

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

|                                 |   |                  |
|---------------------------------|---|------------------|
| LUIS A. TABOADA, JR.,           | ) |                  |
|                                 | ) |                  |
| Petitioner,                     | ) |                  |
|                                 | ) |                  |
| vs.                             | ) | Case No. 04-0905 |
|                                 | ) |                  |
| DEPARTMENT OF BUSINESS AND      | ) |                  |
| PROFESSIONAL REGULATION,        | ) |                  |
| DIVISION OF FLORIDA LAND SALES, | ) |                  |
| CONDOMINIUMS, AND MOBILE        | ) |                  |
| HOMES,                          | ) |                  |
|                                 | ) |                  |
| Respondent.                     | ) |                  |
| _____                           | ) |                  |

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, on May 4, 2004, by video teleconferencing between West Palm Beach and Tallahassee, Florida.

APPEARANCES

For Petitioner: Luis A. Taboada, Jr., pro se  
9924 Orange Park Trail  
Boca Raton, Florida 33428

For Respondent: Joseph S. Garwood, Esquire  
Department of Business and  
Professional Regulation  
The Augusta Building, Suite 100  
8685 Northwest 53rd Terrace  
Miami, Florida 33166

### STATEMENT OF THE ISSUE

The issue in this case is whether an application for a yacht salesperson license filed by Petitioner, Luis A. Taboada, Jr., should be granted by Respondent, the Division of Florida Land Sales, Condominiums, and Mobile Homes, Department of Business and Professional Regulation.

### PRELIMINARY STATEMENT

On December 15, 2003, Petitioner filed an application for a yacht salesperson's license. The application was found to be in order and, therefore, a temporary salesperson's license No. 5344 was issued by Respondent. Respondent subsequently concluded, during its review for "good moral character," that Petitioner lacked good moral character. This conclusion was based upon Respondent's determination that Petitioner had failed to provide a full and complete disclosure of information requested on the application and that Petitioner's criminal history included a plea of nolo contendere to a felony. On February 11, 2004, the Respondent issued a Notice of Intent to Deny License Application.

In response to the Notice of Intent to Deny License Application, Petitioner filed a letter with Respondent requesting a formal administration hearing to contest the allegations of the Notice of Intent to Deny License.

On March 18, 2004, Respondent filed the Notice of Intent to Deny License and Petitioner's request for hearing with the Division of Administrative Hearings. Respondent requested assignment of the matter to an administrative law judge. The matter was designated DOAH Case No. 04-0905 and was assigned to Administrative Law Judge Robert E. Meale. The case was subsequently transferred to the undersigned to conduct the final hearing.

At the final hearing, Respondent agreed to present its case first. Respondent presented the testimony of Victoria Mergenthal, an investigator employed by Respondent, and Robert Badger, head of the yacht sales section of Respondent. Respondent also had one exhibit admitted. Petitioner testified on his own behalf, but offered no exhibits.

At the close of the final hearing, Respondent agreed to allow Petitioner to file affidavits after the conclusion of the hearing that would support his claim of rehabilitation. Petitioner has not filed any affidavits of the date of this Recommended Order.

By Notice of Filing of Transcript issued June 3, 2004, the parties were informed that the Transcript of the final hearing had been filed on June 2, 2004. The parties, pursuant to agreement, therefore, had until June 14, 2004, to file proposed recommended orders. On June 14, 2004, Respondent filed

Respondent's Proposed Recommended Order. Petitioner did not file a post-hearing pleading. The post-hearing submittal of Respondent has been fully considered.

#### FINDINGS OF FACT

1. Respondent, the Division of Florida Land Sales, Condominiums, and Mobile Homes, Department of Business and Professional Regulation (hereinafter referred to as the "Division"), is charged with the responsibility for, among other things, licensing yacht salespersons and brokers in the State of Florida pursuant to the "Yacht and Ship Brokers' Act," Chapter 326, Florida Statutes (2003), and Florida Administrative Code Chapter 61B-60.

2. At the times pertinent to this matter, Petitioner, Luis A. Taboada, Jr., was an applicant for a yacht salespersons' license, having filed an Application for a Yacht and Ship Employing Broker, Broker or Salesperson's License (hereinafter referred to as the "Application") with the Division on December 15, 2003.

3. Consistent with Florida Administrative Code Rule 61B-60.003(2), the Division reviewed the Application and found it to be in "acceptable form." The Division, therefore, issued a temporary salesperson's license, license number 5344, to Mr. Taboada.

4. As required by Florida Administrative Code Rule 61B-60.003(3), the Division proceeded to "evaluate the application and make appropriate inquiry to determine [Mr. Taboada's] moral character."

5. As a part of its review, the Division noticed that Mr. Taboada had answered question 14 of the Application with a "yes" but had not provided information concerning his answer, which the Application directed him to do. In particular, the Application instructed Mr. Taboada to "attach your complete signed statement of the charges and facts, together with the dates, name and location of the court in which the proceedings were held or are pending" if he answered "yes" to question 14.

6. Question 14, which Mr. Taboada answered affirmatively, requested the following criminal history information:

14. CRIMINAL HISTORY: Have you ever been convicted of a crime, either pled or been found guilty, or entered a plea of nolo contendere (no contest), even if adjudication was withheld?

NOTE: This question applies to any violation of the laws of any municipality, county, state, or nation, including traffic offense (but not parking, speeding, inspection or traffic signal violations), without regard to whether you were placed on probation, had adjudication withheld, paroled, or pardoned. Your answer to this question will be checked against local and state records. Failure to answer this question accurately could cause denial of licensure. (Emphasis added).

7. Mr. Taboada was contacted by Victoria Mergenthal, an investigator for the Division, and requested to provide the missing explanation. In response to this request, on or about December 11, 2003, Mr. Taboada filed the following signed statement with the Division:

QUESTION #14

I was arrested for possession [sic] of fraudulent [sic] I.D. and fraudulent [sic] credit cards.

I did 1 1/2 years probation.

This happen [sic] in 1999-2000 in Broward (Deerfield Beach).

8. After receiving Mr. Taboada's statement and in furtherance of the Division's review process, Ms. Mergenthal obtained a criminal history report on Mr. Taboada (hereinafter referred to as the "Criminal History Report") from the Florida Department of Law Enforcement. The Criminal History Report was received on or about December 31, 2003.

9. The Criminal History Report disclosed that Mr. Taboada had an extensive criminal history, including matters not reported to the Division in his December 11, 2003, statement. Those arrests and the charges included the following:

- a. Arrest for retail theft on January 16, 1995;
- b. Arrest for shoplifting on September 7, 1995;
- c. Arrest for burglary on November 7, 1995; and

d. Arrest on September 15, 2000, for possession of blank fictitious unlawfully issued driver license; fraudulent-illegal use of credit cards; and possession of stolen property.

10. As to the September 15, 2000, arrest, some of details of which Mr. Taboada had disclosed in his December 11, 2003, statement, the Criminal History Report showed that Mr. Taboada had pled nolo contendere to unauthorized possession of unlawfully issued driver license I.D. cards in violation of Section 322.212, Florida Statutes, a felony; and forgery of a credit card in violation of Section 817.60(6)(a), Florida Statutes, a felony. Adjudication was withheld on these offenses and Mr. Taboada was sentenced to one and a half years' probation beginning April 6, 2001.

11. The foregoing arrests, and their judicial outcome, were not fully and completely disclosed to the Division by Mr. Taboada.

12. On February 11, 2004, the Division issued a Notice of Intent to Deny License Application. The Division's action was based upon its conclusion that Mr. Taboada lacked good moral character. This conclusion was premised upon the fact that he had pled nolo contendere to a felony and the fact that he had failed to provide full and complete disclosure, or accurate information pertaining to his criminal history, on the Application.

## CONCLUSIONS OF LAW

### A. Jurisdiction.

13. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2003).

### B. The Burden and Standard of Proof.

14. Florida Administrative Code Rule 61B-60.003(2) provides that when an application for a yacht salesperson license is filed and "determined to be in acceptable form" the Division "shall issue a temporary 90-day license." That was done in this case.

