

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1445

BAYFRONT HMA MEDICAL
CENTER, LLC,

Appellant,

v.

DEPARTMENT OF REVENUE,

Appellee.

On appeal from a final order of the Florida Department of
Revenue.

July 28, 2021

PER CURIAM.

Bayfront HMA Medical Center, LLC appeals the final order of the Florida Department of Revenue that sustained the agency's denials of Bayfront's taxpayer contest of assessment and two applications for tax refund. Because Bayfront failed to show the final order was an erroneous interpretation of law or an illegal exercise of discretion by DOR, the final order is affirmed. *See* § 120.68(7)–(8), Fla. Stat.

The administrative proceedings stemmed from Bayfront's challenge to sales and use taxes assessed by DOR upon the rent payments Bayfront paid to its landlord. Bayfront is a for-profit LLC which leases several floors within the landlord's hospital

building for use in Bayfront’s obstetric medical business. Bayfront provides medical services to both inpatients and outpatients. Bayfront asserted in the administrative proceedings that it was exempt from the taxes at issue because: 1) its inpatient rooms were “used exclusively as dwelling units,” under section 212.031(1)(a)2., Florida Statutes, and 2) its rent payments qualified as tax exempt “sales for resale” under rule 12A-1.039(1)(b)4.–5., Florida Administrative Code, because Bayfront leases its patient space from its landlord for subsequent licensing to patients.

After a formal hearing under section 120.57, the administrative law judge made findings of fact and conclusions of law. Bayfront did not file an exception to the ALJ’s findings of fact or conclusion of law that Bayfront’s inpatient rooms were not “used exclusively as dwelling units” under section 212.031(1)(a)2. As a result, Bayfront failed to preserve for our review the agency’s denial of the “dwelling unit” exception. *See Worster v. Dep’t of Health*, 767 So. 2d 1239, 1240 (Fla. 1st DCA 2000) (holding that “a party cannot argue on appeal matters which were not properly excepted to or challenged before the agency”); *Henderson v. Dep’t of Health, Bd. of Nursing*, 954 So. 2d 77, 81 (Fla. 5th DCA 2007) (same).

Bayfront did file an exception to the ALJ’s conclusion that Bayfront’s patients were not “tenants” and the inpatient rooms were not rented or “licensed as transient accommodations by the dealer’s tenants.” *See* Fla. Admin. Code 12A-1.039(1)(b)4.–5. But in the final order, DOR rejected Bayfront’s exceptions as “founded on inaccurate statements of law . . . unsupported by the factual findings, and . . . unreasonable.” The agency found the ALJ’s conclusions of law denying the “sale for resale” exemption “more reasonable than those proposed” by Bayfront. The agency adopted the ALJ’s findings of fact and conclusions of law in full in the final order.

DOR’s conclusion that Bayfront’s patients are not “tenants” was correct under the language of the rule and given the definition of “patients” in section 383.16(3), Florida Statutes (governing regional perinatal intensive care centers). The ALJ found that “Bayfront maintains the sole control and full use of its leased space” and as such “there is no applicable tax exemption under

Florida law.” Furthermore, nothing in the context of rule 12A-1.039(3) shows that Bayfront’s lease of its obstetrics care area within the hospital for subsequent patient use and occupancy qualifies it as a “registered dealer” licensing inpatient rooms to “tenants.”

While expressing its disagreement with the agency’s legal conclusions in the final order, Bayfront fails to show that DOR misinterpreted or misapplied section 212.031, Florida Statutes, or rule 12A-1.039(1)(b), Florida Administrative Code, which requires “strict compliance” with the rule to entitle a taxpayer to an exemption. As a result, we find no ground to set aside the final order under section 120.68(7)(d) or (7)(e), Florida Statutes.

AFFIRMED.

B.L. THOMAS, BILBREY, and NORDBY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jeanette Moffa, Joseph Moffa, James F. McAuley, and Gerald Donnini II of Moffa, Sutton & Donnini P.A., Fort Lauderdale, for Appellant.

Ashley Moody, Attorney General, and Randi E. Dincher, Assistant Attorney General, Tallahassee, for Appellee.