

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

2010 JUN 21 A 9:27

Petitioner,

v.

DOAH CASE NO. 08-6055
AHCA NO. 2008010855
RENDITION NO.: AHCA-10-00097-FOF-OLC

SOUTH DADE ELDERLY CARE
CORPORATION d/b/a HOME SWEET
HOME NO. 2,

Respondent.

_____ /

FINAL ORDER

This cause was referred to the Division of Administrative Hearings where the assigned Administrative Law Judge (ALJ), Errol H. Powell, conducted a formal administrative hearing. At issue in this case is whether the Respondent committed the offenses set forth in the Amended Administrative Complaint and, if so, what action should be taken. The Recommended Order dated May 3, 2010, is attached to this Final Order and incorporated herein by reference.

RULING ON EXCEPTIONS

The Respondent filed exceptions to the Recommended Order, and the Petitioner filed a response to Respondent's exceptions.

In Exception No. 1, Respondent takes exception to Page 11 of the Recommended Order (Paragraph 33 to be exact), wherein the ALJ finds "AHCA states that the purpose of the NOV dated July 18, 2008, was to make certain that there was no lapse in the policy providing liability insurance coverage, not to provide South Dade a time frame in which to purchase the required liability coverage. The purpose stated by AHCA is found to be reasonable." Respondent argues the Agency's stated purpose is not relevant. Instead, Respondent argues the statements in the

letter itself are relevant. However, relevancy is not grounds for rejecting or modifying a finding of fact. The Agency may reject an ALJ's findings only where there is no competent, substantial evidence from which those findings can reasonably be inferred. See Heifetz v. Dep't of Bus. Reg., 475 So.2d 1277, 1281 (Fla. 1st DCA 1985); Belleau v. Dep't of Env't'l Protection, 695 So.2d 1305 (Fla. 1st DCA 1997); Strickland v. Fla. A&M Univ., 799 So.2d 276, 278 (Fla. 1st DCA 2001). Since the findings of fact in Paragraph 33 of the Recommended Order are based on competent, substantial evidence (See Transcript, Page 104), the Agency cannot reject or modify them. Therefore, the Agency denies Exception No. 1.

In Exception No. 2, Respondent takes exception to the ALJ's finding that Respondent violated the applicable Florida law by continuing to operate and conduct its business after its corporation was dissolved. However, Respondent failed to clearly identify the portion of the Recommended Order to which it is taking exception. Section 120.57(1)(k), Florida Statutes, states that an agency's final order "shall include an explicit ruling on each exception, but 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." Because the Respondent failed to clearly identify the disputed portion of the Recommended Order by page number or paragraph in Exception No. 2, the Agency declines to rule on the exception.

In Exception No. 3, the Respondent takes exception to the ALJ's finding that a change of ownership occurred without notifying the Agency. Like in Exception No. 2, the Respondent fails to clearly identify the disputed portion of the Recommended Order by page number or paragraph. Therefore, the Agency declines to Rule on Exception No. 3.

FINDINGS OF FACT

The Agency adopts the findings of fact set forth in the Recommended Order.

CONCLUSIONS OF LAW

The Agency adopts the conclusions of law set forth in the Recommended Order.

ORDER

Based upon the foregoing, the Respondent's assisted living facility license is hereby revoked.

DONE and ORDERED this 18 day of June, 2010, in Tallahassee, Florida.



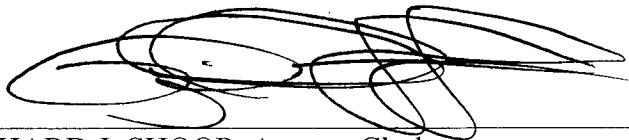
THOMAS W. ARNOLD, SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. or interoffice mail to the persons named below on this 21st day of June, 2010.



RICHARD J. SHOOP, Agency Clerk
Agency for Health Care Administration
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