

**STATE OF FLORIDA
AGENCY FOR PERSONS WITH DISABILITIES**

**AGENCY FOR PERSONS
WITH DISABILITIES,**

Petitioner,

v.

DOAH Case No.: 19-6010FL

**RIVERO GROUP HOME
OWNED AND OPERATED BY
RIVERO GROUP HOME #6, INC.,**

Respondent.

_____ /

FINAL ORDER

This cause is before the Agency for Persons with Disabilities (“Agency”) for entry of a Final Order following the Division of Administrative Hearing’s (“DOAH”) issuance of a Recommended Order concerning the Agency’s Administrative Complaint against Rivero Group Home (“Respondent”).

FACTUAL BACKGROUND

1. On January 15, 2020, an Administrative Law Judge (“ALJ”) of DOAH conducted an administrative hearing with both parties represented by counsel and their witnesses attending via video teleconference. The ALJ issued a Recommended Order on April 17, 2020 recommending that the Agency dismiss the Administrative Complaint against Respondent, which is attached as Exhibit A.

2. As explained in the Recommended Order, the ALJ found that Respondent’s submission of a falsified fire inspection report to the Agency was attributed to Sally Vasquez (“Ms. Vasquez”), the administrator for Respondent during that time. Specifically, “Ms. Vasquez created and submitted the falsified fire inspection report in violation of her job duties and professional obligations, without the knowledge or consent of Mr. Rivero or Rivero.” Recommended Order at paragraph 23.

3. The ALJ ultimately found that, “APD failed to meet its burden of demonstrating by clear and convincing evidence that Rivero ‘falsely represented or omitted a material fact in its license application.’” *Id.* at paragraph 34.

4. Counsel for Petitioner timely filed written Exceptions to the Recommended Order (“Exceptions”) on May 4, 2020. Counsel for Respondent timely filed a written Response to Petitioner’s Exceptions (“Response”) on May 19, 2020. Petitioner’s Exceptions, Respondent’s Response, and the record were thoroughly considered in rendering this Final Order.

LEGAL STANDARD FOR EXCEPTIONS

5. An Agency has limited authority to overturn or modify an ALJ’s findings of fact. *See, e.g., Heifetz v. Dep’t of Bus. Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985) (reasoning that “[i]t is the hearing officer’s [or ALJ’s] function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact

based on competent, substantial evidence.”); *see also* *Gross v. Dep't of Health*, 819 So. 2d 997, 1000–01 (Fla. 5th DCA 2002); *Holmes v. Turlington*, 480 So. 2d 150, 153 (Fla. 3rd DCA 1985). The Agency is not authorized to “weigh the evidence presented, judge the credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.” *Bridlewood Group Home v. Agency for Persons with Disabilities* 136 So. 3d 652, 658 (Fla. 1st DCA 2013) (quoting *Heifetz*, 475 So. 2d at 1281). In addition, it is not proper for the Agency to make supplemental findings of fact on an issue about which the ALJ made no finding. *See Florida Power & Light Co. v. State of Florida, Siting Board, et al.*, 693 So. 2d 1025, 1026 (Fla. 1st DCA 1997).

6. Section 120.57(1)(k)-(l), Florida Statutes provides the following with respect to exceptions to findings of fact and conclusions of law in a Recommended Order issued by an ALJ:

(k) The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted under this subsection shall be de novo. The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. **The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.**

(1) The agency may adopt the recommended order as the final order of the agency. **The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule 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. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.** The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, 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. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

(Emphasis added).

7. Respondent raises an issue in its Response that bears consideration before addressing the exceptions. Respondent argues that none of Petitioner's exceptions to the ALJ's conclusions of law involve administrative rules or laws over which the Agency has substantive jurisdiction. Section 393.0673, Florida Statutes, and its implementing rules provide clear authority for the Agency to take action against a license it has granted under certain circumstances. Matters concerning the safe operation of residential facilities licensed pursuant to chapter 393 and chapter 65G-

2, *Florida Administrative Code*, fall squarely within the Agency's substantive jurisdiction.

