

FILED
Department of Business and Professional Regulation
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File # 2009-05758

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF HOTELS AND RESTAURANTS,

Petitioner,

DBPR Case No.: 2008-059013
DOAH Case No.: 08-6209

and

FLORIDA RESTAURANT AND
LODGING ASSOCIATION, INC.,

Intervenor,

vs.

ENFIN ENTERPRISES, INC.
d/b/a CHEZ PIERRE,

Respondent.

FINAL ORDER

THIS MATTER came before the Secretary for the Department of Business and Professional Regulation ("Department") in accordance with the provisions of Section 120.57(1), Florida Statutes, for consideration of the Recommended Order entered by the Division of Administrative Hearings (DOAH) on April 15, 2009. The Recommended Order is attached as Exhibit 1, and incorporated by reference.

On March 2, 2009, an administrative hearing was held in this matter before T. Kent Wetherell, II, Administrative Law Judge. On April 15, 2009, Judge Wetherell's Recommended Order was entered with DOAH and transmitted to the Department. On May 1, 2009, Respondent filed Respondent's Exceptions to Recommended Order. The

Exceptions are attached as Exhibit 2, and incorporated by reference. On May 11, 2009, Petitioner and Intervenor filed their Joint Response to Respondent's Exceptions to Recommended Order. The Response to Exceptions are attached as Exhibit 3, and incorporated by reference.

RESPONDENT'S EXCEPTIONS & JOINT RESPONSES THERETO

1. Respondent's exceptions and Petitioner and Intervenor's joint responses thereto were both timely filed and considered for the purposes of entering this order.

2. Section 120.57(1)(k), Florida Statutes, provides:

The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted under this subsection shall be de novo. The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The 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.

3. Section 120.57(1)(l), Florida Statutes, provides:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not

based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

Respondent's Exceptions to Findings of Facts

4. Respondent filed an exception to the finding of fact contained in paragraph 24 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the Administrative Law Judge's (ALJ's) finding of fact.

5. Respondent filed an exception to the finding of fact contained in paragraph 61 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's finding of fact.

6. Respondent filed an exception to the finding of fact contained in paragraph 62 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's finding of fact.

7. Respondent filed an exception to the finding of fact contained in paragraph 63 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's finding of fact.

8. Respondent filed an exception to the finding of fact contained in paragraph 64 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's finding of fact.

Respondent's Exceptions to Conclusions of Law

9. Respondent filed an exception to the conclusion of law contained in

paragraph 81 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's conclusions of law.

10. Respondent filed an exception to the conclusion of law contained in paragraph 82 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's conclusions of law.

11. Respondent filed an exception to the conclusion of law contained in paragraph 83 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's conclusions of law.

12. Respondent filed an exception to the conclusion of law contained in paragraph 84 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's conclusions of law.

13. Respondent filed an exception to the conclusion of law contained in paragraph 85 of the Recommended Order. This exception is rejected. There is competent substantial evidence in the record to support the ALJ's conclusions of law.

Non-Rule Policy Exception

14. Respondent filed an exception entitled "Exception to the creation of a new, previously unexpressed non-rule policy." This exception is rejected.

FINDINGS OF FACT

15. The Department adopts and incorporates by reference the findings of fact contained in the ALJ's Recommended Order in toto.

16. There is competent substantial evidence to support the Department's findings of fact.

CONCLUSIONS OF LAW


17. The Department adopts and incorporates by reference the conclusions of law contained in the ALJ's Recommended Order in toto.

Having considered the pleadings, the Findings of Fact and Conclusions of Law herein, and being otherwise fully advised in the premises it is, hereby, ORDERED AND ADJUDGED:

1. The Amended Administrative Complaint is dismissed.

This Final Order shall become effective on the date of filing with the Agency Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 14th day of July, 2009.



Charles W. Drago, Secretary
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-0750

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party adversely affected by this final order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within 30 days of the effective date of this order, in accordance with Rule 9.110, Fla. R. App. P., and Section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided by U.S. Mail to E. Gary Early, Esquire, Messer, Caparello & Self, P.A., 2618 Centennial Place, Tallahassee, Florida 32308, and Maureen McCarthy Daughton and Cathy M. Sellers, Broad and Cassel, 215 South Monroe Street, Suite 400, Tallahassee, Florida 32301, this 15th day of July, 2009.

SARAH WACHMAN, AGENCY CLERK

Sarah Wachman

Brandon Nichols, Deputy Clerk

Copies Furnished to:
Reginald Dixon, General Counsel
Bill Veach, Director, Division of Hotels and Restaurants
Eric Hurst, Chief Professions Attorney
T. Kent Wetherell, II, ALJ, Division of Administrative Hearings

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or PO Box No. **Broad and Cassel**
City, State, ZIP+4® **215 South Monroe Street, Suite 400**
Tallahassee, Florida 32301

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