

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF TRANSPORTATION,)
)
Petitioner,)
)
vs.) CASE NO. 89-0790T
)
RIVERSIDE VILLAGE MARINA, INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings by its duly designated Hearing Officer, K. N. Ayers, held a public hearing in the above-styled case on July 20, 1989 at Bartow, Florida.

APPEARANCES

For Petitioner: Vernon L. Whittier, Jr., Esquire
Department of Transportation
605 Suwannee Street
Tallahassee, Florida 32399-0458

For Respondent: Not, present or represented.

STATEMENT OF THE ISSUES

Whether Respondent's facility is eligible to display a "camping" logo at Exit 64A on 1-75 at the intersection with SR 674.

PRELIMINARY STATEMENT

By letter dated November 21, 1989, Edward Smith, President of Riverside Village Marina, Inc., Respondent, was notified by the Department of Transportation, Petitioner, that participation in the State Department of Transportation Logo Program was being revoked for failure to comply with certain requirements of the logo program and of his right to request a hearing to challenge this determination. By letter dated January 26, 1989, Smith requested a hearing and these proceedings followed.

Prior to the commencement of the hearing, an attempt to contact Smith by telephone to learn if he was enroute to the hearing was unsuccessful when the only response came from a telephone answering machine. After waiting a reasonable period of time for Respondent to appear, the hearing was called to order. Thereafter, Petitioner called three witnesses and 14 exhibits were admitted into evidence.

Petitioner waived the right to submit proposed findings of fact.

FINDINGS OF FACT

1. By Logo Application dated January 29, 1988 (Exhibit 1) Edward Smith, President, Riverside Village Marina, Inc. applied for a camping logo on I-75 at Interchange Exit 46A near Ruskin, Florida. Following an inspection, this application was approved on February 18, 1988 and Smith was sent a Notice of Eligibility on February 25, 1988 (Exhibit 2).

2. In November, 1988, a complaint was received by Petitioner regarding the toilet facilities and potable water at Riverside Marina. On November 18, 1988, an inspection of Respondent's facility was made and it was found both male and female shower rooms were locked, there was no attendant on duty, and no potable water was provided to campers. On November 21, 1988, Respondent was advised of these defects, that participation in the Logo Program was revoked and of his rights to a hearing (Exhibit 3).

3. A conference was held between the parties on December 2, 1988 at which Respondent was advised of the requirements to be met by participants in the logo program (Exhibit 4).

4. Two inspections conducted in December, 1988 revealed the initially reported defects as uncorrected. Respondent was advised of the results of these inspections by letter dated January 5, 1989 (Exhibit 5).

5. Photographs taken by the Department of Transportation inspectors on January 3, 1989, showed padlocks on shower room doors (Exhibit 6-9).

6. By letter dated April 4, 1989, the Department of Health and Rehabilitative Services (Exhibit 10) forwarded copies of chemical analyses of the water at Riverside Village Marina showing the water supply exceeded the maximum contaminant level for turbidity. By letter to Petitioner dated July 17, 1989 (Exhibit 14) the Department of Health and Rehabilitative Services advised that samples taken at Riverside Village Marina on June 12, 1989, failed to meet turbidity requirements.

7. An inspection of the Respondent's facility on July 17, 1989 revealed the shower rooms were padlocked and there was no attendant on duty.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties to, and subject matter of, these proceedings.

9. Rule 14-85.008 Florida Administrative Code establishes business eligibility requirements to be met by businesses participating in the logo sign program. Subsection (d) thereof provides in pertinent part:

To be eligible to display a "Camping" logo panel a business shall:

1. Have all appropriate state and local occupational licenses and health permits

* * *

3. Provide a minimum of 10 campsites with potable water and electrical accommodations for conventional travel-trailers, tents, and campers.

* * *

5. Provide separate male and female shower facilities with hot and cold running water and separate male and female modern restrooms.

* * *

7. Have a full-time attendant on duty or on call 24 hours per day to manage and maintain campground services.

10. To revoke a previously granted eligibility to participate in the logo program, the burden is on the Department of Transportation to prove the facility is not eligible. Balino v. Department of Health and Rehabilitative Services, 348 So.2d 349 (Fla 1st DCA 1977).

11. Here Petitioner has clearly sustained that burden. The evidence is un rebutted that subsequent to November 1988, at every inspection conducted by Petitioner's personnel Respondent's facility has not provided shower room facilities or an attendant on duty as required by the rule above quoted, and that the facility did not meet potable water requirements.

RECOMMENDATION

It is RECOMMENDED that a Final Order be entered revoking Riverside Village Marina, Inc.'s participation in the Florida Department of Transportation Logo Program.

DONE AND ENTERED this 26th day of July, 1989 in Tallahassee, Leon County, Florida.

K. N. AYERS
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of July, 1989.

COPIES FURNISHED:

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