

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ANGELCARE WITH A VISION,

Petitioner,

vs.

Case No. 18-0435

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Pursuant to notice, a final administrative hearing was conducted in this case before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings ("DOAH"), on April 16, 2018, in Tallahassee, Florida.

APPEARANCES

For Petitioner: John E. Terrel, Esquire  
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For Respondent: D. Carlton Enfinger, Esquire  
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STATEMENT OF THE ISSUE

The issue in this case is whether the withdrawal of a licensure application filed by Petitioner, Angelcare With A

Vision ("Angelcare"), by Respondent, Agency for Health Care Administration ("AHCA" or the "Agency"), was warranted.

PRELIMINARY STATEMENT

In correspondence dated September 7, 2017, the Agency notified Angelcare that its application for licensure as an assisted living facility ("ALF") had been deemed incomplete and was being withdrawn from further consideration. The effect of the correspondence was that Angelcare's request for a license could not be approved. Angelcare timely filed a Petition for Formal Administrative Hearing, which was forwarded to DOAH on January 26, 2018. The case was assigned to the undersigned Administrative Law Judge and a final hearing was conducted as set forth above.

At final hearing, Angelcare called three witnesses: Tammy Ceasor; Isabelle Kalms; and Caszie Hart. Angelcare Exhibits 1 through 6 and 8 through 12 were admitted into evidence. AHCA did not call any additional witnesses; its Exhibits 8 and 9 were admitted. Joint Exhibit 1 was admitted. Official recognition was taken of Executive Order No. 17-235.

The Transcript of the final hearing was filed at DOAH on May 15, 2018. The parties each timely filed a Proposed Recommended Order and each was considered in the preparation of this Recommended Order.

## FINDINGS OF FACT

1. Angelcare is a Florida not-for-profit corporation, incorporated on June 4, 2015. It has remained a corporation in good standing since that date. The primary officer/director of the corporation is Tammy Ceasor.

2. AHCA is the state agency responsible for, inter alia, the licensing and monitoring of ALFs in this state.

3. On November 14, 2016, Angelcare submitted an application to AHCA for licensure of an eight-bed ALF, to be located at 1817 Aaron Road, Tallahassee, Florida. AHCA notified Angelcare through Tammy Ceasor that there were "issues" associated with the application. The parties engaged in protracted discussions concerning those issues and, on August 4, 2017, entered into a Settlement Agreement--adopted by Final Order--resolving the issues. Pursuant to terms of the agreement between the parties, AHCA recommenced its review of Angelcare's application for licensure.

4. On the same date the Final Order was entered, AHCA issued an omissions letter, setting forth items that were still required from Angelcare in order to complete the licensure application. Responsive information or documentation from Angelcare was due at AHCA on or before August 25, 2017.

5. On August 24, 2017 (just one day before its omissions responses were due at AHCA), Angelcare notified AHCA by way of

email that it was unable to obtain an inspection from the fire department, which had "too many pressing matters to complete the inspection after being contacted earlier this month." Angelcare therefore requested an extension until September 1, 2017, to submit the inspection report. Isabelle Kalms, the AHCA reviewer with whom Angelcare had been working, responded via email that the extension request was granted; Angelcare had until September 1, 2017, to submit the fire inspection report. Later that same day, Angelcare requested that all omissions responses be due on August 29, 2017; Ms. Kalms granted that request as well.

6. By email on August 29, 2017, at 5:54 p.m., Angelcare--through its attorney John Terrell--asked for "further indulgence by AHCA" concerning the omissions responses.<sup>1/</sup> Attorney Terrell noted that the passage of time since the application was first submitted had resulted in some changes, including a change in location of the proposed ALF. The location of the ALF would be in Chattahoochee, Florida, rather than in Tallahassee, Florida, as originally planned, although the August 29, 2017, email did not expressly identify the new location. Attorney Terrell also noted that the fire inspection would be completed by September 1, 2017, and that the county health inspection had been scheduled as well. That being the case, Attorney Terrell asked that the due date for all omissions

responses be extended to September 1, 2017, just two days hence. Ms. Kalms responded via email on the same day that "all omissions will be due Friday, September 1, 2017."

