

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHARLES E. HILLYER,)
)
 Petitioner,)
)
vs.) CASE NO. 86-4016
)
OFFICE OF COMPTROLLER,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

A formal hearing was conducted on November 17, 1986 in Hearing Room 2B, Oakland Building, Tallahassee, Florida, by Stephen F. Dean assigned Hearing Officer of the Division of Administrative Hearings. This case arose upon denial of Petitioner's application of licensure as a mortgage solicitor because he lacked good character by virtue of his conviction of a felony.

APPEARANCES

For Petitioner: S. Gordon Blalock, Esquire
BLALOCK, HOLBROOK & AKEL, P.A.
2301 Independent Square
Jacksonville, Florida 32202

For Respondent: Miles Gopman, Esquire
Department of Banking and Finance
Office of the Comptroller
Suite 1302, The Capitol
Tallahassee, Florida 32399-0350

ISSUE

Whether Petitioner is qualified for licensure; specifically does he possess the good character necessary in light of his conviction of a felony.

STIPULATION

The parties stipulated and agreed at the commencement of the hearing:

A. Documents attached to Applicant's Brief as Appendix A-1 through A-11 are received into evidence as applicant's composite Exhibit 1.

B. But for his conviction of a crime involving moral turpitude, the Petitioner is otherwise qualified for licensure as a mortgage solicitor.

FINDINGS OF FACT

1. On May 27, 1986, the Petitioner, Charles E. Hillyer, III, made application under the provisions of Chapter 494, Florida Statutes, for license to engage in the business of mortgage solicitor (A-1). The application stated the fact of the applicant's conviction of a crime in the Federal Court, Middle District of Florida, in September 1983 based upon his plea of guilty to:

"knowingly, willfully and intentionally distributing a quantity of cocaine, a Schedule II controlled substance, in violation of Title 21, US Code Section 841(a)(1)."

2. Petitioner had been using cocaine for some time and under the stress of a divorce began using more cocaine. He sold two undercover police officers 27.6 grams of cocaine as part of a scheme to pay for his own drug use in early 1982. This conduct reflects adversely on the Petitioner's character and is a crime of moral turpitude.

3. The Petitioner did plead guilty to the offense described in paragraph 1 above, a felony under the Federal law, and the Court, having found the Petitioner guilty, ordered applicant to serve three years in prison, pay a fine of \$3,000 and serve a special parole term of three (3) years in an order dated September 29, 1983. Conviction of any felony constitutes an act reflecting adversely on one's moral turpitude and good character.

4. In its notification of denial (A-2), the Agency stated that Petitioner did not have "the honesty, truthfulness, and integrity required for licensure pursuant to Section 494.04, Florida Statutes."

5. The Petitioner meets all qualifications for licensure as mortgage solicitor except for the fact that he was, in 1983, convicted of a crime involving moral turpitude.

6. The Petitioner was released from federal prison at Eglin in August 1984, and was assigned to a halfway house in Jacksonville, Florida, remaining under supervision until December 21, 1984, when he secured employment with Jack Bush Toyota South, Jacksonville, Florida, in September 1984 as an auto salesman. He was then employed with Lawyers Title Insurance Corporation in Jacksonville, Florida in February 1985 as an account executive. He continued this employment after work release and up until June 16, 1986 when the applicant commenced employment as an account executive with Shearson Lehman Mortgage Corporation, Jacksonville, Florida. The Petitioner has performed no acts which would constitute practice without a license but has an offer of promotion to the position of mortgage solicitor if he can be licensed.

7. On August 21, 1986, Petitioner was notified by the Agency that his application for licensure as a mortgage solicitor was denied (A-2). Following receipt of the notice of denial the Petitioner filed a request for a hearing (A-3), and said request was granted pursuant to the Agency's letter of October 8, 1986 (A-4).

8. Petitioner has taken the required test for the license of mortgage solicitor and received a passing grade of 90.

9. Petitioner is married and has one child by his current wife. He has two children by a previous marriage to which he has regularly contributed support as required since his divorce except for the period when he was imprisoned. He is providing a stable home for his family, contributes regularly to the support of his children by his previous marriage, and leads a lawful, productive life.

10. Petitioner is active in community affairs, his church, and has obeyed all conditions of his probation and parole. He is active with the Jacksonville Board of Realtors and on both the education and communication committees; member of the South Council, Jacksonville Chamber of Commerce; President, Cypress Landing Association (Condo); Treasurer, Full Gospel Business Men's Club; Member, Servants of Christ Episcopal Church; and Loan Officer with Shearson Lehman Mortgage Corporation. The Petitioner enjoys an excellent reputation in his community and is considered honest and trustworthy.

11. In September 1986 Petitioner completed regular parole and began the special period of parole and probation. He is now eligible for early termination of the special parole but has not yet instituted proceedings to obtain early termination of parole.

12. The Petitioner admitted the serious nature of his offense. It appears his life had been changed by his punishment, and he is determined to lead an honest and upright life.

13. The principal cause of concern in the Agency is whether sufficient time has elapsed since Petitioner's conviction and sentence to determine whether Petitioner has been rehabilitated.

CONCLUSIONS OF LAW

14. This order is entered pursuant to Chapter 120, Florida Statutes. The Agency licenses mortgage solicitors pursuant to Chapter 494, Florida Statutes. Applicants may be denied if the applicant has been guilty of any of the actions outlined in Section 494.05(1), Florida Statutes. See Subsection 494.05(4), Florida Statutes. Section 494.05(1)(d), Florida Statutes, specifically provides:

"(1)(d) A crime against the laws of this state or any other state or of the United States, involving moral turpitude or fraudulent or dishonest dealing, or if a final judgment has been entered against him in a civil action upon grounds of fraud, misrepresentation, or deceit."

15. An applicant who has been convicted of a crime involving moral turpitude may demonstrate his/her rehabilitation to qualify for licensure. The burden of showing such rehabilitation is on the applicant and generally is demonstrated by good works, living in accordance with the law, being self supporting, associating with people of good character and the passage of time.

16. In the instant case, all of these conditions exist except the passage of time. However, the evidence indicates that the Petitioner has already finished his basic probation and that his conduct is exemplary. Under these circumstances, less time should be required in the Petitioner's case to establish within a reasonable certainty his rehabilitation. The Petitioner's

special probation also is a problem because while it exists, a question remains as to the sentencing court's assessment of the Petitioner's rehabilitation. The Petitioner has failed to show that he has been rehabilitated sufficiently and long enough to show the requisite degree of good character for licensure. After his release from special probation and with the passage of more time, he will have more data to support his application.

RECOMMENDATION

Based upon the foregoing, the Hearing Officer RECOMMENDS that the application of Charles E Hillyer, III be denied.

DONE and ORDERED this 3rd day of February, 1987, in Tallahassee, Florida.

STEPHEN F. DEAN
Hearing Officer
Division of Administrative Hearings
The Oakland Building
2009 Apalachee Parkway
Tallahassee, Florida 32399
904/488-9675

FILED with the Clerk of the
Division of Administrative Hearings
this 3rd day of February 1987.

APPENDIX

The Petitioner and Respondent were both permitted to file post hearing briefs and the Respondent was given the opportunity to file late filed exhibits. The Petitioner objected to the Respondent's late filed exhibits. The Petitioner's objections are well founded and the late filed exhibits are not received into the record, and are stricken.

The Respondent did not file proposed findings. The Petitioner did file proposed findings of fact which were adopted with some alterations in organization and small changes in wording with the exception of the fact that Petitioner had established his rehabilitation.

COPIES FURNISHED:

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