

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, BOARD
OF ACCOUNTANCY,

Petitioner,

vs.

Case No. 15-3940PL

LARRY RICHARD BEARD,

Respondent.

_____ /

RECOMMENDED ORDER

On September 4, 2015, Administrative Law Judge Lisa Shearer Nelson of the Division of Administrative Hearings conducted a hearing pursuant to section 120.57(1), Florida Statutes (2015), in Tallahassee, Florida.

APPEARANCES

For Petitioner: Cristin Erica White, Esquire
Megan E. Kachur, Esquire
Department of Business
and Professional Regulation
Suite 42
1940 North Monroe Street
Tallahassee, Florida 32399

For Respondent: Larry Beard, pro se
Union Correctional Institution
7819 Northwest 228th Street
Raiford, Florida 32026-2601

STATEMENT OF THE ISSUE

The issue to be determined is whether Respondent, Larry Beard, violated section 473.323(1)(1), Florida Statutes, as alleged in the Administrative Complaint, and, if so, what penalty should be imposed?

PRELIMINARY STATEMENT

On May 14, 2015, Petitioner, Department of Business and Professional Regulation (Petitioner or the Department), filed an Administrative Complaint against Respondent, Larry Richard Beard, alleging a violation of section 473.323(1)(1). On May 28, 2015, Respondent disputed the allegations in the Administrative Complaint by use of an Election of Rights form and requested a hearing pursuant to section 120.57(1). On July 15, 2015, the case was referred to the Division of Administrative Hearings (Division) for assignment of an administrative law judge.

A Notice of Hearing was issued on July 21, 2015, scheduling the hearing for September 4, 2015. Arrangements were made, in light of Respondent's incarceration, for him to participate by telephone. On August 25, 2015, Petitioner filed a Motion for Official Recognition and a Notice of Filing with respect to copies of the Petitioner's proposed exhibits. Respondent objected to some of Petitioner's exhibits, and sought to have the hearing continued so that Petitioner could "redo" the

exhibits it intended to offer into evidence. By Order dated September 3, 2015, the Request for Official Recognition was granted, and the Motion for Reset of Hearing Date was denied.

The hearing commenced and concluded on September 4, 2015. Petitioner presented the testimony of John Gruppioni, and Petitioner's Exhibits 2, 4, 21, 22, 24, and 27 were admitted into evidence.^{1/} Respondent testified on his own behalf but submitted no additional evidence.

The proceedings were recorded and the Transcript was filed with the Division on September 21, 2015. On September 14, 2015, Respondent wrote a letter identifying concerns he had with respect to Petitioner's exhibits. Specifically, he expressed concerns about the failure to redact certain information in the felony information; asked that Petitioner be compelled to provide him with a copy of the envelopes associated with some of his letters included in exhibits, if the Department still had them; and requested that he be provided a copy of any corrected exhibits. The felony information is a public record and has already been accepted into evidence. With respect to the request for envelopes, the time to ask whether the Department still had these envelopes (for which receipt spans several years) was at the hearing. Further, as noted in the September 3, 2015, Order, Petitioner is under no obligation to "correct" exhibits. The exhibits are what they are. On

September 25, 2015, Respondent submitted his Proposed Recommended Order. Petitioner's Proposed Recommended Order was submitted September 28, 2015. Both Proposed Recommended Orders have been carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the testimony of the witnesses and documentary evidence presented in this proceeding, the following Findings of Fact are found:

1. Petitioner is the state agency charged with regulating the practice of certified public accounting in the State of Florida, pursuant to section 20.165 and chapters 455 and 473, Florida Statutes.

2. At all times relevant to these proceedings, Respondent has been licensed as a certified public accountant by the State of Florida, having been issued license number AC 007921 on September 4, 1979. Respondent's license is currently listed as "current, inactive," and expires December 31, 2015. No evidence of any prior discipline against Respondent's license was offered.

3. On or about November 10, 1994, an Information was filed against Respondent by the State Attorney for the Sixth Judicial Circuit in and for Pinellas County, charging him with six counts: 1) sexual battery, a capital felony; 2) lewd and

lascivious act in the presence of a child under the age of 16 years, a second-degree felony; 3) handling and fondling a child under the age of 16 years, a second-degree felony; 4) lewd and lascivious act in the presence of a child under the age of 16, a second-degree felony; 5) lewd and lascivious act in the presence of a child under the age of 16, a second-degree felony; and 6) handling and fondling a child under the age of 16, a second-degree felony. The victim in the criminal proceedings was nine years old.

4. Counts 3 and 4 were nolle prossed. After a jury trial, on October 16, 1996, Respondent was found guilty of Counts 1 and 2. Respondent pled nolo contendere to Counts 5 and 6. On November 1, 1996, Respondent was originally sentenced to life in prison for Count 1 and 40 years in prison for Count 2, to be imposed consecutively.

