

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHERYL R. WIERZBA,)
)
 Petitioner,)
)
 vs.) Case No. 98-0820
)
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION, BOARD)
 OF LANDSCAPE ARCHITECTURE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a Section 120.57(1) hearing was held in this case on July 22, 1998, by video teleconference at sites in Orlando and Tallahassee, Florida, before Stuart M. Lerner, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Cheryl R. Wierzba, pro se
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For Respondent: R. Beth Atchison, Esquire
Department of Business and
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Office of the General Counsel
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STATEMENT OF THE ISSUE

Whether Petitioner's challenge regarding the June 1997 landscape architecture licensure examination should be sustained.

PRELIMINARY STATEMENT

By letter dated December 6, 1997, Petitioner requested "a formal hearing before the Division of Administrative Hearings pursuant to Section 120.57(1), Florida Statutes," on her challenge regarding parts 2(7), 4 and 5 of the June 1997 national landscape architecture licensure examination. On February 19, 1998, the matter was referred to the Division of Administrative Hearings (Division) for the assignment of an administrative law judge to conduct the hearing Petitioner had requested.

As noted above, the hearing was held on July 22, 1998. At the outset of the hearing, the parties advised that Petitioner's challenge concerning parts 4 and 5 of the examination was moot inasmuch as, subsequent to initiating her challenge, she had retaken and received passing grades on those parts of the examination.

Petitioner and Clarence Chafee, the Executive Director of the Council of Landscape Architectural Registration Boards, were the only two witnesses to testify at the final hearing. In addition to their testimony, a total of 14 exhibits (Petitioner's Exhibits 1 through 9 and Respondent's Exhibits 1 through 5) were offered and received into evidence.

At the conclusion of the evidentiary portion of the hearing, the undersigned announced, on the record, that if the parties desired to file proposed recommended orders, they had to do so within 14 days from the date the transcript of the final hearing

was filed with the Division. The hearing transcript was filed on August 10, 1998.

On August 5, 1998, Petitioner filed a motion requesting that the record in the instant case be reopened so that she could offer, and the undersigned could receive, an additional exhibit, a letter dated July 29, 1998, from Bret D. Hammond to Petitioner (which Petitioner asked be marked as Petitioner's Exhibit 10). On August 7, 1998, the undersigned issued an Order, which provided as follows:

No later than 12 days from the date of this Order, Respondent shall file a written response to Petitioner's motion if it opposes the motion. Petitioner's motion will be deemed to be unopposed if no such written response is timely filed.

Not having received any written response to Petitioner's motion, the undersigned, on August 25, 1998, issued an order granting the motion and receiving Petitioner's Exhibit 10 into evidence.

Petitioner and Respondent filed their proposed recommended orders on August 5, 1998, and August 27, 1998, respectively. These proposed recommended orders have been carefully considered by the undersigned.

FINDINGS OF FACT

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

1. In June of 1994, Petitioner took the national landscape architecture licensure examination (LARE).

2. LARE is an examination developed, administered and graded by the Council of Landscape Architectural Registration Boards (CLARB).

3. The 1994 version of LARE, like all subsequent pre-1997 versions of the examination, contained seven parts: Legal and Administrative Aspects of Practice (part 1), Programming and Environmental Analysis (part 2), Conceptualization and Communication (part 3), Design Synthesis (part 4), Integration of Technical and Design Requirements (part 5), Grading and Drainage (part 6) and Implementation of Design Through the Construction Process (part 7). Three of the seven parts of the examination, parts 1, 2 and 7, consisted of multiple choice questions. Parts 2 and 7 had 90 and 120 questions, respectively. The passing score for each part of the examination was 75.

4. On the June 1994 examination, Petitioner received a passing grade of 75 on part 2 and failing grade of 69 on part 7.

5. In June of 1995, Petitioner retook part 7 of the examination (as well as four other parts of the examination she had failed in 1994).

6. Petitioner received a failing grade of 71 on part 7 of the June 1995 examination.

7. After receiving her scores on the June 1995 examination, Petitioner sent a letter, dated October 10, 1995, to the Department of Business and Professional Regulation (Department), which read as follows:

Pursuant to Section 120.57(1), Florida Statutes, I would like to petition for a formal hearing before the Division of Administrative Hearings.

I am disputing my scores achieved on the Landscape Architecture Registration Examination (LARE) for sections 3, 4, 5 6 and 7. The reason I am disputing the score on these sections is because I was comfortable with the examination format, paid specific attention to detail and felt confident that I had successfully designed appropriate buildable solutions to the problems meeting or exceeding minimum competency.