7. On September 1, 2017, at 4:58 p.m., Attorney Terrell sent an email to Ms. Kalms, attaching the omissions responses (noting that the proof of financial ability ("PFA") documents, which were large, would be sent in a separate email). Part of the PFA material submitted by Angelcare was a copy of a cashier's check in the amount of \$14,000 made payable to Angel Care With A Vision. The copy of the check submitted by the parties as Joint Exhibit 1 shows a date stamp from AHCA on July 27, 2016. That check is dated July 21, 2016, i.e., prior to the filing of the initial application for licensure which is at issue in this proceeding. Disturbingly, in Angelcare Exhibit 2, page 15, there is a copy of the same check, with the same check number, in the same amount, and with the same information, but with a date of September 21, 2016. The dates on the check, written numerically, were "07/21/16" and "09/21/16," respectively. It appears the 9 in the second check has been physically altered, i.e., the 7 is rounded to look like a 9. That apparent alteration, coupled with the fact that one of the identical (but for the date) checks was stamped in at AHCA two months prior to the licensure application, is very suspect. Although this check is of no consequence in this case

due to the findings set forth herein, it is troubling that a seemingly altered check was submitted to AHCA (for whatever reason).

8. In his September 1, 2017, email, Attorney Terrell intimated that a lease and receipts for certain expenditures would also be sent separately. He noted that while there was no specific requirement for zoning according to the county, a letter to that effect could not be provided by the county until September 5, 2017. Further, he said that Angelcare had "encountered difficulties" getting the fire inspection and county health inspection reports. In lieu of the former, he attached a letter from a company, Tyco Integrated Security, stating that it would be able to get a fire alarm installed "in three weeks or so." The installation of a fire alarm was necessary before a fire inspection could be performed. As to the county health inspection, Attorney Terrell said he expected an inspection to be done on "Thursday or Friday of next week." (In fact, the inspection was done about three weeks later.) Attorney Terrell then asked again that ACHA be as accommodating as possible. Angelcare did not specifically request another extension at this time, but merely stated (through its attorney) that "we hope that AHCA can continue to work with us on this initial license."

9. Rather than inferring that another extension of time was being requested, AHCA deemed the application incomplete on September 1, 2017, as Angelcare had not provided all of the information required by the omissions letter of August 1, 2017, and related extensions. As far as the Agency was concerned, Angelcare's proffered reasons for requesting an extension did not constitute "good cause" for granting Angelcare more time.<sup>2/</sup> Instead, the application was deemed withdrawn.

10. AHCA issued its Notice of Intent to Deem Initial Application Incomplete and Withdrawn ("NOIW") on September 7, 2017, six days after deeming the application withdrawn. The basis for withdrawing the application from further consideration was that the information requested in the omissions letter had not been timely received by AHCA. There is no dispute as to that fact. The primary issue in this case then becomes whether Angelcare provided "good cause" for another extension of time that would allow it to gather the required information.

11. On the same day the NOIW was issued, Attorney Terrell sent Ms. Kalms an email with "additional documentation for Angelcare's response to the omission letter." He noted that "there are some delays concerning the county health inspection and fire inspection, no doubt due to the impending hurricane in the Atlantic Ocean." No other support was provided by Angelcare for the extension request, nor was any competent, credible

evidence provided at final hearing that the hurricane caused delays in gathering the required information. It may well have, but there is no credible evidence to prove that fact. The health inspection was ultimately completed on September 26, 2017. A fire inspection letter was issued by the local fire department on September 29, 2017. A zoning letter was issued by the Board of County Commissioners on April 5, 2018. All of these documents were provided to AHCA well after the deadline of September 1, 2017, and only after AHCA had already withdrawn the application from review. None of the letters or inspection reports alluded to any problems or issues caused by Hurricane Irma that delayed timely issuance of the letters.

