

OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



FILED
MAY 18 2016

MAUKEN, INC., d/b/a FAIRYTALES)
LEARNING CENTER,)
TERRI HARRIS, BARRY SLAY,)
AND KAREN SLAY)

Petitioners,)

v.)

BRIGHT FROM THE START: GEORGIA)
DEPARTMENT OF EARLY CARE AND)
LEARNING,)

Respondent.)

Docket No.
OSAH-DECAL-CAPS-1509315-60-
KENNEDY

K. Westray
Kevin Westray, Legal Assistant

DECISION

I. Introduction

On June 19, 2014, the Department of Early Care and Learning (“DECAL,” “Department,” or “Respondent”) administratively terminated Petitioner Mauken, Inc. (“Mauken”), d/b/a Fairytales Learning Center, from the CAPS¹ program. Respondent’s Exhibit (“Rsp. Ex.”) I. Mauken had no appeal rights from that particular adverse action.

On July 24, 2014, DECAL sent a letter to all Petitioners, seeking recoupment of CAPS funds paid to Mauken, Inc. d/b/a Fairytales Learning Center. Rsp. Ex. K at pp. 637-39. DECAL asserted that the center was “being owned and operated by [Petitioners Barry Slay and Karen Slay] and that Barry and Karen Slay are benefitting from the program despite the fact that Fairytales and Barry Slay have been previously dismissed from the CAPS program.” *Id.* at p. 638. DECAL demanded recoupment of \$204,047.00, the entire amount that Mauken had received from CAPS. *Id.* at p. 637. DECAL sought the amount from all four Petitioners,

¹ CAPS (Child and Parent Services) is a state-administered program funded in part by the federal government. It arranges and provides child care assistance as a support to low income families. CAPS Policy Manual, 6000.

asserting that they “are jointly liable with Maulken [sic] for the debt since the above-mentioned conspired to create a corporation with a purpose of defrauding the state.” *Id.* at p. 639.

DECAL on the same date terminated Ms. Harris’s license to operate Fairytales Learning Center. *Id.* at p. 633. DECAL alleged that “Harris, knowing that her parents were terminated from participation in the CAPS program, applied for a change of ownership in her name so that the Slays could continue participation in the CAPS program even though they were ineligible.” *Id.*

Petitioners appealed both decisions, and this Court heard evidence on April 29-May 1, 2015, and August 31-September 2, 2015.

Based on the evidence presented, DECAL’s adverse action seeking recoupment of monies paid under CAPS to Mauken from all of the named Petitioners, and the revocation of Terri Harris’ license to operate the day care center at issue, is hereby **AFFIRMED in part** and **REVERSED in part**. The court affirms Respondent’s recoupment of funds paid to Mauken, Inc. from Mauken, Inc., but reverses Respondent’s action seeking to recoup such funds from Terri Harris, Barry Slay, and Karen Slay, individually. The court further affirms Respondents revocation of Terri Harris’ license to operate the day care center at issue.

II. Standard of Review

DECAL bears the burden of proving its allegations. Admin. Rule 616-1-2-.07. To prove fraud, DECAL must establish: (1) false representation, (2) intent to deceive, (3) intent to induce action from DECAL, (4) justifiable reliance by DECAL, and (5) damage to the state. *Summit Automotive Group, LLC v. Clark*, 298 Ga. App. 875, 880, 681 S.E.2d 681, 686 (2009). Proof of fraud “must amount to more than mere speculation,” *ReMax North Atlanta v. Clark*, 244 Ga. App. 890, 895, 537 S.E.2d 138, 141 (2000), and must be more than sloppy business practices.

Hicks v. McLain's Bldg. Materials, 209 Ga. App. 191, 193, 433 S.E.2d 114, 115 (1993). To show conspiracy to defraud, DECAL must show an agreement between the Petitioners to unlawfully access CAPS funds. *Summit Automotive Group, LLC*, 298 Ga. App. at 879.

This Court must decide whether DECAL has proven its case by a preponderance of the evidence. Ga. Comp. R. & Regs 616-1-2-.21(4). In addition, DECAL's case is largely circumstantial, and thus its evidence "must not only reasonably support [its] conclusion, but also render less probable all inconsistent conclusions." *Charles v. Butler*, 331 Ga. App. 336, 341, 771 S.E.2d 43, 47 (2015).

III. Findings of Fact

A. Terco Inc. d/b/a Fairytale Learning Center

1.

Prior to Barry Slay becoming involved in the day care business, he worked for many years in law enforcement. (B. Slay testimony, Day 6 at 02:16:30-02:17:27)

2.

Prior to Karen Slay becoming involved in the day care business, she worked as a schoolteacher. (K. Slay testimony, Day 6 at 00:01:00-00:01:58)

3.

Mr. and Mrs. Slay decided to become involved in the day care business to help the impoverished Bankhead community in Atlanta. (B. Slay testimony, Day 6 at 02:17:27-02:20:34)

4.

They formed Terco, Inc. ("Terco") in 1991 and both served as officers in the corporation. In 2012, Barry Slay was the Chief Executive Officer of Terco, Inc. and Karen Slay was the Chief Financial Officer. (Rsp. Ex. A-1; Rsp. Ex. A-2)

5.

Terco operated two programs – Fairytales Learning Center (“Fairytales”), a childcare program, and Fairytales Learning Academy (“Academy”), a Pre-K program. DECAL issued each program its own separate license. (Pet. Ex. 2 & 40; Rsp. Ex. A-3; K. Slay testimony, Day 5 at 00:08:13-00:08:40; 00:09:12-00:09:58)

6.

Terco participated in the Childcare and Parents Services (“CAPS”) program, which is a program that provides subsidies for child care costs for low-income parents. The program is administered by DECAL. (Pet. Ex. 1; Rsp. Ex. A-8)

7.

In May 2011, Terco renewed its CAPS contract with DECAL. At that time, Mr. Slay signed the contract as Vice-President of Terco, Inc. d/b/a Fairytales Learning Center. (Pet. Ex. 1 at p. 6; B. Slay testimony, Day 6 at 02:44:23-02:45:18)

8.

On December 12, 2012, the Office of Inspector General (OIG) determined that Terco owed DECAL \$51,958.00 for CAPS overpayments as a result of not being in complete compliance with all rules and regulations regarding the receipt of CAPS payments. (Rsp. Ex. A-8) OIG later reduced the amount that Terco owed to \$44,741.00 after Terco submitted additional documentation in support of its receipt of CAPS payments. (Pet. Ex. 32, p. 2)

9.

