

BEFORE THE
DEPARTMENT OF SOCIAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

ROYA ZIAI-NOSRAT
10 Riez
Newport Coast, CA 92657

Respondent.

Case No. 6603192001

OAH No. L2004120044

10 CDSS 11

PROPOSED DECISION

On March 24, 2005, in Santa Ana, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Leslie Evans, Staff Attorney, represented the complainant.

Respondent Roya Ziai-Nosrat represented herself.

The matter was submitted on March 24, 2005.

FACTUAL FINDINGS

1. On October 26, 2004, Cathleen A. McCoy, Chief of the Technical Assistance and Policy Branch, Community Care Licensing Division, Department of Social Services, State of California (Department) filed Statement of Issues No. 6603192001 in her official capacity. Respondent filed a timely Notice of Defense.

2. On February 6, 2003, respondent signed an Application for a Family Child Home License and submitted it to the Department. She sought a license for a Large Home (up to 14). She indicated she lived at 10 Riez, Newport Coast, California with her two children, ages ten and twelve. This application was reviewed by Department staff and returned to respondent because certain information was missing.

Respondent submitted a second application seeking a Small Home license (up to 8). She did not enter the date. Someone at a later time entered the date of February 13, 2003 and wrote in the word "received" above the date. Respondent indicated she lived at 10 Riez with her two daughters and Vahideh Rassam.

On June 2, 2003, Rassam submitted an application for a Large Home license and indicated on it her home address was 10 Riez, and she lived there with respondent and respondent's two daughters. Rassam described respondent as her "assistant/partner." This application was returned because the Department now had two applications for the same location.

By letter dated June 25, 2003, Mary Kaarmaa, Regional Manager of Orange County Child Care of the Department denied respondent's two applications. In the denial letter, Kaarmaa indicated the second application was received by the Department on May 25, 2003. The basis for the denial was that respondent's applications contained false information because they did not indicate respondent's mother lived at 10 Riez.

Respondent appealed the denial of her applications by letter dated June 29, 2003. Respondent wrote her mother's sole address for all her documents, letters, bank statements had been her address, but her mother preferred to reside with respondent's aunt and would visit respondent and other relatives. Respondent indicated that nevertheless, she had her mother tested for TB and fingerprinted.

3. Respondent's mother lived at 10 Riez during 2003.

4. Rassam did not reside at 10 Riez during 2003. Rassam owned her own residence at 56 Lake Pines in Irvine and lived there. She visited respondent at 10 Riez.

5. Respondent provided false information to the Department in the two applications she submitted. She did not include her mother as a resident of 10 Riez when in fact her mother was a resident, and she indicated Rassam was a resident of 10 Riez when in fact she was not.

6. In order for respondent to obtain a license to operate a Large Home, she had to have a certain amount of experience. Respondent did not have that experience. Rassam did. Thus, respondent and Rassam decided they would list Rassam as the applicant and use her experience to qualify for a Large Home license. Rassam and respondent both testified at the hearing that Rassam lived at 10 Riez, but their testimony was not credible. The testimony of respondent's neighbors that respondent's mother lived at 10 Riez and Rassam did not was more credible and is believed.

7. Respondent created a flyer indicating she was operating a new, licensed family child care and distributed in her neighborhood. The flyer contained false information in that respondent was not licensed and has never been licensed.

8. Respondent testified the applications were confusing and this was the first time she had applied for a license. She indicated she did everything the Department asked of her.

Respondent testified she was trying to be very specific with the Department regarding her mother. By that she meant she did not deny that her mother did not reside with her but

also did not deny that her mother did live with her. Respondent explained her mother had many relatives around the world, enjoyed visiting them, and stayed with them for long periods of time. She claimed that while her children lived with her permanently, her mother did not. She reasoned she had no motive to hide her mother's whereabouts, and when this issue came up, she had her fingerprinted and tested for TB, and she was cleared for both.

Respondent also testified she brought in Rassam because of Rassam's education and extensive experience as a preschool teacher.

LEGAL CONCLUSIONS

1. Health and Safety Code section 1597.54 requires that all family day care homes for children apply for a license on forms furnished by the Department, and the application must contain certain information, including the identity of all adults living in the home along with fingerprints, a criminal record clearance, and a current tuberculosis clearance.

2. Health and Safety Code section 1596.885 provides in part:

The department may deny an application for or suspend or revoke any license, registration, or special permit issued under this act upon any of the following grounds and in the manner provided in this act:

...

(b) Aiding, abetting, or permitting the violating of this act or of the rules and regulations promulgated under this act. . . .

3. Cause to deny the application for a license of respondent Roya Ziai-Nosrat to operate a family child care home pursuant to Health and Safety Code section 1596.885, subdivision (b), violating statutory rules, was established by reason of Findings 2 through 5.

4. Respondent was required to submit an application to the Department to obtain a family child care home license, and the Department rightfully expected respondent would provide truthful information. Affirmative misstatements intended to place an applicant at an advantage may be distinguished from the unintentional nondisclosure of information which under the circumstances is not morally significant. Circumstances of record, notably the absence of any apparent motive to lie about the matter, may qualify as the sort of "unintentional nondisclosure of a relatively unimportant matter" which does not justify exclusion from a profession. *Lubetzky v. State Bar* (1991) 54 Cal. 3d 308, 319.

An applicant who knowingly makes a false statement and omits requested information demonstrates poor moral character sufficient to disqualify the applicant from a licensed occupation. See, *Hall v. Committee of Bar Examiners* (1979) 25 Cal. 3d 730, 775; see also 107 A.L.R.5th 167 (2003) *Falsehoods, Misrepresentations, Impersonations and*

Other Irresponsible Conduct as Bearing on Requisite Good Moral Character for Admission to Bar.

5. It is unclear why respondent would provide false information to the Department regarding her mother's residence. Respondent's mother would apparently satisfy all requirements for residence in a licensed family child care home, and in fact later did meet those requirements. Nevertheless, respondent intentionally omitted her from the two applications she submitted, and continues to falsely claim her mother does not reside in her home both in a letter to the Department appealing the denial of her application, and under oath at the hearing. As indicated, an applicant who omits requested information on multiple occasions demonstrates poor moral character.

In addition, respondent again under oath falsely claimed Rassam resided in her home at the time Rassam submitted an application for licensure. The evidence established Rassam did not reside there. An occasional visit does not qualify as residence. This time, the motive for the false information is apparent, that is, respondent's need for Rassam's experience in order to obtain a license for a Large Home.

Finally, respondent caused a flyer to be distributed in her neighborhood containing false information.

When respondent's applications containing false information, her testimony, and her other conduct are considered, it must be concluded the Department has insufficient reason to trust her to operate a licensed child care facility that satisfies the numerous rules and regulations placed on such facilities. The Department provides little oversight of its licensees, and relies upon them to inform it if problems arise. Respondent has demonstrated she cannot be trusted to report information truthfully and completely. It is therefore against the public interest to allow respondent to operate a family child care facility.

ORDER

The application of respondent Roya Ziai-Nosrat to operate a family child care home is denied.