

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIGUEL A. TORRES,)
)
 Petitioner,)
)
 vs.) Case No. 98-1900
)
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION,)
 COMMUNITY ASSOCIATION OF MANAGERS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on July 21, 1998, by video teleconference at Miami, Florida, before SUSAN B. KIRKLAND, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Miguel A. Torres, pro se
2899 Collins Avenue
Apartment No. 1420
Miami Beach, Florida 33140

For Respondent: Thomas G. Thomas
Assistant General Counsel
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0750

STATEMENT OF THE ISSUES

Whether Petitioner's application for licensure as a community association manager by examination should be granted.

PRELIMINARY STATEMENT

By letter dated March 13, 1998, Respondent, Department of Business and Professional Regulation, Community Association of Managers (Department), denied the application of Petitioner, Miguel A. Torres (Torres), for licensure as a community association manager by examination based on his failure to establish good moral character as required by Section 468.433, Florida Statutes, and Rules 61-20.001(5)(a) and (b), Florida Administrative Code. Torres requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings for assignment to an administrative law judge. On April 27, 1998, the case was assigned to Administrative Law Judge Errol H. Powell. The case was transferred to Administrative Law Judge Susan B. Kirkland to conduct the final hearing.

At the final hearing, Petitioner testified in his own behalf. Petitioner's Exhibits A and A-1 through A-20 were admitted in evidence. Respondent presented no witnesses. Respondent's Exhibits 1-7 were admitted in evidence.

No transcript was ordered. The parties agreed to file proposed recommended orders on or before July 31, 1998. The parties timely filed their proposed recommended orders, which have been considered in rendering this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Miguel A. Torres (Torres), admitted to being sentenced on August 22, 1988, to one-year probation based on his plea of nolo contendere to the charge of carrying a concealed

weapon.

2. In July 1990 Torres pled guilty to battery on a law enforcement officer and disorderly intoxication. He was

sentenced to jail for three days and was given three-days credit for time served prior to the imposition of the sentence.

3. On October 3, 1991, Torres was found guilty of escape, resisting an officer without violence to his person, and criminal mischief based on Torres' plea of nolo contendere to those charges.

4. On October 16, 1992, Torres was adjudicated guilty of aggravated assault with a deadly weapon and battery based on his plea of nolo contendere. He was placed on probation for three years.

5. On October 16, 1992, Torres pled nolo contendere to three counts of unemployment compensation fraud and one count of grand theft. The court adjudicated him guilty of those charges, withheld sentencing, and placed Torres on probation for three years.

6. On February 2, 1994, Torres was adjudicated guilty of driving under the influence based on his plea of guilty to that offense.

7. On February 11, 1994, Torres' probation was revoked, and a sentence of three years was imposed for the crimes of aggravated assault with a deadly weapon and battery. The sentence was to run concurrently with the sentences for escape, resisting arrest without violence, criminal mischief, and driving under the influence.

8. Torres was incarcerated in the state prison system from

April 5, 1994, through June 30, 1995.

9. In his application to the Department of Business and Professional Regulation, Community Association of Managers (Department), Torres included letters of appreciation that he received in 1976 relating to his performance in the Puerto Rico Army National Guard; a letter of appreciation received from the Board of Directors of the Sunset Villas Phase III, Assn., Inc, in 1989; a recommendation letter from the General Manager of the Collins Plaza Hotel, dated April 11, 1997; a letter of appreciation from the Chairman of COM'IN dated November 1997, relating to his duties at the Collins Plaza Hotel; and a letter of appreciation from the Department of Veteran Affairs for Torres' assistance as a volunteer at the VA Medical Center during Hurricane Andrew.

10. Torres also furnished to the Department a letter from the Board of Directors of Mar Del Plata Condominium Assn., Inc., stating that Torres had demonstrated his professionalism to their satisfaction and requesting that Torres' date of examination be expedited so that Torres could accept the Board of Directors' offer of employment as manager of the condominium association.

