

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF HOTELS AND)
RESTAURANTS,)
)
Petitioner,)
)
vs.) Case No. 02-2572
)
MIDDLE EAST CONNECTIONS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing by videoconference in Tallahassee, Florida, on August 27, 2002. The parties, attorneys for the parties, witnesses, and court reporter participated by videoconference in Miami, Florida.

APPEARANCES

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

For Respondent: Tony Kalach
19575 Biscayne Boulevard, No. 1373
Aventura, Florida 33180

STATEMENT OF THE ISSUES

The issues are whether Respondent violated various provisions of law governing the operation of restaurants and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint filed June 27, 2002, Petitioner alleged that Respondent maintained gyro meat at 103 degrees Fahrenheit, in violation of Food Code Section 3-501.16(A); allowed food debris on reach-in gaskets, in violation of Food Code Section 4-601.11(A); and allowed dried food debris on dish shelves and grease on hood filters, in violation of Food Code Section 4-602.13.

Respondent disputed the material allegations and demanded a formal hearing.

At the hearing, Petitioner called two witnesses and offered into evidence seven exhibits. Respondent called one witness and offered into evidence two exhibits. All exhibits were admitted.

The court reporter filed the transcript on September 26, 2002. Petitioner filed a Proposed Recommended Order on October 3, 2002.

FINDINGS OF FACT

1. Respondent operates the restaurant known as Middle East Connections, which is located inside a shopping mall at 19575

Biscayne Boulevard in Aventura, Florida. This restaurant is part of the food court inside the mall.

2. Petitioner's inspector conducted inspections of the restaurant on July 23, October 18, and October 29, 2001. These inspections revealed numerous violations.

3. The inspection on October 29, 2001, identified that Respondent was holding hot gyro meat at a temperature that was at least 30 degrees cooler than the minimum temperature required for this meat. Additionally, Respondent was maintaining the steam table at too low a temperature; thus, chicken was at a dangerously cool temperature of 103 degrees Fahrenheit.

4. The October 29 inspection also revealed dried food debris on the gaskets of the reach-in coolers. The risk of this violation is that food handlers may be obtaining ready-to-eat food, which may become contaminated if the food handlers touch dirty cooler gaskets.

5. The October 29 inspection also uncovered dried food debris on the dish shelves and grease on the hood filters. Dried food debris poses a contamination risk, and greasy hood filters pose a fire hazard.

6. Respondent's first defense is that its principal did not acquire the restaurant from its former operator until February 11, 2002. However, Respondent's principal initiated a license transfer in August 2001. Petitioner promptly

transferred the license. Petitioner's policy is not to issue two licenses for the same location, so that, if Respondent were to prevail on this argument, the restaurant would have been unlicensed during the time of these violations due to the action of Respondent's principal in initiating a transfer of the license.

7. The documentation of the transaction between the current and former operators states that the change in ownership took place on July 1, 2001, and the inspector saw Respondent's principal at the restaurant after the license transfer.

8. Respondent's second defense is that it has corrected all violations and is operating the restaurant in compliance with the law. This claim is credited, although it operates more in mitigation than as a defense.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

10. Rule 61C-4.010(1) adopts Food Code Chapter 3. Rule 61C-4.010(5) adopts Food Code Chapter 4.

11. Food Code Section 3-501.16(A)(1) provides that potentially hazardous foods shall be maintained at 140 degrees

Fahrenheit or above. Food Code Section 4-601.11(A) provides that "equipment food contact surfaces shall be clean to sight and touch." Food Code Section 4-602.13 provides that "nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues."

12. Section 509.261(1) provides for a fine of \$1000 per offense, suspension or revocation of a license, and mandatory attendance at an educational program sponsored by the Hospitality Education Program for any violation of law by a restaurant.

13. In its proposed recommended order, Petitioner seeks a fine of \$2000, suspension of the license until the first payment is received, installments as set by the Director of the Division of Hotels and Restaurants, and attendance at an educational class.

RECOMMENDATION

It is

RECOMMENDED that the Division of Hotels and Restaurants enter a final order imposing a \$2000 fine upon such terms as the Director determines are appropriate.

DONE AND ENTERED this 5th day of November, 2002, in
Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of November, 2002.

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 must be filed with the agency that will issue the final order in this case.