

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HAILES BOARDING HOME,

Petitioner,

vs.

Case No. 17-2710

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case by video teleconference on July 10, 2017, with sites in Tampa and Tallahassee, Florida, before Lynne A. Quimby-Pennock, the duly-designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

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STATEMENT OF THE ISSUE

The issue presented is whether Petitioner's application for renewal of its assisted living facility (ALF) license, located in Tampa, Florida, should be approved or denied.

PRELIMINARY STATEMENT

On March 14, 2017, the Agency for Health Care Administration (AHCA) issued, via certified mail, to Andrea Elise Jones, Administrator of Hailes Boarding Home (Hailes)^{1/} an "Amended Notice of Intent to Deny Hailes Boarding Home Assisted Living Facility Renewal Application" (ANOID). Hailes timely filed an Election of Rights and Petition for Formal Hearing disputing AHCA's action.

Subsequently, on May 10, 2017, AHCA referred the matter to DOAH to assign an Administrative Law Judge to conduct the final hearing. On May 18, 2017, the undersigned set the final hearing for July 10, 2017. On May 22, 2017, AHCA filed a Motion to Relinquish Jurisdiction, to which Hailes filed an objection. The motion was denied. On June 29, 2017, Hailes filed a Motion for a Thirty (30) Day Continuance which was denied on June 30, 2017.

On July 5, 2017, the parties filed a Joint Response to the Order of Pre-hearing Instructions, in which they stipulated to certain facts. These facts have been incorporated into this Recommended Order as indicated below.

The final hearing was held July 10, 2017, with both parties represented. At the start of the hearing, AHCA amended its ANOID

by removing two of the stated reasons for the denial. At the hearing, Hailes presented the testimony of JoAnne Wilson and Andrea Jones. Hailes's Composite Exhibit 1 was received into evidence over objection.^{2/} AHCA presented the testimony of Keisha Woods. AHCA's Exhibits 1 through 8 were received into evidence without objection.

The one-volume Transcript of the hearing was filed at DOAH on July 31, 2017. A Notice of Filing Transcript was issued on August 1, 2017, setting the date for the parties to file their proposed recommended orders (PROs) on or before August 21, 2017. Both parties timely submitted their PROs, and each was given consideration in the preparation of this Recommended Order.

Unless otherwise stated, all statutory and rule references are to the statutes and rules in effect at the time of the alleged violations.

FINDINGS OF FACT

1. AHCA is the state agency charged with the licensure and regulatory oversight of ALFs, pursuant to chapters 408, part II, and 429, Florida Statutes; and Florida Administrative Code Chapters 59A-35 and 58A-5.

2. Hailes is licensed by AHCA as "Adrienne Wilson d/b/a Hailes Board Home," licensed number 5776. Hailes is an ALF, located at 1009 N. Willow Avenue, Tampa, Florida.

3. Hailes started as a business in 1980 and has been operational since then. There are 12 residents who live at

Hailes, many of whom have been residents for multiple years.

Hailes operates as an extended family and members of the Hailes family live and work on the premises.

4. The hearing testimony confirmed, and the most recent certificate evidencing the license at issue in this case provided, in pertinent part the following:

LICENSE #: AL5776
CERTIFICATE #: 48175

State of Florida
Agency for Health Care Administration
Division of Health Quality Assurance
ASSISTED LIVING FACILITY
with LIMITED MENTAL HEALTH
STANDARD

This is to confirm that ADRIANNE WILSON has complied with Chapter 429, Part I, laws of the State of Florida and with 58A-5, rules of the State of Florida and is authorized to operate the following:

HAILES BOARDING HOME
1009 N Willow Ave
Tampa, FL 33607-5549
HILLSBOROUGH COUNTY

TOTAL CAPACITY: 12
Optional State Supplementation Residents: 11
Private Pay Residents: 1

EFFECTIVE DATE: 02/22/2014
EXPIRATION DATE: 02/21/2016

Renewal Application

5. Florida ALF licenses must be renewed every two years. Hailes' license had been successfully renewed since it was first

issued. An issue with Hailes' 2014 renewal application was not resolved until September 12, 2016.^{3/}

6. As the 2014 renewal application was winding its way through AHCA's system, Adrienne Wilson became ill in 2015. Her sister, Andrea Jones, became Hailes' administrator. Prior to becoming Hailes' administrator, Ms. Jones worked with the Hailes' residents in the recreation department, prepared meals for everyone, and scheduled appointments for Hailes' residents. After she became the administrator, Ms. Jones helped to fill out some of the licensing applications.

