

IN THE SUPREME COURT OF THE STATE OF DELAWARE

INFANTE ENTERPRISES, INC.,	§
t/a BULL DOZERS SALOON,	§
FRANK INFANTE,	§ No. 399, 2005
	§
Petitioner Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
DELAWARE HEALTH AND	§ in and for New Castle County
SOCIAL SERVICES, DIVISION	§ C.A. No. 04A-10-002
OF PUBLIC HEALTH,	§
	§
Respondent Below-	§
Appellee.	§

Submitted: December 5, 2005
Decided: December 14, 2005

ORDER

This 14th day of December 2005, it appears to the Court that:

(1) Frank Infante filed a notice of appeal in this matter on August 28, 2005 from a decision of the Superior Court dated August 1, 2005. The Superior Court's order upheld a decision of the Director of the Division of Public Health, which found Infante Enterprises, Inc. in violation of the Clean Indoor Air Act and imposed a \$100 civil administrative penalty against the corporation. In a sworn affidavit filed in Superior Court, Infante represented himself to be the owner of Infante Enterprises, Inc., which does business as

Bull Dozers Saloon. Both Infante and Infante Enterprises, Inc. were represented by counsel in the Superior Court proceedings.

(2) Upon filing his notice of appeal *pro se*, on behalf of himself and the corporation, the Clerk of the Court informed Infante that a corporation is not permitted to proceed *pro se* or be represented by a nonlawyer in proceedings before this Court. Infante was instructed to have counsel enter an appearance on behalf of Infante Enterprises. After failing to comply with the Court's directive, the Clerk issued a rule to show cause why the appeal should not be dismissed for failure to prosecute.

(3) Infante, on behalf of himself only, filed a response contending for the first time that he is not and "has never represented [himself as] the legal owner of Infante Enterprises, Inc." Infante asserts that he holds "no Power of Attorney" and thus has no authority to act on behalf of Infante Enterprises. The State has filed a reply to Infante's response and requests the Court to dismiss the appeal for Infante Enterprises' failure to prosecute. The State argues that the enforcement action under the Clean Indoor Air Act was against the corporation only and that the corporation may appear before this Court only through an agent duly licensed to practice law. The failure of the corporation to do so requires the appeal be dismissed.¹

¹ *Transpolymer Indus., Inc. v. Chapel Main Corp.*, 1990 WL 168276 (Del. Supr.).

(4) After receiving Infante's response reflecting that he was not the owner or agent of Infante Enterprises, the Clerk reissued the Court's directive to Anne Infante, president of Infante Enterprises, Inc. The directive informed Infante Enterprises, Inc. that if counsel did not enter an appearance on behalf of Infante Enterprises by a date certain, the appeal would be dismissed without further notice for the corporation's failure to prosecute. The Court has received no response and counsel has not entered an appearance. Therefore, dismissal of this action is deemed to be unopposed.

NOW, THEREFORE, IT IS ORDERED that the within appeal hereby is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice