

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SAMUEL DUKE BENNETT, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-1641  
 )  
 BOARD OF BUILDING CODE )  
 ADMINISTRATORS AND INSPECTORS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on June 29, 2004, by means of video teleconference between sites at West Palm Beach and Tallahassee, Florida, before Administrative Law Judge Michael M. Parrish of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Miriam S. Wilkinson, Esquire  
McConnaughay, Duffy, Coonrod, Pope &  
Weaver, P.A.  
Post Office Drawer 229  
Tallahassee, Florida 32302-0229

For Respondent: Jeffrey D. Jones, Esquire  
Department of Legal Affairs  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner's application for licensure as a building inspector should be granted or denied.

PRELIMINARY STATEMENT

Following receipt of notice that Respondent intended to deny his application for licensure, Petitioner timely filed a Petition challenging the proposed denial. The Petition raised disputed issues of material fact and also challenged the legal sufficiency of the Notice of Intent to Deny on the grounds that the notice was deficient as written, both in terms of particularity and in terms of failing to comply with the requirements of Section 120.60(1), Florida Statutes.

At the final hearing in this case Petitioner testified on his own behalf and also presented the testimony of five other witnesses. Petitioner also offered four exhibits, all of which were received in evidence. Respondent did not call any witnesses, but did offer two exhibits, both of which were received into evidence.<sup>1</sup>

At the conclusion of the evidentiary hearing the parties were allowed ten days from the filing of the transcript within which to file their proposed recommended orders. The transcript was filed with the Division of Administrative Hearings on July 23, 2004. Thereafter Petitioner filed a proposed

recommended order containing proposed findings of fact and conclusions of law.<sup>2</sup> As of the date of this Recommended Order, Respondent has not filed a proposed recommended order.<sup>3</sup>

FINDINGS OF FACT

1. Petitioner submitted an application for licensure as a building inspector on August 6, 2003.

2. The application was reviewed by Respondent and subsequently denied on the basis that it contained "materials which questions [sic] the good moral character of Petitioner," and that Petitioner's application "failed to provide complete supporting documentation relating to all previous disciplinary actions which could also impact a determination concerning [Petitioner's] moral character."

3. No notification that Petitioner's application lacked supporting documentation was sent by the Department to Petitioner.

4. Petitioner's application lists prior convictions for traffic-related offenses, such as careless driving, driving with a suspended license, and DUI. Petitioner has never been convicted of a crime involving dishonesty, false statement, fraud, or theft. Petitioner has never been convicted of a felony. Petitioner was under the influence of alcohol at the time that all of the traffic-related offenses were committed.

5. Petitioner is now a recovering alcoholic who has been actively involved with Alcoholics Anonymous ("AA") for over three years on a voluntary basis. His sobriety date is May 25, 2001. The sobriety date is important because it marks the date when an alcoholic makes and implements a commitment to a new way of life.

6. AA operates on the principle generally accepted by the medical community that alcoholism is a disease, and not a moral issue. AA operates on the principle that although there is no cure for alcoholism, there is a daily reprieve. AA is a 12-step program providing guidelines to living. AA works only if the alcoholic follows the twelve steps to the best of his or her ability. A person who is not willing to change his or her life cannot be helped by AA. AA is an ongoing lifetime process of personal improvement, the pinnacle of which is service to others.

7. Petitioner is a totally different person now as compared to the way he used to be. Petitioner admits that his alcohol-related impairment was the primary cause of the episodes of misconduct prior to his commitments to a life of sobriety and to the principles of the AA program. Petitioner's last criminal conviction was in 1998.

8. Since becoming sober, Petitioner purchased his own home and recently married. Petitioner is an officer in his AA home

group, with responsibilities that include overseeing the group's activities, setting up meetings, chairing meetings, providing coffee, and paying rent for the meeting site with monies that the group has entrusted to him. Petitioner regularly chairs his home group meetings, and has spoken on alcohol-related issues to several other community groups, including the Salvation Army and the Comprehensive Alcohol Rehabilitation Program. Petitioner has become a person of integrity who cares about others, reaching out to new AA attendees as a mentor.

9. Petitioner has been regularly employed since he stopped drinking. Joe Iagrossi has known Petitioner for a little more than two years. Petitioner is employed by Iagrossi's company, Construction Inspections of the Palm Beaches. Iagrossi considers Petitioner to be a reliable, honest, and truthful employee, trusts Petitioner's judgment, and has confidence in his work. Iagrossi believes that Petitioner has the ability to distinguish right from wrong, as well as the character to observe the difference. There have never been any conduct issues with Petitioner, and he possesses a good reputation within the company. Iagrossi is of the opinion that Petitioner can practice building inspection with reasonable skill and safety to the general public.

