

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

EUGENIO PALENZUELA, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO. 94-7133  
 )  
 DEPARTMENT OF BUSINESS AND )  
 PROFESSIONAL REGULATION, )  
 BOARD OF ARCHITECTURE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted by video teleconference in this case on March 3, 1995, in Miami and Tallahassee, Florida, before Stuart M. Lerner, a duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Eugenio Palenzuela, pro se  
13282 Southwest 119th Terrace  
Miami, Florida 33186

For Respondent: William M. Woodyard, Esquire  
Assistant General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-0750

STATEMENT OF THE ISSUE

Whether Petitioner's challenge to the failing grades he received on the Pre-Design (Division A), Lateral Forces (Division E) and Materials and Methods (Division H) divisions of the June, 1994, architecture licensure examination should be sustained?

PRELIMINARY STATEMENT

By letter dated November 28, 1994, Petitioner requested a formal hearing on his challenge to the failing grades he received on the Pre-Design (Division A), Lateral Forces (Division E) and Materials and Methods (Division H) divisions of the June, 1994, architecture licensure examination. The matter was referred to the Division of Administrative Hearings on December 22, 1994, for the assignment of a hearing officer to conduct the formal hearing Petitioner had requested.

At the formal hearing, which was held on March 3, 1995, Petitioner testified on his own behalf. He also offered one exhibit into evidence.

Respondent presented the testimony of two witnesses, Arnold Butt, a practicing, Florida-licensed architect who taught architecture at the University of Florida for 32 years before his retirement from teaching, and David Paulson, the Department of Business and Professional Regulation's Director of Psychometrics and Research. In addition to the testimony of these two witnesses, Respondent offered four exhibits into evidence. All of Respondent's exhibits, as well as Petitioner's lone exhibit, were received into evidence by the Hearing Officer.

Following the conclusion of the evidentiary portion of the hearing on March 3, 1995, the Hearing Officer advised the parties on the record that their post-hearing submittals had to be filed no later than ten days following the Hearing Officer's receipt of the transcript of the hearing. On March 14, the Hearing Officer received a letter from Petitioner, dated March 10, 1995, in which he stated the following:

The day of the hearing you informed me that I had a right to formally petition the Division of Administrative Hearings for [its] recommendation to the Board of Architecture that all the answers to the questions that I had challenged be consider[ed] correct answers.

I presented my case to you with honesty and with little or no time to research and prepare for the hearing; but my testimony was obvious that I had a strong argument to the questions and answers that were challenged.

By you recommending to the Board that those answers be consider[ed] correct, it will give me a passing grade [on] Divisions A and H, which are two of the four divisions that I will need to pass in order to be able to obtain my Professional License.

At this time, I would also like to sincerely thank the Division of Administrative Hearing[s] for [its] guidance and for allowing me the opportunity to present my case which [I] feel very strong[ly] about.

The Hearing Officer received the hearing transcript of the final hearing in this case on April 11, 1995. On April 17, 1995, Respondent timely filed its post-hearing submittal. Respondent's post-hearing submittal contains, among other things, twelve proposed findings of fact. All of these proposed findings of fact have been accepted by the Hearing Officer and incorporated in substance [although not necessarily repeated verbatim] in this Recommended Order, with the exception of proposed finding of fact 6, to the extent that it states that one of the correct answers to Question 123 of Division H was "F-7" [as opposed to "K-7"]. Other than his March 10, 1995, letter to the Hearing Officer, which consists exclusively of argument, Petitioner has not filed any post-hearing submittal.

#### FINDINGS OF FACT

Based upon the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

1. Petitioner sat for the licensure examination for architects administered in June of 1994.

2. The examination consisted of various divisions.

3. Division A covered the subject of pre-design.

4. The questions in this division of the examination were machine-graded, multiple choice questions. Petitioner received a failing score of 72 on Division A.

5. Question 6 of Division A asked the examinee to identify the term used to describe the separate management units formed by ridge lines that divide the land and determine regional drainage patterns.

