

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAZLYN GEORGES,)
)
 Petitioner,)
)
 vs.) Case No. 06-1508
)
 BOARD OF BUILDING CODE)
 ADMINISTRATORS AND INSPECTORS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on July 13, 2006, in Deland, Florida, before Barbara J. Staros, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jazlyn Georges, pro se
705 Arlene Drive
Deltona, Florida 32725

For Respondent: Jeffrey D. Jones, Esquire
Department of Legal Affairs
The Capitol, Plaza Level 08
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue is whether Petitioner's application for licensure should be granted or denied.

PRELIMINARY STATEMENT

On January 4, 2006, Respondent, Board of Building Code Administrators and Inspectors, issued a Notice of Intent to Deny Petitioner's applications for provisional and standard certification as a building plans examiner. The reason for the denial as stated in the Notice of Intent, is that Petitioner's applications for standard and provisional certification "do not demonstrate, affirmed by affidavit signed by an architect, engineer, contractor, or building code examiner, that you have the required experience for the certifications sought."

Petitioner timely requested an Administrative Hearing to contest the Notice of Intent to Deny. The case was transmitted to the Division of Administrative Hearings on or about April 26, 2006. A Notice of Hearing was issued on May 16, 2006, setting the hearing for July 13, 2006.

At hearing, Petitioner testified on her own behalf. Petitioner offered Exhibit numbered 1, which was admitted into evidence. Respondent did not present any witnesses. Respondent offered Exhibits numbered 1 through 5, which were admitted into evidence. Official Recognition was taken of Chapters 468 and 655, Florida Statutes, and Florida Administrative Code Rule Chapter 61G19-6.

A Transcript consisting of one volume was filed on July 31, 2006.

On August 9, 2006, Petitioner filed a post-hearing submission and Respondent filed a proposed recommended order, which were considered in the preparation of this Recommended Order. All references to the Florida Statutes are to 2005 unless otherwise indicated.

FINDINGS OF FACT

1. Petitioner filed applications with the Department of Business and Professional Regulation (DBPR) for a provisional plans examiner license and a standard building plans examiner license.^{1/}

2. The Board of Building Code Administrators and Inspectors (Board), which is part of DBPR, is the state agency charged with certification of building code administrators, plans examiners, and building code inspectors, pursuant to Chapter 468, Florida Statutes.

3. Accompanying her applications were: a statement of educational history; an affidavit from her then current employer, Robert Olin of the Orange County Building Division; an "Experience History" page; and notarized statements from two construction companies listed on the Experience History page, JE Activities Construction Managers, Inc., and BFC Construction Corp., regarding Petitioner's employment with those companies.

4. DBPR reviewed her applications and sent her two letters dated August 9, 2005, both of which read in pertinent part as follows:

If you are using your education as experience, you will need to have an official transcript sent from your institution. Have them send it to attention building codes, CIU. (There's no need to send the one for the psychology coursework, only the engineering.)

The paperwork you sent from New York is not sufficient. You will need to use the affidavit form in your packet, such as Mr. Olin used. They need to fill out the form completely (please note it does not have to be notarized.) The affidavits must be filled out by a state licensed architect, engineer, contractor or building official (see application instructions.) They must include their state license number and tell what the license is (i.e. general contractor). If they are one of these professions but are not licensed in New York because it is not necessary in that state, they need to send a separate letter so stating, which is notarized.

You need to send a new experience history page which includes your position in Orange County. (emphasis in original)

5. Additionally, the August 9, 2005, letter regarding her application for a provisional license advised Petitioner the following:

Please be advised that in order to be eligible for provisional license, you must be hired into the position of a building plans examiner. . . . You will need to send a new affidavit from your CBO stating that you have been hired into the position, and

the effective date of such hire. (Please see Rule 61G19-6.012(6) showing you are eligible to perform the duties of a building plans examiner when hired for a period of 90 days from the date of submission of the application for provisional licensure) under direct supervision of a CBO. . . .

