

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

vs.

Case No. 22-1062

VILLAR FAMILY HOME DAYCARE, INC.,
D/B/A VILLAR FAMILY DAY CARE HOME,

Respondent.

_____ /

RECOMMENDED ORDER

The final administrative hearing on this matter was conducted before Robert S. Cohen, Administrative Law Judge (“ALJ”) with the Division of Administrative Hearings (“DOAH”), on June 28, 2022, via Zoom teleconference.

APPEARANCES

For Petitioner: Carlos A. Garcia, Esquire
Department of Children and Families
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For Respondent: Matthew E. Ladd, Esquire
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STATEMENT OF THE ISSUES

Whether Respondent acted appropriately in supervising the children in its care; and, if not, whether violations charged and sanctions sought to be imposed by Petitioner are supported by clear and convincing evidence.

PRELIMINARY STATEMENT

On September 10, 2019, Petitioner, Department of Children and Families (“Petitioner” or “DCF”), delivered an Administrative Complaint and Complaint Inspection on Respondent, Villar Family Home Daycare, Inc., d/b/a Villar Family Day Care Home (“Respondent” or “Villar”), setting forth four Class I violations, one Class II violation, and one Class III violation, and imposing penalties of \$2,100 and revocation of the facility’s license. Respondent filed a Petition for Hearing Involving Disputed Issues of Material Fact on September 20, 2019, which was referred to DOAH on October 2, 2019; given case number 19-5254; and assigned to ALJ John G. Van Laningham.

The matter proceeded through the pre-hearing process and was originally set for final hearing on December 9 and 10, 2019, via video teleconference at sites in Miami and Tallahassee. After a total of six continuances during the COVID-19 pandemic, the parties entered into settlement negotiations and asked that jurisdiction of the case be relinquished to DCF for execution of a settlement agreement. On February 3, 2021, Judge Van Laningham issued an Order Closing File and Relinquishing Jurisdiction.

By April 5, 2022, settlement negotiations had fallen through, and the matter was once again referred to DOAH, given case number 22-1062, and assigned to the undersigned ALJ. The case was scheduled for hearing on June 28 and 29, 2022, and proceeded to hearing on June 28, 2022, only requiring one day to complete. The parties filed a Pre-hearing Stipulation on June 27, 2022. The stipulated facts are included in the Findings of Fact below to the extent relevant. The parties also stipulated that, due to the COVID pandemic, any exhibits containing written statements of potential witnesses who would have been called to testify at hearing would be accepted as non-hearsay exhibits.

At the hearing, Petitioner called Maria Caamano, family services counselor, and offered exhibits 1 through 8 into evidence, all of which were admitted. Respondent called Melanie Rodriguez and Ketty Villar as live witnesses and offered six affidavits and statements of witnesses, along with photographs of the facility on the date in question, which were Bates stamped pages 2 through 42, all of which were admitted into evidence.

No transcript of the hearing was ordered by the parties, and the parties requested 20 days from the date of hearing to file proposed recommended orders. Both parties' proposed recommended orders were timely filed and were duly considered in the preparation of this Recommended Order.

All cites to the Florida Statutes and to the administrative rules of DCF are to the versions in effect at the time of the alleged violations.

FINDINGS OF FACT

1. DCF is the state agency charged with regulating providers that are licensed or registered to provide child care services in the State of Florida. § 402.305, Fla. Stat.; Fla. Admin. Code Ch. 65C-22.

2. Ketty Villar is the owner of a day care home licensed as Villar at 22045 Southwest 125th Avenue, Goulds, Florida, license number F11MD0224.

3. On August 16, 2019, DCF went to Villar to respond to a complaint alleging that the provider would tell parents not to drop off kids at the home if there was anything happening in the home. The provider was alleged to have 20 children in care, and when DCF would come to inspect, the children would be taken to the neighbor's home. DCF conducted a complaint inspection on August 16, 2019, of Villar.

4. At the complaint inspection on August 16, 2019, the family services counselors arrived at the home and found the gate to the home locked. The

inspectors rang the doorbell several times, and there was no answer. The inspectors made three phone calls to the home with no answer. Sometime later, the call was returned, and the inspectors were allowed into the home approximately 14 minutes after their arrival to the front door.

