

## **BROWARD COUNTY HEALTH AND SANITARY CONTROL BOARD**

### **MINUTES OF BOARD MEETING – June 25, 2015**

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The Board meeting was called to order at approximately 10:05 a.m. on Thursday, June 25, 2015, by Chair Stuart Kaufman.

The Clerk called roll and the following members were present:

Stuart Kaufman, Chair  
Lily Sayre  
Karen Hodge Kaestner  
Heather Nydick

Mr. Quackenbush, Esquire and Vice Mayor Bushnell were not present.

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

A presentation on limited use water supply was given by Rafael Reyes, Environmental Engineering Director, Florida Department of Health-Broward, to educate the Board on the criteria used by inspectors when they conduct an inspection of facilities that use well water (limited use water supply) began at 9:40 am before the regular meeting was convened.

The Statement to the Respondent and the Procedures of the Board were read to the witnesses those in attendance from the public.

The minutes of the May 28, 2015 meeting were reviewed and a motion to approve the minutes was made by Ms. Sayre and Seconded by Ms. Kaestner and unanimously passed by all.

All who were to testify were sworn in.

#### **RAINBOW GUARDIAN, INC.**

**CASE NO: 15-045 SAN**

Mr. Eichner appeared on behalf of the Department; Theresa Caprio appeared on behalf of the Respondent.

Mr. Eichner presented this as a case which has violated state law, the Florida Administrative Code as well as the county code by not complying with the standards for testing a limited use water supply.

Anthony Johnson, Environmental Health supervisor, in the well survey and construction program, testified that he served the complaint on Rigolene Noel on May 13, 2015 at 13711 SW 52 Place in Southwest Ranches.

Mr. Eichner showed Mr. Johnson the Return of Service Affidavit. Mr. Johnson testified that the Affidavit was the one he filled out and returned to the legal office. Mr. Johnson explained that aside from the service of the complaint he has limited knowledge regarding this case. The Respondent had no questions for Mr. Johnson and the witness was dismissed.

Mr. Eichner moved that the Return of Service Affidavit be entered into evidence as DOH Exhibit 1. Mr. Kaufman accepted.

Adda Hernandez, Florida Department of Health-Broward, Environmental Specialist I, Engineering Department, Drinking Water Program explained that each facility that uses a limited use water supply system is required to submit samples to a state run lab for analysis on a quarterly basis. When the results are returned to the facility, it is the facility's obligation to report the results to the Department no later than 15 days from the end of the quarter. Ms. Hernandez gave the example of the first quarter e.g., January through March. By April 15 all results are to be on file with the Department. Ms. Hernandez explained that in dealing with water quality issues she regularly sends written notices to remind the facility owner of the requirements to submit the samples at the end of the quarter. If a sample has not been submitted to the Department, the Environmental Unit uses an escalating enforcement procedure. Ms. Hernandez explained that she will send emails as reminders then issue a warning letter, followed by a Notice of Violation and finally the issue will be sent to the legal office for enforcement before the Board. Each facility is required to submit water samples from both the well, to determine if there is any bacteria which could be distributed to the residents, and from the source, for instance, a tap inside the facility, to ensure the water treatments are working properly. Ms. Hernandez further explained that Rainbow Guardian is an assisted living facility (group home). Ms. Hernandez explained that she has been to 13711 SW 52 Place, Southwest Ranches, the location of Rainbow Guardian in an attempt to educate the facility owner of the procedure for collection of the samples. Ms. Hernandez testified that Rainbow Guardian fits the definition of group care as defined in Florida Administrative Code 64E-8.001(19) and as in paragraph H of the complaint. Ms. Hernandez further testified that Rainbow Guardian has not fulfilled their obligation to report water sampling results to the Department for the first quarter (January – March 2015). Ms. Hernandez explained that Rainbow Guardian had not submitted complete results for the prior reporting period. Ms. Hernandez explained that in the previous reporting period they submitted the sample results from the well but not from the tap. Ms. Hernandez emailed the facility on April 28, 2015, after the date the water sample results were due to advise them that the Department had not received their results. Mr. Eichner asked Ms. Hernandez if there is anything they can do to come into compliance at this point. Ms. Hernandez testified that there is nothing they can do at this point in that the time frame for sampling has passed. The sample results were due April 15<sup>th</sup> and were not submitted.

