

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,
v.

CASE NO. 14-5378
RENDITION NO. DCF-15-065-FO

CHUTES N' LADDERS, LLC,

Respondent.
_____ /

FILED
APR 15 2015
DCF Department Clerk

FINAL ORDER

THIS CAUSE is before me for entry of a final order after a formal hearing on an Administrative Complaint issued to Respondent by the Department. The Recommended Order finds that Respondent did violate the ratio and supervision standards of section 402.305(4), Florida Statutes, and recommends that an administrative fine be imposed in the amount of \$100.00. Respondent filed timely Exceptions, which are addressed below. No reply to the Respondent's Exceptions has been received.

Respondent's Exceptions

1. The Respondent presented five exceptions to the Recommended Order, contending that Finding of Fact Nos. 6, 7, 12, 17 and 19 were erroneous.

Exception 1 – Finding of Fact Paragraph 6

In its first exception, the Respondent states:

The respondent never described the fixed table into a low wall. One of the respondents is a retired Architect Michael Larkin of fifty years self-employed experienced is clear what a wall is (see Florida building code Exhibit 1)

Finding of Fact Paragraph 6 states:

As such, each room required the appropriate staffing and supervision for the space. As a practical consideration, Respondent did not treat the space as two rooms. Instead, Respondent considered a fixed table permanently built into a low wall as insufficient to constitute a divider between the two spaces. Respondent, therefore, treated the space as one room.

Exception 2 – Finding of Fact Paragraph 7

In its second exception, the Respondent states:

#7 PAGE 4 is incorrect there were four Infants total in the room with two caregivers.

The previous inspector who inspected this infant room from 2011-2013 never gave violations when 7-8 infants occupied this room. This was one room, the inspector should have changed the numbers when the previous tenant removed the dividing wall prior to 2011 and installed the table (see picture of room Exhibit 2) (see plans 2006)

Finding of Fact Paragraph 7 states:

Ms. Witmer noted that supervision could not be provided to all areas of the space by persons standing in one area of the rooms. In fact, such observation formed the basis for a warning given to Respondent on that date. Since there were four children on one side of the space (room 1) and four children on the other side of the space (room 2), Ms. Witmer concluded the caregivers should have been separated, one to each side. Instead, two caregivers were located on one side of the space and could not observe the activity of an infant on the floor in the adjacent room. As a result, Respondent issued a warning for a standard violation: not having staff appropriately stationed to meet the ratio requirement (1:4).

Exception 3 – Finding of Fact Paragraph 12

In its third exception, the Respondent states:

The respondent was made clear that if the table was removed, the Inspector agreed that only one room existed. The inspector revisited the site after the table was removed and posted the area to be one room Capacity 10.

Finding of Fact Paragraph 12 states:

Similarly, the second warning was minor in that the facility would be able to instruct staff to be aware of their charges at all times. Neither of these issues should have been insurmountable for Respondent. The weight of the credible evidence supports Petitioner's assertion that the December 2013 meeting among the parties was ended on an amicable note with all in agreement.

Exception 4 – Finding of Fact Paragraph 17

In its fourth exception, the Respondent states:

This is incorrect the Honorable Judge is now back on the "table" which had nothing to do with the inspection dated April 16, 2014.

Finding of Fact Paragraph 17 states:

Subsequently, Respondent terminated B.J.'s employment with the facility. Additionally, Respondent removed the "table" separating the two rooms and designated the one space for occupancy and staffing.

Exception 5 – Finding of Fact Paragraph 19

In its fifth exception, the Respondent states:

Ms. Witmer the inspection on April 16, 2014 contradicts her events (see her inspection highlighted Exhibit 3)

Where she states there were staff # 1 and staff # 2 she never says that staff # 2 every left the room. And there was only one staff required to be in Raito and supervision. The Respondent gave the Honorable Judge a letter from the Camera Company showing that the camera does not cover the entire room completely, this was disregarded. The inspector stated without a doubt that she could see the room completely on the monitor. (See picture of monitor Exhibit 4)

The plan dated 2006 produced as evidences and which the inspector signed and dated 9/27/13 that the 2006 was the correct plan and that that she had that surveyed the plan and that no changes had taken place. It should be noted that in 2007 the Engineering team were still working on the design. See enclosed drawings and correspondence from

Drum Engineering. At which time the Contractor had not commenced work off the remodeling. For your consideration the correct plan as of today is enclosed.

