

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF HIGHWAY SAFETY AND  
MOTOR VEHICLES,

Petitioner,

vs.

Case No. 21-0905

PEROTTE DRIVING AND TRAFFIC SCHOOL,  
INC.,

Respondent.

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RECOMMENDED ORDER

Administrative Law Judge (“ALJ”) Brittany O. Finkbeiner conducted the final hearing in this case for the Division of Administrative Hearings (“DOAH”) on September 2, 2021, by Zoom conference.

APPEARANCES

For Petitioner: Elana J. Jones, Esquire  
Roberto R. Castillo, Esquire  
Department of Highway Safety  
and Motor Vehicles  
Room A-432  
2900 Apalachee Parkway  
Tallahassee, Florida 32399

For Respondent: Matthew E. Ladd, Esquire  
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Suite 301  
4649 Ponce De Leon Boulevard  
Coral Gables, Florida 33146

STATEMENT OF THE ISSUE

The issue to be determined in this case is whether the Department of Highway Safety and Motor Vehicles (“Petitioner”) may properly terminate its

contract with Perotte Driving and Traffic School, Inc. (“Respondent”), on the basis of failure to comply with the provisions of the contract, pursuant to section 322.56(3)(f), Florida Statutes.

#### PRELIMINARY STATEMENT

On February 4, 2021, Petitioner issued a three-count Administrative Complaint (“Complaint”) notifying Respondent of “its intent to enter a Final Order imposing one or more of the following penalties: imposition of an administrative fine, suspension or revocation of Respondent’s license, and/or any other relief deemed appropriate.” The Complaint alleges that Respondent violated specified provisions of its contract with Petitioner as the bases for its intended action. Respondent timely requested a hearing at DOAH on February 19, 2021.

The final hearing took place on September 2, 2021. At the hearing, Petitioner offered the live testimony of William Ray Graves, Chief of the Bureau of Motorist Compliance; and Beatrice Dume (“Ms. Dume”), Regulatory Specialist. Respondent presented the live testimony of Wilner Perotte (“Mr. Perotte”), CEO of Respondent. Petitioner’s Exhibits 1 through 6 were admitted into evidence. Respondent’s composite exhibits were also entered into evidence. The one-volume Transcript was filed with DOAH on September 24, 2021. Both parties filed proposed recommended orders, which were duly considered in the preparation of this Recommended Order.

Following the final hearing, the undersigned convened a telephonic conference with the parties to discuss whether jurisdiction for this case was proper at DOAH. Both Petitioner and Respondent agreed that jurisdiction was proper and that the administrative case should proceed.

All references to Florida Statutes are to the 2020 codification in effect at the time of the matters relevant to these proceedings.

#### FINDINGS OF FACT

1. Petitioner is the State agency authorized to enter into contracts with driving schools to administer driving and skills portions of examinations for driver licenses, pursuant to section 322.56. Petitioner regulates third-party administrators for compliance with contract provisions in furtherance of Petitioner's mission to ensure safe roads in the State of Florida.

2. Section 322.56 authorizes Petitioner to contract with private sector entities to conduct services in the same manner Petitioner conducts services at both its driver license offices and tax collector offices.

3. Respondent is a third-party administrator under contract with Petitioner to conduct Class E Knowledge Examinations for State of Florida driver licenses.

4. Ms. Dume is employed as a Regulatory Program Specialist for Petitioner. Her duties include visiting third-party administrators and monitoring their activities to ensure that they are abiding by the terms of their contracts with Petitioner.

#### Assistance by Misrepresentation

5. On October 8, 2020, Ms. Dume was present at Respondent's school conducting an on-site inspection. She left at 5:45 p.m., having been informed by Mr. Perotte that the school closed at 6:00 p.m.

