

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

AGENCY FOR PERSONS WITH  
DISABILITIES,

Petitioner,

Case Nos. 20-1772FL  
20-1773FL  
20-1774FL

vs.

ANGEL HEART SUPPORT SERVICES, INC.,  
GROUP HOME, OWNED AND OPERATED BY  
ANGEL HEART SUPPORT SERVICES, INC.,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing in this case was conducted before Administrative Law Judge Mary Li Creasy by Zoom conference on May 27, 2020.

APPEARANCES

For Petitioner: Trevor S. Suter, Esquire  
Agency for Persons with Disabilities  
4030 Esplanade Way, Suite 315C  
Tallahassee, Florida 32399-0950

For Respondent: Michael Paul Gennett, Esquire  
Polsinelli, P.C.  
1111 Brickell Avenue, Suite 2800  
Miami, Florida 33131

STATEMENT OF THE ISSUE

Whether the doctrine of equitable tolling applies to excuse Respondent's failure to timely request administrative hearings regarding the Administrative Complaints filed against facilities 1, 2, and 3.

PRELIMINARY STATEMENT

Respondent, Angel Heart Support Services, Inc. ("Angel Heart"), is the owner and operator of five group homes for disabled adults in Miami-Dade County, Florida. Petitioner, Agency for Persons with Disabilities ("APD") is the State agency responsible for licensing and regulating group homes for disabled adults.

On January 23, 2020, APD issued four Administrative Complaints ("ACs") to Angel Heart's group homes 1 through 4. All four ACs were sent by certified mail and arrived at Angel Heart's administrative office. The ACs for group homes 1, 2, and 3 arrived on January 30, 2020, and were signed for by Odra Kok, an employee of Angel Heart. The AC for group home 4 arrived on February 4, 2020, and was also signed for by Ms. Kok. Ms. Kok informed the principal of Angel Heart, Eartha Mays, about the AC for group home 4, but did not inform her about the ACs for group homes 1, 2, and 3 and, in fact, lost those documents.

Ms. Mays made a timely request for the AC for group home 4 on February 20, 2020. Ms. Mays did not timely appeal the ACs for group homes 1, 2, and 3 because she was not aware of their existence in time to make a timely request for hearing. On March 9, 2020, APD issued Final Orders revoking Angel Heart's license to operate group homes 1, 2, and 3 for failure to timely request a hearing. Ms. Mays first became aware of the existence of the ACs for group homes 1, 2, and 3 when she received the Final Orders.

On March 16, 2020, Angel Heart filed a Motion to Vacate Final Orders with the Agency. APD granted that Motion by Order dated April 9, 2020, and forwarded the matters to the Division of Administrative Hearings ("DOAH") for an evidentiary hearing. The three cases were consolidated by Order dated

April 24, 2020. On May 21, 2020, the parties submitted an Amended Joint Pre-Hearing Stipulation, including a statement of undisputed facts. To the extent that the stipulated facts are relevant, the facts are adopted and incorporated herein as necessary.

The hearing commenced as scheduled on May 27, 2020. APD presented the testimony of Danielle Thompson, APD's Agency Clerk. APD's Exhibits 1 through 10 were admitted. Angel Heart presented the testimony of Odra Kok and Eartha Mays. Angel Heart's Exhibits 1 through 12 were admitted.

The hearing Transcript was filed on June 17, 2020. Both parties timely submitted their proposed recommended orders, and each has been considered in the preparation of this Recommended Order. Except as otherwise indicated, citations to the Florida Statutes refer to the version that was in effect during the time in which the facts of this case occurred.

#### FINDINGS OF FACT

1. APD is the state agency charged with regulating the licensing and operation of group home facilities pursuant to section 20.197 and chapter 393, Florida Statutes.

