

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF HOTELS AND
RESTAURANTS,

Petitioner,

vs.

Case No. 15-5827

LATIN BOHEMIA GRILL INC., d/b/a
LATIN BOHEMIA GRILL,

Respondent.

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RECOMMENDED ORDER

On December 1, 2015, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing by videoconference in Lauderdale Lakes and Tallahassee, Florida.

APPEARANCES

For Petitioner: Charles F. Tunnickliff, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street, Suite 42
Tallahassee, Florida 33299-2202

For Respondent: no appearance

STATEMENT OF THE ISSUES

The issues are whether Respondent's dishmachine chlorine sanitizer was not at proper minimum strength, in violation of Food Code Rule 4-501.114(A); whether vacuum breakers were missing

from hose bibs at the mop sink, in violation of Food Code Rule 5-203.14; and whether kitchen ceiling light fixtures hosted an accumulation of dead insects, in violation of Food Code Rule 6-501.112. If any of these violations are proved, an additional issue is the penalty that should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint dated September 2, 2015, Petitioner alleged that its inspector conducted inspections of Respondent's restaurant located at 1261 South Powerline Road in Pompano Beach, Florida, on March 17, May 20, and July 21, 2015. The Administrative Complaint alleges that, on these dates, inspections disclosed that Respondent was in violation of the three Food Code provisions cited immediately above. The Administrative Complaint seeks an administrative fine of \$1000 per violation.

Respondent requested a hearing by timely filing an Election of Rights dated September 25, 2015. Petitioner transmitted the file to DOAH on October 16, 2015. On October 20, 2015, a hearing by videoconference was scheduled for December 1, 2015. Respondent failed to appear at the hearing.

At the hearing, Petitioner called two witnesses and offered into evidence five exhibits: Petitioner Exhibits 1 through 5. All of the exhibits were admitted into evidence.

The court reporter filed the transcript on January 6, 2016. Petitioner filed a proposed recommended order on January 15, 2016.

FINDINGS OF FACT

1. At all material times, Respondent operated a restaurant located at 1261 South Powerline Road in Pompano Beach, Florida, as a public food service establishment under Permanent Food Service license SEA1620854, profession 2010.

2. On March 17, 2015, Petitioner's inspector conducted an inspection of Respondent's restaurant. The inspection uncovered several violations. The violations included a dishmachine chlorine sanitizer that tested at zero parts per million, which is below proper minimum strength; a missing vacuum breaker at the hose bibb at the mop sink in the rear; and an accumulation of dead insects in the kitchen ceiling light fixtures. The first two violations are "high priority," and the third violation is "basic." The inspector gave Respondent until May 20, 2015, to correct these violations.

3. On May 20, 2015, Petitioner's inspector conducted a followup inspection of Respondent's restaurant. The inspection uncovered several violations, including the three violations cited in the preceding paragraph. The inspector issued warnings for these three uncorrected violations, but gave Respondent an

extension of time until July 21, 2015, to correct these violations.

4. On July 21, 2015, Petitioner's inspector conducted a second followup inspection of Respondent's restaurant. The inspection uncovered three violations, which were the three violations cited in the preceding paragraphs. There were now two hose bibbs lacking vacuum breakers.

5. The failure to maintain the proper strength of chlorine in the dishmachine sanitizer jeopardizes the process by which used items are cleaned and sanitized, so as to be free of pathogens, germs, and viruses. The failure to maintain a vacuum breaker, which creates an air gap in a water line, raises the possibility that dirty water will backflow into, and thus contaminate, a potable water line. The failure to remove the dead insects from the kitchen ceiling fixture poses a risk of attracting additional insects.

6. In the 24 months preceding the issuance of the Administrative Complaint, Respondent had been the subject of one disciplinary order. By Stipulation and Consent Order filed October 21, 2014, Respondent agreed to pay an administrative fine of \$840 to settle allegations of several Food Code violations, which Respondent neither admitted nor denied.

CONCLUSIONS OF LAW

7. DOAH has jurisdiction. §§ 120.569 and 120.57(1), Fla. Stat.

8. The burden of proof is on Petitioner to prove the material allegations by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

9. Florida Administrative Code Rule 61C-1.001(14) defines "Food Code," as used in Florida Administrative Code Chapters 61C-1, 61C-3, and 61C-4, as chapters 4, 5, and 6, among others, of the Food Code (2009).

10. Food Code Rule 4-501.114(A) requires that the chlorine solution for a chemical sanitizer used in connection with warewashing equipment maintain a minimum concentration of at least 25 mg/L, depending on the operating conditions.

11. Food Code Rule 5-203.14 requires that a plumbing system incorporate an air gap or backflow prevention device to prevent the backflow of contaminants into the water supply system at each point of use within a restaurant, including a hose bibb.

12. Food Code Rule 6-501.112 requires that dead insects be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or attraction of pests.

13. Petitioner has proved each of these three violations by clear and convincing evidence.

14. Section 509.261(1), Florida Statutes, authorizes Petitioner to impose a fine of not more than \$1000 per offense or to suspend or revoke a license for any violation of chapter 509 or the rules adopted under chapter 509. Rule 61C-1.005(5)(e) provides that these three violations are a "second offense" due to their occurrence within 24 months of an earlier disciplinary final order. Rule 61C-1.005(6)(c)2. provides that the standard penalty for a second offense of a "high priority" violation is a fine of \$500 to \$1000 and/or suspension. Rule 61C-1.005(6)(a)2. provides that the standard penalty for a second offense of a "basic" violation is a fine of \$250 to \$500.

15. In its proposed recommended order, Petitioner has sought a fine of \$750 for each of the "high priority" violations and \$375 for the "basic" violation. These are within the parameters set forth in the preceding paragraph and are reasonable under the circumstances set forth above.

RECOMMENDATION

It is

RECOMMENDED that the Department of Business and Professional Regulation, Division of Hotels and Restaurants, enter a final order finding Respondent guilty of the three violations set forth above and imposing a fine of \$1875.

DONE AND ENTERED this 8th day of February, 2016, in
Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of February, 2016.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.