

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date 12/29/2010
File # 2010-12049

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

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

2010 DEC 30 A 11:18
DIVISION OF
ADMINISTRATIVE
HEARINGS

Petitioner,

v.

**DOAH Case No.: 10-2675 & 10-3295
DBPR Case No.: 2009045815 & 2010019780**

TATU,

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) Lawrence P. Stevenson's Corrected 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. On November 12, 2010, the agency received a letter, with photographs attached, from the Respondent. The document may have been an attempt by Respondent to respond to Petitioner's exceptions, but it was not timely filed (any response to the Petitioner's exceptions was due on or before November 1, 2010) and it purports to supplement the evidentiary record of this proceeding. As such, Respondent's November 12, 2010 correspondence was not considered in rendering this Final Order.

Certified Article Number
7160 3901 9849 1408 5159
SENDERS RECORD

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

EXCEPTIONS TO RECOMMENDED ORDER

1. Petitioner's Exception #1 was considered and is GRANTED.

FINDINGS OF FACT

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

3. Paragraph 32 of Exhibit A, while labeled a "Conclusion of Law" is, at least in part, a finding of fact, *i.e.*, the ALJ found that the two previous "Stipulation and Consent Orders" entered against the Respondent were not "disciplinary Final Orders" as that term is used in Rule 61C-1005(5)(e), F.A.C. However, this finding of fact is not based on competent substantial evidence because it is contradicted by the unambiguous language of the Stipulation and Consent Orders that were entered into evidence as Petitioner's Exhibits #7 and #8. As such, the Division rejects this finding of fact for the reasons set forth in Exhibit B, which is adopted and incorporated herein by reference, and finds instead that the two previous Stipulation and Consent Orders were "disciplinary Final Orders" entered against the Respondent.

CONCLUSIONS OF LAW

4. The ALJ's Conclusions of Law as set forth in Paragraphs 15 through 31 of Exhibit A are approved, adopted and incorporated herein by reference.

5. Paragraph 32 of Exhibit A also includes a conclusion of law, *i.e.*, the ALJ concluded that this action was not Respondent's "third [or] subsequent offense" as defined in

Rule 61C-1.005(5)(e), F.A.C. This interpretation of the rule is rejected for the reasons set forth in Exhibit B, which is adopted and incorporated herein by reference, because it is inconsistent with the finding that the two previous Stipulation and Consent Orders, entered into evidence as Petitioner's Exhibits #7 and #8, were in fact "disciplinary Final Orders" entered against the Respondent within 24 months of the current administrative complaint(s). The Petitioner's substituted interpretation, *i.e.*, that this was Respondent's "third [or] subsequent offense" as defined in Rule 61C-1.005(5)(e), F.A.C., is at least as reasonable, if not more so, than the interpretation set forth in Exhibit A.

6. Paragraph 33 is rejected because, consistent with Petitioner's substituted interpretation of Rule 61C-1.005(5)(e), F.A.C., the permissible fine in this case is \$750 to \$1000 per violation (rather than \$250 to \$500 per violation) and, under the facts and circumstances of these cases, a fine of \$750 for each of the proven critical violations is appropriate.

SCRIVENER'S ERRORS

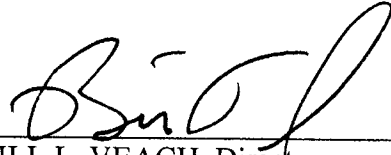
The scrivener's errors identified in Paragraphs 25 through 27 of Exhibit B are approved, adopted and incorporated herein by reference.

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. Respondent shall pay an administrative fine of \$3,750.00 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 28 day of December, 2010.



BILL L. VEACH, Director
Department of Business and
Professional Regulation
Division of Hotels and Restaurants
1940 North Monroe Street
Tallahassee, FL 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: Tatu, c/o Chang S. Bahn, 1702 West University Avenue, Suite J, Gainesville, Florida 32603, on this 29th day of December, 2010.

AGENCY CLERK'S OFFICE

By: Brandon M. Nichols
Brandon Nichols, Deputy Clerk

Copies furnished to:

Amy Toman, Informal Hearing Officer

Charles Tunncliff, Attorney, Hotels & Restaurants

Garnett Chisenhall, Chief Appellate Counsel

Bill Veach, Director, Hotels & Restaurants

Lawrence P. Stevenson, ALJ, DOAH, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060