The procedures for requesting a formal hearing were written with what appear to be contradictions and therefore I am enclosing a copy that was mailed to me. Since the information pamphlet specifically states that NO CHALLENGES TO SECTIONS 1 THRU 7 OF THE EXAMINATION WILL BE ACCEPTED, it is not clear then why it states that a candidate electing to review the examination for the purpose of submitting challenges is then stated. I did call the Department of [Business and Professional] Regulation and spoke with JoAnn Richardson at the Bureau of Testing for clarification. In my first conversation with her, she stated that I would be able to request a pre-hearing review in order to accurately challenge my scores. In a second conversation with her on that same day, she then said that it would be O.K. to go to the review and then submit this letter of petition for a formal hearing. Since the dates in this pamphlet do not accurately reflect our conversation, I asked her if she could write it in a letter for me so that I was confident that I would not miss the deadline to file for this petition. I have not received this letter from her and therefore am petitioning for a formal hearing at this time with a request for a pre-hearing review of my examination.

8. Petitioner received a letter from the Department, dated October 27, 1995, acknowledging receipt of her October 10, 1995, letter and advising her that her letter had been "forwarded to the Office of the General Counsel for review

and action."

9. No action, however, was subsequently taken on the matter.

10. Petitioner telephoned the Department on several occasions to ascertain the status of her hearing request. She was told that she would be notified when a hearing was scheduled. Such notification, however, never came.

11. Petitioner therefore applied to retake, in June of 1996, those parts of the LARE she had not yet passed, including part 7.

12. The Pre-Exam Orientation Information booklet that CLARB sent to candidates before the June 1996 examination alerted candidates to the following:

1996 will be the last time to take Sections 2 and 7 of the LARE separately. In 1997, Sections 2 and 7 of the current test will be combined into a new Section 2(7)- Analytical and Technical Aspects of Practice. If a candidate does not pass both Sections 2 and 7 separately in 1996 he/she will be required to complete the new Section 2(7).

13. Petitioner received a failing grade of 74 on part 7 of the June 1996 examination.

14. She did not take any steps to challenge this failing grade.

15. The revisions announced in the 1996 Pre-Exam Orientation Information booklet were made to the 1997 version of the LARE. Parts 2 and 7 of the examination were replaced by a new part 2(7), entitled "Analytical and Technical Aspects of

Practice," which consisted of 130 multiple choice questions. This new part of the examination tested the same general knowledge, skills and abilities as had parts 2 and 7 of the previous examinations, but did so in a more efficient manner.

16. In June of 1997, Petitioner took part 2(7) of the examination and received a failing grade.

17. The failing score that Petitioner received on part 2(7) of the June 1997 examination, and the failing scores that she received on part 7 of the 1994, 1995, and 1996 examinations, are reliable indicators of her competency in the areas tested at the time she took the examinations. These failing scores reflect her failure to meet minimum competency in the areas tested, as determined by the panel of experts who set the passing scores for these examinations.

CONCLUSIONS OF LAW

18. A person seeking licensure to engage in the practice of landscape architecture in Florida must take and pass a licensure examination. Sections 481.309 and 481.311, Florida Statutes.

19. At all times material to the instant case, the licensure examination for landscape architects has consisted of the LARE (as allowed by Section 455.217(1)(d), Florida Statutes¹), plus a part "on the specialized aspects of the practice of landscape architecture in this state" (in accordance with the requirements of Section 481.309(2), Florida Statutes).

20. At all times material to the instant case, Rule 61G10-11.001, Florida Administrative Code, a rule adopted by the Board of Landscape Architecture (Board), has prescribed the contents of the licensure examination and has provided as follows:

(1)(a) The Board [of Landscape Architecture] approves the Landscape Architect Registration Examination (LARE) developed and administered by the Council of Landscape Architectural Registration Boards and specifies that it

will be the licensing examination administered by the Department on the subject areas set out in Sections (1)(b)1. through 7. below. The Department shall develop and administer the examination on subject area (1)(b)8. below.

(b) The examination is written and measures competency in the following subject areas:

1. Legal and Administrative Aspects of Practice;
2. Programming and Environmental Analysis;
3. Conceptualizing and Communication;
4. Design Synthesis;
5. Integration of Technical and Design Requirements;
6. Grading and Drainage;
7. Implementation of Design through Construction Process;
8. Plant materials and specialized aspects of practice in Florida, including laws and regulations.

(2) The Board adopts the passing score for the LARE as determined by the Council of Landscape Architectural [Registration] Boards (CLARB). Seventy-five is the passing score on section (1)(b)8. above.

21. The examination review procedure is set forth in Rule 61G10-11.003, Florida Administrative Code, another Board rule, which, at all times material to the instant case, has provided as follows:

(1) A candidate may review the examination questions, his answers, problem statements, and the evaluation guide used to score his answers. No candidate may copy materials provided for his review.

