

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RICARDO LUIS LLORENTE,

Petitioner,

vs.

Case No. 16-5763

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,  
DIVISION OF FLORIDA  
CONDOMINIUMS, TIMESHARES AND  
MOBILE HOMES,

Respondent.

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RECOMMENDED ORDER

This case was heard before Administrative Law Judge  
Robert L. Kilbride of the Division of Administrative Hearings  
("DOAH") on December 14, 2016, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Michael Ramer Karcher, Esquire  
Karcher, Canning & Karcher  
760 Northeast 7th Avenue  
Dania, Florida 33004-2502

For Respondent: Megan S. Silver, Esquire  
Department of Business and  
Professional Regulation  
Capital Commerce Center  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2202

STATEMENT OF THE ISSUE

Whether Petitioner carried his burden of proving his good moral character and entitlement to a yacht salesperson's license under chapter 326, Florida Statutes.

PRELIMINARY STATEMENT

On July 11, 2016, Respondent denied Petitioner's application for a yacht salesperson's license. Petitioner timely requested a formal hearing under chapter 120, Florida Statutes.

On October 3, 2016, Respondent referred the matter to DOAH, and the matter was assigned to Administrative Law Judge Robert L. Kilbride.

On November 2, 2016, Respondent filed a Motion to Relinquish Jurisdiction, which was denied by the undersigned on November 21, 2016.

The case proceeded to a final evidentiary hearing on December 14, 2016.

Petitioner testified on his own behalf and presented the testimony of several witnesses: Beatriz Llorente (his sister), Francisco Pines, Sandra Rico, and Lazaro R. Navarro. Petitioner's Exhibits numbered 1 through 6 were admitted into evidence. Respondent presented the testimony of Chelisa Kirkland. Additionally, Respondent's Exhibits numbered 1 through 4 were admitted into evidence.

Based on the request of the parties, an extension of time to file proposed recommended orders was granted on January 4, 2017. A Transcript of the final hearing was filed with DOAH on December 27, 2016.

Proposed recommended orders were timely received from the parties and were considered by the undersigned in the preparation of this Recommended Order.

References to the Florida Statutes are to the 2016 version, unless otherwise indicated.

#### FINDINGS OF FACT

Based on the stipulations of the parties, the oral and documentary evidence, and the record as a whole, the following Findings of Fact are made:

#### Stipulated Facts

1. Respondent is the state agency charged with enforcing chapter 326, the Yacht and Ship Brokers Act, and the administrative rules promulgated thereunder.

2. On June 8, 2016, Petitioner submitted to Respondent an application for a yacht salesperson's license.

3. On Petitioner's application, the application question, number 14, relating to criminal history, was answered "yes."

4. Petitioner failed to attach a complete and signed statement of the charges and facts, together with the dates, names, and location of the court in which the proceedings were

held or were pending, as required by the application for the yacht salesperson's license.

5. On October 12, 2012, Petitioner entered a plea of guilty to conspiracy to commit bank and wire fraud, a felony, in the United States District Court, Southern District of Florida, Miami Division, in case number 1:1220156CR-UNGARO.

6. On October 12, 2012, Petitioner was adjudicated guilty of conspiracy to commit bank and wire fraud in case number 1:1220156CR-UNGARO.

7. On October 12, 2012, Petitioner was sentenced to 57 months' incarceration in the custody of the United States Bureau of Prisons in case number 1:1220156CR-UNGARO.

8. On October 12, 2012, Petitioner was sentenced to three years of supervised release following incarceration in case number 1:1220156CR-UNGARO.

9. On October 12, 2012, Petitioner was ordered to pay \$6,567,496.00 in restitution in case number 1:1220156CR-UNGARO.

10. On April 22, 2016, Petitioner was released from incarceration and placed under supervised release, set to expire on or about April 21, 2019.

11. Petitioner failed to certify to Respondent that Petitioner has never been convicted of a felony in Petitioner's application for a yacht salesperson's license.

12. Petitioner timely received a copy of Respondent's Notice of Intent to Deny License Application on July 19, 2016.

13. Petitioner completed programs in Residential Drug Abuse Treatment Program, the Wellness Program, and the Community Treatment Services Program at Dollan Mental Health Clinic.