11. Torres did not indicate on his application whether his civil rights had been restored after his felony convictions, and no evidence was presented at the final hearing to show that his civil rights had been restored.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has

jurisdiction over the parties to and the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

13. The Department denied Torres' application to take the examination for license as a community association manager on the basis that Torres failed to establish good moral character as required by Section 468.433, Florida Statutes, and Rules 61-20.001(5)(a) and (b), Florida Administrative Code. Section 468.433(1), Florida Statutes, provides:

(1) A person desiring to be licensed as a community association manager shall apply to the department to take the licensure examination. Each applicant must file a complete set of fingerprints that have been taken by an authorized law enforcement officer, which set of fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. The cost of processing shall be borne by each applicant. This department shall examine each applicant who is at least 18 years of age and who the department certifies is of good moral character.

(a) Good moral character means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

(b) The department may refuse to certify an applicant only if:

1. There is substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a community association manager; and

2. The finding of the department of lack of good moral character is supported by clear and convincing evidence.

(c) When an applicant is found to be unqualified for a license because of a lack of good moral character, the department shall furnish the applicant a statement containing its findings, a complete record of the

evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

14. Rules 61-20.001(5)(a) and (b), Florida Administrative Code, provide:

(5) Good Moral Character.

(a) Unless the division denies the application for incompleteness under paragraph (4)(a) of this rule, the division shall evaluate the application and make appropriate inquiry to determine the applicant's good moral character. Demonstration of all of the following will establish the applicant's good moral character:

1. The completion of a criminal history records check by the Florida Department of Law Enforcement and self-disclosure by the applicant that establishes that the applicant has no criminal record; and

2. The absence of civil lawsuits or administrative actions decided adversely to the applicant involving matters bearing upon moral character, including for example: fraud, dishonesty, misrepresentation, concealment of material facts, or practicing a regulated profession without a license or certificate as required by law or rule; and

3. No prior history of violations by the applicant of Chapter 468, Part VIII, Florida Statutes, any rule of the division relating to community association management, or any lawful order of the division previously entered in a disciplinary proceeding, or failing to comply with a lawfully issued subpoena of the division; and

4. The absence of other information generated in the course of the application process which negatively reflects on the applicant's moral character, for example, gross misconduct or gross negligence in the applicant's prior work experience whether or not the prior work was related to the professional responsibilities of a community association manager; and

5. That the applicant has not committed the following in connection with an

application:

a. Given to the division a check for payment of any fee when there are insufficient funds with which to pay the same, if the applicant upon notification by the division, fails to redeem the check or otherwise pay the fee within 30 days of the date of written notification by the division; or

b. Failed to provide full and complete disclosure, or failed to provide accurate information.

(b) If the applicant has failed to establish good moral character under paragraph (5)(a), the division will then consider the following additional factors to determine whether an applicant has good moral character for the purposes of licensure under Chapter 468, Part VIII, Florida Statutes:

1. If commission of a second degree misdemeanor is the only reason that the applicant did not meet the requirements of paragraph (5)(a) of this rule, the applicant will be considered to have good moral character. However, if there are also other reasons why the applicant did not meet the requirements of paragraph (5)(a) of this rule the second degree misdemeanor will be considered along with the other factors in determining the applicant's good character;

2. If the applicant committed a first degree misdemeanor or a felony, and the applicant's civil rights have been restored, this alone shall not preclude a finding of good moral character unless the crime is directly related to the professional responsibilities of a community association manager. Crimes that are deemed to be directly related to the professional responsibilities of a community association manager include, for example, fraud, theft, burglary, bribery, arson, dealing in stolen property, forgery, uttering a forged instrument, sexual battery, lewd conduct, child or adult abuse, murder, manslaughter, assault, battery, and perjury. The applicant has the burden of proving restoration of civil rights by certified true copy of government or court records reflecting such action.

3. Whether the applicant has exhibited a pattern of unlawful behavior which would indicate that the applicant has little regard for the law, rules of society, or the rights of others. All unlawful behavior, even though any one of the unlawful acts by itself might be directly related to the professional responsibilities of a community association manager. It is the applicant's repeated flaunting of or ignoring the law that evinces a lack of moral character needed to perform the duties and to assume the responsibilities of a community association manager, not the particular relationship of any one of the violations to the professional

responsibilities of a community association manager.

