



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER ADAM H. PUTNAM

2012 JUL 25 PM 12 34
FILED
DIVISION OF
ADMINISTRATIVE
HEARINGS

July 24, 2012

Honorable Claudia Llado, Clerk
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

Re: Department of Agriculture and Consumer Services vs. Lee Ann Kennedy and Kenco Industries, LLC; DOAH Case No. 12-1055

Dear Ms. Llado:

Please find enclosed a copy of the Final Order in reference to the above case. If you have any questions, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Karen J. Hunter".

Karen J. Hunter
Administrative Assistant II

Enclosure

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

FLORIDA DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES

Petitioner,

Case No. 12-1055

vs.

LEE ANN KENNEDY and
KENCO INDUSTRIES, L.L.C.,

Respondents.

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FINAL ORDER

THIS CAUSE, arising under the Structural Pest Control Act, Chapter 482, Florida Statutes, came before the Commissioner of Agriculture of the State of Florida for consideration and final agency action after entry of a Recommended Order following a formal hearing by The Honorable Cathy M. Sellers, Administrative Law Judge (ALJ). The Commissioner of Agriculture, as head of the Department of Agriculture and Consumer Services has jurisdiction over the subject matter and the parties thereto.

Background

The Recommended Order relates in pertinent part:

On November 17, 2011, Petitioner filed an Amended Administrative Complaint against Respondents, charging them with

violating several provisions of chapter 482. Specifically, in Count 1, Petitioner charged Kennedy with impersonating a pest control inspector employed by Petitioner, conducting inspections of food establishments, making corrective recommendations, and representing to those establishments that she would conduct follow-up inspections to determine compliance, in violation of section 482.161(1)(j). Count 2 charged that both Kennedy and Kenco advertised that they provided pest control services without obtaining a pest control business license, in violation of sections 482.165(1) and 482.191(1). Count 3 charged that Kennedy, both individually and on behalf of Kenco, solicited business on behalf of a pest control business (Outside In Pest Control, Inc.) without having been licensed by Petitioner to perform pest control, in violation of sections 482.165(1) and 482.191(1). Respondents timely requested an administrative hearing under sections 120.569 and 120.57(1), and the case was referred to DOAH for assignment of an administrative law judge and conduct of a hearing.

The final hearing was held on May 29, 2012. Petitioner presented the testimony of Hung The Thach, Ali Jaber, David Chang, Dennis O'Rourke, Robert Brockway, and John Berquist, and offered Exhibits 3, 5, 6, 8, 9, 10, 12, 13, 14, 15, and 16 for admission into evidence. All but Exhibit 16 were admitted without objection; Exhibit 16 was not admitted on the basis of redundancy. Respondent Kennedy testified on her own behalf and on behalf of Respondent Kenco, and offered Exhibits A, B, C, E-1 and E-2 into evidence. Exhibits A, E-1, and E-2 were admitted without objection; Exhibit C was admitted over a relevancy objection; and Exhibit B was not admitted as irrelevant.

The parties did not order a transcript of the final hearing. They were given until June 8, 2012, to file their proposed recommended orders. The parties timely filed Proposed Recommended Orders, which were considered in preparing this Recommended Order.

The ALJ entered the Recommended Order on June 27, 2012. No

Exceptions to the Recommended Order have been filed by the parties.

The record consists of all notices, pleadings, motions, intermediate rulings, evidence admitted and matters officially recognized, the Proposed Recommend Orders filed by the parties, and the Recommended Order of the ALJ.

The Recommended Order recommending entry of a Final Order assessing fines against Respondents is attached and incorporated herein, as Exhibit 1.

Findings of Fact

1. The Commissioner of Agriculture adopts the findings of fact set forth in the attached Recommended Order of the ALJ.

Conclusions of Law

2. The ALJ's conclusion that Respondent Kennedy should be fined \$2,600.00 for violating Sections 482.161(1)(j), 482.165(1), and 482.191(1), Florida Statutes, is supported by competent, substantial evidence and meets the essential requirements of the law.

3. The ALJ's conclusion that Respondent Kenco should be fined \$1,000.00 for violating Sections 482.165(1) and 482.191(1), Florida Statutes, is supported by competent, substantial evidence and meets the essential requirements of the law.

4. The Commissioner of Agriculture adopts the Conclusions of Law made by the ALJ in the Recommended Order attached hereto.

ORDERED AND ADJUDGED:

A. The Commissioner of Agriculture adopts the Findings of Fact and Conclusions of Law of the ALJ set forth in the Recommended Order attached, in their entirety.

B. Respondent, LEE ANN KENNEDY, has violated Sections 482.161(1)(j), 482.165(1), and 482.191(1), Florida Statutes, and shall pay an administrative fine in the amount of \$2,600.00.


C. Respondent, KENCO INDUSTRIES, L.L.C., has violated Sections 482.165(1), and 482.191(1), Florida Statutes, and shall pay an administrative fine in the amount of \$1,000.00.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Final Order is entitled to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedures. Judicial review proceedings must be instituted by filing a Notice of Appeal with the Department's Agency Clerk, 407 South Calhoun Street, Suite 509, Tallahassee,

Florida, 32399-0800, within thirty (30) days of rendition of this order. A copy of the Notice of Appeal must be filed with the Clerk of the appropriate District Court of Appeal accompanied by any filing fees prescribed by law.

**ADAM H. PUTNAM
COMMISSIONER OF AGRICULTURE**

By: 
Michael A. Joyner, Assistant Commissioner
Florida Department of Agriculture
and Consumer Services

Filed with Agency Clerk this ^{9th} 24 day of July, 2012.


Paul V. Palmiotto, Agency Clerk

Copies furnished:

LEE ANN KENNEDY, by Certified Mail, Return Receipt Requested
KENCO INDUSTRIES, L.L.C., by Certified Mail, Return Receipt Requested