BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

FILED
OSAH
MAR 22 2013
Kevin Westray, Legal Assistant

LALI'S ANGELS, INC.,	:	
	:	
Petitioner,	:	
	:	**Docket No.:**
v.	:	**OSAH-DECAL-CCLC-1333404-44-Miller**
	:	
GEORGIA DEPARTMENT OF EARLY CARE AND LEARNING,	:	
	:	
Respondent.	:	

FINAL DECISION
ORDER AFFIRMING EMERGENCY CLOSURE

I. INTRODUCTION

This matter is an appeal by the Petitioner, Lali's Angels, Inc., of the Order for Intended Emergency Closure of its child care facility issued by the Commissioner for the Georgia Department of Early Care and Learning ("Department") on March 15, 2013. A preliminary hearing pursuant to O.C.G.A. § 20-1A-13 was held on March 20, 2013, before the undersigned Administrative Law Judge of the Office of State Administrative Hearings.

The Petitioner was represented by John C. Jones, Esq., and Melvin M. Goldstein, Esq. The Department was represented by Clare Michaud, Esq. After careful consideration of the evidence and the arguments of the parties, and for the reasons set forth below, the Order for Intended Emergency Closure is hereby **AFFIRMED**.

II. FINDINGS OF FACT

A. Factual Background

1.

Lali's Angels Child Care ("Lali's Angels" or "Center")[1] is a child care learning center located in Doraville, Georgia. The facility, which is owned and operated by Alverro and Biraj

[1] The Petitioner does business under the name "Lali's Angels Child Care." (Exhibit R-9.)

Brown, offers day care for children as young as infants. Lali's Angels also operates a pre-kindergarten program and an after school program for children of school age. Prior to July 2012, the Center was authorized to provide transportation services to children who attended its programs. (Testimony of Biraj Brown, Alvarro Brown, Shenetta McNair, and Elizabeth Holland; Exhibits R-7, R-11.)

2.

On February 7, 2011, an employee of Lali's Angels left a preschool-age child unattended in the facility's van for approximately four hours, in violation of several of the Department's transportation safety regulations. Although the child did not suffer any lasting physical injuries, his health and welfare were placed in significant danger.[2] Mr. and Ms. Brown failed to report the incident to the Department within twenty-four hours, as required. In fact, they failed to report the incident to the Department at any time. The Department was unaware that the incident had occurred until October 2011, when one of its consultants discovered a disciplinary memorandum to the responsible employee during a routine licensing visit to the Center. (Testimony of Ms. Brown and Ms. Holland; Exhibit R-12.)

3.

On July 3, 2012, following an administrative hearing regarding the February 2011 incident and the attendant rule violations, Administrative Law Judge Kimberly W. Schroer issued an Initial Decision affirming the Department's decision to impose a twelve-month restriction on the Petitioner's authorization to transport children.[3] Further litigation ensued, culminating in a Settlement Agreement and Full and Final Release of Claims ("Settlement

[2] In the summer of 2010, a child died after being left alone in a Georgia child care provider's vehicle on a hot day. (Testimony of Ms. Holland.)

[3] Judge Schroer determined that Ms. Brown had instructed the Center's director and another employee not to report the incident. (Exhibit R-12.)

Agreement"), which the parties executed on August 10, 2012. (Testimony of Ms. Brown, Mr. Brown, and Ms. Holland; Exhibits R-9, R-12.)

4.

Pursuant to the Settlement Agreement, the parties agreed, *inter alia*, as follows:

> 6. Lali's Angels shall comply with all of Bright from the Start's Rules for Child Care Learning Centers, Chapter 591-1-1 of the Official Compilation of Rules and Regulations for the State of Georgia;
>
> 7. Lali's Angels, or its principals or employees, shall not provide or make available transportation services for children under its care for one year; [and]
>
> 8. Lali's Angels, or its principals or employees, shall not contract with others to perform any transportation function or provide any transportation service for children under its care for one year . . . .

(Exhibit R-9.)

B. <u>Violations of Settlement Agreement</u>

5.

