OAH 60-0900-36166

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HEALTH

In the Matter of the Administrative Penalty Order Issued to Mahmoud Shahin and Shaheen's Inc.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

This matter came before Administrative Law Judge James E. LaFave for a hearing on August 20, 2019. The record closed on September 6, 2019, with the filing of the parties written closing arguments.

Megan McKenzie, Assistant Attorney General, appeared on behalf of the Minnesota Department of Health (Department). Mahmoud Shahin (Shahin) appeared on behalf of himself and Shaheen's Inc. (Respondents), without legal counsel.

STATEMENT OF THE ISSUES

1. Did the Department properly determine that Respondents failed to timely complete the corrective actions required by the Administrative Penalty Order (APO) issued on January 24, 2018?

2. Did the Department properly issue the Noncompliance Determination dated February 15, 2019 to Respondents?

SUMMARY OF CONCLUSIONS AND RECOMMENDATION

The Administrative Law Judge concludes that Respondents failed to timely complete the corrective actions required by the APO, and that the Department properly issued the Noncompliance Determination. The Administrative Law Judge, therefore, recommends that the Commissioner **AFFIRM** the Department's determination that Respondents failed to timely complete the corrective action required by the APO, and that the Commissioner **AFFIRM** the Department's Noncompliance Determination. But the Administrative Law Judge respectfully recommends that the Commissioner consider reducing the $10,000 administrative penalty based on Respondents' substantial compliance with the APO.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. Background

1. Respondents operate a restaurant, Mim's Cafe, located at 1435 Cleveland Avenue North in Saint Paul, Minnesota.[1] Mim's Café operates under a license from the Department as a food and beverage establishment for that location.[2]

2. Mim's Café is connected to adjacent spaces with different addresses.[3]

3. Respondents operate a coffee shop licensed by the Department as a food and beverage establishment at 1441 Cleveland Avenue North.[4]

4. Mim's Café is also connected via a doorway on the ground level to 1437 Cleveland Avenue North.[5] 1437 Cleveland Avenue North includes a basement space.[6] 1437 Cleveland Avenue North is not a licensed space for the operation of a food and beverage establishment.[7]

II. The January 24, 2018 APO

5. On January 24, 2018, the Department issued a Combination APO citing Respondents for a number of violations of Minnesota's Food Code, found in Minn. R. ch. 4626 (2019) (Food Code).[8]

6. The APO stemmed from a follow-up inspection visit to Mim's Café made by the Department on September 27, 2017, by Public Health Sanitarian Erin Tibbetts.[9] During this inspection the Department discovered violations of the Food Code.[10] Some violations observed and cited during the September 27, 2017, inspection were repeat

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[1] Testimony (Test.) of Crystal Elva. *See In the Matter of the Administrative Penalty Order Issued to Mahmoud Shahin and Shaheen's Inc*, No. 71-0900-35233, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION at 1-2 (Minn. Office of Admin. Hearings, Aug. 31, 2018).
[2] Test. of C. Elva. *See In the Matter of the Administrative Penalty Order Issued to Mahmoud Shahin and Shaheen's Inc*, No. 71-0900-35233, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION at 1-2 (Minn. Office of Admin. Hearings, Aug. 31, 2018).
[3] Test. of C. Elva.
[4] Test. of C. Elva. *See In the Matter of the Administrative Penalty Order Issued to Mahmoud Shahin and Shaheen's Inc*, No. 71-0900-35233, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION at 1-2 (Minn. Office of Admin. Hearings, Aug. 31, 2018).
[5] *See In the Matter of the Administrative Penalty Order Issued to Mahmoud Shahin and Shaheen's Inc*, No. 71-0900-35233, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION at 1-2 (Minn. Office of Admin. Hearings, Aug. 31, 2018).
[6] *Id.*
[7] *Id.*
[8] Exhibit (Ex.) 1 (APO, Jan. 24, 2018).
[9] *Id*; *See In the Matter of the Administrative Penalty Order Issued to Mahmoud Shahin and Shaheen's Inc*, No. 71-0900-35233, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION at 2 (Minn. Office of Admin. Hearings, Aug. 31, 2018).
[10] Ex. 1.

