

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2015 SEP 22 P 12:50

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

Case Nos. 15-1423
15-3648

v.

AHCA Nos. 2014003985
2014006292
2015000083

JEST OPERATING, INC. d/b/a SOMERSET,

~~RENDITION NO.: AHCA-15-0574-S-OLC~~

Respondent.

FINAL ORDER

Having reviewed the Administrative Complaint, and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:

1. The Agency issued the attached Administrative Complaints and Election of Rights forms to the Respondent. (Ex. 1) The parties have since entered into the attached Settlement Agreement, which is adopted and incorporated by reference into this Final Order. (Ex. 2)

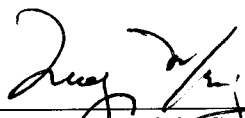
2. The Respondent shall add to its staff policies and procedures a rule prohibiting its staff from giving or receiving gifts above \$20 in value to or from any residents, and from entering into any financial arrangements with residents.

3. The Respondent shall pay the Agency \$2,000.00. If full payment has been made, the cancelled check acts as receipt of payment and no further payment is required. If full payment has not been made, payment is due within 30 days of the Final Order. Overdue amounts are subject to statutory interest and may be referred to collections. A check made payable to the "Agency for Health Care Administration" and containing the AHCA ten-digit case number should be sent to:

Central Intake Unit
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 61
Tallahassee, Florida 32308

4. Count IV of the Administrative Complaint is withdrawn.

ORDERED at Tallahassee, Florida, on this 22 day of September, 2015.



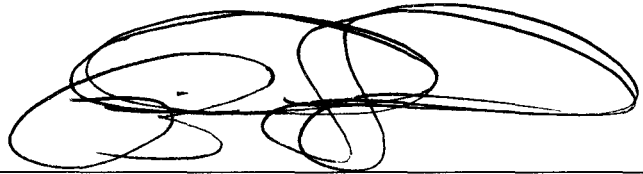
Elizabeth Dudek, Secretary
Agency for Health Care Administration

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 one copy of a notice of appeal with the Agency Clerk of AHCA, and a second copy, along with filing fee as 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 of proceedings shall be conducted in accordance with the Florida appellate rules. The Notice of Appeal must be filed within 30 days of 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 22nd day of September, 2015.



Richard J. Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
Telephone: (850) 412-3630

Jan Mills Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Central Intake Unit Agency for Health Care Administration (Electronic Mail)
Andrew B. Thornquest, Senior Attorney Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	Elizabeth Heiman, Administrator Jest Operating, Inc. d/b/a Somerset 2450 Dora Avenue Tavares, Florida 32778 (U.S. Mail)
Kriste Mennella, Field Office Manager Local Field Office- Region 3 Agency for Health Care Administration (Electronic Mail)	Dean F. DiBartolomeo, Esquire Law Offices of DiBartolomeo & DiBartolomeo 8400 Bird Road Miami, Florida 33155 (U.S. Mail)
Anne Avery, Unit Manager Assisted Living Unit Agency for Health Care Administration (Electronic Mail)	

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

vs.

JEST OPERATING, INC. d/b/a SOMERSET

Respondent.

DOAH Nos.: 15-1423

15-3648

AHCA Nos.: 2014003985

2014006292

2015000083

SETTLEMENT AGREEMENT

The Petitioner, State of Florida, Agency for Health Care Administration (“the Agency”) and the Respondent, Jest Operating, Inc. d/b/a Somerset (“the Respondent”), by and through its undersigned representatives, and pursuant to Section 120.57(4), Florida Statutes, agree as follows:

WHEREAS the Agency is the licensing and regulatory authority that oversees assisted living facilities in Florida and enforces the state laws governing such facilities pursuant to Chapter 408, Part II, Florida Statutes, and Chapter 429, Part I, Florida Statutes, and Chapter 58A-5, Florida Administrative Code; and

WHEREAS, the Respondent was issued a license by the Agency to operate this assisted living facility in Florida; and

WHEREAS, the Agency issued two Administrative Complaints in the above-styled matter on the Respondent seeking \$4,000.00 in administrative fines; and

WHEREAS, the Agency and the Respondent, (hereinafter collectively “the Parties”) have agreed that a fair and efficient resolution of the above-captioned matters would avoid the expenditure of substantial sums to further litigate these disputes; and

EXHIBIT 2

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NOW THEREFORE, in consideration of the mutual promises and recitals herein, the Parties, intending to be legally bound, agree as follows:

1. The above recitals are true and correct and are expressly incorporated into the Settlement Agreement (hereinafter "the Agreement").

