

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Petitioner,) Case No. 08-6055
)
vs.)
)
SOUTH DADE ELDERLY CARE)
CORPORATION, d/b/a HOME SWEET)
HOME NO. 2,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on February 8, 2010, by video teleconference with connecting sites in Miami and Tallahassee, Florida, before Errol H. Powell, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Tria Lawton-Russell, Esquire
Agency for Health Care Administration
Spokane Building, Suite 103
8350 Northwest 52nd Terrace
Miami, Florida 33166

For Respondent: Lawrence E. Besser, Esquire
Samek and Besser
1200 Brickell Avenue, No. 1950
Miami, Florida 33131

STATEMENT OF THE ISSUE

The issue for determination is whether Respondent committed the offenses set forth in the Amended Administrative Complaint and, if so, what action should be taken.

PRELIMINARY STATEMENT

The Agency for Health Care Administration (AHCA) issued a two-count Administrative Complaint on November 3, 2008, against South Dade Elderly Care Corporation (South Dade), d/b/a Home Sweet Home No. 2 (HSH No. 2): Count I—failing to maintain liability insurance in violation of Sections 408.810(7), 429.275(3), and 624.605, Florida Statutes (2007), and Florida Administrative Code Rule 58A-5.021(8); and Count II—failing to notify AHCA that a change of ownership (CHOW) had taken place in violation of Sections 408.803(5), 408.831 (1), 408.804(1), 408.806(2)(b), 408.807, and 429.12, Florida Statutes (2007), and Florida Administrative Code Rule 58A-5.014(2). South Dade disputed the allegations of fact and requested a hearing. This matter was referred to the Division of Administrative Hearings on December 8, 2008.

The final hearing was scheduled on a date agreed to by the parties. Subsequently, the hearing was continued. Discovery issues ensued. South Dade filed a motion to dismiss, which was denied. AHCA also filed a motion to dismiss, which was denied.

On November 24, 2009, AHCA was granted leave to amend the Administrative Complaint. By the Amended Administrative Complaint, AHCA charged South Dade with four-counts: Count I— failing to maintain liability insurance in violation of Sections 408.810(7), 429.275(3), and 624.605, Florida Statutes (2008), and Florida Administrative Code Rule 58A-5.021(8); Count II— failing to notify AHCA that a change of ownership (CHOW) had taken place in violation of Sections 408.803(5), 408.804(1), 408.806(2)(b), 408.807, and 429.12, Florida Statutes (2008), and Florida Administrative Code Rule 58A-5.014(2); Count III—South Dade was a dissolved corporation, which may not carry-on any business, but continued to engage in business, in violation of Sections 607.1405(1) and 607.1622(1), Florida Statutes (2008); and Count IV—failing to pay all outstanding fine amounts that were assessed by Final Order by AHCA, not subject to further appeal, in violation of Section 408.831(1), Florida Statutes (2008).

Subsequently, AHCA filed an amended motion to compel, which was granted. This matter was re-scheduled for final hearing. By Order, sanctions were imposed upon South Dade for failure to provide discovery pursuant to an order issued by the undersigned. Also, AHCA requested that jurisdiction be relinquished, which was denied.

At hearing, AHCA represented that it was not pursuing Count IV of the Amended Administrative Complaint. Further, at hearing,

AHCA presented the testimony of one witness and entered 11 exhibits (Petitioner's Exhibits numbered 1-11) into evidence, with Exhibit No. 11 being deposition testimony. South Dade presented the testimony of one witness and entered no exhibits into evidence. Additionally, at hearing, South Dade moved to dismiss Count I of the Amended Administrative Complaint, which was denied.

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for more than ten days following the filing of the transcript. The Transcript, consisting of one volume, was filed on March 2, 2010. An extension of time was requested by the parties to file their post-hearing submissions, which was granted. The parties timely filed their post-hearing submissions, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. HSH No. 2 is a six-bed assisted living facility. It provides services to individuals with mental deficits and/or psychiatric issues. HSH No. 2 is located at 20700 Southwest 122nd Avenue, Miami, Florida.

2. After a settlement agreement with AHCA, South Dade was allowed to submit a CHOW to purchase HSH No. 2 from the prior owner.

3. South Dade became the legal owner of HSH No. 2 on December 28, 2005.

4. Prior to obtaining initial licensure from AHCA, South Dade was required to provide AHCA with proof of liability insurance.

