

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

2022 AUG 23 P 1:55

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

AHCA No. 2022008093

RENDITION NO.: AHCA- 22 -637 -S-OLC

MCA NAPLES OPERATING COMPANY LLC
d/b/a MEMORY CARE OF NAPLES,

Respondent.

FINAL ORDER

Having reviewed the Administrative Complaint and all other matters of record, the Agency for Health Care Administration ("the Agency") finds and concludes as follows:

1. The Agency issued the attached Administrative Complaint and Election of Rights form to the Respondent. (Ex. 1). The parties have since entered into the attached Settlement Agreement, which is adopted and incorporated by reference into this Final Order. (Ex. 2)

Based upon the foregoing, it is **ORDERED**:

2. The findings of fact and conclusions of law set forth in the Administrative Complaint are adopted and incorporated by reference into this Final Order.

3. An administrative fine of \$32,073.83 is imposed upon the Respondent. This fine is in addition to the \$20,692.79 that was paid to the Residents on 5/31/22. Pursuant to Section 429.24(3)(a), Florida Statutes, \$10,346.40 of the administrative fine shall be remitted to the Residents or his or her estates, and \$21,727.43 to the Agency to be deposited in the Health Care Trust Fund, to be used for the purpose specified in Section 429.18, Florida Statutes.

4. Within 7 days of the service date of this Final Order, the Respondent shall remit directly to each Resident or the Resident's estate the amounts due as follows:

- A. Resident #1 - \$1,062.50
- B. Resident #2 - \$336.28
- C. Resident #3 - \$176.00
- D. Resident #4 - \$1,187.50
- E. Resident #5 - \$2,131.07
- F. Resident #6 - \$508.06
- G. Resident #7 - \$854.84

- H. Resident #8 - \$2,116.94
- I. Resident #9 - \$1,973.21

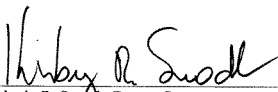
5. The Respondent shall provide the Agency a written confirmation and documentation of the resident refunds. The written confirmation and documentation shall be submitted to the Agency's counsel of record and Assisted Living Unit verifying the refund for each Resident. The Assisted Living Unit contact information is:

Assisted Living Unit
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 30
Tallahassee, Florida 32308
Electronic Mail - assistedliving@ahca.myflorida.com

6. In addition, within 90 days of the service date of the Final Order, the Respondent shall pay the Agency the administrative fine in the amount of \$21,727.43. Unpaid amounts are subject to statutory interest and may be collected by all means allowed by law. A check made payable to the "Agency for Health Care Administration" containing the above-referenced case number(s) should be sent to:

Central Intake Unit
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 61
Tallahassee, Florida 32308

ORDERED in Tallahassee, Florida, on this 23rd day of August, 2022.



Kimberly R. Smock, Deputy Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review, which shall be instituted by filing one copy of a notice of appeal with the Agency Clerk of AHCA, and a second copy, along with filing fee as prescribed by law, with the District Court of Appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Review of proceedings shall be conducted in accordance with the Florida appellate rules. The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Final Order was served on the below-named by the method designated on this 29th day of August, 2022.



Richard J. Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
Telephone: (850) 412-3630

Facilities Intake Unit Agency for Health Care Administration (Electronic Mail)	Keisha Woods, Unit Manager Assisted Living Unit Agency for Health Care Administration (Electronic Mail)
Central Intake Unit Agency for Health Care Administration (Electronic Mail)	Belisa M. Oliveira, Senior Attorney Office of the General Counsel Agency for Health Care Administration (Electronic Mail)
	B.J. Parrish, Authorized Representative MCA Naples Operating Company LLC d/b/a Memory Care of Naples 2626 Goodlette Frank Rd. Naples, Florida 34103 (U.S. Mail)

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

Case No.: 2022008093

vs.

Facility Type: Assisted Living

MCA NAPLES OPERATING COMPANY, LLC d/b/a
MEMORY CARE OF NAPLES,

Respondent.

_____/

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, State of Florida, Agency for Health Care Administration (“the Agency”), by and through its undersigned counsel, and files this Administrative Complaint against the Respondent, MCA Naples Operating Company, LLC d/b/a Memory Care of Naples (“Respondent”), pursuant to §§ 120.569 and 120.57, Florida Statutes (2021), and alleges:

NATURE OF THE ACTION

This is an action against an assisted living facility to impose administrative fines in the amount of sixty-two thousand seventy-eight dollars and thirty-seven cents (\$62,078.37) representing a resident refund amount due under § 429.24(3)(a), Florida Statutes, (2021).

