

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

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2006 MAY 18 A 9:46

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DIVISION OF  
ADMINISTRATIVE  
HEARINGS  
2006 MAY 18 A 11:29

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Petitioner,

DOAH CASE NO. 04-3848  
AHCA NO. 2004007220  
RENDITION NO.

vs.

CORAL TERRACE RETIREMENT  
HOME, INC. d/b/a CORAL TERRACE  
RETIREMENT HOME,

Respondent.

FINAL ORDER

This cause was referred to the Division of Administrative Hearings where the assigned Administrative Law Judge (ALJ), Florence Snyder Rivas, conducted a formal administrative hearing. At issue in this case is whether the Agency proved by clear and convincing evidence that the Respondent committed the violations alleged in the Second Amended Administrative Complaint, and, if so, what penalty should be imposed. The Recommended Order of March 21, 2006, is attached to this Final Order and incorporated herein by reference, except where noted infra.

RULING ON EXCEPTIONS

The Petitioner filed exceptions to which the Respondent filed a response. The Respondent did not file any exceptions.

The Petitioner took exception to Paragraph 25 of the Recommended Order, arguing that the ALJ erred in finding that “[o]n July 19, 2004, two residents, H.C. and Z.E., were unable to transfer, even with assistance.” Petitioner correctly pointed out that the record evidence

demonstrated that this occurred on July 12, 2004, not July 19, 2004. See Transcript, Volume II, Pages 295-299. The Agency will treat Petitioner's exception as a motion to correct scrivener's error, grant it, and change Paragraph 25 of the Recommended Order to state

25. On July 12, 2004, two residents, H.C. and Z.E., were unable to transfer, even with assistance. On the evidence presented, there is no question about this.

Additionally, based on the reasoning supra, the last sentence of Paragraph 28 of the Recommended Order will also be changed to state

AHCA therefore failed to prove, by clear and convincing evidence, that the inability of H.C. and Z.E. to "transfer with assistance" on July 12, 2004, was a violation of the Florida Administrative Code subject to sanctions.

The Petitioner took exception to the findings of fact in Paragraph 28 of the Recommended Order, wherein the ALJ found "the Petitioner offered inadequate evidence as to whether either or both of them [Residents H.C. and Z.E.] were in a temporary status, on that day, that would have defined their inability to transfer as not being a violation of Rule 58A-5.0181(1)(d)." The ALJ found that the Petitioner failed to prove by clear and convincing evidence that Residents H.C. and Z.E. did not meet any of the exceptions to the requirement that residents "[b]e able to transfer, with assistance if necessary" enumerated in Rule 58A-5.0181, Florida Administrative Code. The ALJ's findings were based on competent substantial evidence. See, e.g., Transcript, Volume II, Pages 317-329. The Petitioner is, in essence, asking the Agency to re-weigh the evidence in order to reach a conclusion more favorable to its position, which it cannot do. See § 120.57(1)(l), Fla. Stat.; Heifetz v. Department of Bus. Regulation, 475 So.2d 1277, 1281 (Fla. 1985) (holding that an agency "may not reject the hearing officer's finding [of fact] unless there is no competent, substantial evidence from which the finding could reasonably

be inferred"). Therefore, the Petitioner's exception to Paragraph 28 of the Recommended Order is denied.

The Petitioner took exception to Paragraph 26 of the Recommended Order, arguing that it can fine the Respondent without first following the provisions of Section 400.426(9), Florida Statutes. The ALJ's findings were based on competent substantial evidence. See, e.g., Transcript, Volume II, Pages 322-324. The Petitioner is again, in essence, asking the Agency to re-weigh the evidence in order to reach a finding more favorable to its position, which it cannot do. See § 120.57(1)(I), Fla. Stat.; Heifetz. Therefore, Petitioner's exception to Paragraph 26 of the Recommended Order is denied.

The Petitioner took exception to Paragraph 27 of the Recommended Order, arguing that there was no evidence that the Residents H.C. and Z.E. were bedridden or in hospice, and that these exceptions to the transfer requirement do not hamper the Petitioner's ability to fine a facility immediately for Class II deficiencies regarding inappropriate residents. The ALJ's findings were based on competent substantial evidence. See, e.g., Transcript, Volume I, Pages 152-154; Transcript, Volume II, Pages 324; and Respondent's Exhibit 2, Pages 22-23. The Petitioner is again, in essence, asking the Agency to re-weigh the evidence in order to reach a finding more favorable to its position, which it cannot do. See § 120.57(1)(I), Fla. Stat.; Heifetz. Therefore, Petitioner's exception to Paragraph 27 of the Recommended Order is denied.

#### **SCRIVENER'S ERROR**

The Agency notes that there is a scrivener's error in Paragraph 27 of the Recommended Order wherein the ALJ mistakenly cites to Section 400.426(1), Florida Statutes (2005), instead of Section 400.426(10), Florida Statutes (2005). Therefore, the Agency determines that this was

a scrivener's error on the part of the ALJ, and notes that this change will be incorporated as part of this final order.

**FINDINGS OF FACT**

The Agency adopts the findings of fact set forth in the Recommended Order, except where noted supra.

**CONCLUSIONS OF LAW**

The Agency adopts the conclusions of law set forth in the Recommended Order.

**ORDER**

Based upon the foregoing, the Second Amended Administrative Complaint is dismissed and this case is now closed.

DONE and ORDERED this 15<sup>th</sup> day of May, 2006, in Tallahassee, Florida.

  
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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. or interoffice mail to the persons named below on this 17<sup>th</sup> day of May, 2006.



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