

BEFORE THE
DEPARTMENT OF SOCIAL SERVICES
STATE OF CALIFORNIA

In the Matter of:)	No. 369606401
)	
LEO & ALFINA GALBRAITH)	OAH No. L-9705056
18150 Athol Street)	
Fontana, CA 92335)	99 CDSS 11
)	
Respondents.)	
_____)	

PROPOSED DECISION

On September 11, 1997, in Riverside, California, Alan S Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Ramon Perez, Staff Attorney, represented complainant.

John n Vega, Attorney At Law, represented responden Alfin Galbraith. t

Evidence was received and the record was kept open to permit counsel to file briefs. On October 10, 1997, respondent filed a Supplemental Authority an Argument which was marked Exhibit A. On October 23, 1997, complainant filed Points an Authorities which was marked Exhibit 3. The record was closed and the matter was submitted on November 3, 1997.

FINDINGS OF FACT

I

Martha Lopez, Deputy Director, Community Care Licensing Division, Department of Social Services, State of California, (hereafter, "Department") failed Accusation number 369606401 in his official capacity on April 11, 1997. Respondent filed a Notice of Defense dated April 25, 1997.

II

The Department issued facility license number 360004432 to respondents Leo and Alfin Galbraith to operate a foster family home at 1815 Athol Street, Fontana, California. The most recent license was issued on November 15, 1993. The facility served up to six children up to age 8, with a preference for ages 12 to 18.

III

On January 23, 1996, in the Superior Court of San Bernardino County, in the case of People v. Leo Galbraith, No. FVA04889, respondent Leo Galbraith was sentenced to state prison for a term of six years and eight months following his plea of guilty for two counts of violating penal Code sections 288(a) and (c), lewd and lascivious acts with a child under the age of 14.

There were two victims, Child No. 1 and Child No. 2. Both children were living in respondents' home and were foster children of respondents at the time respondent Leo Galbraith committed the crimes.

IV

Child No. 1 was born on July 12, 1977. She was foster child of respondents and lived in their home between January, 1989, and approximately June or July, 1981. She was sexually molested by respondent Leo Galbraith over a period of time, but there was no evidence as to specifically when the acts of molestations occurred.

VI

The Department issued one license to respondents in the name of Leo and Alfina Galbraith, facility number 360004432. The evidence established respondent Alfina Galbraith did not commit any acts which would justify revocation of the license, nor was she aware of any acts of wrongdoing committed by her husband. **[OMITTED TEXT]**. Respondent Alfina Galbraith argues she should not be disciplined for the wrongdoing of her husband.

Health and Safety Code section 1550 authorizes the Department to suspend or revoke "any license...." The Department this may act against a license, not the individual holders of a license. It is clearly established that where there is only one license in the name of two people, the Department does not have the authority to separate out the guilty person from the innocent one and place the license in the name of the innocent one. Coletti v. State of Equalization (1949) 94 Cal. App. 2nd 61; Rice v. Alcoholic Beverage Etc. Appeals Board (1979) 89 Cal. App. 3d 30, 39; Maxwell Café v. Department of Alcoholic Beverage Control (1956) 142 Cal. App. 2d 73, 80. Rather, if respondent Alfina Galbraith wishes to continue to act as a foster parent, she must obtain a new license. Because one of the co-licensees on the existing license committed acts for which revocation is on the existing license committed acts for which revocation is required, that license must be revoked.

DETERMINATION OF ISSUES

Cause to suspend or revoke the facility license of respondents Leo and Alfina Galbraith pursuant to health and Safety Code sections 1550(a), (b) and (c), 1522 (d), and Title 22, California Code of Regulations, sections 87061, 87064, 87072, and 89019, was established by reason of Findings III, IV, and VI.

ORDER

Facility license number 360004432 issued to respondents Leo and Alfina Galbraith doing business as Leo and Alfina Galbraith doing business as Leo and Alfina Galbraith to operate and maintain a foster family home is hereby revoked.