

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	Case No. 99-2050
GARY L. FRIERSON and ALICE H.	)	
FRIERSON,	)	
	)	
Respondents.	)	
_____	)	
DEPARTMENT OF HEALTH,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 99-2112
	)	
ALICE H. FRIERSON,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

A hearing was held in this case in Arcadia, Florida, on September 3, 1999, before Arnold H. Pollock, an Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Susan Mastin Scott, Esquire  
Department of Health  
Post Office Box 9309  
Ft. Myers, Florida 33902-0309

For Respondent: James M. Beesting, Esquire  
207 East Magnolia Street  
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STATEMENT OF THE ISSUE

The issue for consideration in this case is whether the Respondents, individually and jointly, on March 24, 1999,

established, maintained, or operated migrant housing on their properties located on Rosebud Lane in Arcadia, Florida, without first obtaining permits from the Department of Health.

PRELIMINARY MATTERS

By Citation filed on March 30, 1999, in DOAH Case No. 99-2050, the Department of Health charged Respondents Gary L. Frierson and Alice H. Frierson, his wife, with unlawfully operating residential migrant housing at 1375 Southwest Rosebud Drive in Arcadia, Florida, on March 24, 1999, without first obtaining a permit to do so from the Department, in violation of Section 381.0081, Florida Statutes, and Rule 64F-14.004, Florida Administrative Code, and sought to impose a \$500.00 fine.

By a second Citation filed the same day in DOAH Case No. 99-2112, the Department charged Alice H. Frierson individually with unlawfully operating migrant residential housing at 1408 S.W. Rosebud Drive in Arcadia, Florida, on March 24, 1999, without first obtaining a permit to do so from the Department, in violation of the same cited statute and rule, and sought to impose the same fine.

Both Respondents requested a formal hearing on the allegations and this hearing ensued after the cases were consolidated. At the hearing, the Department presented the testimony of Jack L. Sikes, an environmental specialist II with the DeSoto County Public Health Unit; Robert B. Schultz, supervisor of the DeSoto County Public Health Unit's septic program; and Steven Lynn Sams, Director of Environmental Health

Services and an environmental specialist II for the DeSoto County Health Department. Petitioner also introduced Petitioner's Exhibits 1 through 14.

Respondent Gary Frierson testified both in his own behalf and for Respondent Alice H. Frierson. Respondents also presented the testimony of Sybil Swisher Gianguzzo, personal representative of the estate of B. Y. Barrera, who previously purchased property from the Respondents; and Juliana Barrientos, Kathleen Drymon, Cecelia Dello, Sebastian Damaso, Cuauhtemo Gavila, and Fernando Nunez, all of whom have purchased or are currently purchasing property from the Friersons. Respondents also introduced Respondent's Exhibits A through E, I, J, M, N, O, R and T.

A transcript of the proceedings was not furnished. However, subsequent to the hearing, counsel for the parties submitted matters in writing which were carefully considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. At all times pertinent to the issues herein, the State of Florida's Department of Health, and the DeSoto County Public Health Unit were the agencies in DeSoto County, Florida, responsible for the management and permitting of migrant labor camps and residential migrant housing within that county.

2. Jack L. Sikes has been an environmental specialist II with the DeSoto County Health Unit for 18 years. His duties comprise the management of the migrant housing program within the county, including permitting and inspection of migrant

residential housing units and camps. Migrant housing is defined within the Health Department as any structure housing five or more workers engaged in seasonal work, and who have changed their residence during the preceding year. Inspection standards applied to migrant housing relate to health and safety issues, such as cleanliness, refrigeration, hot and cold water, lights, bedding, and structural problems of the facility which impact safety. For the 1998-1999 growing year, permits were issued for 108 migrant worker camps in the county. In the 1997-1998 year there were only 16-17 permits issued for camps. The increase is due to state emphasis on increased safety for migrant housing.

