

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF HOTELS AND)
RESTAURANTS,)
)
Petitioner,)
)
vs.) Case No. 09-5523
)
ALTHEA'S,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing of this case for the Division of Administrative Hearings (DOAH) on February 17, 2010, by video teleconference in Tallahassee and Sarasota, Florida.

APPEARANCES

For Petitioner: Charles F. Tunnickliff, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street, Suite 42
Tallahassee, Florida 32399

For Respondent: Diane Silvia, pro se
220 West Miami Avenue
Venice, Florida 34285

STATEMENT OF THE ISSUES

The issues are whether Respondent operated as a public food service establishment with dirty food contact surfaces and

utensils and without a certified food protection manager present in violation of Florida Administrative Code Rules 61C-1.001(14) and 61C-4.023(1) and in violation of Subsection 509.032(6), Florida Statutes (2008),¹ and, if so, what penalty, if any, should be imposed against Respondent's license.

PRELIMINARY STATEMENT

Petitioner filed an Administrative Complaint against Respondent on February 6, 2009. Respondent timely requested an administrative hearing, and Petitioner referred the matter to DOAH to conduct the hearing.

At the hearing, Petitioner presented the testimony of one witness and submitted two exhibits for admission into evidence. Respondent presented the testimony of two witnesses and submitted one composite exhibit for admission into evidence.

The identity of the witnesses and exhibits, and the rulings regarding each, are set forth in the one-volume Transcript of the hearing filed on February 26, 2010. Petitioner timely filed its Proposed Recommended Order (PRO) on March 8, 2010. Respondent did not file a PRO.

FINDINGS OF FACT

1. Petitioner is the state agency responsible for regulating and inspecting public food service establishments defined in Subsection 509.013(5). Respondent is licensed by

Petitioner as a public food service establishment. The business address of Respondent is 220 West Miami Avenue, Venice, Florida.

2. On October 21, 2008, an inspector for Petitioner performed a food service inspection of Althea's. No certified food manager was on duty during the inspection. Four or more employees were engaged in food preparation. A buildup of soil material existed on equipment identified in the record as the Blakeslee mixer head.

3. Both violations are critical violations. Both violations present a threat to the public health.

4. Petitioner performed a re-inspection of the premises on December 23, 2008. During the re-inspection, the violations from October 21, 2008, had not been corrected.

5. Ms. Diane Silvia was scheduled to be the certified food manager for Respondent on December 23, 2008. However, she was not present on the premises at the time of the inspection.

CONCLUSIONS OF LAW

6. DOAH has jurisdiction over the subject matter of and parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2009). DOAH provided the parties with adequate notice of the administrative hearing.

7. Petitioner 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 the reasonableness of any proposed penalty.

Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). Petitioner satisfied its burden of proof.

8. Petitioner showed by clear and convincing evidence that Respondent operated a food service establishment in violation of Rules 61C-1.001(14) and 61C-4.023(1) and Subsection 509.032(6). Subsection 509.261(1) authorizes Petitioner to impose a fine in an amount up to \$1,000.00 for each offense committed by Respondent.


9. Petitioner proposes two fines of \$1,000.00 for each offense. The proposed fines are reasonable under the facts and circumstances in this proceeding.

RECOMMENDATION

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

RECOMMENDED that the Division of Hotels and Restaurants enter a final order finding Respondent guilty of the allegations in the Administrative Complaint and imposing a fine in the aggregate amount of \$2,000.00, to be paid within 30 days of the date that this proceeding becomes final.

DONE AND ENTERED this 23rd day of March, 2010, in
Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of March, 2010.

ENDNOTE

^{1/} Reference to subsections, sections, and chapters are to
Florida Statutes (2008), unless otherwise stated.

COPIES FURNISHED:

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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.