

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROSITA MARTIN,

Petitioner,

vs.

Case No. 15-7199EXE

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

_____ /

RECOMMENDED ORDER

This case was heard before Robert L. Kilbride, an Administrative Law Judge of the Division of Administrative Hearings, via video teleconference on March 28 and April 29, 2016, in Tallahassee and Miami-Dade County, Florida.

APPEARANCES

For Petitioner: Jamison Jessup, Qualified Representative
557 Noremac Avenue
Deltona, Florida 32738

For Respondent: Elaine Marquardt Asad, Esquire
Agency for Persons with Disabilities
401 Northwest Second Avenue, Suite S-811
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STATEMENT OF THE ISSUES

The issues in this case are: (1) whether Petitioner has been rehabilitated from her disqualifying offense(s); and, if so, (2) whether the intended action to deny Petitioner's exemption

request pursuant to section 435.07(3), Florida Statutes (2015),^{1/} would constitute an abuse of discretion by Respondent.

PRELIMINARY STATEMENT

In a letter dated November 13, 2015, Respondent, Agency for Persons with Disabilities ("APD" or "Agency"), notified Petitioner, Rosita Martin, that her request for an exemption from disqualification from employment was denied. Dissatisfied with the decision, Petitioner timely requested a formal administrative hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes.

Subsequently, APD referred the matter to the Division of Administrative Hearings to assign an Administrative Law Judge to conduct the final hearing.

A final hearing was held before the undersigned by video teleconference on March 28 and April 29, 2016. Petitioner testified on her own behalf and also called Darnisha Johnson and Molita Cunningham to testify. She offered Exhibits 1 through 10, which were stipulated to by APD and admitted into evidence. APD presented the testimony of Evelyn Alvarez, the Agency's regional operations manager for the Southern Region of Florida. The Agency's Composite Exhibits 1 through 10 have been admitted into evidence, excluding page 26 of Exhibit 2.

The one-volume Transcript of the portion of the hearing held on April 29, 2016, was filed with the Clerk of the Division of

Administrative Hearings on June 10, 2016. The one-volume Transcript of the portion of the hearing held on March 28, 2016, was filed with the Clerk of the Division of Administrative hearings on June 16, 2016. The Agency timely submitted a Proposed Recommended Order ("PRO"). After granting an agreed extension of time, Petitioner submitted a timely PRO as well. Both submissions were given due consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the evidence adduced at the hearing, and the record as a whole, the following material Findings of Fact are made:

1. Petitioner was a 52-year-old female who sought to qualify, pursuant to section 435.07, for employment in a position of trust as a direct service provider for physically or mentally disabled adults or children. This position requires the successful completion of a Level 2 background screening. See § 435.04, Fla. Stat.

2. APD is the state agency responsible for licensing and regulating the employment of persons in positions of trust. Specifically, the mission of the Agency includes serving and protecting the vulnerable population, including children or adults with developmental disabilities.

3. In conformance with the statute, Petitioner was screened by APD since she applied for a position of special trust as a direct service provider of APD.

4. The screening revealed, and the parties stipulated at the hearing, that Petitioner was convicted of the following disqualifying offenses:

- (1) Theft by Shoplifting--Felony--1987
- (2) Theft by Shoplifting--Felony--1987
- (3) Forgery (4 counts)--Felonies--1993
- (4) Theft by Shoplifting--Felony--1993
- (5) Battery-Family Violence--Misdemeanor--1996
- (6) Forgery--Felony--1998

The stipulation also included the fact that 17 years have elapsed since the last disqualifying offense was committed.

5. The screening revealed, and the parties also stipulated at the hearing, that Petitioner was arrested or convicted of the following non-disqualifying offenses:

- (1) Simple Battery--Misdemeanor--arrested--dismissed--1987
- (2) Theft by Conversion--convicted--1993
- (3) Driving Under the Influence--convicted--1994
- (4) Criminal Trespass--Misdemeanor--convicted--2000

The stipulation also included the fact that 15 years have elapsed since the last non-disqualifying arrest or conviction was committed.

Rosita Martin

6. At the time of the hearing, Petitioner was unemployed. She had last been employed at Martin's Group Home as a caregiver of vulnerable children who had disabilities or behavioral problems.

7. Her duties included giving out medicines, assisting clients with bathing, and taking kids on outings and to church. She also helped to cook.

