

STATE OF FLORIDA
DEPARTMENT OF REVENUE

DOR 2015-069 - FOE
FILED

STATE OF FLORIDA,
DEPARTMENT OF REVENUE

Department of Revenue – Agency Clerk
Date Filed: 8-6-2015
By: Sarah Wachman

Petitioner,

vs.

DOR Case No.: DOR-14-080-AC
DOAH Case No.: 14-4647

TAMPA HYDE PARK CAFÉ LLC
D/B/A THE HYDE PARK CAFÉ,

Respondent.

_____ /

FINAL ORDER

This cause came before the State of Florida, Department of Revenue ("Department"), for the purpose of issuing a final order. On June 5, 2014, the Department issued an Administrative Complaint ("Complaint") against Tampa Hyde Park Café LLC d/b/a The Hyde Park Café ("Respondent"). A true and correct copy of the Complaint is attached hereto and incorporated herein by reference as Exhibit 1. The Complaint sought to revoke Respondent's certificate of registration/permit/license, in accordance with Sections 212.18 and 213.692, Florida Statutes, due to Respondent's non-compliance with Chapters 212 and 443, Florida Statutes.

In response to the Complaint, Respondent elected a disputed fact hearing pursuant to Subsection 120.57(1), Florida Statutes, which was held on March 4, 2015. A true and correct copy of Respondent's request for hearing is attached hereto and incorporated herein by reference as Exhibit 2. The Division of Administrative Hearings issued its recommended order ("Order") on June 11, 2015. A true and correct copy of the recommended order is attached hereto and incorporated by reference as Exhibit 3.

RULINGS ON EXCEPTIONS

Following the issuance of the Order herein, on June 26, 2015 Respondent filed Respondent's Exceptions to Recommended Order, which are attached hereto and incorporated herein by reference as Exhibit 4. On July 13, 2015 Respondent filed Respondent's Amended Exceptions to Recommended Order, which are attached hereto and incorporated herein by reference as Exhibit 5. Although Respondent's Exceptions are almost completely lacking in appropriate and specific citations to the record as required by s. 120.57(1)(k), Florida Statutes, they are ruled upon below. Petitioner did not file exceptions to the Order.

1. Exception number one is denied. The Administrative Law Judge's ("ALJ's) findings in Paragraph 8 are supported by competent substantial evidence in the record.

2. Exception number two is denied. The ALJ's findings in Endnote 2 at Paragraph 18 are supported by competent substantial evidence in the record.

3. Exception number three is denied. The ALJ's findings in Paragraph 20 are supported by competent substantial evidence in the record. There is overwhelming evidence that Respondent was aware of the electronic filing and remittance requirement, as Respondent complied therewith from 2003 until 2009.

4. Exception number four is denied. The ALJ's findings in Paragraph 22 and Endnote 3 are supported by competent substantial evidence in the record.

5. Exception number five is denied. The ALJ's findings in Paragraph 24 are supported by competent substantial evidence in the record.

6. Exception number six is denied. In this exception, Respondent misstates the findings in Paragraph 27 and Endnote 4. The ALJ's findings in Paragraph 27 and Endnote 4 are supported by competent substantial evidence in the record.

7. Exception number seven is denied. The ALJ'S findings in Paragraph 31 are supported by competent substantial evidence in the record.

8. Exception number eight is denied. The ALJ's findings in Paragraph 32 are supported by competent substantial evidence in the record.

9. Exception number nine is denied. The ALJ's finding in the second sentence of Paragraph 33 is supported by competent substantial evidence in the record.

10. Exception number ten is denied. The ALJ's finding in the fourth sentence of Paragraph 33 is supported by competent substantial evidence in the record.

11. Exception number eleven is denied. In this exception, Respondent misstates the finding in the sixth sentence of Paragraph 33 of the Order. The ALJ's finding in the sixth sentence of Paragraph 33 is supported by competent substantial evidence in the record. Each of the ALJ's findings in Paragraph 33 is supported by competent substantial evidence in the record.

12. Exception number twelve is denied. Exception number twelve either entirely misstates the findings in Paragraph 36 of the Order, or fails to properly cite the disputed portion of the Order. The ALJ's findings in Paragraph 36 are supported by competent substantial evidence in the record. There is competent substantial evidence in the record to support a finding that the Department and the Respondent had a meeting of the minds in regard to the resolution of the Respondent's tax liabilities. Further, it is worth noting that had there been no compliance agreement entered by Respondent as a result of the revocation conference, Sections 212.18 and 213.692, Florida Statutes, dictate the filing of an Administrative Complaint seeking revocation of Respondent's certificate of registration. The identical result follows either failure to enter a compliance agreement, or failure to comply with a compliance agreement.