12. Again at final hearing Angelcare alluded to the hurricane and its possible impact on gathering documentation. The only evidentiary support provided with their comments was Executive Order No. 17-235, issued by the Governor on September 7, 2017. In that Executive Order, the Governor said that state agencies may suspend regulatory statutes or they may abrogate the time requirements for licensure applications. Ms. Kalms, AHCA's representative at final hearing, was not familiar with the Executive Order, which was issued three days after the omissions responses were due. No findings of fact can be made as to whether the Executive Order had direct impact on AHCA's handling of Angelcare's application.



13. The Executive Order was issued prior to issuance of the NOIW and also prior to Angelcare's submission of information to AHCA on September 7, 2017. Angelcare's final omissions responses, under a cover letter dated November 30, 2017, did not address the Executive Order. That letter did say that "Angelcare had requested additional time due to the approaching hurricane," but did not provide any proof of that statement. The letter also said, "The hurricane had a [sic] delayed the scheduling of the inspections and was an unavoidable event." Again, though it would seem a simple matter to provide substantiation of the claim from the entities providing the inspections, no independent proof of the statement was provided.

14. Angelcare's credibility (and thus the ability to accept all of its statements as true) is somewhat demeaned by the issue concerning the twice-dated bank check. Inasmuch as the check issue raises eyebrows concerning Angelcare's truthfulness, Angelcare's uncorroborated statements about the effect of Hurricane Irma are also suspect. There may be a plausible explanation for the seemingly altered check, but none was provided at final hearing.

#### CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 408.806, Fla. Stat.

Unless stated otherwise herein, all references to Florida Statutes will be to the 2017 version.

16. AHCA is the state agency with responsibility for licensing and monitoring assisted living facilities. § 408.806, Fla. Stat.

17. An administrative hearing involving disputed issues of material fact is a de novo proceeding in which the administrative law judge independently evaluates the evidence presented. Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 787 (Fla. 1st DCA 1981); § 120.57(1), Fla. Stat.

18. The general rule is that the party asserting the affirmative of an issue has the burden of presenting evidence as to that issue. Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co., 670 So. 2d 932, 933 (Fla. 1996). According to section 120.57(1)(k), "Findings of fact shall be based upon a preponderance of the evidence . . . except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized." As the applicant seeking a determination on the status of its licensure application, Angelcare has the burden of proving, by a preponderance of the evidence, that it had shown good cause for further extensions of time to complete its application and thus its application should not have been withdrawn.

19. The evidence is clear that Angelcare did not submit all of the responses mandated by the omissions letter timely. Although Angelcare alluded to meteorological events that may have made it difficult to respond timely, there is no competent evidence to support that claim. Angelcare did not meet its burden of proof. There is not a preponderance of credible evidence that Hurricane Irma was the reason for Angelcare not filing its omissions responses on or before the date they were due. Angelcare did not establish that good cause existed warranting another extension of time. See § 120.60(1), Fla. Stat.

20. Thus, the Agency's withdrawal of the Angelcare application for licensure of an ALF was justified. Whether AHCA could have granted further extensions is not at issue in this proceeding.

21. The recommendation herein does not, however, preclude Angelcare from filing another application for licensure should it wish to do so in the future.

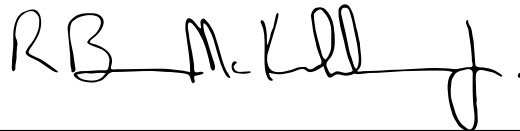
#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that:

The Notice of Intent to Deem Initial Application Incomplete and Withdrawn from Further Consideration, issued by Respondent, Agency for Health Care Administration, is upheld. The

application filed by Petitioner, Angelcare with A Vision, is withdrawn.

DONE AND ENTERED this 31st day of May, 2018, in Tallahassee, Leon County, Florida.



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R. BRUCE MCKIBBEN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of May, 2018.

ENDNOTES

<sup>1/</sup> Tammy Ceasor testified that after the settlement agreement on August 4, 2017, she had no further direct contact with Ms. Kalms or anyone else at AHCA. All communications were done through her attorney, Mr. Terrell.

<sup>2/</sup> Section 120.60(1), Florida Statutes, says that, in an application process, "For good cause shown, the agency shall grant an extension of time for submitting the additional information." There is no definition of "good cause" in that statutory section.

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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.