8. She explained that most of her convictions occurred during a period of her life when she was in an abusive marriage and suffered from depression. She acknowledged that, during that time period, she was abusing drugs (cocaine) and alcohol.

9. During that same period of time, she admitted that she had purchased and also possessed marijuana.

10. She explained that her battery conviction in 1996 related to a domestic dispute with her husband. She called the police, and they took them both to jail. Although she said she was defending herself, she admitted that she had been convicted and found guilty of battery.

11. Petitioner testified that she is a "good girl now." She attends church every Sunday and "left her problems with

drugs." She got sick and tired and "told God to take it away from me and he did."

12. Petitioner testified that she has not used any type of illegal drugs for 20 years.

13. Her sister operates four group homes for children with disabilities. Petitioner worked at one of the homes, and her sister wrote her a letter of support in this case.

14. The evidence was undisputed that she received "excellent" evaluations while at Martin Group Home. Currently, she lives with her daughter, and a granddaughter who is two years old.

15. As a result of one of Petitioner's various felony convictions, she testified that she was ordered to attend in-house drug treatment at the Willingway Hospital in Statesboro, Georgia. Upon questioning by the undersigned, Petitioner stated that she was in rehabilitation at the hospital for "like 6 months" back in the 1990's.^{2/}

16. The various letters of support and reference provided by Petitioner came from her relatives. These included her sister and father.

17. The record reflects that Petitioner attended and successfully completed numerous training courses (e.g. medicine administration, CPR training, blood borne pathogens, HIV

safeguards, etc.) that related to the caretaker work she performs.^{3/}

18. Other than two certificates for domestic violence training in 2011 and 2012, the other training and educational completion certificates did not relate to treatment or counseling programs related to her drug use, alcohol use, psychological counseling, or financial training--the personal issues she struggled with in her past when the disqualifying events took place.

19. The evidence reflected that she had numerous and chronic driving violations, pertaining primarily to failing to pay road tolls. She claimed that all of these toll violations occurred when her daughter was driving her car.^{4/}

20. On cross-examination, Petitioner conceded that she failed to provide a detailed version of the facts or a full explanation for each criminal offense listed on her exemption form.^{5/}

21. Petitioner claimed that she was "new at this" and did not understand the details she was supposed to provide.

22. For the criminal offenses involving theft of property, she claimed on the form, and testified, that there was "no harm" to the victim. Again, she claimed some confusion and stated that she thought that they were talking about harm in the "violent" sense.

23. She was also cross-examined about the six-month drug treatment program that she testified she had attended at Willingway Hospital. She was asked why she did not provide that information to the Agency in the exemption form or provide the agency with a copy of a completion certificate.

24. Inexplicably, she was unable to provide a satisfactory explanation during the hearing for why she did not disclose the drug treatment program on the exemption questionnaire. She claimed that since the court had ordered her into treatment, she did not think it was necessary to specifically list or describe it.

25. She was asked why she was not able to provide a letter of recommendation from her church pastor. She did not provide an adequate explanation and simply stated that she attends church but is not a church member, that she just goes to church there every Sunday.

26. She worked briefly at a company called Best Walks of Life. Her supervisor was her son, Mr. Walker. No details were provided concerning what she did there.

27. She acknowledged that much of her criminal activity arose from or was related to problems with monetary or financial issues; yet, she conceded that she had not taken any financial courses or other classes to obtain financial or budgeting training or counseling.

28. After working for her sister at Martin Group Home, she has not made any attempts to work in any other places or group homes since leaving.

Darnisha Johnson

29. Petitioner is her mother. The witness is 24 years old and lives with her daughter at her mother's house. She testified that her mother is "a great person today. She's great." She also stated that her mother is a "much better person" then when she was involved in criminal activity.^{6/} She also felt that her mother is not using any drugs now.

30. She acknowledged that she has a car, but that it is in her mother's name. In the context of who pays the bills today and supports her financially, she characterized her mother's role as being her "support system."

31. She also admitted that any failures to pay tolls while driving the vehicle registered in her mother's name were her responsibility.

Molita Cunningham

32. She is a friend of Petitioner's. She works as a certified nursing assistant and is certified as such with the State of Florida.

33. She has known Petitioner for a little over three years and met her at a Family Dollar store. She wrote a letter of support for Petitioner.

