

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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

Petitioner,

vs.

Case Nos. 15-7347
15-7350

LATCHMAN'S SEAFOOD MARKET AND
GRILL, INC., d/b/a LATCHMAN'S
SEAFOOD MARKET AND GRILL, INC.,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted on March 10, 2016, before Administrative Law Judge ("ALJ") Robert L. Kilbride, Division of Administrative Hearings ("DOAH"), via video teleconference, at locations in Lauderdale Lakes and Tallahassee, Florida.

APPEARANCES

For Petitioner: Charles F. Tunnickliff, Esquire
Charles LaRay Dewrell, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street, Suite 42
Tallahassee, Florida 32399

For Respondent: No appearance

STATEMENT OF THE ISSUES

Whether Respondent committed the violations alleged in the administrative complaints dated July 8, 2015, and September 30, 2015; and, if so, what disciplinary action should be taken against Respondent.

PRELIMINARY STATEMENT

On July 8, 2015, Petitioner, Department of Business and Professional Regulation, Division of Hotels and Restaurants ("Division" or "Petitioner"), filed an Administrative Complaint, DBPR Case No. 2015-029646, against Respondent, Latchman's Seafood Market and Grill, Inc., d/b/a Latchman's Seafood Market and Grill, Inc. The Administrative Complaint alleged the following violation:

(1) Respondent failed to take effective measures to protect the establishment against the entrance and the breeding on the premises of all vermin, in violation of section 509.221(7), Florida Statutes (2015).^{1/}

Subsequently, on September 30, 2015, Petitioner filed a separate Administrative Complaint, DBPR Case No. 2015-042510, against Respondent. The Administrative Complaint alleged the following violations:

(1) Respondent's employee was engaging in food preparation while not wearing a hair restraint, in violation of Food Code Rule 2-402.11 (2009).^{2/}

(2) Respondent's freezer chest door was in disrepair, in violation of Food Code Rule 4-501.11.

(3) Respondent failed to take effective measures to protect the establishment against the entrance and the breeding on the premises of all vermin, in violation of section 509.221(7).

(4) The outer openings on Respondent's establishment were not protected with self-closing doors, in violation of Food Code Rule 6-202.15(A), (C), and (D).

(5) Respondent failed to provide proof of valid food manager certification for its food manager upon the inspector's request, in violation of section 509.039.

(6) Respondent failed to provide proof of valid employee food handler training certifications for its employees upon request, in violation of section 509.045(5).

On December 7, 2015, and on December 10, 2015, Respondent executed an Election of Rights form for DBPR Case No. 2015-042510 and DBPR Case No. 2015-029646, respectively, and requested formal administrative hearings involving disputed issues of material fact.

On December 29, 2015, Petitioner referred both of the above cases to DOAH to conduct a formal hearing.

On January 6, 2016, an Order of Consolidation was issued, consolidating the above cases for all purposes, including final

hearing, pursuant to Florida Administrative Code Rule 28-106.108 (April 1, 1997).^{3/}

At the final hearing, Petitioner presented the testimony of two witnesses, Deborah Audain, sanitation and safety specialist ("Inspector Audain" or "Audain"), and Rebecca Howard, sanitation and safety specialist ("Inspector Howard" or "Howard").

Petitioner offered seven exhibits, which were accepted into evidence. Despite proper and timely notification, Respondent failed to appear or attend the hearing, present any testimony, or offer any exhibits.

The Transcript of the hearing was filed with the Clerk of DOAH on April 8, 2016. Petitioner timely filed a Proposed Recommended Order. Respondent did not file a post-hearing document.

FINDINGS OF FACT

Based on the evidence presented at the final hearing, the undersigned makes the following findings of relevant and material facts:

1. The Division is the state agency charged with regulating public lodging and public food service establishments pursuant to chapter 509.

2. At all times material hereto, Respondent was licensed as a public food service establishment in the state of Florida by the Division. Pet. Ex. 1.

3. The Division's first witness, Inspector Audain, is employed by the Division as a sanitation and safety specialist at 5080 Coconut Creek Parkway, Suite A, Margate, Florida 33063. Audain has worked for the Division for approximately ten years as an inspector. Prior to working for the Division, Audain worked in the food industry as a managing partner at a restaurant in New York.

4. Upon gaining employment in the Division, Audain was trained on the Food Code and the laws and rules pertaining to public food service establishments and public lodging establishments. Audain is also a certified food manager. Audain receives continuing education and training on a monthly basis. Audain performs more than 700 inspections each year.

5. The Division's second witness, Inspector Howard, is employed by the Division as a sanitation and safety specialist at 5080 Coconut Creek Parkway, Suite A, Margate, Florida 33063. Howard has worked for the Division for approximately one and one-half years.

6. Prior to working for the Division, Howard worked in the food industry as an executive chef at a Hilton Hotel in Tampa, a chef at a W Hotel in South Beach, and a chef at Los Hotel in South Beach.

7. Upon gaining employment in the Division, Howard was trained on the Food Code and on the laws and rules pertaining to

public food service establishments and public lodging establishments. Howard is also a certified food manager. Howard receives continuing education and training on a monthly basis. Howard performs approximately 800 inspections each year.

8. "Basic Item" means an item defined in the Food Code as a Core Item. Fla. Admin. Code R. 61C-1.001(5) (January 1, 2013).

9. "Basic violation" means a violation of a basic item, as defined in Florida Administrative Code Rule 61C-1.001 or a violation of chapter 509 or chapter 61C, which relates to general sanitation and does not meet the definition of high priority violation or intermediate violation and is not otherwise identified in subsection (6) of rule 61C-1.005.

10. "Intermediate violation" means a violation of an intermediate item, as defined in rule 61C-1.001 or a violation of chapter 509 or chapter 61C, which relates to specific actions, equipment, or procedures that contribute to the occurrence of a high priority violation, but does not meet the definition of high priority violation or basic violation and is not otherwise identified in subsection (6) of rule 61C-1.005.

11. "High priority violation" means a violation of a high priority item, as defined in rule 61C-1.001 or a violation of chapter 509 or chapter 61C, determined by the Division to pose a direct or significant threat to the public health, safety, or

welfare and is not otherwise identified in subsection (6) of rule 61C-1.005.

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12. On July 1, 2015, Audain performed an inspection of Latchman's Seafood Market and Grill, Inc. During the inspection, Audain prepared and signed an inspection report setting forth the violation she encountered during the inspection. Pet. Ex. 2.

13. On July 1, 2015, Audain notified Respondent of the cited violation. Ricardo Latchman signed the inspection report on behalf of Respondent. Pet. Ex. 2.

14. During the inspection on July 1, 2015, Audain observed roach activity present as evidenced by eight live roaches found crawling on the floor in the food service area, three live roaches crawling on the fryer in the kitchen, three live roaches found by the water heater in the kitchen, two live roaches found between the hose from the water heater and the wall, two live roaches found underneath the kitchen prep table, at least six live roaches found in the air conditioner closet, one live roach crawling on the wall next to the refrigerator, five live roaches crawling on the reach-in cooler by the door to the front service area, and one live roach crawling on the wall in the front service area of the establishment. This is a violation because roaches can place the health of consumers at risk by transferring

and transmitting bacteria and disease to food, food contact surfaces, and food storage areas. Pet. Ex. 2.

15. As a result of these observations, the Division entered an Order of Emergency Suspension of License and Closure against Respondent. The emergency order was issued on the same date as the inspection, July 1, 2015. Pet. Ex. 7.

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16. On July 16, 2015, Audain performed an inspection of Latchman's Seafood Market and Grill, Inc. During this inspection, Audain prepared and signed an inspection report setting forth the violations she encountered during the inspection. Pet. Ex. 3.

17. On July 16, 2015, Audain notified Respondent about the violations and informed Respondent that the violations needed to be corrected by July 17, 2015. Mr. Latchman signed the inspection report on behalf of Respondent. Pet. Ex. 3.

18. On July 17, 2015, Howard performed a callback inspection of Latchman's Seafood Market and Grill, Inc. During the inspection, Howard prepared and signed an inspection report indicating that some of the violations noted on the July 16, 2015, inspection report had not been corrected. Pet. Ex. 4.

19. On July 17, 2015, Howard notified Respondent about the violations and informed Respondent that the violations needed to

be corrected by September 1, 2015. Mr. Latchman signed the inspection report on behalf of Respondent. Pet. Ex. 4.

20. On September 2, 2015, Audain performed a callback inspection of Latchman's Seafood Market and Grill, Inc. During the inspection, Audain prepared and signed an inspection report indicating that some of the violations noted on the July 16, 2015, and July 17, 2015, inspection reports had not been corrected. Pet. Ex. 5.

21. On September 2, 2015, Audain notified Respondent about the violations and informed Respondent that the violations needed to be corrected by September 3, 2015. Mr. Latchman signed the inspection report on behalf of Respondent. Pet. Ex. 5.

22. On September 3, 2015, Audain performed a callback inspection of Latchman's Seafood Market and Grill, Inc. During the inspection, Audain prepared and signed an inspection report indicating that some of the violations noted on the July 16, 2015; July 17, 2015; and September 2, 2015, inspection reports had not been corrected. Pet. Ex. 6.

23. The first violation was observed during the July 16, 2015; September 2, 2015; and September 3, 2015, inspections. Audain observed employees engaging in food preparation without proper hair restraints. This is a violation because hair can be both a direct and indirect vehicle for contamination. Food employees may contaminate their hands when they touch their hair.

Proper use of a hair restraint keeps dislodged hair from ending up in the food and may also deter employees from touching their hair.

24. The Food Code defines the governing requirement for the first violation as a Core Item. The Division has designated violations of Core Items as basic violations. Pet. Ex. 3, 5-6; Food Code 2009 - Annex 3 Public Health Reasons/Administrative Guidelines, p. 367; Fla. Admin. Code R. 61C-1.005(5)(c).

25. The second violation was observed during the July 16, 2015; July 17, 2015; September 2, 2015; and September 3, 2015, inspections. The inspectors observed equipment in poor repair as evidenced by a freezer chest door having filament (insulation) exposed. This is a violation because failure to properly maintain equipment could lead to violations of the associated requirements of the Food Code that place the health of the public at risk. Refrigeration units in disrepair may no longer be capable of properly cooling or holding potentially hazardous (time/temperature control for safety) foods at safe temperatures. The Food Code defines the governing requirement for the second violation as a Core Item.

26. The Division has designated Core Items as basic violations. Pet. Ex. 3-6; Food Code 2009 - Annex 3 Public Health Reasons/Administrative Guidelines, p. 460; Fla. Admin. Code R. 61C-1.005(5)(c).

27. The third violation was observed during the July 16, 2015; September 2, 2015; and September 3, 2015, inspections. During the July 16, 2015, inspection, Audain observed roach activity present as evidenced by four live roaches found nestled in crevices by the air conditioner in the kitchen and one live roach crawling on the floor in front of the reach-in cooler between the kitchen and front service area.

28. During the September 2, 2015, inspection, Audain observed one live roach crawling on the kitchen floor. Audain also observed one dead roach in the dining room freezer and one dead roach near the kitchen door during her inspection on September 3, 2015. This is a violation because roaches can place the health of consumers at risk by transferring and transmitting bacteria and disease to food, food contact surfaces, and food storage areas.

29. The Division properly designated this violation as a high priority violation. Pet. Ex. 3, 5-6; Fla. Admin. Code R. 61C-1.005(5)(a).

30. The fourth violation was observed during the July 16, 2015; July 17, 2015; September 2, 2015; and September 3, 2015, inspections. The inspectors observed outer openings to the establishment not protected as evidenced by a rear door which was not self-closing. This is a violation because the presence of insects and rodents (which may transmit bacteria and disease to

food) is minimized by protecting and securing outer door openings to the food establishment.

31. The Food Code defines the governing requirement for the fourth violation as a Core Item. The Division has designated violations of Core Items as basic violations. Pet. Ex. 3-6; Food Code 2009 - Annex 3 Public Health Reasons/Administrative Guidelines, pp. 485-486; Fla. Admin. Code R. 61C-1.005(5)(c).

32. The fifth violation was observed during the July 16, 2015; July 17, 2015; September 2, 2015; and September 3, 2015, inspections. During these inspections, the establishment failed to provide the inspectors with proof of the manager's food manager certification upon request.

33. This is a violation because managers are required to pass an approved food manager certification course and test which ensures managers have a higher level of knowledge regarding sanitation and food handling, preparation, and storage. Lack of the required knowledge can result in breakdowns in these processes. The Division has designated this violation as an intermediate violation. Pet. Ex. 3-6; Fla. Admin. Code R. 61C-1.005(5)(b).

34. The sixth violation was observed during the July 16, 2015; July 17, 2015; September 2, 2015; and September 3, 2015, inspections. During these inspections, the establishment failed

to provide the inspectors with proof of the employees' required state-approved employee training.

35. This is a violation because employees of restaurants are required to have basic food safety training, which imparts knowledge of basic food handling skills, including proper glove use, procedures for food temperatures and hot/cold holding, cooking temperature requirements, and basic sanitation measures, such as personal hygiene and hand-washing. Lack of this knowledge can result in a breakdown in these processes, possibly leading to food-borne illness or unsanitary conditions.

