

STATE OF INDIANA
BEFORE THE FIRE PREVENTION AND
BUILDING SAFETY COMMISSION



IN THE MATTER OF:)

GATTITOWN)

CAUSE NO.: DHS-1925-FPBSC-025)

RESPONDENT'S RESPONSE TO PETITIONER'S OBJECTIONS

Respondent provides the following response to Petitioner's objection and requests that the Fire Prevention and Building Safety Commission (Commission) affirm the Administrative Law Judge's (ALJ) Recommended Order Granting Summary Judgment (Recommended Order).

From a review of Petitioner's filing, it appears Petitioner's general objection to the ALJ's Recommended order is that facts and arguments presented by Petitioner were not considered by the ALJ and any technical failures in Petitioner's response were due to his ignorance of the law. However, this body will find, upon review of the Recommended Order, that the ALJ did consider all facts and arguments appropriately presented by Petitioner and that ignorance of the law is no excuse.

Petitioner's Response to Respondent's Motion for Summary Judgment was a four (4) paragraph email with no attachments. No affidavits, documentation, or any other type of evidence was submitted to support any assertions made by Petitioner, and Indiana Trial Rule 56(E) requires:

[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest on mere allegations or denials of his pleading, but his response, **by affidavits** or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

Emphasis added.

Here, a motion for summary judgment was made and supported by Respondent, and the response provided by Petitioner rested solely on mere allegations – no designated

evidence, whether by affidavit or otherwise, was provided. Any attempt to remedy this failure now is too late and should not be accepted to nullify the Recommended Order as this information was not before the ALJ for consideration. Respondent requests that the affidavit not be considered and objects to its contents to the extent it is being used to introduce items other than factual content.

Additionally, in response to the information contained in paragraph 4 of Petitioner's affidavit, IDHS responded to Petitioner's request for records with all information it was able to gather responsive to the request and informed Petitioner a search for the records was performed and no records prior to 2011 were found. *See Exhibit 1, Response to Petitioner's Request for Records.* Respondent cannot produce records it does not have in its possession. Additionally, if Petitioner intended to challenge the underlying violation, and not the resulting penalty for noncompliance, this challenge should have been made prior to the original inspection report order becoming final.

In response to the objection of the Recommended Order on the basis Petitioner was ignorant of the law, Respondent states that it is a well settled legal principle that ignorance of the law is no excuse. Notwithstanding this legal principle, Petitioner cites to *Parisie v. J.W. Greer*, 685 F.2d 1016 (7th Cir. 1982) and argues this case paves the way for noncompliance with the procedural requirements. However, unlike the facts in *Parisie*, we are not concerned with a timing requirement contained in the Federal Rules of Civil Procedure that was not able to be complied with by a prison inmate due to his circumstances and was requested to be extended and not objected to by the opposing party. In fact, in this case, Petitioner, who is not restricted as an inmate would be in prison, was granted additional time to comply with the procedural requirements of this administrative review. Just as is the case with the belated attempt to challenge the underlying

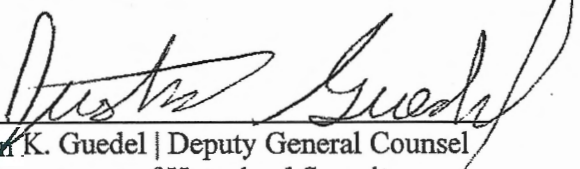
violation that resulted in the civil penalty in question,¹ Petitioner now requests a do over on his response to the motion for summary judgment. Additionally, unlike in *Parisie* Respondent objects to Petitioner's attempt to submit any new arguments or affidavits after the fact. It is clear that *Parisie* is not similar to the case at hand and the procedural rules should apply to Petitioner regardless of his pro se status. See *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014) ("a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented").

Lastly, even if this information were permitted, Petitioner has not made a prima facie showing that Respondent should be estopped from enforcing these requirements. A claim that Petitioner lacks knowledge of the law cannot be used to meet the first element of estoppel. As previously stated, lack of knowledge of the law is no excuse, and Petitioner has the means to apprise himself of the law. The first element of estoppel pertains to not having knowledge and the ability to obtain knowledge, of the **facts**, not the **law**. Therefore, the first element of this claim has not been met.

