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DEPARTMENT OF EDUCATION
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PAM STEWART, AS COMMISSIONER
OF EDUCATION,
DIVISION OF ADMINISTRATIVE HEARINGS

**DEPT OF EDUCATION
TALLAHASSEE FLA**

PETITIONER,

DOE Case No.: 2017-3460
DOAH Case No.: 17-3898SP

vs.

SILVA OF SOUTH FLORIDA, INC., d/b/a
NEW HORIZONS (7502), and YUDIT
SILVA

RESPONDENTS.

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DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

This matter comes before the Department of Education (“Department”) for consideration of the Recommended Order in the above-styled case, entered by Administrative Law Judge John Van Laningham (hereinafter “ALJ”) of the Division of Administrative Hearings and herein incorporated by reference. Having considered the entirety of the record, the Department makes its findings as follows.

PRELIMINARY STATEMENT

This matter arises from the Respondents’ appeal of the Administrative Complaint and Amended Administrative Complaint issued by the Department. As laid out in the complaints, the Department suspended payment of Gardiner, McKay, and Florida Tax Credit (“FTC”) scholarship funds and revoked New Horizons’ scholarship participation. The Department also demanded return of \$1,439.00 in improperly received McKay scholarship funds. Respondent’s timely requested an administrative hearing to dispute the Department’s determination, and the requested hearing was held on August 10, 2017. The ALJ issued his Recommended Order on December 11, 2017, recommending that the Department issue a final order revoking the Respondent’s

participation in the McKay, FTC, and Gardiner scholarship programs. On December 21, 2017, Respondent submitted exceptions to the Recommended Order. On January 2, 2018, the Department submitted its Response to Respondents' Exceptions.

STANDARD OF REVIEW

The Administrative Procedure Act contemplates that an agency will adopt an administrative law judge's recommended order as the agency's final order in most proceedings. To this end, the Department has been granted only limited authority under which to reject or modify findings of fact in the ALJ's Recommended Order.

An agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record 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. Fla. Stat. § 120.57(1)(l).

Absent a demonstration that the underlying administrative proceeding departed from essential requirements of law, "[a]n ALJ's findings cannot be rejected unless there is no competent, substantial evidence from which the findings could reasonably be inferred." Prysi v. Department of Health, 823 So. 2d 823, 825 (Fla. 1st DCA 2002) (citations omitted). In determining whether challenged findings are supported by the record in accord with this standard, the Commissioner may not reweigh the evidence or judge the credibility of witnesses, both tasks being within the sole province of the ALJ as the finder of fact. See Heifetz v. Department of Bus. Reg., 475 So. 2d 1277, 1281-83 (Fla. 1st DCA 1985).

Additionally, an agency may reject or modify only those conclusions of law over which it has substantive jurisdiction. When rejecting or modifying a conclusion of law or interpretation of an administrative rule, the agency must state with particularity its reasons for rejecting or

modifying such conclusion or interpretation, 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. Fla. Stat. §120.57(1)(l).

RULINGS ON EXCEPTIONS

Parties to a dispute before an ALJ are afforded an opportunity by statute to file exceptions to the recommended order (“RO”). An agency’s authority is limited to review of findings of fact and conclusions of law and a review of any penalties imposed by the ALJ. Fla. Stat. §120.57(1)(k) and (l). Respondent’s filed exceptions document contains a great deal of argumentative language not specifically identified as exceptions to the RO. It does not appear as if Respondent intended the document’s introductory language to constitute exceptions, since the language is neither numbered nor specific with regard to challenges to the findings of fact or conclusions of law of the RO. To the extent that these introductory statements were intended by the Petitioner to constitute exceptions to the RO, they are hereby denied for failure to clearly identify the disputed portion of the RO by page number or to provide a legal basis for the exception as required by the above-referenced statute.

