



Florida Department of Agriculture & Consumer Services
CHARLES H. BRONSON, Commissioner
The Capitol PL-10, Tallahassee, FL 32399-0800

PLEASE REPLY TO:
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July 15, 2009

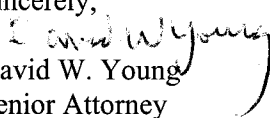
Honorable Claudia Llado, Clerk
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

**Re: FDACS vs. Larry Kravitsky
Agency Case No.: A47018;
FDACS #2007-0079**

Dear Ms. Llado:

Please find enclosed for filing the Final Order entered in the above case on July 14, 2009.

Sincerely,


David W. Young
Senior Attorney

Enclosures

DIVISION OF
ADMINISTRATIVE
HEARINGS

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STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

FLORIDA DEPARTMENT OF
AGRICULTURE AND CONSUMER
SERVICES

Petitioner,

vs.

DOAH CASE NO.: 07-5600PL

LARRY KRAVITSKY,

Respondent.

FINAL ORDER

THIS CAUSE, arising under the Structural Pest Control Act, Chapter 482, Florida Statutes, came before the Commissioner of Agriculture of the State of Florida for consideration and final agency action after entry of a Recommended Order following a formal hearing by The Honorable Larry J. Sartin, Administrative Law Judge (ALJ). 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 Recommended Order relates in pertinent part:

On or about February 13, 2007, the Department of Agriculture and Consumer Services issued an Administrative Complaint and Settlement Agreement, Notice to Cease and Desist, BEPC Case Number 06-1951, Administrative Complaint Number A47018, against Larry Kravitsky. It is alleged in Count 1 of the Administrative Complaint that Respondent had committed

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a violation of Section 482.165(1), Florida Statutes (2006), by "practicing pest control in the State of Florida without a Pest Control Business License" In Count 2 it is alleged that Respondent violated Florida Administrative Code Rule 5E-14.106(1) by "[a]pplying a pesticide in a manner inconsistent with its labeling"

At the final hearing Petitioner presented the testimony of Mary Cohen, Patricia Lucas, Lori Kelley, and Michael J. Page. Petitioner had 18 Exhibits, identified as Petitioner's Exhibits numbered 1, 3, 4, 8, 11 through 16, 18, 19, 22, 26, 28, and 30 through 32, admitted. Petitioner's Exhibit 30 is the deposition testimony of Michael Petrozzino, Petitioner's Exhibit 31 is the deposition testimony of Respondent, and Petitioner's Exhibit 32 is the deposition testimony of Carlos Rojas.

Petitioner also offered the deposition testimony, marked as Petitioner's Exhibit 29, of Cara Beth Walker. Petitioner informed Respondent when the deposition was taken that, due to Ms. Walker's employment, which necessitated her frequent absences from the State, that it would be used in lieu of her testimony at hearing if she were unable to attend the hearing. At hearing, Petitioner represented that Ms. Walker was more than 100 miles from either hearing location. In an abundance of caution, the deposition transcript was admitted conditioned upon Petitioner filing e-mails from Ms. Walker addressing her absence from the State on the date of the hearing.

Respondent testified on his own behalf and presented testimony from Carlos Rojas and John F. McDonough. No exhibits were offered at hearing by Respondent. He was given ten days from the date of the hearing, however, to file a list of pesticides that contain Diphacinone. Respondent did so and Petitioner filed an objection to the document. The document, marked as Respondent's Exhibit 1, is hereby admitted.

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

RECOMMENDED that a final order be entered by the Department of Agriculture and Consumer Services finding that Larry Kravitsky violated Section 482.165, Florida Statutes, and Florida Administrative Code Rule 5E-14.106(6), as alleged in the Administrative Complaint and imposing a fine in the amount of \$4,000.00.

The transcript of the proceedings was filed on March 3, 2009. The Administrative Law Judge (ALJ) entered the Recommended Order on June 2, 2009. On June 15, 2009, Respondent filed a motion for an extension of time for filing Exceptions to the Recommended Order. On June 17, 2009 the Department entered Order Granting Extension to File Exceptions, granting Respondent a ten(10) day extension. On June 29, 2009, Respondent filed a letter with the Department setting forth five(5) Exceptions to the Recommended Order.

The record consists of all notices, pleadings, motions, intermediate rulings, evidence admitted and matters officially recognized, the transcript of the proceedings, proposed findings and exceptions, stipulation of the parties and the Recommended Order of the ALJ.

The Recommended Order recommending entry of a Final Order assessing a fine of \$4,000.00 for violation of Section 482.165, Florida Statutes (2006) and Rule 5E-14.106(6), Florida

Administrative Code, is attached and incorporated herein, as Exhibit 1.

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 (ALJ).

III. CONCLUSIONS OF LAW

2. Respondent's exceptions assert that the ALJ incorrectly:

- a.) determined that Respondent performed pest control;
- b.) determined that the Respondent was required to or capable of having a separate business to perform pest control;
- c.) determined that Respondent applied any product or performed any service related to pest control;
- d.) determined that Respondent was required to be licensed; and
- e.) applied Florida Administrative Code, Rule 5E-14 to Respondent as a non-credentialed employee of Ship Shape Pest Control.

A copy of the letter transmitting these exceptions is attached hereto as Exhibit 2.

3. Section 120.57(1)(k), Florida Statutes, provides in pertinent part:

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.

4. Except for conclusory statements and references to Rule 5E-14.106(6), Florida Administrative Code, the filed exceptions do not identify the legal basis for the exceptions. Respondent also failed to include appropriate and specific citations to the record, or identify the portion of the Recommended Order to which the exceptions pertained. Therefore, the Commissioner of Agriculture declines to rule on the proffered exceptions.

5. The ALJ's conclusion that Respondent violated Section 482.165, Florida Statutes (2006) and Rule 5E-14.106(6), Florida Administrative Code, is supported by competent, substantial evidence and meets the essential requirements of the law.

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

ORDERED AND ADJUDGED:

A. The Commissioner of Agriculture adopts the Findings of Fact and Conclusions of Law of the ALJ set forth in his Recommended Order attached, in their entirety.

B. Respondent, Larry Kravitsky, has violated Section 482.165, Florida Statutes (2006) and 5E-14-106(6), Florida Administrative Code, and shall pay an administrative fine in the amount of \$4,000.00.

NOTICE OF RIGHT TO APPEAL

Any party to these proceedings adversely affected by this Final Order is entitled to seek review of this Final Order pursuant to Section 120.68, Florida Statutes (2006) and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be initiated by filing a petition or notice of appeal with the Agency Clerk, Room 509, Mayo Building, Tallahassee, Florida 32399-0800, and a copy of the same with the appropriate District Court of Appeal within thirty (30) days of the filing of this Final Order with the Agency Clerk.


DONE AND ORDERED this ^{for} 14 day of July, 2009

CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE

BY: 

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

Filed with the Agency Clerk this ^{for} 14 day of July, 2009.


Agency Clerk

CC:

Larry Kravitsky by Certified Mail, Return Receipt Requested