5. Upon entering the home, 11 children were counted. The home's licensed capacity is ten. To come back into the required ratio of caregivers to children, one of the children's parents was called to pick up the child.

6. The inspection continued, and the children's files were reviewed. It was observed by the inspectors that all 11 of the children had an expired immunization record and several influenza forms for the children were missing.

7. On the outside of the home, a gate adjoining the properties of Villar and the neighbor's home was found. Ms. Villar explained that the gate was used for the neighbor's grandkids to come and swim at her home.

8. Upon completing their inspection, and while heading back to their vehicles, the inspectors heard several children's cries coming from the home on the corner of the block. This is the home of Elsa Carmona. Based on the allegations that they had received, the inspectors knocked on the door of this home. No one answered the door. Law enforcement was contacted to assist with the matter.

9. Upon law enforcement's arrival, the officer, M. Chaney, badge number 4728, was informed of the situation regarding the complaint and was shown the connecting gate to the two homes. Ms. Villar approached Officer Chaney and Maria Caamano, the DCF inspector, and admitted that she had lied to the DCF inspectors. She stated that she had taken the children through the gate adjoining the two homes to Ms. Carmona's house when the DCF inspectors had come to Villar for their inspection. She stated that these were children from Villar in the neighbor's home and that it was not the only time that this was done.

10. Ms. Caamano testified that the children in Ms. Carmona's home were soiled, hungry, and crying when she and the police entered the Carmona home. Ms. Caamano counted 14 children in the home with the lights turned off. Officer Chaney confirmed that there were 14 children in the home under the care of one adult, Ms. Carmona.

11. Ms. Villar testified that the children in excess of the ten for which she was licensed (one in her home and 14 in Ms. Carmona's home) were present for an end-of-year Hawaiian luau event at Villar.

12. Officer Chaney assisted DCF in retrieving the 14 children from Ms. Carmona's home, as evidenced by his body worn camera.

13. Ms. Carmona had not been background screened by DCF and authorized to supervise children.

14. Since the complaint inspection, Villar has taken steps to correct the violations by installing video cameras to monitor attendance and has been in compliance with DCF statutes and rules.

15. Ms. Villar, the operator of Villar, presented a live tour through Zoom during her testimony. The tour showed of a clean and organized facility with safe play areas. This was further confirmed by a series of photographs, entered into evidence by Respondent, showing the well-maintained grounds and interior of Villar.

16. Ms. Villar also presented six affidavits, all admitted into evidence without objection, by her enrollees' parents that testified to the fact that Ms. Villar is a very compassionate and caring person and that her program is extremely valuable to the community.

17. The six affidavits presented were submitted from parents and contain warm feelings for Villar by the parents. Parents refer to Ms. Villar as a "God send," "devoted," "loving," and "a blessing." One parent credits Ms. Villar for her son's improvement of a delayed speech issue. It seems that all of the parents genuinely value her service and that their children wake up happy to attend the day care.

18. Ms. Villar testified that her long-time and well-acquainted next-door neighbor, a grandmother herself, Ms. Carmona, assisted her, as did another individual (Ms. Yani), whom DCF did not identify and whose location was not confirmed by the DCF inspectors or Officer Chaney. However, the unrefuted and credible testimony from Ms. Villar claimed that Ms. Yani worked at a day care herself (not Villar) and had been background screened.

19. Ms. Rodriguez, a mother of one of Respondent's students, testified on behalf of Respondent. Ms. Rodriguez testified, consistent with the other affidavits from parents, that she holds Respondent and Ms. Villar in the highest regard; that her child developed substantially through the program offered by Ms. Villar; and that the neighbor, Ms. Carmona, was certainly no cause for concern. She testified that there was no reason to believe that Ms. Carmona threatened the safety of the children. Ms. Rodriguez also testified that "Ms. Yani" also was no cause for concern of harm or danger to the children.

20. Despite the heart-felt testimonials from Ms. Rodriguez and those contained in the affidavits from other parents, violations occurred on August 16, 2019, that should subject Respondent to discipline. The extent and severity of those violations, as well as a recommended penalty, will be discussed in the Conclusions of Law below.

CONCLUSIONS OF LAW

21. DOAH has jurisdiction over the parties and the subject matter of this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2021). This proceeding is de novo pursuant to section 120.57(1)(k).

