

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES,

Petitioner,
vs.

AGENCY Case No. A50008
DOAH Case No. 07-4527

FUN SPOT OF FLORIDA, INC.,

Respondent.

FILED
08 APR -8 AM 10:34
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

THIS CAUSE arising under the provisions of Florida Statutes, Chapter 616, Part II, came before the Commissioner of Agriculture of the State of Florida for consideration and final agency action. The Commissioner of Agriculture, as head of the Department of Agriculture and Consumer Services, has jurisdiction over the subject matter and the parties thereto.

I. BACKGROUND

The Petitioner issued an Administrative Complaint against the Respondent dated August 23, 2007, charging Respondent, FUN SPOT OF FLORIDA, INC., with two violations of Florida Statutes, Subsection 616.242 (19) (a) 1.b, for allegedly operating two its four Go Kart tracks in a manner or circumstance that presented a risk of serious injury its patrons. More specifically, a Department inspector, determined from his observations at Respondent's Orlando amusement park on May 31, 2007, that every section of the Commander Track and the Quad Helix Track was not being monitored during their operation. Rule 5F-8.015(4)(e), Florida Administrative Code, requires:

Every section of a track shall be monitored during its operation. This shall be done visually by attendants or by electronic visual and audio means.

The matter was referred to the Division of Administrative Hearings upon receipt of a timely request by Respondent for a formal administrative hearing. Thereafter, the matter was heard before The Honorable Jeff B. Clark, Administrative Law Judge ("ALJ") at a hearing held on November 4, 2007, in Orlando, Florida. A transcript of the proceedings was timely filed and each party submitted a proposed recommended order. The ALJ entered a Recommended Order on February 29, 2008. The ALJ concluded after a formal hearing that the tracks were being adequately monitored and that Petitioner had failed to establish the two alleged violations by clear and convincing evidence. Accordingly, the ALJ recommended dismissal of the Administrative Complaint.

The record consists of all notices, pleadings, motions, intermediate rulings, evidence admitted and matters officially recognized, the transcript of the proceedings, proposed findings, stipulations of the parties, and the Recommended Order of the ALJ. The parties did not file any exceptions to the Recommended Order. The Recommended Order is attached and incorporated herein as Exhibit "A".

II. FINDINGS OF FACT

1. The Commissioner of Agriculture adopts the findings of fact set forth in the attached Recommended Order of the Administrative Law Judge.

III. CONCLUSIONS OF LAW

2. The ALJ's conclusion that the Administrative Complaint issued August 23, 2007, should be dismissed is supported by competent, substantial evidence and meets the essential requirements of the law.

3. The Commissioner of Agriculture adopts the Conclusions of Law made by the ALJ in his Recommended Order attached hereto.

Accordingly, it is thereupon

ORDERED AND ADJUDGED:

A. The Commissioner of Agriculture adopts the recommendations of the ALJ set forth in his Recommended Order attached hereto.

B. The Administrative Complaint dated August 23, 2007, Agency Case No. A50008, is hereby dismissed.

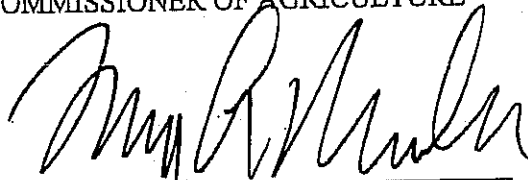
NOTICE OF RIGHT TO APPEAL

Any party to these proceedings adversely affected by this Final Order is entitled to seek review of this order pursuant to Section 120.68, Fla. Stat. (2002), and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be initiated by filing a petition for review or notice of appeal with the Agency Clerk of the Florida Department of Agriculture, Room 509 Mayo Building, Tallahassee, Florida 32399-0800. A copy of the petition for review or notice of appeal, accompanied by the filing fees prescribed by law must also be filed with the appropriate District Court of Appeal within thirty (30) days of the date this Order was filed with the Agency Clerk.

DONE AND ORDERED this 4th day of April, 2008.


CHARLES BRONSON

COMMISSIONER OF AGRICULTURE



Terry L. Rhodes, Assistant Commissioner
Department of Agriculture and Consumer Services

Filed with the Agency Clerk this th 4 day of April, 2008.


Agency Clerk

Copies furnished to:

William N. Graham, Senior Attorney
Florida Dept. of Agriculture
and Consumer Services
Mayo Building, Rm. 520
Tallahassee, FL 32399-0800
Attorney for Petitioner

Robert W. Anthony, Esquire
1325 W. Colonial Drive
Orlando, Florida 32804
Attorney for Respondent

The Honorable Jeff B. Clark
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060