

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

FLO-RONKE, INC.,

2016 JUN 21 A 11:07

Petitioner,

DOAH CASE NO. 15-0982
AHCA CASE NO. 2014011256
FILE NO. 11964826
LICENSE NO. 9399
FACILITY TYPE: ASSISTED
LIVING FACILITY

v.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

RENDITION NO.: AHCA-16-04469 -FOF-OLC

Respondent.

**FINAL ORDER ON MOTION FOR AWARD OF FEES AND COSTS
UNDER SECTION 120.595, FLORIDA STATUTES**

After the Agency prevailed in this matter by way of its January 13, 2016 final order upholding the Agency's denial of Petitioner's assisted living facility licensure renewal application, Respondent renewed its motion for attorney's fees and costs under section 120.595, Florida Statutes, with the assigned Administrative Law Judge (ALJ), John D. C. Newton II. The ALJ entered a Recommended Order on Motion for Award of Fees and Costs under Section 120.595, Florida Statutes ("Fees Recommended Order") on May 6, 2016, is attached to this Final Order and incorporated herein by reference.

RULING ON EXCEPTIONS

Petitioner filed exceptions to the Fees Recommended Order.

In determining how to rule upon Petitioner's exceptions and whether to adopt the ALJ's Recommended Order in whole or in part, the Agency for Health Care Administration ("Agency" or "AHCA") must follow section 120.57(1)(l), Florida Statutes, which provides in pertinent part:

The agency may adopt the recommended order as the final order of the agency. 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. Rejection or modification of conclusions of law may not form the basis for 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 upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. . . .

§ 120.57(1)(l), Fla. Stat. Additionally, “[t]he final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.”

§ 120.57(1)(k), Fla. Stat. In accordance with these legal standards, the Agency makes the following rulings on Petitioner’s exceptions:

Petitioner’s Exceptions to Recommended Order are not valid exceptions pursuant to section 120.57(1)(k), Florida Statutes, because they do not clearly identify the disputed portion of the Fees Recommended Order by page number or paragraph, do not identify a legal basis for the exceptions, and do not include appropriate and specific citations to the record. Indeed, Petitioner’s counsel states in the exceptions that her sole purpose of filing them was “to preserve notice in the Final Order and clarification of the Recommended Order of due process compliance since Petitioner knowingly and voluntarily failed to appear for the instant hearing.” However, there is nothing in chapter 120, Florida Statutes, or chapter 28, Florida Administrative Code, that allows for the filing of exceptions for that purpose. Therefore, since Petitioner’s Exceptions do not comply with the requirements of section 120.57(1)(k), Florida Statutes, the Agency will make no ruling on them.

FINDINGS OF FACT

The Agency adopts the findings of fact set forth in the Fees Recommended Order.

CONCLUSIONS OF LAW

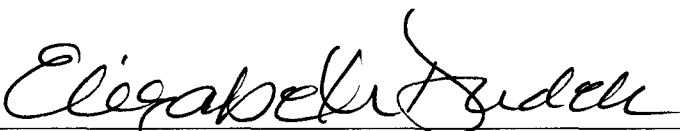
The Agency adopts the conclusions of law set forth in the Fees Recommended Order.

ORDER

Based on the foregoing, Petitioner is hereby ordered to pay the Agency \$4,900.00 in attorney's fees and \$1,316.50 in costs, for a total of \$6,216.50. The parties shall govern themselves accordingly.

Unless payment has already been made, payment in the amount of \$6,216.50 is now due from Petitioner as a result of the agency action. Such payment shall be made in full within 30 days of the filing of this Final Order unless other payment arrangements have been made. The payment shall be made by check payable to Agency for Health Care Administration, and shall be mailed to the Agency for Health Care Administration, Attn. Central Intake Unit, 2727 Mahan Drive, Mail Stop 61, Tallahassee, Florida 32308.

DONE AND ORDERED in Tallahassee, Florida, on this 21 day of June, 2016.



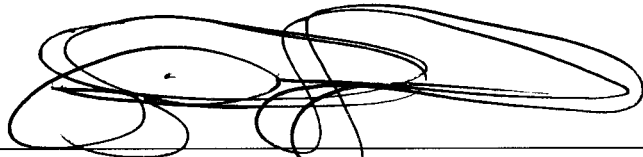
ELIZABETH DUDEK, Secretary
AGENCY FOR HEALTH CARE ADMINISTRATION

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this Final Order was served on the below-named persons by the method designated on this 21st day of June, 2016.



RICHARD J. SHOOP, Agency Clerk
AGENCY FOR HEALTH CARE ADMINISTRATION
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308
Telephone: (850) 412-3630

Copies furnished to:

Honorable John D. C. Newton II
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