Lali's Angels failed to abide by the transportation restriction set forth in the Settlement Agreement by arranging transportation for children in its after school program. At the direction of Mr. and Ms. Brown, transportation was provided both by the Center's employees and by Lamak Group, Inc. ("Lamak"), a transportation service. (Testimony of Ms. McNair, Hung Bui, and Lashawnna Edwards; Exhibit P-3.)

i. Transportation Provided By Lali's Angels Employees

6.

From September 19, 2012, to March 11, 2013, LaShawnna Edwards was employed by Lali's Angels as a teacher in the Center's after school program. During this time, she used her personal vehicle to provide transportation to the Center for children who attended elementary schools in the area. Although this responsibility was not listed in her formal job description, she

transported the children because Ms. Brown instructed her to do so. Ms. Brown compensated Ms. Edwards for her transportation services by paying her for her time[4] and giving her an additional $25.00 per week in cash to pay for gasoline. (Testimony of Ms. Edwards.)

7.

Ms. Edwards routinely transported children to Lali's Angels from two schools: Pleasantdale Elementary School ("Pleasantdale") and Evansdale Elementary School ("Evansdale"). Three children, one of whom was Ms. Edwards' daughter, attended Pleasantdale. Two others attended Evansdale. At Pleasantdale, vehicles were required to display a red card with a carpool number. The parents of the Pleasantdale children gave their school-issued red card to the Center, and Ms. Edwards used it to pick up the children. The card was stored at Lali's Angels, in the classroom supervised by Elizabeth Williams, when it was not being used. (Testimony of Ms. Edwards and Elizabeth Williams.)

8.

When Ms. Edwards began working at Lali's Angels, she drove a Chevrolet Tahoe sport utility vehicle, which was large enough to accommodate six passengers. However, for a period of several weeks, she transported seven children in this vehicle. When this occurred, one child sat in the front passenger seat; two children sat in the second row passenger seats; and four children sat in the third row passenger seats. Because the third row contained only three seat belts, the two children in the middle were "double-buckled," i.e., they shared a seat belt. (Testimony of Ms. Edwards.)

[4] At the hearing, Ms. Brown produced a document labeled "Employee Time Card" that purported to establish that Ms. Edwards was not paid for any of the time she spent transporting children. The Court declines to rely upon this document, inasmuch as Ms. Brown's testimony lacked credibility and was contradicted by that of Ms. Edwards. (Testimony of Ms. Brown and Ms. Edwards; Exhibit P-2.)

9.

Ms. Edwards sold the Tahoe and subsequently drove two other vehicles during her tenure at Lali's Angels: a Honda Accord and a Dodge Neon. Both of these vehicles accommodated four passengers, with one seated in the front and three in the back. However, Ms. Edwards routinely transported a total of five children from Pleasantdale and Evansdale to the Center. When this occurred, one child sat in the front passenger seat and the remaining four children shared the back seat. Because the back seat contained only three seat belts, the two children in the middle of the back seat were double-buckled. On cold days when the children wore heavy coats, they were unable to use the seat belts at all. (Testimony of Ms. Edwards.)

10.

Ms. Edwards did not use a passenger transportation checklist to account for the children she transported. She did not perform checks of her vehicle when she arrived at the Center, nor did she ensure that another staff member performed a second check. (Testimony of Ms. Edwards.)

11.

Ms. Edwards eventually became dissatisfied with her employment at Lali's Angels. She believed that Ms. Brown was "shorting" her paychecks, and she no longer wished to transport children in her personal vehicle. Despite Ms. Edwards' disgruntlement, the Court found her to be a credible witness based on her personal demeanor and her willingness to portray herself in an unflattering light. (Testimony of Ms. Edwards.)

12.

On March 11, 2013, Ms. Edwards' sister, LaToya Brooks, asked Ms. Edwards to transport her daughter from Oak Cliff Elementary to her home. Ms. Edwards agreed. However, she later determined that she did not have enough time to drive her niece home due to her

transportation duties at Lali's Angels. Ms. Edwards therefore brought her niece to the Center, along with the three children from Pleasantdale.[5] When they arrived, Ms. Brown told Ms. Edwards that she was not permitted to bring her niece to the Center because her niece was not registered. Ms. Edwards left the premises with her daughter and her niece. She did not return to work after that day. (Testimony of Ms. Brown and Ms. Edwards.)

