

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RALPH D. JONES, JR., )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 04-0390  
 )  
DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

A hearing was held pursuant to notice, on March 29, 2004, by Stephen F. Dean, assigned Administrative Law Judge of the Division of Administrative Hearings, in Jacksonville, Florida.

APPEARANCES

For Petitioner: Ralph D. Jones, Jr., pro se  
781 Begonia Street  
Atlantic Beach, Florida 32233

For Respondent: Jason W. Holtz, Esquire  
Department of Business and  
Professional Regulation  
400 West Robinson Street, N801  
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether Petitioner is qualified to take the examination for licensure as a registered assistant rental estate appraiser.

PRELIMINARY STATEMENT

On or about May 14, 2003, Ralph D. Jones, Jr. (Petitioner) submitted an application for licensure as registered assistant real estate appraiser to the Department of Business and Professional Regulation, Division of Real Estate (Respondent), on behalf of the Florida Real Estate Appraisal Board (FREAB). Because of an affirmative answer to the question regarding criminal history, Respondent scheduled Petitioner for a hearing before the FREAB on October 7, 2003, and again on December 3, 2003. The FREAB denied Petitioner's application following both hearings. Petitioner timely requested a formal hearing and Respondent referred the matter to the Division of Administrative Hearings (DOAH).

On March 29, 2004, a formal hearing was conducted on the matter. The parties stipulated that Petitioner submitted an application for licensure that was facially complete, except for the matter of disqualifying criminal record.

Official recognition of the relevant sections of Chapters 20, 120, 455, and 475, Florida Statutes, and Florida Administrative Code Rule 61J-2, as filed by the Respondent, was taken and oral notice provided to the parties. Petitioner testified. Respondent did not present witness testimony. Petitioner submitted four documents without objection from the Respondent as Joint Exhibits 1-4. Respondent's Exhibits numbered 1 through 9 were received into evidence.

The Transcript was filed on April 1, 2004. Respondent filed proposed findings that were read and considered. Petitioner did not make a post-hearing filing.

FINDINGS OF FACT

1. Respondent is a state agency in Florida responsible for regulating the practice of real estate in Florida pursuant to Sections 475.001 and 475.05, Florida Statutes.

2. On or about May 14, 2003, Petitioner, Ralph D. Jones, Jr., submitted an application for registration as an assistant real estate appraiser.

3. On the application, Petitioner answered "yes" to the question on the application regarding criminal history indicating Petitioner had a criminal history.

4. Petitioner disclosed on the application that he had in Virginia two larceny charges, a concealment charge, a driving while license suspended charge, a hit and run charge, three assault charges and an obstruction of law enforcement charge: a total of six felony convictions.

5. On or about October 7, 2004, the FREAB conducted an informal hearing regarding Petitioner's application for licensure and the aforementioned crimes. Petitioner attended the hearing and submitted letters attesting to his good character for the FREAB's consideration. The FREAB issued an order denying Petitioner's application.

6. On or about December 2, 2003, the FREAB conducted a second informal hearing regarding Petitioner's application for registration and his criminal record.

7. Petitioner appeared at this hearing and was questioned by the FREAB about the circumstances surrounding Petitioner's criminal history.

8. At the formal hearing, Petitioner testified about the circumstances of his criminal history, with an emphasis on the length of time since his last criminal conviction, and the type of offenses committed by applicants that were approved by the FREAB. He pointed out that it had been over five years since he had been in trouble. It is noted that it had been an even longer time between Petitioner's most recent problems, arising from the breakup of his marriage, and his prior convictions. It is noted that his most recent offenses related to his divorce five years ago.

9. Petitioner has not had his civil rights restored.

10. Petitioner wants to work on his "apprenticeship," so he can become a registered appraiser. Following the hearing, the FREAB issued an order denying the Petitioner's application for a second time.

#### CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

12. This is a de novo proceeding in which Petitioner has the burden of proving by a preponderance of the evidence that he meets the requirements for registration as a real estate appraiser trainee, despite the FREAB's denial of his application. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932, 933 (Fla. 1996).

13. Pursuant to Section 475.624, Florida Statutes, the FREAB has the discretion to refuse to certify any applicant whose conduct would have been grounds for discipline under Section 475.624(5), Florida Statutes.

14. Section 475.615(6), Florida Statutes, specifies that if an applicant has been found guilty of conduct that would have been grounds for discipline by the FREAB, had the person been a registrant at the time of the conduct, that person is deemed not to be qualified, unless because of the lapse of time and subsequent good conduct and reputation, the public is not likely to be endangered by the granting of the registration.

15. Section 475.624(5), Florida Statutes, allows the FREAB to discipline an applicant if the person has been found guilty of or entered a plea of nolo contendere to a crime involving moral turpitude or dishonest conduct.

16. Based on the facts of this case, Petitioner had admitted to committing crimes that constitute a felony in Florida law, including grand larceny. Petitioner admits to leaving the

scene of an accident in which another person was injured because his driver's license was suspended as a habitual traffic offender at the time of the collision. Petitioner admits that he has lost his civil rights as a result of his offenses.

17. Petitioner has an extensive criminal record which is facially disqualifying for licensure as an assistant appraiser. Petitioner presented evidence of subsequent good behavior or good reputation for the last five years. A large number of the offenses Petitioner committed were when he was very young. His most recent offenses arose from or out of marital problems. However, Petitioner civil rights have not been restored and he previously had extended periods in which he did not break the law. Petitioner explained that the reference in his records to being a habitual offender related to driving offenses not being found to be a habitual felon.

18. Notwithstanding Petitioner's explanation and the five years since his last problems with the law, the determination is not whether Petitioner is qualified. He is disqualified. He seeks a discretionary issuance of a license by Respondent "on waivers" based on the passage of time and current good conduct. The passage of five years is a long time; however, Respondent's period of wrong-doing was extensive. The most recent criminal conduct related to marital discord. However, it involved a confrontation with a uniformed officer.

19. The grant of a "waiver" in these circumstances is one of the most discretionary of the Board's actions. The members of the Board know better the situations that will arise and whether Petitioner's background constitutes a risk. They also know what limits, such as longer apprenticeships or probation, could be imposed to ensure adequate oversight while assessing further Petitioner's character and letting him proceed with his current good record.

#### RECOMMENDATION

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

#### RECOMMENDED:

That Respondent permit Petitioner to take the examination, and if Petitioner passes the examination, that Respondent issue a license to Petitioner conditioned on the following:

1. Restoration of his civil rights by the Virginia authorities;
2. Practice under the direction of a licensee designated by Respondent with periodic reports on Petitioner's professional conduct for a period of 24 months; and
3. Automatic revocation of Petitioner's license upon the commission of any offense constituting a misdemeanor or felony in Florida Law or any violation of Chapter 475, Florida Statutes.

DONE AND ENTERED this 28th day of April, 2004, in  
Tallahassee, Leon County, Florida.

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STEPHEN F. DEAN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of April, 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.