On May 2, 2013, Carol Hartman, Assistant Commissioner of Programs at Bright From the Start, sent a letter to Barry Slay (“May 2013 letter”), notifying him that Fairytales Learning Academy had been terminated from the CAPS program. (Rsp. Ex. A-4) However, the

Academy, which was the pre-K program, had never had an agreement with CAPS, and was located at a different address than the Learning Center. (K. Slay testimony, Day 6 at 00:11:16-00:11:43; B. Slay testimony, Day 6 at 02:50:23-2:51:42.) Internal DECAL records include an e-mail from an unidentified source to “Carol,” presumably Ms. Hartman, noting that Mr. Slay’s attorney had disputed the overpayment claim, and that “System had already recouped funds by time letter received. Stop pay pending any further payments from fair hearing outcome.” (Rsp. Ex. A-8, p. 46)

10.

On May 9, 2013, DECAL records note “Fairy Tales [sic] has been terminated from the CAPS program for violation of CAPS policies effective May 12, 2013. . . . The decision to terminate was a senior leadership determination.” (Rsp. Ex. A-8, p. 46) The reason that Ms. Hartman gave in the May 2013 letter for the termination was that “Fairytale Learning Academy’s [sic] failure to comply with an investigation conducted by the Office of Investigator General on behalf of the CAPS program was a violation of CAPS policies.” (Rsp. Ex. A-4, p. 15)

11.

Ms. Hartman explained at the hearing in this matter that the “failure to comply” referenced in the May 2013 letter was Mr. Slay’s failure to sign a repayment agreement, which he chose not to sign because he was contesting the assessed overpayment. (Hartman testimony, Day 1 at 1:07:00-1:07:12; B. Slay testimony, Day 6 at 02:48:26-02:49:08)

12.

Internal DECAL documents do not reflect any concern about the repayment agreement. In fact, DECAL began recouping funds as though an agreement were in place, even while

Fairytales disputed the overpayment determination. (Rsp. Ex. A-8, p. 46; K. Slay testimony, Day 6 at 00:22:12-00:23:00; 01:08:44-01:09:02; B. Slay testimony, Day 6 at 02:48:26-02:49:08)

13.

Ms. Hartman's written documentation after the termination also fails to reflect any concern about the repayment agreement itself. (Pet. Ex. 15 & 18)

14.

Despite the incorrect name and address listed on the May 2013 letter, Mr. Slay decided from the contract number on the letter that DECAL was terminating Terco. (B. Slay testimony, Day 6 at 02:50:23-2:51:42)

15.

On June 5, 2013, Mr. Slay wrote to Ms. Hartman, asking her to reconsider her decision, in part, because Fairytales is located in a depressed area and most of the families serviced by Fairytales received CAPS funds such that termination from the CAPS program rendered Fairytales inoperable. (Testimony of B. Slay; Testimony of K. Slay; Rsp. Ex. A-4, p. 16) On June 10, 2013 ("June 2013 letter").

16.

Clare Michaud, Legal Services Officer, responded to Mr. Slay on Ms. Hartman's behalf denying Mr. Slay's request for reconsideration of the termination. In the letter DECAL advised Mr. Slay that the terminated provider could not reapply for participation in the CAPS program until the provider fully complied with the Office of Inspector General investigation and paid any established claims in full. (Rsp. Ex. A-4, p. 17)

17.

Mr. Slay filed an appeal on behalf of Terco in the Superior Court. (Rsp. Exs. A-5, A-6 & A-7) DECAL, in support of its termination decision, responded to the appeal stating that Terco had failed to submit documentation by the deadline that OIG had set out. (Rsp. Ex. A-6, p. 23) It made no mention of Ms. Hartman's claim that Barry Slay had failed to sign a repayment agreement. (Id.) Mr. Slay later dismissed his appeal. (Rsp. Ex. A-7)

18.

The Slays decided that, given their inability to continue operating the Terco-owned Fairytales, it was time to retire and pass the center down to one of their children. (K. Slay testimony, Day 6 at 00:23:10-00:24:52, 00:26:40-00:27:33)

B. Mauken, Inc. d/b/a Fairytales Learning Center

19.

Terri Harris is the daughter of Mr. and Mrs. Slay. She was a teacher in the Clayton County school system during the time that her parents owned and operated Terco, Inc. d/b/a Fairytales Learning Center. (Harris testimony, Day 5 at 1:51:50-01:52:33)

20.

Ms. Harris always wanted to run a day care center, and she had planned "to step into the business when her folks retired." (Harris testimony, Day 5 at 01:58:37-01:59:54; Smith-Knox testimony, Day 5 at 00:06:22-00:06:35, Smith-Knox testimony, Day 5 at 00:35:40-00:35:59)

21.

When Ms. Harris' parents were unable to win their appeal in Superior Court, Ms. Harris decided to take the opportunity to start her own center using the building and resources that her parents could no longer use. (Harris testimony, Day 5 at 02:00:47-02:01:34)

22.

Ms. Harris “had everything vested into the day care business . . . her whole heart, expectation that that was going to be her job.” (Smith-Knox testimony, Day 5 at 00:39:05-00:40:02)

23.

In June 2013, Ms. Harris began the process to form a corporation called Mauken along with Karen Slay and Estella Parker. (Rsp. Ex. B-4, p. 73) Karen Slay reserved the name for the corporation online with the Secretary of State, and Barry Slay transmitted the incorporation package to the Secretary of State’s office. (Rsp. Ex. B-4, p. 74; Rsp. Ex. B-5) In September 2013, the Secretary of State issued a Certificate of Incorporation backdated to June 13, 2013. (Rsp. Ex. B-4, p. 72)

24.

Also in June 2013, Ms. Harris submitted a change of ownership application to Respondent’s Applicant Services Unit regarding Fairytales. (Testimony of Amy Page, Director of Applicant Services Unit; Rsp. Ex. B-1)

25.

