

**BEFORE THE  
DEPARTMENT OF SOCIAL SERVICES  
STATE OF CALIFORNIA**

IN THE MATTER OF: )

FAITH HARRIS )

AKA: Denise Ann Harris )

AKA: Faith Denise Harris )

26029 Chateau Court )

Moreno Valley, California )

Respondent, )

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DSS NO. 6798280001

OAH NO. L 1998110263

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**PROPOSED DECISION**

John Thomas Montag, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Riverside, California on January 7, 1999.

Steve Semper, Staff Attorney, represented the Department of Social Services.

Respondent, Faith Harris, appeared on her own behalf.

Evidence was received, the record was closed, and the matter was submitted on January 7, 1999.

**FACTUAL FINDINGS**

1. The Department of Social Services is responsible for the licensing and regulation of small family homes pursuant to the California Community Care Facilities Act (Health and Safety Code Section 1500 et seq.).

2. The regulations governing the licensing and operation of small family homes are contained in Title 22, California Code of Regulations, Section 80000, et seq. and Section 84000, et seq..

Section 1558 of the Health and Safety Code permits the Department to prohibit a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility, an employee or prospective employee.

Section 1558(f) of the Health and Safety Code permits the Department to institute or continue a disciplinary proceeding against an employee, notwithstanding any resignation, withdrawal of employment application, change of duties, or any discharge of said employee.

The Department has the burden of proof in this matter. The standard of proof to be applied in this proceeding is a preponderance of the evidence, as provided in Section 1558(b) of the Health and Safety Code.

3. Sometime in September 1998, respondent, Faith Harris, applied to be a teacher at Tutor Time Child Learning Center, located at 23750 Alessandro Boulevard, Moreno Valley, California. When Tutor Time submitted respondent's fingerprints for their required clearance, a prior disciplinary action taken against the respondent by the Department, as well as a criminal conviction incurred by respondent on September 3, 1998, were revealed. On October 1, 1998, the Department excluded respondent from contact with clients in care at any facility licensed by the Department. Respondent appealed the exclusion on October 2, 1998.

4. Martha Lopez, acting in her official capacity as Deputy Director, Community Care Licensing Division, Department of Social Services, signed the Accusation herein on November 5, 1998, seeking to exclude respondent from employment and presence in any facility licensed by the Department, and from contact with clients in any such facility, pursuant to Section 1558 of the Health and Safety Code, on the ground that respondent has violated or permitted the violation of applicable licensing statutes and regulations, and upon the further ground that respondent has engaged in conduct which is inimical to the health, morals, welfare or safety of children in care, or the people of this State. The Accusation was duly served on respondent.

5. Respondent executed her Notice of Defense sometime in November 1998 (the day of the month is not set forth therein) and it was timely filed thereafter with the Department.

6. On August 30, 1994, the Department had issued a license to respondent, authorizing her to operate a family day care home at 25090 Ocotillo Avenue, Moreno Valley, California. Respondent operated this day care home under the name of Harris Family Day Care.

On December 2, 1996, the Department executed an Accusation against respondent in which it sought to revoke her license to operate her family day care home. The allegations of that Accusation (Case No. 6796242001) are the exact same allegations which are set forth in Paragraphs VII through XI C of the Accusation in this case.

The 1996 Accusation was served upon respondent at her last known address of 26029 Chateau Court, Moreno Valley, California, by Certified Mail, Return Receipt Requested. Respondent signed the Certified Mail receipt on December 6, 1996. Respondent failed to execute and return to the Department a Notice of Defense to the Accusation, thereby waiving the right to

a hearing to contest the merits of the pleadings (Accusation). Service of the Accusation upon respondent having been properly accomplished on December 6, 1996, respondent's failure to return the Notice of Defense thereafter had placed her in default.

Accordingly, and properly, on January 23, 1997, the Department issued a Decision and Order, pursuant to the provisions of Section 11520 of the Government Code. Said Decision determined that the factual allegations set forth in the December 2, 1996 Accusation were true. The Order revoked respondent's license to operate her family day care home. The Decision and Order became effective on January 24, 1997.

