

BEFORE THE
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT
STATE OF CALIFORNIA

In the Matter of the Penalty Issued to:	}	
LAVISTA CONGREGATE LIVING HEALTH FACILITY, WELL CARE CONGREGATE LIVING HEALTH FACILITY	}	OSHPD No. 20-006C-LTC
Appellant.	}	
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PROPOSED DECISION

This matter was heard before Michelle Church-Reeves, Hearing Officer, Office of Statewide Health Planning and Development (“OSHPD”), State of California, on Thursday, June 11, 2020 beginning at 10:30 a.m.

Ty Christensen, Manager, Accounting and Reporting Systems Section, and Tina Tran, Associate Governmental Program Analyst, Accounting and Reporting Systems Section represented OSHPD.

LaVista Congregate Living Health Facility, Inc., owner and operator of LaVista Congregate Living Health Facility and Well Care Congregate Living Health Facility, collectively “Appellant,” was represented by Anthony Au, owner, and Sarkis Semeriyian, administrator designee.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Thursday, June 11, 2020 at 10:54 a.m.

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PROCEDURAL FINDINGS

1. On January 29, 2020, OSHPD assessed a penalty against Appellant in the amount of \$26,100 for LaVista Congregate Living Health Facility's delinquent Long-Term Care Annual Disclosure Report.
2. On January 29, 2020, OSHPD assessed a penalty against Appellant in the amount of \$26,100 for Well Care Congregate Living Health Facility's delinquent Long-Term Care Annual Disclosure Report.
3. Appellant appealed the penalties by submitting a Request for Consolidation of Appeals Proceedings form dated February 10, 2020 and received by the OSHPD Hearing Office on February 14, 2020. The OSHPD Hearing Office notified Appellant that their appeal was incomplete. Appellant submitted the Request for Administrative Hearing forms on April 14, 2020 and they were received by the OSHPD Hearing Office on April 16, 2020.
4. Appellant submitted its appeals within the required fifteen business days from receipt of the penalty letters.¹
5. The hearing was conducted telephonically.
6. OSHPD submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 21 were found to be authentic and relevant and admitted to the record.
7. Appellant did not submit written exhibits to the Hearing Office and OSHPD in advance of the hearing.

FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128770 to file the Long-Term Care Annual Disclosure Reports by April 30, 2019. No extensions were requested or granted. Delinquency notices for each facility's report were mailed to "Evangeline Booth or

¹ Health & Saf. Code, § 128770.

current administrator,” on May 6, 2019 and again on May 30, 2019. Penalties accrued from May 1, 2019 until January 16, 2020 when the reports were filed.

2. In accordance with Health and Safety Code section 128770, subsection (a), OSHPD assessed penalties in the amount of \$100 per day for 261 days, resulting in a penalty amount of \$26,100 per report, totaling \$52,200.² These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.

3. Under Health and Safety Code section 128770, subsection (c), a penalty may “be reviewed on appeal, and the penalty may be reduced or waived for good cause.”

4. Appellant submitted a written statement with its appeal and made oral statements of facts it believes show good cause why its report was not submitted in a timely manner.

5. Appellant’s representative testified that the previous administrator, Evangeline Booth, was the only contact listed for both facilities and used an e-mail address which no one else had access to. In addition, in or around November 2019, Anthony Au purchased both LaVista Congregate Living Health Facility (CLHF) and Well Care CLHF. Both facilities were non-operational for portions of 2018 and 2019 due to their financial difficulties. Appellant updated the contact information in OSHPD’s System for Integrated Electronic Reporting and Auditing (SIERA) following the transfer of ownership and reviewed the facility history but did not see any notifications which indicated that the reports had not been filed and were delinquent. Appellant mistakenly assumed that Ms. Booth had filed the reports timely. On January 16, 2020, Ms. Tran notified Appellant through Mr. Semeriyian that the reports were delinquent, and Appellant filed the reports the same day. These facts were substantiated by oral statements made under oath by Mr. Semeriyian at the hearing.