Shortly thereafter, the Department’s Applicant Services Unit learned that there was a CAPS investigation of the former owners of Fairytales and that Terri Harris was listed as an administrator on Barry and Karen Slay’s nutrition application. Based on this information, the Director of the Applicant Services Unit requested additional documentation to determine Terri Harris’ affiliation with Barry and Karen Slay. The Department requested and obtained the Articles of Incorporation filing documents. Upon review of this documentation it was clear that Karen Slay and Terri Harris were listed as incorporators of Mauken, Inc., and that Barry Slay

was listed as the registered agent. Additionally, Ms. Harris submitted documentation with her change of ownership application that listed Barry and Karen Slay as building owners of Fairytale. (Testimony of Page.)

26.

According to a representative, the Department ultimately decided to approve Ms. Harris' change of ownership application despite her connections with Barry and Karen Slay because Barry Slay was not listed as a corporate officer but only as a registered agent. The Department determined that, unlike corporate officers, registered agents do not have vested interests in a corporation and therefore his connection to Ms. Harris and Mauken, Inc. d/b/a Fairytale Learning Center was insignificant. (Testimony of Page) At the time of approval of Terri Harris' application Respondent was well aware of the Slays connection to Terri Harris, Mauken, and the soon-to-be "new" Fairytale day care center inasmuch as a representative wrote in an internal email on July 3, 2013, "Ms. Harris sent me her Articles of Inc. yesterday afternoon Thankfully we requested those before proceeding b/c both of the Slays (former owners) are listed as the registered agent or officer of the new corp." Rsp. Ex. B-8, at p. 82.

27.

Due to the delays in processing and approving Mauken, Inc.'s application for CAPS funding, and the daycare center's inability to generate sufficient income to support Ms. Harris and the center staff without CAPS funding, Ms. Harris decided that she would need to continue working as a teacher until such time that the center was able to support her. She further decided to ask her mother, Karen Slay, to serve as the Director of the center based on Ms. Slay's prior knowledge and experience in operating a day care center. However, Terri Harris did fail to notify Respondent that Karen Slay would serve in the capacity of Director. (Smith-Knox

testimony, Day 5 at 00:39:05-00:40:02; Harris testimony, Day 5 at 02:01:35-02:02:14; K. Slay testimony, Day 6 at 00:28:12-00:29:20)

C. Mauken Change of Ownership Application

28.

After filing the incorporation package, Ms. Harris applied to DECAL to change the ownership of Fairytale Learning Center from Barry and Karen Slay to Mauken, Inc. However, at that point in time Mauken only had a name reservation and had not yet been issued a Certificate of Incorporation. (Rsp. Ex. B-1)

29.

Unfamiliar with the change of ownership form, Ms. Harris listed the name of the owner of the center as “Terri Harris,” but checked the box for “Corporation, LLC” ownership. (Pet. Ex. 5; Rsp. Ex. B-1 at p. 50; Rsp. Ex. B-8, pp. 80 & 85; Page testimony, Day 2 at 01:48:00-01:48:32; Harris testimony, Day 5 at 02:05:37-02:08:27) She also provided the federal Employer Identification Number (“EIN”) for Mauken, Inc. (Rsp. Ex. 501 & Pet. Ex. 5)

30.

On July 11, 2013, DECAL informed Ms. Harris that “we will need some revisions on the application itself to show Mauken, Inc., as the owner rather than your individual name. These are changes that Ms. Milford can have you update during your visit.” However only eight (8) days later, Ms. Churchwell decided that the daycare license would need to be issued in the name of Terri Harris, individually, because the Secretary of State had not yet issued a corporate certificate for Mauken. Ms. Churchwell planned after receiving the corporate certificate to “do the paperwork change to change the license from [Ms. Harris’] individual ownership to the

corporate ownership.” (Churchwell testimony, Day 2 at 02:47:30-02:47:48; Rsp. Ex. B-8, pp. 85-86)

31.

Ms. Churchwell communicated the above information to Ms. Harris in a telephone call, but Ms. Harris mistakenly thought that Ms. Churchwell would initiate the change on her own by somehow becoming aware of when the certificate of incorporation became a public record, while Ms. Churchwell expected Ms. Harris to initiate the change once the incorporation certificate was issued. (Harris testimony, Day 5 at 02:09:43-02:13:42; Churchwell testimony, Day 2 at 02:33:34-02:34:48; Rsp. Ex. B-8, p. 86)

32.

Although DECAL issued a license to Ms. Harris individually, Ms. Harris continued to refer to the owner of the center as Mauken, Inc., d/b/a Fairytale Learning Center because it was her intent for Mauken, Inc. to own the center rather than herself individually. (Rsp. Ex. B-2, p. 66; Rsp. Ex. B-8, pp. 92 & 94; Rsp. Ex. E, p. 137)

33.

Another reason the processing and approval of Mauken’s application was delayed was DECAL’s concerns about Ms. Harris’s connection to Mr. and Mrs. Slay. (Rsp. Ex. B-8, pp. 80-81) DECAL noted that Mr. and Mrs. Slay were listed in the corporation documents for Mauken, Inc. as “the registered agent or officer of the new corp. [sic]” (Rsp. Ex. B-8, p. 82; Page testimony, Day 2 at 01:57:44-01:58:43)

34.

After consulting with its legal department, the DECAL licensing division determined that Mr. and Mrs. Slay's connection to Mauken was not a barrier to issuing a license for the Mauken Fairytales Learning Center. (Rsp. Ex. B-8, p. 85; Page testimony, Day 2 at 01:57:44-01:58:43)

35.

DECAL conducted the Change of Ownership Orientation visit with Ms. Harris on July 22, 2013, and gave her permission to operate fully aware that Mr. and Mrs. Slay had a role in the corporation. (Rsp. Ex. B-2, p. 55; Rsp. Ex. B-8, p. 96; Rsp. Ex. D-1)

D. Mauken CAPS application and August 13, 2013 meeting

36.

Ms. Harris next applied for CAPS funding on behalf of Mauken. She received no information from DECAL about what steps she needed to take to start receiving CAPS funding, despite numerous e-mails and telephone calls requesting information. (Pet. Exs. 10, 11, 12, 13, 16, 17; Rsp. Ex. C, p. 99)

37.

Similar to the processing and approval of Mauken's license, the processing and approval of Mauken's application for CAPS funding was delayed. The delay was the result of DECAL's concerns about Ms. Harris's relationship with Mr. and Mrs. Slay, but no one ever explicitly communicated those concerns to Ms. Harris while processing the application. (Pet. Exs. 14, 19 & 20)

38.