14. Petitioner served his time without issue.

15. Petitioner has been sponsored by a South Florida yacht broker who is going to supervise his activity as a yacht salesman.

#### Facts Adduced at the Hearing

16. Pursuant to chapter 326, Respondent has regulatory jurisdiction over yacht and ship licensees and is responsible for the approval or denial of applications for licensure for yacht salespersons and yacht brokers.

17. Petitioner's younger sister, Beatriz Llorente, who is a practicing real estate and criminal defense attorney, testified.

18. She described Petitioner as a "father figure" to her. She testified that Petitioner's conviction for conspiracy to commit bank fraud "devastated" her, because she felt that her reputation was being questioned.<sup>1/</sup>

19. When she drove him to federal prison, Petitioner "asked her for forgiveness."

20. She was familiar with his prison experience. As far as she knew, Petitioner had no disciplinary problems in prison and

was awarded maximum gain time. Furthermore, his 57-month sentence was reduced to less than two and one-half years.

21. Despite his incarceration and current probation status, she stated that he is very active with his children and shares a great deal of time with them.

22. He told her, "I will work for the rest of my life to regain your trust." His sister is convinced that Petitioner has overcome his faults, and she emphatically stated he is of good character.

23. On cross-examination, she testified that Petitioner had no drug or alcohol problems when he was growing up, but they arose during the years preceding his conviction.

24. An attorney friend of Petitioner's, Francisco Pines, testified. Pines has known Petitioner since 1988. They attended school together.

25. More recently, their families have interacted and spent time together. They participated together in recreational activities, such as boating and fishing, before Petitioner's incarceration for the federal crime.

26. Since Petitioner was released from prison, Pines has had contact with him three or four times.

27. Pines was also asked about Petitioner's character. In his view, Petitioner knows that what he did was wrong and has made changes to get his life in order.

28. Pines testified that Petitioner is very loving, caring and nurturing with his children. The witness has seen a "change for the better." According to him, Petitioner has always demonstrated a strong work ethic, more so now than before the criminal incident.

29. A licensed mental health counselor, Sandra Rico, was also called by Petitioner. Beginning in 2011, she provided mental health therapy and counseling to Petitioner related to his anxiety due to a crisis in his marriage. She determined that he used and abused alcohol to relieve this anxiety.

30. She treated him on and off until 2013. She also emailed him while he was in federal prison to make sure that he was getting continued treatment for his anxiety and alcohol abuse issues.

31. After he was released from prison, Rico counseled him once a month from July 2016 through the fall of 2016. Her current treatment with him is more in the nature of prevention and maintenance, and to help him develop coping skills.

32. She testified that the therapy he received in prison helped him and that Petitioner changed while in prison. As examples, she cited that he is more involved and willing to do more of her treatment assignments and that he now journals his feelings.

33. Rico related that she is surprised by Petitioner's progress and that she believes he is no longer drinking. He is making better choices and being more careful.

34. She opined that he gathers his thoughts more deliberately now, primarily because he wants to impress his children and reach "goals" he has set for himself.

35. In her opinion, he is of good character now. His treatment with her continues "as needed."

36. Lazaro R. Navarro is the chief executive officer at Florida Yachts International and manages approximately ten sales associates.

37. He has known Petitioner's family for over 15 years.

38. When Petitioner was released from federal prison, the family asked Navarro if he would consider employing Petitioner and sponsoring him. He gave Petitioner a job doing "online marketing," which involved managing leads and performing back office work.

39. Navarro characterized Petitioner as a great asset to his company and trustworthy. He has no doubts about Petitioner and his work habits. Petitioner arrives at work early and is usually the last one to leave. Petitioner has exceeded all of his expectations, and is a very dedicated employee.

40. As the employing yacht broker, Navarro supervises Petitioner and ensures that all of his work is done correctly.



Although no details were offered, Navarro testified that Petitioner has accepted full responsibility for his criminal conduct and is a great father.

