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REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA
DIVISION OF
ADMINISTRATIVE
HEARINGS

JAN 21 2009

Docketed by:

IN THE MATTER OF

CASE NO. 96028-08-AG

LAWRENCE JEROME BRYANT

_____ /

FINAL ORDER

08-2876

This cause came on for consideration of and final agency action on the Recommended Order rendered on December 16, 2008 by Administrative Law Judge Carolyn S. Holifield (ALJ) after a formal hearing conducted under Section 120.57(1), Fla. Stat., on October 8, 2008. Petitioner Lawrence Jerome Bryant (Bryant) timely filed exceptions to that Recommended Order. No response to those exceptions was filed by the Department. The Recommended Order, the petitioner's exceptions thereto, the transcript of hearing testimony, admitted exhibits, and applicable law have all been considered in the promulgation of this Final Order.

RULINGS ON THE PETITIONER'S EXCEPTIONS

Bryant's first exception challenges the finding of fact in Paragraph Two of the Recommended Order, which states that Bryant completed his licensure application by accessing the department's on-line website. The challenge is based on a perceived inconsistency with a portion of the Recommended Order's Preliminary Statement where it is stated that Bryant "submitted" his application to the department. Whatever the elusive distinction between "completed" and "submitted" may be, it is not outcome

determinative of any substantive issue in this cause, and the challenged finding of fact is supported by competent substantial evidence. Accordingly, this exception is rejected.

Bryant next excepts to paragraph Five of the Recommended Order, contending that an additional sentence should be added to indicate that Bryant was not informed of a specific date by which he should have revealed his criminal history to the department. This exception does not contend that the challenged finding is not supported by competent substantial evidence, which, in this context, is the only basis on which an agency may alter, amend, or reject a finding of fact. Section 120.57(1)(l), Fla. Stat. Accordingly, this exception is rejected.

Bryant excepts to the Finding of Fact in Paragraph Six of the Recommended Order wherein it is stated that an answer to an application question was untruthful, contending that said finding confuses fact with a conclusion of law. However, Bryant fails to cite to any legal authority in support of that contention, rendering the exception deficient. Section 120.57(1)(k), Fla. Stat. Further, it is well established that it is the exclusive province of a hearing officer or an administrative law judge to determine the veracity of a witness. *Department of Business and Professional Regulation v. McCarthy*, 638 So.2d 298 (Fla. 1st DCA 1994); *Martuccio v. Department of Professional Regulation, Bd. of Optometry*, 622 So.2d 607 (Fla. 1st DCA 1993); *Young v. Department of Educ., Div. of Vocational Rehabilitation*, 943 So.2d 901 (Fla. 1st DCA 2006); *Kany v. Florida Engineers Management Corp.*, 948 So.2d 948 (Fla. 5th DCA 2007). Accordingly, this exception is rejected.

Bryant excepts to the first sentence of the Finding of Fact in Paragraph Seven of the Recommended Order contending that it creates an incorrect impression regarding

the time by which Bryant should have revealed his criminal history to the department. Again, this exception is bereft of supporting legal authority, and is therefore deficient. Section 120.57(1)(l), Fla. Stat. Moreover, such exceptions as Bryant repeatedly makes in this matter are no more than invitations to the agency to reweigh the hearing evidence, something that it lacks the authority to do. *Koltay v. Division of General Regulation, Dept. of Business Regulation*, 374 So.2d 1386 (Fla. 2nd DCA 1979); *Bay County School Bd. v. Bryan*, 679 So.2d 1246 (Fla. 1st DCA 1996); *Walker v. Board of Professional Engineers*, 946 So.2d 604 (Fla. 1st DCA 2006). Accordingly, this exception is rejected.

Bryant excepts to Paragraph Seventeen of the Recommended Order on the basis that certain recitations of statutory language should be stated with emphasis. The exception does not contend that the statutory language is incorrectly quoted, so as to not be supported by competent substantial evidence, or proffer a legal authority in support of the exception. Accordingly, the exception is deficient and is rejected.

Bryant excepts to Paragraph Eighteen of the Recommended Order on the basis that certain recitations of statutory language should be stated with emphasis, and that others should be withdrawn as inapplicable. The exception does not contend that the statutory language is incorrectly quoted, so as to not be supported by competent substantial evidence, or proffer a legal authority in support of the exception showing how the desired exception is material to the outcome of this matter. Accordingly, the exception is deficient and is rejected.

Bryan excepts to Paragraph Nineteen of the Recommended Order, arguing for deletion of its reference to Section 648.45(2), Fla. Stat., on the basis that said statute is

applicable only to an existing license while it was applied to Bryant's application for a license. Bryant misreads the statute; by inclusion of the words " department shall deny... any license" and, "a material misstatement, misrepresentation or fraud in obtaining or in attempting to obtain a license", it is clearly applicable to licensure applications. Accordingly, this exception is rejected.

Bryant excepts to Paragraph Twenty-one of the Recommended Order, arguing for its deletion on the basis that there was no assertion of a specified time within which Bryant should have revealed his criminal history to the department. However, an examination of Paragraph Twenty-one and the record evidence shows that the matter of such an assertion is inapposite to the content of Paragraph Twenty-one, which content is supported by competent substantial evidence. Additionally, Bryant fails to cite to any legal authority in support of the exception. Accordingly, this exception is rejected.

Bryant's exception to Paragraph Twenty-two of the Recommended Order is a hypothetical constitutional challenge to Section 648.25, Fla. Stat. It is well established that such challenges are reserved to the jurisdiction of Article V courts and not to administrative agencies. *Carrollwood State Bank v. State, Department of Banking and Finance*, 362 So.2d 110 (Fla. 1st DCA 1978). Accordingly, this exception is rejected.

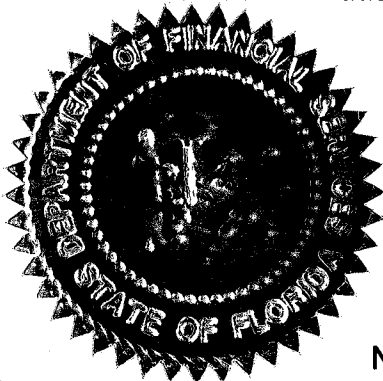
Bryant's last exception is to Paragraph Twenty-four of the Recommended Order. The exception argues that the department's denial of Bryant's licensure application was based on Section 648.355, Fla. Stat., rather than on Section 648.45(2)(a), Fla. Stat., as stated in that paragraph. This conclusory exception is not based on any citation to the record, or any legal authority. It is mere assertion, without more. Thus, it is facially defective. Section 120.57(1)(l), Fla. Stat. Moreover, the record shows that Paragraph

Twenty-four is supported by competent substantial evidence. Accordingly, this exception is rejected.

Having reviewed the Recommended Order, the transcript of proceedings, the exhibits entered into evidence, the Petitioner's exceptions, and applicable law,

IT IS HEREBY ORDERED that the ALJ's Findings of Fact are adopted as the Department's Findings of Fact in this cause, and that the ALJ's Conclusions of Law are adopted as the Department's Conclusion of Law in this cause, and that the application of Lawrence Jerome Bryant for licensure as a temporary bail bond agent is denied.

DONE AND ORDERED this 21st day of January 2009.





Tammy Teston
Deputy Chief Financial Officer

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Fla. R. App. P. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal within thirty (30) days of rendition of this Order.

Copies to
Evelyn Moya
Gautier Kitchen
ALJ Carolyn Hollifield