

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHAYLA ELIZABETH HOFF,

Petitioner,

vs.

Case No. 18-2807

DEPARTMENT OF FINANCIAL
SERVICES, BOARD OF FUNERAL,
CEMETERY AND CONSUMER SERVICES,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this matter on July 31, 2018, in Ocala, Florida, before Yolonda Y. Green, a duly-designated Administrative Law Judge of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner: Shayla Elizabeth Hoff, pro se
6041 Northwest 54th Terrace
Ocala, Florida 34482

For Respondent: Tom L. Barnhart, Esquire
Robert Antonie Milne, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Whether Petitioner's application for licensure as a preneed sales agent should be approved.

PRELIMINARY STATEMENT

In a Notice of Intent to Deny issued on April 26, 2018, the Department of Financial Services, Board of Funeral, Cemetery and Consumer Services (Department or Respondent) notified Petitioner that her application for a preneed sales agent license had been denied because she had pled nolo contendere to a felony charge of child neglect without great bodily harm and failed to demonstrate that she would not be a danger to the public if her license was approved. On May 1, 2018, Petitioner timely requested a hearing disputing the factual basis for the denial of licensure. This matter was referred to the Division and was assigned to the undersigned.

At the final hearing, the parties offered Joint Exhibit 1, which was Petitioner's deposition taken on July 18, 2018. Petitioner testified on her own behalf. Petitioner did not offer any exhibits. Respondent presented testimony of Petitioner. Respondent also offered Exhibits 1 through 8, which were admitted into evidence.

The hearing commenced as scheduled. A one-volume Transcript of the hearing was filed on August 20, 2018. Respondent filed a Proposed Recommended Order, which has been considered in the preparation of this Recommended Order.

Unless otherwise indicated, all statutory references are to Florida Statutes (2018).^{1/}

FINDINGS OF FACT

Based upon the evidence presented at hearing, the following relevant Findings of Fact are made.

1. Petitioner seeks a license as a preneed sales agent so that she may work at Good Shepherd Memorial Gardens Funeral Home ("Good Shepherd"). Petitioner plans to work as a family service advisor to help families with preneed services.

2. A preneed sales agent assists families with planning for funeral or burial needs prior to death. Petitioner anticipates she would conduct meetings with potential customers at the cemetery or in their homes.

3. Petitioner worked with Good Shepherd from January 2018 until June 2018. Although Petitioner is currently not employed at the funeral home, she anticipates that Good Shepherd would allow her to return to work if her application for licensure is approved.

4. Respondent is the state entity responsible for regulating licensure of persons who provide preneed sales services under chapter 497, Florida Statutes.

5. When applying for any license under chapter 497, Respondent considers whether the applicant has a criminal record. An applicant must disclose any felony offense that was committed within 20 years immediately preceding the application.

The Board then considers the applicant's criminal history and whether the applicant would pose an unreasonable risk to members of the public who might deal with the applicant in preneed transactions.

6. Petitioner has a criminal history involving an incident that occurred two years ago. In September 2016, Petitioner's husband placed Petitioner's then eight-year-old daughter in a dog cage because the daughter had allegedly mistreated the family dog. Petitioner returned home from work, found her daughter in the dog cage, and removed her. In a separate but related incident, Petitioner watched her husband take her daughter to her bedroom. Petitioner entered the daughter's bedroom and saw her husband spanking her child with a flip-flop sandal on her behind. At no point did Petitioner attempt to protect her daughter from her husband's abusive actions or report him to the appropriate authorities. The abuse was ultimately reported by a roommate who lived in the home.

7. On June 12, 2017, Petitioner (age 28) pled nolo contendere to one count of child neglect without great bodily harm, a third-degree felony, in violation of sections 827.03(1)(e) and 827.02(2)(d), Florida Statutes. The court sentenced Petitioner to: one day of jail time with credit for time served, probation for 24 months, 100 hours of community service (within the 18 months of probation), and peaceful

contact with her daughter. Petitioner was also ordered to pay court costs and fees and fines in the amount of \$937.00.

Adjudication of guilt was withheld.

8. Petitioner's husband, who was not the child's biological father, pled guilty to two counts of child abuse without great bodily harm. Among other things, he was ordered to have no contact with the child.

