

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

**FILED**

DEPARTMENT OF HEALTH,

Petitioner, 2013 MAR 26 AM 11 27

v.

DIVISION OF DOAH CASE NO. 12-3368  
ADMINISTRATIVE DOH CASE NO. 2012-0063

CARLOS M. CASANOVA and BUSY  
BEE SEPTIC, INC.,

HEARING Session No. DOH-13-0529-For-HSE

Respondents

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**FINAL ORDER**

This matter is before the Florida Department of Health ("Department") for the entry of a final order following receipt of a Recommended Order by an Administrative Law Judge of the Division of Administrative Hearings ("DOAH"). This is an administrative action initiated by the Department seeking to revoke the septic contractor's registration of Respondent, Carlos M. Casanova and the septage collection and disposal permits of Mr. Casanova and Busy Bee Septic, Inc. ("Mr. Casanova" and/or "Busy Bee", collectively, "Respondents"). The Department is the administrative agency of the State of Florida charged with the duty to enforce the provisions of Chapter 381, Florida Statutes, Chapter 489, Part III, Florida Statutes, and the applicable rules contained in Chapter 64E-6 of the Florida Administrative Code.

Having found that Respondents unlawfully violated Section 381.0065, Florida Statutes, Chapter 489, Part III, Florida Statutes and Fla. Admin. Code R. 64E-6, the presiding Administrative Law Judge John D.C. Newton, II, ("ALJ"), recommends that the Department enter a final order revoking the septage collection and disposal permits of Respondents Carlos M. Casanova and Busy Bee Septic, Inc., and revoking the septic

tank contractor registration of Carlos M. Casanova. Respondents have filed exceptions, to which the Department has filed a response.

### **PRELIMINARY STATEMENT**

On July 27, 2012, the Department filed its Administrative Complaint seeking to revoke the septic contractor's registration of Carlos M. Casanova, and the septage collection and disposal permits of Mr. Casanova and Busy Bee Septic, Inc. for the illegal dumping of untreated sewage onto the ground in a residential neighborhood of Cape Coral, Florida. On August 15, 2012, Mr. Casanova disputed the Department's proposed action and requested a formal administrative hearing. The Department referred the matter to the Division of Administrative Hearings ("DOAH") to conduct the hearing. On November 1, 2012, the Division scheduled the hearing for December 11, 2012. A hearing was conducted via video conference on December 11, 2012, at locations in Ft. Myers and Tallahassee, Florida. The parties appeared and were represented by counsel. At hearing, the Department presented testimony from Taylor Brown, John Hendrick, Laurie Hendrick, Richard Orth, and Barlow Smith. Department Exhibits 1 through 3, 6, 7, 9 through 11, 13, and 15 through 17 were entered into evidence. Mr. Casanova testified on his own behalf and offered no exhibits.

A one-volume transcript was filed with DOAH on January 15, 2013. On February 13, 2013, the ALJ issued a Recommended Order to the Department. On February 28, 2013, Respondents filed exceptions to the Recommended Order. The Department filed a response to the exceptions on March 11, 2013.

## STANDARD FOR REVIEWING THE RECOMMENDED ORDER AND EXCEPTIONS TO RECOMMENDED ORDER

The Administrative Procedure Act contemplates that the Department will adopt an ALJ's Recommended Order as the agency's Final Order in most proceedings.

Consequently, the Department has been granted limited authority to reject or modify findings of fact or conclusions of law. In pertinent part, Section 120.57(1)(I), Florida Statutes, states:

Rejection or modification of conclusions of law may not form the basis of rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.

Absent a demonstration that the underlying proceedings departed from the essential requirements of law, "[a]n ALJ's findings cannot be rejected unless there is no competent substantial evidence from which the findings could reasonably be inferred." *Prysi v. Dep't of Health*, 823 So. 2d 823 (Fla. 1st DCA 2002). Additionally, in determining whether challenged findings are supported by the record in accordance with the above standard, the Department may not reweigh the evidence or judge the credibility of witnesses. Both of these responsibilities are within the sole province of the Administrative Law Judge as finder of fact. *Heifetz v. Dep't of Bus. Regulation*, 475 So. 2d 1277 (Fla. 1st DCA 1985); *Lantz v. Smith*, 106 So. 3d 518 (Fla. 1st DCA 2013).