6. Petitioner responded to the August 9, 2005, letters by supplying the requested documentation.

7. Specifically, Petitioner provided a revised affidavit from Robert C. Olin, Manager/Building Official with the Orange County Building Division, which stated as follows:

Ms. Georges was hired as a Plans Examiner on 6/13/05. She is applying for her Provisional Plans Examiner License and also to take the Building Plans Examiner exam. Presently her responsibility is to complete her training for the position of Plans Examiner, and to obtain a Provisional, and then a Standard Plans Examiner License.

8. Petitioner also provided a revised Experience History page which included her position in Orange County listing the dates of employment as June 13, 2005 to present.

9. Further, Petitioner provided revised statements/affidavits, on the affidavit form specified in the August 9, 2005, letter to Petitioner, regarding her work experience in New York. One of the affidavits was written by Ernest Jochen, vice president of JE Activities, Inc., who listed her dates of employment as February 2003 to June 2005, and her years of supervisory experience as "2 years 3 months." The

other affidavit was written by Garfield Stewart, Senior Project Manager, of BFC Construction Corp., who listed her dates of employment as May 2000 to January 2003, and her years of supervisory experience as "2 years 8 months." The substance of the original statements of Mr. Jochen and Mr. Stewart regarding Petitioner's work experience was essentially the same as in the revised affidavits. The revisions were of a technical nature only, i.e., on the correct forms. Petitioner's work experience in these jobs, i.e., managing gut renovations of city-owned multi-family apartment buildings, is in the field of construction.

10. Petitioner also ordered an official transcript from Polytechnic University in Brooklyn, New York, which was received by Respondent on October 5, 2005. The transcript indicates that Petitioner attended Polytechnic University from the fall of 1996 through the fall of 2000, earning 123.50 credits over four years with a major in Civil Engineering.

11. The Board denied Petitioner's applications at a meeting held on December 9, 2005, and issued the Notice of Intent to Deny on January 4, 2006.

12. Subsequent to issuance of the Notice of Intent to Deny,^{2/} Petitioner provided separate letters from Mr. Stewart and Mr. Jochen which read as follows:

A license to complete gut renovations on multi-family structures is not required in the State of New York. The firm is only required to be bonded and insured.

13. Although Petitioner was employed by Orange County at the time she submitted her applications and for several months thereafter, she explained at hearing that she left her employment with Orange County in June 2006, and was employed there for exactly one year. This meant at the time she made application, Petitioner was employed by an agency of government, but not at the time of hearing.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding in accordance with Sections 120.569 and 120.57(1), Florida Statutes.

15. In licensing cases, the burden is on 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); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

16. The Notice of Intent to Deny states as the reason for denial that Petitioner's applications for standard and provisional certification "do not demonstrate, affirmed by

affidavit signed by an architect, engineer, contractor, or building code administrator, that you have the required experience for the certifications sought."

17. Section 468.609, Florida Statutes, reads in pertinent part as follows:

468.609 Administration of this part; standards for certification; additional categories of certification.--

(1) Except as provided in this part, any person who desires to be certified shall apply to the board, in writing upon forms approved and furnished by the board, to take the certification examination.

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part 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;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

* * *

(4) No person may engage in the duties of a building code administrator, plans examiner, or building code inspector pursuant to this part after October 1, 1993, unless such person possesses one of the following types of certificates, currently valid, issued by the board attesting to the person's qualifications to hold such position:

(a) A standard certificate.

(b) A limited certificate.

(c) A provisional certificate.

18. Florida Administrative Code Rule 61G19-6.0035 reads as follows:

61G19-6.0035 Application for Provisional and/or Standard Certification.

(1) Each individual who wishes to obtain a provisional and/or standard certificate in any certificate category shall submit the following to the Board:

(a) A completed application form for the category in which certification is sought. The form that shall be used for this purpose shall be provided by the Department and available on the Department's website.

(b) An affidavit describing in detail each separate period of work experience listed in the application form, signed by a licensed architect, engineer, contractor, or building code administrator who has knowledge of the applicant's duties and responsibilities during the period indicated. The form that shall be used for this purpose shall be provided by the Department and available on the Department's website. Each affidavit must include the name and address of the applicant's employer during the work experience period, the dates of employment, and a description of the applicant's duties

and responsibilities during the employment including any supervisory responsibilities, in sufficient detail to enable the Board to determine whether or not the applicant has the experience required for certification.