5. Liability insurance coverage is for the protection of residents at the assisted living facility in case of injury or death. Without liability insurance, a resident injured at a facility would have no recourse if he/she was harmed or injured in any way.

6. AHCA, not the facility, is listed on each facility's certificate of insurance as the certificate holder. Additionally, the address of AHCA's licensure department is listed on each facility's certificate of insurance in order that AHCA will be notified in the instance of a lapse of insurance coverage.

7. South Dade provided proof of liability insurance to AHCA on October 17, 2005, for the period of September 23, 2005, through September 23, 2006. South Dade obtained the liability coverage from an insurance company in Miami, Florida.

8. Having obtained liability insurance and having provided proof of liability insurance, South Dade obtained licensure from AHCA.

9. South Dade was eventually issued a standard biennial license by AHCA for the period of December 28, 2007, through December 27, 2009. South Dade was the licensee.

10. On September 4, 2007, South Dade, as a corporation, was administratively dissolved due to its failure to file its annual report as required by law. At the time, South Dade was 100 percent owned by Larazo Martinez. South Dade does not dispute that Mr. Martinez allowed the dissolution of South Dade in order for Natalie Egea, who had recently become HSH No. 2's administrator, to gain ownership of HSH No. 2.¹

11. South Dade continued to carry-on business, as HSH No.2, even though it (South Dade) was administratively dissolved.

12. South Dade's corporate status was reinstated on May 11, 2009, over two years after its dissolution. Mr. Martinez was listed as the only officer, i.e., president.

13. Instead of applying for a CHOW to begin the process of new ownership of HSH No. 2, an application for renewal of the license was submitted to AHCA.

14. An application for licensure renewal was filed on November 13, 2007, with AHCA. Only South Dade, as the licensee, could apply for renewal of the license.

15. Ms. Egea completed the application for the licensure renewal. She listed Mr. Martinez, the individual, as the owner of HSH No. 2, not South Dade, the corporation. Furthermore, she

indicated that the applicant was an individual, not a corporation.

16. Ms. Egea was aware that there was a difference between South Dade, the corporation, and Mr. Martinez, the individual, owning HSH No. 2.²

17. After receiving the renewal application, AHCA sent a letter dated December 6, 2007, by certified mail, return receipt, to Ms. Egea, as the administrator of HSH No. 2, advising her, among other things, that the application omitted several documents and was, therefore, incomplete; that the liability insurance for HSH No. 2 had expired; and that proof of current liability insurance coverage needed to be provided. Further, the letter advised Ms. Egea that, in several items on one of the forms, she listed herself as the owner of the facility, but, on another document, she listed Mr. Martinez as the owner of the facility and listed herself as the administrator.

18. By letter dated December 20, 2007, Ms. Egea responded to AHCA's letter dated December 6, 2007, and, among other things, provided the omitted documents and corrected the documents referring to the owner of HSH No. 2 to reflect Mr. Martinez as the owner. Furthermore, Ms. Egea advised AHCA that the facility was having difficulty in obtaining liability insurance coverage.

19. The evidence demonstrates that, when Ms. Egea filed the renewal application, the intent in the application process was to

change the ownership of HSH No. 2 to Mr. Martinez, and, eventually, to herself. Further, the evidence demonstrates that Ms. Egea considered Mr. Martinez as owning HSH No. 2, even though AHCA's licensure documents showed South Dade as owning HSH No. 2 and as the licensee.

20. AHCA issued South Dade a conditional license for the period December 28, 2007, through February 27, 2008, pending proof of liability insurance coverage.

21. Through the issuance of a license to an assisted living facility, AHCA is guaranteeing to the public that that facility is in compliance with all the requirements set by AHCA. But through the issuance of a conditional license, AHCA is putting the public on notice that there are outstanding conditions of licensure that the facility has not met.

22. Even though AHCA renewed the license in the name of South Dade, the application should have been considered a CHOW. AHCA mistakenly treated the application as a renewal, instead of a CHOW. The renewal application was in actuality an application for licensure by an individual, not previously licensed by AHCA. As a result, the application was a CHOW, not a renewal application for licensure.

23. When a facility's liability insurance coverage expires, the facility is required to provide AHCA with proof of a renewal policy or proof of a new policy.

