

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
Petitioner,)
)
vs.) Case No. 06-1134
)
HOMECOMING ADOPTIONS, INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On May 25, 2006, a formal administrative hearing in this case was held in Orlando, Florida, before Jeff B. Clark, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: T. Shane DeBoard, Esquire
Department of Children
and Family Services
400 West Robinson Street, Suite S-1114
Orlando, Florida 32801

For Respondent: James E. Taylor, Esquire
126 East Jefferson Street
Orlando, Florida 32801

STATEMENT OF THE ISSUES

The parties stipulated that a concise statement of the nature of the controversy is: "Petitioner revoked Respondent's license to operate as a child-placing agency under 409.175, Fla. Stat." The issues in the case are delineated with specificity

in the Administrative Complaint dated February 20, 2006.

Petitioner alleges that Respondent's license is revoked for the following reasons:

1. Failure to properly close the agency as required by F.A.C. 65C-15.035.
2. Repeated failure to provide the Department with the agency's 2004 financial audit as required by F.A.C. 65C-15.010 and failure to provide the Department with the agency's 2005 financial audit;
3. Multiple code violations documented on February 10, 2005 in the Child Placing Agency Inspection Sheet attached hereto and incorporated herein by reference;
4. Multiple code violations documented on September 14, 2005 in the Child Placing Agency Inspection sheet attached hereto and incorporated herein by reference;
5. Multiple code violations documented on October 18, 2005 in the Child Placing Agency Inspection Sheet attached hereto and incorporated herein by reference;
6. Multiple code violations documented on January 19, 2006 in the Child Placing Agency Inspection Sheet attached hereto and incorporated herein by reference;
7. Multiple code violations documented on February 17, 2006 in the Child Placing Agency Inspection Sheet attached hereto and incorporated herein by reference;
8. Entering into contracts with a prospective adoptive parent for the placement and adoption of a child, taking the prospective adoptive parent's money and not placing a child in their home for adoption, and, thereafter failing to return money paid for fees, costs and expenses

advanced by the prospective adoptive parent which were refundable. In short, the agency charged the prospective adoptive parent for fees, costs and expenses, and, when the agency failed to deliver on the contract it did not return the advanced money required to be refunded. This is in violation of sections 63.097 and/or 409.175, Florida Statutes, and F.A.C. 65C-15.010;

9. Entering into contracts with a prospective adoptive parent for the placement and adoption of a child, taking the prospective adoptive parent's money, placing a child in their home for adoption, and, thereafter failing to return money advanced to pay for fees, costs and expenses associated with the adoption which were not expended. In short, the agency charged the prospective adoptive parent for fees, costs and expenses, and, when the funds were not actually needed to cover the allowable fees, costs or expenses the agency failed return the advanced money. This is in violation of sections 63.097 and/or 409.175, Florida Statutes, and F.A.C. 65C-15.010.

In its response to the Administrative Complaint, Respondent, Homecoming Adoptions, Inc., has denied each of the nine listed reasons for Petitioner's decision to revoke its license.

PRELIMINARY STATEMENT

On February 15, 2006, Homecoming Adoptions, Inc. (Respondent), notified the Department of Children and Family Services (Petitioner) that it no longer wished to maintain a then existing child-placing agency license and that it wished to withdraw its application for license renewal. The existing

license was to expire on March 2, 2006. On February 20, 2006, Petitioner, filed an Administrative Complaint against Respondent, accepting Respondent's application withdrawal, alleging that it failed to close as required by law and that it failed to transfer services with its existing clients as required by law. It further warned that operation after March 2, 2006, the date the current license would expire, would constitute operation of a child placement agency without a license.

Respondent filed a request for formal hearing. The request was received by the Division of Administrative Hearings on March 31, 2006. An Initial Order was sent to both parties on March 31, 2006. At the request of the parties, the matter was scheduled for final hearing on May 25, 2006, in Orlando, Florida.

The final hearing was conducted as scheduled on May 25, 2006. Petitioner called two witnesses: Helga Mejia, licensing specialist, and Kurt E. Alexander, Esquire, one of the co-owners of Respondent. Petitioner offered nine exhibits that were received into evidence and marked Petitioner's Exhibits 1 through 9.

Respondent called two witnesses: Kurt E. Alexander, Esquire, and Kendall B. Rigdon, Esquire, the other co-owner of

Respondent. Respondent offered one exhibit that was received into evidence and marked Respondent's Exhibit 1.

