

**IN RE: MIDDLE ROAD INN
1822 Middle Road
Indiana Township, PA
Client No.: 44365**

RECEIVED JAN 23 2017

**NOTICE OF APPEAL FROM CIVIL PENALTY ASSESSMENT DATED
DECEMBER 8, 2017**

AND NOW, comes the Appellant, Willee's Tavern II 1822 Middle Road, Inc., operating and doing business as the Middle Road Inn at 1822 Middle Road, Glenshaw, PA 15116, by and through its counsel, Catherine A. Conley, Esquire, and files the within Notice of Appeal in accordance with Section 1104 of Article XI of the Rules and Regulations of the Allegheny County Health Department:

1. Willee's Tavern II 1822 Middle Road, Inc. (hereinafter referred to as "Owner") is the owner of the Middle Road Inn located at 1822 Middle Road, Glenshaw, PA 15116 in Indiana Township, Allegheny County, PA.
2. Natalie A. Fezza is the President of Willee's Tavern II 1822 Middle Road, Inc. and has a mailing address of 1822 Middle Road, Glenshaw, PA 15116, and phone number of (412) 486-7159.
3. By letter dated December 8, 2017, and mailed on December 11, 2017, the Manager of the Food Safety Program, Donna L. Scharding, via Barbara Murray, notified Owner of the assessment of a civil penalty in the amount of \$2,600 for alleged violations of the Allegheny County Health Department Rules and Regulations, Article III, Sections 335, 304, 303, 317, and 312 on August 12, 2017, and August 14, 2017. A true and correct copy of the assessment letter with envelope is attached hereto as Exhibit "A."

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4. Owner disputes that it violated Sections 335, 304, 303, 317 and 312 of the Allegheny County Health Department Rules and Regulations, and requests strict proof of each violation at hearing.

5. Article XVI, Section 1604 (c) of the Allegheny County Health Department Rules and Regulations provides: "In determining the amount of civil penalties to be assessed, the Director shall consider the economic benefit gained by such person be failing to comply with this Article, the willfulness of the violation, the actual and potential harm to the public health, safety and welfare and to the environment, the nature, frequency and magnitude of the violation, and any other relevant factors."

6. The civil penalty assessed for the alleged violations by Owner are unreasonable, punitive, in violation of the mandate of Section 1604(c), and are not inconsistent with civil penalties assessed against other establishments for similar violations under the same Sections of Article III.

Inconsistent
Enforcement

7. The actions taken by the Department in the issuance of, and the refusal to remove, a consumer alert against Owner for the alleged violations by Owner was unreasonable, punitive, and resulted in economic loss to the Owner. Said issuance against Owner and not against other establishments under similar circumstances, reflect an arbitrary, unreasonable, and inconsistent enforcement of the Allegheny County Health Department's Rules and Regulations.

8. The civil penalty assessed against Owner is an abuse of discretion by the Food Safety Program Manager.

9. The consumer alert issued against Owner was an abuse of Discretion by the Food Safety Program.

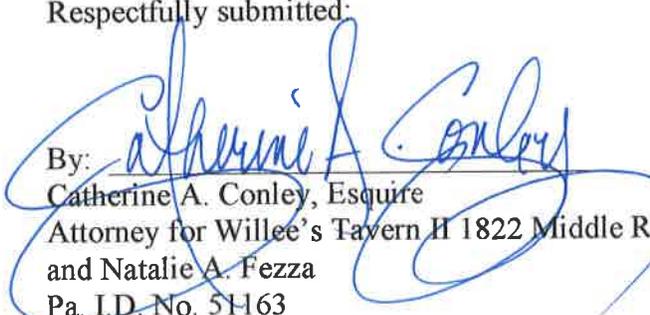
10. The civil penalty assessed against Owner did not take into consideration the economic losses and costs incurred by Owner since August 2017, as the result of actions taken by the Department under the Food Safety Program.

11. The civil penalty assessed and the actions in issuing a consumer alert against Owner constitute arbitrary and unreasonable enforcement of the Rules and Regulations of the Allegheny County Health Department.

12. The civil penalty assessed is not based on a consistent fee schedule and is an arbitrary, unreasonable assessment, and is not uniform or consistent with penalties assessed against other establishments in similar circumstances

WHEREFORE, Willee's Tavern II 1822 Middle Road, Inc., operating and doing business as the Middle Road Inn, respectfully requests that the civil penalty assessment be overturned, and in the alternative, that a hearing be scheduled to address the issues raised in this Notice of Appeal.

Respectfully submitted:

By: 
Catherine A. Conley, Esquire
Attorney for Willee's Tavern II 1822 Middle Road, Inc.
and Natalie A. Fezza
Pa. I.D. No. 51163
215 - 57th Street
Pittsburgh, PA 15201
(412) 782-5221

Dated: January 8, 2018

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

December 8, 2017

Natalie Fezza
c/o Willee's Tavern II 1822 Middle Road, Inc.
1822 Middle Road
Glenshaw, PA 15116

RE: Civil Penalty
Client #44365
Middle Road Inn
1822 Middle Road
- Indiana Twp

Dear Ms. Fezza:

You are hereby notified that you violated Article III, "Food Safety", of the Allegheny County Health Department Rules and Regulations. Said violations were as follows:

Date(s): August 12, 2017; August 14, 2017

Section 335: Consumer Alert placard covered/concealed.

Section 304: Failure to disclose and remind of risk for consuming raw or undercooked foods.

Section 303: Cross-contamination not prevented.

Section 317: Lack of convenient handwashing sink.

Section 312: Utensils and food contact surfaces not properly cleaned and sanitized: Dish machine not operating; utensil washing sink unable to hold water.

As a result of the above violation(s), on behalf of the Director of the Allegheny County Health Department, it is hereby ordered that a civil penalty is being levied against you in the amount of **\$2600.00** for the violation of said sections. In order to resolve these violations without burden of further litigation, said amount of **\$2600.00** should be made payable to the "Food Safety Fund" and forwarded to the attention of Donna Scharding, Allegheny County Health Department, Food Safety Program, Clack Health Center, Building #1, 3901 Penn Avenue, Pittsburgh, PA 15224-1318 no later than ten (10) days of receipt of this notice. Failure to comply will result in further action including closure of your food facility.

Pursuant to Article XI, entitled "Hearings and Appeals", you are hereby notified that you have thirty (30) days in which to file an appeal from the date of this notice. The appeal shall be filed in the office of the Director, 542 Fourth Avenue, 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.

If you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Sincerely,

Donna L. Scharding
Manager
Food Safety Program



KAREN HACKER, MD, MPH, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

3901 PENN AVENUE • BUILDING 1 • PITTSBURGH, PA 15224-1318
PHONE: 412.578.8044 • FAX: 412.578.8190 • WWW.ACHD.NET

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Food Safety Program
Building 1
3901 Penn Avenue
Pittsburgh, PA 15224-1318

PRESORTED
FIRST CLASS



U.S. POSTAGE  FITNEY BOWES

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Natalie Fezza
c/o Willee's Tavern II 1822 Middle Road Inc.
1822 Middle Road
Glenshaw, PA 15116

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