2. The Parties agree that the above recitals are binding findings on the Parties.

3. Upon full execution of this Agreement, the Respondent agrees to a withdrawal of any request for administrative proceeding filed for the above referenced actions, agrees to waive any and all proceedings and appeals under Chapter 120, Florida Statutes, to which they may be entitled including, but not limited to, an informal proceeding under Subsection 120.57(2), a formal proceeding under Subsection 120.57(1), appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or tribunal (DOAH) of competent jurisdiction, and agree to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled as to this matter. Provided, however, that this Agreement shall not be a waiver by any party of the right to the judicial enforcement of this Agreement.

4. Upon full execution of this Agreement, the Parties stipulate as follows:

a. The Respondent, for settlement purposes, will accept Count I and Count II, the two unclassified deficiencies for criminal background screening violations, of the Administrative Complaint in AHCA No. 2014003985 and 2014006292; the Respondent will accept Count I, the one unclassified deficiency for a criminal background screening violation, of the Administrative Complaint in AHCA No. 2015000083; and Respondent shall pay two thousand dollars (\$2,000.00) in administrative fines to the Agency within 30 days of the date of a final order.

b. The Respondent's Facility shall implement facility policies and procedures that prohibit its staff members and volunteers from: giving gifts and/or property greater than twenty dollars (\$20.00) in value to any residents; receiving gifts and/or property greater than twenty dollars (\$20.00) in value from any residents; or entering into any personal financial arrangements with a resident.

c. The Agency, for settlement purposes, will voluntarily withdraw Count II of the Administrative Complaint, the Class II resident rights violation, in AHCA No. 2015000083.

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5. Venue for any action brought to interpret, challenge or enforce the terms of this Agreement or the Final Order entered pursuant to this Agreement shall lie solely in the State Circuit Court of Leon County, Florida.

6. By executing this Agreement, the Respondent neither admits nor denies the allegations set forth in the Administrative Complaints, but recognize that the Agency continues to assert the validity of the allegations in good faith. The Respondent acknowledges that this Agreement does not affect in any manner any other type of action that is or may be initiated against the Respondent by any other government agency, regardless of the type of action or the forum in which the action is brought. The Respondent also acknowledges that this Agreement may not be admitted into evidence in any type of action that is or may be initiated against them.

7. Upon full execution of this Agreement, the Agency shall enter a Final Order adopting and incorporating the terms of this Agreement and closing the above-styled case(s).

8. Each party shall bear its own costs and attorney's fees.

9. This Agreement shall become effective on the date upon which it is fully executed by all of the Parties.

10. The Respondent, for herself and for any related or resulting organizations, successors or transferees, attorneys, heirs, and executors or administrators, discharge the Agency and its agents, representatives, and attorneys of all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to the above referenced actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including claims arising out of the subject of this Agreement, by or on behalf of the Respondent or related or resulting organizations.

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11. This Agreement is binding upon all Parties and those persons and entities identified in the aforementioned paragraph of this Agreement.

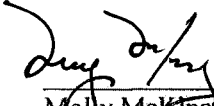
12. In the event that the Respondent was a Medicaid provider at the subject time of the occurrences alleged in the Administrative Complaints, this Agreement does not prevent the Agency from seeking Medicaid overpayments related to the subject issues.

13. The undersigned have read and understand this Agreement and have authority to bind their respective principals. The Parties and their representatives have the legal capacity to execute this Agreement. The Parties have right to consult with their own counsel and have done so in knowingly and freely entering into this Agreement. The Respondent understands that Agency counsel represents solely the Agency and that Agency counsel has not provided any legal advice to them, or influenced them, in the decision to enter into this Agreement.

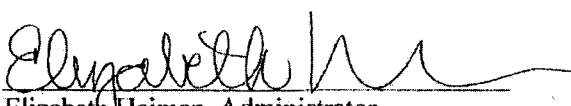
14. This Agreement contains the entire understandings and agreements of the Parties. This Agreement supersedes any prior oral or written understandings and agreements between the Parties. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

15. All Parties agree that an electronic signature suffices for an original signature and that this Agreement may be executed in counterpart.

16. The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.

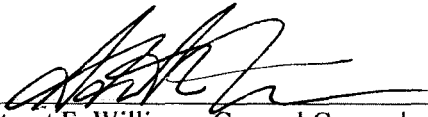

Molly McKinstry, Deputy Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive MS# 3
Tallahassee, Florida 32308

DATED: 9/22/15


Elizabeth Heiman, Administrator
Jest Operating, Inc. d/b/a Somerset
2450 Dora Avenue
Tavares, Florida 32778

DATED: 07/29/2015

DFD



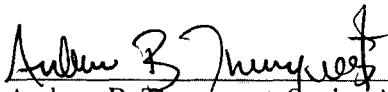
Stuart F. Williams, General Counsel
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida, 32308

DATED: 9/20/15



Dean F. DiBartolomeo, Esquire
Counsel for Respondent
8400 Bird Road
Miami, Florida 33155

DATED: 07/29/2015



Andrew B. Thornquest, Senior Attorney
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308

DATED: 7-29-2015