

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE ORDER

IN RE: Polish on Penn, dba S&D Polish Deli, Docket no. ACHD-18-030

AND NOW, this 19th day of July, 2018, it is hereby ORDERED that the Appeal in this matter is **DISMISSED** for the following reasons:

- 1) Under Allegheny County Health Department (“ACHD”) Rules & Regulations, “The Notice of Appeal shall set forth with particularity the manner in which the Appellant is aggrieved by the action of the Department, the extent to which the Appellant has a direct interest in the action and the grounds for his or her appeal.” (ACHD Art. XI (“Hearings and Appeals”) § 1104(B)).
- 2) Also under Article XI, “A person may amend their Notice of Appeal as of right within thirty (30) days after filing the Notice of Appeal. After the 30-day period for amendment as of right, the Director or the Hearing Officer(s), upon motion by the appellant, may grant leave for further amendment of the appeal. This leave may be granted if no undue prejudice will result to the opposing parties. The burden of proving that no undue prejudice will result to the opposing parties is on the party requesting the amendment.” (ACHD Art. XI § 1104(E)).
- 3) Furthermore, the Hearing Officer “shall evaluate motions to dismiss in the light most favorable to the appellant, and may only grant the motion against the appellant when there are no material facts in dispute and appellant is incapable of demonstrating a right to relief with respect to issues raised by the moving party.” (ACHD Art. XI (“Hearings and Appeals”) § 1108.1).
- 4) Here, Appellant Polish on Penn (“Appellant”) filed its appeal to the ACHD’s February 9th inspection report on March 6, 2018. (*ACHD Motion to Dismiss* at ¶ 1).
- 5) The appeal stated, “I would like to appeal the findings from our inspection dated 2.9.2018 at Polish on Penn, dba S&D Polish Deli. Our permit number is 201704170039. Please let me know the next steps. Thank you for your assistance in this process.” (*ACHD Motion to Dismiss*, Ex. B).
- 6) On April 18, 2018, ACHD Food Safety Program Manager Donna Scharding (“Ms. Scharding”) notified Appellant that the appeal was

insufficient because it did not “state specifically what [it was] appealing” under Article XI § 1104(B). (*Id.*).

- 7) Matthew McDaniel (“Mr. McDaniel”), the owner of Polish on Penn, responded the same day, telling Ms. Scharding, “Thank you Donna. I will follow your instructions with the form – you will have it before long.” (*Id.*).
- 8) Between May 23, 2018 and July 12, 2018, ACHD Environmental Health Supervisor Janet Russo attempted to reach Appellant by phone, and left messages at Polish on Penn. However, Appellant never returned the calls. (*Id.*, Ex. A).
- 9) Mr. McDaniel did not follow up with the ACHD until July 12, 2018, when the ACHD filed its Motion to Dismiss. Appellant explained, “This totally fell through the cracks on my list of items to do. What can I do to satisfy the appeal requirements?”
- 10) Unfortunately, at this point, Appellant cannot satisfy the appeal requirements. This tribunal has reviewed Mr. McDaniel’s July 18, 2018 letter, and has considered his detailed account of his restaurant’s situation regarding installing an additional toilet room. However, more than 90 days have passed since Ms. Scharding reached out to Mr. McDaniel, long past the 30-day timeframe to amend an appeal under Article XI § 1104(E). Furthermore, the ACHD has made at least five unsuccessful attempts to reach out to him during this time. In short, Mr. McDaniel’s July 18, 2018 letter is too little, too late.

Appellant’s Appeal is therefore **DISMISSED**.

Max Slater, Esq.
Administrative Hearing Officer

Copies Sent To:

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