36. The Division properly designated this violation as an intermediate violation. Pet. Ex. 3-6; Fla. Admin. Code R. 61C-1.005(5)(b).

37. Respondent had one Emergency Order of Suspension of License and Closure filed with the agency clerk by the Division within the 12 months preceding the date the current administrative complaints were issued. The Emergency Order of Suspension of License and Closure was filed on July 7, 2015. Pet. Ex. 7.

CONCLUSIONS OF LAW

38. DOAH has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes.

39. Petitioner has jurisdiction over the operation of public lodging establishments and public food service establishments in Florida, pursuant to section 20.165, Florida Statutes, and chapter 509.

40. Petitioner is authorized to take disciplinary action against the holder of such a license for operating in violation of chapter 509, or the rules implementing that chapter.

41. Section 509.261(1) provides that any public lodging establishment or public food service establishment that has operated or is operating in violation of chapter 509, or the rules promulgated thereunder, is subject to fines not to exceed \$1,000.00 per offense, and the suspension, revocation, or refusal of a license.

42. In a proceeding such as this one, where Petitioner seeks to discipline Respondent's license and/or to impose an administrative fine, Petitioner has the burden of proving the allegations charged in the administrative complaints against Respondent by clear and convincing evidence. Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996) (citing Ferris v. Turlington, 510 So. 2d 292, 294-95 (Fla. 1987)); Nair v. Dep't of Bus. & Prof'l Reg., 654 So. 2d 205, 207 (Fla. 1st DCA 1995).

43. Regarding the standard of proof, in Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983), the court held

that clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Id.

44. In addition, any disciplinary action must be based only upon the offenses specifically alleged in the administrative complaint. See Sternberg v. Dep't of Prof'l Reg., Bd. of Med. Exam'rs, 465 So. 2d 1324, 1325 (Fla. 1st DCA 1985); Kinney v. Dep't of State, 501 So. 2d 129, 133 (Fla. 5th DCA 1987); Hunter v. Dep't of Prof'l Reg., 458 So. 2d 842, 844 (Fla. 2d DCA 1984).

45. Section 509.032(6) provides that Petitioner shall adopt such rules as are necessary to carry out the provisions of the chapter.

46. Florida Administrative Code Rule 61C-1.001(14) (January 1, 2013) states, in pertinent part:

Food Code - This term as used in Chapters 61C-1, 61C-3, and 61C-4, F.A.C., means paragraph 1-201.10(B), Chapter 2, Chapter 3, Chapter 4, Chapter 5, Chapter 6, Chapter 7, and Sections 8-103.11 and 8-103.12 of the Food Code, 2009 Recommendations of the United States Public Health Service/Food and Drug Administration including Annex 3: Public Health Reasons/Administrative Guidelines;

Annex 5: Conducting Risk-based Inspections (<https://www.flrules.org/Gateway/reference.asp?No=Ref-01536>), herein adopted by reference.

47. Rule 61C-1.005(6) states, in pertinent part:

(6) Standard penalties. This section specifies the penalties routinely imposed against licensees and applies to all violations of law subject to a penalty under Chapter 509, F.S.

(a) Basic violation.

1. 1st offense - Administrative fine of \$150 to \$300.

* * *

(b) Intermediate violation.

1. 1st offense - Administrative fine of \$200 to \$400.

* * *

(c) High priority violation.

1. 1st offense - Administrative fine of \$250 to \$500.

48. Rule 61C-1.005(6)(o) states, in pertinent part:

(6) Standard penalties. This section specifies the penalties routinely imposed against licensees and applies to all violations of law subject to a penalty under Chapter 509, F.S.

* * *

(o) Any violation requiring an Order of Emergency Suspension of License and Closure, as authorized by Chapter 509, F.S.

1. 1st offense - Administrative fine of \$500.

49. Rule 61C-1.005(7)(a)4. states, in pertinent part:

(7) Aggravating or mitigating factors. The division may deviate from the standard penalties in paragraphs (a) through (n) of subsection (6) above, based upon the consideration of aggravating or mitigating factors present in a specific case. The division may deviate from the standard penalties in paragraph (o) of subsection (6) above, based upon the consideration of aggravating factors present in a specific case. The division shall consider the following aggravating and mitigating factors in determining the appropriate disciplinary action to be imposed and in deviating from the standard penalties:

(a) Aggravating factors.

