

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OAKCREST EARLY EDUCATION)
CENTER, INC., AND JOANNE JONES,)
)
 Petitioners,)
)
 vs.) Case No. 07-4149
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this matter on October 18, 2007, in Ocala, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Joann Jones, pro se
Oakcrest Early Education Center, Inc.
7620 Northeast Jacksonville Road
Ocala, Florida 34479

For Respondent: Timothy M. Beasley, Esquire
Rochanda Mercier, Legal Intern
Department of Children and
Family Services
661 South Broad Street
Brooksville, Florida 34601

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioners' application for licensure of a child care facility should be approved or denied.

PRELIMINARY STATEMENT

Petitioners filed an application for licensure of a child care facility with the Department of Children and Family Services (DCF) on June 14, 2007. The application was denied due to serious violations of governing statutes by Petitioners when previously licensed.

Petitioners timely filed a request for an administrative hearing, which was then forwarded to DOAH on September 13, 2007. At the final hearing, Petitioners offered the testimony of one witness, Petitioner, Joanne Jones. Petitioners offered four exhibits into evidence: Exhibits 1, 3, and 4 were accepted. Respondent called one witness, Leighton Edwards, to testify at the final hearing. Official recognition of Respondent's Exhibits 1 through 6 was taken; Exhibits 7 and 8 were also admitted into evidence.

The parties advised the undersigned that no transcript of the final hearing would be ordered. They were given ten days from the date of the hearing to submit proposed recommended orders. As of the date of this Recommended Order, only

Respondent had filed a Proposed Recommended Order, and it was duly-considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Oakcrest Early Education Center, Inc. (Oakcrest), is a formerly licensed child care facility located at 1606 Northeast 22nd Avenue, Ocala, Florida. Its license was not renewed following an incident on June 7, 2005, to wit: A three-year-old child was left unattended in an Oakcrest vehicle for approximately three hours, resulting in harm to the child.

2. Petitioner, Joanne Jones (Jones), is the owner of Oakcrest.

3. DCF is the state agency responsible for, inter alia, licensing and monitoring child care facilities.

4. Oakcrest has not been licensed as a child care facility since the June 2005 incident. However, the Final Order in DOAH Case No. 05-2616 gave Oakcrest the right to re-apply for a license at any time. Based on that allowance, Jones filed an application for a child care facility license with DCF on June 17, 2007, some two years after the last license application was denied. The basis for denying the latest application was that Jones had done nothing to address the violations precipitating the previous non-renewal of license.

5. At the final hearing in the current case, Jones presented no evidence to convince DCF that prior violations

would not be repeated. In fact, Jones candidly admitted that her only reason for seeking a license was so that she could sell the building housing the child care facility for a higher price. Jones admitted she had no intention of operating the child care facility if a license was issued to her.

6. The violations in 2005 were serious. The child who was involved continues to suffer residual effects from the trauma suffered at that time. He has on-going physical and psychological issues directly related to being left in the hot day care van for about three hours.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2007).¹

8. DCF is the state agency charged with the responsibility of licensing child care facilities. See § 402.305, Fla. Stat.

9. Subsection 402.3055(1)(a), Florida Statutes, requires DCF to ascertain whether an applicant, owner or operator has ever had its license denied, revoked or suspended or been the subject of a disciplinary action. If so, DCF is then required to review the nature of the denial and/or disciplinary action before granting a new license. As set forth in that subsection, "If the department or local licensing agency determines as a

result of such review that it is not in the best interest of the state or local jurisdiction for the applicant to be licensed, a license shall not be granted." DCF's determination that it is not in the best interest of the state to grant Petitioners' license application was substantiated at final hearing.

10. The burden of persuasion in the instant case is on Petitioners. They must show that they are entitled to a license. See Department of Banking and Finance, Division of Securities and Investor Protection, v. Osborne Stern and Co., 670 So. 2d 932, 934 (Fla. 1996), wherein the court emphasized that while the burden of producing evidence may shift between parties in an application dispute, the burden of persuasion remains with the applicant.

11. Petitioners have failed to meet their burden. The fact that Jones has no intention of operating the facility even if a license was to be granted is tantamount to fraud in the application process. But even if her application was not fraudulent, she did not present any competent, substantial evidence to prove her entitlement to a license. Rather, she relied on her past experience. But her licensure history contains an extremely serious violation that she did not sufficiently address.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by DCF denying the application for licensure of a child care facility to Oakcrest and Jones.

DONE AND ENTERED this 6th day of November, 2007, in Tallahassee, Leon County, Florida.

S

R. BRUCE MCKIBBEN
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 6th day of November, 2007.

ENDNOTE

^{1/} Unless stated otherwise herein, all references to the Florida Statutes shall be to the 2007 version.

COPIES FURNISHED:

Joann Jones
Oakcrest Early Education Center, Inc.
7620 Northeast Jacksonville Road
Ocala, Florida 34479

Timothy M. Beasley, Esquire
Rochanda Mercier, Legal Intern
Department of Children and
Family Services
661 South Broad Street
Brooksville, Florida 34601

Gregory Venz, Agency Clerk
Department of Children and
Family Services
Building 2, Room 204B
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

John Copelan, General Counsel
Department of Children and
Family Services
Building 2, Room 204
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

Robert Butterworth, Secretary
Department of Children and
Family Services
Building 1, Room 202
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

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.