6. Neither OSHPD nor Appellant offered additional testimony. The initial statements of both parties were not rebutted.

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² Health & Saf. Code, § 128770.

DISCUSSION AND LEGAL CONCLUSIONS

1. The issue here is whether Appellant had good cause, as required by Health and Safety Code section 128770, for failing to file the Long-Term Care Annual Disclosure Reports for LaVista CLHF and Well Care CLHF by April 30, 2019, and whether the penalty should be waived in whole or in part.

2. In *Waters v. Superior Court*, the California Supreme Court stated that, “good cause may be equated to a good reason for a party’s failure to perform that specific requirement from which he seeks to be excused.”³ Good cause must be directly related to the specific legal requirement which the party failed to perform and should be outside the reasonable control of the party.⁴ Good cause is sometimes defined as circumstances beyond the party’s control, and not related to the party’s own negligent act or failure to act. On an individual basis, courts and administrative bodies have often found that hospitalization, incapacitation, accident involvement, or loss or unavailability of records may constitute good cause.⁵ Good cause is not limited to the listed reasons, however. In civil actions a mistake can be a defense. This excusable neglect must be objectively honest and subjectively reasonable.⁶

3. It is unclear why the previous administrator and responsible party for the reports did not file the reports in a timely manner as none of those persons are involved in the ownership or operation of either facility currently, therefore no testimony was received. The substantiated facts establish that the owner who sold the facilities on the verge of bankruptcy was responsible in fact for the delinquent reports. The substantiated facts also show the delay in filing the

³ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

⁴ *Waters, supra*, 58 Cal.2d 885,893 and Secretary of State, “Good Cause” Reasons for Waiving Late Campaign & Lobbying Filing Fees <https://www.sos.ca.gov/campaign-lobbying/good-cause-reasons-waiving-late-campaign-lobbying-filing-fees/> [as of December 4, 2019].

⁵ Fair Political Practices Commission, Guidelines for Waiving Late Fines (Nov. 2017) <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/FilingOfficer/700FO-Folder/Late%20Fine%20Guidelines.pdf> [as of December 4, 2019]. See also *Waters, supra*, 58 Cal.2d 885, 893.

⁶ Black’s Law Dict. (8th ed. 2004), p. 1601. See also Code Civ. Pro., §473.

delinquent report once the new owner and administrator took over was due to ignorance of both the previous notices, the loss or destruction of which was outside the control of Appellant, and a mistake in not immediately contacting OSHPD and verifying any previous reports and extension requests.. The question is whether this delay following the transfer of ownership in or around November 2019 until January 16, 2019 was within the control of Appellant.

4. The substantiated facts showed that Appellant was mistaken in believing the previous reports had been filed, and the oral statements made under oath by Appellant at the hearing are credible. In addition, should Appellant have realized the reports were delinquent, Appellant could have requested the extensions, both of which remained unused. It is subjectively reasonable that a new owner might not be familiar enough with SIERA to understand which reports were not filed. Furthermore, the change of ownership paperwork takes time to file and process. Upon receiving notification of the delinquency from OSHPD, Appellant immediately filed the delinquent reports. This demonstrated that Appellant was maintaining financial records with the intent to file upcoming reports in a timely manner. Finally, from the time of the transfer of ownership to the filing of the report, Appellant's delinquency would have been covered by the two extension requests which remained unused due to Appellant's ignorance.

5. The substantiated facts meet the typical showing of good cause. Therefore, Appellant met the burden of showing good cause for waiver of the penalty assessed.

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PROPOSED ORDER

The assessed penalty is waived for good cause.

Dated: October 14, 2020

/s/
MICHELLE CHURCH-REEVES
Attorney, Hearing Officer
Office of Statewide Health Planning and
Development

DECISION

Pursuant to Health and Safety Code section 128775, after due consideration of the record,
the Proposed Decision is:

Accepted

Rejected

Dated: October 20, 2020

/s/
MARKO MIJIC
Acting Director
Office of Statewide Health Planning and
Development