

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TOM GALLAGHER, AS COMMISSIONER)
OF EDUCATION,)
)
Petitioner,)
)
vs.) Case No. 00-4018PL
)
COSTA LEMPESIS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on December 5, 2000, in Tallahassee, Florida, before Administrative Law Judge Don W. Davis of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: William B. Graham, Esquire
Graham, Moody & Sox, P.A.
215 South Monroe Street, Suite 600
Tallahassee, Florida 32301

For Respondent: No Appearance

STATEMENT OF THE ISSUE

Whether Respondent committed the offenses set forth in Administrative Complaint and, if so, what penalties should be imposed?

PRELIMINARY STATEMENT

On August 21, 2000, Tom Gallagher, as the Commissioner of Education (Petitioner), filed an Administrative Complaint

alleging that Costa Lempesis (Respondent), had violated various Sections of Chapter 231, Florida Statutes. Respondent is alleged to have failed to disclose, when he executed his sworn application for a Florida teacher's certificate on November 26, 1996, that he had previously pled guilty to a charge of assault and battery and disturbing schools on or about March 18, 1996. Petitioner contends that the failure to disclose by Respondent is tantamount to receiving a teacher's certificate by fraudulent means, a violation of Section 231.2615, Florida Statutes, and constitutes gross immorality by Respondent, reducing his effectiveness as a teacher. Additionally, Respondent is deemed to have violated Section 231.17, Florida Statutes, as a result of failure to exhibit good moral character. These violations are also considered violative of the Principles of Professional Conduct for the education profession.

Respondent subsequently requested a formal administrative hearing. The matter was then transferred to the Division of Administrative Hearings to conduct formal proceedings pursuant to Section 120.57(1), Florida Statutes.

At the hearing, Petitioner presented six exhibits. Respondent did not appear and no evidence or testimony was presented on his behalf. No transcript of the final hearing was provided.

Petitioner filed a Proposed Recommended Order on December 15, 2000. Respondent did not file any post-hearing submissions.

The Proposed Recommended Order submitted by Petitioner has been duly considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent holds Florida Education Certificate No. 460644, covering the areas of Educational Leadership and Social Science. The license is valid through June 30, 2001.

2. At all times material to this proceeding, Respondent was employed as a substitute teacher at Marathon High School in the Monroe County School District.

3. On or about November 26, 1996, Respondent submitted an application for renewal of a Professional Florida Educator's Certificate to Petitioner's Bureau of Teacher Certification. On the application, Respondent checked "no" in response to the following question:

Have you ever been convicted of a crime, found guilty, or entered a plea of nolo contendere or had adjudication withheld in a criminal proceeding; or are there any criminal charges now pending against you. Failure to answer this question accurately could cause denial of certification.

4. By indictment of the grand jury convened in Pickens County, South Carolina, on June 22, 1995, Respondent was charged with "Assault and Battery of a High and Aggravated Nature" and with the offense of "Disturbing Schools." Respondent pled guilty to the charge of Disturbing Schools and the lesser charge of

"Simple Assault and Battery" on March 18, 1996. He received a sentence of a \$200 fine and a suspended 90 days jail sentence.

5. On or about October 6, 2000, Petitioner submitted its First Request for Admissions to Respondent. Respondent failed to answer, admit, or deny the truth of the matters asserted in the request; namely, that Respondent submitted the application for renewal of a Professional Florida Educator's Certificate in the manner and form described in paragraph 3, above, and that he pled guilty to the criminal charges described in paragraph 4, above. Pursuant to Rule 1.370(b), Fla. R. Civ. P., the truth of the matters asserted in the request is conclusively established.

CONCLUSIONS OF LAW

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

7. The Petitioner bears the burden of proof in this proceeding. The evidence must be clear and convincing. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

8. Pursuant to Section 231.2615(1), Florida Statutes, the Education Practices Commission is empowered to take punitive action against the holder of a Florida teaching certificate based upon the grounds enumerated in the statute. The disciplinary actions, which may be imposed by the Commission, range from probation to revocation of certification.

9. The evidence clearly and convincingly demonstrates that Respondent fraudulently obtained his teaching certificate through failure to disclose his criminal past in the course of the application process. Such fraud is one of the proscribed actions for which discipline pursuant to Section 231.2615(1), Florida Statutes, may be imposed.

10. An examination of the Principles of Professional Conduct for the Education Profession as set forth in Rule Chapter 6B-1.006, Florida Administrative Code, also reveals that Respondent has violated Rule 6B-1.006(5)(i) of that Chapter, proscribing fraudulent action such as that indulged in by Respondent in this case.

11. Petitioner has met its burden in this case and justifiably requests that Respondent's teaching certificate be revoked for a period of three years.

RECOMMENDATION

Based upon the findings of fact and conclusions of law, it is

RECOMMENDED that a final order be entered revoking Respondent's teaching certificate for a period of three years.

DONE AND ENTERED this 22nd day of December, 2000, in
Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of December, 2000.

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.