9. Prior to the criminal offense at issue in this matter, Petitioner had no criminal history. In addition, Petitioner has had no known contact with law enforcement since the criminal offense.

10. In a Notice of Intent to Deny issued on April 26, 2018, Respondent notified Petitioner that her application for a preneed sales agent license had been denied as follows:

3. On June 7, 2017, Ms. Hoff pled no contest to a felony charge of child neglect without great bodily harm and was sentenced to 24 months of probation, 100 hours community service, assessed court costs and fines in the amount of \$937.00, and her parental rights were terminated.

4. The [A]pplicant stated that her criminal probation will not be completed until June 2019.

5. The Applicant stated that she has not yet paid the fines and fees assessed in this [criminal] matter.

6. The Applicant stated that she is still married to the gentleman she was married to

at the time of the arrest. This gentleman was involved in the criminal allegations of child neglect.

11. On May 1, 2018, Petitioner timely requested a hearing disputing the factual basis for the denial of licensure.

12. Petitioner has completed 40 hours of the 100 hours community service requirement. She anticipates that she may be eligible for early termination of her probation after she completes the community service hours. Petitioner did not present any evidence of community service other than court-ordered community service.

13. Prior to submitting her application, Petitioner completed approximately 150 to 175 hours of training in preneed sales, covering family planning, death certificates, Veterans Affairs benefits, types of burial products, and financial plan development.

14. Petitioner provided no explanation regarding why she did not protect her daughter from abuse. In addition, Petitioner continues to live with her husband and indicated that she has not yet divorced him due to financial reasons.

15. Petitioner has not presented sufficient evidence to meet her burden to prove that she is not a danger to the public.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter of the proceeding and the

parties thereto pursuant to sections 120.569 and 120.57(1), Florida Statutes (2018).

17. The applicant has the burden of presenting evidence of her fitness for licensure as a preneed sales agent. See Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981). She must prove entitlement to licensure by a preponderance of the evidence. See § 120.57(1)(j), Fla. Stat.

18. As a general matter, section 497.141(5) provides that the licensing authority (in this case, the Board) may not issue a license under this chapter to an applicant that has a criminal record required to be disclosed under section 497.142(10), unless the applicant demonstrates that issuance of the license, according to rules adopted by the licensing authority, does not create a danger to the public.

19. Section 497.466 addresses requirements and procedures for applicants seeking approval for a preneed sales agent license, including in pertinent part:

(2)(d) The application shall require the preneed sales agent applicant to disclose any criminal record, as required by s. 497.142.

* * *

(5)(c) An applicant with a criminal or disciplinary record who desires a permanent preneed sales agent license shall petition the board for issuance of such license using forms and procedures as specified by rule. The board shall issue a permanent preneed

sales agent license to an applicant with a criminal or disciplinary record if the board determines:

* * *

2. That the applicant, if issued a preneed sales agent license, would not pose an unreasonable risk to members of the public who might deal with the applicant in preneed transactions.

20. Section 497.142 provides, in pertinent part, that:

(10) (a) When applying for any license under this chapter, every applicant must disclose the applicant's criminal records in accordance with this subsection. When applying for renewal of any license under this chapter, every licensee must disclose only those criminal offenses required to be disclosed under this subsection since the most recent renewal of her or his license or, if the license has not been renewed, since the licensee's initial application.

(b) The criminal record required to be disclosed shall be any crime listed in paragraph (c) for which the person or entity required to make disclosure has been convicted or to which that person or entity entered a plea of guilty or nolo contendere. Disclosure is required regardless of whether adjudication is entered or withheld by the court.

(c) Crimes to be disclosed are:

* * *

2. Any other felony not already disclosed under subparagraph 1. that was committed within the 20 years immediately preceding the application under this chapter.

21. In evaluating the application of a licensee who has a criminal record, the Board considers the factors cited in Florida Administrative Code Rule 69K-1.008(2).

22. Rule 69K-1.008(2) provides that:

An applicant for new or renewal license that has a criminal record that is required to be disclosed under section 497.142(10) shall not be approved unless the applicant demonstrates that issuance of the license will not create a danger to the public. Such applicant when evaluating whether an applicant for license who has a criminal record has demonstrated that issuance of the license applied for would not create a danger to the public. Such applicant shall complete and submit with the application a form DFS-N1-1716, "Criminal History Form" (Oct. 2006), which is incorporated by reference in rule 69K-1.001, F.A.C. Applicant shall also make a written presentation to the Board, in the form of a letter to the Board, dated and signed by the applicant and attached to the application, addressing therein the factors listed below.

