



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

2009 JAN 29 A 11:04

DIVISION OF
ADMINISTRATIVE
HEARINGS

PLEASE REPLY TO:
DAVID YOUNG, ESQ.
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January 28, 2009

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

Re: *FDACS v. 777 Food Marketing, LLC d/b/a Daily Food Market, A55892;*
Firm No.316836; DACS No. 2008-0130; DOAH Case No. 08-2836

Dear Ms. Llado:

Enclosed please find the original and one copy of the *Final Order* for filing in the above referenced case. Please return the date time stamped copy in the self addressed envelope.

If you have any questions, please do not hesitate to contact this office.

Sincerely,

|S|

David W. Young
Senior Attorney

Enclosures

CC: Khairl Islam, 777 Food Marketing, LLC d/b/a Daily Food Market 446 North
Wabash Avenue, Lakeland, Florida 33815

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

FILED
2009 JAN 29 A 11:03
DIVISION OF
ADMINISTRATIVE
HEARINGS

FLORIDA DEPARTMENT OF
AGRICULTURE AND CONSUMER
SERVICES

Petitioner,

vs.

AGENCY CASE NO. A55892
DOAH CASE NO. 08-2836

777 FOOD MARKETING, LLC
D/B/A DAILY FOOD MARKET

Respondent.

FINAL ORDER

THIS CAUSE arising under the provisions of the Florida Food Safety Act, Florida Statutes, Chapter 500, 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 April 18, 2008 charging Respondent 777 Food Marketing, LLC d/b/a Daily Food Market, (Daily Food Market) with violating provisions of the Florida Food Safety Act, Chapter 500, Florida Statutes, Chapter 5K-4, Florida Administrative Code and the 2001 FDA Food Code and Supplement thereto, adopted by reference in Rule 5K-4.002 (4), Florida Administrative Code on February 28, 2008, March 17, 2008 and April 1, 2008. The matter was referred to the Division of Administrative Hearings and thereafter heard

before The Honorable Daniel Manry, Administrative Law Judge (ALJ) at a hearing held on November 5, 2008. A transcript of the proceedings was not prepared. The ALJ entered a Recommended Order on December 22, 2008. As stated by the Administrative Law Judge in his Conclusions of Law:

“12. Petitioner (Department) has the burden of proof in this proceeding. Petitioner must show by clear and convincing evidence that Respondent committed the acts alleged in the Administrative Complaint and that the proposed penalty is reasonable. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne, Stern and Company, 670 So. 2d 932 (Fla. 1996). Petitioner satisfied its burden of proof concerning the alleged violations and the proposed penalty.

13. Food Establishments that have ancillary food service activities are regulated by Petitioner. §500.12 (5) (a). Respondent manufactured, sold, delivered and held adulterated and mislabeled food in violation of Subsections 500.04 (1) and (2) and 500.10 (1) (f). The aggravating and mitigating factors have been discussed in the Findings of Fact.”

The record consists of all notices, pleadings, motions, intermediate rulings, evidence admitted and matters officially recognized, proposed findings, stipulations of the parties, and the Recommended Order of the ALJ. The Respondent did not file any exceptions to the Recommended Order.

The Recommended Order recommending the entry of a Final Order assessing a fine of \$3,100.00 for violation of Florida Statutes, Subsections 500.04 (1) and (2) and 500.10 (1) (f) 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 (ALJ)

III. CONCLUSIONS OF LAW

2 The ALJ's conclusion that the Respondent violated Florida Statutes, Subsections 500.04 (1) and (2) and 500.10 (1) (f), is supported by competent, substantial evidence and meets the essential requirements of the law.

3. After a full review of the record, 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.

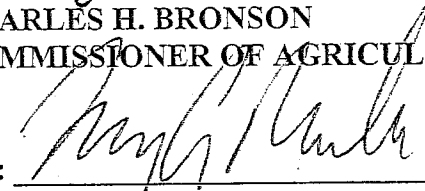
B. Respondent, 777 Food Marketing, LLC d/b/a Daily Food Market, has violated Florida Statutes, Subsection 500.04 (1) and (2) and 500.10 (1) (f) and shall pay an administrative fine in the amount of \$3,100.00.

NOTICE OF RIGHT TO APPEAL

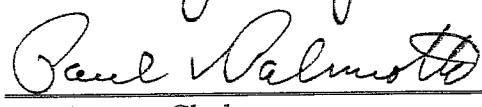
Any party to these proceedings adversely affected by this Final Order is entitled to seek review of this order pursuant to Section 120.68, Fla. Stat. (2008), and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be initiated by filing a petition for review or notice of appeal 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 27th day of January, 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 27th day of January, 2009.


Agency Clerk

Copies to: 777 Food Marketing, LLC d/b/a Daily Food Market, Respondent
State of Florida, Division of Administrative Hearings