

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
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STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

GOLD KEY DEVELOPMENT, INC. d/b/a
CARRIAGE INN,

Respondent.

DOAH CASE NO. 06-1908
AHCA NO. 2006003910

2006 NOV 15 P 1:28
DIVISION OF
ADMINISTRATIVE
HEARINGS

FILED

FINAL ORDER

This cause was referred to the Division of Administrative Hearings where the assigned Administrative Law Judge (ALJ), Suzanne F. Hood, conducted a formal administrative hearing. At issue in this case is whether the Petitioner should impose administrative fines for four class II violations and a survey fee on Respondent, and, if so, in what amount. The Recommended Order of October 17, 2006, is attached to this Final Order and incorporated herein by reference, except where noted infra.

RULING ON EXCEPTIONS

Neither party filed exceptions. However, the Respondent filed a Notice to the Agency of Appearance of Bias and Civil Rights Violations against Respondent Reference Hearing Dated September 18, 2006 ("Notice"), which shall herein be addressed as exceptions to the Recommended Order.

In the Notice, Respondent made general allegations concerning the fairness (or lack thereof) of the proceedings below, alleged that her civil rights were violated, and alleged bias on

the part of the Agency. To the extent that Respondent's Notice could be construed as exceptions to the Recommended Order in general, Respondent did not clearly identify which portions of the Recommended Order it disputed. Section 120.57(1)(k), Florida Statutes (2006), states "an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Therefore, the Agency need not rule on Respondent's "exception." Furthermore, assuming arguendo, Respondent's Notice contained valid exceptions, a thorough review of the record reveals that there is no basis to Respondent's allegations that the proceeding below, in essence, "did not comply with essential requirements of law," which would thus allow the Agency to grant Respondent's "exceptions" and reject or modify the findings of fact and conclusions of law pursuant to Section 120.57(1)(l), Florida Statutes (2006). Indeed, it appeared that the ALJ made every effort to insure that the Respondent understood the procedures for a formal hearing and was not at a disadvantage during the proceeding. See, e.g., Transcript, Pages 4-5, 6, 8, 9-11, 17-18, 27, 30, and 49. Therefore, based upon the foregoing, Respondent's "exceptions" to the Recommended Order are denied.

SCRIVENER'S ERROR

The Petitioner filed a Motion to Correct Scrivener's Error ("Motion") to which the Respondent filed an Objection to Change in Final Order ("Objection"). In Petitioner's Motion, Petitioner noted that, in the Recommendation section of the ALJ's Recommended Order, the ALJ mistakenly recommended that the Petitioner was guilty of four Class II violations and should impose a \$4,000 fine and \$500 survey fee upon itself. Obviously, in reviewing the record and the rest of the Recommended Order itself, it is obvious that the ALJ meant to recommend

that the Respondent was guilty of the violations and should be subject to the fine and survey fee.

Thus, The Recommendation of the ALJ should be changed to state

That Petitioner enter a final order, finding that Respondent is guilty of four class II violations, imposing an administrative fine in the amount of \$4000, and assessing a survey fee in the amount of \$500

The Agency determines that, in spite of Respondent's Objection to the contrary, this was a scrivener's error on the part of the ALJ, and that the suggested change is hereby incorporated and adopted as part of this final order.

FINDINGS OF FACT

The Agency adopts the findings of fact set forth in the Recommended Order.

CONCLUSIONS OF LAW

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

ORDER

Based upon the foregoing, the Respondent is hereby found guilty of four class II violations. Respondent shall be assessed an administrative fine of \$4,000 and a survey fee of \$500. Respondent shall be governed accordingly.

Unless payment has already been made, payment in the amount of \$4,500 is now due from the Respondent as a result of the agency action. Such payment shall be made in full within 30 days of the filing of this Final Order. The payment shall be made by check payable to Agency for Health Care Administration, and shall be mailed to the Agency for Health Care Administration, Attn. Jean Lombardi, Office of Finance and Accounting, 2727 Mahan Drive, Fort Knox Building 2, Mail Stop 14, Tallahassee, FL 32308.

DONE and ORDERED this 7th day of November, 2006, in Tallahassee, Florida.

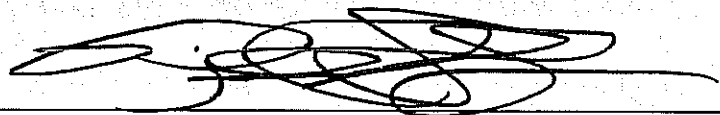

CHRISTA CALAMAS, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

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 14th day of November, 2006.


RICHARD J. SHOOP, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, FL 32308
(850) 922-5873

COPIES FURNISHED TO:

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