7. On January 5, 1999, counsel for the Department filed a Memorandum of Points and Authorities, which has been received and treated as a Motion In Limine, seeking to estop the respondent from any attempt to re-litigate, at the hearing in this matter, the factual findings and conclusions which were determined in the January 24, 1997 Decision and Order in Case No. 6796242001. Said motion was granted, in open court, at the commencement of the hearing on January 7, 1999.

The propriety of granting this motion is set forth in the California Supreme Court case of People v. Sims, 32 Cal. 3d 468; 186 Cal.Rptr. 77, 651 P.2d 321 (1982). In the Sims case, a welfare recipient was exonerated of fraud charges in an administrative hearing which was conducted by the Department of Social Services. At the time of the administrative hearing, felony criminal charges, arising out of the same alleged welfare fraud, were pending against the welfare recipient in the Sonoma County Superior Court. The County of Sonoma declined to present any evidence against the welfare recipient at the administrative hearing, contending that the Department of Social Services lacked jurisdiction to conduct the administrative hearing while criminal charges were still pending in the superior court.

The administrative hearing officer found that the Department of Social services did have jurisdiction to hear the case and that the County, by failing to present any evidence against the respondent at the administrative hearing, had failed to meet its burden of proving that the respondent had fraudulently obtained welfare benefits. Hence, the respondent was exonerated of the charges of welfare fraud. The hearing officer's decision was adopted by the Director of the Department of Social Services.

Thereafter, the respondent moved to dismiss the criminal charges in the superior court, on the ground, inter alia, that the administrative decision barred the criminal prosecution under the doctrine of collateral estoppel. (Collateral estoppel, of course, precludes a party to an action from relitigating in a second action, matters which were litigated and determined in a prior action.) Respondent's motion was granted by the trial court and the dismissal was appealed by the state.

In examining the question as to whether the administrative decision made by the Department of Social Services should have collateral estoppel effect in the subsequent criminal

proceeding, the California Supreme Court found "...appropriate guidance in *United States v. Utah Constr. Co.* (1966) 384 U.S. 394 [16 L.Ed.2d 642, 86 S.Ct. 1545]. There, the United States Supreme Court stated: 'Occasionally courts have used language to the effect that *res judicata* principles do not apply to administrative proceedings, but such language is certainly too broad.... Collateral estoppel may be applied to decisions made by administrative agencies '[w]hen an administrative agency is *acting in a judicial capacity* and *resolves disputed issues of fact* properly before it which the parties have had an *adequate opportunity to litigate . . .*' (Id., at p. 422 [16 L.Ed.2d at p. 661], italics added.) This standard formulated by the Supreme Court is sound, and it comports with the public policy underlying the collateral estoppel doctrine 'of limiting litigation by preventing a party who has had one fair trial on an issue from again drawing it into controversy.[Citations.]' (*Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 811 [122 P.2d 892].")

The California Supreme Court held that the fair hearing which had been conducted by the Department of Social Services was indeed a judicial-like adversary proceeding and that the hearing officer's decision was adjudicatory in nature. The Court then stated:

"Finally, the fair hearing process provided both the County and respondent with an adequate opportunity to fully litigate their claims before the DSS. That the County failed to present evidence or otherwise participate at the hearing does not prove the contrary. The failure of a litigant to introduce relevant available evidence on an issue does not necessarily defeat a plea of collateral estoppel. (*Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.*, *supra*, 58 Cal.2d at p. 607.) Even a judgment of default in a civil proceeding is 'res judicata as to all issues aptly pleaded in the complaint and defendant is estopped from denying in a subsequent action any allegations contained in the former complaint.' (*Fitzgerald v. Herzer* (1947) 78 Cal.App.2d 127, 132 [ 177 P.2d 364].)" (Id. at p. 481.)

