

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF PROFESSIONAL)
REGULATION, BOARD OF)
ACCOUNTANCY,)
)
Petitioner,)
)
vs.) CASE NO. 90-6424
)
DAVID S. LEIDER,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing in the above-styled case was held on March 14, 1991, at Sumter Correctional Institute, in Bushnell, Florida, before Stephen F. Dean, assigned Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

FOR PETITIONER: Tobi C. Pam, Esquire
Department of Professional Regulation
Northwood Centre, Suite 60
1940 North Monroe Street
Tallahassee, Florida 32399-0792

FOR RESPONDENT: David S. Leider, pro se
D.C. #118606
Sumter Correctional Institution
P.O. Box 667
Bushnell, Florida 33513-0667

STATEMENT OF THE ISSUES

Whether the Respondent is guilty of the violations alleged in the Administrative Complaint.

PRELIMINARY STATEMENT

The Petitioner filed an Administrative Complaint against the Respondent on September 17, 1990 alleging violations of Chapter 473, Florida Statutes. The Petitioner forwarded to the Division of Administrative Hearings the Respondent's request for a formal hearing. A Hearing Officer was assigned and a Notice of Hearing was issued on December 6, 1990. The Petitioner filed proposed findings of fact and conclusions of law in the form of a Proposed Recommended Order. The Appendix attached hereto and incorporated herein states which of the Petitioner's proposed findings of fact were adopted and which were rejected and why. The Respondent did not file proposed findings of fact.

FINDINGS OF FACT

1. The Respondent is a licensed certified public accountant in the State of Florida (Petitioner's Exhibit 1).

2. The Respondent's license number is AC 20884 (Petitioner's Exhibit 1).

3. The information filed by the State Attorney for the Sixth Judicial Circuit, in and for Pinellas County, Florida, in Case No. CRC-88-16361-CFANO-A, alleged that the Respondent unlawfully did solicit Detective Rick Shaw to commit the offense of murder in the first degree, an offense prohibited by Section 782.04(1)(a), Florida Statutes; and in the course of such solicitation, did command, urge, hire, or request the Mr. Shaw to engage in specific conduct which would constitute such offense or an attempt to commit such offense, to wit: to unlawfully and from a premeditated design effect the death of Zena Leider, a human being, contrary to Section 777.04(2), Florida Statutes (Petitioner's Exhibit 2).

4. On or about December 4, 1989, the Respondent was convicted in Case No. CRC-88-16361-CFANO-A of one count of solicitation to commit murder in the first degree (Petitioner's Exhibit 2).

5. On or about December 4, 1989, the Respondent was sentenced to be committed to the custody of the Department of Corrections to be imprisoned for a term of 17 years. After serving a period 12 years, the balance of the sentence shall be suspended; and he will be placed on probation for a period of five (5) years (Petitioner's Exhibit 2).

6. Daniel Hevia, CPA, was accepted as an expert in the profession of accountancy and testified concerning that profession (Transcript, pg. 24).

7. Accountancy is based upon professional judgment, both technical and ethical. People practicing accountancy must have good ethics and a strong character because of the types of judgments which have to be made in the profession (Transcript, pg. 26).

8. Accountants have to have mature judgment and maintain good mental stability because the public places a great deal of trust in CPA's (Transcript, pg. 27).

9. Good moral character means a personal history of honest, fairness, respect for the rights of others and for the laws of the State of Florida and the nation (Transcript, pg. 25).

10. The Respondent's conviction shows a lack of good judgment and an absence of ethics and good character which adversely effect the Respondent's ability to practice public accounting (Transcript, pg. 42).

11. In the opinion of Mr. Hevia, the Respondent violated Section 473.323(1)(m), Florida Statutes (Transcript, pgs. 28 and 30).

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding, pursuant to Section 120.57(1), Florida Statutes. Since this case involves proposed license disciplinary action, the Petitioner has the burden of proving the charges set

forth in the Administrative Complaint by clear and convincing evidence. Ferris v. Turlington, Case No. 69,561, Opinion filed on July 16, 1987 (Fla. 1987)

13. Section 473.323(1)(m), Florida Statutes, provides that a licensee may be disciplined for failing to maintain the good moral character as required by Section 473.306, Florida Statutes, which defines "good moral character" as a personal history of honesty, fairness, and respect for the rights of others and for the laws of the State of Florida and the nation.

14. The Petitioner has proved by clear and convincing evidence that the Respondent was convicted of soliciting someone to kill his ex-wife. In Re G.W.L., 364 So.2d 454 (1978), the Supreme Court of Florida stated, regarding a lack of good moral character, that it "includes acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and the nation." The Respondent's conviction of solicitation to murder his ex-wife, a felony, shows a lack of good moral character, contrary to Section 473.323(1)(m), Florida Statutes.

15. Section 473.323(1)(d), Florida Statutes, provides that a licensee may be disciplined for being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of public accounting or the ability to practice public accounting. The offense which the Respondent committed does not directly relate to the practice of accounting. It does relate to the Respondent's ability to practice accounting because, as stated above, it adversely impacts his moral character and good judgment. The court in Rush v. DPR, 448 So.2d 26 (1984), found that Dr. Rush's conviction for conspiracy to import marijuana "shows a lack of honesty, integrity, and judgment, and an unwillingness to abide by the laws of the State of Florida. Relying upon Rush, supra, the court, in Greenwald v. DPR, 501 So.2d 740 (1987), upheld the revocation of Dr. Greenwald's licensed based upon his conviction for solicitation to commit first-degree murder of his ex-wife, finding that his conviction was "directly related to the practice of medicine and the ability to practice medicine." While the practice of accounting does not relate to the treatment of others to save life, the Respondent, in the instant case, showed a lack of honesty and integrity and an unwillingness to abide by the laws of the State of Florida. The crime committed by the Respondent is very heinous. This case is clearly in line with Rush and Greenwald, supra, and the crime of which the Respondent was convicted relates to his ability to practice public accounting.

16. The Respondent argued that this hearing was premature and inappropriate since his conviction is on appeal. The Florida Supreme Court in The Florida Bar v. Heller, 473 So.2d 1250 (1985), in a bar discipline case, stated, "in general, the judgment of conviction of a felony is conclusive proof of the commission of the felony." There is no reason to delay the administrative hearing in this case, and the Respondent's motion for a continuance at hearing was denied.

RECOMMENDATION

Having proved that the Respondent has violated Section 473.323(1)(m), Florida Statutes, by failing to maintain good moral character; and having proved that the Respondent has violated Section 473.323(1)(d), Florida Statutes, by being convicted of a crime relating to his ability to practice public accounting, it is, therefore

RECOMMENDED that the license of the Respondent be revoked.

DONE AND ENTERED this day of June, 1991, in Tallahassee, Leon County, Florida.

STEPHEN F. DEAN
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of June, 1991.

APPENDIX TO RECOMMENDED ORDER IN CASE NO. 90-6424

The Respondent did not file proposed findings of fact.

The Petitioner filed proposed findings which were read and considered. The following proposed findings were adopted or rejected for the reasons stated:

- 1-10. Adopted.
- 11-12. Rejected, as repetitive and cumulative.
- 13-14. Adopted.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.