

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GEORGE W. WILSON, SR., d/b/a)
WILSON'S GAME ROOM,)
)
Petitioner,)
)
vs.) Case No. 00-4046
)
DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF ALCOHOLIC BEVERAGES)
AND TOBACCO,)
)
Respondent,)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on January 10, 2001, by telephone between Fort Pierce and Tallahassee, Florida, before Claude B. Arrington, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: George W. Wilson, Sr., pro se
Wilson's Game Room
1101 Avenue D
Fort Pierce, Florida 34951

For Respondent: Michael Martinez, Esquire
Department of Business and
Professional Regulation
Division of Alcoholic Beverages
and Tobacco
1940 North Monroe Street
Tallahassee, Florida 32399-2202

STATEMENT OF THE ISSUE

Whether Respondent has the discretion to deny Petitioner's application for a beverage license on the grounds set forth in the Notice of Intent to Deny License and, if so, whether Respondent abused its discretion.

PRELIMINARY STATEMENT

Petitioner's application for a beverage license was denied by Respondent on the grounds that the applicant had a previous beverage license revoked in 1994 and was not believed to be of good moral character.

Petitioner timely challenged the denial, the matter was referred to the Division of Administrative Hearings, and this proceeding followed.

At the final hearing, Petitioner testified on his own behalf and presented the additional testimony of his daughter, his daughter-in-law, and his wife. Petitioner offered no exhibits.

Respondent presented no testimony, but offered one exhibit, which was accepted into evidence.

No Transcript of the proceedings was filed. Respondent filed a Proposed Recommended Order, which has been duly-considered by the undersigned in the preparation of this Recommended Order. Petitioner did not file a proposed recommended order.

FINDINGS OF FACT

1. Respondent is a licensing and regulatory agency of the State of Florida charged with the responsibility and duty to issue beverage licenses pursuant to Chapter 561, Florida Statutes, and applicable rules.

2. Prior to October 21, 1994, Petitioner, doing business as Wilson's Grocery, was the owner and holder of beverage license 66-0123.

3. On November 9, 1992, Petitioner's daughter, daughter-in-law, and wife were convicted of felony charges pertaining to food stamps fraud that occurred on or near the licensed premises. On November 9, 1992, Respondent issued to Petitioner a Notice to Show Cause why license 66-0123 should not be revoked based on those convictions.

4. Petitioner timely requested a formal hearing to challenge the Notice to Show Cause, the matter was referred to the Division of Administrative Hearings, and assigned DOAH Case No. 94-0929. A formal hearing was convened in Fort Pierce, Florida, on July 21, 1994, before Administrative Law Judge J. D. Parrish. At the formal hearing, Petitioner withdrew his request for a formal hearing with the knowledge that license 66-0123 would be revoked.

5. On October 21, 1994, a Final Order was entered by Respondent revoking license 66-0123.

6. Petitioner offered no evidence that would establish he has good moral character.

CONCLUSIONS OF LAW

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

8. Section 561.15(1), Florida Statutes, provides that Respondent shall issue beverage licenses only to persons of good moral character.

9. Section 561.15(3)(a), Florida Statutes, provides as follows:

(3) The division may suspend or revoke the license under the Beverage Law of, or may refuse to issue a license under the Beverage Law to:

(a) Any person, firm, or corporation the license of which under the Beverage Law has been revoked or has been abandoned after written notice that revocation or suspension proceedings had been or would be brought against the license . . .

10. Rule 61A-1.017, Florida Administrative Code, provides, in pertinent part, the following pertaining to moral character:

(1) For purposes of the Beverage Law, a person of "good moral character" shall mean a person who:

(a) Has the ability to distinguish between right and wrong and the character to observe the difference;

(b) Observes the rules of right conduct;
and

(c) Acts in a manner that indicates and establishes the qualities of trust and

confidence that is generally acceptable to the state.

(2) Conduct that does not establish the qualities of trust and confidence include the following:

* * *

(k) Having had an ownership interest or managed a business whose alcoholic beverage license or permit was revoked by a government agency for a violation of a criminal law that is punishable by imprisonment for a term exceeding 1 year or four violations of the same law during the preceding 3 years.

11. Respondent established that it was within its discretion to deny Petitioner's application for a beverage license based on the revocation of his prior beverage license.

12. Rule 61A-1.017(2)(k), Florida Administrative Code, provides, in pertinent part, the following as to applicants who need to establish that he or she has good moral character:

(3) Mitigation the division will consider in determining a person's good moral character when there is evidence of the conduct described in subsection (2) of this rule includes:

(a) An affidavit explaining the circumstances of past conduct and evidence of the qualities of trust and confidence, the ability to distinguish between right and wrong, and the character to observe the difference; and

(b) Character references from people who have personal knowledge of the applicant's or licensee's qualities of trust and confidence, the ability to distinguish between right and wrong, and the character to observe the difference. References may not include spouse, sons, daughters, or anyone employed by the applicant or licensee.

(c) Evidence of good citizenship and improving the quality of life in their community.

13. Petitioner failed to present any evidence as to whether he has good moral character.

14. Petitioner failed to establish that Respondent abused its discretion in denying his application for a beverage license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent enter a final order denying Petitioner's application for a beverage license.

DONE AND ENTERED this 6th day of March, 2001, in Tallahassee, Leon County, Florida.

CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of March, 2001.

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.