

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

EDUARDO FEDERICO GODOY,            )  
  )  
      Petitioner,                    )  
  )  
vs.                                    )     Case No. 04-0213  
  )  
DEPARTMENT OF FINANCIAL         )  
SERVICES,                            )  
  )  
      Respondent.                    )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing by videoconference in Tallahassee and Miami, Florida, on March 22, 2004.

APPEARANCES

For Petitioner: Santiago Lavan-dera  
Law Office of Pena and Lavan-dera  
7950 Northwest 155th Street, Suite 201  
Miami Lakes, Florida 33016

Eduardo Federico Godoy  
969 East 29th Street  
Hialeah, Florida 33013

For Respondent: Ladasiah Jackson  
Division of Legal Services  
Department of Financial Services  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUE

The issue is whether Petitioner is entitled to a license as a limited surety/bail bond agent.

PRELIMINARY STATEMENT

By letter dated November 2, 2002, Respondent informed Petitioner that it was denying his application for a license as a limited surety/bail bond agent. The letter states that, on October 15, 1971, Petitioner entered a plea of guilty to the charge of Breaking and Entering with Intent to Commit a Misdemeanor, a felony, and the court withheld adjudication of guilty. The letter states that Section 648.27(2), Florida Statutes, provides that Respondent may not issue a license for any individual found untrustworthy, and Section 648.34(2)(e), Florida Statutes, provides that the qualifications for a bail bond agent include not having been convicted of, or pleaded guilty or no contest to, a felony.

By Motion for Leave to Amend Notice of Denial filed March 10, 2004, Respondent requested leave to amend its denial letter to add an additional ground for denying the license application. The new ground is that Petitioner falsely denied in his application that he had ever been charged, convicted, found guilty, or pleaded guilty or no contest to a crime, regardless whether adjudication of guilt was withheld or a judgment of conviction was entered.

At the hearing, neither party called any witnesses. Petitioner offered into evidence no exhibits. Respondent offered into evidence seven exhibits: Respondent Exhibits 1-7. All exhibits were admitted.

The court reporter filed the transcript on May 5, 2004. Respondent filed a proposed recommended order on May 18, 2004.

FINDINGS OF FACT

1. On July 22, 2002, Petitioner signed, under penalty of perjury, a statement declaring that his application for a license as a limited surety/bail bond agent was true. In the application, Petitioner answered "no" to the question:

Have you ever been charged, convicted, found guilty, or pleaded guilty or nolo contendere (no contest) to a crime under the laws of any municipality, county, state, territory, or country, whether or not adjudication was withheld or a judgment of conviction was entered?"

2. By Information dated February 28, 1971, the State of Florida charged Respondent with "unlawfully and feloniously break[ing] and enter[ing]" into a dwelling with the intent to commit a felony--namely, grand larceny. By Order entered October 15, 1971, the court acknowledged that Respondent had entered a plea of guilty to "breaking and entering with intent to commit a misd[demeanor]," withheld adjudication of guilt, and placed Petitioner on three years' probation. By Order

entered August 15, 1974, the court terminated Petitioner's probation, noting that he had successfully completed it.

CONCLUSIONS OF LAW

3. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2003).

4. As an applicant, Petitioner has the burden of proving that he is entitled to a limited surety/bail bond agent license. Department of Transportation v. J. W. C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

5. Section 648.34(2)(e), Florida Statutes, provides:

To qualify as a bail bond agent, it must affirmatively appear at the time of application and throughout the period of licensure that the applicant has complied with the provisions of s. 648.355 and has obtained a temporary license pursuant to such section and:

(e) The applicant is a person of high character and approved integrity and has not been convicted of or pleaded guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction has been entered.

6. Section 648.45(2), Florida Statutes, provides in material part:

The department shall deny, suspend, revoke, or refuse to renew any license or appointment issued under this chapter or the insurance code, and it shall suspend or revoke the

eligibility of any person to hold a license or appointment under this chapter or the insurance code, for any violation of the laws of this state relating to bail or any violation of the insurance code or if the person:

(a) Lacks one or more of the qualifications specified in this chapter for a license or appointment.

(b) Has made a material misstatement, misrepresentation, or fraud in obtaining a license or appointment, or in attempting to obtain a license or appointment.

\* \* \*

(e) Has demonstrated lack of fitness or trustworthiness to engage in the bail bond business.

\* \* \*

(k) Has been found guilty of, or has pleaded guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction has been entered.

7. Section 810.05, Florida Statutes (1971), classified as a felony of the third degree the breaking and entering any dwelling with intent to commit a misdemeanor.

8. Respondent lawfully denied Petitioner's application on two grounds: a material misstatement in the application and the pleading guilty to a felony in 1971.

RECOMMENDATION

It is

RECOMMENDED that the Department of Financial Services enter a final order denying Petitioner's application for a license as a limited surety/bail bond agent.

DONE AND ENTERED this 30th day of June, 2004, in  
Tallahassee, Leon County, Florida.



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ROBERT E. MEALE  
Administrative Law Judge  
Division of Administrative Hearings  
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Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of June, 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 must be filed with the agency that will issue the final order in this case.