8. Pursuant to Section 120.57(1)(k), the exceptions are addressed individually below.

I. Specific Exception to Conclusions of Law in Paragraph 28

9. Petitioner requests exception to the ALJ's conclusion that "the licensing body cannot rely solely on wrongdoing or negligence committed by an employee of the licensee; instead, the licensing body must prove that the licensee was at fault somehow for the employee's conduct, due to the licensee's own negligence, intentional wrongdoing, or lack of due diligence." *Bridlewood Grp. Home v. Ag. for Pers. with Disab.*, 136 So. 3d 652 (Fla. 2nd DCA 2013).

10. Petitioner references a fact found in paragraphs 20 and 23 of the Recommended Order but does not request an exception to those findings of fact. Instead, Petitioner requests exception to the conclusion of law in this paragraph. While the undersigned agrees that this case is distinguishable from *Bridlewood* because the alleged violation in the instant case is based on the licensee's overt act and not that of an employee, the undersigned does not agree that the overt act rises to the level of a violation of section 393.0673(1)(a)1.

11. There is competent and substantial evidence supporting the ALJ's conclusion in paragraph 6. Of the Recommended Order that Mr. Rivero, as the group home

owner, briefly reviewed and signed the application for license renewal. Although section 393.0673(1)(a)1. does not explicitly require the false representation to be made knowingly, the Facility Application form adopted by reference in Rule 65G-2.002, *Florida Administrative Code*, requires the application content to be “true and accurate to the best of [the licensee’s] knowledge.” The findings support that the application content was true and accurate to the best of the licensee’s knowledge.

12. Additionally, the pertinent case law indicates false representations occur when made knowingly or “with reckless disregard of whether the statements were true or with a conscious purpose to avoid learning the truth.” *Hale v. State*, 838 So. 2d 1185, 1188 (Fla. 5th DCA 2003) (*citing United States v. Santiago-Fraticelli*, 730 F. 2d 828 (2d Cir. 1984)). The findings of fact do not support such a conclusion.

13. The findings indicated that the licensee reasonably believed that the fire inspection had been completed and that there were no violations. This is based on the June 20, 2019 “Inspection Report” email Mr. Rivero received from Broward Sheriff’s Office Fire Rescue indicating “no violations at the time of this inspection” and the application being completed by a “trusted employee” who had worked for Rivero for at least six years and prepared more than 20 APD renewal applications. Therefore, Mr. Rivero cannot be found to have falsely represented a material fact because he lacked knowledge of such fact and did not act with reckless disregard as to whether the statements were true.

14. This exception is granted to the extent that the ALJ applies case law that is distinguishable from the instant case. Applying the *Bridlewood* standard to this case is somewhat misguided as the licensee committed the alleged violation at issue and not the employee. This interpretation is as or more reasonable than the conclusion being modified.

II. Specific Exception to Conclusions of Law in Paragraph 29

15. Petitioner requests exception to the ALJ's conclusion that, citing *Pic N' Save Central Florida v. Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco*, 601 So. 2d 245, 250 (Fla. 1st DCA 1992), when analyzing liability under the theory of *respondeat superior* and revoking a party's right to conduct business, "one's license to engage in an occupation is not to be taken away except for misconduct personal to the licensee." Only when the employees act in a "persistent and practiced manner" so as to justify being described as "flagrant" is "the factual inference that the violations were either fostered, condoned, or negligently overlooked by the licensee" justified. *Id.* at 253-54.

16. Petitioner again distinguishes the instant case from the cited cases, arguing that the licensee's conduct (i.e. Mr. Rivero's) violates a disciplinary statute. Respondent argues, consistent with the ALJ's characterization, that this is an instance where the *respondeat superior* standard described in *Bridlewood* and *Pic N' Save* applies. The undersigned agrees with Petitioner to the extent that analyzing

respondeat superior overlooks the actual violation: the licensee and not the employee allegedly falsely represented or omitted a material fact in the license renewal application submitted under section 393.067.

