

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LAWRENCE JEROME BRYANT,)
)
 Petitioner,)
)
vs.) Case No. 08-2876
)
DEPARTMENT OF FINANCIAL)
SERVICES,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, the final hearing in this case was held on October 8, 2008, in Sarasota, Florida, before Carolyn S. Holifield, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Evelyn L. Moya, Esquire
Law Office of Evelyn L. Moya
5250 Seventeenth Street, Suite 8
Sarasota, Florida 34235

For Respondent: William Gautier Kitchen, Esquire
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner is eligible for licensure as a temporary resident limited surety agent.

PRELIMINARY STATEMENT

On February 11, 2008, Petitioner submitted an application for licensure as a temporary resident limited surety agent to Respondent, Department of Financial Services ("Department"). By Notice of Denial ("Notice") dated May 15, 2008, the Department denied Petitioner's application for licensure. According to the Notice, Petitioner's application was denied for the following two reasons: (1) In 1989, Petitioner pled guilty to assault, a felony, and was adjudicated guilty of that offense in the State of Washington; and (2) Petitioner failed to disclose the foregoing guilty plea and adjudication of guilt in response to a question on his application for licensure. Petitioner timely challenged the Department's decision to deny his license.

The Department forwarded the matter to the Division of Administrative Hearings on or about June 6, 2008. By Notice issued July 9, 2008, the final hearing was scheduled for September 8, 2008. The parties filed a Joint Motion to Continue (Motion) the final hearing on July 30, 2008. The Motion was granted, and the hearing was rescheduled for October 8, 2008.

At hearing, Petitioner testified on his own behalf and presented the testimony of three other witnesses: (1) David DelGrosso, a bail bondsman; (2) Robert E. Griffith, regional supervisor, Division of Licensing, Department of Agriculture and Consumer Services; and (3) Allan Foodman, a psychiatrist.

Petitioner's Exhibits 1 through 6 were admitted into evidence. The Department presented the testimony of one witness, David DelGrosso. The Department's Exhibits 1 through 6 were admitted into evidence.

A Transcript of the hearing was filed on October 24, 2008. Both parties timely filed Proposed Recommended Orders which have been considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner applied to the Department for licensure as a temporary resident limited surety agent on February 11, 2008.

2. Petitioner completed his application for licensure on-line by accessing the Department's website.

3. One of the questions on the application for licensure as a temporary resident limited surety agent was the following:

Have you been charged, convicted, found guilty, or pled guilty or nolo contendere (no contest) to a felony or crime under the laws of any municipality, county, state, territory or country, whether or not adjudication was withheld or a judgment of conviction was entered?

4. Initially, Petitioner responded "yes" to the question requiring that he disclose whether he had a criminal history. However, when Petitioner typed in "yes" to the question, the Department's website posted the "Stop" sign, and the Department's website did not allow Petitioner to proceed further on the application.

5. Petitioner, with the aid of David DelGrosso, called the Department's customer service number. Petitioner told an unidentified customer service representative that after he answered "yes" to the question involving his criminal history, the Department's website had denied him further access and prevented him from answering subsequent questions on the licensure application. The Department's unidentified customer service representative then advised Petitioner to enter "No" to the question regarding any criminal history and to provide the Department with a written explanation as to his criminal history.

6. After speaking with the unidentified customer representative, Petitioner changed his answer to the question related to his criminal history to "No." By doing so, he was able to complete and submit the on-line application for licensure. However, the answer that Petitioner gave to the question related to his criminal history was not truthful.

7. When Petitioner submitted his application, he did not provide the Department with a written explanation as to his criminal history, as the customer service representative directed or suggested. Rather, Petitioner provided a written explanation concerning his criminal history about two months after he submitted his application and only in response to the

Department's request that he do so, after its investigation revealed that Petitioner had a criminal record.

8. On May 5, 1989, Petitioner entered a guilty plea to two felony counts of assault and was adjudicated guilty of those offenses before the Superior Court of the State of Washington for Pierce County. Petitioner was sentenced to and served 48 months in prison.

9. Petitioner served his term of confinement and fulfilled all the terms of his sentence, including payment of a fine. Thereafter, on June 15, 1993, the Superior Court of the State of Washington for Pierce County entered a Certificate and Order of Discharge, which discharged Petitioner from the custody of the State's Department of Corrections and restored his civil rights.

10. Since completing his sentence about 15 years ago, Petitioner has become a productive citizen in the community, has been employed in positions of trust, and has not committed any other crimes. For example, in 1994, Petitioner was licensed as a certified nursing assistant by the Florida Department of Health and, subsequently, worked as a certified nursing assistant in a nursing home and at the Sarasota Memorial Hospital.