JURISDICTION AND VENUE

1. The Agency has jurisdiction pursuant to §§ 20.42, 120.60, and Chapters 408, Part II, and 429, Part I, Florida Statutes (2021).
2. Venue lies pursuant to Rule 28-106.207, Florida Administrative Code,

PARTIES

3. The Agency is the regulatory authority responsible for licensure of assisted living

facilities and enforcement of all applicable federal regulations, state statutes and rules governing assisted living facilities pursuant to the Chapters 408, Part II, and 429, Part I, Florida Statutes, and Chapter 59A-36, Florida Administrative Code, respectively.

4. Respondent operates a fifty-four (54) bed assisted living facility located at 2626 Goodlette Frank Rd., Naples, Florida 34103 and is licensed as an assisted living facility, license number 8972.
5. Respondent was at all times material hereto a licensed facility under the licensing authority of the Agency, and was required to comply with all applicable rules and statutes.

COUNT I

6. The Agency re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.

7. Florida law provides:

(3)(a) The contract shall include a refund policy to be implemented at the time of a resident's transfer, discharge, or death. The refund policy shall provide that the resident or responsible party is entitled to a prorated refund based on the daily rate for any unused portion of payment beyond the termination date after all charges, including the cost of damages to the residential unit resulting from circumstances other than normal use, have been paid to the licensee. For the purpose of this paragraph, the termination date shall be the date the unit is vacated by the resident and cleared of all personal belongings. If the amount of belongings does not preclude renting the unit, the facility may clear the unit and charge the resident or his or her estate for moving and storing the items at a rate equal to the actual cost to the facility, not to exceed 20 percent of the regular rate for the unit, provided that 14 days' advance written notification is given. If the resident's possessions are not claimed within 45 days after notification, the facility may dispose of them. The contract shall also specify any other conditions under which claims will be made against the refund due the resident. Except in the case of death or a discharge due to medical reasons, the refunds shall be computed in accordance with the notice of relocation requirements specified in the contract. However, a resident may not be required to provide the licensee with more than 30 days' notice of termination. If after a contract is terminated, the facility intends to make a claim against a refund due the resident, the facility shall notify the resident or responsible party in writing of the claim and shall provide said party with a reasonable time period of no less than 14 calendar days to respond. The facility shall provide a refund to the resident or responsible party within 45 days after the transfer, discharge, or death of the resident. The agency shall

impose a fine upon a facility that fails to comply with the refund provisions of the paragraph, which fine shall be equal to three times the amount due to the resident. One-half of the fine shall be remitted to the resident or his or her estate, and the other half to the Health Care Trust Fund to be used for the purpose specified in s. 429.18.
§ 429.24(3)(a), Florida Statutes (2021).

8. Florida law also provides:

(7) In the event of the death of a resident, a licensee shall return all refunds, funds, and property held in trust to the resident's personal representative, if one has been appointed at the time the facility disburses such funds, and, if not, to the resident's spouse or adult next of kin named in a beneficiary designation form provided by the facility to the resident. If the resident has no spouse or adult next of kin or such person cannot be located, funds due the resident shall be placed in an interest-bearing account, and all property held in trust by the facility shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code. Such funds shall be kept separate from the funds and property of the facility and other residents of the facility. If the funds of the deceased resident are not disbursed pursuant to the Florida Probate Code within 2 years after the resident's death, the funds shall be deposited in the Health Care Trust Fund administered by the agency.
§ 429.27(7), Florida Statutes (2021).

9. On or about April 25, 2022, the Agency completed an unannounced complaint survey (CCR #2022005891) of Respondent and its facility.

10. That based on record review and interview, the facility failed to provide for 9 (Residents #1-#9) of 9 residents a pro-rated refund based on the daily rate and any unused payment beyond the termination date within 45 days of discharge, the same being contrary to the mandates of law.

11. That on 4/25/22 at 10:20 a.m., the Executive Director (ED) said there are several residents that have discharged and are owed a refund. She said they have gone beyond the 45 days required for providing the refund. She said the facility policy for refunds was an exhibit in the contract itself and provided a copy which reads:

Exhibit F of contract: Upon termination of the Residency Agreement for any reason your Monthly Service Rate will be refunded to you within forty-five (45) days of such termination,

and such refund will be made on a prorated basis calculated from the date of termination. Unless prohibited by law, you agree Memory Care of Naples may offset such refunds by any amount due and owing under the terms of your residency agreement.

