

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT H. RAINES, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 08-2718  
 )  
 CONSTRUCTION INDUSTRY )  
 LICENSING BOARD, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Upon due notice, a disputed-fact hearing was held in this case on November 3, 2008, by video conference between Tallahassee, and Jacksonville, Florida, before Ella Jane P. Davis, a duly-assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert H. Raines, pro se  
11661 Houle Road  
Jacksonville, Florida 32218

For Respondent: Daniel Biggins, Esquire  
Department of Legal Affairs  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Should Petitioner's application for a Certified Residential Contractor license be granted?

PRELIMINARY STATEMENT

Petitioner successfully passed the required examination, and on June 1, 2007, applied to Respondent for a Certified Residential Contractor license. His application was denied by a January 3, 2008, Notice of Intent to Deny, which was not served until March 7, 2008. It listed specific reasons for the denial. Petitioner timely sought a disputed-fact hearing, and the cause was referred to the Division of Administrative Hearings on or about June 9, 2008.

The originally scheduled final hearing was cancelled because the building location in Jacksonville had been closed, on an emergency basis, due to Tropical Storm Fay, but the final hearing went forward on November 3, 2008, by video conference between Tallahassee, and Jacksonville, Florida.

Petitioner, in Jacksonville, testified on his own behalf and had six exhibits admitted in evidence. Respondent's attorney, in Tallahassee, presented the oral testimony of Jacqueline Watts, also present in Tallahassee, and had five exhibits admitted in evidence.

A Transcript was filed on November 12, 2008, and each party's timely-filed Proposed Recommended Order has been considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. The Notice of Intent to Deny in this case listed the following reasons for denying Petitioner a Certified Residential Contractor license: (1) insufficient work experience as required by Section 489.111(2)(c), Florida Statutes (2007), and Florida Administrative Code Rule 61G4-15.001(3), in that Petitioner had only one-half year of experience when he needed one year; commission of crimes related to the practice of, or the ability to practice, contracting, which crimes are a basis for license denial under Sections 489.129(1)(b) and (c) and 455.227(1)(c), Florida Statutes (2007); and failure to satisfy the requirement of good moral character, which is a basis for denial of a license according to Section 489.111(2) and (3), Florida Statutes (2007).

2. In 1991, Petitioner was sentenced to probation for Attempted Capital Sexual Battery on a person under the age of twelve, per Section 794.011, Florida Statutes. Petitioner had exposed himself to his step-daughter. Due to the judge finding mitigation, Petitioner was placed on probation.

3. In 1999, Petitioner was convicted under Section 827.071(5), Florida Statutes, for possession of photographs displaying sexual performances by children. He had stored over 90 images of child sexual acts (pornography) on his computer. His arrest therefor violated his probation for the prior

offense, and he was sentenced concurrently to two years imprisonment and five years' probation, with psychosexual counseling and no unsupervised contact with minors.

4. Petitioner's child pornography possession occurred while Petitioner was on probation for his earlier offense. When questioned by the investigating officer, Petitioner initially was not forthcoming as to the amount of child pornography in his possession.

5. Petitioner was released from prison one year early, presumably due to good behavior.

6. Petitioner's crimes/convictions are related to the practice of contracting, because a licensed residential contractor has greater access to private homes than laymen or many other professionals; because a licensed residential contractor is automatically extended a higher level of trust by consumers' families than is a typical unlicensed construction worker; and because there is a substantial potential that homeowners will entrust a licensed residential contractor in their home and near their children, while expecting the licensee to oversee his on-premises staff.

7. It is axiomatic that the crimes committed by Petitioner are among the most dangerous and threatening to children, a vulnerable segment of the population. The sentencing guidelines and the probationary requirement of no child contact and

psychosexual counseling recognize the potential for future harm.<sup>1/</sup>

8. In 2006, Petitioner gained custody of his 16-year-old son, based entirely on the child's problems in school and the inability of the mother to resolve the son's absentee and scholastic problems.

9. For the last six years, Petitioner has been president of his own successful contracting business. He is financially stable, and has passed the requisite examination for the license for which he has applied. He claims to have two years of college credit, but that was not corroborated.

10. Petitioner's work experience is construction-related, because he has experience drilling into foundation slabs, but he has no experience in actually pouring foundation slabs.

