

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANTONIO BELLAMY,)
)
 Petitioner,)
)
 vs.) Case No. 02-0999
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This cause came on for formal hearing before Diane Cleavinger, Administrative Law Judge with the Division of Administrative Hearings, on May 10, 2002, in Panama City, Florida.

APPEARANCES

For Petitioner: Antonio Bellamy, pro se
604 Hummingbird Street
Lynn Haven, Florida 32444

For Respondent: John R. Perry, Esquire
Department of Children and
Family Services
2639 North Monroe Street, Room 252-A
Tallahassee, Florida 32399-2949

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to an exemption from disqualification.

PRELIMINARY STATEMENT

By letter dated January 31, 2001, Respondent, Department of Children and Family Services, informed Petitioner, Antonio Bellamy, that, after reviewing its records, it was denying Petitioner's request for an exemption from disqualification. Petitioner requested a formal hearing on Respondent's denial. Petitioner's request was forwarded to the Division of Administrative Hearings.

At the hearing, Petitioner testified in his own behalf and offered eight exhibits into evidence. The Department introduced six exhibits into evidence, but did not call any witnesses to testify.

After the hearing, Respondent filed a Proposed Recommended Order on May 16, 2002. Petitioner did not submit a proposed recommended order.

FINDINGS OF FACT

1. Petitioner, Anthony Bellamy, is the husband of, and resides with, his wife, Helena Bellamy. Helena Bellamy applied to Respondent, Department of Children and Family Services, for registration of a family day care home in the couple's home in Lynn Haven, Florida. In order for the family day care to be registered with the Department, Mr. Bellamy must satisfy the screening requirements set forth in Chapter 435, Florida Statutes, because he is a member of Ms. Bellamy's family.

2. In 1995, Mr. Bellamy was a full-time student in Chipola Community College in Marianna, Florida. Mr. Bellamy, who was born and raised in humble circumstances, met a group of individuals who seemed to have all they needed without having to work for it. Mr. Bellamy started associating with this group whose income, it turned out, was derived from the sale of illegal drugs.

3. Mr. Bellamy, envious of the monied lifestyle of his newfound associates, adopted their ways and started selling marijuana and cocaine to his friends. Mr. Bellamy's favorite place of business was a stand of trees on his father's property, which is, coincidentally, near a public school in Cottondale, Florida. However, Mr. Bellamy did not sell drugs to any of the school children. Mr. Bellamy usually timed his sales to coincide with the paydays of his customers so as to enhance his sales. This usually occurred two or three times per month. Mr. Bellamy did not use drugs himself.

4. On January 11, 16, and 25, and March 6 of 1996, an undercover police officer made purchases of cocaine from Mr. Bellamy. On the occasion of his arrest on March 6, 1996, 55 packets of marijuana and approximately 83 pieces of crack cocaine were found with Mr. Bellamy.

5. Mr. Bellamy pled nolo contendere to four counts of sale of cocaine within 1,000 feet of a school, one count each of

possession of cocaine with intent to sell within 1,000 feet of a school, and possession of cannabis with intent to sell within 1,000 feet of a school. Mr. Bellamy was adjudicated guilty of these offenses and sentenced to 22 months of jail time and 10 years of probation.

6. Mr. Bellamy is still on probation for these offenses. He anticipates that he will remain on probation until 2005 or 2006.

7. Although Mr. Bellamy has not re-offended, he concedes that the fear of re-incarceration if he violates his probation is one factor in his recent good behavior. However, his main reasons for no longer selling drugs is that his incarceration taught him a lesson and that he did not wish to be that type of person or live that type of life, especially since he has married and had children. Incarceration, for Mr. Bellamy, was an epiphany, not to be repeated again.

8. During his incarceration, Mr. Bellamy was placed on trustee status and permitted to attend Chipola Community College. He completed his degree in electrical engineering and holds a state license for professional engineering. Importantly, Mr. Bellamy passed the character evaluation to become a licensed professional engineer.

9. After getting out of prison, Mr. Bellamy worked for Southern Bell as an electrical engineer. Southern Bell had full

knowledge of Mr. Bellamy's criminal history when it employed him. He was and is considered a diligent and productive employee. Mr. Bellamy now has formed his own company and performs electrical engineering services on a contract basis for Southern Bell. Mr. Bellamy also works part-time at Tropical Smoothie. He is entrusted to handle the money from that business. In 1999, Mr. Bellamy married his wife. They now have three children and he is very much a family man who wants to do right by that family. He has the determination and enthusiasm to succeed in his chosen work and life.

10. Mr. Bellamy is active in his church and counsels the youth in that church to avoid drugs. He utilizes his experience to emphasize his counseling. There was no evidence that Mr. Bellamy was ever a danger to children or the disabled. Mr. Bellamy has shown that he is not the same person who dealt drugs and has changed his life for the better. He is entitled to an exemption from disqualification.

CONCLUSIONS OF LAW

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

12. For the purposes of this proceeding, the term "child care personnel" includes, inter alia, persons working in a child care facility and persons over the age of 12 residing with a

child care facility operator if the facility is in or adjacent to the operator's home and family members. Sections 402.301(3) and 402.313, Florida Statutes.

13. Mrs. Bellamy operates a family day care home out of the residence she shares with Mr. Bellamy. As a consequence, Mr. Bellamy meets the definition of "child care personnel" set forth in Chapter 402, Florida Statutes.

14. Child care personnel in family day care homes must meet the same standards for good moral character as their counterparts in licensed day care centers. See Sections 402.313(3) and 402.305(2)(a), Florida Statutes.

15. A person who has pled nolo contendere to certain felony offenses set forth within Chapter 893, Florida Statutes, may not work in a position of special trust with children under the level two standards for good moral character set forth in Section 435.04, Florida Statutes. See Section 435.04(3)(mm), Florida Statutes.

16. A person who sells or possesses cocaine or marijuana within 1,000 feet of a public school is guilty of a first-degree felony. See Sections 893.03(2)(a)4., 893.13(1)(c)1., 893.03(1)(c)7., and 893.13(1)(c)2., Florida Statutes. In this case, Mr. Bellamy pled nolo contendere to six felony violations of Chapter 893, Florida Statutes. As a consequence, he is

disqualified by operation of Section 435.04(3)(mm), Florida Statutes, from occupying a position of special trust.

17. Section 435.07, Florida Statutes, authorizes the Department to grant exemptions from disqualification in certain cases.

18. The facts of this case establish that Mr. Bellamy is not a danger to children and has rehabilitated himself. Therefore, an exemption from disqualification should be granted.

RECOMMENDATION

Based on 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 Antonio Bellamy an exemption from disqualification.

DONE AND ENTERED this 26th day of June, 2002, in Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of June, 2002.

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.