

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TEDDY NADEL,)
)
 Petitioner,)
)
 vs.)
) Case No. 08-5416
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by telephone conference on January 12, 2009, at sites in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: David Feldheim, Esquire
Law Office of David Feldheim
Post Office Box 17274
Plantation, Florida 33318

For Respondent: Philip F. Monte, III, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street, Suite 42
Tallahassee, Florida 32399-2202

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner is of good moral character, which must be affirmatively determined by

Respondent before Petitioner can be issued a license to operate as a community association manager.

PRELIMINARY STATEMENT

By a written notice dated August 19, 2008, Respondent Department of Business and Professional Regulation informed Petitioner Teddy Nadel that it would not certify that he is of good moral character and hence intended to deny his application for licensure as a community association manager. Mr. Nadel timely requested a formal hearing to contest the allegation that he lacks good moral character, and the matter was referred to the Division of Administrative Hearings on October 27, 2008.

The final hearing took place as scheduled on January 12, 2009, with both parties present and represented by counsel.

At hearing, Mr. Nadel testified on his own behalf and also called Leonard Lampert and Neal Lechtner as character witnesses. Mr. Nadel offered no exhibits. The Department presented one witness, its employee Anthony Spivey, who is the executive director of an office within the Department's Division of Professions called the Regulatory Council of Community Association Managers. In addition, Petitioner's Exhibits 1 through 11 were admitted into evidence without objection.

The final hearing transcript was filed on January 28, 2009. Each party thereafter submitted a Proposed Recommended Order, and the undersigned has considered these papers.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2008 Florida Statutes.

FINDINGS OF FACT

The Parties

1. Petitioner Department of Business and Professional Regulation ("Department") has jurisdiction to regulate the practice of community association management.

2. In June 2008, Petitioner Teddy Nadel ("Nadel") submitted to the Department an application for licensure as a community association manager.

3. In August 2008, the Department notified Nadel that it intended to deny his application on the ground that he had failed to demonstrate good moral character.

Nadel's Relevant Personal History

4. For decades, from the mid-1960s through 2005, Nadel was a certified general contractor in the state of Florida. During most of this period, Nadel apparently engaged in the business of contracting without incident. In recent years, however, Nadel on several occasions was disciplined administratively for alleged misconduct in connection with his contracting business.

5. The first disciplinary proceeding arose from Nadel's alleged failure timely to pay a civil judgment. In August 2001, the Department issued an Administrative Complaint accusing Nadel of having failed "to satisfy[,] within a reasonable time, the

terms of a civil judgment obtained against the licensee . . . relating to the practice of the licensee's profession," which is an offense under Section 489.129(1)(q), Florida Statutes. Without admitting or denying the allegations, Nadel agreed to entry of a Final Order, in August 2002, whereby he was directed to satisfy the judgment, pay a fine of \$500, and reimburse the Department \$333.37 in costs.

6. In March 2003, the Department again issued an Administrative Complaint against Nadel. The multiple charges included failure timely to satisfy a civil judgment, mismanagement,¹ incompetence,² and helping an unlicensed person engage in the business of contracting.³ In December 2003, pursuant to a stipulation under which Nadel elected not to dispute (or admit) the charges, the Construction Industry Licensing Board ("Board") entered a Final Order requiring Nadel to pay a fine and costs totaling approximately \$4,000, satisfy the final judgment against him, and serve two years' probation.

7. On March 7, 2005, the Board entered a Final Order Approving Voluntary Relinquishment of Licensure, which permanently stripped Nadel of his general contractor license. This action brought to an end certain disciplinary proceedings which were then pending against Nadel, who had been charged with helping four separate unlicensed individuals engage unlawfully

in the business of contracting. Nadel neither admitted nor denied the allegations.

8. At the final hearing, Nadel was afforded a full opportunity to explain the circumstances surrounding the multiple disciplinary actions that had been brought against him. To the rather limited extent Nadel testified about the facts underlying the numerous administrative charges described above, he failed persuasively and credibly to rebut the reasonable inference that naturally arises from the undisputed facts concerning his willingness repeatedly to accept punishment (including, ultimately, the loss of his license) without a contest in the respective disciplinary cases: namely that he had committed the unlawful acts as alleged. The undersigned therefore infers that, in the relatively recent past, Nadel exhibited a troubling pattern of behavior demonstrating a disregard of the laws regulating the business of contracting.

