BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS STATE OF GEORGIA

Petitioner, : Docket No.:

OSAH- - Woodard

v.

GEORGIA VOCATIONAL : REHABILITATION AGENCY. :

Respondent. :

FINAL DECISION

INTRODUCTION

Petitioner appealed Respondent's consolidation of two Business Enterprise Program ("BEP") vending facilities¹ into a single facility, and the assignment of the single facility to the licensed blind vendor who previously managed one of the two separate facilities.² A hearing was held on January 31, 2013. Petitioner appeared *pro se* and Terri A. Rushing, Esq. represented Respondent. For the reasons set forth below, Respondent's action is **AFFIRMED**.

FINDINGS OF FACT

1.

BEP provides legally blind individuals an opportunity to operate vending facilities. BEP is designed to support vendors and increase opportunities for vendors to become more profitable. (Testimony of Rajaunnda Gandy).

2.

On October 24, 2011, Petitioner signed a Temporary Agreement of Operation of Vending Facility a snack bar in the Dekalb County Courthouse. The contract specified that

¹ "Vending Facility" includes vending stands, vending machines, snack bars, cart service, shelters, counters, and such other appropriate facilities and equipment as may be necessary for the sale of articles or services by licensed blind persons or other persons with disabilities. 20 U.S.C. 107e(7); O.C.G.A. 49-9-40.

² Petitioner also appealed Respondent's proposed action to recoup monies it claims Petitioner owes while she operated a vending facility, and to ban her from bidding on new vending locations. However, Respondent has not yet taken any action in recouping the monies or denying a location that Petitioner has bid on. (Exhibit P-1). Thus, these issues are not yet ripe for review, as the Office of Administrative Hearings may not make a declaratory ruling on hypothetical fact situations. OSAH Rule 616-1-1-.04.

Petitioner would operate the facility as a relief operator. As a relief operator, Petitioner temporarily operated the snack bar, but was not considered a licensed blind vendor.³ (Testimony of Teresa Eggleston; Testimony of Rajaunnda Gandy; Exhibit R-7).

3.

Petitioner signed the Temporary Agreement with the Rehabilitation Services' Business Enterprise Program, the state licensing agency for the Randolph-Sheppard Act Georgia Vending Facility Program (hereinafter, the "state licensing agency," or "SLA"). The agreement stated, in part, that "greement, relief operator, [is] placed into [Vending Facility on a temporary basis." (emphasis added). The agreement explicitly provided, "This agreement may be terminated at any time by the SLA. The SLA shall make every effort to provide the Relief Operator with a minimum of one week's notice prior to termination. This agreement will be terminated upon the revocation or termination of the state licensing agency's permit to operate a vending facility on or other property." (Testimony of Teresa Eggleston; Exhibit R-7).

4.

On July 27, 2012, BEP management merged the operations of Vending Facility with Vending Facility a vending facility located a few miles away in Dekalb County in the Manuel Maloof Building. The licensed blind vendor who operated Vending Facility ook over the operation of the merged facilities. Respondent did not invoke a competitive bid process for the position. Respondent terminated Petitioner's Temporary Agreement for Vending Facility #190 at that time. (Testimony of Teresa Eggleston; Testimony of Rajaunnda Gandy).

CONCLUSIONS OF LAW

1.

In order to effectuate the intent of the federal Business Enterprise Program ("BEP"), an agency in each state is selected as the State Licensing Agency ("SLA") by the Rehabilitation Services Administration. 34 C.F.R. §§ 395.2 and 395.3. The Georgia Department of Labor is the SLA for Georgia. Federal regulations require that each state's BEP develop certain policies regarding governance of the program. See 34 C.F.R. §§ 395.3(a)(3), (a)(5) and (a)(6). Additionally,

³ Relief operators do not participate in the competitive bid process, as licensed blind vendors are typically required to do.

federal regulations require that the state BEP promulgate rules and regulations, which must be submitted to and approved by the Secretary of the United States Department of Education. <u>See</u> 34 C.F.R. §§395.4, 395.3(a)(11)(ii).

2.

As part of its role as Georgia SLA, Respondent is responsible for establishing and maintaining objective criteria for licensing qualified applicants, including giving preference to blind persons who are in need of employment. 20 U.S.C. 107a(a)(1), 107b; O.C.G.A. § 49-9-42. Licenses may only be issued to persons who are determined by the State licensing agency to be: blind; citizens of the United States; and certified by the State vocational rehabilitation agency as qualified to operate a vending facility. 34 C.F.R. § 395.7(a).

3

Petitioner argued that when a vacancy opened in a Georgia BEP vending facility, Respondent should have commenced a competitive bid process so that Petitioner could bid to retain operation of Vending Facility

BEP Rules and Regulations § VII(B)(1). However, BEP may elect to transfer licensed vendors as necessary to meet the best interests of the licensed vendor and/or the State Licensing Agency, without opening a vending facility to competitive bidding. Rules and Regulations § VII(A). In this case, BEP exercised its regulatory authority when it chose to transfer operation of Vending Facility

to the licensed vendor, rather than commencing a competitive bid.

4.

The Temporary Agreement between Petitioner and BEP created a contractual relationship governing the operation of Vending Facility — As a matter of law under Official Code of Georgia Annotated, Section 13-2-1, an unambiguous contract is the only evidence of parties' intent and understanding. See e.g., Rauschenberg v. Peeples, 30 Ga. App. 384 (1923). When language in a contract is capable of only one reasonable interpretation, no construction is required by the Court. Franchise Enters., Inc. v. Ridgeway, 157 Ga. App. 458 (1981).

5.

Petitioner's Temporary Agreement stated that the agreement was merely temporary, and Respondent could terminate the agreement at any time. Moreover, the contract adds that the agreement will be terminated upon the revocation or termination of the state licensing agency's

permit to operate the facility. Thus, the contract unambiguously provides that the contract was terminable at any time, Further, the contract is unambiguous that Petitioner, as a temporary operator, did not have the contractual right to retain operation of the facility or to engage in competitive bidding for this or another facility if BEP decided to revoke or terminate her contract.

6.

Parol evidence as to the parties' beliefs and intentions is only admissible when the contract is ambiguous. McGuire Holdings, LLLP v. TSQ Partners, LLC, 290 Ga. App. 595 (2008). As the contract here is unambiguous, Petitioner's argument that Respondent should have offered her a new position or allowed her to retain her current position is moot, as her beliefs are inadmissible parol evidence.

7.

Respondent has proven that it was authorized to terminate Petitioner's Temporary Agreement of Operation.

DECISION

Based on the foregoing, Respondent's adverse action in terminating Petitioner's Temporary

Agreement of Operation for Vending Facility s AFFIRMED.

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PATRICK WOODARD Administrative Law Judge