22. DCF seeks to impose four Class I violations on Respondent's license to operate a child day care facility, one Class II violation, and one Class III violation. Additionally, DCF seeks to revoke the license of the family day care home. In order to impose such discipline on Respondent's license, DCF must prove there exists clear and convincing evidence to impose the requested

sanctions against Respondent due to the allegations contained in DCF's Administrative Complaint.

23. Petitioner, as the party asserting the affirmative of the issue in this proceeding, has the burden of proof. *Coke v. Dep't of Child. & Fam. Servs.*, 704 So. 2d 726 (Fla. 5th DCA 1998); *Balino v. Dep't of Health & Rehab. Servs.*, 348 So. 2d 349 (Fla. 1st DCA 1977); *Dep't of Agric. & Consumer Servs. v. Strickland*, 262 So. 2d 893 (Fla. 1st DCA 1972).

24. Pursuant to Florida law, “[f]indings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized.” § 120.57(1)(j), Fla. Stat.

25. Petitioner has the burden to establish by clear and convincing evidence that the allegations contained in the Administrative Complaint support the charged violations, imposition of a fine, and revocation of Villar's license. *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996). The clear and convincing standard of evidence has been described by the Florida Supreme Court as follows:

[C]lear 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 explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such 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)); *see also S. Fla. Water Mgmt. Dist. v. RLI Live Oak, LLC*, 139 So. 3d 869, 872-73 (Fla. 2014). “Although this standard of proof may be met where the evidence is in conflict ... it seems to

preclude evidence that is ambiguous.” *Westinghouse Electric Corp. v. Shuler Bros.*, 590 So. 2d 986, 988 (Fla. 1991).

26. DCF is directed to “[e]stablish a uniform system of procedures to impose disciplinary sanctions for violations of ss. 402.301-402.319. The uniform system of procedures must provide for the consistent application of disciplinary actions across districts and a progressively increasing level of penalties” § 402.310(1)(c)2., Fla. Stat. This is commonly referred to as the “classification system.” DCF complied with the provisions of this statute when it created the Child Care Facility Standards Classification Summary.

27. Adoption of the classification system contained within the Child Care Facility Standards Classification Summary is incorporated in the rule by reference at Florida Administrative Code Rule 65C-22.012(1)(e)1. The standards listed in the classification summary are the standards that all licensed child care facility providers must follow. DCF is authorized to cite providers for violations of a classification summary standard.

28. The six charged violations in DCF’s Administrative Complaint are as follows:

Violation One: Standard 01-02 Licensed Family: Exceeded Capacity, a Class I violation. The evidence clearly and convincingly establishes that Villar exceeded its licensed capacity of ten children by 15 children, 11 in Ms. Villar’s home and 14 in the unlicensed home of Ms. Carmona. The proposed DCF fine is \$500.

Violation Two: Standard 08-01 Staffing Requirements: Unscreened Individual Alone with Children, a Class I violation. The evidence clearly and convincingly establishes that 14 children were left with Ms. Carmona, an individual who had not had a Level 2 background screening, in her home next door to Respondent. Despite the fact that Ms. Carmona was described as a kind, gentle, and loving mother and grandmother, the children were observed

by law enforcement and the DCF inspector as being in Ms. Carmona's home with the lights turned out and were soiled, hungry, and crying. The proposed DCF fine is \$500.

Violation Three: Standard 08-03 Staffing Requirements: Child Left in Vehicle/Home/Behind, a Class I violation. The evidence clearly and convincingly establishes that 14 of the children entrusted to Villar, whether enrolled or otherwise, were outside the licensed day care home with Ms. Carmona without the licensed provider or any other authorized child care personnel present. The proposed DCF fine is \$500.

Violation Four: Standard 34-05 Fraudulent Information Provided: Serious Harm, a Class I violation. Ms. Villar was asked several times by the DCF inspectors if she had transported children to any of the neighbor's homes, to which she replied "no." As the investigation progressed, it was proven Ms. Villar had transported children to Ms. Carmona's home on August 16, 2019, and on other previous occasions. The proposed DCF fine is \$500.

Violation Five: Standard 01-01 Licensed Family: Allowable Number of Children Exceeded, a Class II violation. On a previous inspection, on December 6, 2017, Villar was cited for violating this standard by having seven preschool-aged children in the day care when she was licensed for six. On the August 16, 2019, inspection, Ms. Villar was found to have 11 children on the premises when she was licensed for ten. The proposed DCF fine is \$50.

