

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES

RISING STARS and ROSALYN SMITH,

Petitioners,

CASE NO. 11-4315
RENDITION NO. DCF-12-045-FO

v.

DEPARTMENT OF CHILDREN AND
FAMILIES,

Respondent.

FILED
FEB - 8 2012
DCF Department Clerk

FINAL ORDER

THIS CAUSE is before me for entry of a final order. The recommended order finds the Department did not establish petitioners, a licensed child care facility and its owner/operator, materially violated the terms of a probationary child care facility license imposed by a settlement agreement between the parties after a previous violation. The administrative law judge (ALJ) recommended the Department grant petitioners' application to renew the facility license. Neither party filed exceptions to the recommended order.

The recommended order is approved and adopted with a small modification explained below.

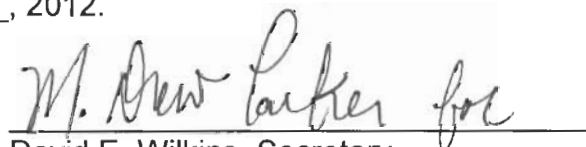
The ALJ, in recommended order paragraph four, found "[t]he Department's denial of [p]etitioner's license renewal was based solely on the alleged violations discovered during an inspection conducted on November 3, 2010, and on an alleged violated discovered on February 2, 2011." This finding was reiterated as a conclusion of law in paragraph 54. The Department's denial

notice, however, clearly alleged the denial was predicated on the fact the alleged transgressions violated the probation conditions imposed as part of the parties' settlement agreement executed on September 20, 2010. The Department did not maintain the alleged violations were, standing alone, sufficient to warrant denial of petitioner's license renewal application.

My disagreement with the ALJ's finding/conclusion on the foregoing point has no bearing on the outcome of the proceeding, because the ALJ ultimately found the Department failed to prove petitioners materially breached the terms of the probationary license as set forth in the settlement agreement. The ALJ's findings on these points are supported by competent substantial evidence and cannot be disturbed.

Accordingly, petitioners' application to renew the child care facility license is GRANTED.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 8th day of February, 2012.



David E. Wilkins, Secretary

RIGHT TO APPEAL

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF CHILDREN AND FAMILIES, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, IN THE DISTRICT COURT OF APPEAL WHERE THE APPELLANT RESIDES, OR IN THE FIRST DISTRICT COURT OF APPEAL. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA RULES OF

**APPELLATE PROCEDURE. THE NOTICE OF APPEAL MUST BE FILED
WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.**

Copies furnished to:

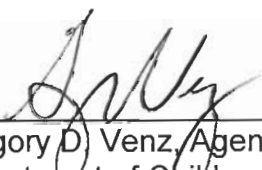
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Division of Administrative Hearing
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Final Order was provided to the above-named individuals at the listed addresses, by U.S. Mail, this 8 day of February, 2012.



Gregory D. Venz, Agency Clerk
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