

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FRANCOISE ANTOINE,)
)
 Petitioner,)
)
 vs.) Case No. 10-2281
)
 AGENCY FOR PERSONS WITH)
 DISABILITIES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge Eleanor M. Hunter conducted a final hearing in this case by video teleconference between sites in Port St. Lucie and Tallahassee, Florida, on June 11, 2010.

APPEARANCES

For Petitioner: Mario Raynald Theodore, Esquire
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For Respondent: Laurel Hopper, Esquire
Department of Children and Family Services
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STATEMENT OF THE ISSUE

The issue is whether Petitioner is eligible to receive a license to operate a group home.

PRELIMINARY STATEMENT

Petitioner owned and operated a licensed group home for persons with developmental disabilities. She was notified by letter dated March 30, 2010, that her application to renew the license was denied by the Respondent pursuant to Sections 393.067 and 393.0673, Florida Statutes (2009). On April 16, 2010, Respondent received Petitioner's Election of Rights disputing the facts upon which the denial was based and requesting an evidentiary hearing. Respondent transferred the case to the Division of Administrative Hearings on April 27, 2010. The final hearing was scheduled, by Notice dated May 11, 2010, and was held on June 11, 2010.

At the hearing, Respondent called five witnesses: Child Protective Investigator Kathleen Forsman; Adult Abuse Protective Investigator Martin Markowitz; Adult Protective Investigator Sonia Dixon; Human Services Program Analyst Cordroy Charles; and Area 15 Program Administrator Peter Karlan. Respondent's Exhibits 1 through 6 were received in evidence. At the request of Respondent, Petitioner testified on her own behalf and presented the testimony of a person who is developmentally disabled and will be identified only by the initials P. A. M. Petitioner's Exhibits C, D, E, F, and G were received in evidence. Proposed Recommended Orders were received July 8, 2010. No transcript of the proceedings was filed.

FINDINGS OF FACT

1. In 2006, Petitioner Francoise Antoine ("Petitioner" or "Ms. Antoine") operated an Agency for Persons with Disabilities ("APD") licensed group home for persons with developmental disabilities. It was called "Just Like Home" and was located on Ranch Avenue in Port St. Lucie, Florida.

2. Respondent Agency for Persons with Disabilities ("APD" or "Respondent") is the State agency responsible for licensing group homes for persons with developmental disabilities, pursuant to Section 393.067, Florida Statutes (2009).

3. In December 2006, the Department of Children and Family Services ("DCF") responded to a hotline allegation of abuse of a resident, F. G., at Just Like Home, by sending Child Protective Investigator Kathleen Forsman to the home. She found that F. G., a non-verbal, severely mentally handicapped 15-year-old, had scratches on her arms and face, bite marks, and a swollen hand, and determined that her wounds were inflicted by another resident. As a result, F. G. was moved to another home and Ms. Forsman made verified findings of inadequate supervision by the responsible caretaker, Ms. Antoine, for failing to adequately protect F. G. from injury.

4. Ms. Antoine knew that F. G. was bitten by her roommate. Ms. Antoine noticed marks on F. G. when she was dressing her for school and notified her school. Someone at the school

apparently reported the injuries over the abuse hotline.

Ms. Antoine submitted the required incident report to APD and, at the suggestion of the DCF investigator, she called the police, and the resident who inflicted injuries on F. G. was arrested.

5. The DCF investigator notified APD of her findings. APD Program Analyst Cordroy Charles saw F. G. and other residents on January 8, 2007, when F. G.'s bite marks with teeth prints and her swollen arm were still visible. Because Ms. Antoine seemed to lack any sense of urgency about getting medical care for F. G., Mr. Charles recommended relocating all of the residents, and the group home on Ranch Avenue was closed. The license expired in January 2008.

6. On or about April 16, 2007, Ms. Antoine received a license from the Agency for Health Care Administration ("AHCA") to operate an adult family care home, called "Abbie's AFCH," located on Del Rio Boulevard in Port St. Lucie. On August 1, 2008, Ms. Antoine took E. B., a resident of the Del Rio home, with her to the Ranch Avenue location, so that she could use a computer. She left him at the home alone while, she said, she had went to get him a hamburger for lunch.

7. E. B. is a vulnerable adult with physical limitations. He walks with a cane. He is also mentally ill and requires

psychotropic medications. While he was alone, E. B. telephoned 911, and expressed concern that someone was going to hurt him.

8. When law enforcement personnel and DCF Adult Protective Investigator Martin Markowitz arrived, E. B. was alone and disoriented. There was old food in the refrigerator and evidence that he had fixed macaroni for himself. The temperature in the house was uncomfortably hot, in the mid-to-upper-80s with only a ceiling fan running. Mr. Markowitz found empty bottles of psychotropic prescription drugs with E. B.'s name on them, but was unable to determine if E. B. had been given his medication as prescribed.

9. E. B. was committed pursuant to the Baker Act, and a different subsequent placement for him was recommended by Mr. Markowitz. After being called by a law enforcement person, Ms. Antoine arrived at the house. Mr. Markowitz recalled her saying that she had fed E. B. a hamburger for lunch but left him because he did not want to return to the licensed Del Rio home. Ms. Antoine was arrested for operating, owning, or maintaining an assisted living facility without a license. The charges later were dropped by the State Attorney.