violations for which Respondents had previously been cited or were an uncorrected continuation of earlier violations.[11]

7. The violations cited in the APO arising from the inspection on September 27, 2017, were as follows:

a. Minn. R. 4626.0130(A): lamb meat not obtained from an approved source, a food bag with unrecognizable contents and a non-English label, and bags of fish in reduced oxygen packaging from a non-approved source, were stored in the restaurant;

b. Minn. R. 4626.0395(A): cooked chicken and sautéed onions stored on the flat top grill were 105 and 89 degrees Fahrenheit respectively;

c. Minn. R. 4626.0400(A): numerous potentially hazardous foods stored in the restaurant's walk-in cooler and prep cooler were not date marked, including cooked rice and falafel;

d. Minn. R. 4626.0840(A): food debris was present on interior surfaces of the hummus machine in the basement of 1437 Cleveland Avenue North;

e. Minn. R. 4626.1595: a spray bottle of quaternary ammonium sanitizer lacked a label;

f. Minn. R. 4626.0740: multiple cutting boards were scored and stained;

g. Minn. R. 4626.0820(B): food thermometers in the restaurant were not calibrated correctly, based on a comparison with a calibrated thermometer; one thermometer measured 15 degrees Fahrenheit below the actual temperature and another measured 11 degrees over the actual temperature;

h. Minn. R. 4626.0840(C): the exterior surfaces of the restaurant's equipment had food debris, residue, grease, and grime on them, including cooler handles, walk-in cooler shelves, and the buttons of the hummus grinder;

i. Minn. R. 4626.1260: the unisex toilet room lacked a covered trash can;

[11] *See In the Matter of the Administrative Penalty Order Issued to Mahmoud Shahin and Shaheen's Inc*, No. 71-0900-35233, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION at 2 (Minn. Office of Admin. Hearings, Aug. 31, 2018).

j. Minn. R. 4626,1325(A): the concrete floor in the food preparation area in the basement of 1437 Cleveland Avenue North was pitted and cracked and a wall was painted concrete;

k. Minn. R. 4626.1345(A): the base coving in the basement of 1437 Cleveland Avenue North was not flush with the wall at corners and gaps were present;

l. Minn. R. 4626.1390: the men's and women's and unisex toilet rooms lacked self-closing doors;

m. Minn. R. 4626.1440(A): the hand sink in the food preparation area in the basement of 1437 Cleveland Avenue North lacked hand cleanser; and

n. Minn. R. 4626.1720(A): food preparation was being conducted in the basement of 1437 Cleveland Ave North, which was not an approved space; though Respondents submitted plans for construction of the area, the work done was not in accordance with those plans; additionally, at the time of the inspection, there were open containers of tahini sauce, olive oil, spices, and cans of food stored in that area as well as food debris on the interior surfaces of the hummus machine.[12]

8. The APO required Respondents to correct the violations and it imposed an administrative penalty of $10,000.[13] The penalty was divided into two portions: $1,000 was nonforgivable, but $9,000 would be forgiven if Respondents corrected the violations or showed they had taken appropriate steps to make corrections.[14]

9. Respondents timely appealed the APO and on August 2, 2018, a contested case hearing was held before Administrative Law Judge Jessica A. Palmer-Denig.[15]

10. On August 31, 2018, Judge Palmer-Denig issued a recommended order affirming the Department's issuance of the APO.[16] Judge Palmer-Denig found the Department had established by a preponderance of the evidence that Respondents

[12] Ex. 1. *See In the Matter of the Administrative Penalty Order Issued to Mahmoud Shahin and Shaheen's Inc*, No. 71-0900-35233, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION at 3-4 (Minn. Office of Admin. Hearings, Aug. 31, 2018).
[13] Ex. 1 at 5.
[14] *Id.*
[15] *See In the Matter of the Administrative Penalty Order Issued to Mahmoud Shahin and Shaheen's Inc*, No. 71-0900-35233, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION at 1, 5 (Minn. Office of Admin. Hearings, Aug. 31, 2018).
[16] Ex. 2.

