

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

**ZURI LIVING WELL PERSONAL  
CARE HOME #2,  
Petitioner,**

v.

**DCH, HEALTHCARE FACILITY  
REGULATION,  
Respondent.**

**Docket No.: 1847952  
1847952-OSAH-DCH-HFR-PCH-121-  
Schroer**

**Agency Reference No.: 1847952**

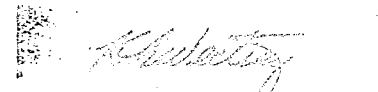


OCT 04 2018

**FINAL DECISION**

**I. INTRODUCTION**

Angela Bates appeals the decision by the Department of Community Health (“DCH” or “Respondent”) to deny her application for a license to operate her facility, Zuri Living Well Personal Care Home #2 (hereinafter “Zuri Living Well”), as a personal care home. An evidentiary hearing was held before the undersigned administrative law judge on September 5, 2018. Lauminnia Nivens, Esq., represented Petitioner in this matter, and Crandall Heard, Esq. represented DCH. For the reasons indicated below, DCH’s action is **REVERSED**.

  
Kevin Westray, Legal Assistant

**II. FINDINGS OF FACT**

1. Ms. Bates intends to operate Zuri Living Well out of a house located at 2133 Fairview Avenue in Augusta, Georgia (hereinafter “the Fairview location”). (Testimony of Angela Bates; Respondent’s Exhibit 2).

2. The Fairview location formerly operated as a personal care home owned by Maxine Donaldson. However, DCH revoked Ms. Donaldson’s personal care home license after she was arrested for exploitation of an elderly or disabled person in violation of O.C.G.A. § 16-5-102. The undersigned affirmed DCH’s action in a Final Decision issued January 11, 2018. The

criminal charge against Ms. Donaldson remains pending. (Testimony of William Loomer, Investigator, Office of the District Attorney).

3. Ms. Bates formerly worked as a caretaker at Aiken-Barnwell Mental Health. While working in that capacity in 2015, she met Ms. Donaldson, who was visiting the facility with one of the residents of her personal care home. After Ms. Bates expressed interest in opening a personal care home, Ms. Donaldson initially pledged to assist her in opening one. However, Ms. Donaldson later indicated she was “too busy” to assist Ms. Bates, and the two eventually fell out of contact. (Testimony of Angela Bates).

4. After learning of the closure of Ms. Donaldson’s personal care home, Ms. Bates visited the Fairview location on January 26, 2018 with the intention of inquiring about purchasing it. Although Ms. Donaldson was not present at the home, Ms. Bates obtained her phone number from her daughter. That evening, she texted Ms. Donaldson: “Hey give me a call. I have a blessing for you[,]” and provided her name and phone number. (Testimony of Angela Bates; Respondent’s Exhibit 5).

5. The following day, Ms. Bates visited Ms. Donaldson at the Fairview location and told her she wanted to acquire the house. Ms. Donaldson indicated to Ms. Bates that she would contact the landlord, Ron Meardy. (Testimony of Angela Bates).

6. On January 29, 2018, Ms. Bates sent Ms. Donaldson two text messages, the first of which read, “Hey[,] [d]on’t mention my name to nobody. . . ,” and the second of which read, “Can’t let the left hand know what [the] right hand [is] doing. That’s the [bible]!!! . . . .” (Testimony of Angela Bates; Respondent’s Exhibit 5).

7. On January 30, 2018, Ms. Bates, who was accompanied by her mother, Earnestine McClendon, met with Ms. Donaldson and Mr. Meardy to discuss entering a lease for the

Fairview location. During the meeting, Ms. Bates signed a three-year lease for the property. Per the terms of the lease, she was required to pay rent of \$1,100 per month. (Testimony of Angela Bates; Respondent's Exhibit 4).

8. The lease included the handwritten provision: "Maxine Donaldson gifts \$1,100 to Angela Bates to give to Ron Meardy as a security deposit on this lease." Mr. Meardy and Ms. Bates signed a receipt for the \$1,100 security deposit. (Respondent's Exhibit 4; Petitioner's Exhibit 1).

9. On February 1, 2018, Ms. Bates purchased the home's furnishings and equipment from Ms. Donaldson for \$8,000. (Testimony of Angela Bates; Testimony of Glen Bates).

10. In February 2018, William Loomer, an investigator with the Richmond County District Attorney's Office, visited the Fairview location in connection with an investigation into another personal care home. Ms. Bates and Ms. Donaldson were at the Fairview location when Mr. Loomer arrived. (Testimony of William Loomer).

