

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)	
PROFESSIONAL REGULATION,)	
DIVISION OF HOTELS AND)	
RESTAURANTS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 00-2746
)	
1015 APARTMENTS,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on September 25, 2000, via video teleconference in Fort Lauderdale and Tallahassee, Florida, before Florence Snyder Rivas, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner:	Charles F. Tunnichliff
	Assistant General Counsel
	Department of Business and
	Professional Regulation
	1940 North Monroe Street
	Tallahassee, Florida 32399-0792
 For Respondent:	 Jean Pierre-Louis, <u>pro se</u>
	1015 Northeast 17th Avenue
	Apartment 205
	Fort Lauderdale, Florida 33304-2465

STATEMENT OF THE ISSUE

The issue presented for decision in this case is whether Respondent violated Section 509.032, Florida Statutes, as set forth in the Administrative Complaint dated April 3, 2000.

PRELIMINARY STATEMENT

By Administrative Complaint dated April 3, 2000, Petitioner notified Respondent of its intent to pursue sanctions against Respondent's public lodging establishment license based upon violations specified in the complaint.

Respondent timely disputed the charges. On July 7, 2000, Petitioner forwarded the matter to the Division of Administrative Hearings for assignment of an Administrative Law Judge and the conduct of a formal administrative hearing in this matter, pursuant to Section 120.57(1), Florida Statutes.

The final hearing was held on September 25, 2000, by video teleconference in Tallahassee and Fort Lauderdale.

Jean Pierre-Louis, pro se, appeared on behalf of Respondent. During the course of the hearing, he asserted that he had been given insufficient notice to procure the attendance of witnesses. He requested, and was permitted, an additional two weeks, through October 9, 2000, to provide the undersigned with sworn statements of as many witnesses as he desired. The undersigned advised Respondent that Petitioner would be permitted additional time to depose any such witnesses, if it desired to do so, and file the deposition transcript(s) for consideration by the undersigned in

the preparation of the Recommended Order. Respondent agreed to that procedure, and affirmatively stated that two weeks would be sufficient time for him to supply affidavits. However, as of this writing, Respondent has neither supplied any statements nor sought an extension of time in which to do so.

At the final hearing, Petitioner presented the testimony of Sean Sylvester Grovesnor, Sanitation and Safety Specialist for Petitioner's Division of Hotels and Restaurants.

Jean Pierre-Louis testified on Respondent's behalf.

Petitioner's Exhibits 1-3 were admitted into evidence without objection. Official recognition was taken of the National Fire Protection Association Act 101-193.4.4.1; Chapter V of the 1997 Food Code of the United States Public Health Service, as incorporated into Title 61C, Florida Administrative Code; Rule 61C-1.004, Florida Administrative Code; Rule 61C-3.002(5), Florida Administrative Code; Rule 61C-4.010(6), Florida Administrative Code, incorporating by reference Chapter 4 of the United States Public Health Lodging Code; and Rule 61C-1.004(1), Florida Administrative Code, incorporating by reference Chapter 5 of the United States Public Health Lodging Code.

Respondent's Composite Exhibit 1 was admitted into evidence without objection.

A Transcript of the final hearing was filed on November 2, 2000. Petitioner filed a Proposed Recommended Order on

November 15, 2000. No proposed recommended order was submitted on Respondent's behalf.

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, and the entire record in this proceeding, the following findings of fact are made.

1. At all times relevant to this proceeding, Petitioner is the state agency charged with licensing, regulating, and inspecting public lodging establishments to protect public safety.

2. To accomplish this purpose, Petitioner employs persons trained to respond to citizen complaints about public lodging establishments. Such inspectors visit and inspect the premises about which complaints are made, gather facts, and make reports to document their findings.

3. At all times relevant to this proceeding, Petitioner employed Sean Sylvester Grovesnor ("Grovesnor") as a Sanitation and Safety Specialist assigned to its Division of Hotels and Restaurants.

4. At all times relevant to this proceeding, Respondent 1015 Apartments was a licensed public lodging establishment within the meaning of Section 509.013(4)(a), Florida Statutes, operating under license control number 16-04182H, and located at 1015 Northeast 17th Avenue, Fort Lauderdale, Florida 33304-2465.