violated the provisions of the Food Code cited in the APO.[17] Judge Palmer-Denig also found the $10,000 administrative penalty to be reasonable.[18]

11. On December 20, 2018, the Commissioner of the Department issued a final Order adopting Judge Palmer-Denig's decision and affirming the Department's issuance of the APO.[19] The Department mailed the Order to Respondents by U.S. Mail on December 21, 2018.[20]

12. The APO required that, within 30 days of receipt of the order, Respondents demonstrate in writing that the violations have been corrected or that appropriate steps toward correcting the violations have been taken.[21] The APO advised Respondents that failure to demonstrate to the satisfaction of the Department that the violations have been corrected or that appropriate steps have been taken to correct the violations within the 30-day period, would be cause for further enforcement action and the forgivable penalty would become due and payable.[22]

13. Respondents did not appeal the Commissioner's final order.

14. On January 3, 2019, Mark Peloquin, Enforcement Coordinator with the Department's Food, Pools, and Lodging Services Section, sent an email to Respondents advising them that they had 30 days to correct the violations cited in the APO and to provide the Department with a written response.[23] Given that the Commissioner's final order was issued on December 21, 2018, Peloquin calculated the 30-day compliance deadline to be January 20, 2019.[24] Peloquin attached a copy of the Commissioner's final order to the email and reminded Shahin that he must also pay the $1,000 nonforgiveable penalty by January 20, 2019.[25]

15. On January 4, 2019, Shahin sent an email to Peloquin thanking him for sending him a copy of the Commissioner's final order.[26] Shahin explained that he was out of the country in the Middle East and had been unaware that the final order had issued.[27] Shahin stated that he would need to be back in the country in order to respond to the order. Shahin told Peloquin that he would notify him of his return date as soon as he purchased a plane ticket.[28] Shahin closed the email by stating: "I understand that

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[17] *Id*.
[18] *Id*.
[19] *Id*.
[20] Ex. 3 at 022.
[21] Ex. 1 at 3. *See* Minn. Stat. § 144.99, subd. 4 (2018).
[22] Ex. 1 at 3.
[23] Ex. 3 at 021.
[24] *Id*.; Test. of Mark Peloquin.
[25] Ex. 3.
[26] Ex. 4.
[27] *Id*.
[28] *Id*.

there is a 30 day deadline, but as we all know, the matter is not urgent, and I would like to resolve the issue in person."[29]

16. Peloquin did not respond to Shahin's email of January 4, 2019.[30]

17. Because Respondents did not receive the Commissioner's final order until January 4, 2019, they had until February 4, 2019 to demonstrate in writing to the Department that the violations had been corrected or that they had developed an acceptable plan for correcting the violations.[31]

III. January 22, 2019 Inspection

18. On January 22, 2019, the Department conducted an unannounced inspection of Mim's Café.[32] Public Health Sanitarians Crystal Elva, James Noyola Jr., and Erin Tibbets conducted the inspection.[33] Shahin was not present at the restaurant during the January 22, 2019, inspection because he was still out of the country.[34] Respondents' employee, Abed Dawada, was managing the restaurant on January 22, 2019. Dawada answered the Department staff's questions and was the primary person interacting with the Department staff as they inspected Mim's Café.[35]

19. During the January 22, 2019, inspection, the Department found 14 violations of the Food Code.[36] Eleven of the violations were repeat violations cited in the January 2018 APO.[37] The Department issued an Inspection Report detailing the violations found during the January 22, 2019, inspection.[38]

20. The violations cited in the January 22, 2019 Inspection Report of Mim's Café are as follows:

a. Minn. R. 4626.0130(A): Per conversation with owner, owner routinely slaughters lambs at a farm and stores the carcasses in the walk-in cooler. The owner then butchers the lambs in the basement of 1437 Cleveland Ave N. Owner stated that butchered meat is for personal and staff use only. Butchered meat present onsite at time of inspection. Sealed bag of unrecognizable food product present onsite. Label on bag not in English. Numerous reduced oxygen packaged bags of frozen fish present onsite (Originally issued 8/14/17);

