

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LOVING TOUCH "A BRIGHTER FUTURE"
HOME, OWNED AND OPERATED BY
ZULIA BRENOVIL, LOVING TOUCH
ADULT FAMILY CARE, INC.,

Petitioner,

vs.

Case No. 18-6496FL

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

_____/

LOVING TOUCH "DYNAMIC" HOME,
OWNED AND OPERATED BY ZULIA
BRENOVIL, LOVING TOUCH ADULT
FAMILY CARE, INC.,

Petitioner,

vs.

Case No. 18-6497FL

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

_____/

RECOMMENDED ORDER

On March 28 and 29, 2019, a final hearing was held in this matter pursuant to section 120.57(1), Florida Statutes (2018). The hearing took place via video teleconference with sites in Tallahassee, Florida, and Fort Pierce, Florida. The hearing was conducted by Administrative Law Judge Robert L. Kilbride of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Trevor S. Suter, Esquire
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Tallahassee, Florida 32399-0950

For Respondent: Lance O. Leider, Esquire
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STATEMENT OF THE ISSUE

Whether Petitioners' applications to license their group home facilities should have been approved by Respondent, Agency for Persons with Disabilities ("APD" or "Respondent").

PRELIMINARY STATEMENT

In December of 2017, Petitioners submitted licensure applications to Respondent. The applications were for new group homes and were the initial applications for those group homes. On March 2, 2018, APD notified Petitioners in writing that each of Petitioners' applications for licensure was denied. Taking exception to this action, Petitioners timely filed requests for administrative hearings to contest the denial of their applications.

On December 10, 2018, the matters were referred to the Division of Administrative Hearings ("DOAH") and assigned DOAH Case Nos. 18-6496FL and 18-6497FL. By Order of the undersigned, the matters were consolidated on December 18, 2018.

On March 28 and 29, 2019, a final hearing was held pursuant to section 120.57(1). Petitioners presented the testimony of their corporate officer Zulia Brenovil and APD employee Cordroy Charles. APD presented the testimony of Department of Children and Families ("DCF") employees Tiffany Perry ("Perry"), Charlie Parker ("Parker"), Virginia Snyder ("Snyder"), and Michelle Windfelder ("Windfelder"). Respondent also presented the testimony of its own employees, Maria Rubin and Cordroy Charles.

Regarding exhibits considered at the hearing, Petitioner withdrew Exhibit 12, and admitted the remaining Exhibits 1 through 34 and 39 without objection. Over objection, Petitioner's Exhibits 40 and 41 were also admitted. The undersigned asked Petitioners to submit additional documents post-hearing, which were admitted as Petitioners' Exhibits 42 through 47.

Respondent admitted Exhibits 1 through 4 without objection. Respondent's Exhibits 5 through 10 were also admitted over objection, on the condition that the undersigned may exclude third-party statements contained in Exhibits 5 through 10, unless there was an evidentiary basis to consider them.^{1/}

A Transcript of the hearing was filed with DOAH on April 16, 2019. By agreement of the parties, and a subsequent extension granted by the undersigned, proposed recommended

orders were due on May 6, 2019. APD timely filed its proposed recommended order on May 6, 2019. Petitioner filed a proposed recommended order on May 7, 2019. It was incorrectly labeled as "Respondent's" Proposed Recommend Order.^{2/} The proposed recommended orders from the parties were reviewed and considered in the preparation of this Recommended Order.

All statutory references herein are to the 2018 version of the Florida Statutes, unless otherwise noted.

FINDINGS OF FACT

The undersigned makes the following findings of fact:

1. APD is the state agency that licenses foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs. § 393.067, Fla. Stat. APD is charged with reviewing all applications and ensuring compliance with the requirements for licensure. Id.

Stipulated Facts Submitted by the Parties

2. The parties stipulated to the following facts.

- Loving Touch Dynamic Group Home and Loving Touch A Brighter Future Group Home are owned and operated by Loving Touch Adult Family Care, Inc.
- Zulia Brenovil is Loving Touch Adult Family Care, Inc.'s sole shareholder.
- Loving Touch's applications for licensure of the A Brighter Future and Dynamic homes were ultimately complete and

met all requirements for licensure. However, APD exercised its discretion to deny the applications pursuant to Section 393.0673(2)(b), Florida Statutes. The parties dispute whether such discretion was correctly applied in this case.

