

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)	
PROFESSIONAL REGULATION,)	
DIVISION OF HOTELS AND)	
RESTAURANTS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 10-0038
)	
BRADFORD MOTEL,)	
)	
Respondent.)	
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RECOMMENDED ORDER

On February 17, 2010, an administrative hearing in this case was held by video teleconference between Tallahassee and Tampa, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner:	Charles F. Tunnichliff, Esquire
	Department of Business and
	Professional Regulation
	1940 North Monroe Street, Suite 42
	Tallahassee, Florida 32399
For Respondent:	Tom Collins, <u>pro se</u>
	Bradford Motel
	2811 Highway 60 East
	Valrico, Florida 33594

STATEMENT OF THE ISSUES

The issues in the case are whether the allegations of the Administrative Complaint are correct, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By an undated Administrative Complaint, the Department of Business and Professional Regulation, Division of Hotels and Restaurants (Petitioner), alleged that the Bradford Motel (Respondent), owned and operated by Tom Collins, was determined after inspection to be in violation of various health and safety regulations. Mr. Collins filed a request for a formal administrative hearing dated September 8, 2008, with the Petitioner. On January 4, 2010, the Petitioner forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the formal hearing.

At the hearing, the Petitioner presented the testimony of two witnesses and had Exhibits 1 through 4 admitted into evidence. Mr. Collins participated in the hearing by telephone and testified on behalf of the Respondent.

The Transcript of the hearing was filed on March 8, 2010. The Petitioner filed a Proposed Recommended Order on March 16, 2010.

FINDINGS OF FACT

1. The Petitioner is the state agency charged with regulation of hotels and restaurants pursuant to Chapter 509, Florida Statutes (2008).

2. At all times material to this case, the Respondent was a residential hotel located at 2811 East Highway 60, Valrico, Florida 33594, and holding license number 6268431.

3. On May 6, 2008, Mark Cannella, a trained inspector employed by the Petitioner, performed a routine inspection of the Respondent.

4. Mr. Cannella identified various safety regulation violations in a written report that was provided at the time of the inspection to Carolyn Seas, a representative of the Respondent.

5. Safety regulation violations that constitute an immediate threat to public safety are deemed to be "critical" violations.

6. Mr. Cannella noted in his inspection report that, at the time of the inspection, the Respondent had no smoke detectors capable of providing appropriate warning to hearing-impaired motel residents.

7. The absence of smoke detectors capable of warning hearing-impaired residents was identified as a critical

violation because hearing-impaired guests may be unable to hear the alarm presented by a standard smoke detection device.

8. Mr. Cannella's inspection report also noted that there was no backflow prevention device installed on a water heater hose bibb.

9. A backflow prevention device prevents potentially contaminated water from being drawn into supply lines. The lack of a backflow prevention device presents a contamination risk to the entire water supply, should tainted water be drawn back into the supply lines.

10. A re-inspection was conducted on June 11, 2008, by Eric Singletary, another inspector employed by the Petitioner. Mr. Singletary's inspection report noted that the violations related to the smoke detection devices and the backflow prevention device had not been corrected. A copy of Mr. Singletary's written report was again provided to Ms. Seas.

11. A second re-inspection was conducted by Mr. Singletary on July 9, 2008. Mr. Singletary's inspection report noted that the violations related to the smoke detection devices and backflow prevention device still remained uncorrected. Ms. Seas was again provided a copy of Mr. Singletary's written report.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2009).

13. The Petitioner is the state agency charged with the regulation of public lodging establishments in the State of Florida. See Chapter 509, Fla. Stat. (2008).

14. The Administrative Complaint alleged that, at the time of the inspections identified herein, the Respondent lacked proper smoke detection devices and a backflow prevention device. Additional allegations set forth in the Administrative Complaint that were related to mattress pads were dismissed by the Petitioner at the hearing.

15. The Petitioner has the burden of proving by clear and convincing evidence the remaining allegations set forth in the Administrative Complaint against the Respondent. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The burden has been met.

16. Section 509.216, Florida Statutes (2008), requires that "[s]pecialized smoke detectors for the deaf and hearing impaired shall be available upon request by guests in public lodging establishments at a rate of at least one such smoke

detector per 50 dwelling units or portions thereof, not to exceed five such smoke detectors per public lodging facility."

17. The evidence presented in this case establishes that the Respondent failed to have the appropriate smoke detection devices available for use by hearing-impaired guests.

18. The Petitioner has adopted by incorporation the applicable provisions of the Food Code. Fla. Admin. Code R. 61C-4.010(1). In relevant part, Food Code Rule 5-203.14 requires that the plumbing system preclude the backflow of potential contaminants into the water supply through the installation of proper backflow devices on hose bibbs.

19. The evidence presented in this case establishes that the Respondent failed to have an appropriate backflow prevention device installed on a water heater hose bibb.

20. Subsection 509.261(1), Florida Statutes (2008), provides that each offense is punishable by a fine not to exceed \$1,000 per offense. In addition, offenses may be disciplined by mandatory attendance at an educational program sponsored by the Hospitality Education Program, or by suspension, revocation, or refusal of a license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and Professional Regulation, Division of Hotels and Restaurants,

enter a final order imposing a fine of \$1,000 against the Respondent and requiring that the Respondent complete an appropriate educational program related to the violations identified herein.

DONE AND ENTERED this 9th day of April, 2010, in
Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of April, 2010.

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.