13.

The next day, March 12, 2013, Ms. Brooks called the Department and filed a complaint regarding the transportation provided by Lali's Angels.[6] The Department assigned Shenetta McNair, a consultant with the Department's complaint unit, to investigate the complaint. (Testimony of Ms. McNair and LaToya Brooks.)

14.

On March 13, 2013, the day after the complaint was filed, Ms. McNair visited the facility. She arrived at approximately 1:30 p.m. to observe the method of transportation utilized by children in the after school program. Ms. McNair observed Elizabeth Williams, an employee of Lali's Angels, place the red Pleasantdale carpool card in the window of her personal vehicle, a Nissan Maxima, and drive away. When Ms. Williams returned to the Center, four children were also in her car. (Testimony of Ms. McNair and Ms. Williams; Exhibits R-2, R-3, R-4, R-5.)

15.

Upon Ms. Williams' arrival at Lali's Angels, the four children emerged from the car while Ms. Williams remained seated inside. The children, ages six, seven, nine, and eleven, played in the parking lot and in a grassy area approximately 100 feet away from the car. After

[5] The two children at Evansdale did not attend the after school program that day. (Testimony of Ms. Edwards.)

[6] Contrary to Ms. Brooks' testimony at the hearing, it appears that her complaint was motivated by anger at her sister, at Lali's Angels, or both. Notwithstanding the Court's concerns regarding her credibility, her complaint and testimony are irrelevant to the findings herein.

several minutes, Ms. Williams got out of the car, and she and the children entered the building. Ms. Williams did not complete any paperwork or perform a vehicle check. (Testimony of Ms. McNair and Ms. Williams.)

16.

Ms. McNair entered the facility shortly after Ms. Williams and the children. Inside the facility, she observed that a brochure was displayed prominently at the front desk. The brochure stated, under the heading "Transportation," that "[t]ransportation is provided to and from the public schools for children enrolled in our Before and After School Program." (Testimony of Ms. McNair; Exhibits R-6, R-7.)

17.

At the hearing, Ms. Brown testified untruthfully regarding her knowledge of the transportation arrangements for the children that Ms. McNair observed with Ms. Williams on March 13, 2013. More specifically, she stated that she was not present when Ms. Williams left to pick up the children, and that she was unaware that Ms. Williams intended to provide their after school transportation until she returned to the Center with the children. According to Ms. Brown, she informed Ms. Williams that this was not permitted due to the transportation restriction.[7] This testimony by Ms. Brown was not credible. (Testimony of Ms. Brown.)

18.

Ms. Brown also testified that she was aware that Ms. Edwards sometimes drove children from Pleasantdale to Lali's Angels, and that Ms. Edwards did this because she was already transporting her own daughter to the Center. According to Ms. Brown, only Ms. Edwards and the children's parents were privy to the details of this arrangement. Ms. Brown offered no

[7] Ms. Williams stated that Ms. Brown did not comment when she returned with the children on March 13, 2013. Ms. Williams' testimony in this regard, which conflicted with that of Ms. Brown, was credible. (Testimony of Ms. Williams.)

explanation for Ms. Edwards' purported willingness to transport the Evansdale children to the Center. Mr. Brown, in contrast to his wife, professed to be unaware of the method of transportation utilized by children in the after school program. The testimony offered by both Ms. Brown and Mr. Brown was disingenuous and lacked credibility. (Testimony of Ms. Brown and Mr. Brown.)

19.

Ms. Williams, who transported the children on March 13, 2013, testified that she "just knew" that she should pick up the children on that date – in the absence of any direction from either Ms. Brown or the children's parents. According to her testimony, she acted of her own accord because she understood that Ms. Edwards, who had routinely driven the children to the Center until the incident two days earlier, no longer worked at Lali's Angels. Ms. Williams' testimony in this regard was not credible.[8] (Testimony of Ms. Williams.)

ii. Transportation Provided By Lamak

20.

