

COUNTY OF



ALLEGHENY

RICH FITZGERALD  
COUNTY EXECUTIVE

March 2, 2020

VIA INTER-OFFICE MAIL AND EMAIL

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

**RE: Rocky's Restaurant Appeal (Client # 199901120002).**

Dear Hearing Officer Slater:

The Allegheny County Health Department ("ACHD" or "Department") hereby files this motion for reconsideration and to dismiss the appeal filed by Emanuel Mori on behalf of Rocky's Restaurant ("Appellant") with prejudice. As this tribunal acknowledged in its order dated February 27, 2020, the ACHD issued its enforcement order on January 21, 2020. The tribunal then stated that "Rocky's mailed to the ACHD its appeal on February 19, 2020, which was within the 30-day window to file an appeal, pursuant to ACHD Article XI (Hearings and Appeals), § 1104.A." February 27, 2020 Order attached as Exhibit "A". According to the plain language of Article XI, the date provided by Appellant is irrelevant in determining whether this tribunal has jurisdiction to hear the appeal.

Article XI of the ACHD's Rules and Regulations sets forth the method, procedures, and limitations of an appeal. It specifically states that "The 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. *The notice of appeal must be filed no later than 4:00 p.m. Eastern Time on the thirtieth (30<sup>th</sup>) day after written notice or issuance of the action.*" (emphasis supplied). See Article XI § 1104.A. "Filing" only occurs when "*Notice of Appeal [is] filed in the Office of the Director, 542 Fourth Avenue, Pittsburgh, PA 15219.*" (emphasis supplied). See Article XI § 1104.C. Moreover, Article XI sets forth the finality of an order when a party fails to take timely action. Article XI § 1104.D states that "All actions of the Department shall become final thirty (30) days after receipt of written notice or issuance if no appeal has been perfected under the provisions of this Section." The regulation does not contemplate that the date of filing may be the date provided by the appellant on its appeal.

It has long been the law in the Commonwealth that "[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage" and that "General words shall be construed to take their meanings and be restricted by preceding particular words." 1 Pa.C.S.A. § 1903. Moreover, the Commonwealth Court has stated that "Where the



ALLEGHENY COUNTY HEALTH DEPARTMENT  
LEGAL SECTION

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words in an ordinance are free from all ambiguity, the letter of the ordinance may not be disregarded under the pretext of pursuing its spirit.” Keener v. Rapho Twp. Zoning Hearing Bd., Lancaster Cty., 79 A.3d 1205, 1214 (Pa. Cmwlth. 2013) citing 1 Pa.C.S. § 1921.

Thus, the pertinent dates for determining whether an appeal is timely are the date of written notice or issuance of the action and the date the appeal was filed *in* the Office of the Director, 542 Fourth Avenue, Pittsburgh, PA 15219. In the instant matter, the date of written notice or issuance of the action was January 21, 2020 and the date the appeal was filed in the Office of the Director, 542 Fourth Avenue, Pittsburgh, PA 15219, as date-stamped by the Director's Office directly on the appeal, was February 21, 2020. The thirtieth day was February 20, 2020. Ultimately, the appeal was *not* filed by 4:00pm Eastern Time on the 30<sup>th</sup> day after written notice or issuance of the action. Thus, the Department's order had already become final by the time the appeal was received.

“It is well established that the failure to timely appeal an administrative agency's action is a jurisdictional defect. The time for taking an appeal therefore cannot be extended as a matter of grace or mere indulgence.” V.S. v. Dep't. of Pub. Welfare, 131 A.3d 523, 527 (Pa. Cmwlth. 2015) quoting J.C. v. Dep't. of Pub. Welfare, 720 A.2d 193, 197 (Pa. Cmwlth. 1998). Indeed our Supreme Court has articulated that, “[w]hether a court has subject matter jurisdiction over an action is a fundamental issue of law which may be raised at any time in the course of the proceedings, including by a reviewing court *sua sponte*. Commonwealth v. Little, 455 Pa. 163, 314 A.2d 270, 272 (1974). Further, subject matter jurisdiction *may not* be conferred by consent of the parties and a defect of such jurisdiction *may not* be waived.” In re Admin. Order No. 1-MD-2003, 594 Pa. 346, 355 (2007) (emphasis supplied).

Thus, this tribunal is deprived of jurisdiction to adjudicate the substance of Appellant's appeal and is restrained from extending the appeal period for “grace or indulgence” in order to address Appellant's substantive issue on this appeal. Appellant offers no authority, argument or facts of record that would militate another result. It provides no explanation for its lack of diligence in prosecuting its own appeal.

Should this tribunal choose to ignore the settled law in this Commonwealth and hear the appeal, the Department requests that the appeal be dismissed because it does not meet the standard provided in Article XI § 1104. Section 1104 of Article XI states that “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.” The appeal in this matter merely states that “I am appealing the decision of the Allegheny Health Department to close my café, Rocky's in Bloomfield.” Appeal attached as Exhibit “B”. Crucially, the appeal does *not* set forth how Appellant was aggrieved by the Department's actions and the grounds for its appeal.