11. At Mr. Loomer's request, Ms. Donaldson provided him with her cell phone. Mr. Loomer reviewed and took photographs of Ms. Donaldson's text message history, which included the texts from Ms. Bates described above. Mr. Loomer also took photographs of text messages from Ms. Donaldson to Mr. Meardy in which the former described Ms. Bates as her "cousin." Mr. Loomer provided the photographs of the text messages to DCH. (Testimony of William Loomer; Respondent's Exhibits 1, 5).

12. Mr. Loomer briefly interacted with Ms. Bates to inform her that there was negative history concerning Ms. Donaldson's personal care home and provided her with his business card. Ms. Bates indicated that she was in the process of acquiring the home. (Testimony of William Loomer; Testimony of Angela Bates).

13. Ms. Bates submitted an application for a PCH license to DCH on or about April 2, 2018. (Respondent's Exhibit 2).

14. In a "Notice of Intent to Deny Application," dated May 10, 2018, DCH informed Ms. Bates that it denied her application based on its determination that Maxine Donaldson was her "alter ego." DCH cited the text messages photographed by Mr. Loomer and the notation in the lease providing that Ms. Donaldson gave Ms. Bates \$1,100 to cover the security deposit for the property. (Respondent's Exhibit 1; Testimony of Shirley Rodriguez, Personal Care Home Program Director, DCH).

15. In her testimony, Ms. Bates denied that she was related to Ms. Donaldson. She could not account for why Ms. Donaldson described her as a relative in her communications with Mr. Meardy, but speculated that she may have used the word "cousin" to denote friendship. She insisted that she had only interacted with Ms. Donaldson in matters pertaining to starting her personal care home. She explained that she sent Ms. Donaldson text messages cautioning her not to mention her name because she was a very "private person" and Ms. Donaldson seemed talkative and indiscreet. (Testimony of Angela Bates).

16. Contrary to the handwritten provision in the lease, Ms. Bates insisted Mr. Meardy effectively gave her \$1,100 by waiving the security deposit for leasing the property. Instead, Mr. Meardy agreed to allow Ms. Donaldson's forfeited security deposit to serve as a security deposit for Ms. Bates. (Testimony of Angela Bates).

17. Ms. Bates' husband, Glen Bates, testified that his wife was not related to Maxine Donaldson. He further testified that he met Ms. Donaldson once, when he accompanied Ms. Bates to acquire the keys to the home from her. (Testimony of Glen Bates).

18. Ms. Bates' mother, Earnestine McClendon, also testified that Ms. Bates was not related to Ms. Donaldson. Ms. McClendon, who was present when Ms. Bates signed the lease for the Fairview location, further testified that Ms. Donaldson never gave her daughter any funds as the lease suggests. (Testimony of Earnestine McClendon).

19. Ms. Bates currently holds a license to operate a different personal care home. She purchased this location in 2017 and applied for licensure with DCH in February 2018. This personal care home began operations on August 13, 2018, after DCH granted her application. From the record, it is unclear why DCH granted Ms. Bates' application to operate this personal care home, but denied her April 2018 application to operate Zuri Living Well. (Testimony of Angela Bates).

### **III. CONCLUSIONS OF LAW**

1. Because this case concerns the denial of Ms. Bates' application for a license to operate a personal care home, she bears the initial burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1). However, DCH bears the burden of proving the existence of an alter ego relationship. See O.C.G.A. § 24-14-1 ("The burden of proof generally lies upon the party who is asserting or affirming a fact and to the existence of whose case or defense the proof of such fact is essential."); see also Atl. Coast Line R.R. Co. v. Thomas, 83 Ga. App. 477, 480 (1951). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2. DCH is the state entity tasked with the licensure and regulation of healthcare facilities, including personal care homes. O.C.G.A. §§ 31-7-3, -12. Pursuant to this responsibility, it has promulgated rules for the operation of personal care homes, which are found in Chapter 111-8-62 of the Official Compilation, Rules and Regulations for the State of Georgia. Ga. Comp. R. & Regs. 111-8-62-.01 et seq. DCH enforces the rules governing PCHs through its General

Licensing and Enforcement Requirements, which are found in Chapter 111-8-25 of the Official Compilation, Rules and Regulations for the State of Georgia. Ga. Comp. R. & Regs. 111-8-25-.01 et seq.

