a restaurant. [...] How am I at fault for not knowing what article—whatever articles they are?” (H.T. at 19).


Although Mr. Shvarts likely meant his question to be rhetorical, it does merit a response. And that response is the old legal maxim: Ignorance of the law is no excuse. Although that maxim is a cliché, it has been affirmed repeatedly by American courts, as well as by this tribunal. See Oliver Wendell Holmes, *The Common Law*, at 48 (“Ignorance of the law is no excuse for breaking it.”); see also *In re: 500 Cato Street* at 4 (2018) (“[Appellants] also stated that they were unaware of the ACHD’s regulations....As the old legal cliché goes, ignorance of the law is no excuse.”); see also *In re: Public Sanitary Sewer 2625 Brownsville Road* at 8 (2017) (holding that ignorance of ACHD sewer management regulations did not relieve a party of liability).

The bottom line is that Mr. Shvarts, as the owner of Vilka Bistro, is responsible for following all applicable requirements of ACHD Article III. The ACHD demonstrated at the hearing that Mr. Shvarts failed to meet several of these requirements.

V. CONCLUSION

This tribunal finds that the ACHD has met its burden of proving by a preponderance of the evidence that the \$1,150 civil penalty was properly assessed

against Vilka Bistro, and that Mr. Shvarts is the responsible party. Vilka Bistro's appeal is therefore dismissed. This administrative decision may be appealed to the Court of Common Pleas of Allegheny County, Pennsylvania.



Max Slater
Administrative Hearing Officer
Allegheny County Health Department

Dated: January 3, 2019