

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND )  
FAMILY SERVICES, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 05-1184  
 )  
SEASHELL CORP., d/b/a HAPPY )  
HEARTS EAST CHILD CARE CENTER, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Upon due notice, a disputed-fact hearing was held in this cause in Lake City, Florida, on June 27, 2005, before Ella Jane P. Davis, a duly-assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Lucy Goddard-Teel, Esquire  
Department of Children and Family Services  
Post Office Box 390, Mail Sort 3  
Gainesville, Florida 32602-0390

For Respondent: Robert Turbeville,  
Qualified Representative  
Seashell Corporation  
174 Northwest Venice Glen  
Lake City, Florida 32055

STATEMENT OF THE ISSUE

Whether the Department of Children and Family Services (DCF) properly imposed a civil penalty against Seashell Corp.,

d/b/a Happy Hearts East Child Care Center in the amount of \$150.00.

PRELIMINARY STATEMENT

Respondent timely requested a disputed-fact hearing, and this cause was referred to the Division of Administrative Hearings on or about April 1, 2005.

At the disputed-fact hearing on June 27, 2005, Robert Turbeville, a principal of Respondent's corporate parent, was examined on the record and accepted as Respondent's qualified representative, provided he filed an appropriate written authorization from a corporate officer within 10 days of the close of hearing. That authorization was filed, and Mr. Turbeville's qualified representative status is hereby ratified.

Petitioner DCF presented the oral testimony of Victoria Ramsey, Donna Giebeig and Sandy Looney, and had four exhibits admitted in evidence. Robert Turbeville testified on behalf of Respondent, and Respondent had three exhibits admitted in evidence. The Prehearing Stipulation was admitted in evidence as Joint Exhibit A.

No transcript was provided.

Petitioner timely filed a Proposed Recommended Order, which has been considered in preparation of this Recommended Order. Respondent waived filing a proposed recommended order.

## FINDINGS OF FACT

1. Respondent Seashell Corp. is licensed to operate a child care facility known as "Happy Hearts--East" located at 149 Southeast Lochlynn Terrace, Lake City, Florida.

2. On August 24, 2004, DCF received a complaint to the abuse hotline, alleging that at the facility, children were playing in a mop bucket with water, while staff members were in the kitchen talking, not paying attention or supervising the children, and too far away to stop the children from playing in the mop bucket.

3. The facility's normal practice is for children who have been awakened from their naps to be sent to the main room to be supervised by staff other than their teacher. This is done to keep the now-awake and newly energized youngsters from waking the children still napping. Apparently, the reporter to the abuse hotline was a visitor who was present on August 24, 2004, to pick up some papers.

4. Later the same day, the teacher of the two-year-olds told DCF investigators that as the children awoke from their naps, she sent them to the main room. Staff also admitted to investigators that the mop bucket had been in the main room within reach of the children. It was admitted that a staff member had stopped the children before any of them touched the water and dissolved cleaning fluids in the mop bucket, but one

staff member also stated that her four-year-old daughter had played with the mop handle.

5. DCF's abuse investigator closed the hotline case with only minor indicators of inadequate supervision. However, Respondent's license was cited by DCF's licensing regulators for minor noncompliance, and a \$50.00 civil penalty was imposed.

6. Due to the location of the two-year-old room in relation to the main room, an inspector, Ms. Giebeig, concluded that the children had to go through a closed door to the main room and that they were not within sight of a teacher at all times in the main room. The floor diagram in evidence does not refute her interpretation, despite Mr. Turbeville's testimony that the teacher of the two-year-olds was expected to stand in a doorway and watch until the children were in view of other staff members in the main room. Even diligent human beings cannot see around right-angled corners and simultaneously maintain a sightline to children in two different rooms.

7. Child care licensees are required to keep their facilities clean. Prior to the August 24, 2004 citation, Respondent's staff always took the mop bucket into the main room to mop, because this procedure is more efficient. Since the citation, they leave the mop bucket in the kitchen, away from the children, and take only the mop back and forth for cleaning the child care areas.

8. On December 6, 2004, Ms. Giebeig was again at Respondent's facility. At that time, she observed a mop hanging to dry on a low picket fence accessible to children from the back porch. From May 6, 1999, when Respondent opened, until Respondent was cited for this incident on December 6, 2004, staff had always hung the mop in the same location after it had been rinsed out, so as to prevent mildew. Despite several intervening inspections by DCF, Respondent had never been told not to follow this procedure. At no time has any child been seen to touch a mop in that location or to come in contact with any toxic chemical residue on a mop in that location. The omission of previous citations was because Ms. Giebeig did not see the mop hanging on the fence on any of her prior inspection visits, which usually occurred only four times each year. The citation on December 6, 2004, proposed a civil penalty of \$100.00. Since that date, the mop has been dried elsewhere.

