

COUNTY OF



ALLEGHENY

December 4, 2018

VIA INTER-OFFICE MAIL AND EMAIL

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

RE: Allegheny County Health Department's Position Statement in the Appeal Hearing for Vilka Bistro, 4607 Library Road, Bethel Park, PA 15102 (Plan Review #17-511-el).

Dear Hearing Officer Slater:

Pursuant to Allegheny County Health Department ("ACHD") Rules and Regulations Article XI, Hearings and Appeals, ("Article XI") § 1105, a full evidentiary hearing was held on September 25, 2018 to adjudicate the appeal filed by Edward Shvarts on behalf of Vilka Bistro, 4607 Library Road, Bethel Park, PA 15102. On January 18, 2018, Mr. Shvarts appealed an order from the ACHD directing Vilka Bistro to pay a civil penalty of \$1,150.00 for violations of ACHD Rules and Regulations Article III, Food Safety, ("Article III") § 334. Mr. Shvarts claimed that the penalty should be directed towards Jason Wroblewski of Marco Construction¹ because of a misunderstanding with the ACHD and because Mr. Wroblewski did not obtain the ACHD permit from the Food Safety program in a timely manner.

Pursuant to 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. Mr. Shvarts is the owner of Vilka Bistro.²

The ACHD issues various permits to facilities depending on the type of operation and purpose. The plan review and permitting process for the plumbing program is separate and

¹ Verbatim Record of September 25, 2018 Hearing (hereinafter "Tr.") at p. 5.

² Tr. at p. 8.



distinct from that of the food program since they have different purposes and concerns.³ Mr. Shvarts stated that he contacted the AHCD in late September or October and was told his contractor should contact the ACHD and that the plumber already reached out.⁴ His testimony and appeal indicate that this conversation was in relation to the plumbing permit as it concerned grease traps, which is regulated by the ACHD Rules and Regulations Article XV, Plumbing and Building Drainage, (“Article XV”), and enforced by the ACHD’s Plumbing program.⁵ This is supported by the fact that Article XV § AC-106.4 states that “[a]pplication/plans for permits shall be made by the owner/occupant or master plumber installing all or part of any plumbing system.” Thus, it is reasonable for the plumbing program to have instructed Mr. Shvarts to inform his plumbing contractor to submit the plumbing plans for Vilka Bistro.

On the other hand, the plain language of Article III does not place any accountability on the owner or operator’s agents to apply for or maintain an ACHD permit from the Food Safety program. Instead, Article III places the responsibility on the owner and operator of the food facility.⁶ Therefore, the permitholder is liable for obtaining the permit.⁷ In this case, Mr. Shvarts hired Marco Construction to perform construction at Vilka Bistro.⁸ Mr. Wroblewski is a project manager employed by Marco Construction.⁹ Mr. Shvarts places great importance to emails between himself, Mr. Wroblewski, and the ACHD where Mr. Wroblewski indicates he forgot to obtain a permit from the Food Safety program.¹⁰ However, under Article III, Mr. Shvarts, the owner of Vilka Bistro and the anticipated permitholder, is liable for obtaining the ACHD permit from the Food Safety program, not Mr. Wroblewski. Mr. Shvarts, not Mr. Wroblewski, paid the plan review fee.¹¹ Therefore, it is irrelevant as to whether Mr. Wroblewski was unaware of Article III’s permitting requirements or simply forgot. Mr. Shvarts, as the responsible party, should have ensured the permits for *his* facility were obtained in a timely

³ Tr. at p. 16. *See also* ACHD Rules and Regulations Article XV, Plumbing and Building Drainage, and Article III, Food Safety.

⁴ Tr. at pp. 6, 10, 13. *See also* Vilka Bistro’s appeal.

⁵ *Id.*

⁶ “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.” Article III § 330.1. “At the time of 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 § 330.2.

⁷ Tr. at p. 15.

⁸ Tr. at p. 8.

⁹ *Id.*

¹⁰ Exhibit D5.

¹¹ Tr. at pp. 25-26.

manner. Alleged lack of knowledge of applicable food safety regulations is not an excuse for noncompliance.¹²

According to Article III § 334, plans and specifications must be submitted to the Food Safety program for approval *prior* to construction.¹³ Moreover, operators must provide at least 10-day notice for scheduling a pre-operational inspection, which would be scheduled *after* the construction and the final plumbing inspection are completed.¹⁴ The review process alone typically takes 3-4 weeks if all the plans are complete.¹⁵ If the plans are incomplete, a pre-operational inspection does not typically take place.¹⁶ In this case, Mr. Shvarts does not deny that Article III § 334 was violated and admits that he requested that the ACHD expedite the plan review and permitting process to assist him even at the expense of other facilities who complied with the process.¹⁷ Construction at Vilka Bistro began at the end of August or beginning of September¹⁸ but the plans were not filed until November 21, 2017.¹⁹ When the plans were submitted, Amanda Mator, the ACHD's administrator in the Food Safety program, testified that the contractor and the owner asked for the process to be expedited, even if it resulted in a fine because they stated that keeping the facility closed was a worse alternative.²⁰ Not only were the plans *incomplete*, but the pre-operational inspection took place with *less* than 10-day notice and *before* the final plumbing inspection was conducted.²¹ The request for the pre-operational inspection, the actual pre-operational inspection, and the issuance of the ACHD permit from the Food Safety program all occurred on December 4, 2017.²² In fact, the incomplete plans were filed and reviewed and the facility inspected and permitted in less than 10 working days, which

¹² Tr. at pp. 12-13, 20-21. See also *Pittsburgh Water and Sewer Authority v. Allegheny County Health Department, In re: Public Sanitary Sewer 2625 Brownsville Road, Pittsburgh, PA 15227* (Allegheny County Health Department, Administrative Decision 2017), pg. 8.

¹³ Tr. at p. 15.

¹⁴ Article III § 334; Tr. at p. 16-17.

¹⁵ Tr. at p. 16.

¹⁶ *Id.* at p. 17.

¹⁷ Tr. at pp. 14, 24; Exhibit D5.

¹⁸ Tr. at p. 8-9.

¹⁹ Tr. at pp. 23, 27; Exhibit D2.

²⁰ Tr. at p. 23; Exhibit D2.

²¹ Tr. at pp. 27-29; Exhibits D3 & D4.

²² Tr. at p. 28-29; Exhibits D3 & D4.

To: Max Slater, Esq.
Re: Vilka Bistro Appeal
Date: December 4, 2018
Page 4 of 4

is far shorter than the typical 3-4 weeks for the review process alone.²³ Thus, because the plans were submitted to the Food Safety program after construction had commenced and the Department was not provided with at least 10-day notice for the pre-operational inspection, Vilka Bistro had violated Article III § 334 and the ACHD properly issued a penalty.

According to Article III, the owner, not a third-party contractor, is responsible for obtaining the permit from the Food Safety program. Therefore, Mr. Wroblewski cannot be liable for the Appellant's negligence. The Appellant suggests that lack of knowledge of applicable regulations shields it from enforcement. However, as the owner of Vilka Bistro, the Appellant is bound to be aware of and comply with the regulations. As the violations existed, the ACHD appropriately issued a civil penalty against Vilka Bistro. Therefore, the ACHD asserts that the appeal should be dismissed.

Sincerely,

/Vijyalakshmi Patel
Vijyalakshmi Patel
ACHD Assistant Solicitor

cc: Donna Scharding, ACHD Food Safety Program Manager (via email)
Edward Shvarts, Appellant (via email)

²³ Tr. at p. 30.