The Administrative Procedure Act also specifies the manner in which the Department is to address conclusions of law in a Recommended Order. Section 120.57(1)(I), Florida Statutes, states, in pertinent part:

The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

*See also, Barfield v. Dep't of Health, Bd. of Dentistry*, 805 So. 2d 1008 (Fla. 1st DCA 2002); *DeWitt v. Sch. Bd. of Sarasota County*, 799 So. 2d 322 (Fla. 2d DCA 2001).

In considering the exceptions to the ALJ's findings of fact, the general rule of deference is that an agency may reject a finding of fact only if a challenged finding is not supported by competent, substantial evidence. In contrast to the ALJ's fact finding, an agency need not defer to an ALJ's interpretation of statutes or administrative rules over which the agency has substantive jurisdiction.

## **RESPONDENTS' EXCEPTIONS**

### **Respondents' Exception No. 1**

In Exception No. 1, Respondents dispute the ALJ's finding of fact contained in paragraphs 21 and 22 of the Recommended Order relating to the credibility of the testimony of John Hendrick. Specifically, the Respondents dispute the ALJ's finding that Mr. Hendrick's observations were accurate and reliable. The credibility of witnesses is a matter within the province of the ALJ, and in a fact-driven case such as this one, great weight is given to the findings of the ALJ, who has the opportunity to hear the witnesses' testimony and evaluate their testimony. *See, Lantz at 521; Resnick v. Flagler Cnty. Sch. Bd.*, 46 So. 3d 1110, 112-13 (Fla. 5th DCA 2010). An agency abuses

its discretion when it improperly rejects the ALJ's findings that are supported by competent, substantial evidence. *Lantz* at 521; *Resnick* at 1113.

Upon review of the record, the Department finds that the findings of fact in paragraphs 21 and 22 of the Recommended Order that Mr. Hendrick's eyesight was not impaired and the ALJ's determination to give great weight to his observations are supported by competent, substantial evidence. As such, rejection of the findings of fact would be erroneous. Therefore, Respondents' Exception No. 1 is rejected.

### **Respondents' Exception No. 2**

In Exception No. 2, the Respondents dispute the ALJ's findings of fact contained in paragraphs 18, 19 and 23 of the Recommended Order, once again challenging the ALJ's weighing of the evidence, specifically, Mr. Hendrick's testimony regarding the name on the side of the truck and the location of the license plate.

Again, it is within the province of the ALJ to weigh the evidence, resolve conflicts, judge credibility, and draw permissible inferences from the evidence. *See, Heifetz* at 1281. Further, an ALJ is entitled to rely on the testimony of a single witness even if that testimony contradicts the testimony of a number of other witnesses. *Stinson v. Winn*, 938 So. 2d 554, 555 (Fla. 1st DCA 2006); *Lantz* at 521.

Upon review of the record, the Department finds that the findings of fact contained in paragraphs 18, 19 and 23 of the Recommended Order are supported by competent, substantial evidence. As such, rejection of the findings of fact would be erroneous. Therefore, Respondent's Exception No. 2 is rejected.

### **Respondents' Exceptions No. 3**

In Exception No. 3, the Respondents dispute the ALJ's findings of fact contained in paragraph 23 of the Recommended Order relating to Mr. Hendrick's description of the color of the truck.

While Mr. Hendrick expressed some uncertainty about the exact color combination on the truck, he testified that the truck he observed was light in color. The ALJ's finding that Mr. Hendrick's testimony regarding the name on the truck should not be discounted because of some uncertainty about the color scheme of the truck is within the province of the ALJ to weigh the evidence. *Heifitz*.

Upon a review of the record, the Department finds that the findings of fact contained in paragraph 23 of the Recommended Order are supported by competent, substantial evidence. As such, rejection of the findings of fact would be erroneous. Therefore, Respondents' Exception No. 3 is rejected.