12. That on 4/25/22 at approximately 11 a.m., the ED provided a list of 9 residents that are past due 45 days for a refund. The list included:

- a. Resident #1 who was discharged on 1/6/22 and is owed \$4,233.87,
- b. Resident #2 who was discharged on 1/21/22 and is owed \$1,709.67,
- c. Resident # 3 who was discharged on 1/25/22 and is owed \$1,016.12,
- d. Resident #4 who was discharged on 2/1/22 and is owed \$4,262.14,
- e. Resident #5 who was discharged on 2/2/22 and is owed \$3,946.42,
- f. Resident #6 who was discharged on 2/9/22 and is owed \$2,375.00
- g. Resident #7 who was discharged on 2/12/22 and is owed \$352.00
- h. Resident #8 who was discharged on 2/12/22 and is owed \$672.57
- i. Resident # 9 who was discharged on 2/14/22 and is owed \$2,125.00

13. That on 4/25/22 at 11:30 a.m., the Executive Director (ED) said the list of residents owed refunds was provided from corporate. The ED said it was out of her hands and she was told that corporate was going through an audit to get their finances in order and refunds would be paid after that. The ED said there was nothing that could be done in house as they didn't handle any of the finances at the facility and all she can do is email corporate which is located in Texas.

14. The above reflects that Respondent failed to provide proof that it returned the prorated refund based on the daily rate for any unused portion of payment beyond the termination date to nine (9) residents (Resident #1-#9) within forty-five (45) days of the resident's discharge, the same being contrary to the mandates of law.

15. In accordance with § 429.24(3)(a), Florida Statutes (2021), Respondent is subject to the imposition of an administrative fine totaling sixty-two thousand seventy-eight dollars and thirty-

seven cents (\$62,078.32) representing the total of three (3) times the balance due to each of the Residents #1-#9.

WHEREFORE, the Agency intends to impose an administrative fine in the amount of sixty-two thousand seventy-eight dollars and thirty-seven cents (\$62,078.37) against Respondent, an assisted living facility in the State of Florida, pursuant to § 429.24(3)(1), Florida Statutes (2021). Said fine is payable one-half (1/2) to each resident and one-half (1/2) to the Agency.

Respectfully submitted this 17th day of June, 2022.

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION

/s/ Belisa M. Oliveira

Belisa M. Oliveira, Esq.
Fla. Bar No. 095109
Agency for Health Care Administration
525 Mirror Lake Drive N., 330B
St. Petersburg, FL 33701
727.552.1929 (office)
Belisa.oliveira@ahca.myflorida.com

NOTICE

The Respondent is notified that it/he/she has the right to request an administrative hearing

pursuant to Sections 120.569 and 120.57, Florida Statutes. If the Respondent wants to hire an attorney, it/he/she has the right to be represented by an attorney in this matter. Specific options for administrative action are set out in the attached Election of Rights form.

The Respondent is further notified if the Election of Rights form is not received by the Agency for Health Care Administration within twenty-one (21) days of the receipt of this Administrative Complaint, a final order will be entered.

The Election of Rights form shall be made to the Agency for Health Care Administration and delivered to: Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Mail Stop 3, Tallahassee, FL 32308; Telephone (850) 412-3630.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Certified Mail, Return Receipt No. 7020 0350 0000 4641 0942 upon Hannah Dubberly Administrator, MCA Naples Operating Company, LLC d/b/a Memory Care of Naples, 2626 Goodlette Frank Rd., Naples, Florida 34103, and by Regular U.S Mail to CT Corporation, Registered Agent, MCA Naples Operating Company, LLC d/b/a Memory Care of Naples, 1200 South Pine Island Road, Plantation, Florida 33324, on June 17th, 2022.

/s/ Belisa M. Oliveira

Belisa M. Oliveira, Esq.

Copy furnished to:
Cynthia Brandt
Field Office Manager
Agency for Health Care Administration

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

Re: AHCA v. MCA Naples Operating Company, LLC d/b/a Memory Care of Naples
AHCA No. 2022008093

ELECTION OF RIGHTS

This Election of Rights form is attached to an Administrative Complaint. The Election of Rights form may be returned by mail or by facsimile transmission, **but must be filed with the Agency Clerk within 21 days by 5:00 p.m., Eastern Time,** of the day that you received the Administrative Complaint. If your Election of Rights form with your selected option (or request for hearing) is not timely received by the Agency Clerk, the right to an administrative hearing to contest the proposed agency action will be waived and an adverse Final Order will be issued. In addition, please send a copy of this form to the attorney of record who issued the Administrative Complaint.