3. By far the greatest percentage of migrant workers are of Hispanic origin. The migrant population increases significantly in DeSoto County during the citrus harvest period which extends from November through June. On March 23, 1999, Mr. Sikes and a co-worker, as a part of a continuing search for un-permitted migrant housing, conducted a drive-through inspection of several mobile homes situated on Southwest Rosebud Lane in Arcadia, Florida. Eight of the lots on Rosebud Lane have mobile homes on them while the other lots are vacant. On this visit, Mr. Sikes did not see any of the indications normally present when a structure is used for a family home such as toys in the yard, laundry drying, etc. As a result, he suspected the homes, some of which were obviously occupied, were being used as migrant housing.

4. The next day, March 24, 1999, at approximately 5:00 p.m., Mr. Sikes and a Spanish-speaking inspector, Robert Schultz, returned to the area and went to the structure located at 1408 Southwest Rosebud Lane, where in response to the inspectors' knock, the door was opened by an Hispanic individual who identified himself as Mario Hernandez. Through the interpretation services of Mr. Schultz, Mr. Hernandez indicated that he lived at that house with his five cousins, all of whose names were recorded on the "Documentation of Hand Laborer" form on which the answers to the interview questions were written.

5. As recounted by Mr. Sikes, Mr. Hernandez spoke for the group as his cousins were not present when the interview began. Mr. Hernandez indicated that he and his cousins arrived in DeSoto County from another location to pick oranges during the first week of November 1998 and took up residence at 1408 Southwest Rosebud Lane. The mobile home they were occupying was large enough to be permitted for six residents. Mr. Hernandez also indicated he and his cousins were renting the mobile home but did not know from whom. Though this statement is hearsay, it is corroborated by an examination of the electricity billing records and other independent evidence of record. A four-fold November increase in electric usage over the mid-October 1998 electric bill indicates the structure was most likely unoccupied before November 1998 but was occupied for several months thereafter. In fact, just after the inspectors left the home, a bus discharged

several other men who appeared to be migrant workers and four of them went in the direction of 1408.

6. When Mr. Sikes and Mr. Schultz went to 1375 Southwest Rosebud Lane they found several Hispanic men getting out of a utility van and going into the mobile home. The inspectors went to the house and were invited in. Mr. Schultz translated. During the course of the conversation, the men indicated they had just returned from the fields where they worked picking oranges. They said they all lived in the mobile home with a sixth man who was not present at the time. They also indicated they had come to DeSoto County from Mexico around the first of the year to pick oranges, and had rented the mobile home from someone whose name they did not know. When the picking season was completed in DeSoto County, they intended to move on to other farm work elsewhere.

7. The inspectors spoke with the driver of the bus who identified himself as a crew leader for Turner Foods for whom the migrant laborers also worked. The driver attempted to interfere with the inspectors' questioning of the workers who got off the bus, and as a result, the inspectors requested that he leave the area. Within five minutes of the driver's departure, Respondent Gary L. Frierson drove up and asked Mr. Sikes what was going on.

8. Mr. Sikes advised Mr. Frierson that he and Mr. Schultz were conducting a housing investigation and that based on what information they had gathered, Mr. Frierson needed to obtain a residential migrant housing permit for the properties.

Mr. Frierson did not deny he owned the property, but, by the same token, did not admit to owning it either. Mr. Frierson said he was trying to sell the property, but, due to tax considerations, was restricted to selling a limited number of parcels per year.

9. Taken together, the evidence of record is abundantly clear that the occupants of both 1375 and 1408 Southwest Rosebud Lane on March 24, 1999, were migrant farm workers, and the properties were being used as residential migrant housing without being permitted as such. The question remains, however, as to who owned the property and was utilizing it in the fashion described.

10. The public records of DeSoto County reflect that Alice H. Frierson is the owner of record of the property located at 1408 Southwest Rosebud Lane, and Gary L. and Alice H. Frierson, jointly, are the owners of record of the property located at 1375 Southwest Rosebud Lane. Respondents presented several documents in an effort to establish they did not own the properties in question. As to Lot 14 and Lot 22, Bokara Acres, unrecorded Agreements for Deed dated December 31, 1998, between both Mr. and Mrs. Frierson and Wayne Radloff as to Lot 14, and Ricardo Sanchez as to Lot 22, provide for a future transfer of title to each buyer, providing the buyer pays all amounts due on the purchase price. Identical Agreements for Deed were also issued the same date to Mr. Radloff for four other properties in the subdivision.