15. Although Mr. Taboada possessed a temporary license, Florida Administrative Code Rule 61B-60.003(3) requires that the Division "evaluate the application and make appropriate inquiry to determine the applicant's moral character." Once that review is completed, if it is found that the applicant does not possess good moral character, "the division shall issue a notice of its intent to deny the application." That is also what occurred in this case.

16. Based upon the foregoing, Mr. Taboada, by seeking a license as a yacht salesperson, had the burden of proof. See Fla. Admin. Code R. 28-107.003; Department of Banking and Finance, Division of Securities and Investor Protection v.



Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); See also  
Espinoza v. Department of Business and Professional Regulation,  
739 So. 2d 1250 (Fla. 3rd DCA 1999). Mr. Taboada was required  
to meet his burden by proving by a preponderance of the evidence  
that he is entitled to the license he seeks.

C. The Division's Grounds for Denial of Mr. Taboada's  
License.

17. In its Notice of Intent to Deny, which the Division  
was required by Florida Administrative Code Rule 28-107.003 to  
provide to Mr. Taboada, the Division notified Mr. Taboada of the  
grounds for its proposed denial of his Application. The  
Division notified Mr. Taboada that the following constituted the  
factual basis for its decision:

On December 15, 2003, the Division received  
an application for a yacht salesperson's  
license from you. The application was found  
to be in correct form and temporary  
salesperson's license no. 5344 was issued.  
On the application, question number  
fourteen, relating to criminal history, was  
answered "yes." Along with your  
application, you included a brief statement  
explaining that you had been arrested for  
possession of fraudulent identifications and  
credit cards and had served 1 1/2 years  
probation for these crimes. A criminal  
background report from the Florida  
Department of Law Enforcement revealed that  
you had a prior arrest record, which  
included theft and burglary charges along  
with a conviction involving the possession  
of fraudulent identifications and credit  
cards. These charges were not disclosed on  
your application. It was also noted that

you served 1 1/2 years probation that ended in October 2002.

18. The Division notified Mr. Taboada that, legally, it was denying his Application pursuant to Section 326.004(6)(a), Florida Statutes. That provision provides, in pertinent part, the following:

(6) The division may deny a license to any applicant who does not:

(a) Furnish proof satisfactory to the division that he or she is of good moral character.

19. The Division also notified Mr. Taboada that its conclusion that he had failed to provide proof satisfactory to the Division that he was of good moral character was based upon Florida Administrative Code Rule 61B-60.003(3)(a)1 and 6, which provide "factors" to consider in determining whether an applicant has good moral character:

. . . . For the purposes of this rule, the following factors bear upon good moral character:

1. The completion of a criminal history check by the Florida Department of Law Enforcement that reveals no convictions of a felony, no convictions of a misdemeanor involving moral turpitude, and no pleas of nolo contendere, pleas of guilty, or verdicts of guilty to a felony charge or of any non-felonious offense involving moral turpitude, fraud, theft, dishonesty, assault and battery, or false statement; and

. . . .

6. Failure of the applicant to provide full and complete disclosure, or to provide accurate information, on the application for licensure.

. . . .

20. The facts proved in this proceeding support the Division's conclusion that Mr. Taboada had failed to satisfy the Division of his good moral character. Mr. Taboada's criminal history disclosed that he had pled nolo contendere to two felonies. This fact bears on Mr. Taboada's moral character pursuant to Florida Administrative Code Rule 61B-60.003(3)(a)1. Mr. Taboada also failed to provide full and complete disclosure, or to provide accurate information on his Application. This fact also bears on Mr. Taboada's moral character pursuant to Florida Administrative Code Rule 61B-60.003(3)(a)6.

21. Mr. Taboada failed to offer any proof to overcome the factors relied upon by the Division in concluding that he lacked good moral character.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Division of Florida Land Sales, Condominiums, and Mobile Homes, Department of Business and Professional Regulation, denying the application for a yacht salesperson license filed by Luis A. Taboada, Jr.

DONE AND ENTERED this 14th day of July, 2004, in  
Tallahassee, Leon County, Florida.

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LARRY J. SARTIN  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of July, 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.