

**STATE OF FLORIDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA,)	
)	
Petitioner,)	
)	
vs.)	OGC CASE NO. 12-1426
)	DOAH CASE NO. 14-5515EF
MARGARITA QUINTERO AND THOMAS PATAS,)	
)	
Respondents.)	
)	

FINAL ORDER

On May 5, 2015, an Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH) submitted a Recommended Order (RO) to the Department of Environmental Protection (Department or DEP) and the Board of Trustees of the Internal Improvement Trust Fund (Board)¹ in the above captioned administrative proceeding. A copy of the RO is attached hereto as Exhibit A. The RO shows that a copy was sent to counsel for the Board, and counsel for the Respondents, Margarita Quintero and Thomas Patas. No party filed any written exceptions to the RO.

¹ Subsection 253.002(1), Florida Statutes provides that “[t]he Department of Environmental Protection shall perform all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees of the Internal Improvement Trust Fund. . . . Unless expressly prohibited by law, the board of trustees may delegate to the department any statutory duty or obligation relating to the acquisition, administration, or disposition of lands, title to which is or will be vested in the board of trustees.”

However, on August 3, 2015, the Department entered an Order notifying the Respondents that an RO was issued and allowing additional time for filing written exceptions. See Exhibit B. The Respondents did not file any written exceptions. This matter is now before the Secretary for final agency action.

BACKGROUND

This matter began with the issuance of a Notice of Violation (NOV) against the Respondents by the Board on October 7, 2014. The NOV was issued under the authority of subsection 253.04(2), Florida Statutes, and Florida Administrative Code rule chapter 18-14. The NOV charged the Respondents with violations of law associated with construction of a walkway and dock on state-owned uplands and sovereign submerged lands on Marco Island. The Board sought to impose administrative fines and require certain corrective action. The Respondents requested an administrative hearing and the matter was referred to DOAH and assigned to an ALJ to conduct a hearing. The Board requested and was authorized to file a First Amended NOV, which clarified the charges.

The ALJ conducted the final hearing on April 17, 2015. Although given timely written notice of the hearing, there was no appearance by the Respondents. A transcript of the hearing was prepared and filed. The ALJ subsequently issued the RO on May 5, 2015.

SUMMARY OF THE RECOMMENDED ORDER

In the RO, the ALJ recommended that the Board enter a final order sustaining the charges in the First Amended NOV; requiring the Respondents to remove the

walkway structure and dock within 20 days of entry of the final order; requiring that within 20 days of the final order each Respondent shall pay \$2,500.00 to the Department. In addition, failure to complete removal of the walkway structure and dock in accordance with the corrective action shall result in accrual of fines at a rate of \$10,000.00 per day. (RO at page 9).

The ALJ found that since December 1, 2005, the Respondents have owned property at 1899 Sheffield Avenue, Marco Island, Florida. A narrow wooden walkway extends in a south-southeasterly direction from the Respondents' property to a small terminal platform in Barfield Bay, a waterbody that lies south of the Respondents' lot. (RO ¶ 2). The ALJ found that the walkway and dock were constructed after the Respondents purchased the property in December 2005. (RO ¶ 8). The ALJ determined that the walkway structure passes over state-owned uplands before crossing the Mean High Water Line and onto sovereign submerged lands in Barfield Bay. The ALJ also found that there was no evidence that the Respondents obtained state authorization to construct the walkway and dock on state-owned lands. (RO ¶¶ 3, 6, 7, 14).

The ALJ found that DEP sent written notice to the Respondents in April 2012, informing them of possible violations of law, including unauthorized construction of the walkway and dock. The Respondents did not respond in writing or contact the DEP to arrange a meeting. (RO ¶ 4). After further investigation, the Board issued the NOV. (RO ¶¶ 6, 7, 8). The ALJ concluded that the Respondents willfully violated applicable Board rules and that the proposed fine was appropriate. (RO ¶¶ 14, 15, 16, 17, 18). The ALJ also concluded that the Board's corrective action was reasonable. (RO ¶ 19).