- Until the denial of the A Brighter Future and Dynamic home applications, APD had not previously denied a license application submitted by Loving Touch Adult Family Care, Inc.
- Loving Touch Adult Family Care, Inc., has never had a license revoked or suspended by APD.
- The Notice of License Application Denial/Administrative Complaint does not charge Loving Touch Adult Family Care, Inc., with making false statements or omitting material facts in its license application under Section 393.0635(2)(a)1, Florida Statutes.
- Loving Touch Adult Family Care, Inc., also owns three additional homes licensed by APD: Loving Touch "My Place," Loving Touch "Transition," and Loving Touch "Unity." See also (Pet. Exs. 24-26.)
- APD renewed the licenses of My Place, Transition, and Unity after March 2, 2018.
- APD had previously renewed and/or issued the licenses of My Place, Transition, and Unity after the alleged verified findings by the Florida Department of Children and Families.

3. Petitioners are the applicants for licensure of two group home facilities. Resp. Exs. 1 and 3. Petitioners' corporate officer and operator is Zulia Brenovil. She prepared

and submitted both group home licensure applications for Loving Touch "A Brighter Future" Home and Loving Touch "Dynamic" Home to APD in December of 2017. Pre-Hr'g Stip. 3.(e); Resp. Exs. 1 and 3.

4. Upon receipt, APD reviewed Petitioners' applications for licensure and took steps to verify the accuracy of the information provided in the applications. As part of the review, APD conducted a search of the Department of Children and Families ("DCF") records on the Florida Safe Families Network. Resp. Ex. 2, pp. 80-81; Resp. Ex. 3, pp. 186-197.

5. APD's search of DCF records revealed four DCF reports that contained verified findings of abuse, neglect, or exploitation against Brenovil. Resp. Exs. 6, 7, 8, and 10. Those cases are outlined in more detail below.

DCF Case Number 2015-147636

6. DCF case number 2015-147636 resulted in a verified finding of maltreatment/threatened harm against Brenovil. Resp. Ex. 6, p. 190. Tiffany Perry was the DCF investigator assigned to investigate the allegations in this case. The initial report to DCF alleged that minor child E.L., a resident of one of Brenovil's group homes, was being bullied by other children and was not receiving enough food.

7. Perry began her investigation by performing background checks on the persons involved in the report. Perry then

visited Brenovil's group home. Perry interviewed all the children in the home. Perry noted that E.L.'s bedroom door had locks on the outside of the door that would allow someone to lock E.L. inside his bedroom.

8. Initially, Brenovil denied knowing that the locks had been switched, but Brenovil ultimately admitted to Perry that Brenovil's maintenance man had switched the locks. Resp. Ex. 6, p. 191.

9. Perry verified the findings against Brenovil because the locks on E.L.'s bedroom were on the outside of the door and this allowed E.L. to be locked in his bedroom. Resp. Ex. 6, p. 191. This also resulted in the other children locking E.L. in his bedroom. Resp. Ex. 6, p. 191.

10. Additionally, if E.L. was locked in his bedroom she concluded that his ability to quickly and safely escape the house in the event of an emergency, such as a fire, would be impaired. Resp. Ex. 6, p. 191.

DCF Case Number 2016-297713

11. DCF case number 2016-297713 resulted in a verified finding of maltreatment/inadequate supervision against Brenovil. Resp. Ex. 7, pp. 209-210. Charlie Parker was the DCF investigator assigned to investigate the allegations in this case.

12. The initial report to DCF alleged that minor child L.K., a resident of one of Brenovil's group homes, was using a cell phone to send pictures of L.K. cutting herself and to send other explicit pictures. Resp. Ex. 7, p. 209. There was also an allegation that another minor child resident, O.W., was not being closely monitored.

13. Parker began his investigation by visiting Petitioners' group home. Upon inspection, Parker found that L.K.'s safety plan was not in L.K.'s file, as required.

14. Parker testified that L.K.'s status was "to be seen, sight and sound." "Sight and sound" means that L.K. was supposed to be within sight of the house parents at Petitioners' group home at all times, and L.K. was never to be left unsupervised.

15. Parker stated that he made verified findings against Brenovil because the safety plans for O.W. and L.K. were not properly located in the group home as required, and that staff members of the group home did not know the contents of the plans. Brenovil admitted to Parker that she was aware that the proper information was not available to the staff members at the group home.

16. Based on Brenovil's comments and Parker's investigation and interviews of other staff members, Parker closed the case with a verified finding of

maltreatment/inadequate supervision against Brenovil. Resp. Ex. 7, p. 211.

DCF Case Number 2017-125783

17. DCF case number 2017-125783 resulted in five verified findings of maltreatment/inadequate supervision against Brenovil. Resp. Ex. 8, pp. 228-229. Virginia Snyder was the DCF investigator assigned to investigate the allegations in this case. The initial report to DCF alleged that five minor children at two of Brenovil's group homes were not being adequately supervised. Resp. Ex. 8, pp. 227-228.