The parties requested and were given 30 days from the date of the filing of the transcript of the final hearing with the Clerk of the Division of Administrative Hearings to file proposed recommended orders. A Transcript of the final hearing was filed on June 16, 2006. On July 14, 2006, the parties jointly stipulated to an extension of time for filing proposed recommended orders. The time for filing was extended to August 15, 2006. Both parties filed Proposed Recommended Orders that have been considered in the preparation of this 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. Respondent is a Florida non-profit corporation, doing business in Orlando, Florida. It is co-owned by Kurt Alexander and Kendall Rigdon; both are officers of the corporation and are attorneys licensed to practice law in the State of Florida.

2. On March 2, 2005, Petitioner issued a Certificate of License to Respondent to operate a child-placing agency. The license was to continue in force for one year from the date of issue unless renewed, withdrawn or revoked for cause.

3. On February 15, 2006, Kurt Alexander advised Petitioner on behalf of Respondent that "we are withdrawing our application for licensure renewal at this time."

4. During relevant times, to wit, March 2, 2005, to February 15, 2006, Respondent entered into contracts (titled "adoptive agency agreement") with individuals seeking to adopt children wherein Respondent undertook to "assist the Adoptive Parent in commencing and completing the adoption." The contracts contemplate the Adoptive Parent traveling "to the foreign country to complete the adoption process and accept physical custody of the child." Evidence was offered that Respondent assisted with adoptions which took place in Russia, China, Guatemala, El Salvador, and other countries. In each instance, the formality of the adoption was effected by individuals or agencies located in the foreign country.

5. Although a licensed child-placing agency, Respondent had never placed a child for adoption within or without the State of Florida. Respondent became a licensed child-placing agency in an abundance of caution in the event it had to undertake a Florida adoption. Respondent never had physical custody of any child on either a temporary or permanent basis.

6. On February 17, 2006, Kurt Alexander again advised Petitioner that Respondent "does not wish to renew or retain its

license as a child-placing agency in Florida." He further advised that

[I]n an abundance of caution and in compliance with 65C-15.035, Homecoming will do the following

1. Transfer all children to the Dept. or another licensed child placement agency. There are none.

2. Transfer responsibility for all children in temporary placement, etc. There are none.

3. Transfer services to all other clients. Will do.

7. On or about February 17, 2006, all active and closed files of Respondent, the licensed child-placing agency, were transferred to the law firm of Rigdon, Alexander & Rigdon, LLP. Thereafter, Kurt Alexander, in his capacity as an attorney with that firm, requested that Petitioner refrain from examining the files that had previously been the property of Respondent, as they were now law firm property and "confidential."

8. On September 14, 2005; October 18, 2005; January 19, 2006; and February 17, 2006, Petitioner conducted annual and complaint inspections of Respondent's files. Employee personnel files lacked applications, references, local/FDLE/FBI criminal background checks, degree verifications, and other required information. Some adoption files lacked completed home studies, character references, background studies, criminal background

checks, and abuse registry checks. In addition, a required financial audit was not available. Respondent's executive director was terminated in August 2005; Petitioner was not notified of his termination.

9. No evidence was offered by Petitioner regarding the allegations of paragraphs 8 and 9 of the Administrative Complaint.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57(1), Fla. Stat. (2005).

11. The Legislature has vested Petitioner with the responsibility of licensing child-placing agencies and the authority to adopt and enforce rules to ensure compliance with the rules governing such agencies. § 63.202 (1) through (3), Fla. Stat. (2005).

12. "All persons or agencies" engaged in the "placement or adoption of children," as defined in Florida Administrative Code Rule 65C-15.001(2), are required to be licensed. Fla. Admin. Code R. 65C-15.002(1).

13. Florida Administrative Code Rule 65C-15.001(2) reads, in pertinent part:

"Adoption process" includes the following:
Recruitment of prospective adoptive parents;
recruitment of individuals for the release

of a child, including a child not yet born, for the purpose of adoption as part of a plan leading to the eventual placement of a child for adoption; provision of medical care or payment of maintenance costs and expenses during pregnancy in consideration for the release of a child for adoption; assessment and preparation of families before placement as part of a plan leading to the eventual placement of a child for adoption; and supervision of families, after placement and prior to the final adoption, has occurred.

14. Subsections 63.032 (15) and (16), Florida Statutes (2005), read as follows:

(15) "To place" means the process of a parent or legal guardian surrendering a child for adoption and the prospective adoptive parents receiving and adopting the child, and includes all actions by any person or adoption entity participating in the process.

(16) "Placement" means the process of a parent or legal guardian surrendering a child for adoption and the prospective adoptive parents receiving and adopting the child and all actions by any adoption entity participating in placing the child.

15. While the evidence clearly demonstrates that Respondent did not take physical custody of any child for placement, which is typical of a licensed child placing agency, by submitting itself for licensure, and through its actions and involvement in the process of adoption, Respondent subjects itself to Petitioner's legislatively-mandated supervision.

