

9-5-03

FILED  
2003 JUN 21 P 1:04  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

STATE OF FLORIDA  
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

FLORIDA DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES,

AT

Petitioner,

DOAH Case Nos.: 03-0535  
03-0536  
FDACS Case No.: 2003-0043  
ADMIN. COMP.: A22880  
FIRM NO.: 277151

vs.

HANDY 89, INC. D/B/A HANDY 89 SUNOCO,

LPS-Closed

Respondent.

FINAL ORDER

THIS CAUSE arose under the Florida Food Safety Act, Chapter 500, Florida Statutes, and comes before the Commissioner of Agriculture and Consumer Services of the State of Florida for consideration and final agency action.

By letters dated September 23, 2002 and December 5, 2002, Petitioner notified Respondent that Petitioner intended to impose an administrative fine against Respondent pursuant to Chapter 500, Florida Statutes. Respondent made a timely request for a formal administrative hearing. The matter was transferred to the Division of Administrative Hearings and a formal administrative hearing was held on May 6, 2003. The Administrative Law Judge's Recommended Order was duly rendered on September 5, 2003, a copy of which is attached to this Final Order as Exhibit "A". No party filed written exceptions to the recommended order.

The Department at the final hearing sought an administrative fine in the amount of \$5,000.00 and that it prominently post a "Closed for Operation" sign on Respondent's food establishment until such time as it has acquired a food permit pursuant to Chapter 500, Florida Statutes. The Department's recommendations were supported by the testimony of Dr. John Fruin, Chief of Food and Meat Inspection, Mr. Klaus Kment a Department sanitation and safety

**Certified Article Number**  
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**SENDERS RECORD**

specialist and Ms. Johanna Whalen an environmental specialist with the Lee County Department of Health.

Upon consideration hereof and being otherwise fully advised in the premises: it is

**ORDERED AND ADJUDGED:**

1. The Administrative Law Judge's Finding of Fact are adopted as if fully set forth herein.
2. The Administrative Law Judge's Conclusion of Law are adopted as if fully set forth herein.
3. The Administrative Law Judge's Recommendation as to the appropriate administrative fine to be imposed for the violation of law are adopted as if fully set forth herein.
4. Accordingly, a fine is hereby imposed in the amount of \$5,000.00, against the Respondent, HANDY 89, INC. D/B/A HANDY 89 SUNOCO. Respondent shall pay the administrative fine in the amount of \$5,000.00 within fifteen (15) days of receipt of this Final Order as authorized by §500.121 Fla. Stat. (2002). Further it is ordered that a "Closed for Operation" sign shall be prominently posted on Respondent's food establishment until such time as it has obtained a food permit pursuant to Chapter 500 Florida Statute.

**NOTICE OF RIGHT TO APPEAL**

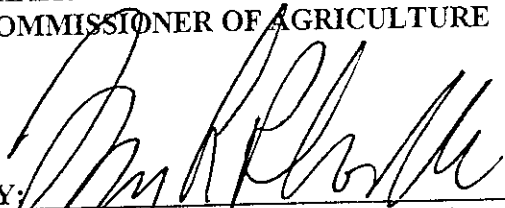
Any party to these proceedings adversely affected by this Final Order is entitled to seek review of this Order pursuant to §120.68 Fla. Stat. (2002), and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be instituted by filing a petition or notice of appeal with the Agency Clerk, Room 509, Mayo Building, Tallahassee, Florida 32399-0800, and

a copy of the same with the appropriate District Court of Appeal within thirty (30) days of filing with the Agency Clerk.

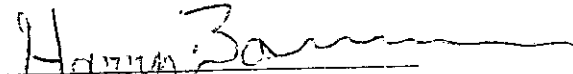
DONE AND ORDERED this 29<sup>th</sup> day of October, 2003.

CHARLES H. BRONSON  
COMMISSIONER OF AGRICULTURE

BY:

  
Terry L. Rhodes, Assistant Commissioner  
Florida Department of Agriculture  
and Consumer Services

Filed with the Agency Clerk this 29<sup>th</sup> day of October, 2003.

  
Agency Clerk

Copies to: Marion Fuller, Director of Food Safety  
Norman Lippman  
Handy 89 Sunoco  
14531 North Cleveland Avenue  
North Fort Myers, FL 33903