11. Petitioner has experience drilling into masonry walls, but no independent experience constructing masonry walls.

12. Petitioner has experience attaching clips to trusses for support, but no experience in the actual setting of trusses.

13. Petitioner's experience in wood framing is limited to moving supports in walls. He takes out the frame, puts in a rod, and replaces the frame.

14. Petitioner conceded that he has no experience in either column erection or structural reinforced concrete.

15. Petitioner's relevant experience is apparently limited to that obtained working for family and friends, which experience he listed on his application. He testified that he has one year's experience as a skilled worker; one year's experience as a foreman; and two years of college credit, but his testimony on this score was not corroborated either by affidavit, another witness' testimony, or by any other reliable evidence.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2007).

17. The Petitioner has the burden of proof in this proceeding. Antel v. Dept. of Professional Regulation, Florida Real Estate Commission, 552 So. 2d 1056 (Fla. 5th DCA 1988); see also Dept. of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

18. Section 489.111(2)(b), (2)(c) and (3), provides, in pertinent part:

(2) A person shall be eligible for licensure by examination, if the person:

\* \* \*

(b) Is of good moral character; and

(c) Meets eligibility requirements according to one of the following criteria:

1. Has received a baccalaureate degree from an accredited 4-year college in the appropriate field of engineering, architecture, or building construction and has 1 year of proven experience in the category in which the person seeks to qualify. For the purpose of this part, a minimum of 2,000 person-hours shall be used in determining full-time equivalency.

2. Has a total of at least 4 years of active experience as a worker who has learned the trade by serving an apprenticeship as a skilled worker who is able to command the rate of a mechanic in the particular trade or as a foreman who is in charge of a group of workers and usually is responsible to a superintendent or a contractor or his or her equivalent, provided, however, that at least 1 year of active experience shall be as a foreman.

3. Has a combination of not less than 1 year of experience as a foreman and not less than 3 years of credits for any accredited college-level courses; has a combination of not less than 1 year of experience as a skilled worker, 1 year of experience as a foreman, and not less than 2 years of credits for any accredited college-level courses; or has a combination of not less than 2 years of experience as a skilled worker, 1 year of experience as a foreman, and not less than 1 year of credits for any accredited college-level courses. All junior college or community college-level courses shall be considered accredited college-level courses. (Emphasis supplied).

\* \* \*

(3)(a) The board may refuse to certify an applicant for failure to satisfy the requirement of good moral character only if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a certified contractor; and

2. The finding by the board of lack of good moral character is supported by clear and convincing evidence.

(b) When an applicant is found to be unqualified for a certificate because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

19. Florida Administrative Code Rule 61G4-15.001(3)

states:

In the case of applicants for certification in the residential contractor category, the phrases "active experience" and "proven experience" as used in Section 489.111(2)(c)1., 2., or 3., F.S., shall be defined to mean construction experience in four or more of the following area:

- (a) Foundation/Slabs.
- (b) Masonry walls.
- (c) Trusses.
- (d) Structural wood framing (excluding platform framing).
- (e) Column erection.
- (f) Formwork for structural reinforced concrete.



20. Section 489.129(1)(b) and (c) states:

(1) The board may take any of the following actions against any certificateholder or registrant: place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the certificate, registration, or certificate of authority, require financial restitution to a consumer for financial harm directly related to a violation of a provision of this part, impose an administrative fine not to exceed \$10,000 per violation, require continuing education, or assess costs associated with investigation and prosecution, if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195 is found guilty of any of the following acts:

\* \* \*

(b) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting.

(c) Violating any provision of chapter 455. (Emphasis supplied).

21. Section 455.227(1)(c), states:

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

\* \* \*

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.

22. Petitioner's convictions are directly related to the practice of residential contracting for the reasons set out in Findings of Fact 6 and 7. Also, the evidence in this case does not persuade that one who has been convicted of these sex-related crimes can safely be granted a professional license that would allow him increased access to unsuspecting homeowners. A court's grant of custody to Petitioner of his natural child, based on the best interests of that individual child, neither adds to, nor detracts from, the foregoing conclusion. Petitioner's application must be denied based upon Sections 455.227(1)(c) and 489.129(1)(b), Florida Statutes. See also § 455.227(2)(a), Fla. Stat.<sup>2/</sup>

23. Petitioner's directing a business and providing for himself and others is admirable. However, he has not demonstrated that he has taken steps to repair his moral character. Sexual felonies cannot be viewed as of so little consequence as to not diminish the perpetrator's moral character. Pursuant to Section 489.111(2)(b), Florida Statutes, an applicant for certification must be of good moral character,

and contrary to Petitioner's assertions, "good moral character" is not purely subjective perception.