17. As discussed previously, the standard for a violation of section 393.0673(1)(a)1. and Rule 65G-2.002, *Florida Administrative Code*, involves consideration of whether the representation was done knowingly or “with reckless disregard of whether the statements were true or with a conscious purpose to avoid learning the truth.” *See* paragraphs 11-12. Although the outcome in this case is the same using the *Bridlewood* and *Pic N’ Save* standard, the standard articulated in Rule 65G-2.002 and *Hale* is more narrowly tailored to these facts.

18. Consistent with the ALJ’s conclusions using the *Bridlewood* and *Pic N’ Save* standard, the findings of fact indicate Mr. Rivero reasonably relied on the June 20, 2019 “Inspection Report” email from Broward Sheriff’s Office Fire Rescue and a “trusted employee.” Mr. Rivero had no knowledge or reason to suspect that the application he signed and submitted to the Agency contained false material facts. He thus fulfilled his legal obligation that the content be “true and accurate to the best of [his] knowledge.” *See* Rule 65G-2.002, Fla. Admin. Code.

19. This exception is granted to the extent that the ALJ applies case law that is distinguishable from the instant case. Applying the *Bridlewood* and *Pic N’ Save* standard to this case is somewhat misguided as the licensee committed the alleged

violation at issue and not the employee. This interpretation is as or more reasonable than the conclusion being modified.

III. Specific Exception to Conclusion of Law in Paragraph 30

20. Petitioner requests exception to the ALJ's conclusion that Ms. Vasquez's one submission of a falsified fire inspection report cannot be construed as "consistent or practiced," nor "flagrant" behavior by Rivero. Petitioner argues that the cases the ALJ relied on, *Bridlewood* and *Pic N' Save*, differ from this case in that the licensee did not commit overt acts in those cases, whereas in this case the licensee signed the application and attestation for licensure that contained the falsified report. The licensee's overt act of signing an application with a falsified report is the alleged violation that justifies a penalty.

21. Petitioner argues that the licensee's cursory review of the application does not absolve him of liability. Although this is true, the facts do not establish that the licensee knew or should have known that the fire report was falsified when he signed and submitted the renewal application. As Respondent argues in its Response, even though paragraph 6. of the ALJ's Recommended Order indicates that "Mr. Rivero, as the group home owner, did a brief review of the application and supporting documents before he signed it[.]" numerous findings of fact establish that Respondent reasonably relied on a longtime Rivero employee who was responsible

for creating the falsified document. *See* paragraphs 5 through 9, 18 through 19, 21, and 23 of the Recommended Order.

22. To the extent that the ALJ applies case law that is distinguishable from the instant case, Petitioner's exception is granted. The conclusion should be supported by the standard articulated in cases such as *Hale* and Rule 65G-2.002 of the *Code*, which incidentally leads to the same conclusion given the facts described in paragraphs 11, 13 and 18 of this Final Order. This interpretation is as or more reasonable than the conclusion being modified.

IV. Specific Exception to Conclusion of Law in Paragraph 34

23. Petitioner requests exception to the ALJ's conclusion that the Agency failed to meet its burden of demonstrating by clear and convincing evidence that Rivero "falsely represented or omitted a material fact in its license application." Although it is true that the license application contained a falsified fire inspection, the extenuating circumstances described in the ALJ's findings of fact indicate that Mr. Rivero not only did not knowingly misrepresent that fact but reasonably believed the fire inspection report to be true and accurate.

