

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
Petitioner,)
)
vs.) Case No. 10-8248
)
NORTH FLORIDA DAYCARE, INC.,)
d/b/a ALACHUA COUNTY CHILD CARE)
CENTER,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A formal hearing was conducted in this case on October 28, 2010, by video teleconference, with hearing sites in Tallahassee, Florida, and Gainesville, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Lucy Goddard-Teel, Esquire
Department of Children and Family Services
1000 North East 16th Avenue
Building J, No. 3
Gainesville, Florida 32601

For Respondent: Tami Hixon, President/Owner
North Florida Daycare, Inc. d/b/a
Alachua County Child Care Center
4138 North West 13th Street
Gainesville, Florida 32601

STATEMENT OF THE ISSUE

The issue is whether Petitioner properly imposed a fine of \$50 against Respondent for failing to timely file an application for license renewal.

PRELIMINARY STATEMENT

On or about July 27, 2010, Petitioner Department of Children and Family Services (Petitioner) filed an Administrative Complaint against Respondent North Florida Daycare, Inc. d/b/a Alachua County Child Care Center (Respondent). The complaint alleged that Respondent violated Florida Administrative Code Rule 65C-22.001(1)(d) by not filing for renewal of its license at least 45 days before its license expired. The complaint alleged that Respondent had to pay a \$50 fine pursuant to Florida Administrative Code Rule 65C-22.010(2)(d).

On July 29, 2010, Respondent filed a request for an administrative hearing to contest the allegations in the Administrative Complaint. Petitioner referred the hearing request to the Division of Administrative Hearings on August 24, 2010.

On September 1, 2010, the undersigned issued a Notice of Hearing by Video Teleconference. The notice scheduled the hearing for October 28, 2010.

During the hearing, Petitioner presented the testimony of two witnesses. Petitioner offered four exhibits that were accepted as evidence.

Respondent presented the testimony of one witness. Respondent did not offer any exhibits for admission into the record.

A transcript of the proceeding was not filed. Petitioner filed a Proposed Recommended Order on November 3, 2010. As of the date that this Recommended Order was issued, Respondent had not filed a proposed order.

Except as otherwise noted, all references hereinafter shall be to Florida Statutes 2010.

FINDINGS OF FACT

1. Petitioner is the state agency that is responsible for receiving and approving applications for childcare facility licenses and for monitoring, regulating, and if necessary, suspending or revoking childcare facility licenses for a violation of any provision of Sections 402.301 through 402.319, Florida Statutes, or the rules adopted thereunder.

2. The following facts are undisputed by the parties:

a. Respondent is licensed by Petitioner to operate a childcare facility at 4138 North West Street, Gainesville, Florida 32609.

b. By letter dated May 1, 2010, Petitioner notified Respondent that its renewal application was due June 21, 2010.

Respondent knew that June 21, 2010, was the deadline for timely submission of the renewal application.

c. Respondent mailed her renewal application to Petitioner on June 21, 2010.

d. The United States Post Office track and confirm notice shows that the application was accepted by mailing on June 21, 2010, at 4:05 p.m.

e. Petitioner received Respondent's renewal application in Lake City, Florida, on June 28, 2010.

3. Tami Hixon, Respondent's director/owner, testified that she telephoned Petitioner's office in Lake City, Florida, on June 21, 2010. According to Ms. Hixon, she spoke with Hannah Hall, Petitioner's Administrative Assistant. Ms. Hixon claims that Ms. Hall gave her permission to mail Respondent's renewal application instead of driving to Lake City, Florida, to file it by hand delivery on June 21, 2010.

4. Ms. Hixson claims she had been sick with bronchitis and had not completed the renewal application until June 21, 2010. Ms. Hixson asserts that she relied on the conversation with Ms. Hall in mailing the renewal application to Petitioner on June 21, 2010. Ms. Hixson's testimony in this regard is not persuasive.

5. Ms. Hall receives numerous telephone calls from childcare providers. She does not have an independent recollection of speaking with Ms. Hixson on June 21, 2010.

6. Ms. Hall testified that she does not have authority to extend the time for filing renewal applications and would never have done so for any childcare provider, including Respondent. Ms. Hall's testimony in this regard is most persuasive.

7. Sha'Leda Mirra is Petitioner's Child Care Licensing Supervisor. Ms. Mirra testified that the rule imposing a fine for late submission of renewal applications is strictly enforced on all providers. Only in extreme cases, such as a provider being in the hospital, has she ever waived the fine.

8. According to Ms. Mirra, Ms. Hixson telephoned after receiving the Administrative Complaint. Ms. Hixson did not mention having bronchitis as a reason for the late filing during the telephone call.

9. Receipt of renewal application 45 days before the license expiration date is necessary because licensing staff must check numerous documents for compliance. Additionally, childcare providers often must make corrections to their renewal applications. Receipt of renewal applications a few days before license expiration causes disruption to families when a facility must be temporarily closed because the renewal is not complete or cannot be processed.

10. Respondent's untimely license renewal application was processed and the fee paid before Respondent's license expired. Petitioner's staff was able to complete the process, even though

the application was missing a fire inspection certificate and despite Respondent's check being returned for insufficient funds.

11. Ms. Mirra and another licensing supervisor are the only individuals who could have approved a late renewal application on June 21, 2010. Neither of them was in the office on that day. Petitioner's support staff, including Ms. Hall, has been well trained and knows not to tell anyone that it is acceptable to submit a late application.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

13. Petitioner has the burden of proving by clear and convincing evidence that Respondent should be fined for failing to file its license renewal application in a timely manner. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996). Petitioner has met this burden.

14. Section 402.310(1), Florida Statutes, authorizes Petitioner to impose disciplinary action for violation of childcare licensing rules.

15. Florida Administrative Code Rule 65C-22.001(1)(d)

states as follows:

(d) A completed CF-FSP Form 5017 for renewal of an annual license must be submitted to the licensing authority at least 45 days prior to the expiration date of the current license to ensure that a lapse of licensure does not occur. Failure to submit a completed CF-FSP Form 5017 at least 45 days prior to the expiration date of the current license constitutes a licensing violation as defined in paragraph 65C-22.010(2)(d), F.A.C.

16. Florida Administrative Code Rule 65C-22.010(2)(d)

states as follows:

(d) Failure to submit a completed CF-FSP Form 5017, Application for License to Operate a Child Care Facility, which is incorporated by reference in paragraph 65C-22.001(1)(a), F.A.C. for renewal of an annual license at least 45 days prior to the expiration date of the current license constitutes a licensing violations. The department shall issue an administrative complaint imposing a fine of \$50.00 for the first occurrence, \$100.00 for the second occurrence, and \$200.00 for each subsequent occurrence within a five-year period.

17. In this case, Petitioner properly determined that Respondent should be fined \$50.00 for failing to file its license renewal in a timely manner. Respondent's explanation for its untimely submission is not persuasive and is therefore insufficient to avoid the fine. Respondent has proved by clear and convincing evidence that it had good cause to impose a \$50.00 fine on Respondent for the untimely submission.

RECOMMENDATION

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

RECOMMENDED:

That the Department of Children and Family Services enter a final order imposing a \$50.00 fine on Respondent.

DONE AND ENTERED this 18th day of November, 2010, in Tallahassee, Leon County, Florida.



SUZANNE F. HOOD
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of November, 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.