11. As to Lot 14, a second Agreement for Deed, dated January 1, 1999, purports to transfer a future interest in the same property to Fernando Gomez, and on that same date, Mr. Radloff executed an Assignment of Agreement for Deed to Fernando Gomez. On January 9, 1999, Mr. Radloff also executed a Quit-Claim Deed for Lots 13 and 14 to Gary L. and Alice H. Frierson.

12. As to Lot 22, on March 28, 1999, Mr. Gomez executed a Rescission of Agreement for Deed and Mutual Release to the Friersons in which the December 31, 1998, transfer of the property to Gomez was rescinded, thereby restoring title to Mr. and Mrs. Frierson. This is four days after the visit on March 24, 1999 by the inspectors, Mr. Sikes and Mr. Schultz.

13. By none of the documents, however, did legal title transfer from Mr. and Mrs. Frierson to Mr. Radloff, Mr. Gomez, or Mr. Sanchez. In fact, Mr. Frierson admitted that he collected the rent from the occupants of both parcels weekly from January through March 24, 1999, though he indicated he had no idea which individuals occupied which property. All Mr. Frierson could recall was that a Hispanic man would come out to the truck each time Mr. Frierson went there and beeped his horn, and would give him the money due. He could not identify the man or even say if it was the same man each time.

14. While the Department contends that the unrecorded Agreements for Deed are a sham designed to isolate Respondents from their legal responsibility to obtain permits for the



property which they operate as residential migrant housing, Respondent vehemently denied this and produced a series of witnesses who, over several years past, have purchased real estate from them through the same process. None of these individuals experienced any difficulty in obtaining title to the property when they completed payment in full.

15. It should be noted, however, that while these individuals have had no difficulty with the transactions, they are permanent residents of the area, and the situation regarding the parcels in question differs considerably. On none of the transfer documents in issue are the name and address of the person who prepared the document legible, and other technical deficiencies make the agreements un-recordable. When those factors are considered in conjunction with the coincidental concurrence of the documents with the arrival of the migrant workers, and the fact that all interest in the property reverted to Mr. and Mrs. Frierson immediately after the date of the Department inspection, the inescapable conclusion is that the transfers to Mr. Radloff/Mr. Gomez and Mr. Sanchez were not bona fide transfers of an interest in property, but were an effort to obscure the actual ownership of the property to avoid the responsibilities which go with the ownership of residential migrant housing.

16. Other evidence of record supports that conclusion. For example, Respondents presented no documentary evidence to indicate they had ever received any of the weekly payments called

for under the Agreements for Deed as to either property but claim that they received a down payment, and that Mr. Frierson collected "rent" each week. For the five properties sold to Mr. Radloff/Mr. Gomez for a total consideration of \$63,000, the total down payment was \$300. For the property sold to Sanchez for \$20,000, the down payment was \$100. Respondent admits he has no records to show the down payment or the monthly rental payments he received on either property. Respondents paid the electricity for both properties during the entire time the properties were under the Agreements for Deed through their account with the utility company and were not reimbursed. They provided water to 1375 Southwest Rosebud Lane free of charge from a well on adjacent property they owned. They paid property, casualty, flood, and hurricane insurance for both properties throughout the entire period and were not reimbursed. They did not advise the county property tax office that they had transferred interest in the property to someone else. Though Respondent gave a key to each property to the respective "purchaser," he never saw either at the property. All but one of the properties in which an interest was transferred to Mr. Radloff, Mr. Gomez, or Mr. Sanchez, are vacant and the location of the "buyers" is unknown.

17. Mr. Frierson indicated that he frequently sells property by unrecorded Agreement for Deed. This is standard procedure for him. He claims he paid the electric bills on the properties when they were previously used as rental properties, and he did not cancel the service -- a thing he has done in the

past when the buyer is short of cash or cannot pay the power company deposit. In one case under consideration here, he claims, the tenant paid more than was called for, so he used the accrued overpayment to pay the electric bill. As for insurance, he continued his coverage because he wasn't sure the buyer could get coverage.

