

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BASEDEO RAMASSAR, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 01-1888  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 )  
 \_\_\_\_\_ )  
 CATHY ANN RAMASSAR, d/b/a )  
 CATHY'S DAY CARE, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 01-1809  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a formal hearing in this case on August 3, 2001, in Sanford, Florida.

APPEARANCES

For Petitioners: George B. Wallace, Esquire  
George B. Wallace, Esq., P.A.  
700 West First Street  
Sanford, Florida 32771

For Respondent: Craig A. McCarthy, Esquire  
Department of Children and  
Family Services  
400 West Robinson Street  
Suite S-1106  
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STATEMENT OF THE ISSUE

The issue is whether Petitioner, Basedeo Ramassar, is eligible for exemption from disqualification from working in a registered or licensed family day care center under Subsection 402.302(3), Florida Statutes.

PRELIMINARY STATEMENT

On January 30, 2001, the Department of Children and Family Services ("Respondent") advised Cathy Ramassar that her Family Day Care Home Registration had been cancelled because her husband, Basedeo Ramassar, had been disqualified from working as a caretaker for children. As a result, Cathy Ramassar requested an administrative hearing. On May 9, 2001, her request was forwarded to the Division of Administrative Hearings and assigned Case No. 01-1809. On March 9, 2001, Petitioner, Basedeo Ramassar, received notice from Respondent that his request for exemption pursuant to Section 435.07, Florida Statutes, had been denied. On March 20, 2001, Basedeo Ramassar requested an administrative hearing on the denial of his request for exemption pursuant to Subsection 435.07(3), Florida Statutes. On May 15, 2001, his request for an administrative

hearing was received by the Division of Administrative Hearings and assigned Case No. 01-1888.

The cases were scheduled for trial on August 3, 2001, in Sanford, Florida. As a result of the pre-hearing meeting of counsel for the parties and preparing the Joint Pre-Hearing Stipulation, the parties agreed that the disposition of Basedeo Ramassar's case seeking exemption from disqualification would be dispositive of both his case and his wife's case. The cases were then consolidated for trial; however, the consolidated case was assigned the higher case number because it was the exemption case number.

At the final hearing, Basedeo Ramassar testified on his own behalf and presented his wife, Cathy Ramassar, Reverend Bobbie Stiver, Mark Templeton, Judy Templeton, Dana Sharpe, and Wanda Wilson as additional witnesses. He offered six exhibits which were received in evidence as Petitioners' Exhibits B and D-H. Respondent presented one witness, Michael Ingram, and offered seven exhibits. Respondent's Exhibits A-F were received in evidence; Respondent's Exhibit G was not received in evidence and all testimony regarding Exhibit G was stricken and not considered by the undersigned Administrative Law Judge.

At the close of the final hearing, the parties were advised of their opportunity to submit proposed recommended orders. On August 17, 2001, after the parties jointly decided not to order

a transcript of the proceedings, they jointly requested an extension to September 4, 2001, for filing proposed recommended orders. The extension was granted. Both parties timely submitted Proposed Recommended Orders.

#### FINDINGS OF FACTS

1. Under Sections 402.301-319, Florida Statutes, the Department of Children and Family Services is the agency responsible for establishing licensing standards for child care facilities and child care personnel.

2. Petitioner, Basedeo Ramassar, is married to Cathy Ramassar; they both reside at 2707 West Airport Boulevard, Sanford, Florida.

3. Cathy Ramassar applied to Respondent to renew her license as a family day care facility at her home at 2707 West Airport Boulevard, Sanford, Florida.

4. As a result of her application, Respondent conducted a Level 2 background screening. As a result of the screening, it was determined that, on March 20, 2000, Basedeo Ramassar had pled nolo contendere to the charge of assignation to commit prostitution, a violation of Section 796.07, Florida Statutes.

5. When Cathy Ramassar was advised that her license would not be renewed because of her husband's violation of Section 796.07, Florida Statutes, she requested an administrative

hearing and, shortly thereafter, Mr. Ramassar requested an exemption pursuant to Section 435.07, Florida Statutes.

6. Michael Ingram, District 7 Screening Coordinator, convened a three-person Exemption Review Committee which considered the circumstances surrounding the disqualifying criminal incident, nature of harm to victim, amount of time since the last criminal incident, and the applicant's general history. The Exemption Review Committee relies on the applicant to provide information on rehabilitation.