16. Admittedly, Messrs. Alexander and Rigdon are members of the Florida Bar and subject to regulation by the Florida Supreme Court. Respondent is not a member of the Florida Bar; by applying for and accepting licensure, it has submitted itself to the scrutiny of Petitioner.

17. The case cited by Respondent, National Adoption Counseling Services and Richard Gitelman v. Department of Health and Rehabilitative Services, 480 So. 2d 250 (Fla. 4th DCA 1985), was decided in part on a glaring procedural defect. As noted by the Appellate Court, the Department of Health and Rehabilitative Services based its injunctive action on a statute allowing it to "enjoin and abate nuisances dangerous to the health of persons, fish and livestock." Although the facts have limited commonality with the instant case, the respondent in the referenced case did not voluntarily subject itself to agency jurisdiction by seeking and accepting licensure.

18. Typically, 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). However, Subsection 409.175(2)(f), Florida Statutes (2005), reads as follows:

"License" means "license" as defined in s. 120.52(9). A license under this section [[L]icensure of family foster homes, residential child-caring agencies, and child-placing agencies] is issued to a

family foster home or other facility and is not a professional license of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department.

19. As a result of Subsection 409.175(2)(f), Florida Statutes (2005), supra, Petitioner has the burden of proving by substantial, competent evidence the allegations of the administrative complaint. Mayes v. Department of Children and Family Services, 801 So. 2d 980 (Fla. 1st DCA 2001).

20. Subsection 409.175(9)(b)2., Florida Statutes (2005), reads as follows:

Any of the following actions by a home or agency or its personnel is a ground for denial, suspension, or revocation of a license:

* * *

2. A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.

21. Florida Administrative Code Rule 65C-15.004 reads as follows:

(1) Licensing staff of the department may make scheduled or unannounced visits to a licensed home, facility or agency at any reasonable time to investigate and evaluate compliance with the licensing requirements. All agencies shall be inspected at least annually.

(2) The department shall investigate complaints to determine if the agency is meeting the licensure requirements.

(3) The department shall advise the owner and operator with authority over the licensed agency that there is a licensing complaint when initiating an investigation and shall advise the agency of the results of the investigation when concluded.

(4) Whenever the department receives a report questioning the certification status or compliance of a child-placing agency with requirements of the state adoption law or alleging violations of this chapter by the agency, the department shall investigate the allegation within 20 working days to determine whether the complaint is substantiated.

(5) The department shall notify the complainant and the agency in writing of the results of the complaint investigation within 15 working days after the report of the department's investigation has been finalized.

(6) The agency shall fully cooperate with the department whenever such complaint investigations are conducted.

22. Florida Administrative Code Rule 65C-15.010(3) reads as follows:

Audit: The agency shall have its financial records audited annually. A report of this audit shall be available to the department at the licensed location during normal business hours.

23. Respondent did not have an audit of its 2005 fiscal year available for inspection by Petitioner as required by Florida Administrative Code Rule 65C-15.010(3).

24. Florida Administrative Code Rule 65C-15.011(1) reads as follows:

The agency shall provide written notification within 30 days after implementation to the department of changes in the agency' director, statement of purpose, services to be provided, clientele to be served, intake procedures or admission criteria.

25. Respondent failed to advise Petitioner that its executive director had left Respondent's employ in violation of Florida Administrative Code Rule 65C-15.011(1).

26. Florida Administrative Code Rule 65C-15.016 reads as follows:

(1) The agency shall have available on site the educational qualifications of employees to verify that they meet the standards set forth in Rule 65C-15.017, F.A.C.

(2) The agency shall have a personnel file for each employee, available for review by the department which shall include, but is not limited to the following:

(a) The application for employment;

(b) Verification that the screening requirements of Section 409.175, F.S., and Chapter 10-20, F.A.C., have been completed and met;

(c) Employee's starting and termination dates and reason for termination;

(d) Annual performance evaluations and any disciplinary actions taken;

(e) Copy of diploma or degree; and

(f) Training record and conferences attended.

27. Employee personnel files lacked applications, references, local/FDLE/FBI criminal background checks, degree verifications, and other required information in violation of Florida Administrative Code Rule 65C-15.016.

28. Florida Administrative Code Rule 65C-15.028 reads as follows:

(1) The agency shall make an evaluation of the adoptive family before placement of a child, which shall include at least one home visit.

(2) The evaluation study shall be summarized in a written report.