DECAL set a meeting for August 22, 2013 to discuss the CAPS application. (Rsp. Ex. C, p. 98)

39.

Ms. Harris, her aunt Sharon Smith-Knox, and center employee Estella Parker went down to the Department unannounced on August 13, 2013 and asked if anyone was available for a meeting. (Smith-Knox testimony, Day 5 at 00:06:48-00:08:09) Carol Hartman and Jonathan Davis from the CAPS division met with them, and at one point Elisabetta Kasfir of the licensing division participated. (Testimony of Davis; Testimony of Harris; Testimony of Sharon Smith-Knox)

40.

Ms. Hartman initially testified that she asked Ms. Harris, “Do you have anything to do with the Slays?”, but later testified that she asked if Barry Slay was “involved in the program.” Ms. Hartman did not tell Ms. Harris what she meant by “involved.” (Hartman testimony, Day 1 at 1:52:06-1:52:54; Hartman testimony, Day 1 at 2:47:30-2:48:15)

41.

Jonathan Davis testified that Ms. Hartman asked Ms. Harris “if she was a part of the previous Fairytales and just wanted to make sure that some of the client’s issues there would not carry on.” (Davis testimony, Day 1 at 4:48:42-4:49:31) He understood Ms. Harris to be saying that she had no business relationship with the old program. (Davis testimony, Day 1 at 4:50:06-4:50:48) The only explanation that he heard Ms. Hartman give Ms. Harris for the question was about “a safe environment . . . very general.” (Davis testimony, Day 1 at 5:27:34-5:28:21)

42.

Ms. Smith-Knox and Ms. Harris testified that the emphasis of Ms. Hartman’s questions was whether Mr. Slay had any ownership interest in the Mauken Fairytales Learning Center. (Smith-Knox testimony, Day 5 at 00:12:05-00:13:09, 00:13:33-00:14:15, 00:51:34-00:52:17,

01:45:20-01:45:46; Harris testimony, Day 5 at 02:43:25-02:45:18) Neither Ms. Harris nor Ms. Smith-Knox understood DECAL to have a concern about whether Mr. Slay was involved in the management of the center or present at the facility in any capacity. (Smith-Knox testimony, Day 5 at 00:13:33-00:14:15, 00:14:48-00:15:28, 01:08:02-01:18:14, 01:43:55-01:44:27; Harris testimony, Day 5 at 02:51:35-02:52:17)

43.

There are no written records of the meeting. According to Johnathan Davis, Ms. Hartman took notes during the meeting, (Davis testimony Day 1 at 5:24:31-5:24:44) but Ms. Hartman did not recall doing so. (Hartman testimony, Day 1 at 2:42:20-2:42:27) No one sent a confirming e-mail or letter to Ms. Harris regarding the meeting. (Hartman testimony, Day 1 at 2:43:05-2:43:26; Davis testimony, Day 1 at 5:25:52-5:26:00)

44.

Ms. Harris entered into a contract with the CAPS program on August 2, 2013. (Rsp. Ex. E.) On the contract, Ms. Harris listed herself as “owner” of Fairytales Learning Center, but listed Mauken, Inc.’s EIN. (Rsp. Ex. E at p. 133) She also provided a W-9 for Mauken, Inc., and had the CAPS funds deposited to a Mauken, Inc. account. (Rsp. Ex. E. at pp. 134-135) It was improper for the CAPS agreement to be signed by Ms. Harris on behalf of Mauken, Inc. because only child care providers licensed by DECAL can enter into CAPS agreement and at that time the license had been issued to Ms. Harris as a sole proprietor since Mauken, Inc. was not yet incorporated. (Testimony of Tamara Hall) No one from DECAL raised any concerns with the conflicting information showing both individual and corporation activity/involvement in the operation of Fairytales Learning Center. (Harris testimony, Day 5 at 02:47:08-02:47:45) However, it is likely that DECAL was unaware of any issues because the documents were

submitted to Maximus, the company DECAL has contracted to manage CAPS payments, records and correspondences. DECAL did not review the documents until an external audit investigation was conducted. (Testimony of Tamara Hall)

45.

When Ms. Harris later applied for funds from the Child and Adult Care Food Program (“CACFP”), she learned that the daycare license was still in her name rather than Mauken’s, and that she could not get that subsidy until the discrepancy was cleared up. (Rsp. Ex. F-2; Rsp. Ex. F-3)

46.

Ms. Harris called and e-mailed Suzanne Milford at DECAL in an attempt to get the license changed to Mauken’s name, and sent in the form that Ms. Milford told her was necessary. Rsp. Ex. B-6 at p. 77; Rsp. Ex. B-8 at p. 88; Harris testimony, Day 5 at 03:07:12-03:07:54, and 03:09:54-03:10:08)

47.

After Ms. Harris submitted the form Ms. Milford had requested she learned that, contrary to what Ms. Churchwell had suggested, it would not be a simple change to switch from an individual to corporate license, but that it would require her to restart the licensing process. (Harris testimony, Day 5 at 03:10:12-03:11:59)

E. Role of the Slays in Mauken

48.

Although Karen Slay was serving as the Director of Fairytales Learning Center when it was owned by Mauken, Inc. and Terri Harris, Ms. Harris was the individual who made the decisions regarding the center and oversaw its operations. (Harris testimony)

49.

After the school year started, Ms. Harris corresponded regularly with DECAL regarding difficulties that the families at the center faced in getting CAPS certification, she applied for the CACFP program, and she attended training for that program, (Harris testimony, Day 5 at 03:02:00-03:03:16; Pet. Exs. 23, 25; Rsp. Ex. F-2 at p. 143; Rsp. Ex. F-3)

50.

Ms. Harris was present at the center and making executive decisions almost every day after work at her teaching position. (Harris testimony Day 5 at 02:55:03-02:56:05) She looked over the books and kept up with the finances. (Harris testimony Day 5 at 03:18:05-03:18:50)

51.