After the twelve-month transportation restriction took effect, the parents of some of the children enrolled at the Center entered into transportation agreements with Lamak. To the extent these parents contracted with Lamak and paid for the service independent of Lali's Angels, the transportation arrangements complied with the Settlement Agreement. However, Lamak also transported other children pursuant to an arrangement with the Browns, in violation of the Settlement Agreement and without the knowledge of the children's parents. (Testimony of Hung Bui, Mr. Brown, and Ms. Brown; Exhibit P-3.)

[8] Ms. Williams remains employed at Lali's Angels. Thus, her testimony was influenced by the presence of her employers in the courtroom, as well as her concern that closure of the facility would result in the loss of her job and income. (Testimony of Ms. Williams.)

21.

Hung Bui is the father of a seven-year-old boy who has attended the after school program at Lali's Angels for approximately three years. Mr. Bui writes a check each week for $55.00, leaves the space for the payee's name blank, and gives the check to Ms. Brown. Mr. Bui's payment covers the costs of both the after school program and his son's transportation to the Center. Prior to March 19, 2013, it was Mr. Bui's understanding, based on his conversations with Ms. Brown, that a Lali's Angels employee transported his son from school to the Center in the facility's van. (Testimony of Ms. Brown and Mr. Bui.)

22.

On March 19, 2013, Mr. Bui arrived at the Center to pick up his son from the after school program. At that time, Ms. Brown informed him that his son was actually being transported from his school to the Center by "Jillian," a driver for Lamak.[9] Mr. Bui was surprised and distressed by this news. Ms. Brown asked Mr. Bui to fill out two forms: one document entitled "Vehicle Emergency Medical Information" and another entitled "Transportation Agreement."[10] Mr. Bui explained to Ms. Brown that he needed to take the forms to his employer[11] before returning them. (Testimony of Mr. Bui; Exhibit R-1A.)

23.

At 6:15 a.m. on March 20, 2013, the morning of the hearing, Ms. Brown called Mr. Bui at home and asked him if he had completed the forms. Mr. Bui stated that he had not, and he again explained that he needed to take the forms to his employer. (Testimony of Mr. Bui.)

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[9] Jillian did not testify at the hearing, and her surname is unknown.

[10] Both documents contain the heading "Lamak Group, Inc.," yet neither document lists contact information for Lamak. (Exhibit R-1A.)

[11] Because Mr. Bui is not a native English speaker, he may have required his employer's assistance to complete the forms.

24.

In her hearing testimony, Ms. Brown denied that these conversations with Mr. Bui took place and stated that Mr. Bui had made his own transportation arrangements with Lamak. She further stated that she had received a copy of the transportation agreement Mr. Bui had purportedly signed with Lamak, but that she was unable to locate it. At one point during her testimony, she suggested that it had disappeared after she gave the child's file to Ms. McNair on the afternoon of March 13, 2013. Her testimony was not credible. (Testimony of Ms. Brown.)

25.

At the hearing, Ms. Brown produced copies of the "Vehicle Emergency Medical Information" and "Transportation Agreement" forms for fifteen children enrolled at Lali's Angels.[12] Of these, the forms for eight children appear to be in order. They date to the fall of 2012 and authorize Lamak to transport children enrolled in the Center's pre-kindergarten program from their homes to the Center, and vice versa. (Testimony of Ms. Brown; Exhibit P-3.)

26.

The remaining seven sets of forms are more suspect. The forms for four children, while they authorize Lamak to transport the children from their elementary schools to the Center, are dated between March 13, 2013, and March 15, 2013.[13] Regarding the remaining three children, the medical information forms date to the fall of 2012, but the transportation agreements are dated March 20, 2013, the day of the hearing. These three children also appear to be enrolled in the Center's pre-kindergarten program, rather than its after school program. Ms. Brown offered

[12] Ms. McNair requested these documents when she was present at the facility on March 13, 2013. However, Ms. Brown did not produce them until the day of the hearing. (Testimony of Ms. Brown and Ms. McNair.)

