

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KENNETH GAUTHREUX,)
)
 Petitioner,)
)
 vs.) CASE NO. 96-0511
)
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION, BOARD)
 OF ARCHITECTURE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on March 29, 1996, in Miami, Florida, before Errol H. Powell, a duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Kenneth Gauthreaux, Pro Se
15151 Southwest 128th Avenue
Miami, Florida 33186

For Respondent: R. Beth Atchison
Assistant General Counsel
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792

STATEMENT OF THE ISSUE

The issue for determination at final hearing is whether the Petitioner is eligible for licensure by the Board of Architecture.

PRELIMINARY STATEMENT

In June 1995, Kenneth Gauthreaux (Petitioner) took the Pre-Design part of the Architectural Examination. A minimum grade of 75 was required to pass. The Department of Business and Professional Regulation, Board of Architecture (Respondent) notified Petitioner that he had failed the Pre-Design part having received a grade of 73. By letter dated November 7, 1995, Petitioner challenged four items on the examination and requested a formal hearing.

On January 29, 1996, this matter was referred to the Division of Administrative Hearings. A hearing was scheduled pursuant to written notice.

At hearing, Petitioner testified on his own behalf and entered six exhibits into evidence. Respondent presented the testimony of two witnesses and entered four exhibits into evidence.

Subsequent to the hearing, Petitioner submitted "Additional Evidence". No motion was made by Petitioner for the admission of late-filed exhibits either prior to adjourning the hearing or with the filing of the "Additional Evidence". The late-filed exhibits are not admitted and have not been considered in this recommended order.

A transcript of the hearing was ordered. The parties submitted proposed findings of fact which are addressed in the appendix to this recommended order.

FINDINGS OF FACT

1. In June 1995, Kenneth Gauthreaux (Petitioner) took the Pre-Design part of the Architecture Examination (Examination).

2. A minimum grade of 75 is required to pass the Examination. The Department of Business and Professional Regulation, Board of Architecture (Respondent) notified Petitioner that he had failed the Examination having received a grade of 73.

3. The Examination is a national examination and is graded by national examiners. Respondent issues licenses to practice architecture in the State of Florida and administers the Examination on behalf of the State.

4. Petitioner challenges, as invalid, the answers selected by the national examiners to questions 9, 16, 73, and 122 of the Examination, which are A, C, A, and D, respectively. Petitioner selected answers B, A, B, and C to the questions, respectively.

5. At hearing, Petitioner withdrew his challenge to question 73, answer A.

6. As the Examination is a national examination, in answering the questions, what is generally occurring nationally, as opposed to locally, is controlling. For example, local codes are not applicable.

7. The correct answers to questions 9, 16, and 122 are the answers identified by Respondent as the answers by the national examiners, i. e., A, C, and D, respectively. The answers selected by Petitioner are not correct.

8. The challenged questions and answers are supported by reference materials which are approved and generally accepted in the national architecture community.

9. The scope of knowledge required for the challenged questions and answers is not beyond the knowledge reasonably expected from a candidate for licensure.

10. The challenged questions contain sufficient information for a candidate for licensure to select the correct answer.

11. The challenged questions are clear and unambiguous.

12. The challenged questions are not arbitrary or capricious.

13. The challenged questions are not devoid of logic or reason.

14. The challenged questions are valid.

15. Statistics indicate that 77 percent of the candidates for licensure (candidates), who took the Examination, answered question 9 correctly; 64 percent of the candidates answered question 16 correctly; and 54 percent of the candidates answered question 122 correctly.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto, pursuant to Subsection 120.57(1), Florida Statutes.

17. The burden of proof is upon Petitioner to show by a preponderance of evidence that the Examination was faulty, or questions worded arbitrarily or capriciously, that his answers were arbitrarily or capriciously graded, or that the grading process was devoid of logic and reason. *Harac v. Department of Professional Regulation, Board of Architecture*, 484 So.2d 1333, 1338 (Fla. 3d DCA 1986); *State ex rel. Glaser v. Pepper*, 155 So.2d 383 (Fla. 1st DCA 1963); *State ex rel. Topp v. Board of Electrical Examiners for Jacksonville Beach*, 101 So.2d 583 (Fla. 1st DCA 1958).

