

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF HOTELS AND )  
RESTAURANTS, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 01-2010  
 )  
HIDDEN COVE APARTMENTS, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on July 27, 2001, in Orlando, Florida, before Jeff B. Clark, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: No appearance

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 August 15, 2000.

PRELIMINARY STATEMENT

By Administrative Complaint dated August 15, 2000, Petitioner notified Respondent of its intent to pursue sanctions against Respondent's public lodging establishment license based upon violations specified in the complaint.

On May 21, 2001, 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 Subsection 120.57(1), Florida Statutes.

On June 8, 2001, the undersigned set the matter for hearing on July 27, 2001, in Orlando, Florida. On or about July 18, 2001, Respondent telephoned the undersigned's office requesting that the hearing be reset in Brevard County; the request was not granted. The final hearing was held on July 27, 2001, in Orlando.

At the final hearing, Petitioner presented the testimony of Susan Cecilione, an Inspector for Petitioner's Division of Hotels and Restaurants.

Petitioner's Exhibits 1-3 were admitted into evidence. Official recognition was taken of the National Fire Protection Association Rule 1-6.2 (1998 Edition, Standard for Portable Fire Extinguishers); Rule 61C-1.004, Florida Administrative

Code; Rule 61C-3.001, Florida Administrative Code; and Chapter 5-203.14, U.S. Public Health Service Food Code.

A Transcript of the final hearing was filed on August 17, 2001. Petitioner filed a Proposed Recommended Order on August 30, 2001. 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 inspect public lodging establishments to ensure compliance with health and safety regulations. Such inspectors visit and inspect these premises making routine inspections or, in response to complaints, to gather facts and make reports documenting their findings.

3. At all times relevant to this proceeding, Petitioner employed Susan Cecilione ("Cecilione") as an Inspector assigned to its Division of Hotels and Restaurants.

4. At all times relevant to this proceeding, Respondent, Hidden Cove Apartments, was a licensed public lodging establishment within the meaning of Subsection 509.013(4)(a), Florida Statutes, operating under license control number 15-04455H 000, and located at 1951 Southeast Convair Street, Palm Bay, Florida, 32909.

5. During a routine inspection on or about July 14, 2000, Cecilione visited Hidden Cove Apartments. Cecilione's inspection revealed various violations. Specifically, Cecilione observed:

(a) The 2A10BC fire extinguisher at building 1961 was discharged;

(b) In apartment 101, building 1961, the electricity flickered on and off in the dining room area;

(c) Fire ant hills were observed along the walkways around buildings 1951 and 1961;

(d) The shower in apartment 103, building 1951, leaked behind the wall into the closet;

(e) The cement driveway was caving in and broken apart;

(f) There were no back flow prevention devices on hose bibbs at buildings 1951 and 1961;

(g) The laundry room had a heavy accumulation of lint and dirt on floor beside, behind, and beneath the dryer;

(h) (i) The front windows in many apartments had been either bolted closed or sealed so they could not be opened without the window falling out;

(ii) There were broken screens on the sliding glass doors at apartments 103 and 104, building 1951;

(iii) In apartment 102, building 1951 and apartment 101, building 1961, the

front door sweeps and seals (gaskets) around the doors were loose fitting, leaving large gaps.

6. Respondent was informed that all violations must be corrected by July 27, 2000.

7. On or about July 28, 2000, Cecilione made a callback/reinspection visit for the purpose of determining whether Respondent had corrected the violations noted on the previous visit. One of the violations previously noted had been corrected. The laundry room had been cleaned.

8. Each of the uncorrected violations listed in paragraph 5 hereinabove constitutes a separate and distinct potential hazard to the health and/or safety of individuals on the premises.

#### CONCLUSIONS OF LAW

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

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

11. 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).

12. Subsection 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 rules listed hereinafter.

13. Rule 61C-1.0021(2), Florida Administrative Code, provides that violations of critical laws or rules are those violations determined by the division to pose a significant threat to the public health, safety or welfare.

14. Rule 61C-1.001, Florida Administrative Code, provides that "[e]xcept when otherwise defined in this rule, the definitions provided in paragraph 1-201.10(B), Food Code, 1999 Recommendations of the United States Public Health Service/Food and Drug Administration, herein adopted by reference, shall apply to Chapters 61C-1, 61C-3 and 61C-4 [Florida Administrative Code]."