34. She was not aware of any facts to suggest that Petitioner was engaged in criminal activity, drug abuse, or abuse of her clients in any manner.

35. She acknowledged she had a background similar to Petitioner's. She was "out there in the streets" and is a convicted felon.

36. Other than being a general character witness, the witness offered no substantive evidence touching upon Petitioner's rehabilitation from the disqualifying offenses.

Evelyn Alvarez

37. Ms. Alvarez is employed with the Agency as the regional operations manager for the Southern Region.^{7/}

38. She obtained a master's degree in public administration from Florida International University in 2000.

39. APD serves individuals that have specific developmental disabilities. The disabilities include intellectual disabilities, autism, cerebral palsy, spina bifida, and the like.

40. Her role in this case was to review the background information gathered by both the Department of Children and Families and APD on Petitioner. After her review, the package of information was sent to an exemption committee. That committee then independently reviewed the exemption package and made its own recommendation to the Director of APD. Before deciding on

the exemption request, the Director reviewed both Ms. Alvarez's recommendation and the recommendation of the exemption committee.

41. She correctly acknowledged that the applicant for an exemption from disqualification must prove rehabilitation by clear and convincing evidence. She also correctly noted that the Agency should consider the circumstances of the disqualifying offense(s), the nature of the harm caused to any victims involved, the history of the employee since the incident and any other evidence indicating that the employee will not present a danger to the vulnerable or disabled adults or children they serve.

42. APD was concerned that Petitioner failed to follow directions and provide the details for each disqualifying criminal event.^{8/} Also, Ms. Alvarez was concerned that Petitioner's failure to acknowledge that someone was "harmed" by the theft or forgery crimes ignores that there were victims involved, and the response fails to show an acceptance of responsibility for the crime(s).

43. Ms. Alvarez testified that the Agency has no idea what happened with each of the disqualifying events, or of any circumstances that were happening at the time that would allow APD to understand why Petitioner would commit the offenses, and that there was no acknowledgment of any harm to any victims.

44. In the opinion of Ms. Alvarez, the training certificates provided by Petitioner were not persuasive evidence of rehabilitation. More specifically, they were only indicative of employment training and did not include anything in terms of addressing Petitioner's substance abuse issues, her inability to manage her finances, or her involvement in acts of domestic violence. In APD's opinion, the lack of any treatment or professional counseling for those issues militated against a finding of rehabilitation.

45. Likewise, Petitioner did not describe her alleged six-month, in-house drug rehabilitation program in the exemption application, nor was there any certificate of completion of drug treatment provided.

46. APD concluded that Petitioner used poor judgment during an incident when she invited her friend, Ms. Cunningham, to spend a day on the job at Martin Group Home with Petitioner's disabled and vulnerable children. APD felt that this was a breach of client confidentiality, HIPAA rights, and may have put some of the children at risk around a visitor who did not have a background check or clearance to be at the facility.

47. There were no professional references or letters of support offered by Petitioner from past employers (other than from group homes involving her relative). Likewise, there were

no letters attesting to her good moral character from her church or other faith-based relationships she may have established.

48. Ms. Alvarez testified that the reason the Agency wants letters of reference from individuals who do not have a conflict of interest is to show her character. Examples of letters of reference would be from a pastor or from an organization where someone had volunteered.

49. The letters provided by Petitioner, while useful, did not reflect an impartial view of her character.^{9/} The Agency determined that it had no basis of reference for the character of Petitioner due to her failure to provide more impartial references.^{10/}

50. In Ms. Alvarez's opinion, after reviewing the completed application, Petitioner had not provided any evidence, and APD had no knowledge, to support a finding of rehabilitation. Furthermore, APD did not have any knowledge of any financial planning or budgeting courses that Petitioner may have taken to show rehabilitation in the area of her finances.

51. APD considered it significant during its review that Petitioner had been charged with driving while license suspended ("DWLS") (a criminal traffic offense) in 2012 and again in 2013, less than two years before the application. (Both DWLS offenses were subsequently dismissed.)

52. Respondent's Exhibit 9, Petitioner's Florida Comprehensive Case Information System driving record, reflects in excess of 20 failures to pay required highway tolls in a two-year period from 2012 to 2013.^{11/}

53. Petitioner did not provide any explanation for her driver's license problems to the Agency at the time of her Exemption Application. The Agency had no knowledge of the facts and circumstances surrounding the DWLS citations.