18. Snyder began her investigation by interviewing the minor children residents of the group homes and the staff members, including Brenovil. Part of the allegations involved a child not receiving a ride back to the group home. The child alleged that she called the group home and no one would pick her up.

19. Brenovil informed Snyder the staff member at the group home could not pick the child up, and Brenovil could not pick the child up because she had taken headache medicine. Brenovil and Brenovil's staff member both admitted to the investigator that the minor child had been dropped off at another foster home without contacting the foster mother of that foster home in advance.

20. Snyder verified findings against Brenovil that children were going between Brenovil's group home and another group home without staff adequately determining or knowing where the children were going or located. Additionally, one child was left at a home and neither Brenovil, nor her employees, were able to pick the child up.

DCF Case Number 2009-146042

21. DCF case number 2009-146042 resulted in a verified finding of maltreatment/inadequate supervision against Brenovil. Resp. Ex. 10, pp. 248-249. In that case, two residents of Brenovil's group home had improper sexual relations, due to inadequate supervision. Resp. Ex. 10, p. 248.

Brenovil's Response to the DCF Verified Findings

22. Brenovil denied switching or having someone switch the locks with respect to DCF case number 2015-147636.

23. Brenovil testified that the safety plans for O.W. and L.K. were properly in the group home during Investigator Parker's investigation in DCF case number 2016-297713.

24. Brenovil denied talking to an investigator with respect to DCF case number 2017-125783.

25. Brenovil testified that she submitted both applications to APD in full in December of 2017. However, the Comprehensive Emergency Management Plans, submitted as part of the applications, were dated January 2018. Resp. Ex. 2, p. 23.

Brenovil did not sign the Comprehensive Emergency Management Plan until February 16, 2018. Resp. Ex. 2, p. 37. Similarly, the Sexual Activities Policy, another document submitted as part of the licensure application, was not signed by Brenovil until January 18, 2018. Resp. Ex. 2, p. 103.

26. Similarly, the Sexual Activity Policy submitted as part of A Brighter Future's application for licensure was not signed by Brenovil until January 18, 2018. Resp. Ex. 4, pp. 184-185.

27. After being confronted with the late documents, Brenovil admitted that the completed applications were not submitted until after December of 2017.^{3/}

28. As part of the DCF investigation in case number 2015-147636, Perry interviewed Brenovil's board member, Mr. Phillip Alexander ("Alexander"). Resp. Ex. 6, p. 194. Alexander informed Perry that the locks had been reversed for years. Resp. Ex. 6, p. 194.

29. When confronted with this at the hearing, Brenovil stated that Alexander did not make this statement to DCF. Brenovil later testified that she knew Alexander did not make that statement because Brenovil was present for the conversation between Alexander and Perry. However, on re-direct, Brenovil acknowledged that she was not present for the conversation between Alexander and Perry.

30. Brenovil testified that she voluntarily gave up her licenses for her DCF licensed group homes, and that there had been no threat of administrative action from DCF.

31. However, Michelle Windfelder, a DCF licensing specialist, testified that Brenovil relinquished her licenses in lieu of revocation. Windfelder testified that, because of problems in Brenovil's home, DCF contacted Brenovil and advised Brenovil that she had the option of relinquishing her licenses, otherwise DCF was going to revoke the licenses. Windfelder testified that because of the impending revocation by DCF, Brenovil decided to voluntarily relinquish the licenses.

32. Petitioners offered no compelling or persuasive evidence to show that APD wrongly denied their license applications, or abused the discretion afforded to it under section 393.0673(2)(b), Florida Statutes.

33. The undersigned finds the testimony and evidence of the DCF investigators and the DCF licensing specialist more compelling and credible than that of Brenovil.

34. Ultimately, the Petitioners did not carry their burden of proof to show that APD abused its discretion or when it denied their initial applications.

CONCLUSIONS OF LAW

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

36. 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 a license. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996).

37. Thus, Petitioners were required to prove by a preponderance of the evidence that their applications for licensure should have been approved.

Applicable Law and Regulations

38. Section 393.067 sets forth APD's responsibilities regarding application procedures and provider qualifications. Another section, section 393.0673, outlines factors and considerations pertaining to licensure.

