

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES E. BETTIS,)
)
Petitioner,)
)
vs.) CASE NO. 82-453
)
DEPARTMENT OF PROFESSIONAL)
REGULATION, FLORIDA REAL)
ESTATE COMMISSION,)
)
Respondent.)
_____)

RECOMMENDED ORDER

This matter came on for hearing in Fort Lauderdale, Florida, before the Division of Administrative Hearings, by its duly designated Hearing Officer, Robert T. Benton II, on August 10, 1982.

APPEARANCES

For Petitioner: James E. Bettis, pro se

For Respondent: Lawrence S. Gendzier, Esquire
400 West Robinson Street, Room 212
Orlando, Florida 32801

After petitioner applied for licensure as a real estate salesman, respondent advised him, by letter dated December 17, 1981, of its intended denial "based on your answer to question six of the licensing application and your criminal record according to the appropriate law enforcement agency," citing "Section 475.17 and Section 475.25, Florida Statutes." Section 475.17(1), Florida Statutes (1981), requires that applicants be "honest, truthful, trustworthy, and of good character, and . . . have a good reputation for fair dealing." Petitioner requested a hearing, and the matter was referred to the Division of Administrative Hearings. See Section 120.57(1)(b)(3), Florida Statutes (1981).

FINDINGS OF FACT

1. Petitioner was arrested in 1969 for issuing a worthless check. He has also been arrested for armed robbery, for conspiracy to commit grand larceny, and for interstate transportation of a stolen boat. His only conviction came after trial on the interstate transportation of stolen goods charges. As a result of that conviction, he was sentenced to prison. In 1973, after serving two and one-half years, he was released and placed on probation.

A NEW LEAF

2. The month after he left prison, he began working for the Atlantic Sprinkler Company in Norfolk, Virginia. Petitioner has been employed continuously since. He left Norfolk to take a job with the Virginia Sprinkler Company in Richmond. In 1975, Mr. Bettis moved to Miami. He worked for Firepak as a salaried employee for three years, then began installing fire sprinkler systems as a subcontractor for Firepak and at least one other company, the business in which he was engaged at the time of hearing.

3. In 1976, petitioner remarried. He and Sheridan Lee Bettis adopted one daughter and another daughter was born to them. They own their own home and some farmland in Georgia. Since his release from prison, petitioner has not had so much as a parking ticket. Petitioner has done nothing hurtful or wrong to his wife's knowledge since 1974.

QUESTION SIX

4. Petitioner's application was not offered as an exhibit by either party. At one point during cross-examination, respondent's counsel read what he represented to be question six and petitioner's answer into the record, without objection or correction by petitioner, but counsel's representations do not constitute evidence. Nevertheless, although somewhat garbled on the point, 1/ the evidence as a whole (T. 15-17) reflects petitioner's failure to disclose all of his arrests on his application. He explained that he "was under the impression that what [was] wanted was something I had been convicted of." (T. 17.) Petitioner has finished two years of college.

PROPOSED FINDINGS CONSIDERED

5. Petitioner made a post-hearing submission, and respondent filed a proposed recommended order. To the extent proposed findings of fact have not been adopted, they have been rejected as immaterial or unsupported by the evidence adduced at hearing.

CONCLUSIONS OF LAW

6. An applicant for licensure as a real estate salesman like petitioner must "be 18 years of age, a bona fide resident of the state, honest, truthful, trustworthy, and of good character and shall have a good reputation for fair dealing." Section 475.17, Florida Statutes (1981). The law also provides:

[I]f the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for . . . chapter [475] had the applicant then been registered, the applicant shall be deemed not to be qualified, unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it shall appear to the board that the interest of the public and investors will not likely be endangered by the granting of registration. Section 475.17, Florida Statutes (1981)

Among the grounds for revocation or suspension of a real estate salesman's license or for denial of applications for licensure is having "[b]een found guilty . . . of a crime against the laws of the United States, which crime . . . involves moral turpitude or fraudulent or dishonest dealing." Section 475.25(1)(f), Florida Statutes (1981).

7. When a licensing agency like respondent has timely "set forth in writing the grounds or basis for [proposed] denial of a license," Rule 28-6.08(2), Florida Administrative Code; see Section 120.60(2), Florida Statutes (1979), "unless otherwise provided by law the applicant shall have the burden of establishing entitlement," Rule 28-6.08(3), Florida Administrative Code, by demonstrating the invalidity of the grounds for denial stated by the licensing agency. See *Department of Transportation v. J.W.C. Company, Inc.*, 396 So.2d 778 (Fla. 1st DCA 1981); *Zemour, Inc. v. State Division of Beverage*, 347 So.2d 1102 (Fla. 1st DCA 1977) (lack of good moral character found "from evidence submitted by the applicant" at 1103); see generally *Balino v. Department of Health and Rehabilitative Services*, 348 So.2d 349 (Fla. 1st DCA 1977).

8. Since the evidence showed that petitioner has been found guilty of a federal offense involving moral turpitude, it was incumbent on him to show a sufficient lapse of time and "subsequent good conduct and reputation," Section 475.17, Florida Statutes (1981), inasmuch as petitioner advanced no "other reason" within the meaning of the statute. In addition, respondent called petitioner's honesty into question for failure to disclose all of his arrests in response to question six on the application, so that petitioner also had the burden to prove his honesty, trustworthiness, good character, and good reputation for fair dealing. In this connection, respondent has cited Rule 2IV-2.27(2)(c) Florida Administrative Code, in its proposed recommended order, but there was no prior mention of the rule. See *Poirier v. Department of Health and Rehabilitative Services*, 351 So.2d 50 (Fla. 1st DCA 1977).

9. The evidence petitioner adduced consisted solely of his own testimony and that of his wife. There was no testimony as to his reputation either for fair dealing or otherwise. Notwithstanding the apparently exemplary life petitioner has led since prison, this testimony, uncorroborated by a single disinterested witness, is legally insufficient to meet petitioner's burden of proof.

RECOMMENDATION

Upon consideration of the foregoing, it is
RECOMMENDED:

That respondent deny petitioner's application for licensure as a real estate salesman.

DONE AND ENTERED this 20th day of September, 1982, in Tallahassee, Florida.

ROBERT T. BENTON II
Hearing Officer
Division of Administrative Hearings
The Oakland Building
2009 Apalachee Parkway
Tallahassee, Florida 32301
(904) 488-9675

FILED with the Clerk of the
Division of Administrative Hearings
this 20th day of September, 1982.

ENDNOTE

1/ The "question six" referred to on page 7 of the transcript is apparently a reference to interrogatories.

COPIES FURNISHED:

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