5. Respondent appealed his conviction and sentence to the Second District Court of Appeal. In Larry Beard v. State of Florida, Case No. 96-4909 (Fla. 2d DCA Mar. 24, 1999), the Second District affirmed the convictions for Counts 1 and 2, but vacated the judgments with respect to Counts 5 and 6, because the trial court failed to renew the offer of assistance of counsel to Mr. Beard at the plea hearing. For the same reason with respect to the sentencing hearing, the sentences for all four counts were reversed, and the case was remanded for

resentencing for Counts 1 and 2. The Court directed that Respondent be given the opportunity to withdraw his plea with respect to Counts 5 and 6.

6. On November 24, 1999, Respondent was re-sentenced to the same sentences for Counts 1 and 2. Counts 5 and 6 were nolle prossed. Respondent again appealed the sentencing order to the Second District Court of Appeal. In Larry Beard v. State of Florida, Case No. 2D00-271 (Fla. 2d DCA June 26, 2002), the Second District affirmed the judgment and sentence for Count 1 and found no error in the application of a sexual predator designation. With respect to Count 2, the State conceded that the 40-year sentence was a scrivener's error (the trial judge orally imposed a 40-month sentence at the sentencing hearing), and the court found that it was imposed based upon an incorrect sentencing scoring sheet. The case was again remanded to the trial court to address the sentence in Count 2. The sentence ultimately imposed for Count 2 is not in the record of this proceeding.

7. Regardless of the changes in sentencing, the fact remains that Respondent was convicted of capital sexual battery in violation of section 794.011(2), Florida Statutes, and a lewd act upon a child, in violation of section 800.04, Florida Statutes (1993).

8. Respondent has been incarcerated within the Florida Department of Corrections since November 7, 1996, and remains incarcerated.

9. On or about January 6, 1998, Respondent requested that his license be placed in a "current, inactive" status. He did not at that time, or anytime thereafter before December 2012, notify the Department that he had been convicted of any crime.

10. Respondent used two other individuals, James Galloway and Penny Loulargous, to assist him in maintaining his license in an inactive status after his incarceration. His address was at different times listed "in care of" these individuals.

11. In December 2012, Respondent wrote to the Department requesting that his address be changed from Mr. Galloway's address to the Okaloosa Correctional Institution located in Crestview, Florida.

12. Upon receiving the address change request, the Department opened an investigation to determine why he was in prison. However, in June 2013, the investigation was closed, in error, for lack of jurisdiction.

13. In July 2014, correspondence was sent to accountancy licensees whose licenses were in inactive or delinquent status about an amnesty program authorized by legislation passing during the 2014 session. Respondent responded to the Department correspondent with a letter of his own, asking questions

regarding the continuing education requirements for attaining active status.

14. As a result, the Department re-opened the investigation that was closed in June 2013. This re-opened investigation led to the charges at issue in these proceedings.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015).

16. This is a proceeding in which Petitioner seeks to revoke Respondent's license as a certified public accountant. Because disciplinary proceedings are considered to be penal in nature, Petitioner is required to prove 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); Ferris v. Turlington, 510 So. 2d 291 (Fla. 1987).

17. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). As stated by the Florida Supreme Court:

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 Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting, with approval, Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)); see also In re Henson, 913 So. 2d 579, 590 (Fla. 2005).

"Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous."

Westinghouse Elect. Corp. v. Shuler Bros., 590 So. 2d 986, 989 (Fla. 1991). Moreover, the allegations against Respondent must be measured against the law in effect at the time of the commission of the acts alleged to warrant imposition of discipline. McCloskey v. Dep't of Fin. Servs., 115 So. 3d 441 (Fla. 5th DCA 2013).

18. The Administrative Complaint alleges the following basis for imposing discipline:

8. Section 473.323(1)(1), Florida Statutes (2014), provides that "[f]ailing to maintain a good moral character as provided in s. 473.308 while applying for licensure, or while licensed in this state or using practice privileges pursuant to s. 473.3141" constitutes grounds for which disciplinary actions may be taken.

9. Section 473.308(6)(a), Florida Statutes (2014), provides that "[G]ood moral character" means a personal history of honesty, fairness, and respect for the

rights of others and for the law of this state and nation.”

10. Based on the foregoing, Respondent violated Section 473.323(1)(1), Florida Statutes (2014), by being adjudicated guilty of one (1) count of Sexual Battery by an Adult on a Victim Under 12, and one (1) count of Lewd and Lascivious Indecent Assault on a Child Under 16, in the Circuit Court of Pinellas County in Case No. 9417041CFANO.

19. While the Administrative Complaint refers to the 2014 codification of Florida Statutes, the version of law in effect at the time of the conduct alleged must be applied. Childers v. Dep't of Env'tl. Prot., 696 So. 2d 962, 964 (Fla. 1st DCA 1997).