4. Whether the applicant is disqualified from applying for a license by reason of section 775.16, Florida Statutes, pertaining to conviction of certain offenses relating to conviction of certain offenses involving controlled substances.

5. Conduct of the applicant relied upon by the division to determine that the applicant lacks good moral character shall be directly related to the professional responsibilities of a community association manager.

6. Written evidence the division will consider in determining the applicant's good moral character shall include:

a. A statement from the applicant explaining the applicant's criminal/unlawful conduct and the reason the applicant believes the division should issue the license;

b. Evidence as to the length of time since the conduct occurred or the age of the applicant at the time the conduct occurred;

c. Evidence of successful rehabilitation;

d. Recommendations from parole or probation employees who have supervised the applicant;

e. Recommendations from the prosecuting attorney or sentencing judge;

f. Character references from individuals other than the immediate family members, who have known the applicant for 3 years or longer;

g. Police reports or transcripts which reveal the underlying facts of the crime;

h. Evidence that the conduct was an isolated occurrence contrary to the applicant's normal pattern of behavior; and

i. Evidence of community or civil activities with which the applicant has been associated. It is the applicant's responsibility to provide such mitigating evidence to the division. . . .

15. There was no evidence presented to show that Torres' civil rights have been restored. Even if Torres' civil rights

have been restored, he has been convicted of fraud, theft, assault, and battery, offenses, which pursuant to Rule 61-20.001(5)(b)2, Florida Administrative Code, are directly related to the professional responsibilities of a community association manager.

16. Torres argues that the crimes of which he has been convicted are not related to the professional responsibilities of a community association. He further argues that Rule 61-20.001(5)(b)2, Florida Administrative Code, conflicts with Section 468.433(1)(b), Florida Statutes, because the rule creates a presumption that convictions of assault, theft, fraud, and battery are directly related to the duties and responsibilities of a community association manager. Torres has not challenged the administrative rule pursuant to Section 120.56, Florida Statutes; thus, the validity of the rule is not at issue in this case.

17. Notwithstanding Rule 61-20.001(5)(b)(2), the crimes of assault, battery, fraud, and theft directly relate to the professional responsibilities and duties of a community association manager as set forth in Section 468.431(2), Florida Statutes. Fraud and theft relate to the responsibilities dealing with the control and disbursement of the funds of the association. Assault and battery are crimes against persons. As a community association manager, Torres would come in day-to-day contact with members of the association and persons who would be

performing maintenance and other services for the association.

18. In his application, Torres argues that the offenses were isolated occurrences that were contrary to his normal pattern of behavior and occurred during a brief period of time. The crimes occurred over a five and one-half year period, which is not a brief period. Torres was convicted of carrying a concealed firearm, battery on a law enforcement officer, disorderly intoxication, escape, resisting an officer without violence to his person, criminal mischief, aggravated assault with a deadly weapon, battery, unemployment compensation fraud, grand theft, and driving under the influence. Convictions of eleven offenses do not constitute isolated occurrences. Torres' conduct shows a pattern of unlawful behavior which would indicate that Torres has little regard for the law, rules of society, or the rights of others.

19. Torres lacks good moral character and is not qualified for licensure as a community association manager by examination.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Miguel A. Torres lacks good moral character and denying his application for licensure as a community association manager.

DONE AND ENTERED this 21st day of August, 1998, in Tallahassee, Leon County, Florida.

SUSAN B. KIRKLAND
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of August, 1998.

COPIES FURNISHED:

Edward Broyles
Executive Director
Regulatory Council of Community
Association of Managers
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792

Lynda L. Goodgame
General Counsel
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792

Thomas G. Thomas
Assistant General Counsel
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0750

Miguel A. Torres, pro se
2899 Collins Avenue
Apartment No. 1420
Miami Beach, Florida 33140

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.