5. Responding to a complaint on or about February 10, 2000, Grovesnor visited 1015 Apartments.

6. Grovesnor's inspection revealed various violations. Specifically, Grovesnor observed:

- a) balcony railing supports in disrepair in front of Apartment No. 204;
- b) no smoke detector in Apartment No. 201;
- c) an exit sign hanging from exposed wires by Apartment No. 205;
- d) a broken window on south side of the building;
- e) water stained ceiling tiles in living room of Apartment No. 201;
- f) holes in kitchen cabinets in Apartment no. 201;
- g) cold water knob in Apartment No. 201 would not work;
- h) faucet head not properly attached to the bathtub in Apartment No. 201;
- i) mildew and mildew holes in bathroom ceiling of Apartment No. 104.
- j) the sewer line clean out pipe cover was missing in the parking lot.

7. Respondent was informed that all violations must be corrected by February 17, 2000.

8. On or about February 18, 2000, Grovesnor made a callback/reinspection visit for the purpose of determining whether Respondent had corrected the violations noted on the previous visit. None of the violations previously noted had been corrected.

9. Each of the above-described violations constitutes a separate and distinct potential hazard to the health and/or safety of individuals on the premises.

10. The balcony railing violation was corrected on March 17, 2000, by Tim's Welding of Fort Lauderdale.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Section 120.57(1), Florida Statutes.

12. Pursuant to Section 509.261, Florida Statutes, Petitioner, through its Division of Hotels and Restaurants, is empowered to regulate and discipline public lodging establishments.

13. Petitioner seeks to impose administrative fines upon Respondent and must, therefore, provide clear and convincing evidence of the allegations made against Respondent. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

14. Section 509.032(6), Florida Statutes, authorizes Petitioner to promulgate rules pertaining to health and safety conditions at Respondent's public lodging establishment. Pursuant to that grant of authority, Petitioner promulgated Rule 61C-4.010(6), Florida Administrative Code, incorporating by reference Chapter 4 of the United States Public Health Lodging Code, and Rule 61C-1.004(1), Florida Administrative Code, incorporating by reference Chapter 5 of the United States Public Health Lodging Code.

15. Rule 61C-1.004(6), Florida Administrative Code, provides in pertinent part:

. . . all building structural components, attachments and fixtures shall be kept in good repair, clean and free of obstructions.

16. Petitioner has demonstrated by clear and convincing evidence that the defective balcony rail support; the broken window; and the mildewed and water-stained ceilings each constitute a violation of this Rule and create a danger to public health and safety.

17. Section 509.215(h), Florida Statutes, provides in pertinent part:

. . . [each room] shall be equipped with an approved listed single station smoke detector"

18. Petitioner has demonstrated by clear and convincing evidence that Respondent failed to provide a working smoke detector in Apartment no. 201. This failure violates the cited statute and constitutes a danger to public health and safety.

19. Rule 61C-1.004(11), Florida Administrative Code, provides, in pertinent part:

To prevent fire or injury, defective electrical wiring shall be replaced and wiring shall be kept in good repair.

20. Petitioner has demonstrated by clear and convincing evidence that Respondent failed to prevent or correct the presence of exposed wires by Apartment no. 205, which failure

violated the cited Rule and constitutes a danger to public health and safety.

21. Chapter 5-205.15(1997), Department of United States Public Health Lodging Code, incorporated into the Florida Administrative Code as Rule 61C-1.004(1), provides, in pertinent part:

. . . a plumbing system shall be. . .
maintained in good repair.

22. Petitioner has demonstrated by clear and convincing evidence that Respondent failed to cover the sewer line clean out pipe; and to repair the cold water knob on the bathroom sink and the bathtub faucet in Apartment no. 201. These failures violate the cited Rule and constitute a danger to public health and safety.

23. Rule 61C-3.001(5), Florida Administrative Code, states:

Furniture, upholstery, draperies, shades,
venetian doors, blinds, and other provided
furnishings in lobby, lodges, parlors and
bedrooms shall be kept clean, and be
renovated or replaced as needed

24. Petitioner has demonstrated that Respondent failed to repair holes in the kitchen cabinet in Apartment no. 201. However, this Rule, by its very terms, does not apply to permanent fixtures such as kitchen counters and cabinets. Thus no sanction can be imposed based upon this Rule.

25. Pursuant to Section 509.211(2), Florida Statutes, Petitioner may impose administrative fines, not to exceed \$1,000

per offense, for each violation of Chapter 509 and Rules promulgated thereunder.

RECOMMENDATION

Upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Business and Professional Regulation, Division of Hotels and Restaurants, enter a final order finding Respondent guilty of violating the above-specified provisions of the Florida Statutes and Florida Administrative Code, and that Respondent be required to pay a fine in the amount of \$1,000.

DONE AND ENTERED this 13th day of December, 2000, in Tallahassee, Leon County, Florida.

FLORENCE SNYDER RIVAS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of December, 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.