3. DCH “may deny an application for a license where the applicant or alter ego of the applicant has had a license denied, revoked, or suspended within one year of the date of an application . . . .” Ga. Comp. R. & Regs. 111-8-25-.05(2)(a)1. DCH’s rules define an alter ego as “a person who acts pursuant to the control or influence of another while purporting to act independently.” Ga. Comp. R. & Regs. 111-8-25-.02(2).<sup>1</sup> In this case, DCH denied Ms. Bates’ application based on its determination that she was the alter ego of Maxine Donaldson, whose license to operate a personal care home was revoked due to criminal activity.

4. Having considered the Findings of Fact above, the Court concludes that DCH did not introduce sufficient evidence to prove that Ms. Bates is the alter ego of Ms. Donaldson. Rather, the preponderance of the evidence proved that Ms. Bates contacted Ms. Donaldson exclusively for the purpose of acquiring her personal care home and other assets. The text messages cited by DCH appear introductory; Ms. Bates provided her name and phone number. Ms. Bates and other witnesses credibly testified that Ms. Bates has no personal or familial relationship with Ms. Donaldson, despite Ms. Donaldson’s vague assertions to the contrary, and there was no probative evidence that Ms. Bates agreed to act on Ms. Donaldson’s behalf and subject to her control after

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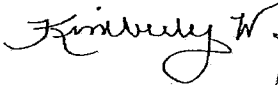
1 Although there does not appear to be any Georgia law considering this specific regulation, Georgia courts have addressed the concept of an “alter ego” in the corporate liability context. For example, the Georgia Supreme Court has held that the doctrine of alter ego is closely intertwined with the legal theories of ostensible agency and joint venturers, and noted that courts frequently invoke the term “agency” when considering whether one party is an “alter ego” of another. Kissun v. Humana, Inc., 267 Ga. 419, (1997) (wrongful death case where plaintiff seeking to hold parent company liable for acts or omissions of subsidiary hospital). On a fundamental level, “[t]he relation of agency is created as the result of conduct by two parties manifesting that one of them is willing for the other to act for him subject to his control, and that the other consents so to act. The principal must in some manner indicate that the agent is to act for him, and the agent must act or agree to act on the principal’s behalf and subject to his control.” Restatement, Agency, § 1, quoted by Smith v. Merck, 206 Ga. 361, 368 (1950). The Court finds these principles to be instructive in considering whether DCH proved that Ms. Bates is the alter ego of Ms. Donaldson.

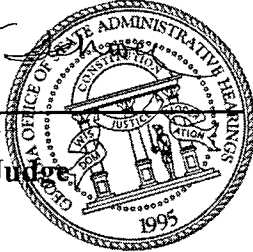
she acquired the Fairview location lease and personal property. Further, the Court concludes that the statement in the lease to the effect that Ms. Donaldson gave Ms. Bates \$1,100, even accepted for its truth, is insufficient to demonstrate that Ms. Donaldson exercised influence or control over Ms. Bates, and there was no other evidence that Ms. Donaldson has any ongoing relationship or connection with Ms. Bates relating to the Fairview location. Consequently, as DCH failed to prove that Ms. Bates was an alter ego of Ms. Donaldson, its denial of Ms. Bates' application on this ground was not proper.

**IV. DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, DCH's decision to deny Ms. Bates' application for a personal care home license is **REVERSED**. This matter is **REMANDED** to the agency for further action consistent with this Final Decision.

**SO ORDERED**, this 4th day of October, 2018.

  
**Kimberly W. Schroer**  
**Administrative Law Judge**



**From:** [Westray, Kevin](#)  
**To:** [lawoffice@nivens.com](mailto:lawoffice@nivens.com); [crandall.heard@dch.ga.gov](mailto:crandall.heard@dch.ga.gov)  
**Subject:** Zuri Living Well PCH # 2 v. DCH-HFR 1847952  
**Date:** Thursday, October 04, 2018 11:14:00 AM  
**Attachments:** [1847952.PDF](#)

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Good morning Attorneys,

Please find attached Judge Schroer's Decision in the above listed case. Have a good day.

Best regards,  
Kevin

Kevin Westray  
Calendar Clerk  
Office of State Administrative Hearings  
404-656-3508 (Phone)  
404-818-3772 (Fax)  
[kwestray@osah.ga.gov](mailto:kwestray@osah.ga.gov)

Please visit our website at <https://osah.ga.gov>

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*For your convenience, below is a link to our procedural rules:  
<https://osah.ga.gov/wp-content/uploads/2016/12/administrative-rules-osah.pdf>*