7. On February 22, 2016, Hailes filed a purported "renewal application" which listed the name of the ALF as "Hailes Assisted Living Facility, Inc" located at "1009 N Willow Ave Tampa, Hillsborough FL 33607." This application provided that Andrea Jones was contact person for the application and held 100 percent of the ownership interest in the "Individual and/or Entity Ownership of Licensee" section. This application did not provide Hailes' license number. The provided Federal Employer Identification Number (FEIN) 47-3080379 is associated with Hailes Assisted Living Facility, Inc.

8. The 2016 "renewal application" provided an ALF name and ALF owner different from the Hailes' licensee of record. By correspondence dated March 10, 2016 (AHCA's Exhibit 3),^{4/} AHCA returned this application. This March 10th letter was addressed

to Andrea Elise Jones as the administrator for Hailes and provided the following explanation for the return of the application:

Pursuant to Section 408.815(2), Florida Statutes a facility while in litigation, must file a renewal application if their license is due to expire during the litigation process.

On February 22, 2016, the Agency for Health Care Administration received an application from you which was marked as renewal, but after review, it was determined it was a change of ownership application. This determination is based on the fact that Adrienne Wilson, is currently the 100% owner of Hailes Boarding Home AL 5776. The application received on February 22, 2016 lists Hailes Assisted Living Facility Inc, FEIN No. 47-3080379 as the licensee and Andrea Jones as 100% of the licensee, making it a change of ownership instead of a renewal application. Based on this determination the application is being returned to you along with a refund form for the total amount submitted with the application \$574.65 and Hailes Boarding Home licensure status will be changed to failed to renew.

Thus, Hailes was put on notice that AHCA deemed the "renewal application" to be a change of ownership application (CHOW) and returned it to the person who submitted it. The responsibility fell to Hailes and its owner(s) or administrator to file a correct renewal application.

9. AHCA did not receive a renewal application or any other submission from Hailes. On April 7, 2016, AHCA issued a "Notice Of Intent To Deny Renewal Application 60936" (NOID). Within that NOID, AHCA provided the "Specific Basis" for the denial determination as follows:

Per 59A-35.060(8) Florida Administrative Code (F.A.C.), an application for license renewal may only be filed by the licensee. The name of the current licensee is Adrienne Wilson. The entity (Hailes Assisted Living Facility Inc.) that submitted the renewal application did not have the authority to do so. The Federal Employer Identification Number (47-3080379) listed on the application differed from that of the current licensee's sole proprietor FEIN 26-2977465.

The licensee has been cited for unlicensed activity pursuant to Section 408.812, Florida Statutes; and

The provider has failed to submit an employee roster pursuant to Section 435.12(2), Florida Statutes [sic] (F.S.).

10. Approximately a year later, on February 13, 2017,^{5/} another application was submitted as a "renewal application" for an entity located at 1009 N. Willow Avenue Tampa, Hillsborough, Florida 33607. Hailes' license number AL5776 was listed on this application. However, the name of the ALF was listed as Adrienne Wilson, not Hailes. The FEIN number 47-3080379 is associated with the entity called "Hailes Assisted Living Facility, Inc."

11. AHCA's witness, Keisha Woods, is the unit manager for the assisted living unit at AHCA. Ms. Woods testified that AHCA reviewed the application, and subjected it, as it does with all renewal license applications, to the same standard as initial license applications. The standards are found in rule 59A-35.

12. On March 14, 2017, AHCA issued the ANOID. Within this ANOID, AHCA provided the basis for this determination as follows^{6/}:

The specific basis for this determination is pursuant to Chapter 59A-35.060(8), Florida Administrative Code (F.A.C.); an application for license renewal may only be filed by the current licensee.

On February 21, 2016, an ALF application marked as a renewal was submitted on behalf of Hailes Boarding Home, Inc. This application has Hailes Assisted Living Facility, Inc. as the name of the ALF and the licensee. Agency records and previous applications have Hailes Boarding Home as the name of the ALF and Adrienne Wilson as 100% "Sole Proprietor" as the licensee. This application was denied due to a change in its ownership. The ownership is listed as a corporation and not as a sole proprietor.

On February 13, 2017, an ALF application was received marked as a renewal with the owner of the ALF listed as Adrienne Wilson and the ownership type as "Individual". However, the Federal Employer Identification Number provided for the licensee is associated with Hailes Assisted Living Facility, Inc. This again shows a change of ownership from a sole proprietor to a corporation.