24. At the expiration of its liability insurance on September 23, 2006, South Dade was unable to immediately renew its liability insurance or obtain new liability insurance from companies in Miami. South Dade blamed the recent hurricanes in the South Florida area as causing insurance companies to become reluctant to issue new liability insurance policies. However, AHCA was the agency licensing and renewing the licensure of assisted living facilities in the entire State of Florida; but AHCA was not aware of any other assisted living facilities in the South Florida area having such difficulty. The undersigned does not find the reason put forth by South Dade for the difficulty in obtaining liability insurance coverage as a plausible reason.

25. AHCA sent a notice of violation (NOV) dated December 4, 2007, by certified mail, return receipt, to Ms. Egea, as the administrator, for the lapse of liability insurance coverage. The NOV, among other things, requested proof of current liability insurance within ten days and indicated, among other things, that the failure to comply could result in an administrative proceeding to revoke the license or deny licensure.

26. AHCA's interpretation of the ten-day period is the maximum amount of time that a facility has to provide evidence to AHCA that it has current liability insurance and that there has not been a lapse and, therefore, no violation. AHCA's interpretation is found to be reasonable.

27. South Dade failed to provide proof of insurance within the ten-day period or during the month of December 2007.

28. A second NOV dated January 2, 2008, was sent by certified mail, return receipt, to Ms. Egea, as the administrator, for the failure to have liability insurance coverage. The second NOV also requested proof of current liability insurance within ten days and indicated, among other things, that the failure to comply could result in an administrative proceeding to revoke the license or deny licensure.

29. South Dade was finally able to obtain liability insurance coverage, effective January 2, 2008, through January 2, 2009. AHCA was provided proof of the coverage.

30. However, approximately three months later, the liability insurance coverage was canceled, effective March 24, 2008, for non-payment of premium.

31. Notification of the canceled liability insurance coverage was faxed to AHCA on July 17, 2008.

32. AHCA sent a NOV dated July 18, 2008, the next day by certified mail, return receipt, to Ms. Egea, as the administrator, for the failure to have liability insurance coverage. The NOV also requested proof of current liability insurance within 21 days and indicated, among other things, that

the failure to comply could result in an administrative proceeding to revoke the license or deny licensure.

33. 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 insurance coverage. The purpose stated by AHCA is found to be reasonable.

34. South Dade received the NOV dated July 18, 2008, on July 23, 2008.

35. South Dade obtained liability insurance coverage on August 12, 2008, effective August 12, 2008, through August 12, 2009.

36. The usual procedure of the insurance agent from whom South Dade obtained the liability insurance coverage was to mail the Certificate of Liability Insurance to both the insured and AHCA when the insurance carrier approves and binds coverage. A finding of fact is made that the insurance agent followed the same procedure in the instant case.

37. On November 3, 2008, AHCA issued its Administrative Complaint charging South Dade, among other things, with failure to maintain liability insurance coverage.

38. After receiving the Administrative Complaint, Ms. Egea contacted the insurance agent regarding the Certificate of

Liability Insurance. The insurance agent reiterated to Ms. Egea that the Certificate of Liability Insurance was mailed to AHCA in August 2008.

39. On November 5, 2008, AHCA received the Certificate of Liability Insurance, as proof of insurance, when it was faxed to AHCA by the insurance agent.

40. Also, the liability insurance policy, effective August 12, 2008, had a different policy number than the last liability insurance policy. The different policy number indicated that the liability insurance coverage effective on August 12, 2008, was a new, not a renewal, policy.³

41. South Dade was without liability insurance coverage from March 24, 2008, until August 12, 2008, when liability insurance coverage was obtained. South Dade failed to maintain continuous liability insurance coverage from March 24, 2008, to August 11, 2008. South Dade had a lapse in liability insurance coverage from March 24, 2008, to August 11, 2008.

42. No evidence was presented to show that any resident was harmed in any form or manner at HSH No. 2.

CONCLUSIONS OF LAW

43. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2009).

44. The ultimate burden of proof is on AHCA to establish by clear and convincing evidence that South Dade committed the offenses as set forth in the Amended Administrative Complaint, except for Count IV which AHCA decided not to pursue. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); § 120.57(1)(j), Fla. Stat.