Mr. Eichner presented Ms. Hernandez's emails to Ms. Caprio, owner of Rainbow Guardian. Ms. Caprio reviewed and agreed that these were the emails Ms. Hernandez sent to her. Ms. Hernandez then testified as to her efforts to communicate with Ms. Caprio by email. Mr. Eichner moved to have the email entered into evidence as DOH Exhibit 2. Mr. Kaufman approved.

Teresa Caprio testified that she takes full responsibility for the sample results not being submitted. Ms. Caprio explained that she hired a company to take the samples and bring the samples to the lab. It wasn't until she received multiple notices from Ms. Hernandez that she realized the results had not been submitted. Ms. Caprio explained that she operates a facility which is state run. Ms. Caprio stated that she has 8 residents who require a great deal of care. Ms. Caprio explained that she did not follow up as she should and is in the process of finding someone to complete the sampling task in the future.

Mr. Eichner recommended that the Board find that Rainbow Guardian is in violation of Florida law, the Florida Administrative Code and Broward County Code as stated in the complaint, that the Board waive the Administrative Fee, impose the Administrative Fine (the amount due is at the discretion of the Board) to be paid before or on July 16, 2015, retain jurisdiction for 90 days, that standard sanction language be used and that the matter is set for status next month.

Ms. Kaestner motioned to accept Mr. Eichner's recommendation and moved to impose a \$500 Administrative Fine. Ms. Sayre Seconded.

Mr. Kaufman moved to amend the motion to reduce the Administrative Fine to \$200, in that he felt it was in excess.

Ms. Kaestner accepted Mr. Kaufman's request for a reduction in the fine and moved to impose a \$300 Administrative Fine. Ms. Sayre seconded and the motion was unanimously passed.

**US BANK NATIONAL ASSOCIATION**

**CASE NO: 15-060 SAN**

Mr. Eichner appeared on behalf of the Department; Amado Mederos appeared on behalf of the Respondent.

In the absence Gina Diaz, Environmental Specialist, Mr. Eichner asked Mr. Mederos if he would agree to stipulate that he was served with the complaint. Mr. Mederos agreed to stipulate and confirmed that the complaint had been served on the business he represents.

Faith Ray is currently in the Environmental Specialist III position for the Department of Health-Broward. Ms. Ray explained that she was the inspector who responded to the complaint filed with the Department but has since been reassigned to the Engineering

Department, drinking water program. Ms. Ray testified that she visited the address at 1205 North Rock Island Road on March 5, 2015 and found rodent activity. Ms. Ray further explained that this is a foreclosed residence and in disrepair with conditions conducive to the propagation of rodents. Mr. Eichner read Florida Statutes 386.041(1)(e) titled "Sanitary Nuisance". Ms. Ray confirmed the description as stated in Florida Statutes and described the conditions at the property and outlined the various conditions that constitute a sanitary nuisance. Mr. Eichner also read Broward County Code 15-206(a) titled "rat-proofing required". Ms. Ray again agreed that the Broward County Code read by Mr. Eichner described were not met and that violations existed at the property. Ms. Ray further explained that on her visit to the property on March 5<sup>th</sup> she found the violations of Florida Statutes as well as the Broward County Code and issued a Notice of Violation which allowed 3 weeks to come into compliance.

Mr. Eichner handed Ms. Ray photographs and then shared them with the Respondent. Ms. Ray explained what violations she found at the property in each of the photos. The photos were then presented to the Board members to review. Mr. Eichner requested that the photos be entered into evidence as DOH Composite Exhibit 1. Mr. Kaufman approved.