15. Rule 61C-1.004(1), Florida Administrative Code, provides that "[e]xcept as specifically provided in these rules, standards for water, plumbing, and waste shall be governed by Chapter 5, Food Code, herein adopted by reference."

16. Pursuant to Rule 61C-1.004(5), Florida Administrative Code, "[a]ll fire safety, protection and prevention equipment must be installed, approved, maintained and used in accordance with Chapter 509 [Florida Statutes] and the National Fire Protection Association Life Safety Code ("NFPA") Chapter 101, as adopted by the Division of State Fire Marshall in Chapter 4A-3 [Florida Administrative Code]."

17. Pursuant to NFPA 10, 1-6.2, portable fire extinguishers shall be maintained in a fully charged and operable condition and kept in their designated places at all times when they are not being used. Petitioner failed to maintain the 2A10BC fire extinguisher at building 1961 in a fully charged and operable condition, which is a violation of Rule 61C-1.004(5), Florida Administrative Code.

18. Pursuant to Rule 61C-1.004(11), Florida Administrative Code, "[t]o prevent fire or injury, defective electrical wiring shall be replaced and wiring shall be kept in good repair." In apartment 101, building 1961, the electricity flickered on and off in the dining room area, which is a violation of Rule 61C-1.004(11), Florida Administrative Code.

19. Pursuant to Rule 61C-1.004(6), Florida Administrative Code, "[a]ll building structural components, attachments and fixtures shall be kept in good repair, clean

and free of obstructions." The cement driveway was caving in and broken apart, which is a violation of Rule 61C-1.004(6), Florida Administrative Code.

20. Rule 61C-1.004(2)(a), Florida Administrative Code, provides, in pertinent part, that "[b]athroom facilities shall be kept clean, in good repair and free from objectionable odors." The shower in apartment 103, building 1951, leaked behind the wall into the closet, which is a violation of Rule 61C-1.004(2)(a), Florida Administrative Code.

21. Pursuant to Rule 61C-1.004(3), Florida Administrative Code:

Effective control measures shall be taken to protect against the entrance into the establishment, and the breeding or presence on the premises of rodents, flies, roaches and other vermin. All buildings shall be effectively rodent-proofed, free of rodents and maintained in a rodent-proof and rodent-free condition. All windows used for ventilation must be screened, except when effective means of vermin control are used.

In violation of Rule 61C-1.004(3), Florida Administrative Code, fire ant hills were observed along the walkways around buildings 1951 and 1961; the front windows in many apartments had been either bolted closed or sealed so they could not be opened without the window falling out; there were broken screens on the glass sliding doors at apartments 103 and 104, building 1951; and in apartment 102, building 1951, and



apartment 101, building 1961, the front door sweeps and seals (gaskets) around the door were loose fitting, leaving large gaps.

22. Pursuant to Chapter 5-203.14, U.S. Public Health Service Food Code, a plumbing system shall be installed to preclude backflow of a solid, liquid or gas contaminant into the water supply system at each point of use at the food establishment, including a hose bibb if a hose is attached or a hose bibb if a hose is not attached, and backflow prevention is required by law by:

- (a) providing an air gap as specified under section 5-202.13; or
- (b) installing an approved backflow prevention device as specified under section 5-202.14.

In violation of Chapter 5-203.14, U.S. Public Health Service Food Code, there were no back flow prevention devices on hose bibbs at buildings 1951 and 1961.

23. Petitioner has demonstrated by clear and convincing evidence that each of the violations enumerated in paragraphs 17-22 are violations of the promulgated Rules and create a danger to public health and safety.

24. Pursuant to Subsection 509.261(1), Florida Statutes, the Division of Hotels and Restaurants may impose penalties for violations of Chapter 509, Florida Statutes, including an administrative fine of no more than \$1,000 for each separate

offense and the suspension or revocation of Respondent's license.

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; that Respondent be required to pay a fine in the amount of \$2,400; and that Respondent's license be suspended until the fine is paid.

DONE AND ENTERED this 11th day of September, 2001, in Tallahassee, Leon County, Florida.

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JEFF B. CLARK  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of September, 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.