45. "If the meaning of the statute is clear then [this Administrative Law Judge's] task goes no further than applying the plain language of the statute. However, when a statutory term is subject to varying interpretations and that statute has been interpreted by the executive agency charged with enforcing the statute [this Administrative Law Judge] follows a deferential principle of statutory construction: An agency's interpretation of the statute that it is charged with enforcing is entitled to great deference. See BellSouth Telecommunications, Inc. v. Johnson, 708 So. 2d 594, 596 (Fla. 1998). [This Administrative Law Judge] will not depart from the contemporaneous construction of a statute by a state agency charged with its enforcement unless the construction is 'clearly unauthorized or erroneous.' (citation omitted)." GTC, Inc. v. Edgar, 967 So. 2d 781, 785 (Fla. 2007).

46. As to the administrative dissolution of South Dade, the Amended Administrative Complaint charged South Dade with

violating Sections 607.1405(1) and 607.1622(1), Florida Statutes (2008).

47. Section 607.1405, Florida Statutes (2008), provides in pertinent part:

(1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will not be distributed in kind to its shareholders;

(c) Discharging or making provision for discharging its liabilities;

(d) Distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

48. Section 607.1622, Florida Statutes (2008), provides in pertinent part:

(1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the Department of State for filing a sworn annual report on such forms as the Department of State prescribes that sets forth:

(a) The name of the corporation and the state or country under the law of which it is incorporated;

(b) The date of incorporation or, if a foreign corporation, the date on which it was admitted to do business in this state;

(c) The address of its principal office and the mailing address of the corporation;

(d) The corporation's federal employer identification number, if any, or, if none, whether one has been applied for;

(e) The names and business street addresses of its directors and principal officers;

(f) The street address of its registered office and the name of its registered agent at that office in this state;

(g) Language permitting a voluntary contribution of \$ 5 per taxpayer, which contribution shall be transferred into the Election Campaign Financing Trust Fund. A statement providing an explanation of the purpose of the trust fund shall also be included; and

(h) Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of this act.

49. The evidence demonstrates that Mr. Martinez intentionally allowed South Dade to be administratively dissolved in order for Ms. Egea to take ownership of HSH No. 2. South Dade was administratively dissolved on September 14, 2007.

50. Additionally, the evidence demonstrates that South Dade was not reinstated as a corporate entity until May 11, 2009. Further, the evidence demonstrates that HSH No. 2 was owned by South Dade; that AHCA issued the license to South Dade for the

operation of HSH No. 2; and that HSH No. 2 continued to operate and conduct business after South Dade was dissolved.

51. Hence, AHCA demonstrated that South Dade violated Sections 607.1405(1) and 607.1622(1), Florida Statutes (2008).

52. As to the CHOW, the Amended Administrative Complaint charges South Dade with violating Sections 408.803(5), 408.804(1), 408.806(2)(b), 408.807, and 429.12, Florida Statutes (2008), and Florida Administrative Code Rule 58A-5.014(2).

53. CHOW is defined in Section 408.803, Florida Statutes (2008), which provides in pertinent part:

As used in this part, the term:

* * *

(5) "Change of ownership" means an event in which the licensee changes to a different legal entity or in which 45 percent or more of the ownership, voting shares, or controlling interest in a corporation whose shares are not publicly traded on a recognized stock exchange is transferred or assigned, including the final transfer or assignment of multiple transfers or assignments over a 2-year period that cumulatively total 45 percent or greater. A change solely in the management company or board of directors is not a change of ownership.

54. Section 408.804, Florida Statutes (2008), provides in pertinent part:

(1) It is unlawful to provide services that require licensure, or operate or maintain a provider that offers or provides services that require licensure, without first

obtaining from the agency a license authorizing the provision of such services or the operation or maintenance of such provider.

55. Section 408.806, Florida Statutes (2008), provides in pertinent part:

(2) (a) The applicant for a renewal license must submit an application that must be received by the agency at least 60 days prior to the expiration of the current license. If the renewal application and fee are received prior to the license expiration date, the license shall not be deemed to have expired if the license expiration date occurs during the agency's review of the renewal application.

(b) The applicant for initial licensure due to a change of ownership must submit an application that must be received by the agency at least 60 days prior to the date of change of ownership.

56. Section 408.807, Florida Statutes (2008), provides in pertinent part:

Whenever a change of ownership occurs:

(1) The transferor shall notify the agency in writing at least 60 days before the anticipated date of the change of ownership.

(2) The transferee shall make application to the agency for a license within the timeframes required in s. 408.806.

(3) The transferor shall be responsible and liable for:

(a) The lawful operation of the provider and the welfare of the clients served until the date the transferee is licensed by the agency.