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[29] *Id*.
[30] Test. of M. Peloquin.
[31] Minn. Stat. § 144.991, subds. 3, 4 (2018).
[32] Ex. 5.
[33] Test. of C. Elva; Test. of James Noyola Jr.
[34] Ex. 7.
[35] Test. of C. Elva; Test. of J. Noyola Jr.
[36] Ex. 5.
[37] *Id*.
[38] *Id*.

b. Minn. R. 4626.0225A: Bare hand contact observed with ready to eat foods when inspectors first arrived. Staff began using gloves after inspectors introduced themselves;

c. Minn. R. 4626.0390A: Lettuce was cut and placed in a deep pan in the top of the line cooler. Ensure foods are fully cooled prior to being placed in the prep top cooler;

d. Minn. R. 4626.0400A: Numerous TCS ready to eat foods, held longer than 24 hours, were not date-marked. Examples include: cooked meat, falafel, house prepared sauces. (Originally issued 8/14/17);

e. Minn. R. 4626.0820B: Compared establishment's thermometer against inspector's calibrated thermometer in a container of tzatziki sauce. Establishment's measured 184 degrees Fahrenheit. Inspector's measured 36 degrees Fahrenheit. (Originally issued 12/6/16);

f. Minn. R. 4626.0840A: Encrusted food debris present on wall mounted potato slicer. (Originally issued 12/6/16);

g. Minn. R. 4626.1440: No soap present at handwashing sink in basement preparation area of 1437 Cleveland Ave N. (Originally issued 8/14/17);

h. Minn. R. 4626.1720A: Work completed in 1437 Cleveland Ave N. Has not been approved. Modifications made that deviate from submitted plan. (Originally issued 11/2/15);

i. Minn. R. 4626.1755A: Licensed to operate in Mim's Café (1435 Cleveland Ave N.) only. All areas of 1437 Cleveland Ave N are not licensed & cannot be used until approved. Open containers of tahini sauce, flour and spices in areas of 1437. Closed containers of food located in areas on 1437. Examples: garbanzo beans and Italian dressing. (Originally issued 6/28/16);

j. Minn. R. 4626.0740: Multiple in use cutting boards scored and stained. (Originally issued 8/14/17);

k. Minn. R. 4626.0840C: Food debris/residue, grease, grime, etc. present on exterior and interior surfaces of equipment. Examples include: handles of coolers, walk-in cooler shelves, hummus grinder buttons. (Originally issued 4/27/17);

l. Minn. R. 4626.1325A1: Sealed concrete floor in basement preparation area of 1437 Cleveland Ave N is damaged, pitted and

cracked. Painted concrete wall present in basement food preparation area of 1437 Cleveland Ave N. (Originally issued 8/14/17);

m. Minn. R. 4626.1345A: The wall/floor junctures are not coved correctly in the basement of 1437 Cleveland Ave N. Example: base coving at wall corners is not flush with wall; gaps present. (Originally issued 9/5/14);

n. Minn. R. 4626.1390: Self-closing devices have been installed but the [toilet room] doors do not fully close. (Originally issued 12/6/16).

21. Between January 22, 2019 and February 15, 2019, Respondents did not submit anything in writing to the Department indicating that they had corrected the violations cited in the outstanding APO or that they had developed a plan for correcting the violations.[39]

22. On February 15, 2019, the Department issued a determination finding that Respondents had not completed the corrective actions required by the APO (Noncompliance Determination).[40] The Department noted that, based on the January 22, 2019 follow-up inspection, it was determined that Respondents had failed to correct 11 of the 14 violations cited in the APO.[41] The Department informed Respondents that because they had failed to complete the corrective actions in the APO, the full $10,000 administrative penalty was due and payable.[42] The Department also notified Respondents that the license for Mim's Café would be revoked within 20 days unless Respondents completed the corrective actions and paid the $10,000 penalty.[43] The Noncompliance Determination advised Respondents of their right to request a contested case hearing.[44]