Thus, because this tribunal lacks jurisdiction to hear this appeal and the appeal does not satisfy the requirements set forth in Article XI, the Department requests that the appeal be dismissed with prejudice. If you have any questions, I can be reached at 412-578-2653.

Letter to Max Slater, Esq.  
Re: Rocky's Restaurant  
March 2, 2020  
Page 3 of 3

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, Food Safety Program Manager (via email)  
Emanuel Mori, Appellant (via first-class mail)

ALLEGHENY COUNTY HEALTH DEPARTMENT  
ADMINISTRATIVE ORDER

IN RE: Rocky's Restaurant, Docket no. ACHD-20-008

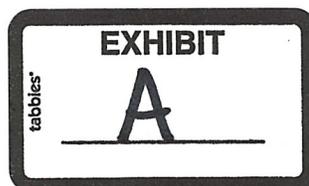
AND NOW, this 27th day of February, 2020, it is hereby ORDERED that the Allegheny County Health Department's ("ACHD") motion to dismiss the appeal filed by Appellant Rocky's Restaurant ("Rocky's") is **DENIED**. The ACHD sent a notice of violation to Rocky's on January 21, 2020. Rocky's mailed to the ACHD its appeal on February 19, 2020, which was within the 30-day window to file an appeal, pursuant to ACHD Article XI (Hearings and Appeals), § 1104.A. The ACHD's Motion to Dismiss is therefore DENIED, and Rocky's Appeal may proceed.

  
Max Slater, Esq.  
Administrative Hearing Officer  
Allegheny County Health Department

Copies Sent To:

Emmanuel R. Mori  
Owner, Rocky's Restaurant  
4759 Liberty Avenue  
Pittsburgh, PA 15224

Vijya Patel, Esq., ACHD Assistant Solicitor (via email)  
Michael Parker, Esq., ACHD Solicitor (via email)  
Donna Scharding, ACHD Food Safety Program Manager (via email)



**EMANUEL R. MORI**

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4759 Liberty Ave., Pittsburgh, PA 15224

February 19, 2020

Allegheny County Health Department

Food Safety Program

Re: Client #199901120002

To Whom It May Concern:

I am appealing the decision of the Allegheny Health Department to close my café, Rocky's in Bloomfield.

Thank you,

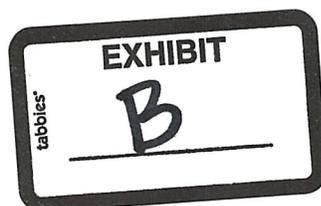
*Emanuel R Mori*

Emanuel R. Mori

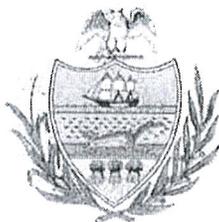
RECEIVED

FEB 24 2020

DIRECTOR'S  
OFFICE



COUNTY OF



ALLEGHENY

RICH FITZGERALD  
COUNTY EXECUTIVE

January 21, 2020

Emmanuel R. Mori  
4759 Liberty Avenue  
Pittsburgh, PA 15224

Re: Client #199901120002  
Rocky's Restaurant  
4759 Liberty Avenue  
8<sup>th</sup> Ward

Dear Mr. Mori,

On December 4, 2019, you were afforded the opportunity for a hearing prior to suspension of your health permit. The Director of the Allegheny County Health Department, under Article III, Section 337.2 - Suspension and Reinstatement of the Health Permit, may suspend the health permit of the food facility when there is a violation of the aforementioned Article.

**THEREFORE, IN ACCORDANCE WITH ARTICLE III, SECTION 337, THE HEALTH PERMIT FOR CLIENT #199901120002 IS SUSPENDED AND YOU ARE ORDERED TO CLOSE THE FACILITY IMMEDIATELY UPON RECEIPT OF THIS NOTICE.**

**IT IS ILLEGAL TO OPERATE A FOOD FACILITY IN ALLEGHENY COUNTY WITHOUT A HEALTH PERMIT.**

In order to have the health permit reinstated, you must comply with the orders issued to you on 01/21/2020 and 08/13/2019.

Pursuant to Article XI, entitled "Hearings and Appeals", you are hereby notified that you have thirty (30) days from the date of this notice in which to file a written appeal. The appeal shall be filed in the office of the Director, 542 Fourth Ave., Pittsburgh, PA 15219. In the event that an appeal is not filed within thirty (30) days from the date of this order, the within action shall become final.

Respectfully,

Janet Russo  
Environmental Health Supervisor  
Food Safety Program

Sign: Emmanuel Rocky Mori Print: EMANUEL ROCKY MORI  
Title: OWNER OF ROCKY'S Date: FEB 18 2020



RON SUGAR, ACTING DIRECTOR  
ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

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