(2) The candidates' review will take place during regular business hours, in the presence of a representative of the Department, at the Department's official headquarters. All security rules defined in Rule 21-11.007, Florida Administrative Code, shall apply to the review session. Any candidate violating any security rule will be subject to immediate dismissal from the review session and imposition of other appropriate sanctions.

(3) Written request for a review must be received by the Department within fifteen (15) days of the date on the candidate's grade notice. Such review must be completed within sixty (60) days after the grade notice. During the review, if a candidate disagrees with his scores on any part of the examination for which objections may be submitted, the candidate may submit written objections to the examination items. Such objections must specify the reasons as to why the candidate is objecting to the item.

(4) Parts 1 through 5 of the examination as provided in Rule 61G10-11.001(1)(b)1. -- 5., F.A.C., comprise a uniform national examination with uniform grading criteria determined by the Council of Landscape Architectural Registration Boards (CLARB) and will not be subject to regrading by the Department. The review provided by this rule for those sections is purely to assist the applicant in any reexamination. Any objections submitted to Section 6 of the examination as provided in Rule 61G10-11.001(1)(b)6., F.A.C., will be evaluated and the Department may alter the score under the applicable procedures in Rule 21-11.011, F.A.C.²

22. Rule 61-11.012, Florida Administrative Code, a Department rule, likewise provides, with respect to national examinations, as follows:

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.

23. The examination at issue in the instant case, the LARE, is a national examination.

24. More specifically, at issue in the instant case is part 2(7) of the 1997 version of the LARE. Petitioner does not question the "development" or "grading" of her performance on that part of the 1997 examination. Rather, she contends that she should not have been required, in order to qualify for licensure as a landscape architect, to take this new part of the 1997 examination, which combined parts 2 and 7 of the previous version of the examination, inasmuch as she had received a passing grade on part 2 of the 1994 examination and had deserved to receive a passing grade on part 7 of both the 1995 and 1996 examinations. Petitioner's argument is without merit.

25. Pursuant to Section 481.311(2)(a), Florida Statutes, an applicant, like Petitioner, seeking to be licensed as a landscape architect (other than by endorsement) must pass (not simply come close to passing) the licensure examination before he or she may be certified for licensure by the Board. The LARE is a component of the licensure examination the applicant must pass in order to qualify for licensure. Petitioner has yet to pass all parts of the LARE. She may have come close to passing part 7 of the examination prior to 1997, but the grades that she received (in 1994, 1995, and 1996) on this part of the examination were still failing grades, which, pursuant to Rules 61-11.012, and 61G10-11.003(4), Florida Administrative Code, are not now (nor were they at any time) subject to challenge or modification.³

26. Not having received a passing grade on part 7 of the

LARE at any time prior to 1997, it was necessary for Petitioner in 1997, if she wanted to be certified for licensure, to take that part of the 1997 version of the LARE that she had yet to pass--the new part 2(7), which had replaced parts 2 and 7 of the previous version of the examination. Had part 2(7) of the 1997 examination covered only the subject matter that had been covered in part 2 of the previous version of the examination (which Petitioner had passed in 1994), the undersigned would find more persuasive Petitioner's argument that she did not need to take this new part of the examination to qualify for licensure. Part 2(7), however, also replaced part 7 of the old examination, which Petitioner had never passed. She therefore needed to take and pass this new part of the examination to qualify for licensure. She took part 2(7) of the examination in 1997, but received a failing grade (which she does not, nor could she, in light of the provisions of Rules 61-11.012, and 61G10-11.003(4), Florida Administrative Code, challenge).

27. Because Petitioner did not at any time prior to 1997 pass part 7 of the old version of the LARE, and because she has not passed part 2(7) of the most recent version of the examination, Petitioner is not qualified for licensure as a landscape architect.

RECOMMENDATION

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

RECOMMENDED that Respondent enter a Final Order finding that Petitioner is not qualified for licensure as a landscape architect because she has not yet passed the licensure examination, as required by Section 481.311(2)(a), Florida Statutes.

DONE AND ENTERED this 11th day of September, 1998, in Tallahassee, Leon County, Florida.

STUART M. LERNER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of September, 1998.

ENDNOTES

¹ Section 455.217(1)(d), Florida Statutes, authorizes "[a] board, or the department when there is no board [to] approve by rule the use of any national examination which the [D]epartment has certified as meeting requirements of national examinations and generally accepted testing standards pursuant to [D]epartment rules."

² Rule 21-11.011, Florida Administrative Code, was transferred to Rule 61-11.011, Florida Administrative Code, and then subsequently repealed effective February 13, 1996.

³ Even if these failing grades could be challenged, the outcome of the instant case would be same since the record evidence is insufficient to establish any basis upon which to conclude that one or more of the grades should be changed to a passing grade.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.

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