

BEFORE THE
DEPARTMENT OF HEALTH CARE ACCESS AND INFORMATION
STATE OF CALIFORNIA

In the Matter of the Penalty Issued to:

**GRAND VILLA CONGREGATE
LIVING HEALTH FACILITY**

Appellant.

HCAI No. 22-012-LTC

PROPOSED DECISION

This matter was heard before Michelle Church-Reeves, Hearing Officer, Department of Health Care Access and Information (“HCAI”), successor to the Office of Statewide Health Planning and Development (“OSHPD”),¹ State of California, on Tuesday, October 18, 2022, beginning at 2:00 p.m. PDT.

HCAI was represented by Ty Christensen, Manager, Accounting and Reporting Systems Section. Tina Tran, Associate Governmental Program Analyst, Accounting and Reporting Systems Section was also present on behalf of HCAI.

Vanik & Arsen, LLC., owner and operator of Grand Villa Congregate Living Health Facility,² collectively “Appellant,” was represented by Ashley Khachatryan, administrator and board member.

Both documentary and testamentary evidence was received. The matter was submitted for decision and the record was closed on Tuesday, October 18, 2022, at 2:19 p.m. PDT.

¹ Stats. 2021, ch. 143, §§ 30, 31.

² Department of Public Health, Cal Health Find Database <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=630017549> [as of October 18, 2022].

PROCEDURAL FINDINGS

1. Appellant's Long-Term Care Annual Disclosure Report was due by October 29, 2021.³
2. On July 1, 2022, HCAI assessed a penalty against Appellant in the amount of \$2,000 for the late filing of its Long-Term Care Annual Disclosure Report.⁴
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated July 6, 2022 and received by the HCAI Hearing Office via email on July 12, 2022.
4. Appellant submitted its appeal within the required fifteen business days from receipt of the penalty letter.⁵
5. The hearing was conducted electronically using video and teleconferencing.
6. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 18 were found to be authentic and relevant and admitted to the record.
7. Appellant submitted a written statement to the Hearing Office and HCAI at the time of appeal. The document was found to be authentic and relevant and admitted to the record as Exhibit A.

FACTUAL FINDINGS

1. Due to the COVID-19 emergency extensions, the initial due dates for the report at issue were extended from April 30, 2021 by three months.⁶ Appellant was therefore required under Health and Safety Code section 128740 to file its report or request an extension by Saturday, July 31, 2021.⁷

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³ Health & Saf. Code, § 128755(b) and Exhibit 3.

⁴ Health & Saf. Code, § 128770. *See also* exhibit 10.

⁵ Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052.

⁶ Executive Order N-08-21 (June 11, 2021) continued the extension to cost report deadlines first granted by Executive Order N-55-20 (April 22, 2020) for reports with initial due dates prior to June 30, 2021.

⁷ *See also* Cal. Code Regs. tit. 22, § 97051 and exhibit 1.

2. On July 30, 2021, Appellant requested and received its first extension.⁸ Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file its report or request an extension by September 29, 2021.
3. On September 29, 2021, Appellant requested and received its final extension.⁹ Following exhaustion of the extension, Appellant was required under Health and Safety Code section 128740 to file its report by Friday, October 29, 2021.
4. HCAI mailed Appellant an Initial Notice of Delinquency dated November 1, 2021 which was delivered using Global Logistics Services on November 3, 2021.¹⁰
5. Penalties accrued from Saturday, October 30, 2021 until Thursday, November 18, 2021 when Appellant filed the report at issue.¹¹
6. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for twenty days for the late filing of the report at issue, resulting in a penalty amount of \$2,000.¹²
7. These facts were substantiated both by oral statements made under oath by Mr. Christensen at the hearing and written exhibits.
8. Appellant submitted a written statement with its appeal and made oral statements of facts it believes show good cause why the report was not filed in a timely manner.
9. Ms. Khachatryan testified on behalf of Appellant that the previous Chief Executive Officer (“CEO”) was the primary responsible party for preparing the report at issue. She had never prepared a report for HCAI previously and had worked more on the nursing administration side. She did not have any training in how to fill out the report and had to reach out to Ms. Tran for assistance. However, the System for Integrated Electronic Reporting and Auditing (“SIERA”) automated email report reminders were sent to Ms. Khachatryan. In addition, the facility’s Certified Public Accountant had some of the information required to complete the report.

⁸ Exhibit 4.

⁹ Exhibit 8.

¹⁰ Exhibits 13 and 14.

¹¹ Exhibit 15.

¹² Health & Saf. Code, § 128770(a) and Exhibit 16.

10. Department of Public Health license records also show that the current CEO, Mr. Rami Georgies, is listed as the current administrator beginning on or about November 19, 2021, the day after he filed the report at issue. Mr. Georgies purchased Vanik & Arsen, LLC on or around February 2, 2022.¹³ No change to the licensee or accreditation was submitted, just the first level of ownership.

11. These facts were substantiated by oral statements made under oath by Ms. Khachatryan at the hearing as well as written exhibits.

12. HCAI's exhibit 18 shows that Appellant filed its previous report in a timely manner. In addition, it shows that Appellant filed its subsequent report in a timely manner.

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 Report for its facility by October 29, 2021, and whether the penalty should be reduced or waived.

2. Under Health and Safety Code section 128770, a penalty may "be reviewed on appeal, and the penalty may be reduced or waived for good cause."¹⁴ 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."¹⁵ 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.¹⁶ Good cause is sometimes defined as circumstances beyond the party's control, and not related to the party's own negligent act or

¹³ Department of Public Health, Cal Health Find Database <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=630017549> [as of October 18, 2022].

¹⁴ Health & Saf. Code, § 128770(c).

¹⁵ *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

¹⁶ *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].

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.¹⁷ The determination of good cause in a particular context should utilize common sense based on the totality of the circumstances, including the underlying purpose of the statutory scheme.¹⁸

3. A party's diligence is a factor in determining good cause for an extension or a delay.¹⁹ The substantiated facts show that the previous CEO, the previous responsible party, did not complete the report in a timely manner and instead asked Ms. Khachatryan to complete the report with no training or assistance. Appellant did not provide specific details as to when the previous CEO left, but HCAI records showed that Ms. Khachatryan and Mr. Georgies were involved in the running of the facility prior to filing the report at issue. While Ms. Khachatryan testified that she was inexperienced and untrained as the responsible party for the filing of this report, the circumstances that led to the late filing were not outside the reasonable control of Appellant.

4. These facts do not demonstrate that Appellant was impacted by circumstances clearly outside its control or that it acted with due diligence under the circumstances. Therefore, the substantiated facts do not show good cause for waiver or reduction of the \$2,000 penalty.

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¹⁷ 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 November 15, 2020]. See also *Waters, supra*, 58 Cal.2d 885, 893.

¹⁸ *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

¹⁹ *People v. Financial & Surety, Inc.* (2016) 2 Cal.5th 35, 47. See also *Wang v. Unemployment Ins. Appeals Bd.* (1990) 225 Cal.App.3d 412, 420.

PROPOSED ORDER

The assessed penalty is upheld.

Dated: November 30, 2022

//original signed//

MICHELLE L. CHURCH-REEVES
Hearing Officer
Department of Health Care Access and Information

DECISION

Pursuant to Health and Safety Code section 128775 and California Code of Regulations, title 22, section 97054, after due consideration of the record, the Proposed Decision is:

Accepted

Rejected

Dated: 12/24/2022

//original signed//

ELIZABETH A. LANDSBERG
Director
Department of Health Care Access and Information