39. Section 393.0673(2) provides that the agency may deny an initial application for licensure submitted pursuant to section 393.067, if the Department of Children and Family Services has verified that the applicant is responsible for the abuse, neglect, or abandonment of a child or the abuse, neglect, or exploitation of a vulnerable adult. § 393.0673(2), Fla. Stat.^{4/}

40. Other provisions of chapter 393 are relevant as well. These sections strongly suggest and signal that the agency must consider and evaluate key management personnel of the licensee before issuing a license.

41. For instance, section 393.067(4), entitled "Facility licensure," directs that the application must be under oath and contain "the name of the person or persons under whose management or supervision the facility or program will be conducted."

42. Likewise, subsection (5) of that same section requires that a license may not be issued or renewed if the applicant "or any manager, supervisor, or staff member" of the direct service provider has failed background screenings as required under section 393.0655.

43. It is clear, and the undersigned concludes, that the Legislature intended for the agency to consider the background and character of individuals who own or intend to operate these facilities, regardless of who the actual applicant may be.

44. In addition to the language of chapter 393, the pertinent Florida Administrative Code Rule defines "applicant" to mean "a person or entity that has submitted a written application to the agency for the purposes of obtaining an initial residential facility license or renewing an existing

residential facility license." Fla. Admin. Code R. 65G-2.001(2).

45. This language reasonably covers or addresses a situation where the license would be issued to a corporation, but the application is prepared and submitted by a person who may be closely related to the company.

46. The primary legal dispute in these particular cases revolves around the question of whether or not the DCF findings against Brenovil, individually, should be imputed or attributed to the corporate applicant's. In other words, can the verified findings against her be considered and used by the agency to deny licensure to corporate entities she owns or operates.

47. Petitioner corporations emphatically argue that they are separate "applicants," and the findings against Brenovil individually may not be considered as a basis to reject their corporate applications under section 393.0673(2) (b).

48. APD, on the other hand, argues that the statute and rule should be interpreted to allow misconduct and the DCF findings against Brenovil to be imputed or attributed to the corporate applicants she owns or operates; therefore, providing a valid basis to deny their initial applications under section 393.0673(2) (b).

49. A related issue concerns whether or not APD is estopped from rejecting the initial license applications of

these two companies, since they renewed applications for several other companies owned by Brenovil, despite knowing that DCF verified findings against Brenovil already existed.

Discussion

50. As the sole operator of the two companies, and the sole shareholder of their parent corporation, Brenovil prepared, signed, and submitted the applications for both group homes. Resp. Ex. 2, p. 97; Resp. Ex. 4, p. 197. It was clear that Brenovil would be closely and actively overseeing the operations of both applicants.

51. The interpretation of section 393.0673(2)(b) and Florida Administrative Code Rule 65G-2.001(2) proposed by Petitioners, particularly, its interpretation of the word "applicant," would permit a corporate applicant to seek an initial license, despite the fact that its sole operator, who filled out and submitted the application, had previously been found to have verified findings of child neglect or abuse. This argument is made, despite the fact that it is undisputed, and the undersigned finds, that Brenovil would be actively and closely involved in the day-to-day operations of the applicants.

Statutory Interpretation Analysis

52. To accept Petitioners' argument and ignore Brenovil's previous violations would lead to an illogical result. APD could not exercise its lawful discretion to deny an initial

licensure for findings of child abuse or neglect by the operator, so long as a corporation, formed and owned by the same operator, is the "applicant." Under Petitioners' interpretation of the word "applicant," Brenovil could figuratively hide behind the veil of the corporations. A statute should not be construed or interpreted to bring about an absurd or ridiculous result. Dep't of Rev. v. Sch. Bd., 62 So. 3d 686 (Fla. 2d DCA 2011).

53. Similarly, to interpret the word as narrowly as Petitioners suggest would lead to an unreasonable result or a manifest incongruity. Vrchota Corp. v. Kelly, 42 So. 3d 319 (Fla. 4th DCA 2010). If consideration of an "applicant" was limited only to the company actually submitting its name for a license, then the agency would be obligated to overlook and ignore the past conduct of officers closely related to the company and actively involved in its operations.

54. This would lead to an unreasonable result, subjecting children and other vulnerable young adults to a potentially unstable or unsafe group home. See also O.I.C.L. v. Dep't of Child. & Fams., 169 So. 3d 1244 (Fla. 4th DCA 2015). This unsafe course of action and illogical result was not intended by the Legislature.

Principles of Corporate Law

55. Time-honored principles of corporate law also must be considered. They indicate that the corporate applicants must be

bound by Brenovil's misconduct and the verified findings against her by DCF.

56. More specifically, and based on the evidence presented, the undersigned concludes that Brenovil was the "alter ego" of the two corporate applicants. Under the circumstances in these cases, her identity cannot be separated from the corporate applicants.