Ms. Ray further explained that she visited the property on March 26<sup>th</sup> (one day after the cure date) and found the property in the exact same condition. Ms. Ray explained that she visited the property a total of 3 times prior to her reassignment and found no improvements.

Ann Elliott, Environmental Specialist III, Department of Health-Broward testified that she reviewed the file with the complaint and pictures taken by Ms. Ray. She then visited the property on May 22, 2015 and June 23, 2015 and found the conditions to be the same as they were in the pictures that were entered into evidence as DOH composite exhibit 1. Ms. Elliott explained that she took pictures on her cell phone on May 22, 2015 and that the violations as cited in the complaint still existed.

Mr. Mederos works for Real Estate Home Sales, Inc. who represents US Bank National Association explained that he had the property exterminated in March. Mr. Mederos further explained that they are in the process of finding a company to rat-proof the residence but are waiting for all bids to seal the deal. Mr. Mederos requested a 30 day extension to complete the work required to be in compliance. Mr. Mederos presented a buyer's acknowledgement requesting the extension on behalf of the company he represents. Mr. Eichner shared the document with the Board.

Mr. Eichner requested that the Buyer's Acknowledgement be entered into evidence as Respondents Exhibit 1. Mr. Kaufman approved.

Mr. Eichner recommended that the Board find that the Respondent is in violation of Florida Statutes and Broward County Ordinances that standard sanction language be used, that the Respondent can ask for mitigation if in compliance.

Ms. Sayre motioned to amend Mr. Eichner's recommendation by adding that the fines and fees be deferred for 30 days.

Ms. Kaestner motioned to amend Mr. Eichner's recommendation by that the Board impose fines and fees and that mitigation be considered later.

Mr. Eichner amended his recommendation to the Board and asked the Board to find that the Respondent has violated Florida Statutes and Broward County Ordinances as stated in the complaint, that a \$500 Administrative Fine and a \$500 Administrative Fee be imposed to be paid on or before July 22, 2015, that the Board retain jurisdiction for 90 days, that the standard sanction language be used and that the matter be set for status next month. If the Respondent is in compliance they may appear before the Board to request mitigation of all fines and fees.

Ms. Sayre motioned to accept Mr. Eichner's amended recommendation and Ms. Kaestner seconded. The motion was unanimously passed by all.

Mr. Maderos provided the name of Real Estate Home Sales located at 4950 North Pine Island Road, Lauderhill, Florida 33351 as the address to mail the order and all future documents to.

**VINTAGE WINE AND SPORTS BAR**

**CASE NO: 15-046 SAN**

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

Mr. Eichner explained this as a case of an unpaid food hygiene permit. It was heard by the Board last month and the Order from the May 28, 2015 hearing was forwarded to the City of Tamarac as per the order of the Board. Mr. Eichner explained that the City of Tamarac Business Tax License office asked us to forward any subsequent orders to their office. Mr. Eichner further explained that at this point neither the permit fee or the fines and fees imposed by the Board have been paid.

Mr. Eichner recommended that the Board retain jurisdiction and the matter be set for status next month.

Ms. Kaestner motioned to accept Mr. Eichner's recommendation and Ms. Nydick seconded. The motion was unanimously passed.

**ETERNAL INK TATTOO SALON**

**CASE NO: 15-033 SAN**

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

Mr. Eichner explained that the legal office contacted the Town of Davie at the request of the Board. A copy of the Order was given to the Town Manager. Mr. Eichner further

explained that the legal office later received a phone call advising that the business is now closed.

**FIREHOUSE NIGHTCLUB AND PUB**

**CASE NO: 15-047 SAN**

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

Mr. Eichner explained that this case was heard last month. Since the last hearing the legal office received a notice that the Respondent has filed for bankruptcy with the courts. Therefore, there is no further action that can be taken in this matter due to the pendency of the bankruptcy.

Mr. Kaufman adjourned the meeting at 11:35 a.m.

PREPARED AND SUBMITTED BY:



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Lisa M. Castello, Clerk of the Board