(c) Each applicant for certification as an inspector or plans examiner shall demonstrate that he or she has at least one (1) year of hands-on experience in the category of certification sought.

(d) Each applicant seeking to qualify for certification through a combination of post secondary education and work experience shall submit an official copy of all college or university transcripts which document the applicant's education in addition to all required affidavits of work experience.

(e) Each applicant who is not employed by a local government agency having responsibility for building code inspection, building construction regulation, and enforcement of building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes at the time of the application shall submit payment of all applicable application, examination and certification fees as specified in Chapter 61G19-10, F.A.C.

(2) In addition to all other required items, each applicant for an inspector or plans examiner certificate shall submit with the application a statement from the applicant's current employer which shall indicate the applicant's present status with the employer. Each applicant employed by a local government agency having responsibility for building code inspection, building construction regulation, and enforcement of building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes at the time the

application is submitted must include on the statement the signature and license number of the building code administrator or building official for the applicant's employing agency.

(3) In addition to all other required items, each applicant for a building code administrator certification shall submit with the application a statement from the applicant's current employer which shall indicate the applicant's present status with the employer.

19. Florida Administrative Code Rule 61G19-6.012 reads in pertinent part as follows:

61G19-6.012 Provisional Certificates.

(1) The Board shall issue a provisional certificate to any newly employed or newly promoted building code administrator, plans examiner, or building code inspector subject to the provisions of Section 468.609, F.S., and the provisions of this rule.

(2) Provisional certificates are not renewable, and are valid for the following terms:

(a) Three years for inspectors.

(b) Three years for plans examiners.

(c) Three years for building code administrators officials.

(3) Provisional inspector or plans examiner certificates shall only be issued to applicants who demonstrate at the time of their application that they possess all of the standards and eligibility requirements for standard certification as set forth in Section 468.609(2), F.S. Provisional building code administrator certificates shall only be issued to applicants who

demonstrate at the time for their application that they possess all of the standards and eligibility requirements for standard certification as set forth in Section 468.609(3), F.S.

(4) Provisional certificates shall be issued to persons employed by an agency of government.

20. Petitioner has the requisite number of years of experience required for a standard certificate. The original and revised affidavits submitted by her former employers demonstrate that she had 4 years, 11 months of on-the-job experience in the field of construction. The affidavits were signed by persons from a state in which licensure was not required, and who provided separate, written statements to verify that. Petitioner was employed by Orange County for exactly one year. Thus, Petitioner has met the eligibility requirements of Section 468.609(2)(c)1., Florida Statutes.

21. Moreover, Petitioner has demonstrated a combination of postsecondary education in the field of construction with at least one year of such total being experience in construction, building code inspection, or plans review. Thus, Petitioner has met the eligibility requirements of Section 468.609 (2)(c)2., Florida Statutes.

22. As a result of Petitioner's acknowledgment at hearing that she is no longer employed by a governmental agency, Respondent argues in its proposed recommended order that

Petitioner should not be granted a provisional license, citing Florida Administrative Code Rule 61G19-6.012(4). Pursuant to the language of that Rule, Petitioner is no longer eligible to receive a provisional certificate.

RECOMMENDATION

Upon consideration of the facts found and the conclusions of law reached, it is

RECOMMENDED:

That a final order be entered denying Petitioner's application for provisional certification as a building plans examiner, and granting Petitioner's application for standard certification as a building plans examiner, thus allowing her to sit for the standard certificate examination.

DONE AND ENTERED this 24th day of August, 2006, in Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of August, 2006.

ENDNOTES

1/ Petitioner also applied for a "1 & 2 Family Plans Examiner License" but withdrew that application.

2/ Although provided by Respondent, these letters do not show a receipt date but are dated by Mr. Jochen and Mr. Stewart January 12 and January 26, 2006, respectively.

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.