* * *

4. Number of Emergency Orders of Suspension or Closure against the same licensee filed with the Agency Clerk by the division within the 12 months preceding the date the current administrative complaint was issued.

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50. Section 509.221(7) states:

The operator of any establishment licensed under this chapter shall take effective measures to protect the establishment against the entrance and the breeding on the premises of all vermin. Any room in such establishment infested with such vermin shall be fumigated, disinfected, renovated, or other corrective action taken until the vermin are exterminated.

51. Petitioner proved by clear and convincing evidence that Respondent violated section 509.221(7), because numerous live roaches were present on July 1, 2015. The presence of approximately three dozen roaches provides sufficient evidence that any means taken by Respondent to eliminate their entrance or breeding was ineffective.

52. The Order of Emergency Suspension of License and Closure contained in Petitioner's Exhibit 7 has been reviewed for determination of penalty, and, having been considered, it is concluded that the July 1, 2015, violation required an Order of Emergency Suspension of License and Closure. Therefore, rule 61C-1.005(6) (o) is the appropriate penalty guideline for the violation.

53. As noted, Respondent is guilty of one violation resulting in an Emergency Order of Suspension of License and Closure. Pursuant to rule 61C-1.005(7), mitigating factors do not apply to the rule 61C-1.005(6) (o) penalty guideline. Therefore, a \$500.00 fine is the appropriate penalty.

DBPR Case No. 2015-042510

54. Food Code Rule 2-402.11 states:

Effectiveness

(A) Except as provided in paragraph (B) of this section, food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn

to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

55. Petitioner proved by clear and convincing evidence that Respondent violated Food Code Rule 2-402.11, because Respondent's employee was observed engaging in food preparation without proper hair restraints on July 16, 2015; September 2, 2015; and September 3, 2015.

56. Food Code Rule 4-501.11 states, in part:

Good Repair and Proper Adjustment

(A) Equipment shall be maintained in a state of repair and condition that meets the requirements specified under Parts 4-1 and 4-2.

(B) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.

57. Petitioner proved by clear and convincing evidence that Respondent violated Food Code Rule 4-501.11, because the freezer chest door was observed in disrepair with exposed filament (insulation) on July 16, 2015; July 17, 2015; September 2, 2015; and September 3, 2015.

58. Section 509.221(7) states:

The operator of any establishment licensed under this chapter shall take effective measures to protect the establishment against the entrance and the breeding on the premises of all vermin. Any room in such

establishment infested with such vermin shall be fumigated, disinfected, renovated, or other corrective action taken until the vermin are exterminated.

59. A public food service establishment has violated section 509.221(7), if vermin, such as roaches, are present in the establishment or there is evidence of their presence in the establishment, even if measures were taken to prevent their entrance and breeding. See Dep't of Bus. & Prof'l Reg. v. Brother & Sister's Barbeque, Inc., Case No. 06-5338 (Fla. DOAH June 22, 2007; Fla. DBPR July 31, 2007) (Respondent violated Food Code Rule 6-501.111, where Massey Services had treated the establishment two days before the inspector observed rodent droppings during an inspection.); and Dep't of Bus. & Prof'l Reg. v. Subway No. 32148, Case No. 12-3871 (Fla. DOAH May 10, 2013; Fla. DBPR June 6, 2013) (Respondent violated Food Code Rule 6-501.111, because of the observed presence of 17 live roaches during inspection establishes that Respondent's efforts to control pests were inadequate and ineffective.).

60. The cited cases involved violations of Food Code Rule 6-501.111 (2001). This requirement is similar to the requirements of section 509.221(7). Food Code Rule 6-501.111 required an establishment to control insects, rodents, and other pests to minimize their presence on the premises by:

(A) routinely inspecting incoming shipments of food and supplies;

(B) routinely inspecting the premises for evidence of pests;
(C) using methods, if pests are found, such as trapping devices or other means of pest control as specified under Food Code Rules 7-202.12, 7-206.12, and 7-206.13; and (D) eliminating harborage conditions.

61. Similarly, section 509.221(7) requires an establishment to take effective measures to protect the establishment against the entrance and the breeding on the premises of all vermin. Evidence of rodents and the presence of live roaches violated Food Code Rule 6-501.111, because they establish the measures taken to control pests were inadequate and ineffective. Likewise, the presence of more than 20 live roaches establishes that Respondent failed to take effective measures to prevent the entrance and breeding of roaches.

