

October 5, 2018

Ken Foltz
kfoltz@leechtishman.com

VIA E-MAIL

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

Re: *Howl at the Moon Appeal (Client No.: 201504020002).*

Dear Mr. Slater:

This firm represents Howl Pittsburgh LLC ("Howl"). We are in receipt of the enclosed letter ("Letter") dated October 2, 2018, from Viyalakshmi Patel, ACHD Assistant Solicitor, on behalf of the Allegheny County Health Department ("ACHD"). Howl disputes the alleged facts and assertions in the Letter.

Pursuant to ACHD Rules and Regulations, Article XI, Hearings and Appeals ("ACHD Rules"), § 1104(A), "[t]he Notice of Appeal shall be filed no later than thirty (30) days *after receipt* of written notice or issuance of the action by which the Appellant is aggrieved," (emphasis added). As stated in the attached Notice of Appeal, Howl received ACHD's notice on August 20, 2018. On September 19, 2018, we attempted to hand deliver the Notice of Appeal to 542 4th Avenue, Pittsburgh, PA 15219, which was the address set forth in ACHD Rules § 1104(C) and as directed in the Notice of Appeal form, a copy of which is attached with the address highlighted. This delivery was rejected as we were informed the ACHD did not have an office at this address any longer. Concurrently, we were told to instead deliver the Notice of Appeal to 3901 Penn Ave. Suite Bldg. 1, Pittsburgh, PA, 15224. In accordance with these directions, Jet Messenger delivered the Notice of Appeal by close of business on September 19, 2018 (delivered at 3:44 p.m.) to such address, which is also attached for your reference. Therefore, Howl's Notice of Appeal should be considered timely.

Further, according to ACHD Rules § 1108.1, "[t]he Director or 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,*" (emphasis added). Since there is a dispute as to the material facts of this action, ACHD's motion to dismiss the appeal should be denied.

LEECH TISHMAN FUSCALDO & LAMPL, LLC

525 William Penn Place, 28th Floor | Pittsburgh, PA 15219 | T: 412.261.1600 F: 412.227.5551

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Howl requests that the motion to dismiss is denied and a hearing is scheduled on these matters.

Very truly yours,

LEECH TISHMAN FUSCALDO & LAMPL, LLC



Kenneth C. Foltz

Enclosed: Letter
Notice of Appeal
ACHD Notice

cc: Viyalakshmi Patel, ACHD Assistant Solicitor (via e-mail only)
Donna Scharding, Food Safety Program Manager (via e-mail only)

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

October 2, 2018

VIA INTER-OFFICE MAIL AND EMAIL

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

RE: Howl at the Moon Appeal (Client No.: 201504020002).

Dear Mr. Slater:

On August 17, 2018, the Allegheny County Health Department (“ACHD”) issued a notice of violation (“NOV”) for violations of ACHD Rules and Regulations Article III, Food Safety (“Article III”), committed by Howl Pittsburgh, LLC’s facility at 125 7th St, Pittsburgh, PA 15222 (“Facility”). The ACHD observed the Facility operating dishwashing machines that do not sanitize properly and lack of three-compartment sinks at each bar. On September 20, 2018, counsel for Howl Pittsburgh, LLC filed an appeal challenging the ACHD’s determination that it must install three-compartment sinks at each bar in the Facility.

Pursuant to ACHD Rules and Regulations, Article XI, Hearings and Appeals, §§ 1104(A) and (D), the appeal is untimely because it was filed more than thirty days after the August 17, 2018 NOV was issued and when the ACHD’s actions had already become final. Thirty days after August 17th places the appeal deadline on Monday, September 17, 2018, rather than Sunday, September 16, 2018. Article XI § 1112.1. If this tribunal determines that the appeal period began when the notice of violation was received, Howl Pittsburgh, LLC’s appeal remains untimely. The appeal states that Howl Pittsburgh, LLC received the August 17, 2018 NOV on August 20, 2018. Therefore, the appeal period ended on Wednesday, September 19, 2018. The ACHD’s action was final and unappealable when Howl Pittsburgh, LLC’s appeal was filed with the ACHD. Thus, the ACHD moves to dismiss this appeal on grounds that it is moot. 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: Howl at the Moon Appeal
October 2, 2018
Page 2 of 2

Sincerely,

A handwritten signature in black ink, appearing to read "Vijyalakshmi Patel". The signature is written in a cursive style with some loops and flourishes.

Vijyalakshmi Patel
ACHD Assistant Solicitor

Enclosures

cc: Donna Scharding, Food Safety Program Manager (via email)
Ken Foltz, Esq., counsel for Appellant (via email)

SEP 20 2018

LEECH TISHMAN
LEECH TISHMAN FUSCALDO & LAMPL

September 19, 2018

Ken Foltz
kfoltz@leechtishman.com

HAND DELIVERY

Allegheny Department of Health
3901 Penn Avenue
Building 1
Pittsburgh, PA 15224

Reference: Howl at the Moon

Dear Sir or Madam:

Enclosed please find the Notice of Appeal for Facility Name: Howl at the Moon.

