

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

KOZETTE KING, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-1139  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a final administrative hearing in this case on February 24, 2005, in Orlando, Florida.

APPEARANCES

For Petitioner: Kozette King, pro se  
3914 Travati Street  
Orlando, Florida 32839

For Respondent: Beryl Thompson-McClary, Esquire  
Department of Children and  
Family Services  
400 West Robinson Street, S-1106  
Orlando, Florida 32801

STATEMENT OF THE ISSUE

The issue in this proceeding is whether Respondent properly revoked Petitioner's license to operate a family day care home.

PRELIMINARY STATEMENT

On February 19, 2004, Respondent, Department of Children and Family Services (Department), advised Petitioner, Kozette King, by a letter titled "Notice of Revocation of Licensure" that her license to operate a family day care home had been revoked. The revocation was based on the Department's evaluation of the complaint of a parent who arrived at the day care center to find her child crying in a room in which an unidentified male was sleeping. When asked, Petitioner reportedly told the Department's investigator that she had left the children for about 15 to 20 minutes and that the children were being supervised by a designated substitute. The revocation letter further states, "[Y]our actions of leaving the children in the family day care home totally unsupervised and in the presence of an unscreened adult placed them at risk of harm. Because your actions demonstrate an inability to ensure the safety of children to the level necessary to be licensed as a family day care home, the Department is unable to propose lesser sanctions than the revocation of your license."

Petitioner disputed the allegations by letter of March 8, 2004, and requested an administrative hearing. In her letter, Petitioner maintained that "an adult was supervising the children" and that "no one was sound asleep as stated."

The Department forwarded the case to the Division of Administrative Hearings on or about April 2, 2004. An Initial Order was mailed to both parties that same day. On April 14, 2004, a final hearing was scheduled for June 7, 2004. The Department filed Respondent's Motion for Continuance on May 21, 2004; the continuance was granted by Order dated May 24, 2004. In the Order Granting Continuance, the parties were directed to advise of dates of availability for a final hearing. On January 5, 2005, the Department advised of dates of availability. On January 14, 2005, the case was rescheduled for final hearing on February 24, 2005.

The final hearing took place as rescheduled on February 24, 2005. At hearing, Petitioner testified on her own behalf. The Department presented the testimony of three witnesses: Brandi Blanchard, Chevelle Washington, and Patricia Richardson, all Department employees. Neither the complaining parent nor the substitute child caregiver was called as a witness. The Department offered six exhibits which were admitted into evidence and marked as Respondent's Exhibits 1 through 6. At the Department's request, official recognition was taken of Florida Administrative Code Rule 65C-20.009(3)(a).

No transcript of proceedings was ordered. The Department filed a "Limited Recommended Order."

## FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing, the following findings of fact are made:

1. Petitioner is the owner and operator of a family day care home and, until the revocation which is the subject of this action, held license number 07C696L.

2. In response to a parent's complaint that she had arrived at the family day care home to find her child crying in a room in which an unidentified man was sleeping, the Department's investigator, Brandi Blanchard, made an unscheduled visit to Petitioner's family day care home immediately following receipt of the complaint.

3. The only evidence that this event occurred as portrayed by the complaining parent is contained in the Department reports and testimony by Department employees who were not present when the event occurred.

4. When questioned regarding the parent's complaint, Petitioner advised that she had left the children for about 15 to 20 minutes in the care of Sibyl Dexter, an authorized substitute caregiver.

5. In addition, there was some discussion about the identity of an adult male sleeping in the family day care home who had been reported by the complaining parent. Other than the hearsay report of the complaining parent, no corroborative

evidence was received regarding the identify of this adult male, nor did any witness testify as to having seen this adult male. It was suggested that the "adult male" was Petitioner's husband; this was denied by Petitioner.

6. In her investigative report, Ms. Blanchard indicates that the substitute caregiver stated that she had not been at the family day care home on the particular day in question; however, Mrs. Dexter, the substitute caregiver, did not testify, and, therefore, this hearsay statement by Ms. Blanchard is not being considered.

7. In her testimony, as in her letter contesting the license revocation and requesting this hearing, Petitioner maintained that the substitute caregiver, Mrs. Dexter, was present. In the absence of testimony by the complaining parent or the substitute caregiver, Petitioner's testimony is credible.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57(1), Fla. Stat. (2004).

9. Chapter 402, Florida Statutes (2004), governs licensure and registration of child care facilities, including family day care homes. Subsection 402.310(1)(a), Florida Statutes, authorizes the Department to deny, suspend, or revoke a license

or impose an administrative fine for the violation of provisions of Sections 402.301 through 401.319, Florida Statutes.

10. Issuance of a professional or occupational license confers a vested property right in the person to whom the license is issued. State ex rel. Estep v. Richardson, 148 Fla. 48, 3 So 2d. 512 (1941).

11. The Department revoked Petitioner's family day care home license. As the party asserting the affirmative of an issue, the Department has the burden of proof. Florida Department of Transportation v. J.W.C. Company, 396 So. 2d 778 (Fla. 1st DCA 1981).

12. The Department must prove the allegations of its Notice of Revocation of Licensure by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

13. The "clear and convincing" standard requires:

[T]hat the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In Re: Davey, 645 So. 2d 398, 404 (Fla. 1994), quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

14. Statutes that authorized the imposition of penal sanctions must be strictly construed, and any ambiguity must be construed in favor of Petitioner. Elmariah v. Department of Business and Professional Regulation, 574 So. 2d 164, 165 (Fla. 1st DCA 1990).

15. The Department has failed to prove the allegations upon which the licensure revocation is predicated. No primary evidence was presented regarding the absence of the authorized substitute caregiver or the unidentified male purportedly found sleeping in the family day care home.

16. In the Department's Notice of Revocation of Licensure, the Department refers to Florida Administrative Code Rule 65C-20.009(3)(a); at the final hearing, the Department requested that official notice be taken of the same Florida Administrative Code rule. Florida Administrative Code Rule 65C-20.009(3)(a), reads as follows:

(3) Annual In-Service Training.

(a) All family day care home operators, must complete a minimum of 10-clock-hours of in-service training or 1 CEU, annually during the state's fiscal year beginning July 1 and ending June 30.

No evidence was presented regarding Petitioner's failure to comply with this Rule.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered reinstating Petitioner's license to operate a family day care home.

DONE AND ENTERED this 1st day of April, 2005, in Tallahassee, Leon County, Florida.



---

JEFF B. CLARK  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of April, 2005.

COPIES FURNISHED:

Kozette King  
3914 Travati Street  
Orlando, Florida 32839

Beryl Thompson-McClary, Esquire  
Department of Children and Family Services  
400 West Robinson Street, S-1106  
Orlando, Florida 32801



Gregory D. Venz, Agency Clerk  
Department of Children and  
Family Services  
Building 2, Room 204B  
1317 Winewood Boulevard  
Tallahassee, Florida 32399-0700

Josie Tomayo, General Counsel  
Department of Children and  
Family Services  
1317 Winewood Boulevard  
Tallahassee, Florida 32399-0700

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.