Based upon the Florida Department of State, Division of Corporations (Sunbiz) Hailes Boarding Home is listed as a sole proprietor with the Federal Employee Identification Number (FEIN) 26-2977465; the FEIN 47-3080379 listed on this application is associated with Hailes Assisted Living Facility, Inc., a corporation. This constitutes a change in the FEIN, and shows the licensee/entity has changed from a sole proprietor to a corporation, see section 408.803(5)(a) Florida Statutes (F.S.), making this a change of ownership application, not a renewal application.

13. Ms. Jones is aware that Hailes has been licensed by AHCA for over 20 years, and that renewals are filed every two years.

Further, Ms. Jones is aware there are specific time frames for filing a CHOW.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the subject matter and parties pursuant to sections 120.569 and 120.57(1), Florida Statutes (2014).

15. In the instant case, Hailes filed a CHOW, but thought it had applied for the renewal of its license to operate an ALF. Hailes challenges AHCA's decision to deny the renewal license application.

16. A license to operate an ALF is a public trust and a privilege, not an entitlement. § 429.01(3), Fla. Stat.

17. Generally, the applicant for licensure has the burden of proof to demonstrate, by a preponderance of the evidence, that it satisfies the requirements for licensure and is entitled to receive the license. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996); M.H. v. Dep't of Child. & Fam. Servs., 977 So. 2d 755, 762 (Fla. 2d DCA 2008).

18. AHCA cited the following statutory and rule citations in the ANOID to deny Hailes' renewal license: sections 408.803(5)(a) and 408.815(1)(c), Florida Statutes, and rule 59A-35.060(8).^{7/}

19. Section 408.803(5)(a) provides:

408.803 Definitions.—As used in this part, the term:

(5) "Change of ownership" means:
(a) An event in which the licensee sells or otherwise transfers its ownership to a different individual or entity as evidenced by a change in federal employer identification number or taxpayer identification number; or

* * *

A change solely in the management company or board of directors is not a change of ownership.

20. Section 408.815(1)(c) provides:

(1) In addition to the grounds provided in authorizing statutes, grounds that may be used by the agency for denying and revoking a license or change of ownership application include any of the following actions by a controlling interest:

* * *

(c) A violation of this part, authorizing statutes, or applicable rules.

21. Rule 59A-35.060(8) provides:

An application for license renewal may only be filed by the licensee.

22. The persuasive evidence adduced at hearing establishes that Hailes did not submit the requisite renewal application for the continuation of its license. Hailes failed to demonstrate, by a preponderance of the evidence, that it met the applicable re-licensure requirements and that it is entitled to a renewal of its license. Hailes' failure to appreciate being advised that what it perceived to be a renewal application was a CHOW and to timely revise it by providing the correct information, demonstrates a lack of attention to details.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that that the Agency for Health Care Administration enter a final order upholding the denial of Hailes' licensure renewal application.^{8/}

DONE AND ENTERED this 7th day of September, 2017, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of September, 2017.

ENDNOTES

- ^{1/} The ANOID is addressed to Ms. Jones. However, the salutation is to Ms. Wilson, either the former administrator or the woman who testified; the actual identity is unknown.
- ^{2/} AHCA's objection to Petitioner's Exhibit 1 was based on relevancy and "getting into the (facility's) history, . . . would be confusing and frankly, at this point, irrelevant." AHCA then proceeded to use the facility's history to explain why the denial was appropriate.
- ^{3/} AHCA issued a notice of intent to deny Hailes' 2014 renewal application and Hailes requested a hearing not involving disputed issues of fact. In May 2014, a hearing was held, and a Recommended Order was issued in December 2014. The parties entered a settlement agreement in August 2016. The Final Order,

in which AHCA "agreed to grant the license application for the licensure period of February 22, 2014 to February 21, 2016," was executed on September 12, 2016. No testimony was provided as to why it took over two years to resolve this renewal application.

^{4/} There was a second page, a form, attached to this letter, "Application for Refund From State of Florida," which was partially completed.

^{5/} Although, in the "Statement of Admitted Facts" the parties provided that this application was submitted on February 22, 2017, the date-stamped application provided that the application was received by AHCA on February 13, 2017.

^{6/} As previously stated, two of the listed reasons for the ANOID were withdrawn and are not found within this section.

^{7/} See Endnote 6 above. The statutory citations to the two omitted reasons are also omitted from this discussion.

^{8/} Sufficient time should be afforded to allow for the orderly transition of the current residents to another facility.

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.