20. Section 473.323(1)(1), Florida Statutes (1996), provides as follows:

(1) The following acts constitute grounds for which disciplinary actions subsection (3) may be taken:

* * *

(1) Failing to maintain a good moral character as provided in s. 473.306.

21. Similarly, section 473.306(4)(a), Florida Statutes (1996), was identical to the current provision in section 473.308(6)(a).

22. The Department has proven the charge in the Administrative Complaint by clear and convincing evidence.

23. Respondent asserts that the Department should be compelled to present evidence with respect to section 473.308(6) (b) and (c), which provide:

(b) The board may refuse to certify an applicant for failure to satisfy this requirement if:

1. The board finds a reasonable relationship between the lack of good moral character of the applicant and the professional responsibilities of a certified public accountant; and
2. The finding by the board of lack of good moral character is supported by competent substantial evidence.

(c) When an applicant is found to be unqualified for a license because of a lack of good moral character, the board shall furnish to the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

24. Respondent's argument is rejected. Section 473.323(1) (1) refers to the definition for failure to maintain good moral character. More importantly, the provision upon which Respondent relies specifically indicates that it applies to those instances where the failure to maintain good moral character is a basis for denying initial licensure to an applicant, as opposed to those instances, as this one, where the definition is applied to a person who is subject to discipline based on conduct evidencing a lack of good moral character after the license has been obtained.

25. Respondent also maintains that he lived an admirable life for many years, including military service and an unblemished record as a CPA, and it is this record, as opposed to the one "snippet" of time representing the convictions at issue in this case by which he should be judged.

26. Respondent is correct in his assertion that good moral character is developed over a lifetime. However, like a good reputation, evidence of good moral character takes a lifetime to build and only a moment to destroy. Here, the crimes for which Respondent was convicted are lewd and lascivious conduct and capital sexual battery, and the victim of these crimes was a child less than 10 years old. He was sentenced for life. Crimes as horrific as these rend the fabric of any moral character with which Respondent might attempt to clothe himself.

27. The Supreme Court once defined a crime of moral turpitude as a crime that is evidenced by an act of baseness, vileness, or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general. The act itself and not its prohibition by statute fixes the moral turpitude. See State ex rel. Tullidge v. Hollingsworth, 108 Fla. 607, 611, 146 So. 660, 661 (1933). While there may be some crimes that were considered evidence of moral bankruptcy in the 1930s that would be considered more acceptable today, the crimes for which

Respondent was convicted remain repugnant by both eras' standards. They certainly raise substantial doubts as to Respondent's honesty, fairness, and respect for the rights of others and for the laws of the state and nation.

28. Finally, Respondent has voiced his frustration at having these charges brought after having been in prison for so many years. While the Department did not charge Respondent with failing to report his convictions, his failure to do so certainly explains most of the lengthy delay in bringing these charges. The prejudice that Respondent claims has more to do with the ability to present character witnesses, than it does presenting evidence with respect to factual allegations related to the charge against him. The facts with respect to his criminal conviction have not changed.

29. The Board of Accountancy is required to adopt disciplinary guidelines to establish ranges of penalties so that both the public and the profession are placed on notice of the penalties that may be imposed for violations of chapter 473. The Board's disciplinary guidelines are found at Florida Administrative Code Rule 614H1-36.004. For the violation charged in this case, the penalty range adopted by the Board ranges from a reprimand and one year of probation, to revocation. Where, as here, the Respondent has been convicted

of crimes that have merited a life sentence, revocation is appropriate.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Accountancy enter a final order finding Respondent guilty of violating section 473.323(1)(1), Florida Statutes, and revoking his license.

DONE AND ENTERED this 13th day of October, 2015, 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 13th day of October, 2015.

ENDNOTE

^{1/} Also included in Petitioner's trial notebook were the documents officially recognized by Order dated September 3, 2015. Those documents are listed in the trial notebook as Petitioner's Exhibits 1, 5-6, 9-10, 14, 16, and 19.

COPIES FURNISHED:

Cristin Erica White, Esquire
Department of Business
and Professional Regulation
Suite 42
1940 North Monroe Street
Tallahassee, Florida 32399
(eServed)

Larry Richard Beard, 0-165663
Union Correctional Institution
7819 Northwest 228th Street
Raiford, Florida 32026-2601

Megan E. Kachur, Esquire
Department of Business
and Professional Regulation
Suite 42
1940 North Monroe Street
Tallahassee, Florida 32399
(eServed)

Veloria A. Kelly, Director
Division of Certified Public Accounting
Board of Accountancy
Department of Business
and Professional Regulation
240 Northwest 76th Drive, Suite A
Gainesville, Florida 32607
(eServed)

William N. Spicola, General Counsel
Department of Business
and Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399
(eServed)

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.