Finding of Fact Paragraph 19 states:

The video tape for the April 11, 2014, activities at Respondent's facility remained in Respondent's possession. At all times material to the allegations of this case, Respondent exercised exclusive control over the video. Respondent did not maintain a copy of the video of the facility for April 11, 2014. At hearing, Respondent disputed the accuracy of Ms. Witmer's account of the citations for ratio and supervision for April 11, 2014. The persuasive weight of the credible evidence supports Ms. Witmer's account, the Inspection Checklist she maintained contemporaneously with the events, and her conclusions regarding the deficiencies noted.

Each of the foregoing exceptions challenges a finding of fact.

Ruling on Exceptions

2. The Department is only permitted to reject or modify a finding of fact if it is not supported by competent substantial evidence. See *Rogers v. Dep't of Health*, 920 So.2d 27, 30 (Fla. 1st DCA 2005); *Fugate v. Fla. Elections Comm'n*, 924 So.2d 74, 77 (Fla. 1st DCA 2006). Section 120.57(1)(l), Florida Statutes, provides in relevant part:

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 upon competent substantial evidence.

Although the hearing was reported by a court reporter, Respondent did not provide a transcript of the hearing. Absent a transcript, the Department is unable to review and record to determine if the challenged findings of fact are supported by competent substantial evidence.

3. The party filing exceptions to a Recommended Order is obligated to provide a transcript of the hearing. See rule 28-106.214(2), Florida Administrative Code, and *Booker Creek Preservation, Inc. v. State, Dep't of Environmental Regulation*, 415 So.2d 750, 751 (Fla. 1st DCA 1982). See also *Rabren v. Department of Professional Regulation*, 568 So.2d 1283 (Fla. 1st DCA 1990). Respondent's Exceptions must therefore be denied.

Acceptance and Incorporation of Provisions of Recommended Order.

4. The ALJ's Findings of Fact, paragraphs 1 through 20 are approved and adopted. The ALJ's Conclusions of Law, paragraphs 21 through 26 are approved and adopted.

Accordingly, the Department's Administrative Complaint is sustained and an administrative fine in the amount of \$100.00 is imposed.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 15 day of April, 2015.



Mike Carroll, Secretary

NOTICE OF RIGHT TO APPEAL

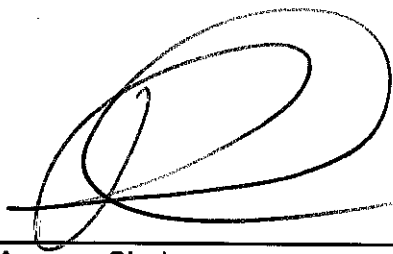
THIS ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULES 9.110 AND 9.190, FLORIDA RULES OF APPELLATE PROCEDURE. A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF CHILDREN AND FAMILIES AT 1317 WINEWOOD BOULEVARD, BUILDING 2, ROOM 204, TALLAHASSEE, FLORIDA 32399-0700, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, IN THE DISTRICT COURT OF APPEAL WHERE THE PARTY RESIDES OR IN THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED (RECEIVED) WITHIN 30 DAYS OF RENDITION OF THIS ORDER.¹

Copies furnished to the following via U.S. Mail on date of Rendition of this Order.

Eugenie G. Rehak
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A handwritten signature in black ink, appearing to be 'C. Llado', written over a horizontal line.

Agency Clerk

¹The date of the "rendition" of this Order is the date that is stamped on its first page.