2. Angel Heart is a Florida registered corporation. Its corporate officers are Eartha Mays and Azjah Temple. Respondent's registered agent is Eartha Mays. The address for Azjah Temple, Eartha Mays, and the corporation is 18901 Southwest 106 Avenue, Suite A-111, Miami, Florida 33157.

3. On January 23, 2020, APD filed ACs against the licenses of Angel Heart's group homes 1 through 4.

4. According to the United States Postal Service, the ACs for group homes 1 through 3 were delivered to 18901 Southwest 106 Avenue,

Suite A-111, Miami, Florida 33157, and signed for by Odra Kok at 12:06 p.m., on January 30, 2020.

5. Odra Kok is the group home manager for Angel Heart's group home 3. On January 30, 2020, Ms. Kok happened to be in Respondent's administrative office and received and signed the certified mail receipts for the ACs related to group homes 1, 2, and 3. Ms. Kok placed the ACs on a table in the office and they were subsequently lost. Neither Ms. Mays nor Ms. Temple was in the office at the time Ms. Kok received the ACs.

6. Angel Heart did not respond to the ACs for group homes 1, 2, and 3 within 21 days of January 30, 2020.

7. On March 9, 2020, APD entered default final orders that revoked the licenses of group homes 1, 2, and 3. APD vacated the final orders in response to a motion filed by Respondent.

8. Eartha Mays timely appealed the AC for group home 4.

9. At the time the ACs were issued in January 2020, Angel Heart was already operating under a settlement agreement with APD regarding group homes 1 through 4 that resulted from one AC issued in May 2019 against all four group homes.

10. The settlement agreement placed a number of requirements on Angel Heart, including attendance at quarterly meetings with APD officials to review compliance issues. The four identical ACs issued in January 2020 allege that Angel Heart failed to comply with certain terms of the settlement agreement.

11. On February 5, 2020, one day after receiving the AC for group home 4, Eartha Mays emailed the AC to Kirk Ryon, APD's Regional Program Supervisor for South Florida, to get more information. Mr. Ryon did not inform Ms. Mays that three identical ACs had been issued for group homes 1 through 3.

12. On February 14, 2020, Ms. Mays met with Kirk Ryon and other APD officials in person to conduct a quarterly meeting. The purpose of the

quarterly meetings was to address any problems or complaints APD had with Angel Heart, including compliance issues. None of the APD officials at that meeting mentioned to Ms. Mays that there were a total of four ACs issued in January.

13. On February 20, 2020, Ms. Mays filed her Request for Administrative Hearing with the APD Agency Clerk, Danielle Thompson, in response to the AC for group home 4. Although Ms. Thompson was aware of the existence of the other three ACs at the time of receiving the Request for Hearing on group home 4, Ms. Thompson did not call or correspond with Ms. Mays to inquire as to why she did not appeal the other three ACs.

14. After filing her Request for Administrative Hearing, Ms. Mays emailed Trevor Suter, the APD attorney who authored all of the ACs, to make sure that her Request for Administrative Hearing had been received. Mr. Suter responded to that email later that same day, saying that he would make sure the clerk received it. Even though he had authored all four ACs, Mr. Suter did not call or correspond with Ms. Mays as to why she did not appeal the three other ACs.

15. The allegations in all four ACs are identical as to Count I, and make no distinctions as to which allegations apply to which facility.

16. Ms. Thompson found that the Request for Administrative Hearing filed by Angel Heart as to group home 4 was legally sufficient, including listing the facts alleged in the AC which were in dispute.

17. Ms. Thompson testified that the only thing Angel Heart would have had to do to make the Request for Administrative Hearing applicable to all four ACs was to list the additional license numbers or style the title so it was clear that the appeal included all four group homes.

18. Ms. Thompson explained that it is APDs standard procedure to give appellants who file timely, but legally deficient requests for hearing, multiple opportunities to amend their hearing requests to address deficiencies.