Exception 1 – Misstatement that Respondent Verified Household Composition

Respondent’s sole enumerated exception challenges the administrative law judge’s ultimate factual determination found in paragraph number 31 of the RO. Respondent asserts that there is no competent substantial evidence in the record to support this finding of fact. Respondent makes no assertion that the underlying proceeding departed from the essential requirements of law.

A complete review of the record reveals the following evidence pertinent to the challenged finding of fact. The Petitioner proffered several dozen Florida Tax Credit Scholarship (FTC Scholarship) applications. These applications were accepted into evidence by the administrative

law judge with no objection from the Respondent as Petitioner's Exhibit 11. The vast majority of these applications contained Verification of Household Composition forms completed by the Respondent and Statement of No Household Income forms completed by the FTC Scholarship applicants. See Petitioner's Exhibit 11 at 1, 10, 18, 35, 45, 54, 77, 86, 95, 104, 114, 125, 136, 146, 156, 164, 173, 182, 191, 203, 212, 225, 238, 247, 254, 265, 275, 283, 291, 301, 311, 336, 344, 358, 366, and 379.

The Petitioner also presented the testimony of Monique Harvey, the transcript of whose deposition was accepted into evidence, without objection from the Respondent, as Petitioner's Exhibit 16. Ms. Harvey is the program director of the Florida Tax Credit Program with Step Up for Students. See Petitioner's Exhibit 16 at 4. Ms. Harvey testified in her deposition that she receives FTC Scholarship applications in the normal course and scope of business in her position with Step up for Students. See Petitioner's Exhibit 16 at 14. Ms. Harvey testified about the receipt of approximately forty (40) suspect FTC Scholarship applications with virtually identical information. See Petitioner's Exhibit 16 at 11 and 15-17. Ms. Harvey identified the documents Petitioner submitted at the Final Hearing as the suspect applications. See Petitioner's Exhibit 16 at 9-10.

The Respondent does not allege that the underlying proceeding departed from the essential requirements of law. A review of the entire record reveals that there was competent substantial evidence presented to, and accepted by, the administrative law judge from which the challenged finding of fact could be inferred.

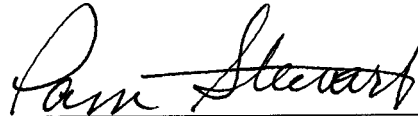
Based on the above, the Agency does not have the authority to overturn the finding of fact challenged by Respondent and, therefore, Respondent's Exception 1 is denied.

DISPOSITION

WHEREFORE, after a review of the record in its entirety, it is ORDERED and ADJUDGED as follows:

1. Respondent's exception is DENIED;
2. The findings and conclusions in the Recommended Order are ADOPTED;
3. The Administrative Law Judge's recommendation is ADOPTED.

DONE AND ORDERED this 12 day of March, 2018, in Tallahassee, Florida.



PAM STEWART
Commissioner of Education

NOTICE OF APPEAL RIGHTS

THIS ORDER CONSTITUTES FINAL AGENCY ACTION. PURSUANT TO SECTION 120.68(2), FLORIDA STATUTES, JUDICIAL REVIEW OF THIS PROCEEDING MAY BE INSTITUTED BY FILING A NOTICE OF APPEAL WITH THE DEPARTMENT'S AGENCY CLERK, 325 WEST GAINES STREET, TALLAHASSEE, FLORIDA 32399-0400, WITHIN THIRTY (30) CALENDAR DAYS OF THE DATE THIS ORDER IS FILED IN THE OFFICIAL RECORDS OF THE DEPARTMENT OF EDUCATION, AS INDICATED IN THE CERTIFICATE OF THE AGENCY CLERK BELOW, OR FURTHER REVIEW WILL BE BARRED. A COPY OF THE NOTICE OF APPEAL MUST BE FILED WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT COURT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES AND MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22(3), FLORIDA STATUTES.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above FINAL ORDER has been filed with the Agency Clerk of the Department of Education on this 3rd day of March, 2018, and that a true and correct copy has been furnished by U.S. Mail to:

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