CONCLUSION

The case law of Florida holds that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. See, e.g., *Comm'n on Ethics v. Barker*, 677 So. 2d 254, 256 (Fla. 1996); *Fla. Dep't of Corrs. v. Bradley*, 510 So. 2d 1122, 1124 (Fla. 1st DCA 1987). In this case, the ALJ entered a RO containing findings, conclusions, and a recommendation adverse to the Respondents. Nevertheless, the Respondents did not file any exceptions challenging the findings, conclusions and adverse recommendation of the ALJ. See *Env'tl. Coalition of Fla., Inc. v. Broward Cnty.*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991) (A party that files no exceptions to certain findings of fact "has thereby expressed its agreement with, or at least waived any objection to, those findings of fact.").

It is therefore ORDERED:

- A. The ALJ's RO (Exhibit A) is adopted in its entirety and is incorporated by reference herein.
- B. Within 20 days from the date of this Final Order, the Respondents shall remove the walkway structure and dock from state-owned lands. The structure, including all decking, stringers and pilings, shall be accessed and removed without causing further impacts to mangroves, wetlands and bay bottom; and steps shall be taken to ensure that water quality will be protected during removal. The material shall be disposed of in an appropriate upland location.

- C. Within 20 days from the date of this Final Order, each Respondent shall pay \$2,500.00 to the Department. Payments shall be made by cashier's check or money order payable to the "Internal Improvement Trust Fund," and shall include OGC Case No. 12-1426. All payments shall be sent to the Department of Environmental Protection, South District, SLERP Section, Post Office Box 2549, Fort Myers, Florida 33902-2549.
- D. If the Respondents complete removal of the walkway structure and dock in accordance with paragraph B, the Respondents do not have to pay the fines. If the Respondents fail to complete removal of the walkway structure and dock in accordance with paragraph B, the fine will begin accruing at a rate of \$10,000.00 per day.


JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal.

The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

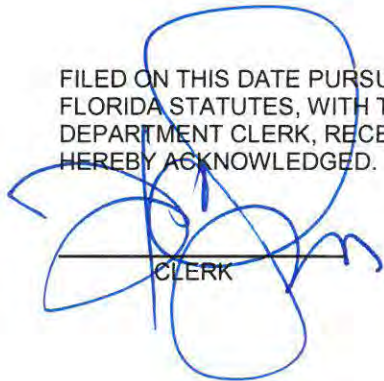
DONE AND ORDERED this 26th day of October, 2015, in Tallahassee, Florida.

BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST
FUND OF THE STATE OF FLORIDA



JONATHAN P. STEVERSON
Interim Secretary
Florida Department of Environmental
Protection, as agent for and on behalf of
the Board of Trustees of The Internal
Improvement Trust Fund of the State of
Florida.

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.



CLERK

10/26/15
DATE

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing Final Order was sent by electronic mail

to:

Robert E. Bickford, Esquire
Robert E. Bickford, P.A.
637 Denise Drive
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rebickford@cfl.rr.com

Ronald W. Hoenstine, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000
Ronnie.W.Hoenstine@dep.state.fl.us

and by U.S. mail to:

Margarita Quintero
Thomas Patas
1899 Sheffield Avenue
Marco Island, FL 34145

Thomas Patas
Margarita Quintero
975 Sundrop Ct.
Marco Island, FL 34145

and by electronic filing to:

Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

this 26th day of October, 2015.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



FRANCINE M. FFOLKES
Administrative Law Counsel

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST
FUND,

Petitioner,

vs.

Case No. 14-5515EF

MARGERITA QUINTERO AND
THOMAS PATAS,

Respondents.

RECOMMENDED ORDER

On April 17, 2015, a hearing in this case was held by video teleconferencing at sites in Fort Myers and Tallahassee, Florida, before D.R. Alexander, Administrative Law Judge, Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Matthew Smith-Kennedy, Esquire
Department of Environmental Protection
Mail Stop 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

For Respondents: No Appearance

STATEMENT OF THE ISSUES

The issues are whether Respondents constructed a dock and walkway on state lands in Collier County, Florida, without obtaining authorization, and if so, whether an administrative

Exhibit A

fine should be imposed for this action; and whether certain corrective action should be taken by Respondents, as described in Petitioner's First Amended Notice of Violation, Orders for Corrective Action, and Administrative Fine Assessment (First Amended NOV) filed on March 24, 2015.

