

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
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2005 JAN 31 10:14

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

vs.

BLUE HAVEN RETIREMENT, INC., d/b/a
BLUE HAVEN RETIREMENT CENTER,

Respondent.

DOAH CASE NO. 02-4170
AHCA NO. 2002031701
RENDITION NO.: AHCA-05-0053

PMR
CLOSED

FILED
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HP

FINAL ORDER

This cause was referred to the Division of Administrative Hearings and assigned to an Administrative Law Judge ("ALJ") for a formal administrative hearing and entry of a Recommended Order. The Recommended Order of May 30, 2003, is attached to this Final Order and incorporated herein by reference except as noted below.

RULING ON EXCEPTIONS

While the Respondent filed no exceptions to the Recommended Order, counsel for the Agency filed detailed exceptions to the Conclusions of Law in Paragraphs 13, 15, 17, and 18 of the Recommended Order; however, those exceptions are not granted. First of all, regardless of whether the Conclusions of Law at issue are within the Agency's substantive jurisdiction, the undersigned does not find the Agency's proposed conclusions are "as or more reasonable" than those reached by the ALJ. See §120.57(1)(l), Fla. Stat. (2004). In addition, because the Agency's proposed conclusions

are not "as or more reasonable" than those reached by the ALJ, the undersigned declines Agency Counsel's invitation to enter a "final order under protest" as described in Barfield v. Department of Health, 805 So.2d 1008, 1013 (Fla. 1st DCA 2001).

FINDINGS OF FACT

The Agency adopts the Findings of Fact set forth in the Recommended Order, which is attached hereto and incorporated by reference.

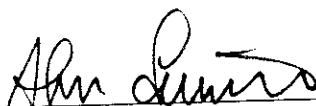
CONCLUSIONS OF LAW

The Agency adopts the Conclusions of Law set forth in the Recommended Order except as noted herein. In Paragraph 13, the ALJ states that a Class II deficiency "is defined in Section 400.419(1)(b), Florida Statutes, and Rules 58A-5.0182 and 58A-5.023, Florida Administrative Code." However, of the three cited authorities, only Section 400.419(1)(b), Florida Statutes (2002) actually defines a Class II deficiency. Also, in Paragraph 14, the correct statutory reference is to Section 400.419(1)(b).

IT IS THEREFORE ADJUDGED THAT:

As discussed in the Recommended Order, the Respondent committed a violation of the "physical plant standards" of Rule 58A-5.023 of the Florida Administrative Code, and said violation was a Class III deficiency as described in Section 400.419(1)(c), Florida Statutes (2002). However, because that Class III deficiency was corrected, no fine shall be imposed.

DONE and ORDERED on this the 28th day of January, 2005, in Tallahassee, Florida.



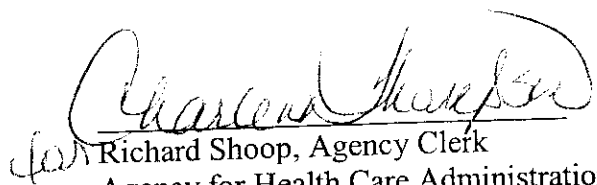
ALAN LEVINE, SECRETARY
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE 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 THE RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail, or by the method indicated, to the persons named below on this the 01 day of January, 2005.


Richard Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, FL 32308

COPIES FURNISHED TO:

P. Michael Ruff
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

Tom R. Moore, Esquire
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, FL 32308

Alvin L. Peters, Esquire
Peters & Scoon
25 East Eighth Street
Panama City, Florida 32401

Elizabeth Dudek
Deputy Secretary
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, FL 32308

Wendy Adams
Facilities Intake
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, FL 32308