

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JUAN RAMON LEAL,)
)
 Petitioner,)
)
 vs.) Case No. 02-3763
)
 DEPARTMENT OF INSURANCE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case by video teleconference on December 6, 2002, with the Petitioner appearing from Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Eugene J. LaNeve, Esquire
Law Offices of Ainslee R. Ferdie
717 Ponce de Leon Boulevard, Suite 215
Coral Gables, Florida 33134

For Respondent: Ladasiah Jackson, Esquire
Florida Department of Insurance
Division of Legal Services
612 Larson Building
200 East Gaines Street
Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUE

Whether the Petitioner, Juan Ramon Leal, is entitled to be licensed as resident legal expense sales representative.

PRELIMINARY STATEMENT

On June 27, 2002, the Respondent, Department of Insurance (Respondent or Department), issued a notice to the Petitioner that his application for licensure as a resident legal expense sales representative was being denied based upon his criminal history. The Petitioner timely challenged that denial and filed an election of rights that sought an administrative review of the Department's decision. The matter was then forwarded to the Division of Administrative Hearings for formal proceedings on September 25, 2002.

At the hearing conducted on December 6, 2002, the Petitioner testified in his own behalf and presented additional testimony from Nicolo Bonanno. The Petitioner's Exhibits 1-7 were admitted by stipulation of the parties. The Respondent offered testimony from Detective Ivan Cabrera and Hazel Mohammed. The Respondent's Exhibits 1-8 were also received by stipulation.

The Transcript of the proceeding was filed with the Division of Administrative Hearings on December 16, 2002. Both parties timely filed Proposed Recommended Orders that have been fully considered in the preparation of this order.

FINDINGS OF FACT

1. At all times material to the allegations of this case, the Respondent is the state agency charged with the

responsibility of regulating persons seeking licenses to become resident legal expense sales representatives. As such the Respondent appropriately received and considered the application for licensure submitted by the Petitioner on or about April 3, 2002.

2. On June 27, 2002, the Respondent issued its decision regarding the Petitioner's application for licensure. Such decision denied Petitioner's request based upon his criminal history and the short amount of time that had elapsed between the alleged criminal activity and the application for licensure.

3. On July 6, 2000, when he was 20 years of age, the Petitioner was arrested for possession of a controlled substance, unauthorized possession of a driver's license, and carrying a concealed weapon.

4. As to the controlled substance charge, at the time of the arrest, the Petitioner was delivering to an individual, who was a confidential informant for the police, 400 tablets of a drug commonly known as ecstasy. The Petitioner knew that the package contained an illegal substance and that he was committing an illegal act.

5. As to the charge of possessing an unauthorized driver's license, the Petitioner held fake identification so that when carded at dance clubs he could enter with his older

girlfriend. There is no evidence that the fake license was used for any other purpose.

6. As to the charge of possession of a concealed weapon, the Petitioner was arrested and his vehicle was thoroughly searched. The "concealed weapon" was a hunting knife under the seat or in the crack of the seats. The knife was not presented in the course of any of the activities cited by the police.

7. In fact, the arresting officer described the Petitioner as "sincerely remorseful" and "cooperative." Subsequent to his arrest the Petitioner attempted to assist the police but proved unsuccessful.

8. On May 10, 2001, the Petitioner pled nolo contendere to the possession charges. As he had no prior criminal record, adjudication of guilt was withheld and he was placed on probation.

9. The Petitioner successfully completed all requirements of his probation. Thereafter, on March 14, 2002, the probation was terminated.

10. On April 3, 2002, within the month of his probation being completed, Petitioner applied for the license at issue in this proceeding.

11. Because the Department denied the license, the Petitioner sought the instant administrative review of the

denial and sought relief from the criminal court having jurisdiction over his probation and record.

12. To that end, Petitioner obtained an Order to Seal his criminal records. This order was entered on August 15, 2002. Had the Petitioner waited until after that date to apply for licensure, the pertinent criminal records would have been under seal and therefore unavailable for review.

13. It is the Department's position that the Petitioner lacks fitness and trustworthiness to hold the license based upon the nature of the criminal activity and the recentness in time to the application for licensure.

14. The Petitioner's employer, Nicolo Bonanno, testified that the Petitioner is a trustworthy employee, that he has had business dealings with the Petitioner for approximately 3 years, and that he has no hesitation in supporting his licensure. Mr. Bonanno is himself a licensee through the Department.

15. The arresting officer expressed complimentary statements regarding the Petitioner including his demeanor during and subsequent to the arrest.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. Section 120.57, Florida Statutes.

17. As the proponent of the affirmative of the issue, the Petitioner, as applicant for licensure, bears the burden of proof in this cause to establish he is entitled to the license sought. See Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977); Florida Department of Transportation v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); McDonald v. Department of Professional Regulation, Board of Pilot Commissioners, 582 So. 2d 660, 670 (Fla. 1st DCA 1991).

18. Section 642.041, Florida Statutes, outlines the circumstances wherein the Department, by statute, must deny a license. The provisions, known in this record as the "mandatory" sections, provide, in pertinent part that the following constitutes grounds for compulsory refusal to license any sales representative:

Having been found guilty of, or having pled guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or any state thereof or under the law of any country, whether or not judgment of conviction has been entered.

19. In contrast, Section 642.043, Florida Statutes, outlines the "discretionary" provisions.

20. It is the Department's legal position that the mandatory provisions requiring denial of the license are applicable to this case. Moreover, the Department maintains

that the Petitioner lacks fitness and trustworthiness to engage in the business of legal expense insurance.

21. As to the Department's contentions, it is undisputed that the Petitioner was charged with possession of the controlled substance. He admitted the possession, admitted that he knew it was illegal, and admitted that he was delivering the package for and presumably to a friend. The Petitioner expressed sincere remorse for the conduct that even the arresting officer deemed credible. There is no evidence that the Petitioner was an experienced drug dealer or that this was anything more than an isolated incident of very poor judgment. Moreover, his employer who has known the Petitioner for approximately 3 years claims that the Petitioner is trustworthy.

22. Additionally, the Petitioner timely and successfully completed all conditions of his probation. The circuit court then granted the Petitioner's request to seal to the criminal record. The Petitioner was not adjudicated guilty of any criminal offense; and based upon the circumstances of this case, the Petitioner did not demonstrate behavior constituting moral turpitude.

23. As such, it is concluded that the Petitioner has met his burden of proof and is entitled to the license sought.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Insurance enter a final order granting the license sought by the Petitioner.

DONE AND ENTERED this 23rd day of January, 2003, in Tallahassee, Leon County, Florida.

J. D. PARRISH
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 23rd day of January, 2003

COPIES FURNISHED:

Honorable Tom Gallagher
Chief Financial Officer
Department of Financial Services
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0300

Mark Casteel, General Counsel
Department of Financial Services
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0300

Eugene J. LaNeve, Esquire
717 Ponce de Leon Boulevard
Suite 215
Coral Gables, Florida 33134

Ladasiah Jackson, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0333

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.