The Supreme Court in *Sims* set forth what it termed a "three-prong" test to determine whether collateral estoppel will bar relitigation of an issue which has been decided in a previous proceeding. This three part test is:

1. The issue decided in the first proceeding is identical to the issue which is sought to be relitigated at the subsequent proceeding.
2. The first proceeding resulted in a final judgment on the merits.
3. The party against whom collateral estoppel is sought was either a party to, or was in privity with a party in the first proceeding.

The present case meets all of the requirements set forth in the *Sims* case for the application of collateral estoppel. The issues raised in the pending employment exclusion case are identical to the issues which were decided in the January 24, 1997 Decision and Order

revoking respondent's license. The allegations of the Accusation in each case, with the exception of the additional allegation in the present case concerning the September 3, 1998 criminal conviction of respondent, are identical. There is no question that the January 24, 1997 Decision and Order in the first case is a final judgment on the merits as to the issues presented. Finally, the parties in the first proceeding for the revocation of respondent's license are identical to the parties in the present employment exclusion case, namely, the Department of Social Services and Faith Harris.

Accordingly, as to the present case, respondent is bound by the Findings of Fact and Determination of Issues set forth in the Decision and Order in Case No. 6796242001, effective January 24, 1997. Exhibit 2 is a certified copy of said Decision and Order and the Accusation dated December 2, 1996, upon which it is based. Exhibit 2 is incorporated herein by reference and is made a part of this Proposed Decision.

8. Paragraphs VII through XI C of the Accusation herein allege, in general terms, that while respondent was operating her family day care home at 25090 Ocotillo Avenue in Moreno Valley, California, she committed the following violations of the Health and Safety Code:

- a. She failed to protect children in care from corporal punishment inflicted by some of her employees;
- b. She failed to have residents and employees of her facility fingerprinted, as required by regulation;
- c. She failed to comply with staffing ratios prescribed by regulation;
- d. She failed to insure that the children in her care were supervised at all times;
- e. She failed to keep her facility free from defects or conditions which might endanger a child;
- f. She made false statements regarding her husband's residence, and regarding the care of children in her facility, and in a certified foster family home. (Respondent had foster children, as well as day care children, at the same time.)

The specific allegations are set forth in full in the Accusation herein, and all of the allegations set forth in Paragraphs VII through XI C of the Accusation are incorporated herein by reference and made a part hereof. They are identical to the allegations in the Accusation brought against respondent in 1996, in Case Number 6796242001 (Exhibit 2). All of these allegations were found to be true and correct in the January 24, 1997 Decision and Order in said case, and respondent is bound by said Decision. Those facts constitute violations of Health and Safety Code Section 1596.885 and Title 22, California Code of Regulations, Sections 102423, 102370,

102370.1, 102416.5 and 102417. Each violation constitutes grounds under Section 1558 of the Health and Safety Code to exclude respondent from any facility licensed by the Department.

9. On June 9, 1998, respondent, who is not physically disabled, parked her motor vehicle in a space at the Riverside Post Office which was reserved for the physically handicapped. She was caught *flagrante delecto* by a parking control officer for the City of Riverside, who issued her a citation for this parking violation. Respondent became enraged when she was given the parking citation and she began to heap profane verbal abuse upon the parking control officer. Respondent then drove her vehicle at a high rate of speed directly at the officer while the officer was seated in her scooter type vehicle, which caused the officer to be concerned for her safety. Respondent stopped her vehicle at the last second, before it struck the officer's vehicle, and respondent thereupon blocked the parking control officer's vehicle so that it could not move, and thereupon rained another torrent of verbal abuse on her.

Criminal charges were brought against respondent as a result of this incident. On September 3, 1998, respondent pleaded guilty in the Superior/Municipal Courts of Riverside County, California, in Case No. RIM371411, to one count of violating Section 23103(b) of the California Vehicle Code (willfully and unlawfully driving a vehicle upon an offstreet parking facility, in willful and wanton disregard for the safety of persons and property). Respondent was placed on probation to the court for a period of eighteen (18) months, on specified terms and conditions. Respondent's probation will not terminate until March 3, 2001.