If you have any questions, do not hesitate to call or email me.

Very truly yours,

LEECH TISHMAN FUSCALDO & LAMPL, LLC

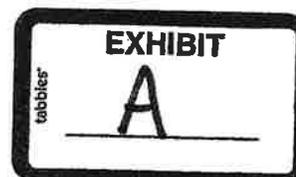


Ken Foltz

Enclosure

LEECH TISHMAN FUSCALDO & LAMPL, LLC
525 William Penn Place, 28th Floor | Pittsburgh, PA 15219 | T: 412.261.1600 F: 412.227.5551

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Notice of Appeal

This form is used to file an appeal of an order, notice, decision, determination, or ruling by the Allegheny County Health Department. Please complete this form (use additional pages as necessary). If more than one person or entity is filing this appeal, please attach a separate form for each additional appellant. **A copy of the order, notice, decision, determination, or ruling must be attached to the Notice of Appeal.**

Name Howl Pittsburgh LLC

Mailing Address 125 7th Ave

City Pittsburgh State PA Zip 15222 Email pholian@verizon.net

Phone (617) 470-0662 Fax (optional) _____

If you are represented by an attorney, please provide contact information for your attorney:

Name Ken Foltz, Esquire

Mailing Address 525 William Penn Place, 28th Floor

City Pittsburgh State PA Zip 15219 Email kfoltz@leechtishman.com

Phone 412-261-1600 Fax (optional) _____

Describe your objections to the Department's actions and a statement describing the relief you want the Hearing Officer to grant. (*The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Use additional pages if necessary.*)

Howl Pittsburgh LLC ("Howl") received the Department's notice on August 20, 2018, requiring the installation of three compartment sinks at each bar at Howl's facility located at 125 7th St., Pittsburgh, PA 15222 ("Facility"). As owner of the

Facility, Howl has a direct interest in this action and appeal. Howl objects to this notice for the following reasons. First, since the Facility's opening, the Department consistently approved of the Facility. Howl's initial permit and each subsequent permit, Permit Numbers 201504020003, 20160429005, 201704260032, 201805310030, ratified the existence of only two compartment sinks at each bar within the Facility. Further, none of the previous inspections cited a violation for the lack of three compartment sinks at the Facility's bars. Installation of three compartment sinks would require, at the minimum, complete re-design of Howl's bars, which would impede its business operations. As such, Howl would incur extreme and unnecessary costs to remedy this, when in the past the Facility has been consistently approved by the Department. (See next page).

By filing this Notice of Appeal with the Allegheny County Health Department, I hereby certify that the information submitted is true and correct to the best of my information and belief.

Signature [Handwritten Signature] Date September 19, 2018

Appeals should be submitted in person or by mail to:
**Allegheny County Health Department
Attention: Hearing Officer
542 4th Avenue
Pittsburgh, PA 15219**

Howl detrimentally relied on the Department's initial approval it received and all subsequent approvals. Therefore, the burden placed on Howl and its business by the Department is arbitrary, unreasonable and unfair. For the foregoing reasons, Howl objects to such notice and the related requirements provided therein. Howl requests that the Department's previous approval of Howl's two compartment sink be carried through at this time.

this transmission by anyone other than the recipient(s) named above is unauthorized and strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone at 412.261.1600. Unauthorized interception of this e-mail is a violation of federal criminal law.

From: Nicole Farrington
Sent: Tuesday, October 02, 2018 10:26 AM
To: Alysia L. Libby <alibby@leechtishman.com>
Subject: proof of delivery - Allegheny County Health

Nicole Farrington | Legal Administrative Assistant
nfarrington@leechtishman.com

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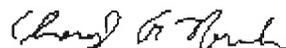
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From: Jet Messenger <noreply@example.com>
Sent: Tuesday, October 02, 2018 10:25 AM
To: Nicole Farrington <nchiodo@leechtishman.com>
Subject: Status for Order#: 129007

Pickup at:
LEECH TISHMAN FUSCALDO...
525 WILLIAM PENN PL Suite 28, PITTSBURGH, PA, 15219

Deliver to:
ALLEGHENY COUNTY HEALTH DEPT
3901 PENN AVE Suite BLDG 1, PITTSBURGH, PA, 15224

Order Details:
Reference: NICHOLE - HOWL PGH LLC HOWL AT THE MOON
Signature: c. nowlin
Order Delivered at: 9/19/18 3:44 PM
Price: \$25.90



Price Breakdown:

DSR: 2.7mi. - 1 x \$21.95
Fuel Surcharge - 1 x \$3.95