

3-29-99

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF HOTELS AND RESTAURANTS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF HOTELS AND
RESTAURANTS,

Petitioner,

vs.

DON'S ITALIAN RESTAURANT OF SINGER ISLAND, INC.
d/b/a ITALIAN CONNECTION
10471 UTOPIA CIRCLE, SOUTH
BOYNTON BEACH, FLORIDA 33437

Respondent.

Final Order No. BPR-99-03087 Date 5-27-99
FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Brandon M. Nichols

98-4351 MMP-Clos

LICENSE NO.: 60-11547-R

CASE NO.: 02-98-142

04 JUL 15 AM 10:38
FILED
ADMINISTRATIVE
HEARINGS

FINAL ORDER

The Director, Division of Hotels and Restaurants, having been apprised of the facts in this case, including the mitigation presented at a formal proceeding, makes the Findings of Fact and Conclusions of Law set forth below and enters this Final Order pursuant to Chapters 120 and 509, F.S.

FINDINGS OF FACT

1. The Respondent admits that he was the holder of the above-styled license for an establishment known as **ITALIAN CONNECTION** and that he is subject to the jurisdiction of the Division.

2. The Respondent refused to allow the Division to conducted an inspection of the Respondent's public **FOOD SERVICE** establishment and cited the Respondent for the violations of the statute or rules, set out in Exhibit "A", attached hereto and made a part hereof, and issued an Administrative Complaint.

3. Respondent was given notice of the right to a hearing, disputed the issue of material facts of the cited violation, requested a formal hearing and received a formal hearing from the Division of Administrative Hearings.

4. At the formal hearing, Respondent submitted his testimony, and stated: THAT THE ESTABLISHMENT HAD VERY LIMITED KITCHEN SPACE AND THE DIVISION'S INSPECTOR ARRIVED TO DO HIS INSPECTION AROUND LUNCH TIME. RESPONDENT STATED HE REQUESTED THE DIVISION'S INSPECTOR TO COME BACK AT ANOTHER TIME, SINCE LUNCH TIME WAS A BUSY TIME FOR HIS ESTABLISHMENT, AND SINCE THE KITCHEN HAD LIMITED WORK SPACE. RESPONDENT STATED THE INSPECTOR CALLED HIS SUPERVISOR AND THEN AGREED TO RESCHEDULE THE INSPECTION.

CONCLUSIONS OF LAW

5. The Division has authority, pursuant to Section 509.261, F.S., to suspend or revoke the Respondent's license for violation of Chapter 509, F.S., or the rules promulgated thereunder, and to assess a civil penalty of up to \$1000.00 for each offense.

6. The acts of Respondent referenced in paragraph 2 of the Findings of Fact above are violations of the statutes or rules so described, and said citations are incorporated herein by reference.

7. The purpose of regulation is to protect the public by attaining compliance with the policies established by the Legislature. Fines and other penalties are provided to assure compliance. Section 120.695, F.S.

MITIGATION DISCUSSION AND ANALYSIS

8. Having concluded that the Division has cause to discipline Respondent, the Director next considers whether there are mitigating or aggravating circumstances to be applied in assessing what disciplinary action will be taken against the Respondent. The Director considered the following:

- a. The seriousness of the violation as it relates to the licensee's duties and responsibilities for operating a public food establishment or public lodging establishment. THE VIOLATION WITH WHICH THE RESPONDENT HAS BEEN CHARGED IS SERIOUS.
- b. The disciplinary record and history of violations of the licensee. THE RESPONDENT HAS NO PRIOR HISTORY OF REPEATED VIOLATIONS.
- c. Extraordinary or unusual circumstances beyond the licensee's control which temporarily impaired the licensee's ability to comply or substantially contributed to the violation for which discipline is being considered. THE RESPONDENT DISPUTED, THE ISSUE OF MATERIAL FACTS, OF THE DIVISION'S CHARGES AND SELECTED TO REQUEST A FORMAL HEARING. THE DIVISION OF ADMINISTRATIVE HEARINGS, ADMINISTRATIVE LAW JUDGE, HEARD THE CASE AND RECOMMENDED AN ADMINISTRATIVE FINE IN THE AMOUNT OF \$1,000.00.
- d. Preventive, corrective or remedial actions implemented by the licensee, either prior to or after the violation. THE DIVISION'S DIRECTOR AGREED, WITH THE ADMINISTRATIVE LAW JUDGE, THAT THE DIVISION'S INSPECTOR WAS OBSTRUCTED FROM PERFORMING THE INSPECTION OF THE ESTABLISHMENT AND THE RECOMMENDED ADMINISTRATIVE FINE OF \$1,000.00 WAS THE APPROPRIATE PENALTY.

9. Having received the Division of Administrative Hearings, Administrative Law Judge's, Recommended Order, the Director concludes that penalty is warranted as

set out in the Order,

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered:

1. For the violation found to exist:
 - a. A fine in the amount of \$1,000.00 is imposed

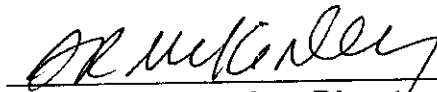
2. Respondent shall cease and desist from the operation of the subject establishment until:

- a. The violation cited against Respondent has been corrected and such corrective action verified by the Division, and
- b. Respondent has been licensed by the Division in accordance with Chapter 509, F.S.

3. This is the Final Order of the Division respecting the matters set forth above and this Order is directly enforceable by petition in a Circuit Court of Florida, as provided for in Section 120.69, *Florida Statutes*. Furthermore, the Division shall obtain attorney's fees from Respondent for necessary enforcement action on this order.

4. Judicial review of a Final Order may be available under Section 120.68, *Florida Statutes*, and Rule 9.110 of the *Florida Rules of Appellate Procedure*, provided a Notice of Appeal is filed with the Division and with the appropriate District Court of Appeal, accompanied by the correct filing fee to the District Court of Appeal, within thirty (30) days after this Final Order is rendered.

DONE AND ORDERED this 25th day of MAY, 1999.



Susan R. McKinley, Director
Division of Hotels and Restaurants
Department of Business & Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1012
(850) 488-1133

Copies to:

**DON'S ITALIAN RESTAURANT OF SINGER ISLAND, INC.
ITALIAN CONNECTION
10471 UTOPIA CIRCLE, SOUTH
BOYNTON BEACH, FLORIDA 33437**

District Administrator

Compliance Administrator

NOTICE OF RIGHT OF APPEAL UNLESS WAIVED

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY SUBSTANTIALLY AFFECTED BY THIS FINAL ORDER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH SARAH WACHMAN, AGENCY CLERK, WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS ORDER.