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**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

RONALD J. PALAMARA,

Petitioner,

v.

CASE NO.: 02-1268 *MMP-CWS*

DEPARTMENT OF BUSINESS AND PROFESSIONAL
REGULATION, DIVISION OF FLORIDA LAND SALES,
CONDOMINIUMS, AND MOBILE HOMES,

Respondent.

**RESPONDENT'S MOTION TO REOPEN CASE PURSUANT TO APPELLATE
MANDATE**

The Department of Business and Professional Regulation moves this Honorable Administrative Law Judge to reopen the above-styled matter for proceedings consistent with the opinion of the Fourth District Court of Appeal, as required by the mandate issued by the court, and in support thereof states as follows:

1. On October 24, 2003, the Fourth District Court of Appeal issued a Mandate, a copy of which is attached hereto as exhibit A, that proceedings be conducted in accordance with the Court's opinion, a copy of which is attached hereto as exhibit B.

2. The opinion of the Fourth District Court of Appeal was that the officially recognized judgments are "strong evidence" regarding the character of Palamara. Accordingly, the judgments must be considered in making a decision as to whether Palamara made satisfactory proof to the Division that he is a person of good moral character, pursuant to section 326.004(6)(a), Florida Statutes.

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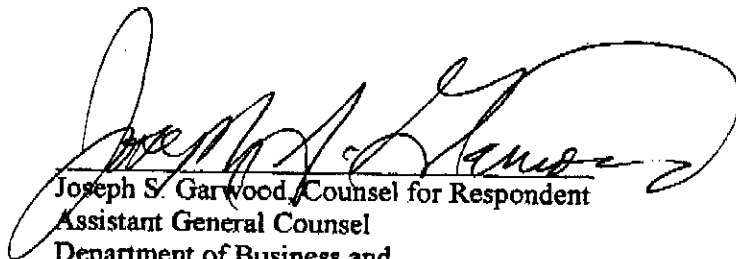
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3. The Petitioner contends that no further evidence need be received in order to comply with the appellate mandate.

WHEREFORE Respondent requests that the Administrative Law Judge enter an Order Reopening the Case for proceedings consistent with the opinion of the Fourth District Court of Appeal.

Respectfully Submitted,



Joseph S. Garwood, Counsel for Respondent
Assistant General Counsel
Department of Business and
Professional Regulation
The Augusta Building
8685 NW 53rd Terrace, Suite 100
Doral, Florida 33166
(304) 470-6783, ext.2275

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Petitioner's has been furnished by facsimile to Barry M. Silver, Counsel for Petitioner, 1200 S. Rogers Circle, Suite 8, Boca Raton, Florida 33487, by U.S. Mail this 29th day of October, 2003.


Joseph S. Garwood

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**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT**

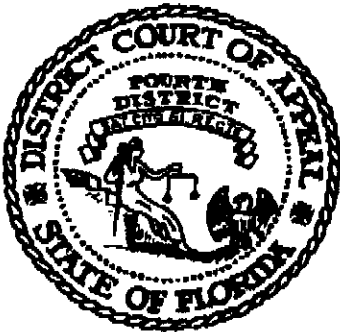
DIRECTOR'S
OFFICE

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable GARY M. FARMER, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

DATE: October 24, 2003
CASE NO.: 4D02-4400
COUNTY OF ORIGIN: Broward
T.C. CASE NO.: 02-1268
STYLE: RONALD J. PALAMARA v. DEPARTMENT OF BUSINESS AND PROFESSIONAL, ETC.



Marilyn Beutenmuller
MARILYN BEUTENMULLER, Clerk
Fourth District Court of Appeal

ORIGINAL TO: Dept. Of Bus. And Prof. Reg.
cc:
Barry M. Silver Joseph S. Garwood

CS

“(A)”

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
JULY TERM 2003

RONALD J. PALAMARA,

Appellant,

v.

**STATE OF FLORIDA, DEPARTMENT OF
BUSINESS AND PROFESSIONAL
REGULATION, DIVISION OF FLORIDA
LAND SALES, CONDOMINIUMS AND
MOBILE HOMES,**

Appellees.

CASE NO. 4D02-4400

Opinion filed October 8, 2003

Appeal from the State of Florida, Department of
Business and Professional Regulation; L.T. Case
No.02-1268.

Barry Silver, Boca Raton, for appellant.

Joseph S. Garwood, Tallahassee, for appellee
Department of Business and Professional
Regulation.

KLEIN, J.

Appellant, whose application for a yacht
broker's license is the subject of this proceeding,
had been convicted of resisting an officer without
violence, had a judgment against him for
dishonest conduct in a yacht transaction, and was
found to have evaded service of process in another
yacht transaction. The administrative law judge
(ALJ) ruled that the judgments in these cases were
not competent evidence of lack of good moral
character and recommended the granting of the
license. The department, however, disagreed and
denied the application. We agree with the
department that the judgments should have been
considered as evidence, but reverse because the

ALJ must still decide the factual issue of whether
appellant was of good moral character.

