



Origin India
Hearing Officer Administrative Hearing
MEETING MINUTES

Southern Nevada Health District
280 South Decatur Boulevard, Las Vegas, Nevada 89107
Red Rock Conference Room
9:00 A.M. – Wednesday, August 23, 2017

SNHD STAFF PRESENT:

Larry Rogers, Environmental Health (EH) Manager
Heather Anderson-Fintak, Associate General Counsel
Jennifer Johnson, Environmental Health Specialist (EHS)
Matithia Eiland-Darboe, EHS
Desiree Hiestand, EHS
Thomas San Nicolas, EHS
Kristine Vasilevsky, EHS
Kevin Pontius, EHS
Erik Sumera, EHS

LJR
Heather Hanoff, Recording Secretary
Karla Shoup, EH Supervisor
Tanja Baldwin, EH Supervisor
Victoria Wilson, EHS
Jason Kelton, Senior EHS
Jason Banales, EHS
Chrissy Lin, EHS
Debbie Clark, EHS

FACILITY OWNERS/REPRESENTATIVES PRESENT:

William Bathini, Owner
Celeste Bathini, Witness

PUBLIC PRESENT:

None

I. CALL TO ORDER:

The Hearing Officer, Henry Melton, called the meeting to order at 9:02 a.m.

II. PUBLIC COMMENT:

None

III. MATTERS REQUIRING HEARING OFFICER ACTION:

Origin India (PR0124274, PR0124275, and PR0124276), 4480 Paradise Road, Suite #1200, Las Vegas, NV 89169: Proposed Denial of Permits

Opening Statements:

Heather Anderson-Fintak announced that the hearing is recorded and it is the Health District's responsibility to prove the case. This will be Origin India's last opportunity to present any evidence or testimony. After this, any appeal is to District Court on a Petition for Judicial Review, which means that the Court will only review a transcript of this hearing and the documents that are presented today to decide if the Hearing Officer had substantial evidence to make his decision. Recording Secretary, Ms. Hanoff, can provide appeal information; appeal requests can only be made within thirty days from today's date. The Hearing Officer is a paid third-party individual that is impartial and not an employee of the Health District. Each party will present their cases through witnesses and will have an opportunity to cross examine opposing witnesses. Each party will also have an opportunity to give a closing statement at the end of the hearing.

The following people were sworn in for testimony by the Hearing Officer: Karla Shoup, Jason Banales, Desiree Heistand, Jennifer Johnson, William Bathini, and Celeste Bathini.

Karla Shoup's Testimony:

Karla Shoup is the supervisor of Facility Design, Assessment, and Permitting (FDAP). She has been a supervisor for approximately three years and was an EHS for eight years before becoming a supervisor. Ms. Shoup issued the denial of permit letter for Chef William, LLC dba Origin India. She explained the Plan Review office review and inspection process. Origin India was closed for unsanitary conditions and since the facility had changed ownership, a new permit had to be processed for the new owner. A Food Safety Assessment Meeting (FSAM) was required prior to scheduling a final inspection to review the five foodborne illness risk factors and how to control them. The facility had a supervisory conference after failing their field inspection. At the supervisory conference, Mr. Bathini indicated that all inspection violations had been corrected. The facility failed the next scheduled inspection also even though the business was still closed to the public and not stocked with food. This is the first time that Ms. Shoup and SNHD management has determined that a facility cannot be successful so the permits must be denied. The owner has good food safety knowledge when you speak with him but it's not being applied in the facility. There is a disconnect between what he knows and what he is capable of doing.

William Bathini had no questions for Ms. Shoup.

Jason Banales' Testimony:

Jason Banales has been an EHS for two years and two months. He is the assigned inspector for the Origin India located at the Las Vegas Convention Center. He had never been to this location until July 5, 2017. The USDA had an active investigation with the facility's previous owner so the USDA asked Mr. Banales to accompany them on an inspection since he had a working relationship with the previous owner. Mr. Banales described the inspection report violations and photographs from the July 5, 2017 inspection. The inspection took approximately three hours. There was no active managerial control. The facility was closed for excessive demerits and a change of ownership being identified.

William Bathini stated that he was embarrassed by the inspection photos. He stated that there was a communication gap with the employees that didn't speak English and that food was within two hours of being in the danger zone. William Bathini had no questions for Mr. Banales.