24. In Zemour, Inc. v. Division of Beverages, 347 So. 2d 1102 (Fla. 1st DCA 1977), an applicant for a beverage license was denied after an administrative finding that the owner was not of good moral character. The court defined moral character:

[N]ot 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.

25. In Florida Board of Bar Examiners, Re: G.W.L., 364 So. 2d 454 (Fla. 1978), the Florida Supreme Court, in a case involving admission to The Florida Bar, stated that a lack of good moral character:

[S]hould not be restricted to those acts that reflect moral turpitude, but rather extends to acts and conduct 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.

See also White v. Beary, 237 So. 2d 263 (Fla. 1st DCA 1970).

26. Respondent may refuse to certify an applicant for failure to satisfy the moral character requirement when there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities

of a certified contractor. See § 489.111(3)(a), Fla. Stat. Petitioner herein has failed to clearly and convincingly satisfy the requirement of good moral character required by Section 489.111(2)(b), Florida Statutes.

27. With regard to whether or not Petitioner's experience is sufficient, his point, made orally at hearing and in his Proposed Recommended Order, to the effect that he should be licensed because some words in parentheses in the statute are not also in parentheses in the corresponding rule, is obscure, but it is clear that because Petitioner claims to have one year of experience as a skilled worker, one year of experience as a foreman, and two years of college credits, the only combinations of experience he could qualify under would be pursuant to Section 489.111(2)(c), which requires either a combination of not less than one year of experience as a foreman and not less than three years of credits for any accredited college-level courses; or having not less than one year of experience as a skilled worker, one year of experience as a foreman, and not less than two years of credits for any accredited college-level courses; or having a combination of not less than 2 years of experience as a skilled worker, one year of experience as a foreman, and not less than one year of credits for any accredited college-level courses.

28. Of the three foregoing possible acceptable combinations, Petitioner apparently intended to qualify under the second option, via his own unsupported testimony that he had worked one year as a skilled worker, one year as a foreman, and two years at accredited college-level courses. Respondent submits that Rule 61G4-15.001(3) interprets the terms, "active experience" and "proven experience" in 489.111(2)(c)3. to require four out of six categories of experience, but since subparagraph 3. (unlike sub-paragraphs 1. and 2.) does not use either the term "active experience" or the term "proven experience," Respondent's argument fails to persuade.

29. Be that as it may, at the present time, Petitioner has failed to demonstrate the necessary experience. Petitioner has not demonstrated two years of work experience in the licensed category of residential construction including one year of supervisory experience as a foreman. Petitioner's demonstrated experience in construction-related activities for his own business, which is, by definition, outside the category of licensed residential construction, does not suffice. Petitioner's experience was not demonstrated to be working as an employee of a licensed contractor. Indeed, the only experience he listed that would qualify him was a short duration of time working on houses for friends, and his testimony was not

corroborated in any manner. Therefore, he does not qualify by experience at this time.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED that the Construction Industry Licensing Board deny Petitioner's application for Certified Residential Contractor's License.

DONE AND ENTERED this 15th day of December, 2008, in Tallahassee, Leon County, Florida.



---

ELLA JANE P. DAVIS  
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 15th day of December, 2008.

ENDNOTES

1/ Respondent alleged that Petitioner currently remains a registered sex offender, but did not offer proof or argument to that effect.

2/ Section 455.227(2) provides, in pertinent part:

(2) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify, or to certify with restrictions, an application for a license.

COPIES FURNISHED:

Robert H. Raines  
11661 Houle Road  
Jacksonville, Florida 32218

Daniel Biggins, Esquire  
Department of Legal Affairs  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399-1050

G.W. Harrell, Executive Director  
Construction Industry Licensing Board  
Department of Business and  
Professional Regulation  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792

Ned Luczynski, General Counsel  
Department of Business and  
Professional Regulation  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792

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.