

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARING

MAC AND GOLD TRUCK, LLC,	:	In Re: Mac and Gold Truck, LLC
	:	
Appellant,	:	<u>Copies Sent To:</u>
	:	Timothy Tassone
v.	:	Owner, Mac and Gold Truck, LLC
	:	100 Hafner Avenue
ALLEGHENY COUNTY HEALTH	:	Pittsburgh, PA 15223
DEPARTMENT,	:	
	:	Vijya Patel, Esq.
Appellee.	:	Assistant Solicitor
	:	Allegheny County Health Department
	:	301 39 th Street, Building 7
	:	Pittsburgh, PA 15201

**DECISION AND ORDER OF THE ALLEGHENY COUNTY HEALTH
DEPARTMENT HEARING OFFICER**

I. INTRODUCTION

At issue in this case is whether the owner of a food truck may use a storage unit to prepare food. Timothy Tassone (“Mr. Tassone”) is the owner of Mac and Gold Truck, LLC (“Appellant” or “Mac and Gold”), which operates a food truck in Pittsburgh. The Allegheny County Health Department (“ACHD”) has conducted several inspections of the food truck, as well as a storage unit in Etna (“Storage Unit”) and kitchen space at the Pittsburgh Pickle Co. in Verona where Mr. Tassone prepares food for his business. The ACHD has tallied several violations against Mr. Tassone under Article III of the ACHD Rules & Regulations, pertaining to food safety. Specifically, the ACHD has charged Mr. Tassone with failing to keep refrigerated food sufficiently cold, and for preparing and storing food at the storage unit, which does not comply with the ACHD’s sanitation standards.

I find that Appellant may not use the Storage Unit to prepare or store food, and must use the Pittsburgh Pickle Co. as his base of operations for food preparation. Moreover, Appellant must complete cooling charts regularly to track temperature, and recorded cold-holding and ambient air temperatures. As a result, Appellant's appeal dated June 28, 2017 is dismissed.¹

II. EVIDENCE

Appellant did not offer any exhibits into evidence.

The following exhibits were offered by the ACHD and admitted into evidence:

- D1: Letter dated 5/2/14
- D2: Commissary Agreement
- D3: Inspection Report (9/14/16)
- D4: Inspection Report (6/19/17)
- D5: Inspection Report (9/29/16)
- D6: Re-inspection Report (9/29/16)
- D7: Inspection Report (6/2/17)

III. FINDINGS OF FACT

Based on my review of the evidence and having resolved all issues of credibility, I find the following facts:

- 1) Timothy Tassone ("Mr. Tassone") is the owner of Mac and Gold Truck, LLC ("Appellant" or "Mac and Gold"). (Hearing Transcript ("H.T." at 5)).
- 2) Mr. Tassone operates Mac and Gold as a food truck (H.T. at 8-9).
- 3) Mr. Tassone rents a storage unit on Hafner Avenue in Etna, PA ("Storage Unit"). (H.T. at 10).
- 4) Mr. Tassone does prep work for his food truck at the Storage Unit, including grating cheese, heating up milk, creating cheese sauce, and cooking toppings. (H.T. at 10-11).

¹ This is an unusual case, as Appellant largely did not contest the findings of the ACHD.

- 5) Mr. Tassone also rents out kitchen space at the Pittsburgh Pickle Co. in Verona, PA. (H.T. at 10).
- 6) The Storage Unit is not an approved commissary. (H.T. at 25-26).
- 7) The ACHD allowed Appellant to only store dry foods and packaged cheese at the Storage Unit. (H.T. at 24: Ex. D1).
- 8) At various times, the ACHD observed elevated food temperatures and cooling unit ambient air temperatures in Appellant's food truck. (Exs. D3, D5-D7).
- 9) On June 19, 2017, the ACHD issued an inspection report ("June 19th Report), instructing Appellant to only use the Storage Unit for dry storage and refrigerated packaged foods. The June 19th Report declared, "All water/cooling/cooking/cleaning/waste water dumping must be conducted at the new commissary at the Pittsburgh Pickle Co." (Ex. D4).
- 10) On June 28, 2017, Mr. Tassone appealed the June 19th Report.
- 11) On September 25, 2017, an administrative hearing was held to resolve this matter.

IV. DISCUSSION

Under the ACHD Rules & Regulations in operation at the times when the appeal was filed, the hearing was held, and the briefs submitted, "The person filing the appeal shall bear the burden of proof and the burden of going forward with respect to all issues." ACHD Rules & Regulations, Article XI § 1107(C). Therefore, Appellant bears the burden of proving by a preponderance of the evidence that his use of the Storage Unit for food preparation and handling was compliant with ACHD Rules & Regulations.

A. The Storage Unit is not a “Food Facility” under Article III, and may not be used to prepare or handle food.

The Storage Unit does not meet the standards required to operate as a food facility, and therefore, should not be used to prepare or handle food.

A “food facility” is defined as “any place, permanent or temporary, where food is prepared, handled, served, sold, or provided to the consumer.” Article III § 338. A food facility must have “smooth durable material such as sealed concrete” and must “be kept clean and maintained in good repair.” Article III § 320. The walls and ceilings of a food facility must be “finished and sealed to provide a smooth[,] easily cleanable surface.” Article III § 321. Food facilities must also include sufficient ventilation and the ability to easily clean all fixtures, vent covers, and other attachments. Article III §§ 321, 323. Article III requires that food be placed in an environment protected from food contamination. Article III § 304.4(B).

Here, Mr. Tassone testified that he uses the Storage Unit to prepare food such as grating cheese, heating milk, cooking cheese sauce, and preparing meats and vegetables. (H.T. at 10-11). He also cools these items at the Storage Unit. *Id.*

Katherine Costello, an ACHD food inspector, visited the Storage Unit, and testified that the cement floor there has “cracks and crevices” which indicate it is not rodent-proof. (H.T. at 33, 41). Additionally, the walls are made of corrugated metal rather than a smooth surface, and thus, cannot be easily cleaned. (H.T. at 41). Moreover, the walls of the storage unit do not reach the ceiling, which presents the risk of food being contaminated from neighboring storage units. *Id.*

Based on Ms. Costello's testimony and the relevant Article III provisions, I find that Mr. Tassone may not use the Storage Unit to prepare or handle food.

B. The Storage Unit is not a "Commissary" under Article III.

Mr. Tassone may also not use the Storage Unit as a commissary. A commissary is a food facility that every mobile food unit is required to use as its base of operations. Article III § 327.7. A commissary must be constructed and operated in compliance with Article III and must contain all equipment necessary to prepare and process food for sale from a mobile food unit. *Id.*

For the reasons listed in Section (A) above, the Storage Unit is not compliant with the ACHD's requirements for a commissary. However, as discussed during the hearing, the Pittsburgh Pickle Co. will suffice as an appropriate commissary for Appellant's business, as it has Article III-compliant facilities for food preparation, waste disposal, water supply, and refrigeration. (Ex. D2). Thus, Appellant must only use Pittsburgh Pickle Co. as its base of operations for food preparation, and may only store non-potentially hazardous foods at the Storage Unit.

C. Appellant must refrigerate all potentially hazardous food to 41°F or less, and use cooling charts to regularly track temperature.

Under Article III, "potentially hazardous food" can be summarized as food that must be maintained in such a way as to prevent bacterial growth. Article III § 338. Potentially hazardous food includes meats, vegetables, and cooked pasta. (H.T. at 21). Potentially hazardous food must be kept at 41°F or less. Article III § 304. Additionally, Article III provides specific temperatures to which all potentially

