

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
13 DHR 10556

## FINAL DECISION

Whether the Respondent acted erroneously when it summarily suspended Petitioner's license to operate Lelia's Home Day Care.

## **EXHIBITS ADMITTED INTO EVIDENCE**

Petitioner offered no Exhibits into evidence.

Respondent's Exhibits 1-3, and 5-8 were admitted into evidence. The Undersigned took official notice of N.C. Gen. Stat. §§110-85, 110-90.2, 110-98, 110-102.2 and North Carolina Child Care Rule 10A NCAC 09 .2207.

## **FINDINGS OF FACT**

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge ("ALJ") makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

### **Parties/Witnesses**

1. Respondent, Division of Child Development (the "Division"), is an administrative agency of North Carolina State Government operating under the laws of North Carolina and administering the licensing program for child care facilities in the State of North Carolina.

2. Pursuant to the North Carolina Child Care Act, N.C. Gen. Stat. §§110-85, *et seq.*, the Division has a mandate to ensure that children in child care facilities are cared for in physically safe and healthy environments, where the developmental needs of the children are met.

3. Fredericke C. Brammer, III is a Detective with the Charlotte-Mecklenburg Police Department (CMPD). Det. Brammer has been employed at CMPD for twenty-six (26) years and served in the CMPD North Division's Violent Crimes Unit for nine (9) years. Prior to CMPD, Det. Brammer served in the United States Air Force. Det. Brammer's responsibilities include providing intelligence for the CMPD's entire Northern Division investigating priority offenses and serving as the Northern Division Strategy Team Representative.

4. Deanna Hoxworth is a Program Manager for the Division's Investigations Unit. Ms. Hoxworth has worked for the Division for nine (9) years and holds a Bachelor's degree in child and family development from the University of North Carolina at Charlotte. Ms. Hoxworth's responsibilities as Program Manager include overseeing the Division's investigations of child abuse and neglect and violations of child care

requirements in child care facilities. Ms. Hoxworth oversees investigations in forty-nine counties, including the central, northeastern, and west central areas of the state.

5. Petitioner Lelia Knox operates “Lelia’s Home Day Care,” a family child care home located in Charlotte, North Carolina, pursuant to a four star license issued by the Division. Lelia’s is operated out of Ms. Knox’s home located at 3410 Cypress Pond Drive. Ms. Knox was licensed to operate on first and second shifts caring for no more than eight (8) children during first shift and no more than five (5) children on second shift. Lelia’s is licensed to care for no more than two (2) children under one year old. (R. Ex. 1).

### **Background**

6. Lelia’s received its four star license on March 21, 2011. (R. Ex. 1)

7. On March 12, 2013, the Division received a report of alleging that Ron Garland, a convicted felon, resides at Lelia’s Home Day Care. Mr. Garland informed the North Carolina Department of Correction that he lives at 3410 Cypress Pond Drive, where Lelia’s Home Day Care is located. (R. Ex. 2). The report alleged that Mr. Garland was arrested at Lelia’s on March 12, 2013 while an enrolled child was in care. (R. Ex. 2)

8. Mr. Garland also informed the North Carolina Division of Motor Vehicles and the North Carolina Department of Correction that he lives 3410 Cypress Pond Drive. (R. Ex. 6)

9. Ron Garland has been convicted of conspiracy to commit robbery with a dangerous weapon, attempted robbery with a dangerous weapon, sale of marijuana and resisting a public officer. (R. Ex. 2)

10. Ron Garland has pending charges of carrying a concealed weapon, possession of a firearm by a felon, possession of marijuana and breaking and entering. (R. Ex. 2)

11. Pursuant to N.C.G.S. §110-90.2, Ron Garland was disqualified from providing child care due to his criminal convictions and pending criminal charges. (R. Exs. 3, 10)

12. Division policy requires the issuance of a Summary Suspension when a household member of a family child care home is disqualified to ensure the health and safety of enrolled children. (R. Ex. 5)

13. On March 13, 2013, Crystal Parks, investigations consultant, visited Lelia’s to hand deliver a Summary Suspension of the facility’s four star license and Ron Garland’s Disqualification Letter. (R. Ex. 3)

14. Based upon Petitioner’s testimony, the Undersigned finds as fact that Petitioner allowed Ron Garland into her home while a child was in her care on March 12, 2013.

15. North Carolina General Statute §110-85(1) requires the Division to protect children in child care facilities by ensuring that facilities provide physically safe and healthy environments and that children are cared for by qualified persons of good moral character. (R. Ex. 10)

16. Pursuant to N.C.G.S. §110-90.2, any household member in a family child care home who is over fifteen years old who uses the home as their residence on a permanent or temporary basis must have their criminal background checked to determine if they are fit to be responsible for the safety and well-being of children based on their criminal history. (R. Ex. 10)

17. Child care rule 10A NCAC 09.2207 enables the Division to summarily suspend a child care license when it determines that immediate action is necessary to protect the safety, health or welfare children in care at a licensed child care facility. (R. Ex. 10)

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case pursuant to Chapters 110 and 150B of the North Carolina General Statutes.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder and the notice of hearing was proper.

3. The primary purpose of child care regulation in the state is to provide for the health, safety and developmental well-being of children in child care facilities by qualified persons of good moral character. N.C. Gen. Stat. §110-85.

4. At all times relevant to this matter, Petitioner's facility was subject to the child care licensure laws and rules of the State of North Carolina and was licensed by the Respondent as a family child care home.

5. Ron Garland's criminal history of assaults, robbery, possession of drugs and sale of drugs rendered him unfit to care for children under N.C. Gen. Stat. §110-90.2.

6. Petitioner created an environment that presented immediate danger to the safety, health and welfare of children in her care when she allowed Ron Garland into her facility.

7. When it issued the summary suspension, the Division properly considered the threat Ron Garland's presence posed to the safety, health and welfare of the children in care at Petitioner's facility.

8. The Division acted properly and within its authority and jurisdiction when it summarily suspended Petitioner's license to operate Lelia's Home Day Care.

9. The Division did not deprive Petitioner of property by summarily suspending her license.

10. The Division did not err in summarily suspending Petitioner's license.

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

### **DECISION**

The Respondent's decision to summarily suspend Petitioner's license is **AFFIRMED.**

### **NOTICE**

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with 26 NCAC 03.012 and the Rules of Civil Procedure, N.C.G.S. §1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision. N.C.G.S. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C.G.S. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record

This the 27<sup>th</sup> day of August, 2013.

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Selina M. Brooks  
Administrative Law Judge