41. Based upon the financial procedures and protocols used at Navarro's yacht company, he testified that Petitioner would not need to handle or accept any cash as a part of his sales responsibilities. Instead, finances and money exchanges are handled and processed by a closing specialist and the chief financial officer.<sup>2/</sup>

42. Navarro commented that he would trust Petitioner with money handling, if that occasion arose.

43. Petitioner offered his own testimony. He received a Florida real estate license in February 2005 and worked for his cousin as a real estate salesperson until 2008.

44. He was indicted for conspiracy to commit bank and wire fraud in March 2012. This federal indictment stemmed from activities in 2006 while he worked as a licensed real estate salesperson.

45. He confirmed that he visited with Rico for mental health counseling related to problems with his wife, as well as anxiety related to the government's criminal investigation of him in 2009.

46. Although his prison sentence did not include mandatory alcohol or drug treatment, he followed the advice of a

psychiatrist at the prison and voluntarily enrolled in a residential drug and alcohol abuse treatment program. He also participated in a health and nutrition wellness class for nine weeks. He completed both programs successfully.

47. While in prison, he took several foreign language classes, thinking they would be useful for the yachting business. He also participated in a hazmat (hazardous materials) program outside the prison on a naval base. Apparently, a Navy Admiral retained him for the program. Also, while in prison, he was hired on the naval base to provide cleaning and maintenance services at a dormitory.

48. He was allowed to serve a reduced prison sentence-- 32 months of his 57-month sentence, and he was released six months early to go to a halfway house. While there, he became eligible for home confinement. He was released from home confinement in April 2016.

49. Although he is still under supervised release (probation), he is no longer required to make personal visits and can report to his probation officer remotely through the Internet.

50. He is jointly and severally liable for over \$6 million in restitution with the other defendants in his criminal case. It was undisputed that he is current with his restitution payments of \$151.00 each month.

51. Petitioner is active in his Catholic Church and gave "his testimony" at a recent church retreat.

52. He characterizes his relationship with his children as being one of honesty and emphasized that it is important to have God in his life.

53. When Respondent called requesting additional information for his application, he promptly provided his federal Termination Report and Certificates of Completion. Pet. Exs. 3, 4, and 5.

54. Petitioner expressed a passion for boating and believes he is good at sales. He wants the yacht salesperson's license, in part, so that he can pay off the criminal restitution more quickly.

55. He claims to no longer act impulsively and believes that his children are the most important thing in his life.

56. On June 8, 2016, Petitioner submitted to Respondent an application for a yacht and ship salesperson's license.

57. On Petitioner's application, he answered question number 14 "Yes," indicating that he had a criminal history.<sup>3/</sup>

58. Applicants who answer "Yes" to question number 14 on the application are directed to attach a complete and signed statement of the charges and facts, together with the dates, names, and location of the court in which the proceedings were held or are pending.<sup>4/</sup>

59. However, Petitioner failed to submit this statement. When asked about this omission, Petitioner testified, "I turned back for the next one (question), and I didn't bother looking. It shows part of impulsive behavior." Petitioner thought the information request at the bottom of the page he overlooked was simply a part of the next question.<sup>5/</sup>

60. Respondent obtained a Florida Department of Law Enforcement criminal background check on Petitioner, which indicated that, on October 12, 2012, Petitioner pled guilty to conspiracy to commit bank and wire fraud. Resp. Ex. 4.

61. Certified court records obtained by the Division indicated that Petitioner was adjudicated guilty of conspiracy to commit bank and wire fraud in violation of 18 U.S.C. § 1349, a felony, and sentenced to 57 months' incarceration in the custody of the United States Bureau of Prisons with three years of supervised release following incarceration. Petitioner was ordered to pay \$6,567,496.00 in restitution.<sup>6/</sup>

62. Notably, Petitioner's federal "Judgment In A Criminal Case" included Special Conditions of Supervision. This included a "Related Concern Restriction." Petitioner testified that this provision prohibited him from "touch[ing] funds" while under supervised release. His employer at Florida Yacht International wrote a letter, ultimately filed with the probation office, that

Petitioner "would not be dealing with any funds." Resp. Ex. 1, pp. 1-7.<sup>7/</sup>

63. Petitioner certified on his application that, in February 2005, he was licensed as a real estate sales associate in the state of Florida, having been issued license number SL3111375.

