

CITY OF ALLENTOWN

Review of Contract: DANFRANK ENTERPRISES, LLC d/b/a Jack's Slice Pizza

Date of Report: November 02, 2020

Jack's Slice Pizza restaurant is located on the Allentown Municipal Golf Course in Allentown's West End. They have two outdoor patios and an indoor bar which includes multiple flat screen TVs, a remodeled dining room and large patios.

The City of Allentown entered into a lease agreement with Jack Slice on July 11, 2014 with 4 amendments dated: 03/03/2015, 2017, 2018 and 07/01/2020.

OBJECTIVE

The objective of the review was to determine whether the payments due to the City of Allentown (City) for fees and services were received in compliance with the Jack Slice lease agreement and whether proper insurance was included with the agreement.

The period selected for testing include payments for the 1st Quarter 2019 thru the 3rd Quarter 2020 and contracts/renewals thru August 2020.

PROCEDURES

This audit was conducted in accordance with generally accepted governmental auditing standards and utilized an approach that included staff interviews, reviews of documents and reports, and examinations of individual financial transactions.

FINDINGS, RECOMMENDATIONS AND RESPONSES

PAYMENT DEFICIENCIES/ INTERNAL CONTROL WEAKNESSES

1. Lack of Insurance Compliance

Per the Jack Slice Lease Agreement dated 07/11/2014,

Section 13. Insurance

“a. Lessee shall submit a certificate of insurance to the Lessor as evidence that it has obtained and that such insurance is valid for the term of the lease, and any extensions, general liability policy which includes the following coverage and amounts:

- i. Comprehensive
- ii. Premises – operations
- iii. Contractual insurance
- iv. Independent Contractor or Subcontractor

Lessee shall obtain minimum coverage limits of \$1,000,000.00 per occurrence...

c. Excess/Umbrella

- i. Lessee shall obtain minimum coverage limits of \$2,000,000.00 per occurrence. The additional limits above the Comprehensive General Liability and Automotive Liability and Automotive Liability policies.
- ii. All policies shall name the City of Allentown, its officers, agents and Employees as additional insured. This coverage shall be reflected on the Certificates of Insurance.

d. Worker's Compensation — including Occupational Disease and Employer's Liability Insurance in the following amounts:

- i. Statutory — amounts and coverage as required by Pennsylvania Workmen's Compensation and Occupational Disease Laws
- ii. Employer's Liability — \$500,000.00 each occurrence.
 1. Accident \$100,000.00 each
 2. Disease \$500,000.00 minimum policy limits
 3. Disease \$100,000.00 each employee

e. Lessee shall maintain a Dramshop (Liquor) Liability Policy to cover exposures from the sale of alcoholic beverages with...

f. Lessee shall provide: a copy of all certificates of insurance and all other insurance related documents to:

Leonard Lightner (Or successor in title)
Risk & Safety Manager
City of Allentown
435 Hamilton Street
Allentown, PA 18101”

We requested copies of the current Certificate of Insurance (COI) and the only one available expired on 06/03/2020. The next COI obtained was after our initial request and is dated 08/31/2020. Although requests were made by Administration, Jack's Slice did not provide any proof to indicate there was insurance coverage between 06/03/2020 and 08/31/2020.

Recommendation

Jack's Slice should be reminded of their obligation to abide by the terms of the lease agreement.

Administration should determine if there was a breach of the lease agreement and seek guidance from the Solicitor as to how it should be handled.

Administration's Response

The City Risk office requested information on possible lapse in coverage identified in the Audit report. The lessee did not respond, and Risk requested assistance from the Solicitor's office.

The response received from the Solicitor's Office is as follows:

"returned my phone call this date at approximately 12:39 p.m. He was very pleasant and answered the question as to insurance coverage during the time period of between June 3, 2020 and August 31, 2020. He notified me of following:"

- His business partner received all of the mail at his home.
- The business was "shut down" during COVID.
- Insurance was lapsed and was canceled; and
- He had conversations with Administration regarding the insurance.

Additional Auditor's Comment

Per Jack Slice, they had a limited opening on 06/23/2020 and then opened up the outside pavilion in early July.

2. Accounts Receivable (AR) Not Updated Timely

On 08/12/2020, we reviewed the EDEN AR for Jack's Slice and noted the last entry was made on 12/13/19.

The 4th amendment to the lease agreement relieving Jack's Slice of 3 months of rental payments was made on 07/01/2020 and was not reflected on the AR until after our initial review.

Recommendation

EDEN AR should be reviewed monthly to insure it is accurate.

Administration's Response

The Administration agrees and we will ensure that Eden AR is reviewed monthly to ensure it is accurate.

3. Late Fees Waived

Per the Jack Slice Lease Agreement dated 07/11/2014,

“4. RENT...

c. In the event Lessee pays any rent, additional rent, charge, fee or other amount due under the terms of the Lease later than ten (10) calendar days of the due date, Lessee shall also pay a late fee of five (5%) percent of the total amount then due. Any such late fee shall be deemed to be additional rent. Interest shall accrue at an annual rate of six (6%) percent on any sums due after thirty (30) days.”

The July 2020 rent balance and the August rent payment were made on 09/03/2020.

Under the terms of the lease agreement late fees totaling \$163.50 should have been assessed.

Due to COVID, the Financial Analyst made the decision to waive the late fees until September 2020.

Recommendation

The Financial Analyst does not have the authority to change the terms of the lease agreement. Changes to a leased agreement should be documented and properly approved.

Administration's Response

The Administration agrees and, in the future, will ensure the lease terms are adhered to and that any changed will be from the proper authority and be properly documented.

4. Non-Compliance of Reporting Requirements

Per the Jack Slice Lease Agreement dated 07/11/2014,

“18. RIGHT TO AUDIT BUSINESS AND PERFORMANCE:

A. The Lessee shall provide to the City of Allentown's Office of the Treasury an income statement of all gross sales from all Golf Course Restaurant function, including food and beverage. Reports are due in March, June, September and December, month ending. The Lessee shall also submit to the City a written statement signed by the Lessee and certified to be accurate by a certified public accountant, showing in detail the amount of gross income of the preceding year on or before the 60th day following the end of the lease year....”

No evidence could be obtained that these reports were received by anyone in the City.

Recommendation

Jack's Slice should be reminded of their obligation to abide by the terms of the lease agreement.

Administration should determine if there was a breach of the lease agreement and seek guidance from the Solicitor as to how it should be handled.

Administration's Response

We agree with the findings. We spoke with the owner of Jack's Slice and he said he would provide us with the requested documents. We also spoke with the Solicitor's Office. The Solicitor's office will continue to be made aware of the situation and we will work with them for an appropriate follow-up action for breach of contract.