[13] Prior to Ms. McNair's visit to the Center, three of these four children were routinely picked up after school by Ms. Edwards or Ms. Williams. (Testimony of Ms. McNair, Ms. Edwards, and Ms. Williams.)

no credible explanation for the date discrepancies or the absence of information regarding the means of transportation for other children who attend the after school program. (Testimony of Ms. Brown; Exhibit P-3.)

27.

Throughout their testimony, both Ms. Brown and Mr. Brown made statements that were self-serving, evasive, implausible, and wholly lacking in credibility. The Court therefore declines to rely on the majority of their testimony. (Testimony of Ms. Brown and Mr. Brown.)

II. CONCLUSIONS OF LAW

1.

The Department bears the burden of proof in this matter. Ga. Comp. R. & Regs. r. 616-1-2-.07. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21.

2.

In July 2011, the General Assembly gave the Department's Commissioner the authority to close an early care and education program on an emergency basis for up to twenty-one days. Under O.C.G.A. § 20-1A-13(c)(1), the Commissioner may order an emergency closure under the following circumstances:

> (A) Upon the death of a minor at such program, unless such death was medically anticipated or no serious rule violations related to the death by the program were determined by the department; or
>
> (B) Where a child's safety or welfare is in imminent danger.

O.C.G.A. § 20-1A-13(c)(1). Prior to July 2011, the Commissioner's authority in the event of an immediate threat to the health, safety or welfare of a child was restricted to placing a monitor at the Center. See O.C.G.A. § 20-1A-13(b).

3.

The Department proved, by a preponderance of the evidence, that the safety and welfare of children at Lali's Angels are in imminent danger within the meaning of O.C.G.A. § 20-1A-13(c)(1)(B). The Court's determination is based on the following considerations:

(1) The serious and potentially fatal consequences to a child if the incident that occurred on February 7, 2011, is repeated;

(2) Lali's Angels' failure to report the incident that occurred on February 7, 2011;

(3) The Center's refusal to abide by the transportation restriction imposed by the Settlement Agreement;

(4) The serious rule violations stemming from the Center's refusal to abide by the transportation restriction imposed by the Settlement Agreement,[14] including the increased risk of injury to children who are not appropriately restrained in a vehicle;

(5) Ms. Brown's and Mr. Brown's evasiveness, dishonesty, and lack of candor in their dealings with the Department, the parents of children enrolled at Lali's Angels, and this Court; and

(6) The Court's serious concern that a monitor would be unable to provide adequate oversight of the transportation of children to and from Lali's Angels, in light of the Browns' propensity for circumventing regulatory

[14] By authorizing the transportation of children to the Center in the manner described in the Findings of Fact, above, Lali's Angels has failed to comply with the Department's transportation rules, as follows:

(1) The Center failed to ensure that children were properly restrained with seat belts, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.36(2)(f)(1);

(2) The Center failed to ensure that vehicles used to transport children did not exceed to vehicle's seating capacity, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.36(2)(f)(2);

(3) The Center failed to ensure that passenger transportation checklists were used to account for children during transportation, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.36(6)(c);

(4) The Center failed to ensure that the driver or other designated person documented each child's entrance to and exit from the vehicle, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.36(6)(c)(3); and

(5) The Center failed to ensure that thorough vehicle checks by the driver and another designated staff member occurred after children were unloaded from the vehicle, in violation of Ga. Comp. R. & Regs. r. 591-1-1-.36(6)(d).

> requirements, their pattern and practice of providing false or misleading information, and the Department's limited authority to investigate the conduct of unlicensed individuals.

Accordingly, the Commissioner is authorized to order the emergency closure of Lali's Angels for up to twenty-one days, pursuant to O.C.G.A. § 20-1A-13(c)(1).

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Order for Intended Emergency Closure is hereby **AFFIRMED**.

SO ORDERED, this 22nd day of March, 2013.

KRISTIN L. MILLER
Administrative Law Judge