Desiree Heistand's Testimony:

Desiree Heistand is an EHS for FDAP. She inspected the facility because the assigned inspector, Jennifer Johnson, was unavailable for expedited inspections on July 20, 2017. She was not involved with the office activities for this facility and she had never conducted an inspection there. Ms. Heistand described the inspection report violations and photographs from the July 20, 2017 inspection. Inspection violations demonstrated a lack of active managerial control.

William Bathini asked if Ms. Heistand was supposed to inspect the bar without him applying for the bar license yet. Ms. Heistand did the inspection for all three inspections as requested. Mr. Bathini had no further questions.

As a follow-up question, Heather Anderson-Fintak asked Ms. Heistand why she inspected the bar permit. Ms. Heistand did it at Mr. Bathini's request to get the facility open and operating. Ms. Heistand confirmed three permits on the Plan Review application. The Health District does not concern itself with whether a facility has a liquor license; it's the owner's responsibility to coordinate with other applicable agencies.

William Bathini had no additional questions for Ms. Heistand.

Jennifer Johnson's Testimony:

Jennifer Johnson has been an EHS for FDAP for approximately nine months and worked in Food Operations prior to that. Ms. Johnson described the Plan Review process and the application review meeting for Origin India on July 17, 2017. The initial meeting is for evaluating if the facility processes are safe and work with the equipment. Ms. Johnson also required an FSAM due to the 48 demerits closure and because she felt that Mr. Bathini did not know how to apply his food safety knowledge. She went over the FSAM process and described Mr. Bathini's FSAM meeting. Handouts and education were given during the meeting. At the end of the meeting, Ms. Johnson felt that there were still some areas that needed more review and preparation before the final inspection. The facility failed their scheduled July 20, 2017 inspection with Desiree Heistand and were then required to have a supervisory conference. Ms. Johnson described the inspection report violations and photographs for the next facility inspection on August 1, 2017. The inspection started at 1:30pm and was approximately 2 hours but Ms. Johnson was still at the facility at 4:30 p.m. answering questions about the inspection.

William Bathini asked Ms. Johnson if she inspected the bar. Ms. Johnson did enter the bar with the intent to inspect; however, the bar permit could not be approved since the kitchen permit was not approved. Mr. Bathini had no additional questions.

William Bathini's Testimony:

Mr. Bathini stated that he used to operate Paradise India in Summerlin. Ms. Heistand was his inspector and he always maintained an A grade. That location went out of business and he took over Origin India. He did not follow the formalities of changing ownership. Origin India's owner was losing 20K every month because of employee theft so he fired the existing employees. Mr. Bathini was working without management and he takes responsibility for that. He believes that cleanliness is next to godliness and he is a very clean person. He is embarrassed that his kitchen was not clean. As an owner, he is supposed to have food and facility knowledge. He wanted to earn money while he was fixing issues because he didn't have enough funds to cleanup everything at once. Mr. Bathini and his wife cleaned the facility to the best of their ability and had the backflow fixed by a certified plumber. He has 30k in new investor money to get the facility opened. Everything in the photographs has been corrected. Now the restaurant looks brand new.

Heather Anderson-Fintak asked when Mr. Bathini took over Origin India. The LLC was formed in May and he started at the facility at the end of June. The previous owner was supposed to give him 20K to help with the transition but didn't because of a family emergency. He should have taken over, closed the restaurant, and fixed everything. Mr. Bathini ran Paradise India in Summerlin for one year and he received two A grade inspections. Mr. Bathini is a ServSafe Food Safety Manager and has been for 17 years. He also ran a restaurant in Washington, D.C. Ms. Anderson-Fintak asked how the Health District could trust that he has corrected all the issues when he's had multiple inspections where he has claimed to be ready but wasn't. He has funds now to fix the issues and is confident that he can receive an A grade inspection. Mr. Bathini has had several things repaired at the facility but no receipts were provided. He had black and white photos of the repairs that were on his phone. Since he was taking over an A grade restaurant, Mr. Bathini didn't realize that he would have to go through FDAP like Paradise India. His biggest mistake was that he should have closed the facility, got the permit, and cleaned up the facility. Mr. Bathini said it was his fault and he takes full responsibility for that.

Celeste Bathini's Testimony:

Mr. Bathini was attempting to say that he has very high food knowledge and he did well at Paradise India. He was a little uneducated about the process of taking over an already established restaurant.

Heather Anderson-Fintak had no questions for Celeste Bathini.