(a) A detailed explanation of the facts and circumstances of the criminal conduct.

(b) If applicant was not the sole perpetrator of the crime, a description in detail of applicant's role on the crime.

(c) If there are multiple crimes on different dates, applicant's explanation of why the multiple crimes should not be found to indicate inability or unwillingness to comply with applicable laws.

(d) The age of the applicant when the crime(s) was committed.

(e) Whether the crime involved physical violence, and the nature, amount and circumstances of the violence.

(f) A detailed description of the type and amount of personal or property harm, injury or damage suffered by any victim or innocent bystander as a result of the crime(s).

(g) Whether all legally required restitution has been made. If all legally required restitution has not been made, applicant shall provide an explanation of why it has not been made.

(h) If applicant initially denied or failed to disclose the criminal record on the application for license, an explanation for such denial or failure to disclose.

(i) Identification and description of any evidence that applicant is remorseful concerning the crime.

(j) Whether applicant believes they had a drug or alcohol abuse problem in the time frame the crime was committed and if so, identification and description of any evidence that applicant has been successfully treated, or has otherwise overcome or is in remission concerning such drug or alcohol abuse.

(k) Whether the applicant has successfully completed and complied with, or is completing or complying with, all requirements imposed by the court in the criminal proceedings, including but not limited to probation, and identification and description of any evidence in support of applicant's assertion in that regard.

(l) Whether applicant has, since the criminal court proceeding, engaged in any activity in the nature of community service, apart from and in addition to any criminal sentencing requirements, and if so,

identification and description of any evidence in support of applicant's assertion in that regard.

(m) Any other argument by applicant as to why applicant would not be a danger to the public if the licensed applied for is granted, and identification and description of any evidence in support of such argument and not previously identified and described in applicant's presentation to the Board.

23. Petitioner submitted a letter with her application addressing her criminal history. Regarding factors (a) through (f), the record demonstrates that Petitioner provided details concerning certain facts about the criminal conduct. Petitioner explained that her daughter was laughing while in the dog cage and suggests she was not harmed. She also indicated that there was no violence involved with her daughter being placed in the dog cage. However, Petitioner provided few details about her role in the criminal events and provided no explanation of why she did not protect her daughter from abuse. Regarding factor (i), Petitioner expressed remorse for the incident and indicated that she "feels horrible about it." Regarding factor (k), Petitioner is complying with her probation term, which is scheduled to end on June 7, 2019. Regarding factor (m), Petitioner did not offer any evidence of other community service outside of the court-ordered community service and requirements. Factors (g), (h), and (j) were not relevant to this matter.

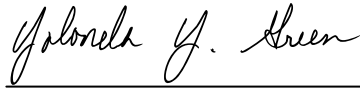
24. Rule 69K-1.008(3) allows the submission of references that support the assertion that if licensed the applicant would not be a danger to the public. Petitioner submitted three letters of reference. The first letter was authored by Adriana Hartzell, the family services manager for Good Shepherd. She described Petitioner as honest, compassionate, caring, and punctual. Ms. Hartzell has known Petitioner for only six months. The two remaining letters were identical and written by Candace Morris. However, Ms. Morris signed one letter and Robert Morris signed the other letter. The letters describe Respondent as a hard worker but offer no information regarding whether she would be a danger to the public.

25. Based on the totality of the evidence, Petitioner has not demonstrated that, if licensed, she would not be a danger to the public. Accordingly, her application should be denied at this time.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Funeral, Cemetery, and Consumer Services enter a final order denying Shayla Hoff's application for licensure as a preneed sales agent.

DONE AND ENTERED this 19th day of September, 2018, in
Tallahassee, Leon County, Florida.



YOLONDA Y. GREEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of September, 2018.

ENDNOTES

^{1/} Because a final order has not yet been issued for this case, Petitioner's application is governed by current law. See Ag. for Health Care Admin. v. Mount Sinai Med. Ctr., 690 So. 2d 689, 691 (Fla. 1st DCA 1997).

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.