

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

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

2010 NOV 24 A 11:35

DIVISION OF
ADMINISTRATIVE
HEARINGS

Petitioner,

v.

DOAH Case No.: 10-2477
DBPR Case No.: 2009036238

NEW YORK DELI & BAKERY,

Respondent.

FINAL ORDER

THIS CAUSE came before the State of Florida, Department of Business and Professional Regulation ("Department"), for the purpose of considering Administrative Law Judge (ALJ) W. David Watkins' Recommended Order, a copy of which is attached hereto as Exhibit A, in the above-styled matter. Petitioner filed timely exceptions to the Recommended Order, a copy of which is attached hereto as Exhibit B. Respondent did not file exceptions and did not file responses to Petitioner's exceptions.

After a review of the complete record in this matter, including consideration of the Recommended Order and Petitioner's Exceptions to Recommended Order, the Department makes the following findings and conclusions:

EXCEPTIONS TO RECOMMENDED ORDER

1. Petitioner's Exceptions #1, #2, #3, #4 and #5 were considered and are GRANTED.

FINDINGS OF FACT

2. The ALJ's Findings of Fact as set forth in Paragraphs 1 through 13 of Exhibit A are approved, adopted and incorporated herein by reference. These findings are supported by competent substantial evidence.

3. Paragraph 18 of Exhibit A, while labeled a "Conclusion of Law" is a finding of fact, *i.e.*, the ALJ found that the matter addressed by the December 8, 2008 "Stipulation and Consent Order" was "finally resolved without any admission or finding of violation by Respondent." However, this finding of fact is not based on competent substantial evidence because it is contradicted by the unambiguous language of the Stipulation. As such, the division rejects this finding of fact and finds instead that the Stipulation provides that a post-settlement inspection "may result in additional administrative action without the benefit of opportunity for correction."

4. Paragraph 18 of Exhibit A is amended as requested in paragraph 17 of Exhibit B, for the reasons set forth by the division in Petitioner's Exception #1 and is approved, adopted and incorporated herein by reference.

CONCLUSIONS OF LAW

5. The ALJ's Conclusions of Law as set forth in Paragraphs 14 through 17 and 19 through 23 of Exhibit A are approved, adopted and incorporated herein by reference.

6. Paragraph 24 of Exhibit A is amended as proposed in Paragraph 23 of Exhibit B, for the reasons set forth by the division in Petitioner's Exception #2, which are approved, adopted and incorporated herein by reference. As amended, this conclusion of law is as or more reasonable than that which was modified.

7. Paragraph 25 of Exhibit A is stricken, for the reasons set forth by the division in Petitioner's Exception #3, which are approved, adopted and incorporated herein by reference. Striking this conclusion of law is required by the division's more reasonable interpretation of Rule 61C-1.005(5)(d), F.A.C., than that provided by the Recommended Order.

8. Paragraph 26 of Exhibit A is amended as proposed by the division in Paragraph 26 of Exhibit B, for the reasons set forth by the division in Petitioner's Exceptions #4 and #5, which are approved, adopted and incorporated herein by reference. As amended, this conclusion of law is as or more reasonable than that which was modified.

9. Paragraph 27 of Exhibit A is stricken, for the reasons set forth by the division in Petitioner's Exceptions #4 and #5, which are approved, adopted and incorporated herein by reference. Striking this conclusion of law is required by the division's more reasonable interpretation of Rule 61C-1.005(5)(d), F.A.C., than that provided by the Recommended Order.

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. Respondent shall pay an administrative fine of \$1,000.00 made payable to the division of Hotels and Restaurants, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, FL 32399, within thirty (30) days of the date of the filing of this Final Order with the Agency Clerk.

2. This order shall become effective on the date of the filing with the Department's Agency Clerk.

DONE AND ORDERED this 15 day of November, 2010.



BILL L. VEACH, Director
Department of Business and
Professional Regulation
Division of Hotels and Restaurants
1940 North Monroe Street
Tallahassee, Florida 32399-1011

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially 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 thirty (30) days rendition 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 Final Order has been provided via U.S. Mail to: New York Deli & c/o Ramiro Escoban, 2800 SW 24th Avenue, Suite 406, Ocala, Florida 34474, on this 23rd day of November, 2010.

AGENCY CLERKS OFFICE

By: Brandon M. Nichols
Brandon Nichols, Deputy Clerk

Copies furnished to:

Amy Toman, Informal Hearing Officer

Charles Tunncliff, Attorney for Hotels & Restaurants

Garnett Chisenhall, Chief Appellate Counsel

W. David Watkins, ALJ, DOAH, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060