

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF HOTELS AND)
RESTAURANTS,)
)
Petitioner,)
)
vs.) Case No. 99-5347
)
ISSA CORPORATION, d/b/a)
NATURE'S TABLE,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A formal hearing was held in this case on May 23, 2000, in Gainesville, Florida, before the Division of Administrative Hearings, by its Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioner: Charles F. Tunnickliff, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-2202

For Respondent: Jamil Al-Issa, pro se
Issa Corporation
6253 Newberry Road, Suite F-20
Gainesville, Florida 32605

STATEMENT OF THE ISSUE

The issue is whether Respondent's public food establishment license should be revoked or otherwise penalized for violating Chapter 509, Florida Statutes, and Rule 61C, Florida Administrative Code.

PRELIMINARY STATEMENT

Petitioner Department of Business and Professional Regulation, Division of Hotels and Restaurants (Petitioner) issued an Administrative Complaint against Respondent Issa Corporation, d/b/a Nature's Table (Respondent) on February 24, 1999. Respondent requested a formal hearing to contest the charges in the complaint. Petitioner subsequently referred the case to the Division of Administrative Hearings on December 21, 1999.

A Notice of Hearing scheduled the hearing for April 13, 2000. An Amended Notice of Hearing rescheduled the hearing for May 23, 2000.

At the hearing, Petitioner presented the testimony of one witness and offered Exhibit Numbers P1-P3, which were accepted into evidence. Respondent presented the testimony of one witness but offered no exhibits for admission into evidence.

A Transcript of the proceeding was filed on July 13, 2000. Petitioner filed a Proposed Recommended Order on

July 24, 2000. Respondent did not file proposed findings of fact or conclusions of law.

FINDINGS OF FACT

1. Petitioner is the state agency that has the responsibility to license and inspect public food service establishments pursuant to Chapter 509, Florida Statutes.

2. At all times material hereto, Respondent was licensed to operate and did operate a public food service establishment, holding license number 11-02423-R. Respondent's restaurant is located at 6253 Newberry Road, Gainesville, Florida.

3. On January 22, 1999, Petitioner's staff inspected Respondent's establishment. The inspection revealed eighteen violations for which Respondent was cited. Ten of the violations were repeat offenses. Respondent was advised in writing that all violations had to be corrected by February 4, 1999.

4. On February 5, 1999, Petitioner's staff performed a call back/re-inspection at Respondent's restaurant. The inspection revealed that Respondent had not corrected the following five violations: (a) sliced turkey at 51°F in well of sandwich-maker table; (b) unavailability of a product thermometer; (c) plastic tableware not dispensed with handles extended out; (d) glass cleaner stored on

counter at the ice bin; and (e) extension cord used at the drink refrigerator.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.569 and 120.57(1), Florida Statutes.

6. Petitioner has the burden of proving by clear and convincing evidence that Respondent failed to correct five of the violations for which he was cited on January 22, 1999. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

7. Petitioner has the duty to regulate and inspect public food service establishments for the purpose of safeguarding the public health, safety, and welfare. Section 509.032(1), Florida Statutes. It also has the responsibility to promulgate such rules as are necessary to carry out its obligations. Sections 509.032(2), 509.032(3), and 509.032(6), Florida Statutes.

8. In Chapter 61C, Florida Administrative Code, Petitioner adopted and incorporated by reference certain relevant chapters of the Food Code, 1997 Recommendations of the United States Public Health Service/Food and Drug Administration (Food Code).

9. Chapter 61C, Florida Administrative Code, states as follows in pertinent part:

61C-1.004 General Sanitation and Safety Requirements.

The following general requirements and standards shall be met by all public lodging and public food service establishments:

* * *

(4) The storage and use of poisonous and toxic materials shall be governed by the provisions of Chapter 7, Food Code, herein adopted by reference. . .

* * *

61C-4.010 Sanitation and Safety Requirements.

(1) Food Supplies and Food Protection - Except as specifically provided in this rule, public food service establishments shall be subject to the provisions of Chapter 3, Food Code, herein adopted by reference.

* * *

(5) Food Equipment, Utensils and Linens - Public food service establishments shall be subject to the provisions of Chapter 4, Food Code, herein adopted by reference.

