

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES, BOARD OF FUNERAL,)
CEMETERY, AND CONSUMER)
SERVICES,)
)
Petitioner,)
)
vs.) Case No. 11-1879PL
)
TEBBIE SINGLETON,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on June 15, 2011, in Tallahassee, Florida, before Susan B. Harrell, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Thomas A. David, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399

For Respondent: Tebbie Singleton, pro se
5108 Mission Hills Avenue^{1/}
Apartment 332
Tampa, Florida 33617

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated sections 497.152(1)(a) and 497.152(4)(h), Florida Statutes (2008

and 2009); section 497.146, Florida Statutes (2009); sections 497.152(5)(b) and 497.152(5)(g), Florida Statutes (2008);^{2/} and Florida Administrative Code Rule 69K-21.055, and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On September 27, 2010, Petitioner, Department of Financial Services, Board of Funeral, Cemetery, and Consumer Services (Department), filed a three-count Administrative Complaint against Respondent, Tebbie Singleton (Mr. Singleton), alleging that he violated sections 497.152(1)(a), 497.152(4)(h), 497.146, 497.152(5)(b), and 497.152(5)(g) and rule 69K-21.055. Mr. Singleton requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on April 15, 2011, for assignment of an Administrative Law Judge to conduct the final hearing.

Mr. Singleton had been represented by counsel, John A. Rudolph, Jr. On June 14, 2011, Mr. Rudolph filed a Motion to Withdraw as Counsel for Respondent. At the commencement of the final hearing, the motion was granted.

The Department advised at the commencement of the final hearing that it would not be presenting any evidence relating to the allegations contained in Count II of the Administrative Complaint. After learning that no evidence would be presented

concerning Count II, Mr. Singleton advised that he was prepared to proceed without benefit of counsel.

At the final hearing, the Department called Sandra Gantt-Ford, Mr. Singleton, and Kurt Schuler as its witnesses. Joint Exhibits 2 and 3 were admitted in evidence. Petitioner's Exhibits A through H were admitted in evidence. Mr. Singleton testified in his own behalf and did not submit any exhibits for admission in evidence.

The Transcript of the final hearing was filed on June 30, 2011. The parties agreed to file proposed recommended orders within ten days of the filing of the Transcript. The Department filed its Proposed Recommended Order on July 11, 2011. On the same date, Mr. Singleton filed a letter, which is deemed to be his proposed recommended order.

FINDINGS OF FACT

1. Mr. Singleton has been licensed by the Department as a funeral director and embalmer since December 15, 1997. His license number is F043742.

2. On August 26, 2008, the Department entered a Final Order finding Mr. Singleton guilty of the violations alleged in the administrative complaint, In the Matter of: Tebbie Singleton (License Number F043742), Case No. 95046-08-FC. The Department imposed the following penalty:

Respondent [Mr. Singleton] shall pay an administrative fine in the amount of \$5,000. Said fine shall be paid within ninety (90) days of the date of the filing of this Final Order. The fine shall be paid by cashier's check or money order payable to the Board of Funeral, Cemetery, and Consumer Services and delivered to the Board office at the Department of Financial Services, Board of Funeral, Cemetery and Consumer Services, 200 East Gaines Street, Tallahassee 32399.

In addition, Respondent is required to pay interest on the fine due to the Board at a rate of 11% per annum, beginning on the ninety-first (91st) day after the issuance of this Final Order.

Respondent is placed on probation for a period of one year. Respondent must attend an in-person meeting of the Board at the last scheduled meeting prior to the expiration of the one year probation. Respondent must notify the Division Director of his intent to attend no less than one month prior to the meeting. Respondent shall demonstrate compliance with the Order and demonstrate by testimony, presentation of letters, or recommendation from individuals within the industry, or other indicia of rehabilitation, that Respondent is able to resume practicing with reasonable care and safety and is in compliance with the laws of the State of Florida and rules of this Board.

3. Mr. Singleton failed to pay the fine within 90 days of the issuance of the Final Order. On December 22, 2008, the Department entered a Notice of Intent to Enter Emergency Order of Suspension, advising Mr. Singleton that if he did not comply with the Final Order issued on August 26, 2008, that his license would be suspended.