(Please use this form unless you, your attorney or your qualified representative prefer to reply according to Chapter 120, Florida Statutes, and Chapter 28, Florida Administrative Code.) The address for the Agency Clerk is:

Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Building #3, Mail Stop #3
Tallahassee, Florida 32308
Telephone: 850-412-3630 Facsimile: 850-921-0158

PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS

OPTION ONE (1) _____ I waive the right to a hearing to contest the allegations of fact and conclusions of law contained in the Administrative Complaint. I understand that by giving up my right to a hearing, a final order will be issued that adopts the proposed agency action and imposes the fine, sanction or other agency action.

OPTION TWO (2) _____ I admit the allegations of fact contained in the Administrative Complaint, but I wish to be heard at an informal hearing (pursuant to Section 120.57(2), Florida Statutes) where I may submit testimony and written evidence to the Agency to show that the proposed administrative action is too severe or that the fine, sanction or other agency action should be reduced.

OPTION THREE (3) _____ I dispute the allegations of fact contained in the Administrative Complaint and request a formal hearing (pursuant to Section 120.57(1), Florida Statutes) before an Administrative Law Judge appointed by the Division of Administrative Hearings.

PLEASE NOTE: Choosing **OPTION THREE (3)**, by itself, is **NOT** sufficient to obtain a formal hearing. You also must file a written petition in order to obtain a formal hearing before

the Division of Administrative Hearings under Section 120.57(1), Florida Statutes. It must be received by the Agency Clerk at the address above **within 21 days** of your receipt of this proposed agency action. The request for formal hearing must conform to the requirements of Rule 28-106.2015, Florida Administrative Code, which requires that it contain:

1. The name, address, telephone number, and facsimile number (if any) of the Respondent.
2. The name, address, telephone number and facsimile number of the attorney or qualified representative of the Respondent (if any) upon whom service of pleadings and other papers shall be made.
3. A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.
4. A statement of when the respondent received notice of the administrative complaint.
5. A statement including the file number to the administrative complaint.

Licensee Name: _____

Contact Person: _____ Title: _____

Address: _____
Number and Street City Zip Code

Telephone No. _____ Fax No. _____

E-Mail (Optional) _____

I hereby certify that I am duly authorized to submit this Election of Rights to the Agency for Health Care Administration on behalf of the licensee referred to above.

Signed: _____ Date: _____

Print Name: _____ Title: _____

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

Case No.: 2022008093

vs.

Facility Type: ALF

MCA NAPLES OPERATING COMPANY, LLC
d/b/a MEMORY CARE OF NAPLES,

Respondent.

SETTLEMENT AGREEMENT

Petitioner, State of Florida, Agency for Health Care Administration (hereinafter the "Agency"), through its undersigned representatives, and Respondent MCA Naples Operating Company, LLC d/b/a Memory Care of Naples (hereinafter "Respondent"), pursuant to Section 120.57(4), Florida Statutes, each individually, a "party," collectively as "parties," hereby enter into this Settlement Agreement ("Agreement") and agree as follows:

WHEREAS, Respondent was at all times relevant an assisted living facility licensed pursuant to Chapters 429, Part I, and 408, Part II, Florida Statutes, Section 20.42, Florida Statutes and Chapter 59A-36, Florida Administrative Code; and

WHEREAS, the Agency has jurisdiction by virtue of being the regulatory and licensing authority over Respondent, pursuant to Chapters 429, Part I, and 408, Part II, Florida Statutes; and

WHEREAS, the Agency served Respondent with an administrative complaint on or about June 17, 2022, notifying the Respondent of its intent to impose administrative fines in the amount of sixty-two thousand seventy-eight dollars and thirty-seven cents (\$62,078.37); and

WHEREAS, the parties have negotiated and agreed that the best interest of all the parties will be served by a settlement of this proceeding; and

NOW THEREFORE, in consideration of the mutual promises and recitals herein, the parties intending to be legally bound, agree as follows:

1. All recitals herein are true and correct and are expressly incorporated herein.

2. Both parties agree that the “whereas” clauses incorporated herein are binding findings of the parties.

3. Upon full execution of this Agreement, Respondent agrees to waive any and all appeals and proceedings to which it may be entitled related to this state proceeding including, but not limited to, an informal proceeding under Subsection 120.57(2), Florida Statutes, a formal proceeding under Subsection 120.57(1), Florida Statutes, appeals under Section 120.68, Florida Statutes; and declaratory and all writs of relief in any court or quasi-court of competent jurisdiction; and agrees to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled, provided, however, that no agreement herein shall be deemed a waiver by either party of its right to judicial enforcement of this Agreement.

