

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF AGRICULTURE AND)
CONSUMER SERVICES,)
)
Petitioner,)
)
vs.) Case No. 06-1925
)
ROYAL FUN TIME, INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on July 12, 2006, in Orlando, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: William N. Graham, Esquire
Department of Agriculture and
Consumer Services
Mayo Building, Suite 520
407 Calhoun Street
Tallahassee, Florida 32399-0800

For Respondent: Patricia Atkins, Qualified Representative
Royal Fun Time, Inc.
5770 West Irlo Bronson Memorial
Highway, No. 142
Kissimmee, Florida 34746

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated Subsection 616.242(19)(a)1.b., Florida Statutes (2005),¹ and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On February 3, 2006, Petitioner, Department of Agriculture and Consumer Affairs (Department), filed an Administrative Complaint against Respondent, Royal Fun Time, Inc. (Royal Fun Time), alleging that Royal Fun Time violated Subsection 616.242(19)(a)1.b., Florida Statutes, by operating an amusement ride in a manner or circumstance that presents a risk of serious injury to patrons. Respondent requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on May 26, 2006, for assignment of an administrative law judge. The case was originally assigned to Administrative Law Judge Daniel M. Kilbride, but was reassigned to Administrative Law Judge Susan B. Harrell to conduct the final hearing.

At the final hearing, the Department called the following witnesses: Jennifer Christian DeLorme; Joseph Roland Ensminger, Jr.; Kevin Waters; Allan Freeman Harrison; and Lisa Ensminger. Petitioner's Exhibits 1, 2, 3, 5, and 6 were admitted in evidence.

At the final hearing, Royal Fun Time called Rick Gayhart and Carlos Rivera as its witnesses. No exhibits were submitted in evidence for Respondent.

The one-volume of the Transcript of the final hearing was filed on August 8, 2006. The parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript. The Department timely filed its Proposed Recommended Order. As of the date of this Recommended Order, Royal Fun Time had not filed a proposed recommended order.

FINDINGS OF FACT

1. Royal Fun Time operates a permanent amusement park at Old Town Amusement Park (Old Town), in Kissimmee, Florida. Among the amusement rides housed at Old Town is a ride named "Tilt-a-Whirl." The ride consists of cup-like seats on round platforms that are located on a round base. As the base turns, the seats will also turn on the platforms. Once a person is seated on the ride, a lap bar is placed across the seat to prevent the rider from falling off the ride.

2. On January 16, 2006, Jennifer Christian DeLorme (Ms. DeLorme) visited Old Town with her friends, Joseph and Lisa Ensminger (Mr. and Ms. Ensminger). On the day of their visit, Rick Gayhart was operating the Tilt-a-Whirl. The proper procedure for operating the Tilt-a-Whirl requires the operator

to make sure that each patron is seated with the lap bar in place before starting the ride.

3. Ms. DeLorme and Ms. Ensminger bought tickets to ride the Tilt-a-Whirl. Ms. Ensminger got into a seat and urged Ms. DeLorme to find a seat near her. Ms. DeLorme slowly walked around the ride, apparently trying to decide which seat to take. As Ms. DeLorme was attempting to get into a seat, the ride started and dragged her, causing injuries to her elbow, abdomen, and back. People started screaming to stop the ride, and Mr. Gayhart stopped the ride.

4. According to Mr. Gayhart, there is a blind spot on the Tilt-a-Whirl which prevents the operator from observing all the seats when the operator is starting the ride at the control panel. He could not see whether Ms. DeLorme was in her seat because of the blind spot. The management of Royal Fun Time was aware that a blind spot existed, but did not take measures to eliminate the spot. Such measures could have been as simple as placing a mirror near the control panel.

5. After Mr. Gayhart stopped the ride, Mr. Ensminger requested that the manager be notified of the incident. Mike Rivera, an employee of Royal Fun Time, was called and came to the scene a short time later. He talked to Ms. DeLorme and her mother, who insisted that her daughter be taken to a hospital

for her injuries. An ambulance was called, and Ms. DeLorme was transported to a hospital.

6. While waiting to be taken to a hospital, Ms. DeLorme did not continue to patronize other rides in the park as claimed by Royal Fun Time. However, Ms. Ensminger did ride amusement rides in the park, while waiting for the ambulance.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

8. The Department seeks to impose an administrative fine against Royal Fun Time; thus, the Department has the burden to establish the allegations of the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996). The Department has alleged that Royal Fun Time violated Subsection 616.242(19)(a)1.b., Florida Statutes, which provides that the Department may fine the owner of an amusement ride up to \$2,500 per violation per day if the amusement ride has operated "[i]n a manner or circumstance that presents a risk of serious injury to patrons."

9. The Department has established by clear and convincing evidence that Royal Fun Time did violate Subsection 616.242(19)(a)1.b., Florida Statutes. Mr. Gayhart did not


ensure that all patrons were in their seats with the lap bars in place before starting the ride. While Mr. Gayhart may not have been able to see all the patrons because of a blind spot, Royal Fun Time was aware of the blind spot and did not take measures to correct the problem.

RECOMMENDATION

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

RECOMMENDED that a final order be entered finding that Royal Fun Time, Inc., violated Subsection 616.242(19)(a)1.b., Florida Statutes, and imposing an administrative fine of \$1,000.

DONE AND ENTERED this 22nd day of August, 2006, in Tallahassee, Leon County, Florida.



SUSAN B. HARRELL
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 22nd day of August, 2006.

ENDNOTE

1/ Unless otherwise indicated, all references to the Florida Statutes are to the 2005 version.

COPIES FURNISHED:

William N. Graham, Esquire
Department of Agriculture and
Consumer Services
Mayo Building, Suite 520
407 South Calhoun Street
Tallahassee, Florida 32399-0800

Charles D. Hundley
Royal Fun Time, Inc.
5770 West Irlo Bronson Memorial
Highway, No. 129
Kissimmee, Florida 34746

Gary Conroy
Royal Fun Time, Inc.
5770 West Irlo Bronson Memorial
Highway, No. 142
Kissimmee, Florida 34746

Patricia Atkins, Qualified Representative
Royal Fun Time, Inc.
5770 West Irlo Bronson Memorial
Highway, No. 142
Kissimmee, Florida 34746

Chris Green, Chief
Bureau of License and Bond
Division of Marketing
Department of Agriculture and
Consumer Services
407 South Calhoun Street, Mail Station 38
Tallahassee, Florida 32399-0800

Richard D. Tritschler, General Counsel
Department of Agriculture and
Consumer Services
407 South Calhoun Street, Suite 520
Tallahassee, Florida 32399-0800

Honorable Charles H. Bronson
Commissioner of Agriculture
Department of Agriculture and
Consumer Services
The Capitol, Plaza Level 10
Tallahassee, Florida 32399-0810

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.