

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE ORDER

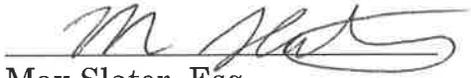
IN RE: Rocky's Restaurant, Docket no. ACHD-20-008

AND NOW, this 6th day of March, 2020, it is hereby ORDERED as follows with respect to the Allegheny County Health Department's ("ACHD") motion for reconsideration regarding the appeal filed by Appellant Rocky's Restaurant ("Rocky's" or "Appellant"):

- 1) The ACHD's Motion for Reconsideration is **DENIED** with respect to the allegation. As this tribunal stated in its February 27, 2020 Order denying the ACHD's Motion to Dismiss, "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." As the Third Circuit Court of Appeals has stated, "The purpose of a motion for reconsideration... is to correct manifest errors of fact or law or to present newly discovered evidence." *Howard Hess Dental Laboratories Inc. v. Dentsply Intern., Inc.*, 602 F.3d 237, 251 (3d Cir. 2010). *See also Fanuiel v. Roxborough Mem. Hosp.*, 2013 WL 6143650 (Pa. Com. Pl. 2013) (denying motion for reconsideration of order granting summary judgment for defendant where Plaintiff did not offer any new facts or law).

Here, the ACHD is essentially re-hashing the legal argument made in its original motion to dismiss. It is not presenting any new law or evidence.

2) The ACHD's Motion for Reconsideration is **DENIED** with respect to the ACHD's argument that Rocky's "failed to set forth with particularity the manner in which the Appellant is aggrieved by the action of the Department[...]and the grounds for his or her appeal." ACHD Art. XI, § 1104(B). The proper pleading for raising this argument is a motion to dismiss, not a motion for reconsideration, as the ACHD did not raise Appellant's alleged failure to set forth the grounds for its appeal in the Department's original motion to dismiss. Therefore, if the ACHD wishes to raise this argument, the proper procedure would be to file another motion to dismiss.


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)