10. Mr. Markowitz made verified findings of inadequate supervision and medical neglect of a vulnerable adult by the responsible caretaker, Ms. Antoine, with regard to her treatment of E. B. Residents were removed but later allowed to return to

the Del Rio home. Ms. Antoine's current AHCA-issued license to operate an adult family care home on Del Rio was effective April 16, 2009, and expires April 15, 2011.

11. On October 20, 2008, P. A. M., a developmentally disabled vulnerable adult resident of the group home on Del Rio, called 911 for another resident, O. J., after she told him that she was depressed and thinking of hurting herself. At the time, Ms. Antoine was in the home, in her bedroom watching television. She was not aware of the emergency telephone call until the police arrived, according to P. A. M.

12. Ms. Antoine had responded earlier in the day to O. J.'s complaint of a headache and had taken her to the doctor who prescribed a pain reliever for O. J. Nevertheless, after meeting O. J. in an acute care unit of a mental health facility, Adult Protective Investigator Sonia Dixon made verified findings of medical neglect against Ms. Antoine, the responsible caretaker for O. J.

13. Ms. Antoine submitted an application that was notarized January 26, 2010, to APD for licensure of a residential facility at the same Ranch Avenue address of the previous APD-licensed "Just Like Home." The facility was to be named "Excell Group Care Home." Ms. Antoine did not check whether the application was for an initial license or renewal of a license. She also represented falsely that she had not been

identified as a person responsible for the abuse or neglect of a child or vulnerable adult.

14. APD treated the application as an initial application because the license for "Just Like Home" had expired in 2008. The Area Program Administrator said the use of the word "renewal" in the Notice to Ms. Antoine was a scrivener's error.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2010).

16. In general, an applicant has the burden of proving entitlement to a license by a preponderance of the evidence. See Dept. of Banking & Finance v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996). If, however, a licensing agency proposed to deny a renewal license based upon specific statutory or rule violations, then it has the burden of proving a lack of entitlement to the renewal. See Robert's Large Family Daycare Home v. Dept of Children and Family Services, DOAH Case No. 08-3027 (R.O. September 5, 2008, F.O. January 5, 2009), citing Coke v. Dept of Children and Family Services, 704 So. 2d 726 (Fla. 5th DCA 1998).

17. Initially, there was some confusion over whether the Petitioner was applying for an initial or a renewal license. Petitioner did not indicate which it was on the application

form, and the notice given by Respondent said;"[Y]our application for renewal for licensure as a group home has been denied" At hearing Respondent took the position that this was an initial application. Florida Administrative Code Rule 65G-2.005 provides, in relevant part, that:

(4) A license shall be revoked whenever an operator does not make his/her annual written application for license renewal.

18. An application for renewal must be filed before the expiration of the existing license. Dept. of Children and Family Services v. Ms. Sylvia's It's A Better World Daycare and Learning Center, 2003 Fla.Div.Admin.Hear LEXIS 1108, DOAH Case No. 03-3153 (R.O. December 12, 2003, F.O. March 19, 2004). By its terms the prior application expired in January 2008, and the application at issue in this case, filed January 2010, is a new application. See Lamar's Companion Service Corp., etc. v. Agency for Person's with Disabilities, 2009 Fla.Div.Admin.Hear. LEXIS 625, DOAH Case No. 09-1540 (R.O. August 19, 2009; F.O. November 6, 2009). Therefore, the Petitioner has the burden in this case.

19. Section 393.0673, Florida Statutes, provides, in relevant part, as follows:

(1) The agency may revoke or suspend a license or impose an administrative fine, not to exceed \$1,000 per violation per day, if:
(a) The licensee has:

1. Falsely represented or omitted a material fact in its license application submitted under s. 393.067:

2. Had prior action taken against it under the Medicaid or Medicare program; or

3. Failed to comply with the applicable requirements of this chapter or rules applicable to the licensee; or

(b) The Department of Children and Family Services has verified that the licensee is responsible for the abuse, neglect, or abandonment of a child or the abuse, neglect, or exploitation of a vulnerable adult.

(2) The agency may deny an application for licensure submitted under s. 393.067 if:

(a) The applicant has:

1. Falsely represented or omitted a material fact in its license application submitted under s. 393.067:

2. Had prior action taken against it under the Medicaid or Medicare program;

3. Failed to comply with the applicable requirements of this chapter or rules applicable to the applicant; or

4. Previously had a license to operate a residential facility revoked by the agency, the Department of Children and Family Services, or the Agency for Health Care Administration; or

(b) The Department of Children and Family Services has verified that the applicant is responsible for the abuse, neglect, or abandonment of a child or the abuse, neglect, or exploitation of a vulnerable adult.

(Emphasis added.)

18. In light of the statutory provisions, Respondent APD was justified in denying Petitioner's application for making a false statement in the license application that she had not been identified as responsible for the abuse or neglect of a child or vulnerable adult; and for having been verified by DCF as the

caretaker responsible for the abuse or neglect of both a child and a vulnerable adult.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Agency for Persons with Disabilities enter a Final Order denying the application filed by Petitioner for a license to operate a group home in Port St. Lucie, Florida.

DONE AND ENTERED this 28th day of July, 2010, in Tallahassee, Leon County, Florida.



ELEANOR M. HUNTER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of July, 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.