¹ As is demonstrated by the record of these proceedings, Petitioner did not challenge the initial violation report issued by Respondent which detailed all violations found during the inspection and set a date for compliance, but waited until after the compliance date had passed and a penalty was issued for noncompliance to address the concern with the initial order that was already finalized. There is no dispute here from Petitioner that he did not comply with the order being enforced, Petitioner is attempting to dispute that the already final order issued initially was improper and therefore noncompliance should be permitted.

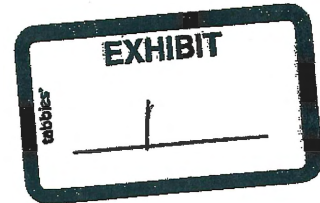
Wherefore, Respondent requests the ALJ's Recommended Order be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Justin K. Guedel", is written over a horizontal line.

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

From: DHS Public Records
To: john zeidler
Cc: Guedel, Justin K
Subject: RE: DHS_Public_Records_Request_Web_Form_4045
Date: Wednesday, March 04, 2020 2:22:56 PM
Attachments: Gattitown Fire Marshal Reports.zip



Dear Mr. Zeidler,

Please find attached all records responsive to your request. A preliminary search of our records did not reveal copies of reports prior to 2011. As reports older than three years are not typically maintained by DHS (reports are transferred to the Indiana Archives after three years for weeding, sampling, and evaluation pursuant to archival principles), these are the only documents that DHS can make available in response to your claim. Reports prior to 2011 would need to be requested from the Archives.

Additionally, the Public Records Manager has no authority to grant you an extension to your hearing. In order to obtain an extension to your hearing, you would need to contact counsel for the respondent and the Office of the Administrative Law Judge, pursuant to applicable statutes and court rules.

Thank you,

Daz L. Dyer | Public Records Manager
Indiana Department of Homeland Security
302 W. Washington St., Room E208
Indianapolis, IN 46204
Tel: (317) 234-8837
Web: www.in.gov/dhs

From: john zeidler <jzeidler63@gmail.com>
Sent: Monday, February 24, 2020 4:07 PM
To: jzeidler63@gmail.com
Cc: DHS Public Records <Publicrecords@dhs.IN.gov>; #DHS PIO <PIO@dhs.in.gov>; Schuster, Nicole <nicole.schuster@atg.in.gov>; Molly Skarbeck <Molly.Skarbeck@atg.in.gov>; Guedel, Justin K <JGuedel@dhs.IN.gov>
Subject: Re: DHS_Public_Records_Request_Web_Form_4045

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

All, apparently my request was misconstrued as a request for all state fire inspections instead of only for my business. As such, I have resubmitted a corrected request for documents per the email below. Since I do not anticipate receiving this prior to our 30 day window from 1/29, I would request a 30 day extension on our hearing. Let me know your thoughts. Thx

John Zeidler
812-454-3253

On Feb 24, 2020, at 3:03 PM, noreply@formstack.com wrote:

The Indiana Department of Homeland Security has received your request for public records. As required by Ind. Code 5-14-3-9, this email serves as acknowledgment that your request has been received and will be processed. If the agency has records which are responsive to your request, we will gather those and send the documents or a link to the documents to the email you included with your submission. Please understand that some requests take more time than others to process and review before they are released depending on the type and scope of the request. If you have any questions about your request, please feel free to contact us at PublicRecords@dhs.in.gov.

Thank you.

Name: John Zeidler

Person(s) Making Request: Citizen

Organization Represented: Gattitown Evansville

Telephone Number: (812) 454-3253

Email Address: jzeidler63@gmail.com

Summary of Materials Being Requested: Fire Marshall IDHS inspections for Gattitown Evansville located at 316 N Green River Rd Evansville, IN 47715. All related inspections from 2008 thru and including 2019