6. These management units are called watersheds.

7. Accordingly, the correct answer to Question 6 of Division A was "D."

8. Petitioner selected "A," "swales," as his answer to the question.

9. Swales, however, while they are used as drainage areas, are not, unlike watersheds, regional in character.

10. Petitioner's answer to Question 6 of Division A therefore was clearly incorrect.

11. Question 8 of Division A asked the examinee to identify which of the four drawings shown on the question sheet depicted a symmetric, hierarchal pattern of land use.

12. The correct answer to the question was "B."

13. Petitioner selected "C" as his answer to the question.

14. "C," however, depicted an axial, rather than a hierarchal, pattern.

15. Petitioner's answer to Question 8 of Division A therefore was clearly incorrect.

16. Question 13 of Division A tested the examinee's knowledge of the impact the increase in the number of young, professional dual-income families has had on residential neighborhoods.

17. The increase in the number of young, professional dual-income families has increased property values in older established neighborhoods, led to the building of large new suburban tracts, reduced the availability of residences that moderate income families can afford and accelerated the restoration of older neighborhoods.

18. Accordingly, the correct answer to Question 13 of Division A was "D."

19. Petitioner selected "B" as his answer to the question, which was clearly incorrect.

20. Question 20 of Division A tested the examinee's knowledge of the possible components of a market study.

21. A market study might include a windshield survey, data obtained from questionnaires and/or an analysis of competing projects. A detailed financial package, however, would not be part of a market study.

22. Accordingly, the correct answer to Question 20 of Division A was "C."

23. Petitioner selected "A" as his answer to the question, which was clearly incorrect. 1/

24. Question 28 of Division A tested the examinee's knowledge of the requirements of the national building code relating to multistory buildings.

25. The code allows, in a multistory building, two fire exits on one corridor, fan coil units utilized in office space and a fire exit that intersects two corridors. A corridor utilized as a return-air plenum, however, is not permitted under the code.

26. Accordingly, the correct answer to Question 28 of Division A was "C."

27. Petitioner selected "D" as his answer to the question, which was clearly incorrect.

28. Question 53 of Division A asked the examinee to identify the most dominant design feature of the structures depicted on the question sheet.

29. The correct answer to Question 53 of Division A was "C," "facade rhythm."

30. The structures depicted did not display vertical harmony inasmuch as their facades were different.

31. Accordingly, the answer selected by Petitioner, "A," "vertical harmony," was clearly incorrect.

32. Division E of the examination covered the subject of lateral forces. The questions in this division of the examination were machine-graded, multiple choice questions. Petitioner received a failing score of 73 on Division E.

33. Question 14 of Division E tested the examinee's knowledge of the factors which determine the maximum lateral-load and shear capacity of a plywood roof diaphragm.

34. These factors include nail size, nail penetration, plywood thickness and plywood species.

35. Accordingly, the correct answer to Question 14 of Division E was "D," not "C," the answer Petitioner selected. 2/

36. Division H of the examination covered the subject of materials and methods. The questions in this division of the examination were machine-graded, multiple choice questions. Petitioner received a failing score of 74 on Division H.

37. Question 21 of Division H tested the examinee's knowledge of the requirements of the model building code relating to the dimensions of a Class A interior stairway in a newly constructed multistory building serving an occupant load of 100.

38. The correct answer to the question was "D," "60 inches."

39. Petitioner selected "C," "48 inches," as his answer to the question.

40. Although the Americans with Disabilities Act (ADA) requires that Class A interior stairways in multistory buildings have a minimum clear width of 48 inches between the handrails, question 21 of Division H was based upon the requirements of the model building code, not the requirements of the ADA.

41. Accordingly, Petitioner's answer to the question was clearly incorrect.

42. Questions 121 through 123 of Division H tested the examinee's knowledge of the components of an inverted (IRMA) roof system.

43. There were two correct answers to Question 123, "F-9" ("membrane") and "K-7" ("vapor barrier"). Petitioner selected one of these answers, "F-9," and received credit for answering the question correctly.