Violation Six: Standard 31-02 Children's Records: Immunization Record Unacceptable, a Class III violation. On two previous inspections, December 6, 2017, and January 17, 2018, immunization records for one or more children at Villar were found to have expired. On August 16, 2019, the inspectors

found that immunization records for all 11 children enrolled were expired. The proposed DCF fine is \$25.

29. In accordance with section 402.310(1)(a)3., Florida Statutes, DCF is expressly authorized to deny, suspend, or revoke a license or registration for a violation of any provision of sections 402.310 through 402.319 or the rules adopted thereunder. In determining the appropriate disciplinary action to be taken, the following factors are to be considered:

1. The severity of the violation, including the probability that death or serious harm to the health or safety of any person will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of ss. 402.301-402.319 have been violated.
2. Actions taken by the licensee or registrant to correct the violation or to remedy complaints.
3. Any previous violations of the licensee or registrant.

§ 402.310(1)(b), Fla. Stat.

30. Villar was over capacity by 15 children. Upon arrival of the DCF inspectors, 14 of the children were moved to a neighbor's home through a gate in the fence where they were left in an unlicensed home with an unscreened individual. While the children in the neighbor's home were clearly not at great risk of serious bodily harm or death, they were not clean, well fed, smiling, and happy when law enforcement arrived on the scene and, together with Ms. Caamano, entered Ms. Carmona's home. Had law enforcement been later to the scene, it was reasonably certain the children's unhealthy conditions would have worsened without having their soiled clothes changed, food provided, and better supervision provided by more adults who were qualified.

31. DCF has proven by clear and convincing evidence that Respondent committed all six violations. The facts in this case are not in dispute, and the actions taken by the day care home's owner is clearly documented. The

children were moved to Ms. Carmona's home and were left with an unscreened individual for the duration of DCF's inspection, while not being changed or fed throughout that time. Moreover, Ms. Villar's actions in not admitting that a large number of children, 14, that exceeded, in itself, the maximum number of children authorized to be under Villar's care, is an aggravating factor here. Not until confronted by the police and the DCF inspectors did Ms. Villar, who by all appearances is a warm and dedicated provider of high-quality child day care services, come clean and admit the children were all under her care, albeit for an end-of-school year party. She was fortunate no children were injured or, far worse, died while in her neighbor's care, but that does not excuse her willful behavior concerning clear DCF standards for child day care facilities.

32. However, taking into account that, except for two or three prior minor violations of DCF statutes and rules, Ms. Villar and Villar, as a child day care facility, had a clean record until the badly failed inspection of August 16, 2019. The undersigned believes that the fact that all the major violations occurred from one instance, rather than a series of incidents, that this fact mitigates towards avoiding the ultimate penalty sought to be imposed here, namely, revocation of Respondent's license. Since death was extremely unlikely to occur here and since serious harm did not occur, although there was minor harm (crying, soiled, and hungry children), the fines for Violations One through Four should be reduced to \$250 per violation. The proposed fines in the amount of \$50 for Violation Five and \$25 for Violation Six are reasonable and not excessive, and should stand. Moreover, Respondent's license should be placed on probation status for six months pursuant to the conditions of section 402.310(1)(a)2.

33. The undersigned recognizes that Villar is providing service to the underserved population in South Florida, which is much needed and admirable. Any sanction imposed here may jeopardize Respondent's eligibility for the Early Coalition's School Readiness Funds to assist parents

with funds to enroll their children in the day care. While unfortunate, the safety of children is of paramount importance here and Respondent's willful violations committed on August 16, 2019, combined with the fact that Ms. Villar admitted, albeit late, that she had exceeded her licensed capacity of students on occasions in addition to the August 16, 2019, inspection makes agreeing to impose little or no sanctions here untenable.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Children and Families enter a final order imposing a fine of \$1,075 and placing Respondent's license in probation status for six months from the date of the final order.

DONE AND ENTERED this 2nd day of August, 2022, in Tallahassee, Leon County, Florida.



ROBERT S. COHEN
Administrative Law Judge
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Filed with the Clerk of the
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this 2nd day of August, 2022.

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.