

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF AGRICULTURE AND )  
CONSUMER SERVICES, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 01-1553  
 )  
LASTE INTERNATIONAL, INC., )  
d/b/a LASTE SUPERMARKET, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case before Administrative Law Judge Michael M. Parrish of the Division of Administrative Hearings on June 13, 2001, by means of video teleconference at sites in Tallahassee and Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: John McCarthy, Esquire  
Department of Agriculture and  
Consumer Services  
Mayo Building, Fourth Floor  
407 South Calhoun Street  
Tallahassee, Florida 32399-0800

For Respondent: Yves Corneille  
Laste International, Inc.  
1721 North Andrews Square  
Fort Lauderdale, Florida 33311-4862

### STATEMENT OF THE ISSUE

This is a license discipline case in which the Petitioner seeks to impose an administrative fine on the basis of allegations in an Administrative Complaint in which the Respondent is charged with having violated the Florida Food Safety Act, Chapter 500, Florida Statutes.

### PRELIMINARY STATEMENT

Following the issuance and service of the Administrative Complaint, the Respondent made a timely request for an evidentiary hearing. The case was then transferred to the Division of Administrative Hearings, where it was scheduled for hearing.

At the final hearing on June 13, 2001, the Department of Agriculture and Consumer Services (the "Department") presented the testimony of two witnesses and offered three exhibits, all of which were received in evidence. The Respondent presented the testimony of two witnesses. The Respondent did not offer any exhibits.

At the conclusion of the hearing, the deadline for filing proposed recommended orders was established as 15 days following the date of the hearing. Neither party filed a transcript of the hearing. The Petitioner filed a timely Proposed Recommended Order. As of the date of this Recommended Order, the Respondent has not filed any post-hearing documents.

## FINDINGS OF FACT

1. The Department of Agriculture and Consumer Services (Department) is the state agency charged with the responsibility for enforcement of the Florida Food Safety Act, Chapter 500, Florida Statutes.

2. At all times material to this case, the Respondent, Laste International, Inc, d/b/a Laste Supermarket, was the owner and operator of a retail food service establishment located at 1721 North Andrews Square, Fort Lauderdale, Florida. At all times material to this case, the Respondent has held a food service permit for the establishment.

3. On January 8, 2001, a Department representative inspected the Respondent's premises described above. At the time of the inspection, there were numerous conditions on the Respondent's premises that were violations of the Florida Food Safety Act. Among the violations observed on January 8, 2001, were the following critical deficiencies:

- Failure to discard unsafe, adulterated or contaminated food.
- Food on premises from an unknown and/or unapproved source.
- Equipment or utensils that were not properly sanitized.
- Failure to have hot and cold running water under pressure for warewashing sinks.
- Failure to have hot and cold running water under pressure at handsink.
- Failure to control the presence of insects.
- Failure to control the presence of rodents.

4. As a result of the several critical deficiencies and numerous other deficiencies, the Respondent's establishment was given an overall rating of "poor," and the Respondent was advised that the premises would be reinspected two weeks later. The Respondent was also notified of several specific violations which required the removal of several specified items of food from the Respondent's establishment because the food items were adulterated or were from unapproved sources. In the food retail area of the Respondent's establishment there were insect droppings, rodent droppings, and rodent urine. Some bags of rice were adulterated by rodent excrement. Some cans of food were dented and rusted and unfit for human consumption.

5. As of the date of the inspection on January 8, 2001, the Respondent's establishment had a long history of unsatisfactory conditions. During the period of slightly more than three years from November 20, 1997 to January 8, 2001, the Respondent's establishment was inspected a total of 13 times by Department inspectors. During that entire period the Respondent's establishment was never rated as "good," and was rated as "fair" following only two inspections. On all of the other inspections prior to January 8, 2001, the Respondent's establishment was rated as "poor." This long history of unsatisfactory conditions was one of the considerations that led to the Department's decision to impose an administrative fine when the Respondent had

another "poor" inspection report as a result of the inspection conducted on January 8, 2001.

6. The Respondent's establishment was reinspected on January 25, 2001. On that date, for the first time in over three years, the Respondent's establishment received an inspection rating of "good."

7. The Department seeks to impose an administrative fine in the amount of \$5,000.00. The fine the Department seeks to impose in this case is consistent with the administrative fines the Department has imposed on other permit-holders who had similar histories of unsatisfactory conditions in retail food service establishments.

#### CONCLUSIONS OF LAW

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

9. Section 500.032, Florida Statutes, grants to the Department authority to administer and enforce the provisions of Chapter 500, Florida Statutes, the Florida Food Safety Act.

10. Section 500.09, Florida Statutes, grants the Department the authority to adopt sanitary rules governing the handling of food products.

11. Section 500.121(1), Florida Statutes, grants the Department authority to impose an administrative fine not to

exceed \$5,000.00 for each violation of Chapter 500, Florida Statutes.

12. Section 500.04, Florida Statutes, prohibits the delivery or proffered delivery of food that is adulterated.

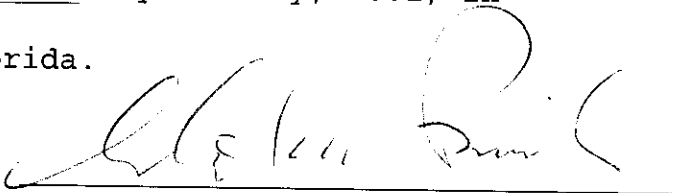
13. Section 500.10, Florida Statutes, declares food to be adulterated if, among other things, it is kept under unsanitary conditions where it may become contaminated with filth or where it may have been rendered unwholesome or injurious to health.

14. In a case of this nature, the burden of proof is on the Department to prove the factual basis for its proposed action by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987), and Section 120.57(1)(j), Florida Statutes. In this case, the burden has been met and the Department has proved by clear and convincing evidence that on January 8, 2001, the condition of the Respondent's establishment was as alleged in the Administrative Complaint. Similarly, the Department has proved that the Respondent's establishment has a long history of unsatisfactory conditions during the course of prior inspections.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department enter a final order in this case imposing an administrative fine in the total amount of \$5,000.00.

DONE AND ENTERED this 18<sup>th</sup> day of July, 2001, in  
Tallahassee, Leon County, Florida.



MICHAEL M. PARRISH  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 18 day of July, 2001.

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.