

**STATE OF FLORIDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

**BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST
FUND OF THE STATE OF FLORIDA,**)
)
)
Petitioner,)
)
vs.)
)
**MARGARITA QUINTERO AND
THOMAS PATAS,**)
)
Respondents.)
_____)

**OGC CASE NO. 12-1426
DOAH CASE NO. 14-5515EF**

FINAL ORDER

On May 5, 2015, an Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH) submitted a Recommended Order (RO) to the Department of Environmental Protection (Department or DEP) and the Board of Trustees of the Internal Improvement Trust Fund (Board)¹ in the above captioned administrative proceeding. A copy of the RO is attached hereto as Exhibit A. The RO shows that a copy was sent to counsel for the Board, and counsel for the Respondents, Margarita Quintero and Thomas Patas. No party filed any written exceptions to the RO.

¹ Subsection 253.002(1), Florida Statutes provides that “[t]he Department of Environmental Protection shall perform all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees of the Internal Improvement Trust Fund. . . . Unless expressly prohibited by law, the board of trustees may delegate to the department any statutory duty or obligation relating to the acquisition, administration, or disposition of lands, title to which is or will be vested in the board of trustees.”

However, on August 3, 2015, the Department entered an Order notifying the Respondents that an RO was issued and allowing additional time for filing written exceptions. See Exhibit B. The Respondents did not file any written exceptions. This matter is now before the Secretary for final agency action.

BACKGROUND

This matter began with the issuance of a Notice of Violation (NOV) against the Respondents by the Board on October 7, 2014. The NOV was issued under the authority of subsection 253.04(2), Florida Statutes, and Florida Administrative Code rule chapter 18-14. The NOV charged the Respondents with violations of law associated with construction of a walkway and dock on state-owned uplands and sovereign submerged lands on Marco Island. The Board sought to impose administrative fines and require certain corrective action. The Respondents requested an administrative hearing and the matter was referred to DOAH and assigned to an ALJ to conduct a hearing. The Board requested and was authorized to file a First Amended NOV, which clarified the charges.

The ALJ conducted the final hearing on April 17, 2015. Although given timely written notice of the hearing, there was no appearance by the Respondents. A transcript of the hearing was prepared and filed. The ALJ subsequently issued the RO on May 5, 2015.

SUMMARY OF THE RECOMMENDED ORDER

In the RO, the ALJ recommended that the Board enter a final order sustaining the charges in the First Amended NOV; requiring the Respondents to remove the

walkway structure and dock within 20 days of entry of the final order; requiring that within 20 days of the final order each Respondent shall pay \$2,500.00 to the Department. In addition, failure to complete removal of the walkway structure and dock in accordance with the corrective action shall result in accrual of fines at a rate of \$10,000.00 per day. (RO at page 9).

The ALJ found that since December 1, 2005, the Respondents have owned property at 1899 Sheffield Avenue, Marco Island, Florida. A narrow wooden walkway extends in a south-southeasterly direction from the Respondents' property to a small terminal platform in Barfield Bay, a waterbody that lies south of the Respondents' lot. (RO ¶ 2). The ALJ found that the walkway and dock were constructed after the Respondents purchased the property in December 2005. (RO ¶ 8). The ALJ determined that the walkway structure passes over state-owned uplands before crossing the Mean High Water Line and onto sovereign submerged lands in Barfield Bay. The ALJ also found that there was no evidence that the Respondents obtained state authorization to construct the walkway and dock on state-owned lands. (RO ¶¶ 3, 6, 7, 14).

The ALJ found that DEP sent written notice to the Respondents in April 2012, informing them of possible violations of law, including unauthorized construction of the walkway and dock. The Respondents did not respond in writing or contact the DEP to arrange a meeting. (RO ¶ 4). After further investigation, the Board issued the NOV. (RO ¶¶ 6, 7, 8). The ALJ concluded that the Respondents willfully violated applicable Board rules and that the proposed fine was appropriate. (RO ¶¶ 14, 15, 16, 17, 18). The ALJ also concluded that the Board's corrective action was reasonable. (RO ¶ 19).

CONCLUSION

The case law of Florida holds that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. See, e.g., *Comm'n on Ethics v. Barker*, 677 So. 2d 254, 256 (Fla. 1996); *Fla. Dep't of Corrs. v. Bradley*, 510 So. 2d 1122, 1124 (Fla. 1st DCA 1987). In this case, the ALJ entered a RO containing findings, conclusions, and a recommendation adverse to the Respondents. Nevertheless, the Respondents did not file any exceptions challenging the findings, conclusions and adverse recommendation of the ALJ. See *Env'tl. Coalition of Fla., Inc. v. Broward Cnty.*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991) (A party that files no exceptions to certain findings of fact "has thereby expressed its agreement with, or at least waived any objection to, those findings of fact.").

It is therefore ORDERED:

- A. The ALJ's RO (Exhibit A) is adopted in its entirety and is incorporated by reference herein.
- B. Within 20 days from the date of this Final Order, the Respondents shall remove the walkway structure and dock from state-owned lands. The structure, including all decking, stringers and pilings, shall be accessed and removed without causing further impacts to mangroves, wetlands and bay bottom; and steps shall be taken to ensure that water quality will be protected during removal. The material shall be disposed of in an appropriate upland location.

- C. Within 20 days from the date of this Final Order, each Respondent shall pay \$2,500.00 to the Department. Payments shall be made by cashier's check or money order payable to the "Internal Improvement Trust Fund," and shall include OGC Case No. 12-1426. All payments shall be sent to the Department of Environmental Protection, South District, SLERP Section, Post Office Box 2549, Fort Myers, Florida 33902-2549.
- D. If the Respondents complete removal of the walkway structure and dock in accordance with paragraph B, the Respondents do not have to pay the fines. If the Respondents fail to complete removal of the walkway structure and dock in accordance with paragraph B, the fine will begin accruing at a rate of \$10,000.00 per day.


JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal.

The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 26th day of October, 2015, in Tallahassee, Florida.

BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST
FUND OF THE STATE OF FLORIDA



JONATHAN P. STEVERSON
Interim Secretary
Florida Department of Environmental
Protection, as agent for and on behalf of
the Board of Trustees of The Internal
Improvement Trust Fund of the State of
Florida.

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.



CLERK

10/26/15
DATE

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing Final Order was sent by electronic mail

to:

Robert E. Bickford, Esquire
Robert E. Bickford, P.A.
637 Denise Drive
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rebickford@cfl.rr.com

Ronald W. Hoenstine, Esquire
Department of Environmental Protection
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Tallahassee, FL 32399-3000
Ronnie.W.Hoenstine@dep.state.fl.us

and by U.S. mail to:

Margarita Quintero
Thomas Patas
1899 Sheffield Avenue
Marco Island, FL 34145

Thomas Patas
Margarita Quintero
975 Sundrop Ct.
Marco Island, FL 34145

and by electronic filing to:

Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

this 26th day of October, 2015.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



FRANCINE M. FFOLKES
Administrative Law Counsel