24. It is worth noting that even if Respondent did falsely represent or omit material in its license application as described in section 393.0673(1)(a)1., Rule 65G-2.0041, *Florida Administrative Code*, provides as follows with respect to disciplinary actions against licensees:

(2) Factors considered when determining sanctions to be imposed for a violation. The Agency shall consider the following factors when determining the sanctions for a violation:

- (a) The gravity of the violation, including whether the incident involved the abuse, neglect, exploitation, abandonment, death, or serious physical or mental injury of a resident, whether death or serious physical or mental injury could have resulted from the violation, and whether the violation has resulted in permanent or irrevocable injuries, damage to property, or loss of property or client funds;
- (b) The actions already taken or being taken by the licensee to correct the violations, or the lack of remedial action;
- (c) The types, dates, and frequency of previous violations and whether the violation is a repeat violation;
- (d) The number of residents served by the facility and the number of residents affected or put at risk by the violation;
- (e) Whether the licensee willfully committed the violation, was aware of the violation, was willfully ignorant of the violation, or attempted to conceal the violation;
- (f) The licensee's cooperation with investigating authorities, including the Agency, the Department of Children and Families, or law enforcement;
- (g) The length of time the violation has existed within the home without being addressed; and,
- (h) The extent to which the licensee was aware of the violation.

25. Death or serious injury could have resulted if the group home was not compliant with fire safety standards. There is no evidence in the record that the group home was compliant or noncompliant with Fire Inspection standards at the time of the application. However, the falsified inspection report by itself did not result in harm to any residents.

26. There is evidence in the record that the licensee took action to correct the violation by firing the employee responsible for the falsified fire report.

27. This is Respondent's first violation of this type.

28. There is no evidence in the record regarding the number of residents currently served by Respondent, although the maximum capacity is six residents. All were put at risk by this violation as described in paragraph 18.

29. Based on the ALJ's findings of fact, the licensee was not aware of this violation until he received the administrative complaint on October 23, 2019. Based on the record and as Respondent indicated in its response, "Mr. Rivero and Rivero Group Home did not know of Ms. Vazquez's false document, had every reason to rely on Ms. Vazquez to honestly and accurately prepare truthful applications, had no indications Ms. Vazquez had falsified a document, and did not discover Ms. Vazquez's deceit until many months after the renewal application was submitted, at which time they fired Ms. Vazquez."

30. The record does not indicate the extent to which the licensee cooperated with investigating authorities pertaining to the misrepresentation, although paragraphs 9 through 13 of the Recommended Order indicate he was generally cooperative with the Agency and Broward Sheriff's Office Fire Rescue.

31. The violation existed since Mr. Rivero submitted the license application on June 20, 2019, although he was not aware until October 23, 2019.

32. Petitioner's exception to paragraph 34, although labeled an exception to a conclusion of law, implicates several findings of fact and conclusions of law. Although it would be possible to grant it to the extent that, technically and without


consideration of the penalty phase of disciplinary action, Respondent did submit a falsified document in its license application and therefore “falsely represented” that fact. Although revocation is permitted by the plain language of section 393.0673(1)(a)1., it is not supported by Rule 65G-2.002, pertinent case law, or the considerations discussed in Rule 65G-2.0041. *See* paragraphs 11 through 12 and 24 through 31 of this Final Order. To the extent that modifying paragraph 34 indicates disagreement with the ALJ’s ultimate conclusion of law, this exception is denied. For the reasons described above, this exception is denied.

33. The ALJ’s Recommended Order is hereby modified in part and adopted in part.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, the administrative complaint is dismissed.

DONE AND ORDERED in Tallahassee, Leon County, Florida, on August 31, 2020.



Clarence Lewis
Deputy Director of Operations
Agency for Persons with Disabilities

NOTICE OF RIGHT TO APPEAL

A party who is adversely affected by this final order is entitled to judicial review. To initiate judicial review, the party seeking it must file one copy of a "Notice of Appeal" with the Agency Clerk. The party seeking judicial review go must also file another copy of the "Notice of Appeal," accompanied by the filing fee required by law, with the First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the rendition of this final order.¹

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Rita Castor
Regional Operations Manager
APD Southeast Region

¹ The date of "rendition" of this Final Order is the date that the Agency Clerk certified it was sent to the named individuals.

I HEREBY CERTIFY that a copy of this Final Order was provided by regular US or electronic mail to the above individuals at the addresses listed on August 31, 2020.

/s/ *Danielle Thompson*
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