

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FRANCIS J. FERRIS,)
)
 Petitioner,)
)
 vs.) Case No. 01-0849
)
 DEPARTMENT OF BUSINESS AND,)
 PROFESSIONAL REGULATION,)
 DIVISION OF FLORIDA LAND SALES,)
 CONDOMINIUMS, AND MOBILE HOMES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Claude B. Arrington, held a formal hearing in the above-styled case on April 27, 2001, in Tallahassee, Florida. 1/ Petitioner appeared by telephone from Miami. Respondent appeared in Tallahassee.

APPEARANCES

For Petitioner: Julio Gutierrez, Esquire
1395 Northwest 15th Street
Miami, Florida 33125-1621

For Respondent: Janis Sue Richardson, Esquire
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street, Suite 60
Tallahassee, Florida 32399-2202

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to the issuance of a yacht and ship salesperson's license pursuant to Section 326.006, Florida Statutes, and Rule 61B-60.003, Florida Administrative Code.

PRELIMINARY STATEMENT

Petitioner applied to Respondent for licensure as a yacht and ship salesperson pursuant to the Yacht and Ship Broker's Act, Chapter 326, Florida Statutes. After reviewing the application, Respondent issued Petitioner a temporary license. Consistent with its practice, Respondent next ordered a criminal background screening from the Florida Department of Law Enforcement and obtained certain information from the Florida Department of Corrections. Respondent thereafter issued to Petitioner a Notice of Intent to Deny his application because he had been convicted of a felony, his application did not reflect the felony conviction or subsequent incarceration, and he did not show he possessed good moral character. In denying the application, Respondent relied on the provisions of Section 326.004(6)(a) and (b), Florida Statutes, and Rule 61B-60.003(3)(a), Florida Administrative Code.

Petitioner stipulated to the facts set forth in Respondent's prehearing statement and to the admission of the exhibits attached thereto. Petitioner also stipulated that there were no facts in dispute. Respondent moved to remand the case for an informal

hearing and entry of a final order, which motion was denied because there was a dispute as to the interpretation of those facts and as to the application of the relevant law to those facts.

At the final hearing, Petitioner testified on his own behalf, but offered no exhibits. Respondent presented the testimony of its employees, Robert Badger (an investigator) and Peter Butler, Sr. (a supervising manager). Respondent introduced 13 exhibits, each of which was entered into evidence without objection. Official recognition was taken of all relevant statutes and rules.

No transcript of the proceedings was filed. Each party filed a Proposed Recommended Order, which has been duly considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. By application dated June 23, 2000, Petitioner applied to Respondent for licensure as a yacht and ship salesperson. Respondent received the application on July 5, 2000.

2. Consistent with its practice, Respondent issued to Petitioner a temporary license for the period beginning July 11, 2000, and ending October 11, 2000.

3. On his application, Petitioner answered "YES" to question 14, which is as follows:

CRIMINAL HISTORY: Have you ever been convicted of a crime, either pled or been found guilty, or entered a plea of nolo contendere (no contest), even if adjudication was withheld.

4. Immediately below question 14 was the following note:

This question applies to any violation of the laws of any municipality, county, state, or nation, including traffic offenses (but not parking, speeding, inspection or traffic signal violations), without regard to whether you were placed on probation, had adjudication withheld, paroled, or pardoned. Your answer to this question will be checked against local and state records. Failure to answer this question accurately could cause denial of licensure.

5. The following appeared on the application following question 16:

If your answer to question 14, 15, or 16 is Yes, attach your complete signed statement of the charges and facts, together with the date, name and location of the court in which the proceedings were held or are pending.

6. Petitioner attached to the application a list describing 20 arrests beginning in 1984 and ending in 1998. Petitioner was adjudicated guilty of driving under the influence of alcohol following arrests on June 8, 1984; on August 20, 1991; on September 1, 1994; and on December 13, 1997. Following the entry for the arrest of September 1, 1994, Petitioner reflected that he had been sentenced to 365 days in BCJ, which was a reference to the Broward County Jail. Following the entry

of the December 13, 1997, arrest, Petitioner wrote in hand "ADJ-270 Days DCJ." Petitioner testified that he meant this to reflect that he had been adjudicated guilty and had served 270 days in the Dade County Jail.

