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STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

MARY C. JOHNSON,

Petitioner,

CASE NO. 04-0271
RENDITION NO. DCF-04-177-FO

v.

DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

AP

EJD-CWS

Respondent.

FILED

SEP 21 2004

DCF Department Clerk

FINAL ORDER

THIS CAUSE is before me upon the attached Recommended Order (RO) that was issued by the Administrative Law Judge (ALJ) assigned to hear the case by the Division of Administrative Hearings. A Transcript of the hearing was filed with the Agency Clerk. The Respondent filed exceptions to the Recommended Order. The ALJ recommends that the department enter a Final Order granting the Petitioner's application to operate a registered family day care home. The complete record has been reviewed in the preparation of this Final Order.

PRELIMINARY STATEMENT

1. In the preliminary statement, the ALJ imposed the clear and convincing burden of proof upon the Respondent citing to Osborne-Stern & Co. v. Dept. of Banking and Finance, 670 So.2d 932 (Fla. 1996). This is a conclusion of law. As a conclusion of law, it is respectfully rejected and substituted as follows: In application denial proceedings, the Applicant/Petitioner has the burden of presenting evidence of their fitness for registration and bears the burden of ultimate persuasion at each and every step of the licensure proceedings. The Department has the burden of presenting evidence that the applicant

violated certain statutes or licensing standards and were thus unfit for registration. Because the license has not yet been issued, there is no implication of loss of livelihood and as such, the Department only needs to present a preponderance of evidence to support its decision. I find this interpretation of law is as or more reasonable than that being rejected. For the same reasons, I accept, adopt and incorporate herein Respondent's Exceptions 1 and 2.

FINDINGS OF FACT

2. All findings of fact in the ALJ's RO are adopted and incorporated herein by reference.

CONCLUSIONS OF LAW

3. Conclusions of law contained in paragraph 18 of the ALJ's RO are accepted, adopted and incorporated herein by reference.

4. Conclusions of law contained in paragraph 19 of the ALJ's RO are rejected for the reasons set-forth in paragraph 1 of this Final Order.

5. Conclusions of law contained in paragraph 20 and 21 of the ALJ's RO are accepted, adopted and incorporated herein, to the extent that Report 99-105502 shall not be considered in the preparation of this Final Order. I also agree with the ALJ that it should not have been considered as part of the grounds for denying the Petitioner's registration application. In 1999, the year of the allegations, the alleged victim was three, and the interview did not occur until 2002. The alleged victim had very limited recollection of events. The majority of the child's interview had nothing to do with allegations against the Petitioner. Finally, the Petitioner was never interviewed about the allegations.

6. The conclusions of law contained in the first sentence of paragraph 22 of the

ALJ's RO is accepted, adopted and incorporated herein by reference. All other conclusions of law herein are rejected and substituted as follows: In Report 2000-128236, the Petitioner was identified as the "caretaker responsible" (p.2 of DCF Exh.1) and the allegations were verified. (p.4 Id.). Report 1999-118736 identified the Petitioner as "significant other" and the allegations were classified as "some indicators of inadequate supervision." The Petitioner also admitted to both of these incidents occurring in her daycare. (T.55, In.17-20). The Department is authorized by section 39.201(6), Florida Statutes to use information in the automated abuse information system for the licensing and registration process of screening applicants. I find this interpretation of the law is as or more reasonable than that which is being rejected.

7. Conclusions of law contained in paragraphs 23-31 of the ALJ's RO are accepted, adopted and incorporated herein by reference.

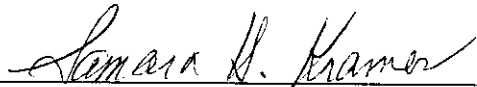
8. The conclusion of law contained in paragraph 32 of the ALJ's RO, that the Respondent is only entitled to consider one of the reports it considered in deciding not to grant the Petitioner's application for registration is rejected. For the reasons stated in paragraph 5 of this Final Order, the Respondent is entitled to consider Reports 2000-128236 and 1999-118736, in addition to 1998-050246. I find this interpretation of law is as or more reasonable than that which is being rejected.

9. Conclusions of law contained in paragraphs 33-34 of the ALJ's RO are rejected. The Applicant/Petitioner has the burden of presenting evidence of their fitness for registration and bears the burden of ultimate persuasion at each and every step of the licensure proceedings. The Respondent has the burden of presenting evidence that the applicant violated certain statutes or licensing standards and were thus unfit for registration.

The Respondent established that over an eight-year period of previous licensure, the Petitioner received three complaints relating to inadequate supervision. Although these prior allegations may not have supported a revocation action, needing a showing of clear and convincing evidence, they do support a licensure denial, needing only a preponderance of the evidence finding. I find this interpretation is as or more reasonable than that which is being rejected.

And the undersigned being fully advised, it is therefore **ORDERED** that petitioner's application for registraion as a family day care is hereby **DENIED**.

DONE and ORDERED this 21st day of September, 2004, in Tallahassee, Leon County, Florida.



SAMARA H. KRAMER, DBA
Chief of Staff
Department of Children and Family Services

Copies of this Final Order are being furnished to:

ELLA JANE DAVIS
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NOTICE OF RIGHT TO APPEAL

A party who is adversely affected by this final order is entitled to judicial review. To initiate judicial review, the party seeking it must file one copy of a "Notice of Appeal" with the Agency Clerk. The party seeking judicial review must also file another copy of the "Notice of Appeal," accompanied by the filing fee required by law, with the First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the rendition of this final order.¹

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and copy of the foregoing **FINAL ORDER** has been sent by U.S. Mail or by hand delivery to each of the persons named above on this 21st day of September, 2004.



PAUL FLOUNLACKER, Agency Clerk
Department of Children and Family Services
1317 Winewood Blvd. Bldg. 2 Room 204Z
Tallahassee, FL 32399-0700

¹ The date of the "rendition" of this Final Order is the date that is stamped on its first page. The Notices of Appeal must be received on or before the thirtieth day after that date.