54. Ms. Alvarez testified that traffic offenses and driving habits are important considerations, since direct service providers are often required to transport persons with developmental disabilities

55. In essence, APD concluded that Petitioner had fallen short of her burden of showing rehabilitation by clear and convincing evidence.

CONCLUSIONS OF LAW

56. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 435.07(3), Florida Statutes.

57. Individuals, such as Petitioner, who are seeking to work in a position having direct contact with vulnerable children or adults served by programs administered by Respondent are

required to undergo a Level 2 background screening. § 402.305, Fla. Stat.

58. Pursuant to section 435.04(2):

The security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:

* * *

(cc) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.

59. Additionally, pursuant to section 435.04(3), the purpose of the background screening is to:

(3) [E]nsure that no person subject to this section has been found guilty, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense that constitutes domestic violence as defined in s.741.28, whether such act was committed in this state or in another jurisdiction.

60. Section 741.28(2), Florida Statutes, defines domestic violence as follows:

"Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one

family or household member by another family or household member.

61. Individuals who have disqualifying offenses may request, as Petitioner has done, an exemption from disqualification from the head of the appropriate agency. § 435.07(1), Fla. Stat.

62. Pursuant to section 435.07(1)(a)2., the agency head may grant to any employee otherwise disqualified from employment an exemption from disqualification for criminal convictions cited in chapter 435, if the applicant has completed or been lawfully released from confinement, supervision, or nonmonetary conditions imposed by the court.^{12/}

63. The core issue to be resolved in any exemption case under chapter 435 is straightforward and outlined in the statute. To be eligible for an exemption, Petitioner must demonstrate by clear and convincing evidence that she should not be disqualified from employment. § 435.07(3(a), Fla. Stat.; J.D. v. Fla. Dep't of Child. & Fams., 114 So. 3d 1127, 1131 (Fla. 1st DCA 2013) ("[T]he ultimate issue of fact to be determined in a proceeding under section 435.07 is whether the applicant has demonstrated rehabilitation by clear and convincing evidence.").

64. More specifically, Petitioner has the burden of demonstrating clear and convincing evidence of her rehabilitation from the felony conviction(s):

[I]ncluding, but not limited to, the circumstances surrounding the criminal incident for which an exemption is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the employee since the incident, or any other evidence or circumstances indicating that the employee will not present a danger if employment or continued employment is allowed.

See generally § 435.07(3)(a), Fla. Stat.^{13/}

65. The "clear and convincing evidence" standard requires that the evidence be found credible, the facts to which the witnesses testify must be distinctly remembered, the testimony must be precise and explicit, and the witnesses must be lacking in confusion as to the facts in issue. Importantly, the evidence must be of such 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); Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

66. Pursuant to section 435.07, even if the core issue of rehabilitation is proven, the applicant only becomes "eligible" for an exemption, not entitled to one. Respondent retains discretion to deny the exemption, provided its decision does not constitute an abuse of discretion. J.D. v. Fla. Dep't of Child. & Fams., supra.

67. As the First District Court of Appeals further explained in Heburn v. State, 772 So. 2d 561, 563 (Fla. 1st DCA 2000):

In section 435.07, the legislature has not provided for an exemption as a matter of right, but has delegated to the Department the broad discretion to grant an exemption. Subsection (1) of section 435.07 provides that "the appropriate licensing agency may grant to any employee otherwise disqualified from employment an exemption from disqualification. . . ."

An exemption from a statute, enacted to protect the public welfare, is strictly construed against the person claiming the exemption, and the Department was not required to grant Heburn any benefits under the exemption. See State v. Nourse, 340 So. 2d 966, 969 (Fla. 3d DCA 1976). The discretion accorded the agency in this case is analogous to, but perhaps even broader than, the discretion accorded a licensing agency determining the physical fitness of applicants to engage in a business or occupation potentially injurious to the public welfare. Cf. Astral Liquors v. Dep't of Business Regulation, 463 So. 2d 1130 (Fla. 1985) (agency exercises broad discretionary authority on the question of whether to transfer liquor license when entitlement is a privilege rather than a right).

68. In Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980), the court noted that, "[d]iscretion, in this sense, is abused when the . . . action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable [person] would take the view adopted." See also Kareff v. Kareff, 943 So. 2d 890, 893 (Fla.