13. Exception number thirteen is denied. Exception number thirteen either entirely mistakes the findings in Paragraph 36 of the Order or fails to properly cite the disputed portion of the Order. Respondent's argument is, essentially, that the Department's efforts to work with the Respondent, despite Respondent's blatant failures to follow the specific requirements set forth in the compliance agreement and Florida law, should be deemed a waiver of the Department's authority to follow through with revocation as a result of said violations. This position is disingenuous, with no basis in law or fact. The ALJ's findings in Paragraph 36 are supported by competent substantial evidence in the record.

14. Exception number fourteen is denied. Exception number fourteen entirely misstates the findings in Paragraph 35 of the Order. The ALJ's findings in Paragraph 35 are supported by competent substantial evidence in the record. This exception focuses solely upon the scheduled compliance agreement payments rather the provision requiring immediate payment in full upon breach of the compliance agreement. Further, Respondent's reliance upon the specific terms of the compliance agreement repudiates its position that there was no meeting of the minds establishing a valid compliance agreement. Regardless of any compliance agreement, breach thereof, or lack thereof, Respondent was and is obligated to pay the entire amount of sales and use tax collected from customers plus statutory interest, penalties, and costs pursuant to numerous provisions in chapters 212 and 213, Florida Statutes.

15. Amended Exception number one is denied. This exception is identical to Exception number one, and was ruled upon in paragraph 1 above.

16. Amended Exception number two is denied. The ALJ's findings in Paragraph 9 are supported by competent substantial evidence in the record.

17. Amended Exception number three is denied. The ALJ's findings in Paragraph 11 are supported by competent substantial evidence in the record. In addition, estimates are deemed prima facie correct pursuant to s. 212.12(5)(b), Florida Statutes.

18. Amended Exception number four is denied. The ALJ's findings in Paragraph 16 are supported by competent substantial evidence in the record.

19. Amended Exception number five is denied. The ALJ's findings in Paragraph 17 are supported by competent substantial evidence in the record.

20. Amended Exception number six is denied. This was ruled upon in paragraph 2 above, taking into account all arguments made in Exception number two and Amended Exception number six. The ALJ's findings in Endnote 2 at Paragraph 18 are supported by competent substantial evidence in the record.

21. Amended Exception number seven is denied. This exception is identical to Exception number three, and was ruled upon in paragraph 3 above. The ALJ's

findings in Paragraph 20 are supported by competent substantial evidence in the record.

22. Amended Exception number eight is denied. Credibility of witnesses is a matter solely within the purview of the trier of fact. The ALJ's findings in Paragraph 21 are supported by competent substantial evidence in the record.

23. Amended Exception number nine is denied. This exception was ruled upon, in part, in paragraph 4 above. Taking into account all arguments made in both Exception number four and Amended Exception number nine, the ALJ's findings in endnote 3 and Paragraph 22 are supported by competent substantial evidence in the record.

24. Amended Exception number ten is denied. This exception was ruled upon in paragraph 5 above. Taking into account all arguments made in both Exception number 5 and Amended Exception number 10, the ALJ's findings in Paragraph 10 are supported by competent substantial evidence in the record.

25. Amended Exception number eleven is denied. This exception was ruled upon in paragraph 6 above. Taking into account all arguments made in both Exception number six and Amended Exception number eleven, there is competent substantial evidence in the record to support the ALJ's findings in Paragraph 27 and Endnote 4.

26. Amended Exception number twelve is denied. The ALJ's findings in Paragraph 28 are supported by competent substantial evidence in the record.

27. Amended Exception number thirteen is denied. The ALJ's findings in Paragraph 29 are supported by competent substantial evidence in the record.

28. Amended Exception number fourteen is denied. The ALJ's findings in Paragraph 30 are supported by competent substantial evidence in the record.

29. Amended Exception number fifteen is denied. This exception was ruled upon in paragraph 7 above. Taking into account all arguments made in both Exception number seven and Amended Exception number fifteen, there is competent substantial evidence in the record to support the ALJ's findings in Paragraph 31.

30. Amended Exception number sixteen is denied. This exception is identical to Exception number eight, and was ruled upon in paragraph 8 above. There is competent substantial evidence to support the ALJ's findings in Paragraph 32.

31. Amended Exception number seventeen is denied. This exception is identical to Exception number nine, and was ruled upon in paragraph 9 above. There is competent substantial evidence in the record to support the ALJ's findings in the second sentence of Paragraph 33.