64. Petitioner testified that, in order to become a real estate sales associate, he completed a pre-licensing course; applied with and was approved to take the state licensing exam by the Department of Business and Professional Regulation; and passed the Florida Real Estate Sales Associate Examination. Petitioner stated that, at the time, he was familiar with the laws regulating the profession of real estate contained in chapter 475, Florida Statutes.<sup>8/</sup>

65. Petitioner testified that between 2005 and 2008, he worked as a real estate sales associate for Llorente Realty Group, under a supervising broker, Petitioner's cousin.

66. While employed there as a Florida licensed real estate sales associate, Petitioner engaged in an illegal real estate fraud scheme which lead to his 2012 federal criminal conviction. On several occasions, Petitioner provided up to \$150,000.00 of his own funds to make seven or eight improper short-term loans of approximately ten to 15 days each. Petitioner made a profit of approximately eight to ten percent per loan.<sup>9/</sup>

67. Petitioner testified that these transactions involved buying houses under an individual's name (the straw buyer) and, after closing, executing a quitclaim deed to transfer title of the property to one of the co-conspirators, to whom Petitioner had made the loan. The property was subsequently transferred to the co-conspirator's family trust, leaving the outstanding mortgage in the name of the straw buyer. When the straw buyer failed to pay the outstanding mortgage, the lender would initiate foreclosure proceedings against the straw buyer who was no longer in possession of the property.

68. This fraudulent scheme was carried out against several lending institutions. After the lenders became aware of the scheme, a criminal investigation was initiated. The government characterized his involvement as a breach of his fiduciary duty.

69. In mid-2009, Petitioner was notified that he was under federal investigation for his involvement in the "straw buyer" scheme. After finding out about the investigation, Petitioner began to have relationship problems with his wife and to abuse alcohol. This prompted him to see Rico, a licensed mental health counselor.

70. On March 8, 2012, Petitioner was indicted on eight counts related to the bank fraud scheme. On October 12, 2012, Petitioner entered a plea of guilty and was adjudicated guilty of conspiracy to commit bank and wire fraud, a felony, in the United

States District Court, Southern District of Florida, Miami Division, in case number 1:1220156CR-UNGARO. Resp. Ex. 1.

71. Petitioner was incarcerated at Pensacola Prison Camp beginning March 1, 2013. Petitioner earned eight months' "gain time" off of his sentence.

72. Additionally, while incarcerated, Petitioner completed the RDAP, Residential Drug and Alcohol Treatment Program, which qualified Petitioner for a 12-month reduction in his sentence. Due to these reductions and good behavior, Petitioner served only 32 months of his 57-month sentence in federal prison.

73. During his incarceration, Petitioner also completed a nine-week wellness course on various subjects such as nutrition and exercise and worked at Naval Air Station Pensacola, Corry Station Naval Technical Training Center, and the Pensacola Prison Camp.

74. On October 27, 2015, Petitioner was released to a halfway house and shortly thereafter began working for Navarro at Florida Yacht International as a clerk.

75. On November 10, 2015, Petitioner became eligible for home confinement, and, by April 18, 2016, Petitioner completed TDAPT, a transition recovery program.

76. On April 21, 2016, Petitioner was released from custody, and, on April 22, 2016, he was placed under supervised release, currently set to expire on April 21, 2019.

77. Petitioner testified that he has paid \$6,000.00 towards the restitution he owes in the amount of \$6,567,496.00. As previously mentioned, this restitution is owed with several co-conspirators who are jointly and severally liable with him. Resp. Ex. 1, p. 5.

78. Petitioner testified that he is up to date on required payments pursuant to the order of restitution.

79. Navarro monitors and supervises Petitioner's work and is ultimately responsible for Petitioner under his own yacht broker license. Petitioner is also currently employed as a part-time driver for Uber.

80. In compliance with the Related Concern Restriction of his criminal conviction, Petitioner has not been placed in a position of trust or responsibility over sums of money at Florida Yachts International.