6. Ms. Dume returned to continue her inspection on October 9, 2020, arriving at 10:20 a.m. She monitored the school from the parking lot before entering at 11:20 a.m. Then, Ms. Dume observed Mr. Perotte entering information into his computer showing that a student had completed the four-hour Traffic Law Substance Abuse Education course ("TLSAE"). The TLSAE is a requirement to earn a Florida driver license. The course must be taken in one consecutive four-hour period. Ms. Dume obtained the certificate

for TLSAE course completion for the student, which reflected a completion date of October 9, 2020. However, based on Ms. Dume's credible testimony, it would have been impossible for the student to have completed the four-hour TLSAE course on the date that Mr. Perotte entered into the computer because Ms. Dume was present up until 15 minutes prior to the school closing and did not observe the student taking the course. Mr. Perotte's claim that the student took the course after Ms. Dume left was not credible. His credibility was further diminished by his inconsistent and illogical testimony that he entered the erroneous date of course completion by mistake.

7. Although it was established that the same student did complete the TLSAE in 2013, that fact is immaterial to Mr. Perotte's clear misrepresentation of the course completion date.

**Ensuring Only Applicants Allowed in Examination Area**

8. During Ms. Dume's on-site inspection on October 8, 2020, she observed an applicant inside the testing room taking the knowledge exam with an instructor also inside the testing room.

9. The instructor explained to Ms. Dume that she was inside the testing room to have the applicant sign paperwork, but Ms. Dume believed that the reason was pretextual based on her observations.

10. On October 14, 2020, during another on-site inspection of Respondent, Ms. Dume observed Mr. Perotte inside the testing room standing over a customer who was sitting down taking the knowledge exam.

11. Mr. Perotte testified that he was inside the testing room while a test was in progress to fix a technical issue with the computer. He also testified, however, that in the event of a technical issue, he would ask the examinee to exit the testing room while a staff member addressed the issue. Mr. Perotte's testimony was unconvincing and inconsistent.

### Allowing the Department to Conduct Random Inspections

12. Ms. Dume testified that for each of her on-site inspections that are relevant to this proceeding, on October 8, 9, and 14, 2020, she entered Respondent's facility through an unlocked door.

13. During her October 14, 2020, inspection, Ms. Dume observed that there were a number of customers present when she arrived at 12:30 p.m. A few minutes later, all of the customers were gone, and Mr. Perotte stopped others from entering the school. Ms. Dume believed that the customers were discouraged by Mr. Perotte from patronizing the school while Ms. Dume was present. Ms. Dume left around 2:30 p.m., due to the school being empty. The reasons why customers may have left or decided not to enter the school in Ms. Dume's presence were based on assumptions and were not conclusively established.

### CONCLUSIONS OF LAW

14. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. § 120.569 and 120.57(1), Fla. Stat. Contract disputes are traditionally settled in the civil courts with state agencies being treated the same as any other contracting party. *Vincent J. Fasano, Inc., v. Sch. Bd. of Palm Bch. Cnty*, 436 So. 2d 201, 202-03 (Fla. 4th DCA 1983). Section 120.57(1), Florida Statutes, however, provides for a full evidentiary hearing before an ALJ when an agency's determination affects a party's substantial interests. *See Diaz v. AHCA*, 65 So. 3d 78, 82 (Fla. 3d DCA 2011). A party does not have a substantial interest where a contract is terminable at will by the agency. *Id.* In the present case, Petitioner has the right to take adverse action with respect to the contract at issue only if the third-party administrator "fails to comply with any terms of the contract." § 322.56(1)(f), Fla. Stat. Thus, Respondent has a substantial interest in its entitlement to continued participation as a third-party administrator if it complies with the terms of the contract.

15. Petitioner has the burden to prove the allegations in the Administrative Complaint by clear and convincing evidence. *See Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

16. Clear and convincing evidence “requires more proof than a ‘preponderance of the evidence’ but less than ‘beyond and to the exclusion of a reasonable doubt.’” *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997). As stated by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

*In re Davey*, 645 So. 2d 398, 404 (Fla. 1994) (quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). “Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous.” *Westinghouse Elec. Corp. v. Shuler Bros.*, 590 So. 2d 986, 988 (Fla. 1st DCA 1991).