However, Mr. and Mrs. Slay assisted Ms. Harris. Mrs. Slay worked as the director and cook of the center, and was the Chief Financial Officer for Mauken. (K. Slay testimony, Day 6 at 00:30:12-00:31:08) Mr. Slay provided maintenance services and wrote checks for the center on the Mauken, Inc. bank account at Ms. Harris' direction. (K. Slay testimony, Day 5 at 00:37:32-00:38:08; K. Slay testimony, Day 6 at 00:31:08-00:33:38; Harris testimony, Day 5 at 02:04:28-02:05:14; Harris testimony, Day 5 at 03:18:05-03:19:25; B. Slay testimony, Day 6 at 03:05:23-03:07:15; Miles testimony, Day 2 at 05:15:16-05:16:38 (spoke to him in passing); Myree testimony, Day 3 at 00:37:18-00:38:14 (saw him passing through the office); Milford testimony,

Day 3 at 3:21:12-3:23:48 (Mr. Slay drove van onto the premises); Thomas testimony, Day 3 at 4:42:39-04:44:35 (saw no actions inconsistent with Mr. Slay's statement that he did only maintenance at the center); Pet. Ex. 30 (Mr. Slay had not been present at center since previous licensing visit)

52.

Mr. Slay wrote checks and withdrew cash as instructed by either Ms. Harris or Ms. Slay. Ms. Harris relied on Mr. Slay's assistance because she continued to work as a school teacher since the center was unable to provide sufficient income for Ms. Harris to quit her other employment. (K. Slay testimony, Day 5 at 00:37:32-00:38:08; K. Slay testimony, Day 6 at 00:31:08-00:33:38; Harris testimony, Day 5 at 02:04:28-02:05:14; Harris testimony, Day 5 at 03:18:05-03:19:25; B. Slay testimony, Day 6 at 03:05:23-03:07:15)

F. Mr. and Mrs. Slay Did Not Benefit from Mauken

53.

In May 2014, DECAL asked M.H. Miles to conduct an audit of the Fairytale CAPS program. Rsp. Ex. H.

54.

The audit revealed no money flowing from Mauken to Mr. or Mrs. Slay. Nevertheless, M.H. Miles recommended that DECAL investigate the matter further. (Rsp. Ex. H. at pp. 217-18; Myree testimony, Day 3 at 01:46:27-01:48:03)

55.

DECAL did not investigate further until after it terminated Mauken from the CAPS program and Petitioner filed an appeal. Only then did DECAL conduct a supplemental investigation of Mauken bank records. (Rsp. Ex. J-1)

56.

In the supplemental investigation, Ryan Ringsrud, Director of Audits and Compliance for DECAL, concluded that Barry Slay benefitted from Mauken because he received \$3,225, and spent approximately \$50,000 in cash with no supporting documentation of how the funds were spent. Mr. Ringsrud also mentioned some expenses that appeared to be personal, but did not quantify them. (Ringsrud testimony, Day 4 at 01:52:56-01:53:00; Ringsrud testimony, Day 4 at 02:49:12-02:49:31, 02:53:34-02:54:12; Rsp. Ex. J-1, pp. 279-81)

57.

Mrs. Slay testified that she was the person who spent the cash, and that most of it was for payroll. Mrs. Slay explained that she paid the staff in cash for the first few months that Mauken operated Fairytales because many of the staff members did not have a bank account and had difficulty cashing checks. (K. Slay testimony, Day 5 at 00:32:01-00:33:38; K. Slay testimony, Day 6 at 00:32:01-00:33:38, 00:34:35-00:36:10)

58.

Mrs. Harris knew of Mrs. Slay's use of cash to pay the staff and trusted her judgment. (Harris testimony, Day 5 at 03:21:00-03:21:33)

59.

The pattern of the payments, with significant amounts of cash spent every other Friday until the center started paying through a payroll service, supports that testimony, as does

Mauken's tax records for 2013 and 2014 showing payments to employees totaling \$36,170.02 and \$24,237.65, respectively. (Ringsrud testimony, Day 4 at 03:45:50-03:51:43; Pet. Ex. 48 and 49; Pet. Ex. 51 (demonstrative exhibit))

60.

Petitioners also introduced evidence that the \$3,000.00 in direct payments to Mr. and Mrs. Slay represented repayment of money that they had provided for Mauken operating expenses. (Harris testimony, Day 5 at 02:17:49-02:18:13, 02:18:36-02:19:40, 03:36:43-03:37:29; K. Slay, Day 6 at 00:56:11-00:57:41; Rsp. Ex. J-3)

61.

As for the payments of personal expenses, Ms. Harris and Mrs. Slay testified that those were Mrs. Slay's expenses, and that Ms. Harris authorized those payments because she could not afford to pay Mrs. Slay a regular salary. Those payments were included in Mrs. Slay's W-2. (Harris testimony, Day 5 at 03:34:50-03:35:53, K. Slay testimony, Day 6 at 00:50:52-00:51:20)

62.

According to Mauken tax records, the center paid Karen Slay \$3,441.02 in 2013, and \$7,695.19 in 2014. These payments were not excessive for Mrs. Slay's assistance in serving as Director and, actually, were low for a typical day care center director. (Ringsrud testimony, Day 4 at 04:26:32-04:26:15; Pet. Ex. 48, p. 6; Pet. Ex. 49, p. 9)

63.

There is insufficient evidence that Mr. Slay directly benefitted from Mauken's CAPS funds, or that Mrs. Slay's financial benefits were not commensurate with the services that she rendered to the center. (Ringsrud testimony Day 4 at 04:02:02-04:02:18)

G. Investigation of Mauken, Inc.

64.

On February 25, 2014, Carol Hartman made a determination that Barry and Karen Slay were the owners of Mauken, Inc. (Rsp. Ex. B-8, p. 89) The only reason she listed in her internal e-mail for her belief was that Barry Slay was the registered agent of Mauken, Inc. (*Id.*)

65.

Sometime after Ms. Hartman's February 25, 2014 e-mail, DECAL held a meeting in which the various participants decided on a potential action list that included "civil lawsuit, revoke license, terminate CAPS, [and] pierce corp. [sic] veil as collected 44,000 [sic]." (Pet. Ex. 27; Kasfir testimony, Day 2 at 00:54:14-00:56.13)

66.

In March 2014, DECAL conducted two routine monitoring visits to Fairytale. Terri Harris, who had been identified as the owner and director of Fairytale was not present at either monitoring visit. This raised concerns for DECAL because the Department's rules specifically require that a director be present on the center's premises. (Testimony of Rukiya Thomas; Ga. Comp. R. & Regs. 591-1-1-.31(1)(a)). The Department also became concerned because Mr. Slay was observed to be on the premises during one of the monitoring visits and had informed the DECAL representative that he was serving as a maintenance worker. (Testimony of Thomas)

67.