4th DCA 2006) (holding that pursuant to the abuse of discretion standard, the test is whether "any reasonable person" would take the position under review).

69. Since an administrative hearing under chapter 120 is a "de novo" review, the abuse of discretion should be judged based on the evidence adduced during the hearing before the undersigned. § 120.571(1)(k), Fla. Stat. This analysis may, therefore, include facts and observations not previously considered by the Agency.

70. Furthermore, if the purpose of a chapter 120 administrative hearing is to ferret out all the relevant facts and allow the "affected parties an opportunity to change the agency's mind," then, logically, it should be the facts and observations adduced at the final hearing that carry the day, and upon which any final action by the Agency is measured. See J.D. v. Fla. Dep't of Child. & Fams., 114 So. 3d at 1132, citing with approval Couch Const. Co. v. Dep't of Transp., 361 So. 2d 172 (Fla. 1st DCA 1978). See also Caber Sys., Inc. v. Dep't of Gen. Servs., 530 So. 2d 325, 334 n.5 (Fla. 1st DCA 1988).

71. After determining the relevant facts at the hearing, the Administrative Law Judge should disturb an agency's intended decision to deny a requested exemption only if there is clear and convincing evidence that such a denial would constitute an abuse of discretion. § 435.07(3)(c), Fla. Stat. ("The decision of the

head of an agency regarding an exemption may be contested through the hearing procedures set forth in chapter 120. The standard of review by the Administrative Law Judge is whether the agency's intended action is an abuse of discretion."). Cf. Goin v. Comm'n on Ethics, 658 So. 2d 1131, 1138 (Fla. 1st DCA 1995) (Under the usual Administrative Procedure Act structure, a hearing officer must reach ultimate findings of fact.).

72. After an administrative final hearing is conducted and a recommended order is issued, the agency head is then able to base the final decision as to whether or not an exemption should be granted on facts and observations determined through procedures satisfying the right to a hearing afforded by the Administrative Procedure Act.

FACTORS TO BE CONSIDERED UNDER SECTION 435.07(3) (a)

73. The statute outlines a broad range of non-exclusive factors that the Agency may consider as a part of the lithmus test for rehabilitation. That section provides:

(3) (a) In order for the head of an agency to grant an exemption to any employee, the employee must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment. Employees seeking an exemption have the burden of setting forth clear and convincing evidence of rehabilitation, including, but not limited to, the circumstances surrounding the criminal incident for which an exemption is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the employee since the incident, or any other

evidence or circumstances indicating that the employee will not present a danger if employment or continued employment is allowed.

In considering those factors, the undersigned finds as follows.

Circumstances Surrounding the Criminal Incident(s)

74. As previously noted, Petitioner offered little, if any, details or evidence in her exemption questionnaire or at the hearing, to explain the circumstances surrounding any of the disqualifying criminal offenses. Therefore, this factor weighs in favor of Respondent.

Time Period that has Elapsed Since the Incident

75. The intervening period of 17 years since the disqualifying offenses is a significant period of time and weighs in favor of Petitioner.

Nature of the Harm Caused to the Victim

76. Other than general inferences that can be drawn due to the nature of her crimes, there was no evidence to describe the type or extent of harm to any victims. However, Petitioner's faulty assumption that property-related crimes do not involve "harm" to a victim is useful in gauging her level of recovery, and rehabilitation. This factor tends to undermine a finding of rehabilitation by her, and weighs in favor of Respondent.

History of the Employee Since the Incident

77. Since the disqualifying incidents of the 1980s and 1990s, there is evidence that Petitioner has been involved in other alcohol-related offenses (DUI) and a physical altercation (simple battery arrest). Also concerning is her DWLS status in 2012 and 2013 and her chronic and unabated toll violations (20+) in the last few years, which reveal, regrettably, a disregard for the law and poor judgment by not correcting the problem. Also noteworthy is that Petitioner has not provided any compelling or truly objective evidence of support from third parties or former employers (other than relatives), her church pastor from Florida or Georgia, or other volunteer or charitable organizations. This factor weighs in favor of Respondent and leaves lingering doubts in the mind of the undersigned about her character and rehabilitation.