(3) The report shall be maintained by the agency as a permanent record, and shall include the following:

(a) The applicant's motivation for adoption;

(b) The strengths, weaknesses and personal adjustment of each member of the household;

(c) The attitudes and feelings of the family, its extended family members, or significant others towards adoptive children;

(d) The attitudes of the applicants toward the birth parents and the reasons children may be in need of adoptive placement;

(e) The applicant's plan for discussing adoption with the child;

- (f) The applicant's emotional stability and maturity;
- (g) The applicant's ability to cope with problems;
- (h) The applicant's capacity to give and receive affection;
- (i) The applicant's child caring skills;
- (j) The adjustment of birth children, and previously adopted children, if appropriate;
- (k) The applicant's ability to provide financially for the child and other family members;
- (l) A medical assessment identifying any medical problems which may limit the applicant's ability to parent a child to adulthood;
- (m) The applicant's religious orientation, if any;
- (n) The location and physical environment of the home;
- (o) The plan for child care if the prospective adoptive parents both work outside the home;
- (p) A recommendation in regard to the number, age, sex, characteristics, and special needs of the children who can be best served by the family;
- (q) Evidence of screening of the applicants by the Florida Protective Services System Abuse Registry and law enforcement clearance; and
- (r) Any special characteristics or limitations of the applicant's regarding children placed for adoption in their home.

29. Some completed adoption files lacked completed home studies, character references, background studies, criminal background checks, and abuse registry checks in violation of Florida Administrative Code Rule 65C-15.028.

30. Florida Administrative Code Rule 65C-15.034 reads as follows:

The agency shall keep records for each adoptive family which shall contain:

- (1) The applications;
- (2) The adoptive assessment study;
- (3) Medical information;
- (4) Character references from a least three sources;
- (5) A summary of family contacts following approval for adoption until the child is placed;
- (6) A copy of the information given to the parent's concerning the child or children to be placed for adoption with them;
- (7) All legal documents pertaining to the adoption; and
- (8) Summary containing the placement decision, pre-placement and post-placement contacts with the family and the adoptive child, including services provided to stabilize the placement and decisions regarding finalization of the adoption.

31. Florida Administrative Code Rule 65C-15.035 reads as follows:

If a child-placing agency ceases operation, for any reason, it shall notify the department in writing at least 30 days prior to closing and shall provide the following information to the department:

(1) Legal transfer of surrender and releases of any children in its custody to another licensed child-placing agency or to the department;

(2) Appropriate transfer of responsibility for children in temporary placement to another licensed child-placing agency or to the department. Deposit all open and closed records to the department or another licensed child-placing agency.

(3) Appropriate transfer or termination of services to all other clients;

32. Florida Administrative Code Rule 65C-16.007(2) reads as follows:

(2) Criminal background checks through local, state and federal law enforcement agencies will be conducted on all persons age 18 or older residing in the prospective adoptive home. For applicants who have been foster parents or who have adopted in other states, local and state checks must be completed in the state of previous residence. Should the background reveal that the applicant has been convicted of a crime specified in Section 435.045(1)(a)1., F.S., the application must be rejected. Juvenile delinquency checks through the Florida Department of Law Enforcement must be conducted on all household members twelve through seventeen years of age as a public record search. If this check reveals a Juvenile Justice record, this information must be addressed in the home study and a determination must be made regarding possible impact on the adopted child.

33. Petitioner has proved by competent, substantial evidence that Respondent violated each of the Florida Administrative Code Rules cited in paragraphs 21, 23, 25, 27, and 29, supra. Respondent's failure to allow examination of its records after the mid-February "transfer" to Rigdon, Alexander & Rigdon, LLP, is a violation of Florida Administrative Code Rule 65C-15.004(6). However, of greatest concern, is the fact that Respondent has chosen to ignore the requirement of Florida Administrative Code Rule 65C-15.035(2) that it: "Deposit all open and closed records to the department or another licensed child-placing agency." Obviously, Rigdon, Alexander & Rigdon, LLP, is neither the department or a licensed child-placing agency.

34. Acknowledging that the administrative requirements for adoption probably vary greatly from Guatemala to Russia, it presents a weak argument for failing to adhere to the Florida requirements found in Florida Administrative Code Rules 65C-15.028 and 65C-15.034. This information would appear to be important and helpful in any adoption.

35. Petitioner did not offer any evidence regarding the allegations of paragraphs 8 and 9 of the Administrative Complaint, and, therefore, failed to prove same.

RECOMMENDATION

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

RECOMMENDED that Petitioner enter a final order revoking the license of Respondent, Homecoming Adoptions, Inc., effective February 20, 2006.

DONE AND ENTERED this 6th day of September, 2006, in Tallahassee, Leon County, Florida.



JEFF B. CLARK
Administrative Law Judge
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Filed with the Clerk of the
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this 6th day of September, 2006.

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.