Ms. Thompson will often call pro se appellants to advise of any deficiencies

and permit them extra time to refile or amend their filing. Ms. Thompson indicated that as long as the petition for hearing was filed timely, she would allow appellants extra time to amend their petition even after the 21 days to appeal had expired.

#### CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has jurisdiction over the subject matter of and parties to this proceeding. §§ 120.569, 120.57(1), Fla. Stat. (2019).

20. APD has the burden to show that notice of intended action was received and that Respondent's request for hearing was untimely. Respondent, as the party seeking equitable tolling, has the burden of proof as to that issue. *Menominee Indian Tribe of Wis. v. U.S.*, 136 S. Ct. 750, 755-56 (2016). The standard of proof for each of the parties is a preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

21. In relevant part, section 120.60(5), Florida Statutes, provides:

No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a proceeding pursuant to ss. 120.569 and 120.57.

22. The requirement that a hearing must be requested within 21 days of receipt of the notice of agency action is clear. Florida Administrative Code Rule 28-106.111 provides in relevant part:

(2) Unless otherwise provided by law, persons seeking a hearing on an agency decision which does or may determine their substantial interests shall

file a petition for hearing with the agency within 21 days of receipt of written notice of the decision.

\* \* \*

(4) Any person who receives written notice of an agency decision and who fails to file a written request for a hearing within 21 days waives the right to request a hearing on such matters. This provision does not eliminate the availability of equitable tolling as a defense.

23. Section 120.569(2)(c) provides that a request for hearing "shall be dismissed ... if it has been untimely filed." The statute expressly notes that this does not eliminate the availability of equitable tolling as a defense.

24. In this case, the parties dispute whether the ACs were properly served. It is undisputed that the Request for Hearing was returned more than 21 days after service of the ACs for group homes 1 through 3.

Notice Was Not Properly Served

25. Process against a private corporation may be served on: the president, vice president, or other head of the corporation; in their absence, the cashier, treasurer, secretary, or general manager; in the absence of the previous two categories, any director; in the absence of the previous three categories, any officer or business agent residing in the state. § 48.081(1), Fla. Stat.

26. Alternatively, service of process can be performed on the designated registered agent. § 48.081(3)(a), Fla. Stat. However, service can be made on any employee of the corporation at the corporation's principal place of business if service cannot be made "*because of a failure to comply with section 48.091, Florida Statutes.*" (emphasis added). § 48.081(3)(a), Fla. Stat. A person attempting service of process can serve any employee of the registered agent even if the registered agent is temporarily absent from the office. § 48.081(3)(a), Fla. Stat.

27. APD argues that Ms. Mays serves as both the director and the registered agent of the company and Ms. Temple serves as a member. All

share the same address with the corporation, 18901 Southwest 106 Avenue, Suite A-111, Miami, Florida—the location where the complaints were served. Ms. Mays and Ms. Temple were, at least temporarily, away from the office at the time of service. Ms. Kok is an employee of Ms. Mays because Ms. Mays is the 100 percent owner of Angel Heart for which Ms. Kok works. APD argues that service on Ms. Kok was proper in this circumstance.

28. However, APD failed to demonstrate that Angel Heart did not comply with section 48.091, Florida Statutes, which provides in relevant part:

Every corporation shall keep the registered office open from 10 a.m. to 12 noon each day except Saturdays, Sundays, and legal holidays, and shall keep one or more registered agents on whom process may be served at the office during these hours. The corporation shall keep a sign posted in the office in some conspicuous place designating the name of the corporation and the name of its registered agent on whom process may be served.

29. The evidence shows that Ms. Kok signed for the ACs at 12:06 p.m. No evidence was presented regarding whether Ms. Mays, as registered agent, was available to accept service between 10:00 a.m. and noon or whether the appropriate signage was in the office. Accordingly, APD failed to demonstrate that notice as to group homes 1 through 3 was properly served.

Equitable Tolling is Appropriate

30. Assuming arguendo that service on Ms. Kok was sufficient to constitute proper service on Angel Heart, the doctrine of equitable tolling would excuse Angel Heart's delay in requesting an administrative hearing for group homes 1 through 3.

