

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RONALD BURKETT, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 03-4765  
 )  
 DEPARTMENT OF HEALTH, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A hearing was held pursuant to notice in the above-styled cause on February 25, 2004, by Stephen F. Dean, assigned Administrative Law Judge of the Division of Administrative Hearings, in Pensacola, Florida.

APPEARANCES

For Petitioner: E. Brian Lang, Esquire  
One West Lloyd Street  
Pensacola, Florida 32501

For Respondent: Rodney M. Johnson, Chief Counsel  
Department of Health  
Northwest Law Office  
1295 West Fairfield Drive  
Pensacola, Florida 32501

STATEMENT OF THE ISSUE

Whether the Agency should register the Petitioner as a septic tank contractor?

PRELIMINARY STATEMENT

The Petitioner applied for registration as a septic tank contractor. The Department of Health advised the Petitioner by letter of its intent to deny his application because of various problems with the application and his qualifications. This letter advised the Petitioner of his right to an administrative hearing on the denial of his application and the Petitioner requested a hearing. The Department forwarded the matter to the Division of Administrative Hearings on or about December 18, 2003. The case was set for hearing for February 17, 2004, by a Notice of Hearing dated January 9, 2004. Thereafter, an amended notice was issued on January 22, 2004, continuing the case until February 25, 2004. The case was heard as noticed, except that the undersigned was assigned to hear the case for Judge Don W. Davis, who was unable to travel because of illness.

The Department of Health called Robert J. Kuhn and Robert A. Knott to testify. The Petitioner testified in his own behalf. The parties stipulated to the introduction of the letter of denial dated October 7, 2003, as Exhibit 9, and to the authenticity of Exhibits 1 through 6, and 8. These exhibits and Exhibit 7 were received into the record.

Both parties submitted proposed findings that were read and considered.

## FINDINGS OF FACT

1. The Petitioner, Ronald Burkett, applied for registration as a septic tank contractor to the Department of Health, the regulatory and permitting authority.

2. The Department notified the Petitioner by letter of its intent to deny his application for various grounds and that he had a right to a formal hearing. The Petitioner made a timely request for a formal hearing and these proceedings ensued.

3. The application filed by the Petitioner was filled out by his now ex-wife, Susan Burkett, who had previously been a licensed septic tank contractor and the Petitioner's employer. The couple did business in the name of Working Man Septic Tank (Working Man). Susan Burkett filed out the application because the Petitioner does not read or write.

4. The Petitioner as the employee of Working Man installed a septic tank without a license under a complex set of circumstances in which the property owner, employees of the Department of Health and the Petitioner sought to eliminate a serious health problem at a rental property. The existing septic system had failed and raw sewage was on the ground in the yard of single family residence which was being rented. The Department of Health sought to eliminate the nuisance. The Petitioner undertook to fix the system, submitted an application, and commenced work. Thereafter, it was determined

that public sewer service was available, and this precluded issuance of the permit to repair the septic system.

5. There is conflicting testimony about what occurred next; however, based upon the testimony of all the witnesses, the Petitioner left the tank he had installed in the ground; the owner hooked up the system; and the problems were eliminated. However, Susan Burkett received a warning letter from the Department of Health for having commenced the work without the permit.

6. In 1994, the Petitioner was disciplined for septic tank contracting without a license, for installing septic tanks without a permit, and for substandard work in contracting.

7. In 2003, Burkett repaired and replaced a distribution box at 638 Lakewood Road without a permit or an inspection which resulted in his now ex-wife, Susan Burkett, receiving a fine of \$1,000, as the responsible contractor.

8. Complaint SC 0752 alleges that U.S.A. Septic abandoned its contract and failed to fully perform a repair. Ron Burkett received checks in the amount of \$3,500, which were negotiated in due course.

9. Profit and Loss Statements which were part of tax documents submitted with the Petitioner's application indicated that they were for Ron's Septic Tank Service and Ronald E. Burkett. However, these statements were prepared in error by

the Petitioner's accountants who subsequently supplied corrected documents showing the Petitioner's business name to be U.S.A. Septic Tank Co. and Ronald E. Burkett, Proprietor. Ron's Septic Tank Service is an unrelated septic contracting company owned and operated by another individual. This appears to have been a scrivener's error by the accountant which was corrected. However, the corrected documents are at odds with the business organization which supposedly existed, that is, U.S.A. Septic Tank Co., operated by Susan Burkett. At a minimum, the activities of U.S.A. Septic Tank Co. cannot be separated from the Petitioner's activities, and the Petitioner cannot divorce himself from misfeasance and malfeasance of that company or other companies which he worked for as an employee of his wife.

10. The Construction Industry Certificate of Exemption from Florida Workers' Compensation Law filed with the application had had the expiration date altered. While the Petitioner may not have been responsible for the alteration, his application was facially deficient by failing to have a current exemption certificate.

#### CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over parties and subject matter in this case pursuant to Section 120.569, Florida Statutes.

12. Because this is an application case, the Petitioner has the burden of proof to establish that his application is facially sufficient. The burden is by a preponderance of the evidence. See Section 120.57(1)(j), Florida Statutes.

13. The application is not facially sufficient because it lacks a current workmans' compensation exemption certificate. The error on the Profit and Loss Statement was corrected by the accountant, and it is sufficient to meet the application's requirements.

14. The Department has put forth affirmative grounds for denying the license. The Department has the burden to prove these allegations by a preponderance of the evidence. The Department showed that two predecessor septic tank contracting companies with which the Petitioner was intimately associated either as owner and operator or as the employee and husband of the "owner" and "operator" have been disciplined for being unlicensed, doing work without the required permits, and doing substandard work. Although there are substantial mitigating factors regarding one of the allegations, notwithstanding the name changes and changes in the licensee, the Petitioner has been involved in unlicensed contracting for over a period of nearly ten years.

15. Section 489.553, Florida Statutes, requires in pertinent part that the individual applying for registration be of good moral character. The statute states that in considering good moral character, the Department may consider any matter that has a substantial connection with the professional responsibilities of a registered contractor. Unlicensed contracting and contracting without the required permits are the types of violations which can be considered.

16. The Department showed good cause to deny the registration of the Petitioner for lack of good character.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law set forth herein, it is

RECOMMENDED:

That the Department of Health deny the Petitioner's application for registration as a septic tank contractor.

DONE AND ENTERED this 16th day of March, 2004, in Tallahassee, Leon County, Florida.



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STEPHEN F. DEAN  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 16th day of March, 2004.

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.