62. Petitioner proved by clear and convincing evidence that Respondent violated section 509.221(7), because numerous live roaches were present on July 16, 2015; September 2, 2015; and September 3, 2015. The presence of roaches during the three inspections establishes that any means taken by Respondent to eliminate their entrance or breeding was ineffective.

63. Food Code Rule 6-202.15(A) and (C) states, in pertinent part:

Outer Openings, Protected.

(A) Except as specified in §§ (B), (C), and (E) and under § (D) of this section, outer openings of a food establishment shall be protected against the entry of insects and rodents by:

- (1) Filling or closing holes and other gaps along floors, walls, and ceilings;
- (2) Closed, tight-fitting windows; and
- (3) Solid, self-closing, tight-fitting doors.

* * *

(C) Exterior doors used as exits need not be self-closing if they are:

- (1) Solid and tight-fitting[.]

64. Petitioner proved by clear and convincing evidence that Respondent violated Food Code Rule 6-202.15(A), (C), and (D) due to having outer doors which were not sufficiently self-closing or secured.

65. Section 509.039 states, in part:

Food service manager certification - It is the duty of the division to adopt, by rule, food safety protection standards for the training and certification of all food service managers who are responsible for the storage, preparation, display, or serving of foods to the public in establishments regulated under this chapter. The standards adopted by the division shall be consistent with the Standards for Accreditation of Food Protection Manager Certification Programs adopted by the Conference for Food Protection. These standards are to be adopted by the division to ensure that, upon

successfully passing a test, approved by the Conference for Food Protection, a manager of a food service establishment shall have demonstrated a knowledge of basic food protection practices.

66. Petitioner proved by clear and convincing evidence that Respondent violated section 509.039, because Respondent failed to provide proof of food manager certification for its manager upon request on July 16, 2015; July 17, 2015; September 2, 2015; and September 3, 2015.

67. Section 509.049(5) states:

It shall be the duty of each public food service establishment to provide training in accordance with the described rule to all food service employees of the public food service establishment. The public food service establishment may designate any certified food service manager to perform this function. Food service employees must receive certification within 60 days after employment. Certification pursuant to this section shall remain valid for 3 years. All public food service establishments must provide the division with proof of employee training upon request, including but not limited to, at the time of any division inspection of the establishment. Proof of training for each food service employee shall include the name of the trained employee, the date of birth of the trained employee, the date the training occurred, and the approved food safety training program used.

68. Petitioner proved by clear and convincing evidence that Respondent violated section 509.049(5), because Respondent failed to provide proof of the required state-approved employee training

for its employees upon request on July 16, 2015; July 17, 2015; September 2, 2015; and September 3, 2015.

69. The Order of Emergency Suspension of License and Closure contained in Petitioner's Exhibit 7 has been reviewed for determination of penalty, and, having been considered, it is also concluded that an Emergency Order of Suspension and Closure was filed against Respondent with the agency clerk by the Division within the 12 months preceding the Administrative Complaint dated September 30, 2015, and is an aggravating factor with regard to the violations cited in that Administrative Complaint.

70. As noted, Respondent is guilty of three basic violations, two intermediate violations, and one high priority violation. A reasonable fine in this case is \$225.00 for each basic violation, \$300.00 for each intermediate violation, and \$375.00 for the high priority violation, for a total fine of \$1,650.00.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Department of Business and Professional Regulation, Division of Hotels and Restaurants, ordering Latchman's Seafood Market and Grill, Inc., d/b/a Latchman's Seafood Market and Grill, Inc., to pay an administrative penalty in the amount of \$500.00 for the violation listed above in DBPR Case No. 2015-029646 and an

administrative penalty in the amount of \$1,650.00 in DBPR Case No. 2015-042510, for a total administrative penalty of \$2,150.00, plus any applicable and authorized investigative expenses or costs, due and payable to the Department of Business and Professional Regulation, Division of Hotels and Restaurants, 1940 North Monroe Street, Tallahassee, Florida 32399-1011, within 30 calendar days of the date of the final order.

DONE AND ENTERED this 5th day of May, 2016, in Tallahassee, Leon County, Florida.



ROBERT L. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of May, 2016.

ENDNOTES

^{1/} References to Florida Statutes are to the 2015 version, unless otherwise indicated.

^{2/} References to Food Code rules are to the 2009 version, unless otherwise indicated.

^{3/} References to Florida Administrative Code rules are to the May 31, 2015, version, unless otherwise indicated.

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.