

STATE OF FLORIDA
BOARD OF ACCOUNTANCY

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	2/11/2016
File #	2016-01136

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

DBPR CASE NO.: 2012-052938
DOAH CASE NO.: 15-3940PL
LICENSE NO.: AC 0077921

LARRY RICHARD BEARD,

Respondent.

_____ /

FINAL ORDER

THIS CAUSE came before the Board of Accountancy (the Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, at a duly noticed public meeting on December 11, 2015, in Tallahassee, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Respondent's Exceptions to the Recommended Order, and Petitioner's Response to Respondent's Exceptions to the Recommended Order. Petitioner was represented by C. Erica White, Chief Attorney. Respondent was neither present nor represented by counsel and the Board was represented by Mary Ellen Clark, Senior Assistant Attorney General.

Upon review of the Recommended Order, the Exceptions, the Response to Exceptions, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULING ON EXCEPTIONS

The Board reviewed and considered the Respondent's Exceptions to the Recommended Order and ruled as follows:

1. Respondent's Exception 1 is to findings of fact and is DENIED because the Board cannot find the findings in Paragraphs 23 and 24 were not based on competent substantial evidence.

2. Respondent's Exception 2 is to a finding of fact and is DENIED because the Board cannot find the finding in Paragraph 4 was not based on competent substantial evidence.

3. Respondent's Exception 3 is to a finding of fact and is partially GRANTED. The Board finds the clause "to the same sentences" in the first sentence of Paragraph 6 is not based on competent substantial evidence and, pursuant to Section 120.57(1)(l), Florida Statutes, must be stricken. Exhibit 14, page 145, of the record reflects that Respondent was resentenced for Counts 1 and 2 on November 24, 1999, but not "to the same sentences."

4. Respondent's Exception 4 is GRANTED. The Board finds the last sentence of Paragraph 6 is not based on competent substantial evidence and, pursuant to Section 120.57(1)(l), Florida Statutes, must be stricken. The sentence ultimately imposed for Count 2 is in the record of the proceeding, found in Exhibit 19, pages 165-168; the Board modifies the penultimate sentence of Paragraph 6 in the Recommended Order to be: "The case was again remanded to the trial court to address the sentence in Count 2

and, on September 12, 2007, a sentence of 17.5 months of imprisonment, to run concurrent with that for Count 1, was imposed.”

5. Respondent’s Exception 5 is to a finding of fact and is DENIED because the Board cannot find the finding in Paragraph 4 was not based on competent substantial evidence.

FINDINGS OF FACT

6. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference, with the exception that Paragraph 6, for the reasons set forth in the Ruling on Exceptions, above, shall now be:

On November 24, 1991, Respondent was re-sentenced 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 and, on September 12, 2007, a sentence of 17.5 months of imprisonment, to run concurrent with that for Count 1, was imposed.

7. There is competent, substantial evidence to support the findings of fact, as modified, found by the Board.

CONCLUSIONS OF LAW

8. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 473, Florida Statutes.

9. The conclusions of law set forth in the Recommended Order, are approved and adopted and incorporated herein by reference.

10. There is competent, substantial evidence to support the conclusions of law adopted by the Board.

VIOLATIONS

11. Respondent is found to have VIOLATED Section 473.323(1)(l), Florida Statutes.

PENALTY

12. The Administrative Law Judge's Recommendation is approved and adopted by the Board in its entirety.

WHEREFORE, IT IS HEREBY ORDERED and ADJUDGED that:

Respondent's license, AC 0077921 is hereby REVOKED.

This Final Order shall take effect upon being filed with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 8th day of February, 2016.

Veloria A. Kelly
Veloria A. Kelly, Division Director ✓

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: **Larry R. Beard**, 0-165663, Union Correctional Institution, 7819 NW 228th Street, Raiford, FL 32026-2601; and to **Lisa Shearer Nelson, Administrative Law Judge**, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060; and by interoffice mail to **C. Erica White**, Esquire, Department of Business and Professional Regulation, 1940 North Monroe Street, Suite 42, Tallahassee, FL 32399-2202, and to **Mary Ellen Clark**, Senior Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; this 11th day of February, 2016.

A handwritten signature in black ink that reads "Brandon M. Nichols". The signature is written in a cursive style and is positioned above a horizontal line.