17. Section 322.56(3)(f) mandates that contracts between Petitioner and third-party administrators include a provision as follows:

Reserve to the department the right to take prompt and appropriate action against a third party that fails to comply with state or federal standards for a driver license examination or that fails to comply with any terms of the contract.

18. Accordingly, the contract between Petitioner and Respondent states, in pertinent part, at Section VIII, paragraph A.:

The Department reserves the right to terminate this agreement upon determining the Third Party Administrator or Third Party Examiner in the

employ of a Third Party Administrator fails to comply with the terms of the contract ...

**Count I**

19. Count I of the Administrative Complaint charges Respondent with failing to comply with Section VIII, paragraph A., 2. of the contract, which requires:

Administering Class E Knowledge Exams honestly and without false statement, without obtaining or assisting a person in obtaining any driver license through fraudulent means or by misrepresentation, to include falsification of course completions that are required to obtain or reinstate driver license privilege.

20. Petitioner proved, by clear and convincing evidence, that Respondent violated the contract by assisting a person in obtaining a driver license through misrepresentation to include falsification of course completion.

21. Ms. Dume's observations with respect to Mr. Perotte's misrepresentation of a student's TLSAE completion were credible and distinctly remembered. Mr. Perotte admitted that he entered a completion date that he knew was false, although he said that he somehow entered the date by mistake. The contract, however, does not contemplate any exceptions for misrepresentations made by mistake.

**Count II**

22. Count II of the Complaint charges Respondent with failing to comply with Section III, paragraph G., 2. and 4. of the contract, which respectively state:

The Third Party Administrator must ensure that the examination area is free from distractions or interference that would affect the examining ability of any applicant.

The Third Party Administrator must ensure that only the actual examining applicants are allowed in the examination area.

23. Petitioner proved, by clear and convincing evidence, that Respondent violated the contract by failing to ensure that only examining applicants were allowed in the examination area.

24. The unrefuted evidence shows that persons other than examining applicants were inside the examination area on two separate occasions. The only dispute is as to why those persons were inside examination area.

25. Even if Mr. Perotte’s version of events were credible—that he was inside the testing room on October 14, 2020, with an applicant actively taking a test to fix a technical issue—it would not change the fact that he violated the plain language of the contract. The contract clearly states that Respondent is required to “ensure that only the actual examining applicants are allowed in the examination area.” The contract does not contain an exception for technical issues, or for any other reason. By the same logic, the reason for an instructor being inside the testing room with an applicant on October 8, 2020, is immaterial.

### **Count III**

26. Count I of the Complaint charges Respondent with failing to comply with Section V, paragraph I., 1., b., of the contract, which states:

Statutory requirements of the Third Party Administrator:

Requirements of Section 322.56, Florida Statutes:

Allow the Department, or its representative, to conduct random examinations, inspections, and audits without prior notice.

27. Petitioner did not prove, by clear and convincing evidence, that Respondent failed to allow random examinations, inspections, and audits. To



the contrary, Ms. Dume testified that she entered the school on each visit without incident. Petitioner's allegation that customers were turned away to intentionally impede inspection is entirely speculative.

**Conclusion**

28. Petitioner proved Counts I and II of the Complaint by clear and convincing evidence. Petitioner did not meet its burden to prove Count III. Termination of the contract, however, is within Petitioner's discretion based on failure to comply with "any terms" of the contract under section 322.56(3)(f). Further, the contract, by its own terms, contemplates possible termination if the third-party administrator "fails to comply with the terms of the contract."

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent be found in violation of the contract, as alleged in the Complaint, and that the contract be terminated.

DONE AND ENTERED this 22nd day of October, 2021, in Tallahassee, Leon County, Florida.



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BRITTANY O. FINKBEINER  
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Filed with the Clerk of the  
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COPIES FURNISHED:

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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.