81. Petitioner stated that upon obtaining a job as a clerk with Florida Yachts International, Navarro was required to certify to Petitioner's supervisors through the halfway house that Petitioner "would not be dealing with any funds," pursuant to the "Related Concern Restriction" of Petitioner's Special Conditions of Supervision.<sup>10/</sup> Resp. Ex. 1, p. 4; Resp. Ex. 4, p. 51.



82. Following his release from incarceration, Petitioner continues to see Rico for therapy sessions on a monthly basis. Rico provided a letter of recommendation for Petitioner.

83. As mitigation and in an effort to show his good moral character, Petitioner testified that he is not abusing alcohol anymore, has made substantial efforts to reconnect with his children, and has maintained a close relationship with his sister both before and after his incarceration.

84. Licensed yacht salespersons are not restricted and may work under any licensed yacht broker. They may also switch their registered broker if they wish to work for someone else. Additionally, salespersons become eligible to apply for their own yacht and ship broker license after two years as a salesperson.

85. A representative of Respondent, Chelisa Kirkland, testified for Respondent. A yacht salesperson's license is only required for the sale of used or pre-owned vessels in excess of 32 feet. Vessels less than 32 feet and new vessel sales of any size do not require a license.

86. Kirkland confirmed that Petitioner's probation, or court supervision, does not end until April 2019.

87. Applying the statutory and rule criteria, Respondent denied Petitioner's application for a yacht salesperson's license. More specifically, Respondent was concerned about the nature and seriousness of the federal crime, particularly because

Petitioner held a professional real estate license at the time the criminal bank fraud offenses were committed.

88. Additionally, as of the date of the application, Petitioner's government supervision and probation had not been completed, and there was a very significant amount of restitution still owed, in excess of \$6,000,000.00. Finally, Respondent felt that there had not been a significant passage of time since the conviction in 2012.

89. As a result of the totality of these circumstances, Kirkland recommended that Petitioner's application be denied. She acknowledged that her recommendation was based solely on the conviction for conspiracy to commit bank and wire fraud. She conceded that Florida law does not impose an "automatic" denial just because Petitioner owes restitution, is still under supervision, or was convicted of a federal crime.

#### CONCLUSIONS OF LAW

90. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this action pursuant to sections 120.57(1) and 120.60. Administrative proceedings under chapter 120 are a de novo review of the agency's intended action. § 120.57(1)(k), Fla. Stat. As a result, the evidence of Petitioner's moral character is revisited and considered anew by the undersigned based on the evidence adduced at a hearing held under chapter 120.

91. Respondent denied Petitioner's application on the basis that Petitioner had not sufficiently proven that he was of good moral character. This conclusion was premised on Petitioner's federal felony criminal conviction in October 2012 for conspiracy to commit bank and wire fraud.

92. Section 326.004(6)(a) authorizes Respondent to deny a chapter 326 yacht salesperson's license to an applicant who does not furnish satisfactory proof that he or she is of good moral character.

93. Florida Administrative Code Rule 61B-60.003(3) outlines the criteria to be used by Respondent to evaluate and determine if good moral character has been established by an applicant for a yacht salesperson's license.

94. The rule criteria contain the essential fabric and crux of Respondent's basis for denial of Petitioner's application. The rule states, in pertinent part (underlining is added for emphasis):

(3) Review for Good Moral Character.

(a) When the application has been determined to be in acceptable form, the division shall evaluate the application and make appropriate inquiry to determine the applicant's moral character. For the purposes of this rule, the following factors bear upon good moral character:

1. The completion of a criminal history check by the Florida Department of Law Enforcement that reveals no convictions of a

felony, no convictions of a misdemeanor involving moral turpitude, and no pleas of nolo contendere, pleas of guilty, or verdicts of guilty to a felony charge or of any non-felonious offense involving moral turpitude, fraud, theft, dishonesty, assault and battery, or false statement; and

2. Civil lawsuits and administrative actions bearing upon moral character (e.g., fraud, misrepresentation, theft, assault and battery); and

3. Applicant's prior history of unlicensed brokering or sales activity in the State of Florida subject to the provisions of Chapter 326, F.S.; and

\* \* \*

5. Other relevant information generated in the course of the application process that bears upon the applicant's moral character, including but not limited to those acts described by Section 326.006(2)(e)-(f), F.S.; and

6. Failure of the applicant to provide full and complete disclosure, or to provide accurate information, on the application for licensure.