9. On January 4, 2007, Nadel was convicted in the Circuit Court for the Seventeenth Judicial Circuit on charges of engaging in the unlicensed practice of contracting during a state of emergency, which is a third degree felony⁴; and grand theft in the third degree, which is also a felony of the third degree.⁵ (Nadel had pleaded no contest to these charges, and the court had withheld adjudication.) Following this conviction,

the court sentenced Nadel to 18 months' probation, imposed some small fines, and assessed costs.

10. In his application for licensure as a community association manager, Nadel disclosed his criminal conviction and the fact that he had voluntarily relinquished his general contractor license. He denied, however, having been "involved in any civil lawsuits or administrative actions in this or any other state" This denial was false, as Nadel must have known. After all, in the previous six years at least two administrative actions had been brought against Nadel in whole or in part because of his failure to pay two separate civil judgments.

Ultimate Factual Determination

11. Based on the foregoing findings of fact, the evidence in support of which is clear and convincing, it is determined that Nadel does not possess the good moral character required for issuance of a community association manager license.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

13. Before the Department can issue a community association manager license to any person, it must certify that

the person is of good moral character. The relevant statute provides as follows:

(2) The department shall examine each applicant who is at least 18 years of age, who has successfully completed all prelicensure education requirements, and who the department certifies is of good moral character.

(a) Good moral character means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

(b) The department may refuse to certify an applicant only if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a community association manager;
2. The finding by the department of lack of good moral character is supported by clear and convincing evidence; or
3. The applicant is found to have provided management services requiring licensure without the requisite license.

§ 468.433(2), Fla. Stat.

14. The Department has prescribed by rule a detailed framework of objective criteria for determining whether an applicant possesses good moral character. Florida Administrative Code Rule 61-20.001(5) provides in pertinent part as follows:

(a) Unless the division denies the application for incompleteness under paragraph (4)(a) of this rule, the division shall evaluate the application and make appropriate inquiry to determine the applicant's moral character. Demonstration

of all of the following will establish the applicant's good moral character:

1. The completion of a criminal history records check by the Florida Department of Law Enforcement and self-disclosure by the applicant that establishes that the applicant has no criminal record; and

2. The absence of civil lawsuits or administrative actions decided adversely to the applicant which involved matters bearing upon moral character including, for example: fraud, dishonesty, misrepresentation, concealment of material facts, or practicing a regulated profession without a license or certificate as required by law or rule; and

3. No prior history of violations by the applicant of Chapter 468, Part VIII, F.S., any rule of the division relating to community association management, or any lawful order of the division previously entered in a disciplinary proceeding, or of failing to comply with a lawfully issued subpoena of the division; and

4. The absence of other information generated in the course of the application process which negatively reflects on the applicant's moral character including, for example: gross misconduct or gross negligence in the applicant's prior work experience whether or not the prior work was related to the professional responsibilities of a community association manager; and

5. That the applicant has not committed the following in connection with an application:

a. Given to the division a check for payment of any fee when there are insufficient funds with which to pay the same, if the applicant, upon notification by the division, fails to redeem the check or otherwise pay the fee within 30 days of the date of written notification by the division; or

b. Failed to provide full and complete disclosure, or failed to provide accurate information.

(Emphasis added.) For purposes of the foregoing, the term "criminal record" means "any misdemeanor or felony charge filed against the applicant in the courts of any state or federal district or territory, or other country, on any subject matter whether related to community association management or not, concerning which charge the applicant was found guilty, or pled guilty, or pled no contest, regardless of whether or not there was an adjudication by the court, and regardless of whether the matter is under appeal by the applicant." Fla. Admin. Code R. 61-20.001(1)(c).

15. The fact that Nadel has a criminal record is sufficient, of itself, to preclude a finding of good moral character pursuant to Rule 61-20.001(5)(a).

16. When an applicant is unable, as here, to establish good moral character under Rule 61-20.001(5)(a), the following additional factors must be considered:

1. If commission of a second degree misdemeanor is the only reason the applicant did not meet the requirements of paragraph (5)(a) of this rule, the applicant will be considered to have good moral character. However, if there are also other reasons why the applicant did not meet the requirements of paragraph (5)(a) of this rule, the second degree misdemeanor will be considered along with the other factors in determining the applicant's good moral character;

2. If the applicant has committed a first degree misdemeanor or a felony, and the applicant's civil rights have been restored, this alone shall not preclude a finding of

good moral character unless the crime is directly related to the professional responsibilities of a community association manager. Crimes that are deemed to be directly related to the professional responsibilities of a community association manager include, for example, fraud, theft, burglary, bribery, arson, dealing in stolen property, forgery, uttering a forged instrument, sexual battery, lewd conduct, child or adult abuse, murder, manslaughter, assault, battery, and perjury. The applicant has the burden of proving restoration of civil rights by certified true copy of government or court records reflecting such action.