57. As such, her actions, conduct, and the verified findings against her should be imputed or attributed by APD to the corporate applicants as a basis to deny their applications. There are a myriad of cases addressing and explaining the "alter ego" concept in a corporate setting. A few case citations make the point.

58. For instance, in Sky Cable, LLC v. DIRECTV, Inc., 886 F.3d 375 (4th Cir. 2018), the court utilized the "alter ego" theory of corporate law, and found that a court may disregard the corporate identity if it would be inequitable for the court to uphold a legal distinction between the corporation and its sole member. Id. at 386.

59. Under Sky Cable, when an entity, such as a corporation or LLC, is determined to be the alter ego of its sole member, this finding permits a court to treat the corporate entity as "identical" to its member. Id. at 389. Disregarding the corporate identity under the alter ego theory is particularly

appropriate when a single individual or entity completely dominates and controls another entity. Id. at 390.

60. This is precisely what happened in these cases. Brenovil owned, dominated, and controlled all the Loving Touch entities, including the new corporate applicants.

61. When a company is an alter ego of its sole member, the alter ego and the member are effectively the same entity. See also Dehres LLC v. Underwriters at Interest at Lloyds London, 826 F. Supp. 2d 1338 (S.D. Fla. 2011); Phillips v. Englewood Post No. 322 Veterans of Foreign Wars of the U.S., Inc., 139 P.3d 639 (Colo. Supreme Court 2006).

Collateral Estoppel

62. The Loving Touch applicants also argue that collateral estoppel bars APD from denying their initial applications because APD renewed licenses for other Loving Touch entities when it knew, or should have known, that DCF had made verified findings against Brenovil.

63. In Zikofsky v. Marketing 10, Inc., 904 So. 2d 520 (Fla. 4th DCA 2005), the court explained the concept as follows:

In Florida, collateral estoppel bars re-litigation of the same issue between the same parties which has already been determined by a valid judgment. Stogniew v. McQueen, 656 So. 2d 917, 919 (Fla. 1995). Collateral estoppel applies even when a present and former cause of action are different and it bars re-litigation of specific issues--"that is to say points and

questions"--that were actually litigated and decided in the former suit. See Gordon v. Gordon, 59 So. 2d 40, 44 (Fla. 1952); GLA & Assoc., Inc. v. City of Boca Raton, 855 So. 2d 278, 281 (Fla. 4th DCA 2003). "Florida has traditionally required that there be a mutuality of parties in order for the doctrine to apply. Thus, unless both parties are bound by the prior judgment, neither may use it in a subsequent action." E.C. v. Katz, 731 So. 2d 1268, 1269 (Fla. 1999) (quoting Stogniew, 656 So. 2d at 919).

64. The undersigned is not persuaded or convinced that the doctrine of collateral estoppel applies or controls the outcome of these cases. The parties are not re-litigating the same issues, nor is there any previous ruling or judgment they are bound by.

65. Likewise, the other corporate entities owned by Brenovil who had their licenses renewed are not parties to this action.

66. Similarly, and as alluded to by APD during the hearing, those other license matters involved renewals of existing licenses. These cases involve initial licensing. The undersigned is mindful of the fact that license renewal cases raise fundamentally different property concepts, arguments, and considerations than initial licensing cases.

67. The undersigned concludes that APD provided sufficient reasons why its consideration of these initial


applications was fundamentally different and driven by different considerations than in the case of the renewal of other group home licenses for Brenovil.

68. Accordingly, after considering all the facts, circumstances, and the applicable statutes, rules, and case law, the undersigned concludes that APD was justified in denying Petitioners' applications.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent, Agency for Persons with Disabilities, enter a final order denying the license applications of Petitioners, Loving Touch "A Brighter Future" and Loving Touch "Dynamic."

DONE AND ENTERED this 28th day of May, 2019, in Tallahassee, Leon County, Florida.



ROBERT L. KILBRIDE
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of May, 2019.

ENDNOTES

^{1/} The undersigned did consider relevant statements of third parties in those documents to the extent they supplemented, or explained, other admissible evidence. § 120.57 (1)(c), Fla. Stat.

^{2/} As previously directed, the Loving Touch applicants are to be referred to as Petitioners, not Respondents.

^{3/} This admission, and other inconsistencies in her testimony, raised questions in the mind of the undersigned regarding her and the accuracy of her testimony and credibility.

^{4/} There was no evidence presented by Petitioners to suggest or prove that these previous verified findings of abuse or neglect made by DCF against Brenovil had been appealed or overturned.

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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.