4. Upon full execution of this Agreement, Respondent agrees to pay ten thousand three hundred forty-six dollars and forty cents (\$10,346.40) to the Residents within seven (7) days of the Final Order and twenty-one thousand seven hundred twenty-seven dollars and forty-three cents (\$21,727.43) to the Agency within ninety (90) days of the Final Order, for a total of thirty-two thousand seventy-three dollars and eighty-three cents (\$32,073.83), and Respondent

shall provide proof of payment to the Resident by providing a copy of the cancelled check to the Agency within thirty (30) days of the entry of the Final Order.

5. Venue for any action brought to enforce the terms of this Agreement or the Final Order entered pursuant hereto shall lie in Circuit Court in Leon County, Florida.

6. By executing this Agreement, Respondent admits, and the Agency asserts the validity of the allegations raised in the administrative complaint referenced herein.

7. No agreement made herein shall preclude the Agency from using the deficiencies from the surveys identified in the administrative complaint in any decision regarding licensure of Respondent, including, but not limited to, a demonstrated pattern of deficient performance. The Agency is not precluded from using the subject events for any purpose within the jurisdiction of the Agency. Further, Respondent acknowledges and agrees that this Agreement shall not preclude or estop any other federal, state, or local agency or office from pursuing any cause of action or taking any action, even if based on or arising from, in whole or in part, the facts raised in the Survey. This agreement does not prohibit the Agency from taking action regarding Respondent's Medicaid provider status, conditions, requirements or contract.

8. Upon full execution of this Agreement, the Agency shall enter a Final Order adopting and incorporating the terms of this Agreement and closing the above-styled case.

9. Each party shall bear its own costs and attorney's fees.

10. This Agreement shall become effective on the date upon which it is fully executed by all the parties.

11. Respondent for itself and for its related or resulting organizations, its successors or transferees, attorneys, heirs, and executors or administrators, does hereby discharge the State of Florida, Agency for Health Care Administration, and its agents, representatives, and attorneys

of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter and the Agency's actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum, including any claims arising out of this agreement, by or on behalf of Respondent or related facilities.

12. This Agreement is binding upon all parties herein and those identified in paragraph eleven (11) of this Agreement.

13. In the event that Respondent was a Medicaid provider at the subject time of the occurrences alleged in the complaint herein, this settlement does not prevent the Agency from seeking Medicaid overpayments related to the subject issues or from imposing any sanctions pursuant to Rule 59G-9.070, Florida Administrative Code.

14. Respondent agrees that if any funds to be paid under this agreement to the Agency are not paid within ninety-one (91) days of entry of the Final Order in this matter, the Agency may deduct the amounts assessed against Respondent in the Final Order, or any portion thereof, owed by Respondent to the Agency from any present or future funds owed to Respondent by the Agency, and that the Agency shall hold a lien against present and future funds owed to Respondent by the Agency for said amounts until paid.

15. The undersigned have read and understand this Agreement and have the authority to bind their respective principals to it. Respondent has the capacity to execute this Agreement. Respondent understands that it has the right to consult with counsel and has knowingly and freely entered into this Agreement without exercising its right to consult with counsel. Respondent affirms that Respondent understands counsel for the Agency represents solely the

Agency and Agency counsel has not provided legal advice to or influenced Respondent in its decision to enter into this Agreement.

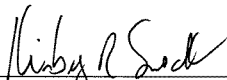
16. This Agreement contains and incorporates the entire understandings and agreements of the parties.

17. This Agreement supersedes any prior oral or written agreements between the parties.

18. This Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

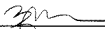
19. All parties agree that a facsimile signature suffices for an original signature.

The following representatives hereby acknowledge that they are duly authorized to enter into this Agreement.



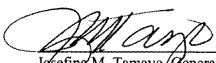
Kimberly R. Swoak, Deputy Secretary
Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Building #1
Tallahassee, Florida, 32308

DATED: 8/23/2022



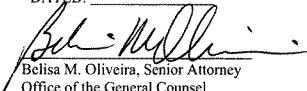
B.J. Parrish
Authorized Representative
MCA Naples Operating Company, LLC
d/b/a Memory Care of Naples
2626 Goodlette Frank Rd.
Naples, Florida 34103

DATED: 8/3/22



Josefina M. Tamayo, General Counsel
Office of the General Counsel
Agency for Health Care Administration
2727 Mahan Drive, MS #3
Tallahassee, Florida 32308
Florida Bar No. 688428

DATED: 8/18/2022



Belisa M. Oliveira, Senior Attorney
Office of the General Counsel
Agency for Health Care Administration
525 Mirror Lake Drive North, Suite 330B
St. Petersburg, Florida 33701
Florida Bar No. 095109

DATED: 8/3/22