23. On February 25, 2019, Shahin called Peloquin to contest the Noncompliance Determination. Shahin was still out of the country, but he requested that Department staff meet with Mim's Café staff in early March to discuss the violations and provide guidance regarding corrective action.[45]

24. Peloquin told Shahin that he would need to get the violations corrected by March 17, 2019, or the Department would revoke the license for Mim's Café.[46]

25. On March 4, 2019, Peloquin, Noyola Jr. and Tibbets met with Dawada and one other employee at Mim's Café to discuss the violations cited in the APO and the actions necessary to correct the violations.[47] During the meeting, the Department staff

[39] Test. of J. Noyola Jr.; Test. of M. Peloquin.
[40] Ex. 6.
[41] *Id*.
[42] *Id*.
[43] *Id*.
[44] *Id*.
[45] Ex. 7.
[46] *Id*.
[47] Ex. 8; Test. of M. Peloquin.

reviewed with Dawada the requirements for date marking and storage of food, cooling methods, identification of food product, and storage of equipment. Peloquin also inspected the unlicensed 1437 Cleveland Avenue North space and determined Respondents were not preparing food there.[48]

26. During the March 4, 2019 meeting, Peloquin observed two violations cited in the January 2018 APO that were still not corrected: the storage of partially filled spice jars in the unlicensed 1437 Cleveland Avenue North space; and a container of falafel that did not have a date mark on it. The container appeared to have been taken out of a freezer to thaw.[49] Dawada told Peloquin that the spice jars were "trash" that Respondents intended to throw away.[50]

27. Apart from these two violations, all of the other violations cited in the January 2018 APO appeared to have been corrected.[51]

28. Following the meeting, Shahin contacted Peloquin and asked whether he could use the dining area of the unlicensed 1437 Cleveland Avenue North space to store equipment.[52] Respondents had been permitted to use that space for equipment storage in the past when the City of St. Paul was responsible for inspecting Mim's Café and other restaurants within the city.[53] After consulting with others, Peloquin told Shahin that it was acceptable for him to store equipment in the 1437 Cleveland Avenue North space.[54]

29. On March 8, 2019, Respondents timely filed a request for a contested case hearing to contest the Noncompliance Determination.[55]

30. On March 18, 2019, the Department conducted a follow-up inspection of Mim's Café to determine whether Respondents had fully complied with the outstanding APO.[56] Although the Department found two new violations, it determined that Respondents had corrected all of the violations cited in the January 2018 APO.[57]

31. By letter dated March 21, 2019, the Department informed Respondents that it was rescinding its order revoking Respondents' license based on Respondents' correction of the violations cited in the APO.[58] The Department notified Respondents that the $10,000 administrative penalty was still due and payable.[59]

32. This matter came on for hearing on August 20, 2019.

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[48] Ex. 10.
[49] Test. of J. Noyola Jr.; Test. of M. Peloquin.
[50] Test. of M. Peloquin.
[51] Test. of M. Peloquin Test. of J. Noyola Jr.
[52] Ex. 10 at 069.
[53] Test. of M. Peloquin and Mahmoud Shahin.
[54] Test. of M. Peloquin.
[55] Ex 10 at 069; *See* Minn. Stat. § 144.991, subd. 5.
[56] Ex. 11.
[57] *Id.*; Ex. 12; Test. of J. Noyola Jr.
[58] Ex. 12.
[59] *Id.*

33. Any finding of fact more properly designated as a conclusion of law shall be considered as such.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Health (Commissioner) have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 144.99, 144.991 (2018).

2. The Department has fulfilled all procedural requirements of law and rule and this matter is properly before the Administrative Law Judge and the Commissioner.