(b) Any and all penalties imposed against the transferor for violations occurring before the date of change of ownership.

(4) Any restriction on licensure, including a conditional license existing at the time of a change of ownership, shall remain in effect until the agency determines that the grounds for the restriction are corrected.

(5) The transferee shall maintain records of the transferor as required in this part, authorizing statutes, and applicable rules, including:

- (a) All client records.
- (b) Inspection reports.
- (c) All records required to be maintained pursuant to s. 409.913, if applicable.

57. Section 429.12, Florida Statutes (2008), provides in pertinent part:

It is the intent of the Legislature to protect the rights of the residents of an assisted living facility when the facility is sold or the ownership thereof is transferred. Therefore, in addition to the requirements of part II of chapter 408, whenever a facility is sold or the ownership thereof is transferred, including leasing:

(1) The transferee shall notify the residents, in writing, of the change of ownership within 7 days after receipt of the new license.

(2) The transferor of a facility the license of which is denied pending an administrative hearing shall, as a part of the written change-of-ownership contract, advise the transferee that a plan of correction must be submitted by the transferee and approved by the agency at least 7 days before the change of ownership and that failure to correct the condition which resulted in the moratorium pursuant to part II of chapter 408 or denial of licensure is grounds for denial of the transferee's license.

58. Florida Administrative Code Rule 58A-5.014 provides in pertinent part:

(2) CHANGE OF OWNERSHIP (CHOW).

(a) Pursuant to Section 429.12, F.S., the transferor shall notify the agency in writing, at least 60 days prior to the date of transfer of ownership.

(b) Completed applications shall be filed with the Agency by the transferee at least 60 days before the date of transfer of ownership as required by Section 429.12, F.S., and must include the information and fees required under subsection (1) of this rule. An application package for a change of ownership of a currently licensed facility is available from the Agency Central Office.

(c) At the time of transfer of ownership, all resident funds on deposit, advance payments of resident rents, resident security deposits and resident trust funds held by the current licensee shall be transferred to the applicant. Proof of such transfer shall be provided to the agency at the time of the agency survey and prior to the issuance of a standard license. This provision does not apply to entrance fees paid to a continuing care facility subject to the acquisition provisions in Section 651.024, F.S.

1. The transferor shall provide to each resident a statement detailing the amount and type of funds credited to the resident for whom funds are held by the facility.

2. The transferee shall notify each resident in writing of the manner in which the transferee is holding the resident's funds and state the name and address of the depository where the funds are being held, the amount held, and type of funds credited.

(d) The current resident contract on file with the facility shall be considered valid

until such time as the transferee is licensed and negotiates a new contract with the resident.

(e) Failure to apply for a change of ownership of a licensed facility as required by Section 429.12, F.S., shall result in a fine levied by the Agency pursuant to Section 429.19, F.S.

(f) During a change of ownership, the owner of record is responsible for ensuring that the needs of all residents are met at all times in accordance with Part III of Chapter 400, F.S., and this rule chapter.

(g) If applicable, the transferor shall comply with Section 408.831(2), F.S., prior to Agency approval of the change of ownership application.

59. The evidence demonstrates that South Dade was the licensee and that South Dade was the owner of HSH No. 2. The evidence further demonstrates that South Dade failed to continue to be a corporate entity when it was administratively dissolved on September 14, 2007, and was not reinstated as a corporate entity at the time that the renewal application was filed; that the renewal application was completed by Ms. Egea; that South Dade was not listed as the owner of HSH No. 2; that Mr. Martinez, not South Dade, was listed as having 100 percent ownership interest in HSH No. 2; that Mr. Martinez, as an individual, was listed as the applicant, not South Dade. Consequently, a CHOW had occurred.

60. Furthermore, the evidence demonstrates that AHCA was not notified 60 days prior to the CHOW.

61. Hence, AHCA demonstrated that South Dade violated Sections 408.803(5), 408.804(1), 408.806(2)(b), 408.807, and 429.12, Florida Statutes (2008), and Florida Administrative Code Rule 58A-5.014(2).

62. As to the failure to maintain liability insurance, the Amended Administrative Complaint charged South Dade with violating Sections 408.810(7), 429.275(3), and 624.605, Florida Statutes (2008), and Florida Administrative Code Rule 58A-5.021(8).

63. Section 408.810, Florida Statutes (2008), provides in pertinent part:

In addition to the licensure requirements specified in this part, authorizing statutes, and applicable rules, each applicant and licensee must comply with the requirements of this section in order to obtain and maintain a license.

