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COMMISSION
STAFF

STATE OF INDIANA
BEFORE THE FIRE PREVENTION AND
BUILDING SAFETY COMMISSION

FILED

FEB 19 2020

SPECIAL SERVICES
ALJ

IN RE:

BLUE OLIVE CAFE

CAUSE NO.

DHS-1917-FPBSC-017

**RECOMMENDED ORDER OF DISMISSAL AND
ORDER AFFIRMING CANCELLATION OF PREHEARING CONFERENCE**

On February 18, 2020, Respondent State in the above-captioned matter filed a Motion to Dismiss. Respondent indicated that Petitioner Blue Olive Café's petition for review related to a civil penalty issued to Petitioner that has now been waived, "as it was issued prior to the date of compliance." Blue Olive Café did not file a response in opposition. The ALJ having reviewed the Motion and being otherwise duly advised in the premises, now finds that this matter should be dismissed. Accordingly, it is hereby **ORDERED** that Cause No. **DHS-1917-FPBSC-017** is dismissed. See Exhibit A, "Motion to Dismiss."

Respondent filed a motion to cancel the prehearing conference set for February 18, 2020. Petitioner did not file a response in opposition. The ALJ granted this motion shortly before the time of the hearing. However, due to technical issues, the ALJ became aware that Petitioner did not receive the notice that the hearing was canceled and could not make a connection to the teleconference number where the ALJ was waiting in case any party called in. The ALJ is sincerely sorry for the confusion experienced by Petitioner and appreciates Petitioner's sincere attempt to comply and appear.

Accordingly, the Administrative Law Judge now enters this Recommended Order of Dismissal and Order Affirming Cancellation of Prehearing Conference. The ultimate authority in this matter is the Fire Prevention and Building Safety Commission. Indiana Code § 4-21.5-3-29(d) requires any party seeking to preserve an objection to this order for judicial review to file a written objection that

1. identifies the basis of the objection with reasonable particularity; and
2. is filed with the Commission within fifteen days (or any longer period set by statute) after this order is served.

In the absence of an objection from a party or notice from the Commission of its intent to review any issue related to this order, the Commission shall affirm this order in accordance with Indiana Code § 4-21.5-3-29(c).

The rest of this page purposely left blank.

Date: February 19, 2020

/s/ Nicole M. Schuster

Nicole M. Schuster, Administrative Law Judge
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302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, Indiana 46204
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861611

STATE OF INDIANA
BEFORE THE FIRE PREVENTION AND BUILDING
SAFETY COMMISSION FILED

IN THE MATTER OF:)

FEB 18 2020

BLUE OLIVE CAFE)

SPECIAL SERVICES
CAUSE NO: DHS-1917-FPBSC-017


MOTION TO DISMISS

Respondent respectfully request the above captioned matter be dismissed. In support of this request, Respondent states the following:

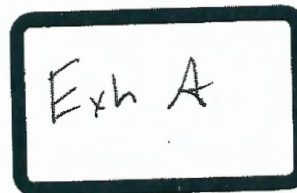
1. On or about October 02, 2019, Respondent issued a civil penalty to Petitioner for failing to correct two violations found during an inspection on August 28, 2019.
2. On or about October 06, 2019, Petitioner filed their petition for review of this civil penalty.
3. In order to resolve this dispute, Respondent waives the civil penalty issued to Petitioner, as it was issued prior to the date of compliance.

WHEREFORE, the Respondent respectfully request this matter be dismissed as moot.

Respectfully submitted,


Justin Guedel
Attorney for Respondent

Date: 2/18/20



Schuster, Nicole

From: Schuster, Nicole
Sent: Tuesday, February 18, 2020 9:57 AM
To: Guedel, Justin K; Olive Milan
Cc: Skarbeck, Molly
Subject: RE: Respondent's Motion to Dismiss Cause No DHS-1917-FPBSC-017

Well, since I haven't heard from Blue Olive, here's what I'll do—I'm going to go ahead and grant the motion and cancel today's hearing, but I'll be on the line to tell Blue Olive in person, if necessary.

From: Guedel, Justin K [mailto:JGuedel@dhs.IN.gov]
Sent: Tuesday, February 18, 2020 9:38 AM
To: Schuster, Nicole <Nicole.Schuster@atg.in.gov>; Olive Milan <oliveyouinmilan@gmail.com>
Cc: Skarbeck, Molly <Molly.Skarbeck@atg.in.gov>
Subject: RE: Respondent's Motion to Dismiss Cause No DHS-1917-FPBSC-017

FILED
FEB 18 2020
SPECIAL SERVICES
ALJ

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Respondent requests that the hearing scheduled for 10 be cancelled.

Justin K. Guedel | Deputy General Counsel
Indiana Department of Homeland Security
302 W. Washington Street, Rm. E208
Indianapolis, IN 46204
(317) 234-9515
JGuedel@dhs.IN.gov

ORIGINAL

From: Schuster, Nicole <Nicole.Schuster@atg.in.gov>
Sent: Tuesday, February 18, 2020 9:37 AM
To: Guedel, Justin K <JGuedel@dhs.IN.gov>; Olive Milan <oliveyouinmilan@gmail.com>
Cc: Skarbeck, Molly <Molly.Skarbeck@atg.in.gov>
Subject: RE: Respondent's Motion to Dismiss Cause No DHS-1917-FPBSC-017

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Thank you, Counsel. I will send a file-stamped copy to the parties shortly.

Should I expect a request, joint or otherwise, to cancel the hearing scheduled for 10 a.m., or do you anticipate it going forward?

Thanks,

Nicole Schuster

Nicole M. Schuster
Deputy Attorney General

Office of Attorney General Curtis Hill
302 West Washington Street
IGCS-5th Floor
Indianapolis, IN 46204
p: 317.234.7141 | f: 317.232.7979
[Nicole.Schuster\[atg.in.gov\]](mailto:Nicole.Schuster[atg.in.gov])



From: Guedel, Justin K [<mailto:JGuedel@dhs.IN.gov>]
Sent: Tuesday, February 18, 2020 9:34 AM
To: Schuster, Nicole <[Nicole.Schuster\[atg.in.gov\]](mailto:Nicole.Schuster[atg.in.gov])>; Olive Milan <oliveyouinmilan@gmail.com>
Cc: Skarbeck, Molly <[Molly.Skarbeck\[atg.in.gov\]](mailto:Molly.Skarbeck[atg.in.gov])>
Subject: Respondent's Motion to Dismiss Cause No DHS-1917-FPBSC-017

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ALJ Schuster:

Respondent requests that this matter be dismissed as moot as Respondent has waived the civil penalty. Attached is a copy of Respondent's Motion to Dismiss.

Justin K. Guedel | Deputy General Counsel
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