

BROWARD COUNTY HEALTH AND SANITARY CONTROL BOARD

MINUTES OF BOARD MEETING – October 31, 2013

The Board meeting was called to order at approximately 9:36 a.m. on Thursday, October 31, 2013 by Chair Stuart Kaufman.

The Clerk called roll and the following members were present:

Stuart Kaufman, Chair
Lily Sayre, Vice Chair
Commissioner Pamela Bushnell
Robert McColgan
Anthony Quackenbush, Esq.
Karen Hodge Kaestner
Ronald Kaplan

The following members were absent:

Dr. Mark Gendal

Also present were: Patrice Eichen, Attorney for the Board
Paul Eichner, Attorney for the Department
Anthony Vomero, Petitioner Representative

The minutes of the September 26, 2013 meeting were reviewed and a motion to approve the minutes was made by Lily Sayre and Seconded by Commissioner Pamela Bushnell and unanimously passed.

The Chair of the Board and Legal Counsel read the board procedures prior to the cases being called.

All witnesses were sworn in. Ms. Carter (Case No. 13-008 SP) arrived after all of the other witnesses were sworn in. Upon her arrival Ms. Carter was sworn in.

Case No. 13-004 SAN D & R Inc, d/b/a Southern Fox

Mr. Eichner appeared on behalf of the Department; Mr. Frederick Maskell appeared on behalf of Southern Fox.

Mr. Eichner advised the board that he has been informed by Kent Edwards, Environmental Manager that Southern Fox is now in compliance.

Mr. Edwards advised that Southern fox has applied for a license from the Department and that Mr. Eichner's statement is correct.

Mr. Eichner recommended that the board retain jurisdiction for three (3) months giving the Respondent time to pay the Administrative Fee by December 25, 2013.

There was some discussion as to why Mr. Maskell was present today even though his establishment is now fully in compliance.

Ms. Eichen advised the Board they could pass a motion which would direct the State to have Code Enforcement Inspectors advise the Respondent that they do not need to appear at the next scheduled board hearing when all violations come into compliance. Ms. Eichen further explained that if the Board

has any questions there would then need to be a subsequent hearing in which the Respondent would need to attend.

A motion was made by Commissioner Bushnell adopting the recommendation of Counsel and Seconded by Ms. Sayre and unanimously passed by all.

Mr. Maskell requested the board to reconsider the Five Hundred dollar (\$500) Administrative Fee which was imposed at the last hearing. Mr. Maskell stated that due to the difficult economic times, most small businesses are struggling and it would cause hardship if he needed to pay the fee.

Ms. Sayre motioned to extend the current deadline of December 25, 2013 and have the Respondent pay all fines by April 30, 2014. Mr. Kaplan Seconded.

Motion passed 6-1 (Ms. Kaestner opposed)

CASE NO. 13-007SAN Jasmine Lakes Condominium Association, Inc.

Mr. Eichner appeared on behalf of the Department; Ms. Susan Hayes appeared on the behalf of Jasmine Lakes Condominium Association, Inc.

Mr. Eichner advised the Board that Jasmine Lakes is now in compliance and they are doing what they stated they would do. (Cleaning all bat droppings according to the Florida Wildlife Commission's procedures on a 7 day a week basis.)

Kent Edwards, Environmental Manager, Florida Department of Health in Broward County stated that he had visited the property on October 25th and that there were only sparse bat feces, which indicates they are cleaning the droppings on a daily basis as per the order.

Mr. Eichner recommended to the Board that this matter be closed.

CASE NO. 13-008SP Palm Village Property Owners Association

Mr. Eichner appeared on behalf of the Department; Ms. Janet Carter appeared on the behalf of Palm Village and for Mr. Friis.

Mr. Eichner stated that because of the lengthy complaint containing numerous violations, that each of the Board members has a copy of the complaint and the fact that some of the violations have been remedied he would not read the entire complaint into the record. Mr. Eichner gave a synopsis of the case advising the Board that Palm Village has a pool which is not in compliance. Mr. Eichner advised that this property has residences which surround the pool area. There had been numerous visits to the property by Health Department employees.

Faith Ray, Environmental Specialist for the Florida Department of Health in Broward County, gave sworn testimony in which she stated she visited 925 SW 25th Street, Deerfield Beach, Broward County on October 4th. Ms. Ray visited this property because it was on a list for reinspection. Ms. Ray was unable to find anyone on the property to discuss the violations or to give the Notice of Violation. Mr. Ray found a phone number for Mr. Friis, Registered Agent, and when she called she got Mr. Friis' voicemail. On the voicemail there was an email address. Mr. Ray sent certified mail as well as an email (to the email address from the voicemail) regarding the 2 Notices of Violation which she issued on October 4th. One of the NOVs was for an unpaid permit and the second was for various violations (as stated in paragraph L of the complaint). Ms. Ray went to the property on October 11th, the date given on the October 4, 2013 NOV for reinspection and also issued a new Notice of Violation on that date. On October 30, Ms. Ray went to the property to reinspect in the morning and most of the violations were still outstanding. Later that day Ms. Ray received a phone call from Ms. Janet Carter. Ms. Carter advised that she had been hired by Mr. Friis to work on getting the pool into compliance. Ms. Ray went back out to the property and found some of the violations had been corrected.

Mr. Eichner showed pictures to Ms. Ray, the Respondent and then to each member of the Board as Ms. Ray testified as to each of the outstanding violations (specifically paragraphs D, E, H, J, and K of the complaint). Mr. Eichner requested the Board enter all pictures into evidence. All pictures were accepted into evidence.

