

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BANS N. PERSAUD )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 98-2717  
 )  
 DEPARTMENT OF BUSINESS AND )  
 PROFESSIONAL REGULATION, )  
 BOARD OF ACCOUNTANCY, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, this case was heard by the Division of Administrative Hearings, through its Administrative Law Judge, David M. Maloney, on July 23, 1998, in St. Petersburg, Florida.

APPEARANCES

For Petitioner: Bans N. Persaud, pro se  
310 Ninety-Second Avenue North  
St. Petersburg, Florida 33702

For Respondent: R. Beth Atchison, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-1007

STATEMENT OF THE ISSUE

Whether Petitioner, Bans N. Persaud, should be awarded a passing grade on the "Financial Accounting" part of the Certified Public Accounting examination given on May 7-8, 1997.

PRELIMINARY STATEMENT

On June 15, 1998, the Division of Administrative Hearings received a letter from the Department of Business and Professional Regulation under the signature of R. Beth Atchison, Assistant General Counsel. The letter constituted a request that an administrative law judge be assigned to a case pending before the Board of Accountancy in the Department styled: Bans N. Persaud v. Department of Business and Professional Regulation, Accountancy Board, OGC 98-3368.

Attached to the letter was a copy of what the letter referred to as "a petition for formal hearing," from Mr. Persaud. Indeed, the petition consisted of a letter from Mr. Persaud stating:

This is an appeal against my Part 4 of the May 1997 CPA examination result. My score was 62 as compared to my score in November 1995, which was 63. I had asked for a review through NASBA and the result was "NO CHANGE."

I am making this appeal because I am very certain that I passed this examination.

Letter of Bans N. Persaud, October 31, 1997. Also attached to the Department's letter of June 15, 1998, was an examination report of the Bureau of Testing at the Department. The report showed that Bans Narayan Persaud had passed the Audit, Accounting and Reporting, and Law Exam parts of the CPA Exam in May of 1997 with scores of 75 in each part but that he had failed the Financial Accounting part of the exam with a score of 62.

The case was assigned Case No. 98-2717 and Administrative Law Judge Arnold Pollock was designated to conduct the

proceedings. Prior to hearing, the undersigned was designated to conduct the proceedings in the place of Judge Pollock.

The case proceeded to final hearing as noticed on July 23, 1998 in St. Petersburg, Florida. Both parties presented one witness. Mr. Persaud testified in his own behalf and Respondent presented the testimony of Ahva Goldman. Petitioner's Exhibits numbered 1, 2 and 3 were all received into evidence.

The transcript of the final hearing was filed on August 10, 1998. The Respondent's proposed final order was received on August 24, 1998. Petitioner did not file a proposed recommended order but did make a number of post-hearing ex parte filings which have been published and placed on the record pursuant to Section 120.66(2), Florida Statutes.

#### FINDINGS OF FACT

1. Petitioner, Bans N. Persaud, took the Certified Public Accountant Exam in May of 1997.

2. The Department of Business and Professional Regulation's Bureau of Testing notified Petitioner by Examination Grade Report dated August 4, 1997, that he had earned a score of 75.00 which was a passing grade on three parts of the exam: Audit, Accounting & Reporting, and Law Exam. The report informed him that, "CREDIT ON PASSED PARTS HAS BEEN GRANTED."

3. The report also informed Mr. Persaud that he had failed the Financial Accounting Part of the exam. On that part, he received a score of 62.00 when a minimum passing score was 75.

4. Petitioner, "very certain that [he] passed this examination," filed a letter of appeal with the Department, treated by the Department as request for a formal administrative hearing.

5. During the course of pre-hearing procedures, Mr. Persaud requested that he be allowed to audit the grading of the examination. The Department responded by pointing to Section 455.217(2), Florida Statutes, which states in pertinent part,

The board . . . shall make available an examination review procedure for applicants . . . . Unless prohibited or limited by rules implementing security or access guidelines of national examinations, the applicant is entitled to review his examination questions, answers, papers, grades, and grading key . . .

and the following language of Rule 61-11.012(6), Florida Administrative Code:

In order to preserve the security and integrity of the examination, such candidate shall be permitted to review only the questions and answers missed on the examination.

Furthermore, the Department pointed to the following excerpt of Section 119.07(3)(a), a provision of the public records law,

Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment are exempt from the provisions of subsection (1) and s.24(a), Art. I of the State Constitution [provisions which require disclosure of public record].