3. The Department bears the burden of proof to establish by a preponderance of the evidence that Respondents violated the Food Code.[60]

4. The Department established that Respondents violated the provisions of the Food Code cited in the January 2018 APO and the Commissioner has issued a final order with respect to those violations.[61]

5. The Department has authority under Minn. Stat. §§ 144.99, .991, to issue an APO requiring correction of violations and imposition of a penalty in an amount up to $10,000.

6. The penalty assessed in the APO is due and payable on the 31st day after the order was received, if the person to whom the order was issued fails to provide information to the commissioner showing that the violations have been corrected or that appropriate steps have been taken toward correcting the violations.[62]

7. Respondents received the final order affirming the APO on January 4, 2019.

8. Respondents failed to provide information to the Department before February 4, 2019, demonstrating that they had corrected the violations cited in the January 2018 APO or that they had developed an acceptable corrective plan or taken appropriate steps toward correcting the violations.[63]

9. The $10,000 administrative penalty is, due and owing.

10. The Department's issuance of the Noncompliance Determination was proper.

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[60] Minn. R. 1400.7300, subp. 5 (2019).
[61] See *In the Matter of the Administrative Penalty Order Issued to Mahmoud Shahin and Shaheen's Inc*, No. 71-0900-35233, FINAL ORDER (Dec. 20, 2018).
[62] Minn. Stat. § 144.991, subd. 3, 4(a). *See also* Minn. Stat. § 144.99, subd. 4.
[63] Minn. Stat. §§ 144.99, subd. 4, 144.991, subds. 4, 5.

11. Any conclusion of law more properly designated as a finding of fact shall be considered as such.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, which is incorporated herein, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner **AFFIRM** the Department's determination that Respondents failed to timely complete all of the corrective actions required by the January 2018 APO. The Administrative Law Judge also recommends that the Commissioner **AFFIRM** the Department's Noncompliance Determination of February 15, 2019. But the Administrative Law Judge respectfully recommends that the Commissioner consider reducing the $10,000 administrative penalty based on Respondents' substantial compliance with the APO.

Dated: October 7, 2019

JAMES E. LAFAVE
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Findings of Fact, Conclusions of Law, and Recommendations. Under Minn. Stat. § 14.61 (2018), the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Jan Malcolm, Commissioner, Minnesota Department of Health, 85 East Seventh Place, P.O. Box 64975, St. Paul, MN 55164, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2018). The record closes upon the filing of exceptions to the Report and the

presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1 (2018), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Because Respondents failed to demonstrate, in writing, that they had corrected the all the violations cited in the January 2018 APO or that they had developed an acceptable corrective plan, the Department properly issued the Noncompliance Order. The $10,000 administrative penalty is, therefore, due and owing.

The Administrative Law Judge suggests, however, that the Commissioner consider whether a reduction in the penalty may be warranted. This is not a case where a licensee simply ignored the changes ordered by the Department. Here, Respondents immediately contacted the Department after receiving the Noncompliance Determination and requested a consultation with the Department to address the remaining violations.

The evidence established that Shahin was out of the country during January and February of 2019. Shahin indicated in an email to Peloquin that he wished to resolve the citations when he returned to Minnesota. Arguably, Shahin was proposing a plan to correct the violations. Peloquin did not respond to Shahin's email and admittedly, was not obligated to, having already informed him of Respondents' 30-day deadline to resolve the violations. Nevertheless, it appears Respondents corrected most of the violations as soon as Shahin returned to Minnesota, as outlined in his email. The Administrative Law Judge notes that Respondents were in substantial compliance with the APO by March 4, 2019, which was the date the Department first visited Mim's Café after the 30-day compliance period expired.

Although Respondents never submitted anything in writing to the Department indicating that the citations had been corrected, the testimony of Peloquin and Noyola Jr. established that the only citations in the APO that remained uncorrected as of March 4, 2019, were minor ones: the storage of spice jars in the unlicensed 1437 Cleveland Avenue North space, and an undated frozen container of falafel. It is undisputed that Respondents did not follow the terms of the APO but given that all of the other more serious citations appear to have been resolved once Shahin returned from overseas, a reduction in the penalty would not be unreasonable.

J. E. L.