During Ms. Carter's sworn testimony she stated the Mr. Friis gave her the authority to get everything fixed. Mr. Friis had only assigned her to do this as of two days ago. Ms. Carter works for Mr. Friis on his properties. Mr. Friis owns 13 of the units at this property. Ms. Carter also stated that Mr. Friis has had difficulty in making the repairs because of financial issues. He has not been able to collect all of the homeowners' fees. Ms. Carter also stated that Mr. Friis has recently collected some of the homeowners' fees through a lawsuit and that is why he is currently able to do some of the repairs.

Mr. Eichner recommended to the Board that a finding be made that violations currently exist as indicated by the testimony. That the Board impose a \$500 Administrative Fee per Notice of Violation (3), a \$500 Administrative fee (totaling \$2000), pay a \$40 reinspection fee for a post order inspection, the Board maintain jurisdiction for 90 days and standard sanction language.

Mr. McColgan motioned to impose the Administrative Fee of \$500 fine for each of the Notices of Violations, a \$500 Administrative Fee, retain jurisdiction for 90 days, standard sanction language, pay all fines and fees in 30 days after that date send to collections, and set for December 5th status hearing.

Ms. Carter stated that she was uncertain if all of the work could be done and all of the fines and fees paid for considering their current financial status.

Ms. Eichner advised Ms. Carter that her case would be set for a status hearing on December 5th and she would receive (or Mr. Friis) the orders in the mail giving her all the information regarding the next hearing. At that point in time, she could come before the Board in an attempt to mitigate the fines and fees.

Ms. Sayre suggested Ms. Carter to keep the pool closed until all violations are in compliance and that the water would have to be kept clean in any event.

Mr. Kaplan added a \$40 reinspection fee to her motion.

The motion was Seconded by Ms. Kaestner. A vote was taken and unanimously passed.

CASE NO. 13-006SP H & N Friendly Estates d/b/a Montreal Inn

Mr. Eichner appeared on behalf of the Department; Ernesto Hidalgo appeared on behalf of the Respondent.

Mr. Eichner advised the Board that this is another case similar to the last one in which it is a public pool with many violations some of which have already come into compliance. This property is a former motel in Hollywood, Florida, 324-328 Balboa Street, currently being used as an apartment complex. The inspector was given direction to go out to see this property.

Nicole Baker, Environmental Specialist II, Florida Department of Health-Broward County, gave sworn testimony that this is a one floor hotel complex with approximately 15 apartments. Ms. Baker was given direction to go to the property in May, at which time she issued a Notice of Violation. Ms. Baker went out again on September 4th and issued a Notice of Violation which had numerous violations. Ms. Baker stated she did not receive any response. Ms. Baker also stated she received a phone call from someone named Christian, prior to the last hearing, requesting assistance and explanation of how to comply. Ms. Baker met with him and gave him all of the information. From that point on Ms. Baker had not received any further communication regarding this property. Ms. Baker went back out to the property on September 11, 2013 to reinspect (scheduled reinspection date noted on September 4, 2013 NOV). Upon this reinspection Ms. Baker issued another NOV dated September 11, 2013 with various violations. Ms. Baker was not able to contact anyone at the property so she posted the NOV, sent the NOV via US Mail

as well as by certified mail. Ms. Baker noted she received the return receipt. Ms. Baker stated she had not received a response from the property owner until they received the written complaint advising them they would be brought before the Broward Health and Sanitary Control Board. Ms. Baker went out to the property October 30, 2013 at which time some of the items listed in the complaint were in compliance.

Mr. Eichner presented pictures to Ms. Baker, to the Respondent, and to each member of the Board as Ms. Baker presented testimony. All pictures were entered into evidence.

Ernesto Hidalgo is the partner on other properties of the owner of Montreal Inn. Mr. Hidalgo stated that the reason they have not come into complete compliance is because they are attempting to sell the property. The property was set for sale in August and the sale fell through. The owner currently has a new contract for sale which is supposed to close on January 10, 2014. Mr. Hidalgo stated that because of this the owner does not want to spend a lot of money on the property (the D.E. separator is very costly) because it will be sold and demolished. Mr. Hidalgo asked the Board for options in lieu of completing all of the work and pending the sale of the property. Mr. Hidalgo stated he told his partner to keep the pool closed but to maintain the water quality so if someone does not adhere to the pool closed sign and go into the water no one will get sick.

There was some discussion as to options for closing the pool, fixing the violations, or draining the pool.

Mr. Eichner recommended a \$500 Administrative Fine for the September 4th Notice of Violation (for violations of paragraphs D, E, G, H, I, J, K, M, N, O, & P as stated in the complaint) a \$500 Administrative Fee (totaling \$1000), 30 days to pay \$1,000, the Board retain jurisdiction for 90 days, standard sanction language, if fees and fines not paid sent for collection, and set for status hearing on December 5th, come into compliance in 10 days by fixing the pool, close the pool and maintain the proper chlorine levels, or drain the pool and repair the VGB cover.

Commissioner Bushnell accepted Mr. Eichner's recommendations and adopted same as her Motion. Ms. Sayre Seconded.

Mr. Eichner requested Commissioner Bushnell amend the motion by directing the Respondent to advise the Health Inspector the actions taken to come into compliance. Commissioner Bushnell agreed and Ms. Sayre accepted the change.

A vote was taken and unanimously passed.

Mr. Kaufman adjourned the hearing at 11:40.

PREPARED AND SUBMITTED BY:

Lisa M. Castello, Clerk of the Board