In light of the response, the ruling was made at hearing that the Department was not required to allow Petitioner to conduct the

requested audit. In fact, it was determined that the requested audit was a prohibited act under the force of law through the operation of Rule 61-11.012(6), Florida Administrative Code.

6. Mr. Persaud claimed that without an audit, he would not be able to prove that he had, in fact, passed the examination.

7. The examination was developed by the American Institute of Certified Public Accountants, a national organization of certified public accountants whose function it is to develop, prepare and grade the "in-force CPA exam." (Tr. 74). As such, the exam is considered a "national examination," id., developed by a national organization. About such exams, the following is stated in the rules of the Department of Business and Professional Regulation, Bureau of Testing:

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.

Rule 61-11.012(1), Florida Administrative Code.

8. The examination consisted of six questions, two of which (Questions five and six) were essays. Mr. Persaud received 36 points out of the 60 points available for question one, 2.15 out of five points available for question two, 4.38 out of five available for question three, 3.68 out of five for question four, 8.5 out of ten for question five, and 5.5 out of ten for question six, for a total of 62 points.

9. Mr. Persaud pointed to his background as a person of Indian descent (that is, from the subcontinent of India) who immigrated from Georgetown, Guyana, to the United States where, in 1984, he received U.S. citizenship. Mr. Persaud felt that lack of points on the essay for English composition, grammar and expression were due to prejudice and incorrect because of the excellent state of his English. During the hearing, it was obvious that Mr. Persaud's spoken English, although at times difficult to understand because of pronunciation, is otherwise of high quality. Whatever the state of his written English, however, had he received all points available for the essay questions he still would have failed the Finance and Accounting part of the exam with a score of 68 when a passing score of 75 was necessary.

10. It was therefore incumbent on Mr. Persaud to show more than just that improper grading of English (which he did not show) in the essay portion of the exam led to the failing grade. Mr. Persaud made no attempt to do so. To the contrary, Mr. Persaud did not show that the examination was faulty, or that it was arbitrarily worded, or that the answers to challenged questions were capriciously graded or that he was arbitrarily denied credit through a grading process of the challenged questions devoid of logic or reason. In fact, Mr. Persaud does not appear to have ever identified the questions among those that

he missed that were under challenge. He simply insisted that he had passed the exam.

11. Rather than challenge specific questions for which he was not given credit or the grading of the answers to those questions, Mr. Persaud took a different tack. He testified that immediately after passing parts 3 and 4 of the CMA in 1996, he was suddenly bombarded on a daily basis by the noise of planes from the international Airport who were assisted in some way by a Village Inn not far from his house. When he complained to the authorities, they stated that they did not fly anywhere near his house. He complained of other noises and pressures to which he was subject while trying to study and identified them as "[p]lanes at four o'clock," (Tr. 48) and a "12 part air conditioner." Id. He also complained that his computer had been sabotaged and produced documents he had composed where the word "and" appeared in a sentence when his choice, and the more appropriate word, would have been "but." (Tr. 55).

12. After this line of the challenge to the exam had been exhausted at hearing, Mr. Persaud was asked to identify the questions among those he missed that he now challenges as well as any of their answers. Aside from testimony about written English on the Essay questions, Mr. Persaud made no reference to individual questions. He chose to maintain his position that he had passed the test.

#### CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

14. Mr. Persaud failed to carry the burden of proof which is his in this proceeding. He failed to demonstrate that his answers to the questions were deserving of more credit or were arbitrarily or capriciously graded or that the questions, themselves, were somehow misleading or faulty. Once Mr. Persaud's request for an audit was denied, he made no attempt other than to assert that his English had been improperly graded, to challenge any specific question or bolster any of his answers as correct when determined to be incorrect. As for his claim with regard to the English portion of the essays, Mr. Persaud made no attempt to produce the questions or the answers for an analysis. In contrast, the Respondent put on evidence that Mr. Persaud received the correct grade for the Finance and Accounting part of the exam. Mr. Persaud's challenge, therefore, fails.

#### RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is recommended that a final order be entered denying Petitioner's challenge to the grade he received on the Financial Accounting part of the CPA Exam administered in May of 1997.

DONE AND ORDERED this 16th day of September, 1998, in Tallahassee, Leon County, Florida.

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DAVID M. MALONEY  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of September, 1998.

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 must be filed with the agency that will issue the Final Order in this case.