PRELIMINARY STATEMENT

Pursuant to section 253.04, Florida Statutes (2014), on October 7, 2014, the Board of Trustees of the Internal Improvement Trust Fund (Board) issued an NOV alleging that Respondents had constructed a walkway and dock on state-owned uplands and submerged lands without authorization from the state. The NOV sought to impose an administrative fine and require certain corrective action. The Board later requested and was authorized to file a First Amended NOV, which clarified the charges. Respondents requested a formal hearing, and the matter was referred by the Board to DOAH to conduct a hearing.

At the final hearing, the Board presented the testimony of three witnesses. Board Exhibits A through C, G, H, J, and K were accepted in evidence. Although given timely written notice of the hearing, there was no appearance by Respondents.^{1/}

A transcript of the hearing has been prepared. The Board did not submit a proposed recommended order.

FINDINGS OF FACT

1. The Board is responsible for overseeing state-owned lands and ensuring that they are managed in trust for the citizens of the state. The Department of Environmental Protection (Department) performs all staff duties and functions related to the administration of state lands. See § 253.002(1), Fla. Stat. Pursuant to that authority, the Department has prosecuted this action on behalf of the Board.

2. Since December 1, 2005, Respondents, Margarita Quintero and Thomas Patas, as tenants in common, have owned property at 1899 Sheffield Avenue, Marco Island, Florida. See Bd. Ex. G. The property is more specifically identified as Parcel ID No. 57200400000, Section 16, Township 52 South, Range 26 East. A narrow wooden walkway extends in a south-southeasterly direction from Respondents' property to a small terminal platform in Barfield Bay, a waterbody that lies south of Respondents' lot. See Bd. Ex. C.

3. The Board owns uplands located in Section 16, Township 52 South, Range 26 East, and those sovereign submerged lands of Barfield Bay lying adjacent to Section 16. Those lands are described as follows: Lots 22 and 23, Block 149 and Lot 10, Block 150, and that portion of Dogwood Drive lying between Lots 22 and 23 and Lot 10, of the subdivision of Marco Beach Unit Five recorded in Plat Book 6, Pages 39 through 46, Public

Records of Collier County. See Bd. Ex. G-2. Most of the uplands were deeded to the state in 1985 pursuant to a settlement agreement with The Deltona Corporation, while a small sliver of land was deeded to the state in September 2013. Respondents' property is located adjacent to these state-owned lands.

4. On March 28, 2012, the Department received a complaint from a third party that the walkway and dock had been constructed adjacent to Respondents' property. In a letter dated April 19, 2012, the Department warned Respondents of "possible violations of the law." See Bd. Ex. J. The letter stated that the Department believed Respondents were responsible for a dock being installed on state-owned lands and mangroves had been altered for the installation of the dock. The letter also noted that Respondents' property did not appear to be riparian. Respondents were requested to contact the Department within 15 days to arrange a meeting to discuss these issues. Respondents did not reply to the letter or meet with Department representatives.

5. On June 14, 2012, the Department recorded a Notice of Unauthorized Structure (NOUS) in the public records of Collier County. See Bd. Ex. H. The NOUS was intended to serve as notice to prospective purchasers and other interested persons that certain unauthorized structures were located on state lands

adjacent to Respondents' property. There is no evidence that Respondents responded in any manner to the NOUS.

6. On December 10, 2012, a Department Environmental Specialist III conducted an inspection of the walkway and dock. He observed a two-foot wide access walkway extending 335 feet from Respondents' property, which terminated at a 63-square-foot terminal platform (dock) in Barfield Bay. The total dock size is 733 square feet, while the walkway encompasses around 670 square feet. See Bd. Ex. A. A follow-up inspection on January 12, 2015, revealed that the structure had not been removed. See Bd. Ex. K.

7. Property records and a coastal engineering site survey confirm that the structure passes over state-owned uplands before crossing the Mean High Water Line and onto sovereign submerged lands in Barfield Bay. See Bd. Ex. C. There is no evidence that Respondents obtained authorization to construct the walkway and dock.

8. To determine when the dock and walkway were constructed, the Department reviewed aerial images of the property taken in 2004, 2006, 2009, and 2012. See Bd. Ex. B. The walkway and dock did not appear until the 2012 image. This confirms that Respondents constructed the walkway and dock after they purchased their property in December 2005.