31. In *Machules v. Department of Administration*, 523 So. 2d 1132, 1134 (Fla. 1988), the Florida Supreme Court stated, "[g]enerally, the tolling doctrine has been applied when the plaintiff has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum."



32. Regarding the use of equitable tolling in administrative proceedings, the *Machules* Court explained:

The tolling doctrine is used in the interests of justice to accommodate both a defendant's right not to be called upon to defend a stale claim and a plaintiff's right to assert a meritorious claim when equitable circumstances have prevented a timely filing. Equitable tolling is a type of equitable modification which 'focuses on the plaintiff's excusable ignorance of the limitations period and on [the] lack of prejudice to the defendant.' *Cocke v. Merrill Lynch & Co.*, 817 F.2d 1559, 1561 (11th Cir. 1987)(quoting *Naton v. Bank of California*, 649 F.2d 691, 696 (9th Cir. 1981)). . . The doctrine [of equitable tolling] serves to ameliorate harsh results that sometimes flow from a strict, literalistic construction and application of administrative time limits contained in statutes and rules.

*Id.* at 1134.

33. The initial AC that Ms. Mays received in May 2019 addressed all four group homes in a single document. This led Ms. Mays to believe that APD's ACs address all facilities subject to the complaint in one document.

34. Ms. Mays had multiple contacts and communications with APD representatives, prior to the deadline for appealing the ACs for group homes 1, 2 and 3, all of whom were aware of the existence of those ACs and all of whom failed to make her aware of the ACs in time to appeal them.

35. On February 20, 2020, Ms. Mays filed her Request for Hearing at 10:50 a.m. as to group home 4. Ms. Thompson testified that, at the time she received the Request for Hearing, she was aware of the existence of the other three ACs but made no attempt to contact Ms. Mays to inquire whether she intended to appeal the other three ACs. Ms. Thompson testified that she did not do this because she assumed Angel Heart was only disputing the fourth one. Yet, she also testified that she routinely contacts other persons who file petitions with deficiencies and gives them several opportunities to amend

their petitions, particularly pro se appellants like Ms. Mays because "they need a little bit of procedural help with it."

36. On the same day, Ms. Mays received emails from Trevor Suter, counsel for APD in this case, acknowledging that he would make sure the clerk received her appeal. As the author of all four ACs, Mr. Suter was aware of the existence of all four and also that the appeal he received was only for one AC. He could have, but did not, reach out to Ms. Mays to find out why she had only appealed one.

37. There is no reason to believe any of these APD representatives acted intentionally to prevent Ms. Mays from appealing all four ACs. Nevertheless, their conduct misled and lulled Ms. Mays into inaction by believing that there was only one AC.

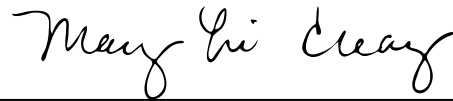
38. License revocation for group homes is an unacceptable harsh result given Angel Heart's clear intention to dispute the allegations of the ACs. Accordingly, the doctrine of equitable tolling applies to excuse Angel Heart's late filing of a request for hearing as to groups homes 1 through 3.

39. APD will not be prejudiced by accepting a late appeal from Angel Heart for group homes 1, 2, and 3, particularly because these ACs are virtually identical to the AC for group home 4, for which there is already a pending appeal.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Persons with Disabilities treat the pending Request for Hearing for group home 4 as an appeal of all four Administrative Complaints or, in the alternative, allow Angel Heart Support Services, Inc., an additional 21 days from the date of the Final Order to appeal the Administrative Complaints for group homes 1, 2, and 3.

DONE AND ENTERED this 20th day of July, 2020, in Tallahassee, Leon  
County, Florida.



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MARY LI CREASY  
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Filed with the Clerk of the  
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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.