In the criminal case, which occurred in 1998,
appellant had been convicted of resisting an
officer without violence and sentenced to time
served and probation.

In one of the civil cases, a judgment was entered
against appellant for \$18,000 stating that he had
fraudulently and dishonestly misappropriated
funds which he had been given to pay for work
performed on a vessel by a third party. Appellant
did not disclose the details of this case, but rather
asserted only that the allegations were unfounded.

In the other civil case, appellant appealed a
\$157,500 default judgment, and this court
affirmed, concluding that appellant had evaded
service of process. The complaint had alleged
that appellant had committed tortious interference
by secretly purchasing a yacht for a buyer, so that
the buyer could avoid paying a commission
earned by another broker. Appellant did not
disclose this case in his application. All of the
judgments were final, not subject to appellate
review.

Appellant had been previously licensed as a
yacht broker, but his license had expired.
Appellant's evidence that he was of good moral
character was provided by people in the
community who knew him and testified that he
had a reputation for being honest and of good
moral character.

Although the ALJ accepted the certified copies
of the judgments from the three cases in evidence,
he ruled that they were not, in and of themselves,
competent evidence. He relied on cases such as
Trucking Employees of North Jersey Welfare
Fund, Inc. v. Romano, 450 So. 2d 843 (Fla. 1984),
in which it was held that a criminal conviction is
not admissible in a civil action to prove the truth
of the underlying facts in the criminal case.

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Section 326.004(6)(a), Florida Statutes (2002), provides that the department may deny a yacht broker's license to any applicant who does not furnish satisfactory proof that he or she is of good moral character. Florida Administrative Code rule 61B-60.003(3)(a)7 (2002), which governs applications for yacht broker's licenses, provides:

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

a. The disposition of criminal charges shall be considered if such constitutes a felony, or if such constitutes a misdemeanor involving moral turpitude, fraud, theft, dishonest assault and battery, or false statement.

b. The disposition of any administrative action or of any civil litigation involving fraud, misrepresentation, theft, assault and battery, or moral turpitude shall be considered if such results in a determination against the interests of the applicant.

The department ruled that the ALJ was required by rule 61B-60.003(3)(a)7 to consider the "disposition" of the cases brought against appellant and that the certified copies of the judgments were sufficient to establish that he was not of good moral character. The department also based its denial of the license on appellant's failure to disclose one of the lawsuits against him and his failure to disclose the details of the other two cases.

The Romano case, on which the ALJ relied, was a civil action in which the issue was whether a criminal conviction of fraud would be conclusive proof of fraud in a civil action based on principles

of collateral estoppel.¹ Romano is distinguishable because the rule involved in this case does not provide that the dispositions of the prior cases are conclusive. The ALJ is only required to consider certified copies of the judgments as evidence of character.

We must, however, reverse for the ALJ to decide the question of good moral character. As the court explained in Albert v. Florida Department of Law Enforcement, 573 So. 2d 187 (Fla. 3d DCA 1991):

In the context of professional and occupational licensing, the question of what constitutes "good moral character" has been held to be ordinarily a question of fact for the trier of fact. See Bachynsky v. State Dept of Professional Regulation, 471 So. 2d 1305 (Fla. 1st DCA 1985); Village Zoo, Inc. v. Division of Alcoholic Beverages & Tobacco, 450 So. 2d 920, 921 (Fla. 4th DCA 1984); White v. Beary, 237 So. 2d 263, 266 (Fla. 1st DCA 1970); see also Aguino v. Dept of Professional Regulation, 430 So. 2d 598 (Fla. 4th DCA 1983); Wash & Dry Vending Co. v. State Dept of Business Regulation, 429 So. 2d 790 (Fla. 3d DCA 1983). The result is otherwise, of course, where a specific provision of a statute or rule categorically excludes an applicant from consideration. See e.g., § 943.13(4), Fla. Stat. (1987) (excluding applicants who have certain felony or misdemeanor convictions); see also Cimigliaro v. Florida Police Standards & Training Comm'n, 409 So. 2d 80 (Fla. 1st DCA 1982).

Id. at 188 (footnote omitted).

¹ Romano, which held that the criminal conviction would not be conclusive proof, has been limited by the legislature in certain circumstances that do not apply to this case. See Stoenlew v. McQueen, 656 So. 2d 917, 920 (Fla. 1995) (holding that sections 772.14 and 775.089(8) do not mandate total abandonment of the mutuality principle upheld in Romano).

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In the present case neither the statutes nor the rules categorically exclude applicant from consideration. Accordingly, although these judgments are certainly strong evidence regarding appellant's moral character, it is for the ALJ to determine this factual issue. Reversed.

GUNTHER and GROSS, JJ., concur.

***NOT FINAL UNTIL DISPOSITION OF ANY
TIMELY FILED MOTION FOR REHEARING.***