On May 5, 2014, the Department contracted MH Miles Company to conduct an audit of the Fairytale CAPS program.² (Rsp. Ex. H)

² M.H. Miles is a CPA firm located in Decatur, Georgia. The CPA firm largely works with contract compliance in which it reported that 90% of its contract work is in the area of governmental compliance. MH Miles has done governmental compliance contracts with the Department since 1999. These contracts specifically dealt with the CAPS program.

68.

M.H. Miles reviewed six (6) Agreed-Upon Procedures (“AUP”) assigned by DECAL, only five (5) of which are relevant to this proceeding. (Myree testimony, Day 3 at 00:13:05-00:13:54, 00:20:48-00:21:20)

69.

The auditors found that (1) there was a family relationship between the Slays and Ms. Harris; (2) the license for the center was in the name of Terri Harris while the CAPS contract was with Mauken; (3) they were unable to determine whether the Slays were directly benefitting from Mauken, in part, because they had difficulty reviewing Mauken’s bank records due to technical issues with Fairytales printing equipment; (4) they were unable to determine whether the Slays were receiving salaries; and (5) they were unable to determine what rent Mauken was paying to the Slays who still owned the building and land that Mauken was using to operate a day care center. (Rsp. Ex. H, pp. 200-214, 217-220) M.H. Miles also noted that during their visit to Fairytales on May 5, 2014, a Business Tax Registration Certificate and an Occupation Tax Registration Certificate bearing the corporation name of Terco, Inc. was observed displayed on the wall. (Testimony of Monica Miles)

70.

During the investigation, the auditors spoke only briefly with Mrs. Slay and Ms. Harris. (Miles testimony, Day 2 at 05:10:13-05:10:48)

71.

The auditors never conducted an exit interview with Ms. Harris or Mrs. Slay to discuss their findings and obtain additional information. (Miles testimony, Day 2 at 05:48:15-05:48:45,

06:21:37-06:21:59; K. Slay testimony, Day 6 at 00:42:28-00:42:39, 00:42:48-00:43:12, 00:43:45-00:44:00)

72.

At the conclusion of the audit, M.H. Miles recommended that DECAL undertake further investigation on several of the AUPs. (Miles testimony, Day 2 at 05:22:19-05:23:10, 05:47:29-05:48:15)

73.

In July 2014, two federal undercover officers visited the Mauken Fairytale. During the meeting, the undercover officers focused on who was managing the Fairytale center. At that time Mrs. Slay was serving as the director in Ms. Harris's stead. Mrs. Slay introduced herself to the officers and, at the end of their meeting, provided a business card that reflected herself as the owner of Fairytale. (Hinton testimony, Day 3 *passim*; Coble testimony, Day 3 *passim*) Mrs. Slay explained that she provided the business card because it was readily available and included the center's address and phone number. It was the old business card that Mrs. Slay had never thrown out when Terco, Inc. owned and operated the center. (K. Slay testimony, Day 6) During this visit, the two federal officers also observed, as MH Miles had, the Business Tax Registration Certificate and an Occupation Tax Registration Certificate bearing the corporation name of Terco, Inc. instead of Mauken, Inc. (Testimony of Alexander Hinton; Rsp. Ex. H)

H. Termination of Mauken, Inc. d/b/a Fairytale, Inc.

74.

On July 24, 2014, DECAL terminated Mauken from the CAPS program. Rsp. Ex. I at p. 266. The Department also revoked Ms. Harris's license citing the CAPS termination and listing three violations: (1) Ms. Harris's application as a sole proprietor rather than on behalf of

Mauken; (2) giving false information in that application; and (3) Ms. Harris's not being on premises when she listed herself as director. (Rsp. Ex I at p. 266; Rsp. Ex. K at pp. 633-636). The Department contends that Ms. Harris completed the change of ownership application knowing that Barry and Karen Slay "would be the individuals owning, operating and financially benefitting from the center," while being fully aware that Barry and Karen Slay had been terminated from participation in the CAPS program. The Department further contends that Ms. Harris "withheld this information to intentionally mislead the Department to approve her application." Rsp. Ex. K. at p. 633. On July 30, 2014, Petitioner filed an appeal.

75.

DECAL also sought recoupment of the CAPS funds paid to Mauken, Inc. for service weeks July 29, 2013 through July 14, 2014, in the amount of \$204,047, from all Petitioners on the grounds that the Fairytale center was "owned and operated by the Slays and that Barry and Karen Slay are benefitting from its operation despite the fact that Fairytale and Barry Slay have been previously dismissed from the CAPS program." Rsp. Ex. K at pp. 637-638. DECAL further contends that Barry Slay, Karen Slay and Terri Harris are jointly liable with Mauken, Inc. to repay the debt because they "conspired to create a corporation [i.e., Mauken, Inc.] with a purpose of defrauding the state." Id. at p. 639.

76.

On July 31, 2014, Petitioner requested reconsideration of the Department's decision. (Rsp. Ex. K). On August 8, 2014, the Department denied Petitioner's request for reconsideration. On August 18, 2014, Petitioner filed an appeal.

In preparation for the hearing in this matter, DECAL chose to conduct a supplemental audit. As a result of the information gathered from the M.H. Miles audit conducted in May 2014, and the supplemental audit conducted by DECAL, the Department determined that the majority of Mauken, Inc.'s bank account was being funded by CAPS funds. Therefore, whoever was receiving money or managing money in the account was essentially managing CAPS funds. The documents showed that Mr. Slay was primarily managing the account by having signed 98 checks, while Mrs. Slay had only signed 16 checks, and Ms. Harris had signed only 2 checks. (Testimony of Chereese Myree; Testimony of Rian Ringsrud; Rsp. Ex. J) The supplemental audit further revealed that Ms. Harris authorized some of Mrs. Slay's personal bills to be paid through Mauken, Inc.'s business checking account, in part, because Ms. Harris could not financially afford to pay Mrs. Slay a fair market salary for her services. (Testimony of Harris)

IV. Conclusions of Law

1.

Respondent bears the burden of proof in these matters. Ga. Comp. R. & Regs. 616-1-2-.07(1) [2014].

2.

The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4) [2014].

Mauken, Inc. Must Repay Funds It Received Under the CAPS Program

3.

