

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA DEPARTMENT OF LAW )  
ENFORCEMENT, CRIMINAL JUSTICE )  
STANDARDS AND TRAINING COMMISSION, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 98-4705  
 )  
ERIC C. DENOUN, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on February 17, 1999, at Fort Lauderdale, Florida, before Administrative Law Judge Michael M. Parrish of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Karen D. Simmons, Esquire  
Florida Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302

For Respondent: Eric C. Denoun, pro se  
1421 Cottonwood Circle  
Weston, Florida 33326

STATEMENT OF THE ISSUE

This is a license discipline case in which the Petitioner seeks to take disciplinary action against the Respondent on the basis of conduct alleged in an Administrative Complaint. The

Respondent is charged with failure to maintain good moral character by trespassing on the premises of another and by being naked on such premises.

PRELIMINARY STATEMENT

Immediately prior to the commencement of the final hearing, the Respondent filed and served a Motion to Dismiss. The parties were advised that disposition of the motion would be included in the Recommended Order. The parties were instructed to include their arguments for and against the motion in their respective proposed recommended orders.

At the final hearing on February 17, 1999, the Petitioner presented the testimony of four witnesses and offered nine exhibits into evidence, all of which were admitted. One Joint Exhibit was also admitted into evidence. The Respondent did not present the testimony of any witnesses and also chose not to testify on his own behalf. The Respondent did not offer any exhibits other than the one Joint Exhibit.

At the conclusion of the final hearing, the parties agreed that the deadline for filing proposed recommended orders would be ten days from the filing of the transcript. The transcript was filed with the Division of Administrative Hearings on April 16, 1999.<sup>1</sup> Thereafter, both parties filed proposed recommended orders containing proposed findings of fact and conclusions of law. The proposals submitted by the parties have been carefully considered during the preparation of this Recommended Order.<sup>2</sup>

FINDINGS OF FACT

1. The Respondent was certified as a sworn law enforcement officer by the Criminal Justice Standards and Training Commission on May 13, 1983, and was issued Law Enforcement Certificate Number 4384. The Respondent held such certification at all times material to this proceeding.

2. The Respondent began employment with the Metro-Dade Police Department in early 1983, and was so employed at all times material to this case.

3. At all times material to this case, the Respondent resided at 1421 Cottonwood Circle, Weston, Florida 33326. The Respondent's residence was one of several units in a townhouse building.

4. In December of 1991, Ms. Kimberly McDonald<sup>3</sup> resided at 1419 Cottonwood Circle, Weston, Florida 33326. Her 11-year-old daughter resided with her at that address. Ms. McDonald's residence was next door to the Respondent's residence.

5. Ms. McDonald's residence in December of 1991 had a yard and patio area at the rear of the residence. There were sliding glass doors and windows that faced the yard and patio area at the rear of the residence. That yard and patio area was enclosed by a wooden fence. The fence was slightly more than six feet high.

6. As of December 1991, Ms. McDonald had lived next door to the Respondent for approximately six months. As of December 1991, Ms. McDonald and the Respondent were casual acquaintances; neighbors who occasionally spoke to each other.

7. On the morning of December 4, 1991, Ms. McDonald left her residence and started driving towards her place of employment. Earlier that morning, Ms. McDonald's daughter had gone to school. The Respondent saw Ms. McDonald leave her residence that morning. The Respondent also knew that Ms. McDonald's daughter had gone to school and that their residence was unoccupied.

8. For reasons that are not made clear by the record in this case,<sup>4</sup> shortly after the Ms. McDonald drove away on the morning of December 4, 1991, the Respondent walked to the back of Ms. McDonald's residence, removed all of his clothes, and jumped or climbed over the wooden fence around the back yard and patio area of Ms. McDonald's residence. The Respondent then walked naked across Ms. McDonald's back yard and attempted to open one of the sliding glass doors of Ms. McDonald's residence.

9. In the meantime, before she got to her office, Ms. McDonald remembered that she had forgotten something she would need later in the day. Accordingly, she turned around and drove back home. Ms. McDonald entered her residence through the front door and had taken only a few steps into the residence when she saw the Respondent standing in her back yard, completely

naked, with one of his hands on the handle of one of the sliding glass doors. Ms. McDonald was frightened and upset by the unexpected and uninvited presence of a naked neighbor.

Ms. McDonald had never invited the Respondent into her house or into her enclosed back yard, nor had she ever given the Respondent permission to climb the fence and enter her back yard and patio area.

10. The Respondent saw Ms. McDonald at about the same time she saw him. The Respondent panicked, immediately turned away from Ms. McDonald, and ran naked towards the wooden fence. When the Respondent got to the fence, he stepped on a chair and jumped over the fence. Once over the fence, the Respondent retrieved his clothes, dressed, and returned home.

11. Ms. McDonald was very upset about finding a neighbor in her yard who appeared to be trying to enter her residence. A few minutes later, after talking to a relative, Ms. McDonald called the Broward County Sheriff's Office and reported the incident. The Sheriff's office conducted an investigation and filed criminal charges against the Respondent. Following a jury trial, the Respondent was found guilty of the offenses described in Sections 800.03 and 810.08, Florida Statutes (1991).

12. As a result of the Respondent's conduct on December 4, 1991, Ms. McDonald was concerned about the possibility that the Respondent might engage in future bizarre conduct. She also feared for the safety of herself and her daughter, because she

did not know what purpose the Respondent had in mind when he came to her house naked. Because of these concerns and fears, Ms. McDonald and her daughter immediately moved to another residence.