* * *

(7) If proof of insurance is required by the authorizing statute, that insurance must be in compliance with chapter 624, chapter 626, chapter 627, or chapter 628 and with agency rules.

64. Section 429.275, Florida Statutes (2008), provides in pertinent part:

The assisted living facility shall be administered on a sound financial basis that is consistent with good business practices.

* * *

(3) The administrator or owner of a facility shall maintain liability insurance coverage that is in force at all times.

65. Section 624.605, Florida Statutes (2008), provides in pertinent part:

(1) "Casualty insurance" includes:

* * *

(b) Liability Insurance --Insurance against legal liability for the death, injury, or disability of any human being, or for damage to property, with provision for medical, hospital, and surgical benefits to the injured persons, irrespective of the legal liability of the insured, when issued as a part of a liability insurance contract.

66. Florida Administrative Code Rule 58A-5.021 provides in pertinent part:

(8) LIABILITY INSURANCE. Pursuant to Section 429.275, F.S., facilities shall maintain liability insurance coverage, as defined in Section 624.605, F.S., in force at all times. On the renewal date of the facility's policy or whenever a facility changes policies, the facility shall file documentation of continued coverage with the AHCA central office. Such documentation shall be issued by the insurance company and shall include the name of the facility, the street address of the facility, that it is an assisted living facility, its licensed capacity, and the dates of coverage.

67. The evidence demonstrates that South Dade failed to have liability insurance coverage in force at all times. South Dade was without liability insurance coverage for the period March 24, 2008, to August 11, 2008, and obtained liability insurance coverage effective on August 12, 2008. Therefore, South Dade failed to maintain continuous, and had a lapse in, liability insurance coverage from March 24, 2008, through August 11, 2008.

68. AHCA's interpretation that to maintain and have in force at all times liability insurance coverage was to maintain continuous coverage and not have a lapse in coverage is a reasonable interpretation and will not be disturbed.

69. Further, the purpose presented by AHCA as to the time frame provided to South Dade in the NOV of July 18, 2008, was not a time frame in which to obtain liability insurance coverage, but was a time frame in which to show that it (South Dade) had continuous, non-lapsed liability insurance coverage is reasonable. The evidence demonstrates that South Dade was unable to make such a showing.

70. Hence, AHCA demonstrated that South Dade violated Sections 408.810(7), 429.275(3), and 624.605, Florida Statutes (2008), and Florida Administrative Code Rule 58A-5.021(8).

RECOMMENDATION

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

RECOMMENDED that the Agency for Health Care Administration enter a final order:

1. Finding that South Dade Elderly Care Corporation, d/b/a Home Sweet Home No. 2, committed the offenses set forth in Counts I, II, and III in the Amended Administrative Complaint.

2. Revoking the license of South Dade Elderly Care Corporation, d/b/a Home Sweet Home No. 2.

DONE AND ENTERED this 3rd day of May, 2010, in Tallahassee, Leon County, Florida.

Errol H. Powell

ERROL H. POWELL
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 3rd day of May, 2010.

ENDNOTES

^{1/} Mr. Martinez did not testify at hearing. Ms. Egea testified on behalf of South Dade and provided the testimony. Her

testimony regarding the dissolution of South Dade is found to be credible.

^{2/} Ms. Egea testified that South Dade had been dissolved and that she saw no difference between Mr. Martinez, who owned 100 percent of South Dade, and South Dade; to her they were one-in-the-same. Ms. Egea's testimony that she saw no difference between South Dade and Mr. Martinez is not found to be credible. She knew that South Dade had been dissolved and that Mr. Martinez owned HSH No. 2. Furthermore, she indicated on the renewal application that the applicant was an individual, not a corporation.

^{3/} AHCA provided testimony that HSH No. 2 may have purchased retroactive insurance. The evidence fails to support a finding that HSH No. 2 purchased retroactive insurance.

COPIES FURNISHED:

Tria Lawton-Russell, Esquire
Agency for Health Care Administration
Spokane Building, Suite 103
8350 Northwest 52nd Terrace
Miami, Florida 33166

Lawrence E. Besser, Esquire
Samek and Besser
1200 Brickell Avenue, No. 1950
Miami, Florida 33131

Richard J. Shoop, Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

Justin Senior, General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

Thomas W. Arnold, Secretary
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

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.