### **Respondents' Exception No. 4**

In Exception 4, the Respondents dispute the ALJ's findings of fact contained in paragraph 24 of the Recommended Order, again challenging the ALJ's weighing of the evidence. Specifically, the ALJ discounted the Respondents attempt to suggest that another septic tank contracting business by the name of BeBee Septic Service could have been responsible for the illegal discharge of septage. It is within the province of the ALJ to weigh the evidence. *Id.*

Upon review of the record, the Department finds that the findings of fact contained in paragraph 24 of the Recommended Order are supported by competent substantial evidence. As such, rejection of the findings of fact would be erroneous. Therefore, Respondents' Exception No. 4 is rejected.

### **Respondents Exception No. 5**

Respondents' Exception No. 5 fails to clearly identify the disputed portion of the recommended order by page number or paragraph and does not include appropriate and specific citations to the record. As such, the Department is not required to rule on this exception. *See*, § 120.57(1)(k), Florida Statutes; *Boldt v. Dep't of Educ.*, 24 FCSR 108 (2009). Regardless, this exception merely repeats the challenges made in Exceptions 1, 2, and 3 discussed above. Accordingly, Respondent's Exception No. 5 is rejected.

Having carefully reviewed the Recommended Order, I conclude that the ALJ clearly explained his weighing of the evidence in this case and how he reached his ultimate finding and recommendation that the septage collection and disposal permits of Carlos M. Casanova and Busy Bee Septic, Inc., and the septic tank contractor registration of Carlos M. Casanova be revoked. As the Department has no authority to alter the findings of fact and no reason to alter the conclusions of law, the Petitioner's exceptions are denied.

### **FINDINGS OF FACT**

A thorough review of the entire record reveals that the Findings of Fact contained in the Recommended Order are based on competent, substantial evidence in the record, and the proceedings on which the findings were based complied with the essential requirements of law. The Department hereby adopts and incorporates by reference the Findings of Fact as set forth in the Recommended Order.

### **CONCLUSIONS OF LAW**

A thorough review of the entire record of this matter indicates that the Conclusions of Law contained in the Recommended Order are reasonable and correct

interpretation of the law based on the Findings of Fact. The Department hereby adopts and incorporates by reference the Conclusions of Law as set forth in the Recommended Order.

The Recommended Order entered in this proceeding on February 13, 2013, is adopted and incorporated by reference.

Based on the foregoing, the Septic Contractor's Registration of Carlos M. Casanova (Registration Number SR0041463) is hereby revoked. Additionally, the septage collection and disposal operating permit issued to Carlos M. Casanova and Busy Bee Septic, Inc., (Permit 36-QA-29343) is also hereby revoked.

**DONE and ORDERED** this 21<sup>st</sup> day of March, 2013, in Tallahassee, Leon County, Florida.

**FLORIDA DEPARTMENT OF HEALTH  
Surgeon General & Secretary  
John H. Armstrong, M.D., FACS**



**BY: Kim E. Barnhill, MS, MPH, Chief of Staff**

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

**A PARTY ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. A REVIEW PROCEEDING IS GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. A REVIEW PROCEEDING IS INITIATED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILING FEE WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR IN THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE FILING DATE OF THIS FINAL ORDER.**



Copy furnished to each of the following:

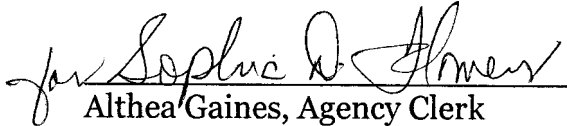
Denise Duque, Esquire  
Chief Legal Counsel  
Southwest Alliance of County Health Departments  
Department of Health  
2995 Victoria Avenue, Room 206  
Ft. Myers, Florida 33901

Dannie Hart, Esquire  
H. Richard Bisbee, Esquire  
H. Richard Bisbee, P.A.  
1882 Capital Circle NE, Suite 206  
Tallahassee, Florida 32308

Hon. John D.C. Newton, II  
Division of Administrative Hearings  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing FINAL ORDER has been served by mail via the United States Post Office, inter-office mail, electronic transmission, or by hand delivery to each of the above-named persons, this 22<sup>nd</sup> day of March, 2013.



Althea Gaines, Agency Clerk  
Florida Department of Health  
4052 Bald Cypress Way, Bin A02  
Tallahassee, Florida 32399-1703  
Telephone: (850) 245-4005