44. Each of the foregoing questions (Questions 6, 8, 13, 20, 28 and 53 of Division A, Question 14 of Division E, and Questions 21 and 123 of Division H) was clearly and unambiguously worded, provided sufficient information to select a correct response and required the application of knowledge that a qualified candidate for licensure as a registered architect should possess.

#### CONCLUSIONS OF LAW

45. Any person seeking to be licensed as a registered architect in the State of Florida must apply to the Department of Business and Professional Regulation to take the licensure examination. Section 481.209(1), Fla. Stat.

46. The licensure examination consists of nine parts or divisions: Division A (Pre-Design); Division B (Site Design); Division C (Building Design); Division D (Structural Technology: General); Division E (Structural Technology: Lateral Forces); Division F (Structural Technology: Long Span); Division G (Mechanical, Plumbing, Electrical and Life Safety); Division H (Materials and Methods); and Division I (Construction Documents and Services). Rules 61G1-14.001 and 61G1-14.002, Fla. Admin. Code.

47. Divisions A, D, E, F, G, H, I, and part of Division B are machine graded, multiple choice examinations. Rule 61G1-14.003(1), Fla. Admin. Code.

47. For each of these divisions, a passing score is 75 or greater. Rule 61G1-14.004(1), Fla. Admin. Code.

48. Following the examination, applicants are entitled to review their examination answers, the examination questions and the grading key. Rule 61G1-14.005, Fla. Admin. Code.

49. Applicants who have a failing score and believe that an error was made in the grading of their examination may request a hearing pursuant to Chapter 120, Florida Statutes. Section 455.229, Fla. Stat.

50. The burden is on the applicant at hearing to establish by a preponderance of the evidence that his examination was erroneously or improperly graded. See Harac v. Department of Professional Regulation, Board of Architecture, 484 So.2d 1333, 1338 (Fla. 3d DCA 1986); Florida Department of Health and Rehabilitative Services v. Career Service Commission, 289 So.2d 412, 414 (Fla. 4th DCA 1974).

51. In the instant case, Petitioner requested a hearing to contest the failing scores he received on Divisions A, E and H of the licensure examination for architects administered in June of 1994. His challenge is directed to the grading of his answers to Questions 6, 8, 13, 20, 28 and 53 of Division A, Question 14 of Division E, and Questions 21 and 123 of Division H.

52. The record reveals that, despite Petitioner's belief to the contrary, he has already been given credit for his answer to Question 123 of Division H.

53. With respect to the other questions at issue, Petitioner has failed to show that any of these questions was unclear, ambiguous or in any other respect unfair or unreasonable, nor has he demonstrated that he was erroneously or improperly denied credit for his answers to these questions. Accordingly, in declining to award him credit for his answers to these questions, those grading his examination did not act arbitrarily or without reason or logic.

54. In view of the foregoing, Petitioner's challenge to the failing scores he received on Divisions A, E and H of the licensure examination for architects administered in June of 1994, is without merit and therefore no adjustment should be made to these scores.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

RECOMMENDED that the Board of Architecture enter a final order rejecting Petitioner's challenge to the failing scores he received on Divisions A, E and H of the licensure examination for architects administered in June of 1994.

DONE AND ENTERED in Tallahassee, Leon County, Florida, this 19th day of April, 1995.

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STUART M. LERNER  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of April, 1995.

ENDNOTES

1/ Petitioner conceded at hearing that his answer to Question 20 of Division A was incorrect.

2/ At hearing, Petitioner acknowledged that his answer to Question 14 of Division E was wrong.

COPIES FURNISHED:

Eugenio Palenzuela  
13282 Southwest 119th Terrace  
Miami, Florida 33186

William M. Woodyard, Esquire  
Assistant General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-0750

Angel Gonzalez, Executive Director  
Board of Architecture  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792

Linda Goodgame, General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street, Suite 60  
Tallahassee, Florida 32399-0792

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 of time 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.