CAPS Policy Manual 6700 states that "formal child care providers who participate in the state subsidized child care program must be licensed, registered or exempted by BFTS: DECAL."

CAPS Policy Manual 6701 defines a licensed provider as “a child care learning center or group day care home who is licensed and regulated by DECAL.”

4.

An improper payment in the CAPS program is defined as “any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative or other legally applicable requirement.” 72 Fed. Reg. 50, 889 (2007).

5.

As set forth in the Findings of Fact above Respondent never issued Mauken, Inc. a license to operate as a child care learning center. Since an individual or entity that receives payments under the CAPS Program must be licensed to receive such payment, and since Mauken, Inc. was never issued a license, all payments made to Mauken, Inc. are improper payments that can be recouped by Respondent.

6.

Respondent is given discretion to recover or recoup funds that are not a result of fraud, such as where the state erroneously makes a payment to an ineligible recipient. 72 Fed. Reg. 50, 889, 50, 895 (2007). In this matter, Respondent erroneously made payments to Mauken, Inc. because Petitioner Terri Harris submitted paperwork to Respondent’s contractor, Maximus, Inc., indicating that Mauken, Inc. was the day care provider. At some point Terri Harris also provided Maximus, Inc. a copy of her day care license that was issued in her name as a sole proprietor. Maximus, Inc. failed to recognize the conflicting information and issued payments to Mauken, Inc. on Respondent’s behalf. Although the improper payments were made, in part, due to a lack of oversight on the part of Maximus, Inc., Respondent is entitled to recoup these funds from Mauken, Inc. at its discretion, which it chose to exercise in this matter. Id.

7.

Based on the foregoing, the court concludes that Respondent is entitled to recoup all funds paid to Mauken, Inc. from July 29, 2013 through July 14, 2014.

8.

However, the court further concludes that Respondent is not entitled to recoup the funds from Terri Harris, Barry Slay and Karen Slay, individually, because the evidence is insufficient to prove that the aforementioned Petitioners committed fraud in having a day care license issued to Terri Harris or in having CAPS payments issued to Mauken, Inc. 45 C.F.R. 98.60(i) [2015] (payments that are made as the result of fraud shall be recovered from the party responsible for committing the fraud).

9.

To prove the fraud that it claims, DECAL must establish that the Petitioners intentionally misrepresented to DECAL their relationship, and that DECAL reasonably relied on those misrepresentations. *Summit Automotive Group, LLC, supra*, 298 Ga. App. at 880, 681 S.E.2d at 686.

10.

Respondent asserted in its initiating documents that Terri Harris's center "is being owned and operated by the Slays and that Barry and Karen Slay are benefitting from its operation." Rsp. Ex. K-1, pp. 638-39. The licensing division further asserted that Terri Harris started a new center "with full knowledge that the Slays, her parents, would be the individuals owning, operating and

financially benefitting from the center.” *See* Rsp. Ex. K, pp. 633-35.³ Subsequently, during the pendency of the appeal, Respondent conducted an internal audit and raised additional allegations. Specifically, following the internal audit Respondent further argued that (1) because Karen Slay received money from the center that she spent on household expenses, Barry Slay indirectly benefitted from CAPS funding, and (2) Barry Slay, as a signatory on the bank account, improperly had access to CAPS money. However, neither in the initiating documents or financial audits or correspondence with the Petitioners or internal DECAL e-mails did any government employee express either of these concerns. Rsp. Ex. K, pp. 633-639. For purposes of this decision, the court is focused on those allegations that led to the issuance of the notices of adverse action.

11.

First, the evidence was insufficient to establish that Barry Slay financially benefitted from the operation of the center that was owned and operated by Terri Harris. Additionally, the evidence was insufficient to establish that Karen Slay received benefits that were not commensurate with the services that she provided for the center. *See* Ringsrud testimony, Day 4 at 04:02:02-04:02:18 (no evidence of money “going into Barry Slay’s pocket”); 04:26:32-04:26:15 (Karen Slay compensation “slightly below market value”). Also, although Respondent asserted that Mauken was the alter ego of Terco Inc. or Barry and Karen Slay, Respondent presented no evidence refuting Terri Harris’s sworn testimony that she is the sole shareholder of Mauken. Moreover, Mr. and Mrs. Slay received none of the profits of Mauken, and there was

³ The audit that DECAL provided to Petitioners mentions the fact that the CAPS contract was with Mauken, which did not have a proper license, but none of the initiating documents lists that problem as grounds for recoupment from Mauken. Rsp. Ex. K at pp. 633-638. Rather, DECAL has concentrated on the claim of fraud, apparently because it believes that is the only way that it can recoup the funds from the individual Petitioners. Ringsrud testimony, Day 4 at 04:46:57-04:47:27.

no evidence to rebut sworn testimony that neither of the Slays were entitled to anything beyond compensation for services rendered.

12.

Second, the evidence shows that Terri Harris decided to assume ownership of Barry and Karen Slay's former day care center after Respondent both revoked the day care license held by Terco, Inc., the corporation owned by Barry and Karen Slay, and terminated the CAPS contract with Terco, Inc.⁴ Respondent argued that Terri Harris and Barry and Karen Slay conspired to have the day care licensed in Terri Harris' name only while Barry and Karen Slay were to be the "real owners" of the day care center. However, despite Respondent's assertion that Terri Harris attempted to conceal her parent-child relationship to the Slays, and despite Respondent's assertion that Terri Harris attempted to conceal the Slay's involvement in her operation of the day care center, Terri Harris from the moment of her application did not hide the fact that the Slays were connected to the new center. For example, Terri Harris disclosed to Respondent that she would be leasing the property from Karen Slay and provided a copy of the lease agreement. Additionally, on her application Terri Harris listed her email address as that of her parents company, Terco, Inc. Terri Harris also informed Respondent that her intent was for Mauken, Inc. to own the day care center. Respondent was well aware that Barry Slay was the registered agent of Mauken, Inc. and that Karen Slay was the Chief Financial Officer of Mauken, Inc. prior to Respondent approving Terri Harris' license application and participation in the CAPS