4. Mr. Singleton sent a check in the amount of \$6,340.00 and dated January 17, 2011, to the Department. The check was drawn on the account of Betty Miller (Ms. Miller), who was a friend of Mr. Singleton's mother. At the top of the check was handwritten: "Tebbie Singleton, 9506 Fieldview Drive, Thonotosassa, Florida 33592, 850-577-6500." Mr. Singleton claims that neither he nor Ms. Miller wrote the address on the check, which was a starter check. The address that appeared on the check was an address at which Mr. Singleton had previously lived. Mr. Singleton's testimony that neither he nor Ms. Miller wrote the address on the check is not credible. The Department had no record prior to the receipt of the check that Mr. Singleton had ever resided at that address.

5. Ms. Miller's check was returned for insufficient funds. Mr. Singleton explained that Ms. Miller, a 72-year-old woman, had her Social Security check deposited in the account and that the money was used for bills so the account was overdrawn. As of the date of the final hearing, Mr. Singleton had not paid the fine.

6. On January 21, 2009, the Department entered an Emergency Order of Suspension because Mr. Singleton had failed to pay the administrative fine of \$5,000.00 as required by the Final Order issued on August 26, 2008. The Emergency Order of Suspension provides:

IT IS THEREFORE ORDERED that all licenses, appointments and eligibility for licensure heretofore issued to Licensee, Tebbie Singleton, within the purview of the Department, are hereby SUSPENDED.

(a) You, TEBBIE SINGELTON, shall return your license to the Division of Funeral, Cemetery and Consumer Services within ten (10) days of the issuance of the suspension.

(b) Your, TEBBIE SINGLETON'S, licenses shall not thereafter be reinstated except upon written request by you. Reinstatement shall be conditioned upon your compliance with all terms of the Final Order, including payment of the administrative fine and upon compliance with the terms of this suspension.

(c) This suspension shall terminate upon notice by the Department to the licensee that the Department has received satisfactory evidence that the licensee has come into compliance with the Board's order. The Department shall promptly provide said notice to the licensee upon receipt of such evidence.

(d) During the period of suspension, you, TEBBIE SINGLETON, shall not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under the Florida Funeral, Cemetery and Consumer Services Act.

7. Mr. Singleton has had odd jobs since the Final Order imposing the fine, but Mr. Singleton has made no effort to make even minimal payments on the fine. Instead, he tries to get friends to help him pay his fine. He intends to get married later on this year and thinks that his fiancée's family will help him pay the fine. As of the date of this Recommended

Order, nothing has been submitted by Mr. Singleton that the fine has been paid. He did state in his post-hearing submittal that he had not paid the fine, but that he would be paying the fine within the next few days.

8. Prior to June 7, 2007, Mr. Singleton had provided the Department with the following address for himself: 5607 North Armenia Avenue, Tampa, Florida 33609. He changed his address on June 7, 2007, to 8551 Manassas Road, Tampa, Florida 33635. On or about August 3, 2009, Kurt Schuler, a financial specialist with the Department, sent a letter to Mr. Singleton notifying him of an investigation concerning allegations of his unlicensed practice. The letter was sent to the Manassas Road address, but was returned by the United States Postal Service as "unable to forward." On October 8, 2009, Mr. Singleton filed a license renewal with the Department and changed his preferred mailing address to "5108 Mission Hill Drive, # 332, Tampa, Florida 33617." He had been living at the "5108 Mission Hill Drive" address since sometime in December 2008.

9. No evidence was presented concerning the allegations of practicing with a suspended license as set forth in Count II of the Administrative Complaint.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 & 120.57, Fla. Stat. (2010).

11. The Department has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996).

12. The Department has alleged that Mr. Singleton violated sections 497.152(1)(a), 497.152(4)(h), 497.152(5)(b), and 497.152(5)(g), which provide:

This section sets forth conduct that is prohibited and that shall constitute grounds for denial of any application, imposition of discipline, or other enforcement action against the licensee or other person committing such conduct. For purposes of this section, the requirements of this chapter include the requirements of rules adopted under authority of this chapter. No subsection heading in this section shall be interpreted as limiting the applicability of any paragraph within the subsection.

