

BROWARD COUNTY HEALTH AND SANITARY CONTROL BOARD

MINUTES OF BOARD MEETING – September 26, 2013

The Board meeting was called to order at approximately 9:35 a.m. on Thursday, September 26, 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

The following members were absent:

Dr. Mark Gendal
Ronald Kaplan

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

Ms. Sayre noted that her last name was incorrectly spelled as Sayer on the February 2013 minutes. The minutes of February 28, 2013 meeting will be amended to reflect the correct spelling and a motion to approve the minutes was made by Karen Hodge Kaestner and seconded by Stuart Kaufman and unanimously passed.

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

All witnesses were sworn in.

CASE NO. 13-006 SP H & N Friendly Estate, LC

Mr. Eichner appeared on behalf of the Department; no one appeared on behalf of the Respondent.

Mr. Eichner advised the Board that a written request for continuance had been submitted to him yesterday from H & N Friendly Estate, LC. Mr. Eichner asked the Board to consider continuing this case to the next Board meeting scheduled for October 31, 2013. Commissioner Bushnell moved to approve the Continuance, which was seconded by Mr. Kaufman and passed without objection (6-0).

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

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

Mr. Eichner read the Complaint into the record.

Paul Thompson, Environmental Health Specialist for the Florida Department of Health in Broward County gave sworn testimony in which he stated that he went out to the property located at 4720 SW 62 Way, Davie, on November 30, 2012 due to an anonymous complaint. He observed an odor in several areas of the building as well as droppings on the stairwell, along with sounds he considered to be consistent with

bats. Prior to his inspection of the building on November 30, 2012, he had contacted the Association regarding methods of removing bats as well as some companies who could do this type of work. On December 3, 2012, a Notice of Violation was served on Alliance Property Systems, the property management company for the Respondent, for a sanitary nuisance as it relates to the presence bats, odors, and droppings. Upon expiration of this Notice of Violation there was no action taken by the Association. (Previously, the Association had attempted to extricate the bats by sealing areas with a spray foam type substance to avoid the bats reentering the overhang area.) A second Notice of Violation was issued on July 16, 2013 with a correction date of August 15, 2013 (This date of correction was set for the Association to be under contract to have the necessary work done outside of the bat maternity season, which, according to testimony, was mid April through mid August). Mr. Thompson stated that the Fish and Wildlife Commission advised that during bat maternity season no attempts should be made to extricate the bats because bats are a protected species in Florida and extricating the bats during this time was not allowed because the young would not be able to remove themselves from the area and would not survive the extrication effort. Mr. Thompson observed droppings on the concrete walkway on the third floor. In this area he observed "not stale" droppings. Mr. Thompson stated by this point he had not received any response from the Association regarding the Notice of Violation. Mr. Thompson had wanted the Association to advise him of what actions they would be taking prior to any work being done. The reason for this was to request advice from the Florida Wildlife Commission. Mr. Thompson's last inspection of the property was on September 25, 2013 where he noted the violation was still present by observing the droppings on the walkway and the sound consistent with bats but not to the same degree and not in the same area but still on the same site.

Documents were provided to the Board from Ms. Hayes, the President of the Respondent's Association, during her testimony indicating she has previously had work done in an attempt to eradicate the bats from the building. Mr. Kaufman requested these documents be put into evidence. These documents were accepted into evidence as Respondent's Exhibit "1".

Mr. Eichner recommended to the Board that the Respondent come into compliance in 30 days, a \$500 Administrative Fee be imposed and a \$500 Fine be imposed, that the Board retain jurisdiction for 90 days and set the matter for status hearing on October 31, 2013.

An unsuccessful motion was proposed as follows:

Mr. McColgan adopted Mr. Eichner's recommendation but without fines and put forward the motion,

Commissioner Bushnell proposed a friendly amendment to allow 60 days to come into compliance.

Mr. Eichner requested that the motion be amended by requesting that during a 60 day period a company who could complete this work provide a written report indicating a time frame suitable for completion.

A vote was taken:

Robert McColgan and Stuart Kaufman voted in favor of the motion, and

Anthony Quackenbush, Karen Kaestner, Lily Sayre and Commissioner Pamela Bushnell voted against the motion.

Ms. Sayre motioned that the droppings be cleaned on a daily (7 days a week) basis pursuant to the Florida Wildlife Commission procedures and no fines or administrative fees imposed with the Board retaining jurisdiction.

A vote was taken and it was unanimously approved.

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 read the complaint into the record.

John "Kent" Edwards, Environmental Manager for the Florida Department of Health in Broward County gave sworn testimony in which he stated that he went out to the property at 6019 Johnson Street, Hollywood, Florida, based on a complaint filed with the Department. He inspected the property on March 8, 2012 and found the business to be operating without a valid license from the Florida Department of Health in Broward County or from the Department of Business and Professional Regulation (DBPR). Mr. Edwards stated that Mr. Maskell had previously held a license from the Department of Business and Professional Regulation but the license had expired. Mr. Edwards stated he told Mr. Maskell that since he no longer served food that he did not have to be licensed by DBPR but because he was serving alcohol he would have to be licensed by the Florida Department of Health in Broward County. A Notice of Violation was issued on March 8, 2012, by certified mail return receipt. On September 11, 2013, Mr. Edwards returned to Southern Fox and after inspecting the premises noted that various violations still existed. A Notice of Violation was issued to Mr. Maskell on September 11, 2013, as well as a copy sent certified mail return receipt with a correction date of September 18, 2013. As of September 25, 2013 some of the violations noted on the September 11, 2013 Notice of Violation had been corrected and are now in compliance. There are still some violations which need to be corrected. Mr. Edwards identified the outstanding violations and described same to the Board.

Mr. Maskell also testified as to the alleged violations and in response to Mr. Edwards' testimony.

Mr. Eichner recommended the Board find violations of sections D, E, G, H, J of Complaint, allow 15 days to correct violations but before next hearing, take steps to get a certificate from the Florida Department of Health in Broward County, retain jurisdiction, and assess a \$500 fine and a \$500 Administrative Fee and set the matter for a status conference on October 31, 2013.

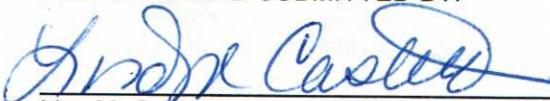
Ms. Kaestner motioned to find a violation of sections D, E, G, H, and J of the complaint and request re inspection as soon as possible but no later than 7 days. If sections G, H, and J of the complaint are in compliance Respondent is to apply for a license satisfying paragraphs D and E of the complaint. A \$500 Administrative Fee and a \$250 fine are also imposed. If in Mr. Maskell is in compliance and applies for the license prior to the next Board hearing the \$250 fine will be waived. The Board retain jurisdiction for 90 days. The Administrative fee is to be paid in 90 days.

This motion was seconded by Commissioner Bushnell.

The motion was approved unanimously.

A motion was made to adjourn at 11:55 by Mr. Kaufman and seconded by Commissioner Bushnell and unanimously passed.

PREPARED AND SUBMITTED BY:



Lisa M. Castello, Clerk of the Board