7. The foregoing factors shall be considered in determining whether an applicant is of good moral character for purposes of licensure under Chapter 326, F.S., if they comply with the following guidelines:

a. The disposition of criminal charges shall be considered if such constitutes a felony, or if such constitutes a misdemeanor involving moral turpitude, fraud, theft, dishonesty, assault and battery, or false statement.

b. The disposition of any administrative action or of any civil litigation involving

fraud, misrepresentation, theft, assault and battery, or moral turpitude shall be considered if such results in a determination against the interests of the applicant.

c. Except as provided in sub-sub-paragraph 7.d. of this rule, no information relating to criminal, administrative or civil actions shall be considered if more than 5 years has elapsed from the satisfaction of the terms of any order, judgment, restitution agreement, or termination of any administrative or judicially-imposed confinement or supervision of the applicant, whichever is more recent.

d. Any action, proceeding, or grievance filed against the applicant, individually or otherwise, which relates to the applicant's prospective duties, responsibilities, and obligations of licensure under Chapter 326, F.S., may be considered with no limitation as to time.

e. Other considerations such as termination of probation, compliance with and satisfaction of any judgment or restitution agreement may be considered as evidence of rehabilitation of the applicant's good moral character.

(b) Within 15 days after the division has determined that the application is in acceptable form, the division shall apply for a criminal history record with the Florida Department of Law Enforcement.

(c) After receipt of the criminal history check, the division shall complete its evaluation of the moral character of the applicant. As used herein, "criminal history check" shall include verification of the nature and disposition of all criminal charges and all civil or administrative actions initiated against the applicant. Specifically, the inquiry may include the following:

1. National fingerprint processing;
2. Status as to any supervision of the applicant (e.g., confinement, probation, community service requirements);
3. Status as to any restitution agreements;
4. Status as to any civil judgments or final orders; and
5. Contact with arresting agencies and responses to requests for clarification by the division. The applicant shall assist the division in acquiring the foregoing information.

(d) If upon completion of its evaluation of the moral character of an applicant, the division concludes that the applicant does possess good moral character, the division shall issue the applicant a license, upon payment of all fees owed to the division, if any.

(e) The effective date of the permanent license will be the date that the temporary license is actually issued by the division. The expiration date of the permanent license will be a date 2 years from date of issuance of the temporary license.

(f) If upon completion of its evaluation of the moral character of an applicant, the division concludes that the applicant does not possess good moral character, the division shall issue a notice of its intent to deny the application. (emphasis added).

95. The rule above specifically incorporates section 326.006(2)(f). Therefore, this statute also bears upon a finding of good moral character and may be considered by Respondent. The statute subsection provides:

(f) The division may suspend or revoke the license of a broker or salesperson who has:

1. Procured a license for himself or herself or another by fraud, misrepresentation, falsification, or deceit.
2. Been found guilty of a felony or a crime of moral turpitude. (emphasis added.)

96. It is against this regulatory backdrop that Petitioner's application to obtain a yacht salesperson's license should be evaluated and weighed by the undersigned in this "de novo" review.

97. Since administrative hearings under chapter 120 are "de novo," the evaluation may, therefore, include facts and observations not previously considered by the agency.

98. Further, if the purpose of the chapter 120 administrative hearing is to ferret out all the relevant facts and to allow the "affected parties an opportunity to change the agency's mind," then, logically, it should be the credible and persuasive facts and observations adduced at the final hearing that carry the day, and upon which any final action by the agency is measured. See generally J.D. v. Fla. Dep't of Child & Fams., 114 So. 3d 1127 (Fla. 1st DCA 2013), citing 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).

99. Other principles of law are equally applicable. The general rule is that a party asserting the affirmative of an issue (applying for a professional license and proving good moral character) has the burden of presenting persuasive evidence as to those points. Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

100. Thus, Petitioner had the burden of persuasion to present credible and persuasive evidence of his good moral character and fitness for licensure. Likewise, it is equally important for Petitioner to satisfactorily explain why evidence relied on by Respondent is not credible or persuasive and should not be relied upon by the undersigned in making a recommendation. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996).

