

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CRIMINAL JUSTICE STANDARDS)
AND TRAINING COMMISSION,)
)
Petitioner,)
)
vs.) Case No. 09-3743PL
)
ANTONIO R. SARIA,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On October 12, 2009, a duly-noticed hearing was held by means of video teleconferencing with sites in Pensacola and Tallahassee, Florida, before Administrative Law Judge Lisa Shearer Nelson, assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Sharon S. Traxler, Esquire
Assistant General Counsel
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

For Respondent: Jeremy Early, Esquire
5234 Willing Street
Milton, Florida 32570

STATEMENT OF THE ISSUES

The issues to be determined in this case are whether Respondent has failed to maintain the qualifications required for a correctional officer pursuant to Section 943.1395(7), Florida

Statutes (2006),^{1/} and Florida Administrative Code Rule 11B-27.0011(4)(b), and if so, what penalty should be imposed?

PRELIMINARY STATEMENT

On December 12, 2008, the Florida Department of Law Enforcement (FDLE or the Department) issued an Administrative Complaint against Respondent, Antonio Saria, alleging that he violated Section 943.1395(7), Florida Statutes, and Florida Administrative Code Rule 11B-27.0011(4)(b) by committing a battery on Candida Nowlin by touching or striking her against her will, and did "unlawfully and intentionally harass . . . Candida Nowlin, and thereby hinder, delay, prevent, or dissuade [her] from reporting to a law enforcement officer or judge the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding." On January 7, 2009, Respondent disputed the allegations in the Administrative Complaint and requested a hearing pursuant to Section 120.57(1), Florida Statutes. On July 14, 2009, the Department forwarded the case to the Division of Administrative Hearings for assignment of an administrative law judge.

A Notice of Hearing issued August 4, 2009, scheduling the final hearing for October 12, 2009, and the case proceeded as scheduled. At hearing, Petitioner presented the testimony of Harry Barraclough, Lucille Epley and Candida Nowlin, and Petitioner's Exhibits 2-4 were admitted into evidence.

Respondent testified on his own behalf and presented the testimony of Deborah Willette. The proceedings were recorded and a Transcript was filed with the Division November 3, 2009. Both parties timely filed Proposed Recommended Orders, which were carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to the allegations in the Administrative Complaint, Respondent was certified by the Department as a correctional officer in the State of Florida, having been issued Correctional Certificate #170241.

2. Respondent and Candida Nowlin are engaged and live together. They have lived together since 2002. Ms. Nowlin has two children from a previous relationship and she and Mr. Saria have a child together.

3. At the time of the events giving rise to these proceedings, the couple was under a great deal of stress because of a serious accident involving one of Ms. Nowlin's children.

4. On the evening of November 6, 2006, Mr. Saria and Ms. Nowlin had an argument. She asked him to leave, and he refused. In his anger, he slammed a cordless phone in their home against the kitchen counter. However, there is no competent evidence that he struck or grabbed her, or threw her into a wall.

The only competent testimony presented is that he touched her arms in order to move her out of his path as he went to another room in the home, but did not harm her in any way.

5. Ms. Nowlin felt that she and Mr. Saria needed some time apart, so when Mr. Saria refused to leave their home, she went with her young daughter next door to her neighbor's home to call the police.

6. Her neighbor, Ms. Epley, was having a dinner party. She noticed that Ms. Nowlin was crying and she let her use her phone, but was distracted by her hostess duties. She did not remember Ms. Nowlin being injured, and Ms. Nowlin did not tell her that Mr. Saria had beaten her up.

7. Ms. Nowlin called the police from Ms. Epley's home. Two officers came to the home, then-officer Barraclough and Sergeant Spears. They interviewed Ms. Nowlin, Ms. Epley, and Mr. Saria, and arrested Mr. Saria and took him away. After they had removed Mr. Saria from the home, the two officers completed statements from both Ms. Epley and Ms. Nowlin.

8. Officer Barraclough testified that he saw scratches and red marks on Ms. Nowlin's arms. However, his testimony was contradicted by all other witnesses who testified, and is not credited.

9. Sergeant Spears, who did not testify, took Ms. Nowlin's statement. While she was doing so, Ms. Nowlin's mother came to the home. Her testimony, which is credited, is that Ms. Nowlin

had no bruises or marks on her arms and that Ms. Nowlin was primarily upset at that point because Mr. Saria had been arrested.

10. The only competent evidence of what happened between Ms. Nowlin and Mr. Saria during their argument is the testimony of the two of them. They both deny vehemently that he struck her or engaged in any unwanted touching. They both insist that they had an argument because of the amount of stress they were under, and that the police were called because Ms. Nowlin felt they needed some time away from each other.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes (2009).

12. This is a disciplinary proceeding against Respondent's license. Accordingly, the Department must prove the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Sterne, Inc., 670 So. 2d 932, 935 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

13. Clear and convincing evidence:

requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it

produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005), quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

14. The Administrative Complaint alleges that Respondent failed to maintain good moral character as required by Section 943.13(7), and thereby violated Section 943.1395(7), Florida Statutes, which provides:

(7) Upon a finding by the commission that a certified officer has not maintained good moral character, the definition of which has been adopted by rule and is established as a statewide standard, as required by s. 943.13(7), the commission may enter an order imposing one or more of the following penalties:

- (a) Revocation of certification.
- (b) Suspension of certification for a period not to exceed 2 years.
- (c) Placement on a probationary status for a period not to exceed 2 years, subject to terms and conditions imposed by the commission. Upon the violation of such terms and conditions, the commission may revoke certification or impose additional penalties as enumerated in this subsection.
- (d) Successful completion by the officer of any basic recruit, advanced, or career development training or such retraining deemed appropriate by the commission.
- (e) Issuance of a reprimand.

15. The Department has defined the failure to maintain good moral character, as required by Section 943.13(7), Florida

Statutes, in Florida Administrative Code Rule 11B-27.0011. This rule provides in pertinent part:

(4) For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as:

* * *

(b) Except as otherwise provided in Section 943.13(4), F.S., a plea of guilty or a verdict of guilty after a criminal trial for any of the following misdemeanor or criminal offenses, notwithstanding any suspension of sentence or withholding of adjudication, or the perpetration by an officer of an act that would constitute any of the following misdemeanor or criminal offenses whether criminally prosecuted or not:

1. Sections . . . 784.03 . . . , F.S.

16. Section 784.03, Florida Statutes, provides:

(1)(a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or

2. Intentionally causes bodily harm to another person.

(b) Except as provided in subsection (2), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

17. The Department has not proven the allegations in the Administrative Complaint by clear and convincing evidence. As stated in the findings of fact, there was no credible evidence

that Respondent caused any bodily harm to Ms. Nowlin or anyone else, or that he touched or struck Ms. Nowlin against her will. At best, the evidence showed that the couple had an argument they both regret during a stressful time in their relationship. The competent, credible evidence falls far short of demonstrating that a battery occurred. Therefore, the evidence does not demonstrate that Respondent failed to maintain good moral character in violation of Section 943.1395(7), Florida Statutes.

RECOMMENDATION

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

RECOMMENDED:

That a final order be entered dismissing the Administrative Complaint.

DONE AND ENTERED this 24th day of November, 2009, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of November, 2009.

ENDNOTE

^{1/} Unless otherwise indicated, all references to Florida Statutes are to the 2006 codification.

COPIES FURNISHED:

Sharon S. Traxler, Esquire
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

Antonio R. Saria
5240 Hawks Nest Drive
Milton, Florida 32570

Michael Crews, Program Director
Division of Criminal Justice
Professionalism Services
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

Michael Ramage, General Counsel
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

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.