IV. CLOSING STATEMENTS:

Heather Anderson-Fintak:

Mr. Hearing Officer, as you heard from Ms. Shoup, in her three years of being the supervisor, we have never brought a denial of a permit to the hearing officer process. It is unusual. Staff normally allows second chances and the facilities can meet the standards. The standards for new permits in Plan Review are not any different for change of ownerships. We are still going to look to make sure that existing equipment is working appropriately. We are still going to make sure that all services are smooth and easily cleanable. We're going to make sure there are no rough welds. These are all requirements of the facility. The Health District took this extreme position because the person in charge of the permits, had failed to take the necessary steps to change ownership. More importantly, while it was under his control as the owner and Food Safety Manager, this establishment had 48 demerits which is a closure regardless. That is way too many demerits and our food operations inspector found most of these demerits almost exclusively in the handling of food. Things were not at the right temperature. Expired food had not been thrown away and could have been utilized again. The utensils were being improperly covered. Food was uncovered. Products were on the floor. Food was open and in metal containers. No sanitation was being used for cleaning. There were dirty pots in the hand sinks. The fan wasn't working. Plan Review looks at the ceiling, the floor, and all the equipment. A person should be able to pass Plan Review when closed. When you are closed and you are not making food, we are not looking at keeping temperatures from the danger zone. We're not looking at whether someone washes their hands or whether someone's apron is dirty. Unfortunately, this facility is in such bad condition and needed such an investment of money that it was unable to pass two reviews: one on July 20th and one on August 1st. The Health District has a permit seeker who has shown that they do not know how to maintain food appropriately in a facility that needs too many repairs. The first time they did not pass the inspection, we did not charge them the \$239 closure fee. The Health District wanted this person to be successful and in doing so, we gave them another opportunity. We gave them a supervisory conference. We told them what needed to happen and yet the same issues are present on August 1st. The beverage machine is not working. The walk-in freezer has ice buildup. We find even more problems like the cracks in the Tandoori oven. This facility is not in good condition. We have seen nothing today that shows us that Mr. Bathini has the knowledge to do what he needs to do or that he has invested the money into the facility to bring it up to the Health District's minimum requirements for the purposes of serving food. For that reason, the Health District is seeking the extreme position of denying the permit and we are requesting this under NRS 446.875. The Regulations showing that he should be denied this permit, at this location, is 4-102.11, 4-201, 4-202, 4-204, 6-5, and 8-203.11D. However, if the Hearing Officer is so inclined to give this operator another chance, which we strenuously object to, but if that is the case, we would like to ask that these conditions be placed on the permit: a written standard operating procedure on sanitation, training documents for all employees, the facility maintains an A grade on all inspections for the next twelve months, there must be a person in charge that is a Certified Food Protection Manager at all times that the establishment is open, the owner must maintain a food safety consultant on contract and the contract must specify this site at least once per week, and if any inspection in the next twelve months is below an A grade (10 demerits) or less the permits will be immediately revoked without further administrative process or hearing.

William Bathini:

I think I deserve a second chance. It's not that I've been having a bad track record. It's one offense. I understand what it is to maintain A grade and nothing less than that. I've always proved in my experience and I think I deserve a second chance. As Ms. Anderson-Fintak said, give me a second chance and I'll make sure it's always an A grade for one year or more. I would plead to get a second chance.

V. EVIDENCE:

- SNHD Exhibit 1: Permit Denial Letter, 08/08/17
- SNHD Exhibit 2: Request for Hearing, 08/11/17
- SNHD Exhibit 3: Notice of Hearing, 08/15/17
- SNHD Exhibit 4: Pre-Permitting Supervisory Conference, 07/26/17
- SNHD Exhibit 5: Inspection Report and Photographs, 07/05/17
- SNHD Exhibit 6: Inspection Report and Photographs, 07/20/17
- SNHD Exhibit 7: Inspection Report and Photographs, 07/20/17
- SNHD Exhibit 8: Inspection Report and Photographs, 07/20/17
- SNHD Exhibit 9: Permit Application, 07/17/17
- SNHD Exhibit 10: FDAP Checklists for All Three Permits, 07/17/17
- SNHD Exhibit 11: Food Safety Assessment Meeting Questionnaire, 07/19/17
- SNHD Exhibit 12: Inspection Report and Photographs, 08/01/17

VI. PUBLIC COMMENT:

None

VII. DECISION:

Origin India (PR0124274, PR0124275, and PR0124276): PERMITS DENIED

Hearing Officer: Based on the documents and the testimony, this sounds like a cash flow issue. We have a population of approximately two million people to be concerned about. The awareness level of Mr. Bathini and the performance level is not parallel.

VIII. ADJOURNMENT:

The hearing was adjourned by the Hearing Officer at 12:43 p.m.