101. In Florida, an applicant for a professional license ultimately bears the burden of persuasion at each and every step of the licensure proceedings, regardless of which party bears the burden of presenting certain evidence. Moreover, while the burden of producing evidence may shift between the parties in an application proceeding, when a dispute arises, the burden of persuasion remains with the applicant to prove his or her entitlement to the license by a preponderance of the evidence.

102. Notable as well in licensure cases, and of particular interest in this case, is the Florida Supreme Court's reminder



that a regulatory agency has "particularly broad discretion" in determining the fitness of applicants who seek to engage in an occupation, the conduct of which is a privilege rather than a right. Osborne, supra.

103. This discretionary authority is particularly necessary where an agency regulates occupations which are (1) practiced by privilege rather than by right and (2) potentially injurious to the public welfare. Astral Liquors, Inc. v. Dep't of Bus. Reg., 463 So. 2d 1130, 1132 (Fla. 1985).<sup>11/</sup>

104. On the other hand, in a license application proceeding, the agency has the burden of proving specific acts of misconduct by a preponderance of the evidence if it seeks to deny a license application on that basis. M.H. v. Dep't of Child. & Fam. Servs., 977 So. 2d 755, 761 (Fla. 2d DCA 2008) ("[I]f the licensing agency proposes to deny the requested license based on specific acts of misconduct, then the agency assumes the burden of proving the specific acts of misconduct that it claims demonstrate the applicant's lack of fitness to be licensed."). Here, then, Respondent had the burden to prove Petitioner's previous felony conviction existed to support its conclusion that Petitioner should be denied the license for lack of good moral character.<sup>12/</sup>

105. In the context of professional and occupational licensing, the question of what constitutes "good moral character" is a question of fact for the trier of fact. Yeoman v. Constr. Indus. Licensing Bd., 919 So. 2d 542 (Fla. 1st DCA 2005); Palamara vs. Dep't of Bus. & Prof'l Reg., 855 So. 2d 706, 708 (Fla. 4th DCA 2003); Bachynsky v. State Dep't of Prof'l Reg., 471 So. 2d 1305 (Fla. 1st DCA 1985); and Village Zoo, Inc. v. Div. of Alcoholic Beverages & Tobacco, 450 So. 2d 920, 921 (Fla. 4th DCA 1984). Consequently, it is for the undersigned to determine this factual issue and recommend the proper disposition of the case. Id.

106. Finally, in licensure cases, neither the statutes nor the rules categorically exclude an applicant from consideration for licensure due to a felony criminal conviction alone. Palamara, supra at 708. However, as the Fourth District Court of Appeals reminded in Palamara, the undersigned should not overlook the serious felony conviction against Petitioner in 2012. And while the Administrative Law Judge must determine the factual issue of Petitioner's moral character, the court commented that a criminal judgment is "certainly strong evidence" regarding Petitioner's moral character. Id.

107. With these principles in mind, and considering the respective burdens of proof, the undersigned draws several additional conclusions from the evidence adduced at the hearing.

108. Respondent has a legitimate interest in protecting the public by screening applicants for yacht and ship salesperson's licenses because applicants are in a position of fiduciary responsibility to members of the public and are permitted to collect escrowed funds on behalf of their broker.<sup>13/</sup>

109. Petitioner offered seven letters with personal observations regarding Petitioner's general work ethic and character. Two were written in 2012 and two came from witnesses who testified at the hearing. However, the relevance and use of the letters was limited because they were unsworn hearsay. Likewise, the authors were not subject to cross-examination under oath. The letters were given the weight they deserve.<sup>14/</sup>

110. Petitioner did not present any disinterested witnesses to persuasively describe or attest to Petitioner's good moral character in business matters or transactions.

111. While Beatriz Llorente, Pines, and Navarro all testified and provided a good deal of insight regarding personal attributes of Petitioner, the undersigned concludes that each had a familial, financial, or long-standing friendship tie with Petitioner. There was an absence of compelling and persuasive evidence offered by more neutral, impartial, or dispassionate

witnesses attesting to his good moral character, trustworthiness, or experience in business transactions.