10. Richard Sussan is Petitioner's AA sponsor and has known Petitioner for two years. Sussan considers Petitioner a

person of integrity, who cares about others, is reliable and honest, and is very committed to AA.

11. Petitioner is a member of, and is actively involved with the activities of, Christ Fellowship Church. Petitioner is a regular volunteer in the church's Special Needs Ministry. The Special Needs Ministry is a program which allows families of children with special needs to attend regular church services by providing volunteers to watch the special needs children during that time. For the past two years Petitioner has volunteered every other Sunday to watch a special needs child so that the child's parents can attend church services. Petitioner is highly regarded by church officials and church members who know him, and in that group he enjoys a reputation of being very reliable, honest, and a person of integrity and good morals.

12. Petitioner worked for the architectural firm of Ames Bennett & Associates, P.A. for fifteen years. Petitioner's duties included field inspections for residential and commercial projects, for code and contract compliance, from geotechnical and foundation through trim work, ADA, and fire safety oversight. Petitioner also managed the office, paid bills, interviewed job applicants, and showed new employees inspection techniques.

13. Petitioner passed the Southern Building Code Congress International certification examination for Building Inspector

on November 20, 2001. Petitioner passed the International Code Council certification examination for Building Inspector on September 18, 2003.

14. Chapter 11 of the Florida Building Code governs enforcement of the Florida Americans with Disabilities and Accessibility Implementation Act. The Act defines "disability" as "physical or mental impairment that substantially limits one or more major life activities, and includes alcoholism."

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 120.57(1), Florida Statutes.

16. Section 468.609, Florida Statutes, governs standards for certification as a building inspector, and states that a person shall be entitled to take the examination for certification as a building inspector if the person:

- (a) Is at least 18 years of age.
- (b) Is of good moral character.
- (c) Meets eligibility requirements according to one of the following criteria:

- 1. Demonstrates 5 years combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought. . . .

17. Petitioner is more than 18 years of age and has the requisite experience.

18. Based on the language of the Notice of Intent to Deny, Petitioner was denied licensure by Respondent on the basis that he lacks good moral character, and that his application did not provide complete supporting documentation relating to all previous disciplinary actions which may affect a moral character determination.

19. Pursuant to Section 120.60(3), Florida Statutes, the Notice of Intent to Deny is deficient as written, both in terms of particularity and in terms of requirements under Section 120.60(1), Florida Statutes. Specifically, an agency must notify an applicant of any errors or omissions in the application within thirty (30) days of receipt, and shall not deny a license for failure to correct an error or omission or to supply additional information unless the agency timely notified the applicant within the statutory 30-day period. The agency failed to state what supporting documentation was missing with respect to the "previous disciplinary actions." Any errors or omissions in the application should have been addressed by Respondent's staff prior to forwarding the application for final review, and Petitioner should have been notified of any errors or omissions within 30 days of the Department's receipt of the application. Since no such notification was sent by the agency to Petitioner, and Respondent elected to review the



application, Petitioner's application was obviously deemed complete.

20. In licensing cases, the burden is upon the applicant to demonstrate entitlement to the requested license by a preponderance of the evidence. Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); State ex rel. Glaser v. Pepper, 155 So. 2d 383 (Fla. 1st DCA 1963); Florida Department of Transportation v. J.W.C. Co., Inc. 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

21. Petitioner has proved by a preponderance of the evidence that he is entitled to be licensed as a building inspector.

22. The uncontroverted evidence in this case shows that Petitioner is a recovering alcoholic who has been actively involved in AA since May of 2001. His last conviction was six years ago. Since his sobriety date, Petitioner has held a steady job, is well-liked by his colleagues and employer, and is in a stable marriage. He is actively involved with his church, volunteering his time with the church's Special Needs Ministry. He is respected by friends, family, and co-workers. He has demonstrated honesty, integrity, and commitment to competent service in the profession of building inspection.

