

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CHRISTIAN P. WELVAERT,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 02-1282
	)	
DEPARTMENT OF BUSINESS AND	)	
PROFESSIONAL REGULATION,	)	
DIVISION OF FLORIDA LAND SALES,	)	
CONDOMINIUMS AND MOBILE HOMES,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 10, 2002, by videoteleconference at sites in West Palm Beach and Tallahassee, Florida, before Administrative Law Judge Florence Snyder Rivas.

APPEARANCES

For Petitioner: Christian P. Welvaert, pro se  
7 Kenmore Lane  
Boynton Beach, Florida 33435

For Respondent: Joseph S. Garwood, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street, Suite 60  
Tallahassee, Florida 32399-2202

STATEMENT OF THE ISSUE

Whether the Respondent, Department of Business and Professional Regulation, Division of Land Sales, Condominiums,

and Mobile Homes (Respondent or Division), acted arbitrarily or capriciously in denying Christian Welvaert's (Petitioner or Welvaert) application to be licensed as a yacht and ship salesmen under Chapter 326, Florida Statutes.

#### PRELIMINARY STATEMENT

On January 11, 2002, Respondent filed a Notice of Intent to Deny License Application (Notice) on the grounds that Petitioner did not furnish proof satisfactory to the Division that he is of good moral character. More specifically, the Notice stated that Petitioner had not fully revealed his criminal history as required by law in submitting his application for licensure.

Petitioner timely asserted his right to an administrative hearing in a hand-written document in which he stated, "Please give me a chance to explain."

The Division moved to dismiss the petition asserting that the request was untimely, and did not adequately specify the disputed material facts. The motion was denied without prejudice, and a final hearing was scheduled for June 12, 2002. Thereafter, Petitioner advised that he would be "away for the summer." He provided no details and did not supply a current address or telephone number.

In preparation for the final hearing, the Division propounded a Request for Admissions. Welvaert failed to timely reply, and he failed to seek an enlargement of time. The

Request for Admissions addressed all the material allegations of the Notice, and the Division moved for entry of an order deeming the allegations to be admitted. This too was denied without prejudice, so as to provide Petitioner, who was acting pro se, an opportunity to have his case heard on the merits.

Over the Division's objection, the hearing went forward on September 10, 2002. At that time, Petitioner presented his own testimony. Respondent presented the testimony of its investigator James Courchaine, and introduced four exhibits, all of which were entered into evidence.

The transcript of the proceedings was filed on September 17, 2002.

Petitioner has not filed a proposed recommended order. Respondent filed a Proposed Recommended Order on September 23, 2002, which has been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Respondent is the state agency charged with regulating and licensing of yacht and ship brokers under Section 326.002(2), Florida Statutes.

2. On October 16, 2001, Welvaert submitted to the Division his application for licensure as a yacht and ship salesman.

3. Licensure is a privilege granted to individuals who affirmatively demonstrate good moral character. The Division is

authorized to, and does in fact investigate an applicant's criminal background if one exists. This is done so that the state may determine if the individual's criminal history is of a nature which would warrant denial of licensure.

4. To facilitate the state's investigation, applicants are asked to fully disclose any criminal history. It is required that this question, and all the questions on the application, be answered truthfully.

5. Welvaert falsely stated on his application that his only criminal background was "traffic offense."

6. A Florida Department of Law Enforcement (FDLE) background check revealed that Welvaert had been arrested on several occasions on charges relating to possession of drugs and drug paraphernalia; domestic battery and resisting an officer without violence; probation violation by possessing drug paraphernalia and cannabis; and driving under the influence of drugs or alcohol.

7. Welvaert did not offer any evidence to contradict the FDLE's findings in any material way. He asserted that he never violated probation, claiming that he didn't know when his court date was because he had moved.

8. This experience did not teach Welvaert the importance of attending to his legal affairs. In this case, he blamed his landlady for his failure to respond to the Division's Request

for Admissions, which was properly served upon him at the address he had on file in this case. Welvaert stated, "I thought the person, the landlady I was staying with, I thought she was going to call me or tell me if I had something this important in the mail. I guess she didn't."

9. Petitioner testified that he has "changed his life around" and is now rehabilitated. While he did not unequivocally deny the drug charges, he implied that he "just [took] the time" on the advice of the presiding judge. He further stated, "It was at someone's house. I was in a college town at the time."

10. Nothing in Welvaert's testimony constitutes a legally or factually sufficient excuse for his failure to disclose his criminal background.

#### CONCLUSIONS OF LAW

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

12. In this proceeding, Petitioner had the burden of proving by a preponderance of the evidence that he is entitled to a license pursuant to Rule 28-107.003, Florida Administrative Code. Department of Business & Professional Regulation,

Division of Securities & Investor Protection v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

13. This he has failed to do. Section 326.004(6)(a), Florida Statutes, authorizes the Division to deny a license to an applicant who does not furnish satisfactory proof of good moral character. A key component of good moral character is that an applicant truthfully report his criminal history in order to facilitate the Division's efforts to determine whether the applicant has been sufficiently rehabilitated so as to be granted the privilege of licensure.

14. Rule 61B-60.003(3)(a), Florida Administrative Code, reasonably mandates that the applicant provide full and complete disclosure, as well as accurate information, concerning any criminal background on the application for licensure.

15. Although not required to, the Division advises applicants on the face of the application that the Division will independently research and confirm the representations made on the application with respect to criminal history. No reasonable person could have been confused as to the requirements of the law.

16. The procedural history of this case as set forth in the preliminary statement reveals that Welvaert seeks second chances in the form of probation in criminal matters and, in this case, an impartial review of a predicament for which he

alone is responsible, yet cannot be troubled to provide address changes to the authorities whose indulgence he seeks.

17. Yacht salesmen deal with huge sums of money in an industry which is vital to Florida's economy. The state has a legitimate interest in assuring that individuals who work in this industry are people of integrity and character. The record in this case establishes that Welvaert is dishonest and immature. The Division was well justified in denying his application for licensure.

#### RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is RECOMMENDED that the Petitioner's application to be licensed as a yacht and ship salesman's be denied.

DONE AND ENTERED this 4th day of November, 2002, in  
Tallahassee, Leon County, Florida.

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FLORENCE SNYDER RIVAS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of November, 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.