112. Despite commendable and laudable achievements while in prison, and after his release from prison, it would be premature to conclude that Petitioner has been fully rehabilitated from the very serious federal crime he committed, which involved an ongoing and repeated scheme, affecting multiple victims.

113. This is particularly true since he is still under supervised release (probation), and an enormous amount of restitution is still unpaid.

114. While the progress and achievements made by Petitioner are commendable, Petitioner has not persuasively demonstrated that he has been sufficiently rehabilitated from a criminal conviction entered less than five years ago.

115. To conclude, in the face of a recent and very serious felony conviction related to his illegal activities involving multiple victims in another regulated industry, the evidence presented by Petitioner was not sufficient to adequately establish that he has presently attained the level of good moral character required by the law.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and Professional Regulation, Division of Florida Condominiums,

Timeshares, and Mobile Homes, confirm its previous denial and enter a final order denying Petitioner's application for a yacht salesperson's license.

DONE AND ENTERED this 13th day of February, 2017, in Tallahassee, Leon County, Florida.



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ROBERT L. KILBRIDE  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 13th day of February, 2017.

ENDNOTES

<sup>1/</sup> Apparently, the real estate closings related to the federal conspiracy conviction took place at her law office, and her firm records were subpoenaed by the government.

<sup>2/</sup> Navarro testified that, as Petitioner's broker, he would collect 50 percent of the revenue for each yacht sold by Petitioner, if Petitioner is granted a license.

<sup>3/</sup> The undersigned concludes that this fulfilled any obligation he had to certify that he did, or did not, have a felony conviction.

<sup>4/</sup> It is reasonable to infer from the evidence that this is done for several reasons. It gives Respondent more detail and background information regarding the conviction and underlying facts. It also helps them to assess the applicant's forthrightness and honesty. Finally, the written statement gives

the agency an indication of the level of rehabilitation that has been achieved by the applicant.

<sup>5/</sup> The undersigned does not find this explanation persuasive, particularly in light of the serious, important, and formal nature of the application. Further, to the best of the undersigned's recollection, Petitioner never provided the detailed signed statement as required by the application.

<sup>6/</sup> Petitioner testified that this restitution amount is a joint and several liability with other defendants in the criminal case.

<sup>7/</sup> The criminal judgment expressly prohibited Petitioner from owning, operating, being employed in, or participating in any manner in "any related concern" during the period of his supervised release (running until April 2019). It does not simply prohibit him from handling money. Rather, it extends to prohibiting involvement in any related industry. While this phrase is not defined and clarifying evidence was not offered, it is reasonable to conclude that professional sales in any regulated industry would likely qualify as a prohibited related concern.

<sup>8/</sup> Significantly and despite his training, it was during his tenure as a Florida licensed and regulated real estate salesperson, that Petitioner disregarded the law and committed the real estate fraud for which he plead and was convicted in 2012.

<sup>9/</sup> These illegal loans formed the basis of the federal government's criminal charges against him.

<sup>10/</sup> It is noteworthy that Petitioner is required to comply with the Special Conditions of Supervision until he is released from supervision in April 2019.

<sup>11/</sup> The utilization of a yacht salesperson license qualifies under both of these standards.

<sup>12/</sup> The federal conviction for conspiracy to commit bank fraud was conclusively proven by Respondent. Palamara v. Dep't of Bus. & Prof'l Reg., 855 So. 2d 706, 708 (Fla. 4th DCA 2003).

<sup>13/</sup> Although Navarro testified that his company's financial protocols would guard against this, there is nothing that would legally prevent this from changing in the future. Nor is there

anything to prevent Petitioner from working elsewhere after obtaining his license.

<sup>14/</sup> From an Florida Evidence Code standpoint, none of the letters address or relate to Petitioner's reputation for truthfulness or veracity (to support the credibility of Petitioner's testimony), nor do they address his character reputation in the community or among associates as required by section 90.803(21), Florida Statutes. Rather, they were personal observations of the writer. Without these predicates being laid, the hearsay letters of individual support were of limited value.

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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.