

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

CASE NO. 13-2377
13-2393

v.

RENDITION NO. DCF-14-032-FO

AMANDA'S CHILDCARE & PRESCHOOL,
INC., d/b/a AMANDA'S CHILDCARE &
PRESCHOOL

Respondent.

FILED
FEB 13 2014

FINAL ORDER

DCF Department Clerk

THIS CAUSE is before me for entry of a final order. The recommended order finds the Department did not prove respondent violated rule 65C-22.001(4), Florida Administrative Code, with regard to staff-to-child ratios, or rule 65C-22.002(1)(a), Florida Administrative Code, by having a hammer and a power tool accessible to children on the playground. The Department filed two exceptions, which are addressed below.

The Department's first exception contends the administrative law judge (ALJ) erred by addressing the staff ratio violation, because petitioner did not request a hearing on that violation. This exception is well-taken. The administrative complaint at issue in this proceeding alleged two distinct violations, one for staff-child ratio and one for the tools on the playground. The Department imposed a \$50 fine for each violation. Respondent's request for a hearing expressly contested only the tools violation and the \$50 fine associated with that violation. The request for hearing did not dispute any fact relating to the ratio violation. See rule 28-106.2015(5), F.A.C. At the final hearing

moreover, Department counsel explained respondent was contesting only the tools violation, and respondent's owner repeatedly confirmed this. (T. 6-9). Respondent's case-in-chief at the final hearing addressed only the tools violation. (T. 83-89). Although respondent's owner made a statement to the effect he did not believe the facility was out of ratio on the day in question, that statement was not sufficient to bring the violation within the ambit of the proceeding, given his affirmative statements to the contrary. In short, the matter was not at issue in the administrative proceeding. Any discussion in the recommended order of the staff ratio violation and rule 65C-22.001(4), Florida Administrative Code, is rejected.

The Department's second exception contends the ALJ abused his discretion by finding respondent did not demonstrate the use of the tools to children in care on the day in question. This exception is rejected. The only evidence on this point were testimony and out of court statements by respondent's owner. The evidence was far from clear, but certainly provides a competent substantial foundation for the ALJ's finding. I cannot reject a finding which is supported by competent substantial evidence.

The recommended order is approved and adopted, as modified above.

Accordingly, paragraphs six through eight of the Department's February 13, 2013, administrative complaint, alleging a class II violation of rule 65C-22.002(1)(a) and imposing a \$50 fine, are DISMISSED.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 13th day of February, 2014.


Esther Jacobo, Interim 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:

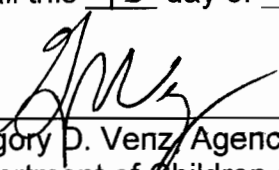
Jane Almy-Loewinger
Assistant Regional Counsel
Department of Children and Families
210 North Palmetto Ave., Suite 447
Daytona Beach, FL 32114

Joseph Corneck
Amanda's Childcare and Preschool
123 West Rhode Island Ave.
Orange City, FL 32114

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of this final order was provided to the above-named individuals electronically or by U.S. Mail this 13 day of February, 2014.



Gregory D. Venz, Agency Clerk
Department of Children and Families
1317 Winewood Blvd.
Bldg. 2, Rm. 204
Tallahassee, FL 32399-0700
Ph: (850) 488-2381