11. Petitioner also has been issued licenses by the Florida Department of Agriculture and Consumer Services-- a License D (concealed weapon permit) issued on July 5, 2007,

and a License G (statewide firearm license) issued February 26, 2008. The foregoing licenses were issued to Petitioner despite his disclosure of his criminal history and/or because his civil rights were restored and/or his proven rehabilitation.

12. Petitioner does not dispute that he entered a plea of guilty to two felony counts of assault and that he was adjudicated guilty of those offenses. However, Petitioner believes that given his record after being released from prison and the circumstances surrounding the incident which led to his conviction, his application for licensure as a temporary resident limited surety agent should be approved.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2008).¹

14. The Department is the state agency responsible for administering the provisions of Chapter 648, Florida Statutes,¹ which includes the licensure of limited surety agents and primary and temporary bail bond agents.

15. As an applicant for a temporary limited licensure, Petitioner has the burden of establishing by a preponderance of evidence that he meets the statutory requirements for the licensure he seeks.

16. The Department denied Petitioner's application for licensure as a temporary resident limited surety agent based on Subsections 648.27(2), 648.34(2)(e) and 648.45(2)(a), (b), (e) and (k), Florida Statutes.

17. Subsection 648.27(2), Florida Statutes, states:

(2) For the protection of the people of this state, the department may not issue, renew, or permit to exist any license or appointment except in compliance with this chapter. The department may not issue, renew, or permit to exist a license or appointment for any individual found to be untrustworthy or incompetent who has had his or her eligibility to hold a license or appointment revoked, or who has not established to the satisfaction of the department that he or she is qualified therefor in accordance with this chapter.

18. Subsection 648.34(2)(e), Florida Statutes, states:

(2) To qualify as a bail bond agent, it must affirmatively appear at the time of application and throughout the period of licensure that the applicant has complied with the provisions of s. 648.355 and has obtained a temporary license pursuant to such section and:

* * *

(e) The applicant is a person of high character and approved integrity and has not been convicted of or pleaded guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction has been entered.

19. Subsection 648.45(2), Florida Statutes, provides in pertinent part the following:

(2) The department shall deny, suspend, revoke, or refuse to renew any license or appointment issued under this chapter or the insurance code, and it shall suspend or revoke the eligibility of any person to hold a license or appointment under this chapter or the insurance code, for any violation of the laws of this state relating to bail or any violation of the insurance code or if the person:

(a) Lacks one or more of the qualifications specified in this chapter for a license or appointment.

(b) Has made a material misstatement, misrepresentation, or fraud in obtaining a license or appointment, or in attempting to obtain a license or appointment.

* * *

(e) Has demonstrated lack of fitness or trustworthiness to engage in the bail bond business.

* * *

(k) Has been found guilty of, or has pleaded guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction has been entered.

20. The evidence established that Petitioner made a material misstatement or misrepresentation in attempting to obtain a license as a temporary resident limited surety agent.

21. Petitioner argues that Petitioner's failure to truthfully answer the question about his criminal history on his on-line application is not a material misstatement or misrepresentation. As support for this argument, Petitioner asserts that he did not intend to deceive or to fraudulently obtain the subject license, as evidenced by his providing documents related to his criminal history to the Department. Petitioner's argument is not persuasive in light of the fact that Petitioner did not provide documents regarding his criminal history to the Department until almost two months after he submitted his application and after the Department requested that information.

22. Assuming arguendo that Petitioner's untruthful statement does not constitute a material misstatement or misrepresentation in attempting to obtain a license, he is still ineligible for licensure pursuant to Subsection 648.45(2)(k), Florida Statutes.

23. The undisputed evidence established that in 1989, Petitioner pled guilty to and was convicted of a felony under the laws of the State of Washington.

24. The Department properly denied Petitioner's application for licensure as a temporary resident limited surety agent because he lacks one or more of the qualifications for such licensure as noted above. See § 648.45(2)(a), Fla. Stat.

RECOMMENDATION

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

RECOMMENDED that Respondent, Department of Financial Services, enter a final order that: (1) finds Petitioner, A.D., ineligible for licensure; and (2) denies Petitioner's application for licensure as a temporary resident limited surety agent.

DONE AND ENTERED this 16th day of December, 2008, in Tallahassee, Leon County, Florida.

Carolyn S. Holifield

CAROLYN S. HOLIFIELD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of December, 2008.

ENDNOTE

1/ All references are to 2008 Florida Statutes, unless otherwise indicated.

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.