23. "Good moral character" is a broad standard subject to interpretation. The Village Zoo, Inc. d/b/a Village Zoo v. Division of Alcoholic Beverages and Tobacco, Case No. 83-389 (1983 Fla. Div. of Adm. Hear. LEXIS 6127). It is not defined by any applicable statute or rule governing building code inspectors. The courts have, however, provided some guidance in defining and applying this standard. In Zemour, Inc. v. State of Florida, Division of Beverage, 347 So. 2d 1102 (Fla. 1st DCA 1977), the court stated:

Moral character, as used in this statute, means not only the ability to distinguish between right and wrong, but the character to observe the difference; the observance of the rules of right conduct, and conduct which indicates and establishes the qualities generally acceptable to the populace for positions of trust and confidence. An isolated unlawful act or acts of indiscretion wherever committed do not necessarily establish bad moral character.

24. In Florida Board of Bar Examiners v. G.W.L., 364 So. 2d 454, 458, (Fla. 1987), the court discussed the meaning of good moral character as follows:

In our view, a finding of a lack of "good moral character" should not be restricted to those acts that reflect moral turpitude. A more appropriate definition of the phrase requires an inclusion of acts which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and nation.

25. What constitutes "good moral character" is a matter to be developed by facts. White v. Beary, 237 So. 2d 263 (Fla. 1st DCA 1970). Florida decisional law generally holds the view that alcoholism, in and of itself, is not a moral character problem. State v. Wadsworth, 210 So. 2d 4 (Fla. 1968)("Alcoholism is not said to be or thought of as a character trait."); Criminal Justice Standards and Training Commission v. Vause, Case No. 89-2768 (1989 Fla. Div. of Adm. Hear. LEXIS 6986) ("Alcoholism is a disease. . . and not an issue of 'good moral character.'"); Todd v. Todd, 56 So. 441 (Fla. 1951)("Intoxication does not stain the character like stealing, robbery and other acts involving moral turpitude"); Plummer v. Florida Board of Medicine, Case No. 92-2060 (1993 Fla. Div. of Adm. Hear. LEXIS 5047) ("The fact that eight years ago Petitioner was deeply in alcoholic denial does not constitute persuasive evidence of a current bad moral character or of bad moral character during the period his alcoholism has been in remission."). It has also been held that driving while intoxicated is not necessarily a failure of good character. Bray v. Florida Real Estate Commission, Case No. 83-3005 (1984 Fla. Div. of Adm. Hear. LEXIS 4862) (DUI conviction does not bear on the issue of Petitioner's honesty, truthfulness, trustworthiness, or character).

26. In sum: the evidence in this case clearly establishes that at this time Petitioner is a person of good moral

character.<sup>4</sup> He meets all other criteria for approval of his application. Accordingly, his application should be granted.

RECOMMENDATION

Based on the foregoing, it is hereby RECOMMENDED that a Final Order be entered granting Petitioner's application for licensure as a building inspector.

DONE AND ENTERED this 9th day of August, 2004, in Tallahassee, Leon County, Florida.



---

MICHAEL M. 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 9th day of August, 2004.

ENDNOTES

1/ Respondent was granted leave to late-file one of its exhibits. That exhibit was filed with the Division of Administrative Hearings on July 23, 2004, at the same time the transcript was filed.

2/ The proposed findings and conclusions set forth in Petitioner's proposed recommended order are in large part consistent with the findings and conclusions reached by the Administrative Law Judge. Accordingly, portions of Petitioner's

proposals have been incorporated into the text of this Recommended Order. It should also be noted that a number of facts proposed by Petitioner have been omitted from the findings of fact in this Recommended Order not because of a lack of competent substantial evidence, but because they appeared to the ALJ to be subordinate and unnecessary details.

3/ Respondent advised by telephone that it did not intend to file a proposed recommended order.

4/ The nature and frequency of Petitioner's episodes of misconduct prior to his commitments to sobriety and to the principles of AA certainly raise questions about the state of Petitioner's moral character at that time. But the issue in this case is not whether the Petitioner was once of questionable moral character at some time in the past. Rather, the issue here is whether Petitioner is presently a person of good moral character. The evidence establishes that he is presently such a person.

COPIES FURNISHED:

Anthony B. Spivey, Executive Director  
Building Code Administrators and  
Inspectors  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792

Leon Biegalski, General Counsel  
Department of Business and  
Professional Regulation  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-2202

Miriam S. Wilkinson, Esquire  
McConnaughay, Duffy, Coonrod, Pope &  
Weaver, P.A.  
101 North Monroe Street, Suite 900  
Post Office Drawer 229  
Tallahassee, Florida 32302-0229

Jeffrey D. Jones, Esquire  
Department of Legal Affairs  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

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.