18. Respondent asserts he does not want to operate migrant housing and has told this to Mr. Sams of the Health Department. He wants single families, and the family which occupied one of the properties in issue on June 7, 1999, went in after the rescission of the Agreement for Deed.

19. Mr. Frierson claims the family's rental business is far less formal than a normal rental operation. Many renters who terminate usually do so by leaving without notice. Many of the renters are Hispanics, whom he describes as quite naïve about paper work. When Mr. Sanchez advised him he wanted out of their agreement, Respondent prepared a Rescission and Release and a Quit-Claim Deed, though he admits the use of both is probably overkill.

20. As to the transactions with Mr. Radloff, Respondent claims he entered into it on the basis of advice from his tax accountant to avoid a higher tax obligation. When he found that he didn't have the tax problem after all, he bought the lots back and transferred them to Mr. Gomez, which, he contends was his original intention. Mr. Frierson contends that the money paid to him by Mr. Radloff actually came from Mr. Gomez, which, to

Respondent, explains the concurrent transfers. He also contends that shortly after the transfer, Mr. Gomez came to him and wanted out of the deal, as had Mr. Sanchez, and he, Mr. Frierson, agreed. Respondent claims, however, that he had no idea of how the properties were used when Mr. Gomez and Mr. Sanchez had control of them. He overlooks the fact that he collected the rents weekly during that period.

#### CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case. Section 120.57(1), Florida Statutes.

22. The Department of Health cited Respondents for operating residential migrant housing at 1375 and 1408 Southwest Rosebud Lane in Arcadia, Florida, without permits to do so, in violation of Section 381.008, Florida Statutes, and seeks to impose an administrative fine of \$500 in each case. Operating a residential migrant housing unit without first obtaining a permit is prohibited by Section 381.008(2), Florida Statutes. The Department has the burden to prove its allegations by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

23. In addition to the criminal sanctions provided, supra, Section 381.008(4), Florida Statutes, permits the Department to impose a fine of up to \$1,000 for each violation. This section also provides for the imposition of a fine against the owner of the property even if someone other than the owner is responsible

for committing the offense and the owner knew, or should have known upon reasonable inquiry, that the section was being violated. For this reason, assuming the property was being used as residential migrant housing by Sanchez or Gomez after Respondents transferred an interest in the property to them, under the law, Respondent were still the owners of legal title to the property and had conveyed only an interest in it under the Agreement for Deed. Under the circumstances of this case, they clearly knew or should have known that the property, in which they maintained an ownership interest, was being used as migrant housing.

24. Section 381.008(8), Florida Statutes, defines residential migrant housing as:

. . . a building, structure, barracks, or dormitory, and the land appertaining thereto, that is rented or reserved for occupancy by five or more migrant workers . . .

and a "migrant farm worker" is defined by Section 381.008(4), Florida Statutes, as a person who is or has been employed in hand labor operations in planting, cultivating, or harvesting agricultural crops within the last 12 months and who has changed residence for purposes of employment in agriculture within the last 12 months. Here, while much of the evidence regarding the occupants of the properties in issue is circumstantial, ample corroborative evidence exists to make it clear that the property was being used as residential migrant housing. In addition, though Respondents have attempted to establish that they were not

the owners of the property at the time the parcels were being so used, the evidence of record clearly contradicts that assertion.

25. Since the properties were being used as residential migrant housing at the time of the inspection, and since the evidence of record is clear and convincing that the Respondent's were the legal owners of the properties at the time they were being so used, the suggested fines are well within the limit authorized by statute for that purpose and are appropriate.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Department of Health enter a final order in this matter imposing administrative fines of \$500.00 on Gary L. and Alice H. Frierson for the proven violation at 1375 Southwest Rosebud Lane, and an additional \$500 fine on Alice H. Frierson for the proven violation at 1408 Southwest Rosebud Lane, both in Arcadia, Florida.

DONE AND ENTERED this 30th day of September, 1999, in Tallahassee, Leon County, Florida.

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ARNOLD H. POLLOCK  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 30th day of September, 1999.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.