10. Rule 61C-1.004(11), Florida Administrative Code, prohibits the use of extension cords except during cleaning, maintenance, and other temporary activities. Respondent's use of an extension cord at the drink refrigerator violated this rule.

11. In regard to potentially hazardous food, and the hot and cold holding of same, Section 3-501.16 of the Food Code states as follows in pertinent part:

Except during preparation, cooking, or cooling, or when time is used as the public health control . . . POTENTIALLY HAZARDOUS FOOD shall be maintained:

* * *

(c) At 7°C (45°F) or between 7°C (45°F) and 5°C (41°F) in existing refrigeration EQUIPMENT that is not capable of maintaining the food AT 5°C (41°F) or less if:
(1) The EQUIPMENT is in place and in use in the FOOD ESTABLISHMENT; and
(2) Within 5 years of the REGULATORY AUTHORITY'S adoption of this Code, the EQUIPMENT is upgraded or replaced to maintain FOOD at a temperature of 5°C (41°F) or less.

Respondent violated this provision because sliced turkey in the well of the sandwich-maker table was 51°F.

Respondent's failure to keep the sliced turkey, a potentially hazardous food, at a safe temperature was Respondent's most serious offence and a violation of a "critical rule" as that term is defined in Rule 61C-1.0021, Florida Administrative Code.

12. Section 4-302.12 of the Food Code states, "FOOD TEMPERATURE MEASURING DEVICES shall be provided and readily accessible for use in ensuring attainment and maintenance of FOOD temperatures as specified under Chapter 3."

Respondent violated this provision because a product thermometer was unavailable.

13. Section 4-904.11 of the Food Code states the following relative to kitchenware and tableware:

(A) Single-SERVICE and SINGLE-USE ARTICLES and cleaned and SANITIZED UTENSILS shall be handled, displayed, and dispensed so that contamination of FOOD- and lip-contact surfaces is prevented.

(B) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by EMPLOYEES and by CONSUMERS if CONSUMER self-service is provided.

(C) Except as specified under ¶ (B) of this section, SINGLE-SERVICE ARTICLES that are intended for FOOD- or lip-contact shall be furnished for CONSUMER self-service with the original individual wrapper intact or from an APPROVED dispenser.

Respondent violated this provision because plastic tableware was not dispensed with handles extended out.

14. Section 7-201.11 of the Food Code states as follows:

POISONOUS OR TOXIC MATERIALS shall be stored so they can not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES by:

(A) Separating the POISONOUS OR TOXIC MATERIALS by spacing or partitioning; and

(B) Locating the POISONOUS OR TOXIC MATERIALS in an area that is not above FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE or SINGLE-USE ARTICLES.

This paragraph does not apply to EQUIPMENT and UTENSIL cleaners and SANITIZERS that are stored in WAREWASHING areas for availability and convenience if the materials are stored to prevent contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

Respondent violated this provision because glass cleaner, a poisonous or toxic material, was stored on the counter at the ice bin. The bottle of glass cleaner posed a threat to public health and safety due to possible leakage onto the counter, a food contact surface, and to contamination of the ice, which is defined as food. Respondent's failure to properly store the glass cleaner was a violation of a "critical rule."

15. Petitioner carried its burden of proving each of the above-referenced violations by clear and convincing evidence.

16. Section 509.261(1)(a), Florida Statutes, authorizes Petitioner to suspend or revoke the license of Respondent, or to impose administrative fines, not to exceed \$1,000 for each offence.

17. Section 509.281(2), Florida Statutes, provides as follows:

For the purposes of this section, the division may regard as a separate offense each day or portion of a day on

which an establishment is operated in violation of a "critical law or rule," as that term is defined by rule.

RECOMMENDATION

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

RECOMMENDED:

that Petitioner enter a final order finding that Respondent is guilty of violating Chapter 509, Florida Statutes, and imposing an administrative fine in the amount of \$200.00.

DONE AND ENTERED this 8th day of August, 2000, in Tallahassee, Leon County, Florida.

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of August, 2000.

COPIES FURNISHED:

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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.