Any Other Evidence or Circumstances Indicating that the Employee Will Not Present a Danger

78. There was some evidence presented by Petitioner regarding the "absence" of any observations by family and friends regarding current drug use or criminal activity by Petitioner. Yet, the quantum and quality of evidence presented by Petitioner on this point simply did not rise to the level of clearly and convincingly persuading the undersigned that Petitioner had been

rehabilitated and would not present a danger to the vulnerable and disabled children she would serve.

79. Based on the totality of evidence that the undersigned credited at the hearing, the undersigned concludes that Petitioner failed to show by clear and convincing evidence that she is sufficiently rehabilitated from the diverse and numerous disqualifying offenses. § 435.07(3)(a), Fla. Stat.

80. Furthermore, in light of the evidence developed and the undersigned's observations at the final hearing, it would not constitute an abuse of discretion for the Agency to implement its intended decision to deny her request for an exemption from disqualification under section 435.07(3)(c). This conclusion is further supported by the test enunciated by the Florida Supreme Court in Canakaris, supra.

81. In conclusion, the Agency's preliminary decision to deny Petitioner's request for an exemption was not unreasonable and not outside the range of discretion delegated to the Agency. Heburn, supra. After careful consideration of all the evidence adduced at the hearing, as well as the documents submitted, and applying the law and factors outlined in the statute, there was nothing presented that compels or convinces the undersigned to recommend otherwise.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Persons with Disabilities confirm its previous intended denial and enter a final order denying Petitioner's application for an exemption from disqualification.

DONE AND ENTERED this 27th day of July, 2016, in Tallahassee, Leon County, Florida.



ROBERT L. KILBRIDE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of July, 2016.

ENDNOTES

^{1/} References to the Florida Statutes are to the 2015 version, unless otherwise indicated.

^{2/} There was no documentation provided by Petitioner to verify her drug treatment and rehabilitation program. She claims that the hospital is closed, and she was unable to get any documentation. Notably, Petitioner also did not specifically mention or attempt to describe this drug treatment and rehabilitation program in her exemption request filed with APD.

3/ She appears to be qualified and adequately trained for the position she held at Martin Group Homes.

4/ The undersigned finds this explanation unpersuasive. The vehicle belongs to her, and she is accountable for its use by others. There was no reasonable explanation provided as to why toll violations were not promptly paid, the car taken away from her daughter, or the problem corrected with a Sunpass. This questionable behavior also resulted in several suspensions of Petitioner's driver's license.

5/ The exemption questionnaire emphasized on the first page that "[f]or EACH disqualifying criminal offense appearing on your record, please write a DETAILED version of the events; please be specific. Attach extra pages as needed[.]"

6/ The witness would have been one or two years old at the time of several of the offenses in the 1990s; so, it is difficult to attach much weight to this comment.

7/ Petitioner's qualified representative ("QR") objected to portions of this witness's testimony and moved to strike it. The QR claimed it violated the rule of sequestration since she may have reviewed the Transcript of the first hearing, including Petitioner's direct testimony. That objection is overruled and the undersigned has given her testimony the weight it deserves. The undersigned notes that the QR and counsel were both informed by the undersigned at the March 28, 2016, hearing that the corporate representative, who was absent, *could* review the Transcript from the first hearing before the start of the second hearing. Further, there was no objection or exception taken to this ruling by Petitioner's QR when it was made. See Mar. 28, 2016, Tr., p. 13, line 17.

8/ The undersigned concurs that this tends to show a lack of interest and/or acceptance of responsibility for the criminal offense.

9/ Petitioner's collection of letters of reference, Respondent's Exhibit 6, were from family members, employees at the place of her employment (not supervisors), and a friend.

10/ No additional letters were provided during the hearing other than those already considered by the Agency.

11/ Whether these incidences involved her driving, her vehicle, or her daughter driving her vehicle, the undersigned concludes

that this chronic accumulation of road toll violations tend to show a disregard of the law by Petitioner. She could have, and should have, corrected this problem, but instead chose to ignore it. This behavior tends to undermine her argument that she has been rehabilitated.

^{12/} In this case, Petitioner has been released from any supervision.

^{13/} The undersigned concludes that these details and circumstances were not adequately presented during the course of these proceedings. This, in turn, prevented APD, and the undersigned, from assessing or comparing Petitioner's current "station in life" against the backdrop of what had occurred, what prompted the criminal conduct, or other relevant circumstances.

COPIES FURNISHED:

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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.