

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

In the Matter of the Penalty Issued to:

**SUNSHINE LOVELY**

Appellant.

HCAI No. 24-023-LTC

**PROPOSED DECISION**

This matter was heard before Michelle Church-Reeves, Hearing Officer, Department of Health Care Access and Information (“HCAI”), State of California, on Wednesday, October 16, 2024, beginning at 1:49 PM 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.

Sunshine Lovely, Inc., owner and operator of Sunshine Lovely, Inc.<sup>1</sup>, collectively “Appellant,” was unrepresented. Justine Braga, the listed representative for Appellant, failed to appear at the scheduled hearing.

Both documentary and testamentary evidence was received. The hearing concluded and the record was closed on October 16, 2024 at 1:58 PM PDT.

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<sup>1</sup> Department of Public Health, Cal Health Find Database  
<https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/FacilityDetail.aspx?facid=630019338> [as of October 10, 2024].

## PROCEDURAL FINDINGS

1. On May 10, 2023, HCAI assessed a penalty against Appellant for the late extension request of its Long-Term Care Annual Disclosure Report for a total of \$400.<sup>2</sup>
2. Appellant emailed the Hearing Office requesting information on May 24, 2024 and again on June 10, 2024, but did not include the Request for Administrative Hearing or Notice of Penalty at that time.
3. Appellant appealed the penalty by submitting a Request for Administrative Hearing form dated July 15, 2024 and received by the Hearing Office via electronic mail on August 7, 2024 at 6:03 PM PDT.
4. Appellant did not submit its appeal within the required fifteen business days from receipt of the penalty letter.<sup>3</sup>
5. On Tuesday, September 3, 2024 at 4:46 PM PDT, the Hearing Office sent HCAI and Appellant the Scheduling Notice. The email was sent to Appellant at the address which the appeal was filed from, justine@bragamc.com. An out of office reply was received from Appellant email stating that she would return on September 19, 2024.
6. The hearing was conducted on October 16, 2024 electronically using video and teleconferencing as detailed in the Scheduling Notice. Reminder emails were sent to Appellant at 1:43 PM and again at 2:07 PM that the hearing had begun and ended, respectively.
7. HCAI submitted written exhibits to the Hearing Office and Appellant in advance of the hearing in a timely manner. Exhibits 1 through 3 were found to be authentic and relevant to HCAI's affirmative defense that Appellant missed the statutory deadline to submit an appeal. Exhibits 1 through 3 were admitted to the record. Exhibits 4 through 9 were received, but not relevant to HCAI's affirmative defense.
8. Appellant did not submit a written statement at the time of appeal, nor any exhibits prior to the scheduled hearing. No documentary evidence was admitted to the record for Appellant.

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<sup>2</sup> Health & Saf. Code, § 128770. *See also* exhibit 1.

<sup>3</sup> Health & Saf. Code, § 128775. *See also* Cal. Code Regs. tit. 22, § 97052 and exhibit 2.

## FACTUAL FINDINGS

1. Appellant was required under Health and Safety Code section 128740 to file its Report Period Ending (“RPE”) date December 31, 2022 report or request an extension by Sunday, April 30, 2023.<sup>4</sup>
2. On Thursday, May 4, 2023, Appellant requested and received its first available extension.<sup>5</sup>
3. In accordance with Health and Safety Code section 128770, HCAI assessed penalties in the amount of \$100 per day for four days for the late extension request of the report at issue, resulting in a penalty amount of \$400.<sup>6</sup>
4. HCAI mailed Appellant a Notice of Penalty dated Wednesday, May 10, 2023 using Global Logistics Services overnight mail. The Notice of Penalty was delivered to Appellant on Friday, May 12, 2023 at or around 1:35 PM PDT.<sup>7</sup>
5. Based on the date of receipt, Appellant should have filed its Request for Administrative Hearing by Monday, June 5, 2023. However, Appellant did not contact the Hearing Office until May 24, 2024 and the Request for Administrative Hearing was not received until August 7, 2024.<sup>8</sup>
6. A Scheduling Notice, dated September 3, 2024, was emailed to HCAI and Appellant on Tuesday, September 3, 2024 at or around 4:46 PM PDT. This administrative hearing was scheduled for Wednesday, October 16, 2024 at 1:30 PM PDT.
7. On Friday, October 4, 2024 at 10:46 AM PDT, HCAI staff emailed its exhibits to Appellant and the Hearing Office. HCAI staff further attached a copy of the Scheduling Notice containing the administrative hearing information with its exhibits.
8. These facts were substantiated both by oral statements made under oath by

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<sup>4</sup> See also Cal. Code Regs. tit. 22, § 97051 and exhibit 1.

<sup>5</sup> Exhibit 1.

<sup>6</sup> Health & Saf. Code, § 128770(a) and exhibit 1.

<sup>7</sup> Exhibit 2.

<sup>8</sup> Exhibit 3.

Mr. Christensen at the hearing and written exhibits.

9. The hearing was conducted on October 16, 2024 electronically using video and teleconferencing as detailed in the Scheduling Notice. HCAI representatives and the Hearing Officer were ready to begin at the scheduled time of 1:30 PM PDT. At 1:43 PM PDT, a reminder email was sent to Appellant advising that “a failure to appear may result in a decision against the party.”

10. An additional email was sent to Appellant at 2:07 PM PDT advising Appellant that the hearing record was closed at 1:58 PM and the matter would be decided on the basis of documentary and testamentary evidence introduced to the hearing record. No written exhibits were submitted by Appellant at the time of appeal or prior to the scheduled hearing.

#### 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 request an extension for its Long-Term Care Annual Disclosure Report for its facility by April 30, 2023, 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.”<sup>9</sup> 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.”<sup>10</sup> 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.<sup>11</sup> Good cause is sometimes defined as

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<sup>9</sup> Health & Saf. Code, § 128770(c).

<sup>10</sup> *Waters v. Super. Ct. of Los Angeles County* (1962) 58 Cal2d 885, 893 (hereafter *Waters*).

<sup>11</sup> *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].

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.<sup>12</sup> 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.<sup>13</sup>

3. A party's diligence is a factor in determining good cause for an extension or a delay.<sup>14</sup> Appellant submitted no testimonial or documentary evidence with its Request for Administrative Hearing or at the time of the scheduled hearing. HCAI exhibits showed the penalty was properly calculated and Appellant received legally sufficient notice of the penalty.

4. While the substantiated facts do show an out of office reply was received from Appellant when the Scheduling Notice was sent, the out of office reply indicated Appellant's representative would be back in the office on September 19, 2024, ensuring adequate notice of the hearing date and time to prepare for the hearing. Appellant received additional notice of the hearing date with HCAI's exhibits on October 4, 2024. Appellant additionally received e-mail notices that the hearing had begun and that the hearing record was closed, but Appellant failed to provide a statement or any other documentary evidence prior to the hearing, appear at the hearing, or contact the Hearing Office to withdraw its appeal or request a continuance.

5. These facts do not demonstrate that Appellant was impacted by circumstances clearly outside its control nor that it acted with due diligence under the circumstances. Therefore, the substantiated facts do not show good cause for reduction or waiver of the \$400 penalty.

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<sup>12</sup> 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.

<sup>13</sup> *Laraway v. Sutro & Co.* (2002) 96 Cal.App.4th 266, 274.

<sup>14</sup> *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 18, 2024

//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: 12/4/2024

//original signed//

JAMES YI, Attorney IV  
FOR ELIZABETH A. LANDSBERG, Director  
Department of Health Care Access and Information