

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

YOLANDA CHEESMON

Petitioner,

CASE NO. 98-5593

RENDITION NO. DCF-99-219-FO

v.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES

Respondent.

_____/

FINAL ORDER REVERSING RECOMMENDED ORDER AND
DENYING APPLICATION FOR LICENSURE

THIS CAUSE is before me for entry of a Final Order based on a Recommended Order that, consistent with the Respondent's filed exceptions, draws erroneous conclusions of law and makes factual findings that are not supported by competent substantial evidence of record.

It is uncontroverted in this case that the petitioner falsified her application for licensure. She readily admits that she forged her landlord's signature to a document that purported to grant permission for her to operate a day care at the rented premises. She admits that she submitted this document to the Department in support of her application for licensure.

Rather than confront this uncontested reality, however, the administrative law judge found, at paragraph 10, that:

The landlord did not disapprove of the child care activity. The landlord wanted insurance to hold (the petitioner) blameless. The Petitioner needed approval by the Department to obtain insurance. Petitioner's forgery was not so much a false statement of the landlord's position, as an improper means to accomplish what the landlord wanted.

There is no competent substantial evidence in the record, which I have read in its entirety, to support this finding of fact. Indeed, the landlord did not testify. The administrative law judge, therefore, could not have divined what the landlord intended except through the testimony of the petitioner. The

testimony of the petitioner, meanwhile, is hearsay as it pertains to the landlord's desires. As unsubstantiated hearsay, it cannot be relied-upon to support a finding of fact. Section 120.57(1)(c), Florida Statutes.

To compound the error, the administrative law judge goes on further to find, at paragraph 15, that U(t)he issue is not bad character, but the failure of the Petitioner to meet the rule's requirements." Although I might disagree with the administrative law judge regarding whether or not the issue is one of bad character, it is not necessary for me to do so in order to agree that, indeed, the petitioner did fail to meet the rules. Therefore, since, by law, the burden of proof is on the petitioner to show that she meets all of the Department's requirements for licensure, and since, as the administrative law judge found, she has failed to meet that burden of proof, her application for licensure is hereby denied. See Department of Banking and Finance v. Osborne Stem & Co., 670 So. 2d 932, 934 (Fla 1996).

This denial renders moot the administrative law judge's gratuitous finding at paragraph 16. There is nothing in the record to suggest, as the administrative law judge found there, that (t)he application at issue has been made moot by the passage of time . . . Therefore, the pending application is moot."

Accordingly, it is ORDERED that petitioners' application for a day care license under chapter 402, Florida Statutes, is denied.

DONE and ORDERED this 2nd day of December, 1999, in Tallahassee, Leon County, Florida.

JUDGE KATHLEEN A. KEARNEY, Secretary
Department of Children and Family Services

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies furnished to:

John R. Perry, Esquire
District 2 Legal Office
Department of Children and
Family Services
2639 North Monroe Street
Suite 252-A
Tallahassee, FL 32399-2949

Yolanda Cheesmon
1012 Yates Avenue
Panama City, FL 32402

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing FINAL ORDER has been sent by U. S. Mail or hand delivery to each of the above-named persons this 27 day of December, 1999.

Virginia Daire, Agency Clerk
Department of Children and
Family Services
1317 Winewood Blvd.
Bldg. 2, Rm. 204-X
Tallahassee, FL 32399-0700
(850) 488-2381