9. It is not DCF's practice to cite a child care licensee for every deficiency, violation, or lack of precise compliance with the licensing and inspection statutes and rules which DCF administers, but prior to the August 24, 2004 citation, there had been two similar observations of non-compliance on March 18, 2003 (unsecured hazardous materials), and August 9, 2004 (staff not within sight of children). The December 6, 2004 citation was a fourth occurrence. Each of these situations was similar,

in that they involved concerns about very young children being unobserved or in the vicinity of toxic materials.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Sections 120.57 and 120.60, Florida Statutes.

11. DCF has the duty to go forward and the burden to prove by a preponderance of the evidence the charges against Respondent.

12. Section 402.310(1)(a), Florida Statutes, provides:

The department or local licensing agency may deny, suspend, or revoke a license or impose an administrative fine not to exceed \$100.00 per violation, per day, for the violation of any provision of ss. 402.301-402.319 or rules adopted thereunder. However, where the violation could or does cause death or serious harm, the department or local licensing agency may impose an administrative fine, not to exceed \$500.00 per violation per day.

13. Florida Administrative Code Rule 22.001(5)(a), provides, in pertinent part:

(5) Supervision.

(a) Direct supervision means watching and directing children's activities within the same room or designated outdoor play area and responding to each child's need. Child care personnel at a facility must be assigned to provide direct supervision to a specific group of children and be present with that group of children at all times. When caring for school age children, child

care personnel shall remain responsible for the supervision of the children in care, be capable of responding to emergencies, and be accountable for children at all times, which includes when children are separated from their groups.

14. Florida Administrative Code Rule 65C-22.002(1)(b)

states:

Physical Environment

(1) General Requirements.

\* \* \*

(b) All areas and surfaces accessible to children shall be free of toxic substances and hazardous materials.

15. There is no suggestion herein that Respondent had any evil intent or was unusually careless or negligent. Indeed, Respondent has been particularly cooperative and anxious to work with DCF, even to adopting the clearly inefficient procedure of carrying a wet mop, without a bucket, from the kitchen to other rooms for numerous cleaning activities throughout the day and even to using a new location to dry the mop after it has been rinsed.

16. DCF's trained inspection personnel may have been hyper-vigilant to potential dangers, but no one disputed that the potential dangers existed. The inspectors' special sensitivity were warranted here, because cleaning fluids are involved; very young children's eyes and mucus membranes were at

stake; and a similar exposure problem had been repeated, as had a failure to observe problem. Rather than thinking of this as a case of hyper-vigilance, it is more reasonable to think of it in terms of the too-often heard modern expression, "But I didn't take my eyes off the baby for a minute; the accident just happened," or the too-infrequently heard expression, "Better safe than sorry."

17. It is undisputed that on August 24, 2004, a mop and full mop bucket were within reach of children aged two through four, and that a four-year-old child was playing with the mop handle, in violation of Florida Administrative Code Rule 65C-22.002(1)(b).

18. It is undisputed that on December 6, 2004, a mop was hung to dry on a picket fence, within reach of the children, in violation of Florida Administrative Code Rule 65C-22.002(1)(b).

19. DCF has proven, by a preponderance of the evidence, that on August 24, 2004, Respondent violated Florida Administrative Code Rule 22.001(5)(a) and Florida Administrative Code Rule 65C-22.002(1)(b), and that on or about December 24, 2004, Respondent violated Florida Administrative Code Rule 65C-22.002(1)(b).

20. It is undisputed that Respondent was previously cited for similar violations involving inadequate supervision or hazardous materials accessible to children in its care.



21. The amount of the two civil penalties, severally and jointly, at a total of \$150.00 is both reasonable and the lowest amount authorized pursuant to the applicable fine schedule.

RECOMMENDATION

Upon the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Department of Children and Family Services enter a final order imposing a civil penalty in the total amount of \$150.00 against Seashell Corp., d/b/a Happy Hearts East Child Care Center.

DONE AND ENTERED this 2nd day of August, 2005, in Tallahassee, Leon County, Florida.



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ELLA JANE P. DAVIS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 2nd day of August, 2005.

COPIES FURNISHED:

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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.