#### CONCLUSIONS OF LAW

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

14. Turning first to the Respondent's Motion to Dismiss, the motion is denied.<sup>5</sup>

15. In a proceeding of this nature, proof greater than a mere preponderance of the evidence must be submitted. Clear and convincing evidence is required. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932, 935, (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987; McKinney v. Castor, 667 So. 2d 387, 388 (Fla. 1st DCA 1995); Tenbroeck v. Castor, 640 So. 2d 164, 167 (Fla. 1st DCA 1994); Nair v. Department of Business and Professional Regulation, 654 So. 2d 205, 207 (Fla. 1st DCA 1995); Pic N' Save v. Department of Business Regulation, 601 So. 2d 245 (Fla. 1st DCA 1992); Munch v. Department of Professional Regulation, 592 So. 2d 1136 (Fla. 1st DCA 1992); Newberry v. Florida Department of Law Enforcement, 585 So. 2d 500 (Fla. 3d DCA 1991); Pascale v. Department of Insurance, 525 So. 2d 922 (Fla. 3d DCA 1988); Section

120.57(1)(h), Florida Statutes. ("Findings of fact shall be based on a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute.").

16. The Administrative Complaint in this case alleges, in pertinent part, that the Respondent engaged in the following conduct:

2.(a) On or about December 4, 1991, the Respondent, Eric C. Denoun, did unlawfully, without being authorized, licensed, or invited, willfully enter or remain in a structure or conveyance, to-wit: 1419 Cottonwood Circle, Fort Lauderdale, Florida, owned or leased by Kimberly McDonald. . . .

(b) On or about December 4, 1991, the Respondent, Eric C. Denoun, did unlawfully expose or exhibit his sexual organs in a public place or on the private premises of another . . . , in a vulgar or indecent manner, or so to expose his person in such place or to go or be naked in such place.

17. The conduct described immediately above has been proved by clear and convincing evidence. The unlawful nature of such conduct is established by the language of Sections 800.03 and 810.08, Florida Statutes (1991), and by the Respondent's criminal convictions for the cited offenses.

18. Rule 11B-27.0011(4), Florida Administrative Code (1991), in effect at the time of the alleged offense, defines "good moral character" for purposes of the implementation of disciplinary action upon Florida law enforcement officers. The rule states in relevant portion:

(4) For the purposes of the Commission's implementation of any of the penalties enumerated in Section 943.1395(6) or (7) a certified officer's failure to maintain a good moral character, as required by Section 943.13(7), is defined as:

\* \* \*

(b) The perpetration by the officer of an act which would constitute any of the following misdemeanor or criminal offenses, whether criminally prosecuted or not: Sections . . . 800.03, . . . 810.08, F.S., or. . . .

19. Section 800.03, Florida Statutes (1991), reads as follows in pertinent part:

It shall be unlawful for any person to expose or exhibit his sexual organs in any public place or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or so to expose or exhibit his person in such place, or to go or be naked in such place. Provided, however, this section shall not be construed to prohibit the exposure of such organs or the person in any place provided or set apart for that purpose. Any person convicted of a violation hereof shall be guilty of a misdemeanor of the first degree. . . .

20. Section 810.08, Florida Statutes (1991), reads as follows in pertinent part:

(1) Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

(2)(a) Except as otherwise provided in this subsection, trespass in a structure or



conveyance is a misdemeanor of the second degree

21. Section 810.011, Florida Statutes (1991), includes the following definition for use in Chapter 810: "(1) 'Structure' means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof."

22. It is clear from the facts in this case that the Respondent has failed to maintain good moral character. With regard to such failure, Section 943.1395(6), Florida Statutes, authorizes the Criminal Justice Standards and Training Commission (Commission) to impose penalties which may include revocation, suspension, probation, and/or reprimands. Upon consideration of the Commission's disciplinary guidelines, the appropriate penalty in this case is revocation of the Petitioner's law enforcement certification.

#### RECOMMENDATION

Based on all of the foregoing, it is RECOMMENDED that a final order be issued in this case finding that the Respondent committed the violations charged in the Administrative Complaint and imposing a penalty consisting of the revocation of the Respondent's law enforcement certification.

DONE AND ENTERED this 27th day of May, 1999, in Tallahassee,  
Leon County, Florida.

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MICHAEL M. PARRISH  
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  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of May, 1999.

ENDNOTES

- 1/ An amended transcript was filed on April 27, 1999.
- 2/ The findings of fact and conclusions of law proposed by the Petitioner are, for the most part, consistent with the views reached by the Administrative Law Judge following a consideration of all of the evidence and argument submitted by the parties. Accordingly, portions of the Petitioner's Proposed Recommended Order have been incorporated into this Recommended Order.
- 3/ Ms. McDonald is now known by a different last name.
- 4/ Although the Respondent did not testify at the final hearing in this case, the exhibits in this case include statements made by the Respondent under oath on other occasions, including his testimony at the criminal trial that arose from his actions on December 4, 1991. The Respondent's prior statements about why he was naked in Ms. McDonald's back yard are not worthy of belief. To the contrary, they are illogical, are inconsistent from one telling to the next, and in many details appear to be intentionally false statements.
- 5/ In addition to being untimely, the motion also lacks merit because it is based in part on factual details different from those proved at the final hearing, and it is based in part on erroneous interpretations of the applicable legal principles.

COPIES FURNISHED:

Karen D. Simmons, Esquire  
Florida Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302

Eric C. Denoun  
1421 Cottonwood Circle  
Weston, Florida 33326

A. Leon Lowry, II, Program Director  
Division of Criminal Justice  
Professionalism Services  
Florida Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302

Michael Ramage, General Counsel  
Florida Department of Law Enforcement  
Post Office Box 1489  
Tallahassee, Florida 32302

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.