18. Petitioner has failed to satisfy his burden of proof.

19. Rule 61-11.012, Florida Administrative Code, provides in pertinent part:

(1)...If the examination being challenged is an examination developed by or for a national board, council, association, or society (hereinafter referred to as national organization), the Department shall accept the development and grading of such examination without modification.

20. Petitioner is not entitled to credit for the challenged questions.

RECOMMENDATION

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

RECOMMENDED that the Department of Business and Professional Regulation, Board of Architecture enter a final order dismissing Kenneth Gauthreaux's examination challenge and denying him licensure.

DONE AND ENTERED this 26th day of July, 1996, in Tallahassee, Leon County, Florida.

ERROL H. POWELL, 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 26th day of July, 1996.

APPENDIX

The following rulings are made on the parties' proposed findings of fact:

Petitioner's Proposed Findings of Fact Introductory Paragraphs

- Paragraph 1. Rejected as being argument, or conclusions of law.
- Paragraph 2. Rejected as being not supported by the evidence presented.

Question No. 122

- Paragraph 1. Rejected as being unnecessary, argument, or conclusions of law.
- Paragraph 2. Rejected as being not supported by the evidence presented, argument, or conclusions of law. (The "Additional Evidence" is not admitted into evidence. See, the Preliminary Statement.)
- Paragraph 3. Rejected as being subordinate.
- Paragraph 4. Rejected as being subordinate, argument, or conclusions of law.
- Paragraph 5. Rejected as being subordinate.
- Paragraph 6. Rejected as being subordinate, or unnecessary.
- Paragraph 7. Rejected as being argument, or a conclusion of law.

Question No. 16

- Paragraph 1. Rejected as being not supported by the evidence presented, argument, or conclusion of law.
- Paragraph 2. Rejected as being not supported by the evidence presented, argument, or a conclusion of law.
- Paragraph 3. Rejected as being subordinate, not supported by the evidence presented, argument, or conclusions of law.
- Paragraph 4. Rejected as being argument, or conclusions of law.

Question No. 9

- Paragraph 1. Rejected as being argument, or conclusions of law.
- Paragraph 2. Rejected as being subordinate, unnecessary, or argument.
- Paragraph 3. Rejected as being argument, or conclusions of law.
- Paragraph 4. Rejected as being argument, or conclusions of law.
- Paragraph 5. Rejected as being argument, or conclusions of law.
- Paragraph 6. Rejected as being subordinate, or unnecessary.

Paragraphs 7, 8, and 9 are not considered part of Petitioner's proposed findings of fact, but part of his proposed conclusions of law. If Petitioner intended the said Paragraphs to be part of his proposed findings of fact, they are rejected as being argument, or conclusions of law.

Respondent's Proposed Findings of Fact

1. Partially accepted in finding of fact 1.
2. Partially accepted in finding of fact 2.
3. Partially accepted in finding of fact 2.
4. Partially accepted in finding of fact 2.
5. See Preliminary Statement.
6. See Preliminary Statement.
7. Partially accepted in finding of fact 4.
8. Partially accepted in finding of fact 4.
9. Partially accepted in finding of fact 7.
10. Partially accepted in finding of fact 11.
11. Partially accepted in finding of fact 10.
12. Partially accepted in finding of fact 8.
13. Partially accepted in finding of fact 9.
14. Partially accepted in finding of fact 13.
15. Partially accepted in finding of fact 6.
16. Partially accepted in finding of fact 15.
17. Partially accepted in finding of fact 15.
18. Partially accepted in finding of fact 15.
19. Rejected as being subordinate.

NOTE--Where a proposed finding has been partially accepted, the remainder has been rejected as being subordinate, irrelevant, unnecessary, cumulative, not supported by the greater weight of the evidence, not supported by the evidence presented, argument, or a conclusion of law.

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.