32. Amended Exception number eighteen is denied. This exception is identical to Exception number ten, and was ruled upon in paragraph 10 above. There is competent substantial evidence in the record to support the ALJ's findings in the fourth sentence of Paragraph 33.

33. Amended Exception number nineteen is denied. This exception is identical to Exception number eleven, and was ruled upon in paragraph 11 above. There is competent substantial evidence in the record to support the ALJ's findings in the sixth sentence of Paragraph 33. Each of the ALJ's findings in Paragraph 33 is supported by competent substantial evidence in the record.

34. Amended Exception number twenty is denied. There is competent substantial evidence in the record to support the ALJ's findings in Paragraph 34.

35. Amended Exception number twenty-one is denied. There is competent substantial evidence in the record to support the ALJ's findings in Paragraph 35.

36. Amended Exception number twenty-two is denied. This exception is identical to Exception number twelve, and was ruled upon in paragraph 12 above. There is competent substantial evidence in the record to support each of the ALJ's findings in Paragraph 36.

37. Amended Exception number twenty-three is denied. This exception is identical to Exception number thirteen, and was ruled upon in paragraph 13 above. There is competent substantial evidence in the record to support each of the ALJ's findings in Paragraph 36. Given the fact that, regardless of the existence of any compliance agreement or other settlement agreement, Respondent owes the sales tax liabilities due to its conversion of sales tax collected from customers, the Department's

acceptance of payments and application thereof to Respondent's outstanding tax liability cannot be construed as a waiver of any of the breaches of the compliance agreement.

38. Amended Exception number twenty-four is denied. There is competent substantial evidence in the record to support the ALJ's findings in Endnote 1 at Paragraph 13.

39. Amended Exception number twenty-five is denied. This exception is identical to Exception number fourteen, and was ruled upon in paragraph 14 above. Amended Exception number twenty-five misstates the ALJ's findings in Paragraph 35 entirely. In Paragraph 35, the ALJ clearly cites that portion of the record conclusively establishing that the entire unpaid balance due at the time the compliance agreement is breached is immediately due. There is competent substantial evidence in the record to support the ALJ's findings in Paragraph 35, as a matter of fact and as a matter of law.

FINDINGS OF FACT

The Department hereby adopts and incorporates by reference the findings of fact as set forth in the recommended order as the factual findings herein.

CONCLUSIONS OF LAW

The Department hereby adopts and incorporates by reference the conclusions of law as set forth in the recommended order as the conclusions of law herein.

DETERMINATION

Accordingly, it is ORDERED:

That Respondent's Certificate of Registration, numbered 39-8011930243-9 is hereby revoked.

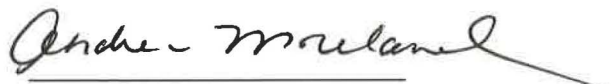
ENGAGING IN THE BUSINESS OF SELLING OR LEASING TANGIBLE PERSONAL PROPERTY OR SERVICES OR ACTING AS A DEALER AFTER A CERTIFICATE HAS BEEN REVOKED IS PROHIBITED AND CONSTITUTES A CRIME PUNISHABLE AS PROVIDED IN SECTION 775.082 OR SECTION 775.083, FLORIDA STATUTES.

NOTICE OF RIGHT TO JUDICIAL REVIEW

Any party who is adversely affected by this final order has the right to seek judicial review of the order under section 120.68, Florida Statutes, by filing a notice of appeal under Rule 9.190 of the Florida Rules of Appellate Procedure with the Agency Clerk of the Department of Revenue in the Office of the General Counsel, Post Office Box 6668, Tallahassee, Florida 32314-6668 [FAX (850) 488-7112], **AND** by filing a **copy** of the notice of appeal accompanied by the applicable filing fees with the District Court of Appeal, First District or with the District Court of Appeal in the appellate district where the party resides. **The notice of appeal must be filed within 30 days from the date this order is filed with the clerk of the Department.**

ENTERED in Tallahassee, Leon County, Florida, this 6th day of August, 2015

State of Florida
DEPARTMENT OF REVENUE



Andrea Moreland
Deputy Executive Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Order has been filed in the official records of the Florida Department of Revenue and that a true and correct copy of the Final Order has been furnished by United States mail, both regular first class and certified mail return receipt requested, to Respondent at: 303 South Melville Avenue, Tampa, Florida 33606; 1806 West Platt Street, Tampa, Florida 33606; and C/O W. Bart Meacham at 308 Each Plymouth Street, Tampa, Florida 33603 this 6th day of August, 2015.

Narah Wachman

Agency Clerk