7. On the upper left corner of the attachment to the application, Petitioner typed his name and, without explaining its meaning, the following: 97-12341CF. 2/

8. Consistent with its practice when an applicant responds in the affirmative to question 14, Respondent obtained a Florida Criminal History Report (History Report) from the Florida Department of Law Enforcement (FDLE) which revealed Petitioner's arrest history and the disposition of those arrests. The History Report confirmed the information Petitioner had supplied. In addition, the History Report reflected that Petitioner had been incarcerated beginning January 26, 1999, on a felony conviction of DUI. The History Report reflected that this was Petitioner's fourth DUI conviction and advised that the Florida Department of Corrections (DOC) may have additional information in a Florida Inmate Release Status Report (Status Report).

9. Respondent next obtained a Status Report for Petitioner from DOC. This report reflected that Petitioner was incarcerated for the felony offense of DUI from January 26, 1999, until his release on March 17, 2000.

10. The Status Report also reflected that the case number assigned to the felony charges in Broward County for which Petitioner was subsequently convicted and incarcerated was 97-12341. Petitioner asserts that he disclosed his felony conviction and incarceration by placing that case number on the attachment to the application. That assertion is rejected because no reasonable person would have known what that series of numbers and letters meant without an explanation.

11. Petitioner did not reveal the felony conviction and incarceration on his application. Petitioner was not candid with Respondent or fully forthcoming as to his conviction and incarceration on his application.

12. Petitioner's civil rights have not been restored.

13. Petitioner still owes several hundred dollars in outstanding fines from his prior convictions.

14. The only evidence presented that may be viewed as relating to the issue of Petitioner's rehabilitation was that he had completed his term of incarceration.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding, pursuant to Section 120.57, Florida Statutes.

16. Respondent is the state agency charged with regulating and licensing yacht and ship brokers and salespersons under Chapter 326, Florida Statutes.

17. Petitioner has the burden of proving his entitlement to a license by a preponderance of the evidence. Department of Banking and Fin., Div. of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932, 933 (Fla. 1996).

18. Section 326.004(6)(a) and (b), Florida Statutes (1999), provides as follows:

(6) The Division may deny a license to any applicant who does not:

(a) Furnish proof satisfactory to the division that he or she is of good moral character.

(b) Certify that he or she has never been convicted of a felony.

19. Rule 61B-60.003(3), Florida Administrative Code, provides:

(3) Review for Good Moral Character.

(a) When the application has been determined to be in acceptable form, the division shall evaluate the application and make appropriate inquiry to determine the applicant's moral character. For the purposes of this rule, the following factors bear upon good moral character:

1. The completion of a criminal history check by the Florida Department of Law Enforcement that reveals no convictions of a felony . . . and

* * *

6. Failure of the applicant to provide full and complete disclosure, or to provide

accurate information, on the application for licensure.

7. The foregoing factors shall be considered in determining whether an applicant is of good moral character for purposes of licensure under chapter 326, Florida Statutes, if they comply with the following guidelines:

a. The disposition of criminal charges shall be considered if such constitutes a felony. . . .

* * *

c. Except as provided in sub-sub-paragraph 7.d. of this rule, no information relating to criminal, administrative or civil actions shall be considered if more than 5 years has elapsed from the satisfaction of the terms of any order, judgment, restitution agreement, or termination of any administrative or judicially-imposed confinement or supervision of the applicant, whichever is more recent.

* * *

e. Other considerations such as termination of probation, compliance with and satisfaction of any judgment or restitution agreement may be considered as evidence of rehabilitation of the applicant's good moral character.

20. Petitioner has failed to establish his entitlement to a yacht and ship salesperson's license. Petitioner's conviction of a felony within the past five years, his pattern of arrests since 1984, his failure to disclose his most recent incarceration for that felony on his application, and his failure to provide sufficient evidence of rehabilitation, compel

the conclusion that Petitioner's application for licensure should be denied.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is recommended that a Final Order be entered denying Petitioner's application for a yacht and ship salesperson's license.

DONE AND ENTERED this 16th day of May, 2001, in Tallahassee, Leon County, Florida.

CLAUDE B. ARRINGTON
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 16th day of May, 2001.

ENDNOTES

1/ The final hearing was scheduled for Tallahassee because neither party filed a response to the Initial Order.

2/ This number is the case number assigned to the criminal proceeding that resulted in Petitioner's conviction and subsequent incarceration on felony charges of DUI.

COPIES FURNISHED:

Julio Gutierrez, Esquire
1395 Northwest 15th Street
Miami, Florida 33141

Ross Fleetwood, Director
Division of Florida Land Sales,
Condominiums, and Mobile Homes
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1030

Janis Sue Richardson, Esquire
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street, Suite 60
Tallahassee, Florida 32399-2202

Hardy L. Roberts, General Counsel
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-0792

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.