⁴ As a result of having terminated the CAPS contract with Terco, Inc., Terco was prohibited from engaging in the CAPS Program until such time that it complied with all state requirements including repayment of the identified overpayment. CAPS Manual 6714, 6715, 6808. The termination and prohibition from engaging in the CAPS Program did not extend to the officers of Terco, Inc. "The cardinal rule of corporate law is that a corporation possesses a legal existence separate and apart from that of its officers and shareholders." *Raynor v. American States Ins. Co.*, 176 Ga. App. 564, 565, 337 S.E.2d 43, 43 (1985). The law enforces the separation specifically because "a corporation shields individual shareholders and members from personal liability for the acts of the corporation, unless there is legal reason to pierce the corporate veil." *Dept. of Transp. v. McMeans*, 294 Ga. 436, 437, 754 S.E.2d 61, 63 (2014). There is no evidence that Respondent found a basis to pierce the corporate veil and extend the prohibition to Barry and Karen Slay.

program.⁵ Respondent approved the license in Terri Harris' name as a sole proprietor only because Mauken, Inc. had not yet been incorporated by the Secretary of State at the time of her application. However, Respondent was well aware that Terri Harris' intention was to eventually have the day care license transferred from her name to Mauken, Inc., and Respondent was also well aware of the Slay's connection to Mauken, Inc. Finally, Respondent was also aware that Mr. Slay had filed a complaint with the Governor's office on behalf of the new owners of Fairytale Learning Center. *See* Pet. Ex. 14.

13.

In addition to the foregoing, Respondent also asserted in its notice that Terri Harris had no signatory authority, but "the Slays" did. *Rsp. Ex. K* at p. 637, ¶ 11. However, the evidence during the hearing established that Terri Harris did have signatory authority but that she primarily relied on her father to assist her in signing checks on her behalf. *See* Day 4 at 04:21:57-04:22:01.

Respondent Did Not Prove the Basis for Revocation of Terri Harris' License

14.

In its Notice of Revocation, Respondent cites the following three violations of the Rules and Regulations for Child Care Learning Centers as its basis for revoking Terri Harris' license:

⁵ Even though Carol Hartman claimed that as of August 13, 2013 she had no knowledge of Mauken, Inc., *See* Hartman testimony, Day 1 at 3:00:18-3:01:20, she sent a follow-up e-mail that day to Johnathan Davis listing Ms. Harris as the owner of Mauken. *Pet. Ex. 46.*

1. Ga. Comp. R. & Reg. 591-1-1-.16(f), which requires in part that the application for a license, including the application for criminal records check, must be truthfully and fully completed.
2. Ga. Comp. R. & Reg. 591-1-1-.31(4), which provides that center staff shall comply with all applicable laws and regulations.
3. Ga. Comp. R. & Reg. 591-1-1-.31(1)(a), which requires in part that a center must have a director who is responsible for the supervision, operation and maintenance of the center.

15.

Regarding the first citation, Ga. Comp. R. & Reg. 591-1-1-.16(f), Respondent has not shown that Terri Harris failed to truthfully and fully complete her change of ownership application. First, Respondent asserted during the hearing that the only false information that Terri Harris provided was that “[o]n her change of ownership application, she indicated that she’s sole proprietor of the ownership.” *See* Parker testimony, Day 3 at 05:43:33-05:43:46. However, she did so only at the direction of Respondent who advised Terri Harris that she could not submit her application as a corporation because Mauken had not yet been incorporated. She was further informed by Respondent that she could later transfer her license from a sole proprietorship to a corporate license once Mauken was incorporated. In addition to the above, Respondent has also suggested that Terri Harris concealed the Slays connection to her ownership and operation of the center, but the record establishes that Terri Harris indicated on her application that she was affiliated with Barry and Karen Slay, and their company Terco, Inc. Respondent was also aware that both Barry and Karen Slay were affiliated with the new corporation that Terri Harris was in the process of incorporating, that being Mauken, Inc. Terri Harris intended to assume ownership of her parents’ former day care center but ultimately ended up relying on their assistance more

than she anticipated because the day care center was not generating enough income for Terri Harris to resign from her teaching position. Although Barry and Karen Slay were involved in the operation of the day care center, Terri Harris remained the owner of the center, the one licensed to own the center and the one who made the final executive decisions regarding the center.

16.

Regarding the second citation, Ga. Reg. 591-1-1-.31(14), Respondent has shown that Terri Harris failed to comply with all applicable laws and regulations. More specifically, Terri Harris failed to file a new business application to register her new business in accordance with Georgia Department of Revenue Rule No. 560-12-1-.09(1), (4), (7) [2013] and Georgia Department of Revenue Rule No. 560-12-1-.31 [2013]. Additionally, Terri Harris failed to conspicuously display a business certificate bearing either her name or that of Mauken, Inc. O.C.G.A. 48-8-59; Atlanta, Georgia Code of Ordinances 30-65 and 30-76 [2015]; and Georgia Department of Revenue Rule No. 560-12-1-.09(4) [2013]. Instead, the business license associated with Terco, Inc. remained displayed on the center's wall after Terri Harris assumed ownership of the center.

17.

Finally, regarding the third citation, Respondent has proven that Terri Harris was not on site at least 80% of the time as required of the designated director. However, Terri Harris did have a director in place to supervise, operate and maintain the center on her behalf. Although Terri Harris failed to formally change the named director with Respondent, it was established that this violation would not normally result in a revocation of the license but rather would only require the owner providing the name of a qualified director who is on the premises 80% of the time. *See* Parker testimony, Day 3 at 05:24:51-05:25:57; Kasfir testimony, Day 2 at 01:30:08-01:30:44.

18.

Respondent is authorized to impose sanctions against the holder of a license when the Respondent finds that the licensee has violated applicable rules and regulations. O.C.G.A. 20-1A-12. When determining the appropriateness of the sanction to be imposed, Respondent must consider the seriousness of the violation, including the circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public. Id. Based on Terri Harris failure to comply with all applicable laws, rules and regulations, and taking into consideration the miscommunications and misunderstandings that occurred between Terri Harris and Respondent, the court concludes that Respondent was authorized to determine that revocation was the most appropriate sanction to impose.

V. Decision

Based on the foregoing, the court **AFFIRMS** Respondent's recoupment of funds paid to Mauken, Inc. from Mauken, Inc., but **REVERSES** Respondent's action seeking to recoup such funds from Terri Harris, Barry Slay, and Karen Slay, individually. The court further **AFFIRMS** Respondent's revocation of Terri Harris' license to operate the day care center at issue.


HON. ANA-BEATRIZ KENNEDY
Administrative Law Judge