

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

July 12, 2018

VIA INTER-OFFICE MAIL AND EMAIL

Max Slater, Esquire
Administrative Hearing Officer
Allegheny Co. Health Dept.
542 Fourth Avenue
Pittsburgh, PA 15219

RE: Polish on Penn, dba S&D Polish Deli Appeal (Client #201611290003).

Dear Hearing Officer Slater:

On March 6, 2018, the Allegheny County Health Department (“Department”) received an appeal from Polish on Penn, dba S&D Polish Deli, 2204 Penn Ave., Pittsburgh, PA 15222 (“Facility”). The appeal vaguely states that the Facility appeals the findings of the inspection report dated February 9, 2018 (“Feb. 9th inspection report”). The Department found the appeal to be insufficient as provided by the Department’s Rules and Regulations Article XI, Hearings and Appeals (“Article XI”). Therefore, the Department contacted the appellant on April 18, 2018 and requested that the appellant amend its appeal to include additional information such as whether the appellant is appealing specific orders in the Feb. 9th inspection report or the entire report. The appellant replied and said it would provide the requested information promptly.

The Department hereby files a motion to dismiss the appeal on the following grounds. First, the appeal does not set forth with particularity the manner in which the appellant is aggrieved by the action of the Department. Article XI § 1104.B. The Department should not speculate as to which portions of the Feb. 9th inspection report the appellant is aggrieved by. Moreover, the time to amend the appeal ended on April 6, 2018. Article XI § 1104.E. Additional time for amending the appeal to make it sufficient under Article XI § 1104 should not be granted because the appellant never responded in a timely manner to the Department’s April 18th request, which was nearly three months ago. Even if this tribunal believes the time to amend the appeal began when the Department’s request was made, the period to amend would have ended May 18, 2018. Therefore, the Department requests that the appeal be dismissed. If you have any questions, I can be reached at 412-578-2653.



KAREN HACKER, MD, MPH, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
542 FOURTH AVENUE • PITTSBURGH, PA 15219
PHONE (412) 687-ACHD (2243) • FAX (412) 578-8325 • WWW.ACHD.NET

Letter to Max Slater, Esquire
Re: Polish on Penn Appeal
July 12, 2018
Page 2 of 2

Sincerely,

A handwritten signature in black ink, appearing to read "Vijyalakshmi Patel". The signature is written in a cursive, flowing style.

Vijyalakshmi Patel
ACHD Assistant Solicitor

Enclosures

cc: Donna Scharding, ACHD Food Safety Program Manager (via email)
Matthew McDaniel, Appellant (via email)

Patel, Vijyalakshmi

From: matt mcdaniel <mcdlt10@gmail.com>
Sent: Wednesday, April 18, 2018 4:09 PM
To: Scharding, Donna
Cc: Russo, Janet; Crystaloski, Dean; Patel, Vijyalakshmi
Subject: Re: FW: Polish on Penn: Appeal
Attachments: image001.png

Thank you Donna. I will follow your instructions with the form - you will have it before long.

Thanks again.

M2

On Wed, Apr 18, 2018, 3:46 PM Scharding, Donna <Donna.Scharding@alleghenycounty.us> wrote:

Dear Mr. McDaniel,

We received notice from our legal department that you have requested assistance in filing an appeal with this Department. You state in your inquiry that you wish to appeal the findings from the inspection dated 2.9.2018.

In order for us to proceed with your request you will need to state specifically what you are appealing (Is it a specific order, or is it the whole inspection and the pertinent sections in the regulations), and the basis for your appeal. If you are the person who is aggrieved, you will need to submit the document with your signature. You can find filing information according to Article XI: http://www.achd.net/regulations/Article_11_hearings-appeals_eff-120817.pdf. Section 1104 is most helpful.

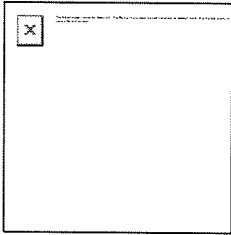
If you wish to forward your appeal through email, I can accept your document on behalf of the Department and will see that it is properly forwarded.

Let me know if you have further questions,

Donna

Donna L. Scharding

Food Safety Program Manager



Food Safety Program

3901 Penn Avenue

Pittsburgh, PA 15224-1318

Ph: 412.578.8044

fax: 412.578.8190

-----Original Message-----

From: Patel, Vijjalakshmi

Sent: Friday, April 13, 2018 10:10 AM

To: Scharding, Donna <Donna.Scharding@AlleghenyCounty.US>

Subject: Polish on Penn: Appeal

Donna,

The appeal is at the bottom of this email chain.

Vijya Patel, Esq.

Assistant Solicitor

Allegheny County Health Department

301 39th Street, Bldg. No. 7

Pittsburgh, PA 15201

Telephone: 412-578-2653

Facsimile: 412-578-8144

-----Original Message-----

From: Parker, Michael

Sent: Tuesday, March 6, 2018 12:19 PM

To: Slater, Max <Max.Slater@AlleghenyCounty.US>; Patel, Vijyalakshmi <Vijya.Patel@AlleghenyCounty.US>

Cc: Scharding, Donna <Donna.Scharding@AlleghenyCounty.US>; Brubach, Bill <Bill.Brubach@AlleghenyCounty.US>

Subject: FW: Appeal of Inspection

FYI, we received the message below as an appeal of a food safety inspection.

Michael Parker

ACHD Solicitor

412-578-8102

-----Original Message-----

From: Brubach, Bill

Sent: Tuesday, March 6, 2018 12:16 PM

To: Parker, Michael <Michael.Parker@AlleghenyCounty.US>; Anderson, Victoria <Victoria.Anderson@AlleghenyCounty.US>; Glidden, Robert <Robert.Glidden@AlleghenyCounty.US>; Marvich, Shelley

<Shelly.Marvich@AlleghenyCounty.US>; Murray, Barb <Barb.Murray@AlleghenyCounty.US>; Reinhart, Linda <Linda.Reinhart@AlleghenyCounty.US>; Scharding, Donna <Donna.Scharding@AlleghenyCounty.US>

Subject: FW: Appeal of Inspection

Hi,

This came through the form today.

Thanks,

Bill

-----Original Message-----

From: mcdlt10@gmail.com [mailto:mcdlt10@gmail.com]

Sent: Tuesday, March 06, 2018 12:11 PM

Subject: Appeal of Inspection

Message from: Matthew McDaniel

at mcdlt10@gmail.com

Hidden: ContactUsForm

Name: Matthew McDaniel

Telephone: 4123897746

E-mail: mcdlt10@gmail.com

Subject: Appeal of Inspection

Comment: Good Morning Director -

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.

Matt McDaniel, Owner

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