

RO AT

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED

FILED

DEC -6 00

86
DEC 6 AM 10:30
DIVISION OF
ADMINISTRATIVE
HEARINGS

AHCA
DEPARTMENT CLERK

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

CASE NO.: 00-1066

AHCA NO.: 10-99-110-ALF

v.

RENDITION NO.: AHCA-00-270-FOF-OLC

H & C RETIREMENT CENTER, INC.
d/b/a RETIREMENT LIFE CENTER

Respondent.

_____ /

FINAL ORDER

This cause was referred to the Division of Administrative Hearings for a formal administrative hearing. The assigned Administrative Law Judge ("ALJ") has submitted a Recommended Order to the Agency for Health Care Administration ("Agency"). The Recommended Order of September 29, 2000, entered herein is incorporated by reference.

EXCEPTIONS

Counsel for the Respondent, licensee, filed exceptions in numbered paragraphs one through seventeen. Most of the exceptions, including paragraphs one through nine, eleven; and fifteen through seventeen, merely reargue the weight of the evidence. The ALJ is the trier of fact. At this level of review the Agency has no authority to reweigh the evidence. The challenged findings are supported by competent, substantial evidence;

therefore the exceptions are denied. Heifetz v. Dept. of Business Regulation, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985).

In paragraphs eleven through fourteen, counsel maintains that the record does not support the recommended fine of \$1,000. Paragraph ten of the exceptions correctly recites the factors to be considered in fixing the amount of a fine, the gravity of the violation, the extent to which the applicable law was violated, actions taken by the licensee to correct violations, history of violations, financial benefit to licensee, and the licensed capacity of the facility. See § 400.419(3), Fla. Stat. (1999).

The "clear and convincing" standard is applicable to proof that the violation existed, but there need only be record support for the aggravating or mitigating factors considered in fixing the amount of a fine. See Criminal Justice Standards and Training Commission v. Bradley, 596 So.2d 661, 664 (Fla. 1992); Ong v. Dept. of Professional Regulation, 565 So.2d 1384, 1387 (Fla. 5th DCA 1990); and Agency for Health Care Admin. v. Orlando Living Center, 22 F.A.L.R. 976, 977 (AHCA 1999).

There is ample record support for the recommended fine of \$1,000, but not the \$50 fine suggested by the Respondent. Important is the Respondent's dilatory response to correcting the violation. See paragraphs five through 10 and 20 of the Recommended Order. The ALJ pointedly noted that the Respondent's excuse lacked credibility. See paragraph fourteen of the Recommended Order. The exceptions are denied.

FINDINGS OF FACT

The Agency hereby adopts the findings of fact set forth in the Recommended Order.


CONCLUSIONS OF LAW

The Agency hereby adopts the conclusions of law set forth in the Recommended Order. The Default Final Order filed January 26, 2000 is vacated.

Based on the foregoing, a fine of \$1,000 is imposed. Payment in full is due within 30 days of the filing of this Final Order. Make payment by check payable to the Agency for Health Care Administration and mail it to the Agency for Health Care Administration, Office of Finance and Accounting, 2727 Mahan Drive, Fort Knox Building II, Mail Stop 14, Tallahassee, Florida 32308.

DONE and ORDERED this 30th day of November, 2000, in Tallahassee, Florida.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION


RUBEN J. KING-SHAW, JR., SECRETARY

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 AHCA, AND A SECOND COPY ALONG WITH THE 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:

J. D. Parrish
Administrative Law Judge
DOAH, The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Alba Rodriguez, Esquire
State of Florida, Agency for
Health Care Administration
8355 Northwest 53rd Street
Miami, Florida 33166

Som Ramrup, Esquire
Law Offices of Ramrup & Chang
5605 Northwest 27th Court
Lauderhill, Florida 33313

Alberta Granger
HQA-HFC-ALF
Fort Knox Building I, Room 223
Tallahassee, Florida 32308

Office of Finance & Accounting
Agency for Health Care Admin.
2727 Mahan Drive, MS 14
Fort Knox Building II
Tallahassee, Florida 32308

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served on the above-named people by U. S. Mail this 5th day of Dec, 2000.



R. S. Power, Agency Clerk
State of Florida, Agency for
Health Care Administration
2727 Mahan Drive, Suite 3431
Fort Knox Building III, MS 3
Tallahassee, Florida 32308
850/922-5865