Clearly, respondent's conduct on June 9, 1998, which resulted in her September 3, 1998 conviction, as described above, is conduct which is inimical to the health, morals, welfare, or safety of either a child in care at a facility licensed by the Department, or the people of the State of California, within the meaning of Section 1596.885(c) of the Health and Safety Code. It evidences extremely poor judgment on the part of respondent, and shows her to have a temperament that is not suitable for a person who wishes to be entrusted with the care of small children. This violation constitutes further grounds under Section 1558 of the Health and Safety Code to exclude respondent from any facility licensed by the Department.

10. As a matter in aggravation, the Department introduced evidence which proved that sometime in 1994, respondent had applied for certification to operate a foster family home at an address at which she did not reside. Respondent utilized a fictitious name when she applied for the foster family home certification, and she falsely claimed that the foster children were under the guardianship of her aunt. She did this at a time when she was licensed to operate a family day care home at a different address than the address which she was using for the foster home application. Thus, she was falsely claiming that she was residing at two different addresses, for each license (foster family care and child day care) requires that the applicant, or licensee, physically reside at the address for which the license is to be issued. Moreover, respondent, and not her aunt, was the actual foster mother for the children in question.

Respondent was further untruthful in her application for licensure from the Department, in failing to list her husband as a resident of her home. Her husband was such a resident, and he had not been fingerprint cleared, as required by the Department. Respondent did not list her husband as a resident of her household, nor did she submit his fingerprints for clearance, because she knew that if she did list him as a resident and submit his fingerprints for clearance, the Department might not grant her a license. Her husband had been incarcerated in prison from 1988 to 1993 following a criminal conviction for selling drugs.

11. Respondent testified in her own behalf. Since the revocation of her family day care license, she has taken a variety of training courses relating to foster care and adult residential care, and she has worked, for a period of time, in an adult residential care facility. She claims that people constantly seek her assistance in caring for children, and that there are many people who are "dying to hire her as an administrator". She says that she would not repeat her past mistakes if she were permitted to work in another facility.

Respondent stated that all of the testimony given at the hearing by the parking control officer was false. Respondent could offer no motivation for the officer to have testified falsely at the hearing, but claimed that the officer had indeed done so. Respondent denied that she had deliberately driven her vehicle at the parking control officer. Respondent claimed that she had merely driven her vehicle to the back of the post office in order to turn around and exit the lot. Her testimony in this regard was unbelievable. The testimony of the parking control officer was clear, concise and completely credible.

Respondent's patently false testimony regarding the incidents surrounding her June 9, 1998 confrontation with the Riverside Parking Control Officer, viewed in conjunction with the false statements which she made to the Department in her applications for licensure, as set forth in paragraph 10, above, shows that respondent obviously find it extremely difficult to tell the truth. She has failed to present any compelling evidence of rehabilitation. Indeed, her most recent criminal conviction is graphic evidence to the contrary. It is right and just to exclude respondent from any facilities licensed by the Department.

### LEGAL CONCLUSIONS

1. Cause exists to exclude respondent from employment in, presence in, residence in, or contact with clients in any facility licensed by the Department, in that respondent has violated or permitted the violation of applicable licensing statutes and regulations, and respondent has engaged in conduct which is inimical to the health, morals, welfare or safety of children in care, or the people of the State of California, pursuant to Section 1558 of the Health and Safety Code, by reason of Findings 6, 7 and 8.

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2. Cause exists to exclude respondent from employment in, presence in, residence in, or contact with clients in any facility licensed by the Department in that respondent has engaged in conduct which is inimical to the health, morals, welfare or safety of children in care, or the people of the State of California, pursuant to section 1558 of the Health and Safety Code, by reason of Finding 9.

### **ORDER**

Respondent, Faith Harris, aka Denise Ann Harris, aka Faith Denise Harris, is hereby excluded from employment in, presence in, residence in, or contact with clients in any facility licensed by the Department of Social Services.