7. The Exemption Review Committee denied Mr. Ramassar's exemption request based, in part, on the fact that not enough time had elapsed since the 1999 offense and the March 20, 2000, nolo contendere plea and a 1990 domestic battery arrest which occurred prior to his current marriage. This denial was a proper exercise of the authority vested in the Exemption Review Committee.

8. Mr. Ramassar testified that during the afternoon hours of November 26, 1999, he approached an undercover female police officer and "offered her \$20 for straight sex." This resulted in his arrest and ultimately, his nolo contendere plea to assignation to commit prostitution.

9. With the help of a supportive wife and members of their church, which he regularly attends, Mr. Ramassar has made a good start on a rehabilitation program. Apparently, he has a good

marriage which has withstood the humiliation of public knowledge of his infidelity and criminal involvement; each witness testified to awareness of his criminal involvement.

10. As a part of the exemption process, Subsection 435.07(3), Florida Statutes, requires an assessment of "the nature of the harm caused to the victim"; the only "victim" in this case is Mr. Ramassar's wife, who has not only suffered the public humiliation of her husband's infidelity, but has been denied a license renewal for her day care facility.

11. Mr. Ramassar is regularly employed as a mason and, as a result, except on rare occasions, is away from the day care facility during its normal working hours.

12. Witnesses who had children enrolled in Mr. Ramassar's wife's day care facility expressed little concern with the knowledge that Mr. Ramassar had pled nolo contendere to assignation to commit prostitution.

#### CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding pursuant to Subsections 120.57(1) and 435.07(3), Florida Statutes.

14. The Department of Children and Family Services establishes licensing standards for child care facilities and child care personnel. Section 402.305, Florida Statutes.

15. Child care personnel in family day care facilities are subject to the applicable screening provisions of Chapter 435, Florida Statutes.

16. Mr. Ramassar is a "child care personnel" as defined in Subsection 402.302(3), Florida Statutes, which reads, in pertinent part, :

"Child care personnel" means all owners, operators, employees, and volunteers working in a child care facility . . . . For purposes of screening, the term includes any member, over the age of 12 years, of a child care facility operator's family, or person, over the age of 12 years, residing with a child care facility operator if the child care facility is located in or adjacent to the home of the operator or if the family; member of, or person residing with, the child care facility operator has any direct contact with the children in the facility during its hours of operation . . . .  
[Emphasis added]

17. If a person suffers disqualification, he or she may request an exemption from disqualification from the licensing agency. This discretionary exemption from disqualification is limited to specific criminal acts and shall not be used unless coupled with clear and convincing evidence from the applicant of rehabilitation. Subsection 435.07(3), Florida Statutes.

18. The "clear and convincing" evidence standard requires:

[T]hat the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; and the testimony must be precise and explicit and the witnesses must be lacking in

confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Slomowitz vs. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

19. The disqualifying misdemeanor criminal offense adjudicated on March 20, 2000, is uncomfortably recent; however, Mr. Ramassar, through his own testimony, and that of his wife, his pastor, and friends, has presented clear and convincing evidence of rehabilitation.

20. While it is easy to determine the causal relationship between most criminal offenses listed in Subsection 435.04(2), Florida Statutes, and the potential for harm to children, there is no such apparent relationship between assignment to commit prostitution and harm to children. While not intending to minimize the inappropriateness of Mr. Ramassar's conduct, the admitted offense as revealed in Mr. Ramassar's testimony demonstrated no basis for the conclusion that children would suffer harm as a result of Mr. Ramassar having committed the offense.

21. There is no "harm caused to the victim" as contemplated by Subsection 435.07(3), Florida Statutes; the real victim is Mr. Ramassar's wife who has suffered considerable humiliation and potential loss of her day care facility license.



RECOMMENDATION

Based upon the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED that the Department of Children and Family Services enter a final order granting Petitioner, Basedeo Ramassar, an exemption from disqualification from employment as a caretaker for children and granting Cathy Ramassar a renewal of her license.

DONE AND ENTERED this 12th day of September, 2001, in Tallahassee, Leon County, Florida.

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JEFF B. CLARK  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of September, 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.