(1) GENERAL PROVISIONS.--The generality of the provisions of this subsection shall not be deemed to be limited by the provisions of any other subsection.

(a) Violating any provision of this chapter or any lawful order of the board or department or of the statutory predecessors to the board or department.

* * *

(4) OBLIGATIONS TO REGULATORS AND OTHER GOVERNMENT AGENCIES.--

* * *

(h) Failing to perform any statutory or legal obligation placed upon a licensee.

(5) LIMITATIONS ON SCOPE OF PRACTICE; UNLICENSED PRACTICE.

* * *

(b) Practicing or attempting to practice with a revoked, suspended, inactive, or delinquent license.

* * *

(g) Using the name or title "funeral director," "embalmer," "direct disposer," or other title suggesting licensure that the person using such name or title does not hold.

13. The Department has established by clear and convincing evidence that Mr. Singleton violated sections 497.152(1)(a) and 497.152(4)(h) by failing to pay the administrative fine that was imposed on him by the Department's Final Order dated August 26, 2008.

14. The Department presented no evidence concerning violations of sections 497.152(5)(b) and 497.152(5)(g); thus, the Department has failed to establish these violations as set forth in Count II of the Administrative Complaint.

15. The Department has alleged that Mr. Singleton violated section 497.146, which provides:

Each licensee under this chapter is responsible for notifying the department in writing of the licensee's current business and residence mailing address and the street address of the licensee's primary place of practice and shall notify the department in writing within 30 days after any change in such information, in accordance with procedures and forms prescribed by rule. Notwithstanding any other provision of law, service by regular mail to a licensee's last known address of record with the department constitutes adequate and sufficient notice to the licensee for any official communication to the licensee by the board or the department, except when other service is expressly required by this chapter. Rules may be adopted establishing forms and procedures for licensees to provide the notice required by this section.

16. The Department has alleged that Mr. Singleton violated rule 69K-21.055, which provides:

Each licensee and registrant shall provide by mail written notification to the Department the licensee's current mailing address and place of practice. The term "place of practice" means the physical location where the practice of the profession occurs, and for a funeral director in charge the place of practice is the location designated where the funeral director is in charge.

17. The Department has established by clear and convincing evidence that Mr. Singleton violated section 497.146 and rule 69K-21.055 by failing to provide the Department with written notification of his current mailing address within 30 days after his address had changed. According to Mr. Singleton, he had been living at the "Mission Hill Drive"

address since sometime in December 2008. He did not change his mailing address until October 8, 2009, which was more than 30 days from the time he moved to the "Mission Hill Drive" address and more than 30 days from the time that the Department's letter addressed to the Manassas Road address, which was the address on file for Mr. Singleton, was returned as unable to be forwarded.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Mr. Singleton violated sections 497.152(1)(a), 497.152(4)(h), and 497.146 and rule 69K-21.055; finding that Mr. Singleton did not violate sections 497.152(5)(b) and 497.152(5)(g); imposing an administrative fine of \$2,500.00; suspending his license until he becomes compliant with the Final Order issued on August 26, 2008, and the payment of the fine imposed in this case; and placing him on probation for two years after his suspension is lifted.

DONE AND ENTERED this 19th day of July, 2011, in
Tallahassee, Leon County, Florida.

Susan B. Harrell

SUSAN B. HARRELL
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 19th day of July, 2011.

ENDNOTES

- ^{1/} Respondent used this address on his Election of Rights.
- ^{2/} The statutory provisions are the same for 2008 and for 2009. All references are to the 2008 and/or 2009 versions, unless otherwise stated.

COPIES FURNISHED:

Thomas A. David, Esquire
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399

Tebbie Singleton
5108 Mission Hills Avenue
Apartment 332
Tampa, Florida 33617

Doug Shropshire, Director
Division of Funeral, Cemetery, and
Consumer Services
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0361

P. K. Jameson, General Counsel
Department of Financial Services
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0307

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.