3. Whether the applicant has exhibited a pattern of unlawful behavior which would indicate that the applicant has little regard for the law, the rules of society, or the rights of others. All unlawful acts will be considered in determining whether the applicant has exhibited a pattern of unlawful behavior, even though any one of the unlawful acts by itself might not be directly related to the professional responsibilities of a community association manager. It is the applicant's repeated flaunting of or ignoring the law that evinces a lack of the moral character needed to perform the duties and assume the responsibilities of a community association manager, not the particular relationship of any one of the violations to the professional responsibilities of a community association manager.

4. Whether the applicant is disqualified from applying for a license by reason of Section 775.16, F.S., pertaining to conviction of certain offenses involving controlled substances.

5. Conduct of the applicant relied upon by the division to determine that the applicant lacks good moral character shall be directly related to the professional responsibilities of a community association manager.

6. Written evidence the division will consider in determining the applicant's good moral character shall include:

a. A statement from the applicant explaining the applicant's criminal/unlawful conduct and the reason the applicant believes the division should issue the license;

b. Evidence as to the length of time since the conduct occurred or the age of the applicant at the time the conduct occurred;

c. Evidence of successful rehabilitation;

d. Recommendations from parole or probation employees who have supervised the applicant;

e. Recommendations from the prosecuting attorney or sentencing judge;

f. Character references from individuals other than immediate family members, who have known the applicant for 3 years or longer;

g. Police reports or transcripts which reveal the underlying facts of the crime;

h. Evidence that the conduct was an isolated occurrence contrary to the applicant's normal pattern of behavior; and

i. Evidence of community or civil activities with which the applicant has been associated.

It is the applicant's responsibility to provide such mitigating evidence to the division.

7. If the applicant makes incomplete, misleading or false statements regarding material facts in making an application, such action will establish the applicant's lack of good moral character, and the application will be denied.

Fla. Admin. Code R. 61-20.001(5)(b)(emphasis added).

17. A few of the enumerated factors weigh heavily against Nadel. To begin, his felony conviction for grand theft—a crime which is deemed to be directly related to the professional

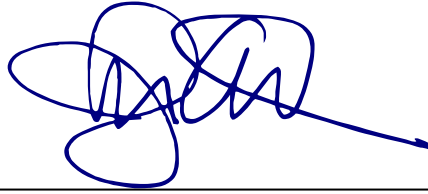
responsibilities of a community association manager—is probably disqualifying, without more.⁶ But there *is* more: a pattern of relatively recent, unlawful behavior, as evidenced by the serial disciplinary proceedings during the instant decade, which culminated in Nadel's losing his general contractor license. And finally, Nadel made a false statement of material fact in his application, denying that he had been involved in any civil lawsuits or administrative actions, when in fact his *recent* litigation history includes both civil and administrative proceedings. Taken together, these factors decisively demonstrate the existence of several serious deficiencies in Nadel's moral character—too many, at bottom, for the Department to certify that such character is "good."

18. The Department, therefore, has presented clear and convincing evidence that Nadel lacks good moral character.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department enter a final order denying Nadel's application for licensure as a community association manager.

DONE AND ENTERED this 18th day of March, 2009, in
Tallahassee, Leon County, Florida.



JOHN G. VAN LANINGHAM
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 18th day of March, 2009.

ENDNOTES

^{1/} See § 489.129(1)(g), Fla. Stat.

^{2/} See § 489.129(1)(m), Fla. Stat.

^{3/} See § 489.129(1)(d), Fla. Stat.

^{4/} See § 489.127(2)(c), Fla. Stat.

^{5/} See § 812.014(2)(c)1., Fla. Stat.

^{6/} Nadel failed to prove that his civil rights have been restored; the outcome would be the same, however, even if he had proved restoration.

COPIES FURNISHED:

David Feldheim, Esquire
Law Office of David Feldheim
Post Office Box 17274
Plantation, Florida 33318

Philip F. Monte, III, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street, Suite 42
Tallahassee, Florida 32399-2202

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

Anthony B. Spivey, Executive Director
Regulatory Council of Community
Association of Managers
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.