9. The First Amended NOV seeks to impose an administrative fine on each Respondent in the amount of \$2,500.00 for unauthorized use of sovereign submerged land. If the walkway and dock are removed within 20 days, no fine will be imposed. For every day after the 20 days that removal does not occur, the Board intends to impose a fine accruing at a rate of \$10,000.00 per day.

10. As corrective action, the Board proposes generally that Respondents remove the walkway and dock within 20 days from the date of a Final Order; that during such removal steps be taken to ensure that no further impacts to mangroves, wetlands, and bay bottom occur; that water quality be protected during this process; and that the material be disposed of in an appropriate upland location.

CONCLUSIONS OF LAW

11. The Board has the burden of proof to show, by clear and convincing evidence, that Respondents committed the acts alleged in the First Amended NOV. See, e.g., Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996).

12. Section 253.77(1) provides that a person may not commence any construction or other activity involving the use of sovereign or other lands of the state without the required lease, license, easement, or other form of consent authorizing the proposed use.

13. Section 253.04(2) authorizes the Board to take enforcement action against persons who have knowingly refused to comply with or willfully violated the provisions of chapter 253.

14. By clear and convincing evidence, the Board has established that Respondents constructed a walkway and dock on state-owned lands without authorization from the state.

15. The evidence establishes that by building and maintaining docks and pilings on or over state land without authorization, Respondents have also violated Florida Administrative Code Rule 18-14.003, which makes it unlawful to knowingly refuse to comply with any provision in chapter 253. The facts establish that Respondents' actions were willful.

16. Rule 18-14.002 provides that for knowingly refusing to comply with or willfully violating a provision of chapter 253, the Board shall impose upon the violator an administrative fine ranging from \$1.00 to \$2,500.00 for the first offense.

"Offense" is defined in rule 18-14.001(4) as each day during which a violation occurs. The Board proposes to impose a \$2,500.00 fine on each Respondent, which falls at the top of the permissible range.

17. In determining the amount of the fine, the Board can consider aggravating or mitigating circumstances specific to the violation, including the nature and extent of the violation, a violator's degree of cooperation in correcting the violation,

and a violator's good faith efforts to negotiate a settlement before legal proceedings begin. See Fla. Admin. Code R. 18-14.002(e).

18. Given Respondents' failure to correct the violation after being sent written notice in April 2012, and no evidence of good faith efforts to negotiate a settlement, the Board's proposed fine is appropriate.

19. If the dock and walkway are removed in the manner and timeframe set out herein, the Board does not intend to assess a fine. To satisfy this condition, Respondents must remove the walkway and dock from state property within 20 days from the date of the final order entered in this proceeding. The structure, including all decking, stringers, and pilings, shall be accessed and removed without causing further impacts to mangroves, wetlands, and bay bottom, and steps shall be taken to ensure that water quality will be protected during removal. Finally, the material shall be disposed of in an appropriate upland location. If this corrective action is not taken, the Board intends to impose a fine in the amount of \$10,000.00 per day until the structure is removed. See Fla. Admin. Code R. 18-14.002(4)(b). This corrective action is reasonable.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Board of Trustees of the Internal Improvement Trust Fund enter a final order sustaining the charges in the First Amended NOV. Within 20 days of the entry of a final order, each Respondent shall pay \$2,500.00 to the Department. Payments shall be made by cashier's check or money order payable to the "Internal Improvement Trust Fund." All payments shall be sent to the Department of Environmental Protection, South District, SLERP Section, Post Office Box 2549, Fort Myers, Florida 33902-2549.

If Respondents complete removal of the walkway structure and dock from Board property in accordance with the corrective action described in paragraph 19, Respondents do not have to pay the fines. If Respondents fail to complete removal of the dock and walkway structure in accordance with the corrective action, the fine will begin accruing at a rate of \$10,000.00 per day.

DONE AND ENTERED this 5th day of May, 2015, in Tallahassee, Leon County, Florida.



D. R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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1230 Apalachee Parkway
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of May, 2015.

ENDNOTE

^{1/} During a pre-hearing conference on March 25, 2015, Respondents' counsel stated that he intended to file a motion to withdraw as counsel. However, a motion to withdraw was never filed, and he remains counsel of record. According to counsel, Respondents reside in Bogota, Colombia, a part of each year, and while they were aware of this proceeding and its implications, they did not intend to return to the United States to attend the hearing.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.