

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

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2010009834

JULES ROSE, UNIT OWNER,
THE PIERRE ASSOCIATION, INC.

DS 2010-011

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (Division) hereby issues this Declaratory Statement pursuant to sections 120.565 and 718.501, Florida Statutes.

PRELIMINARY STATEMENT

On March 12, 2010, the Division received a Petition for Declaratory Statement from Jules Rose seeking an opinion on whether a unit owner whose civil rights have been restored but not the right to bear arms is eligible to serve on the board of The Pierre Association, Inc. under section 718.112(2)(d), Florida Statutes. Mr. Rose did not request a hearing.

On March 12, 2010, the Division mailed a letter to Mr. Rose, requesting that he provide the Division with an e-mail correspondence between himself and Jeremy Anderson, the association's attorney, a complete set of governing documents, and the scheduled date of the election at issue. Otherwise, Mr. Rose was informed that the Division would be unable to issue a statement.

On March 26, 2010, notice of receipt of the petition was published in Florida Administrative Weekly. On April 1, 2010, the Division received a response from Mr. Rose containing the requested governing documents.

FINDINGS OF FACT

The following findings of fact are based on information submitted by Mr. Rose. The Division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this final order.

1. The Pierre Association, Inc. is a condominium "association," as that term is defined by section 718.103(2), Florida Statutes.¹

2. Mr. Rose is a unit owner at The Pierre, a "residential condominium" as that term is defined by section 718.103(23), Florida Statutes.²

3. Before obtaining his Florida residency in 2002, Mr. Rose pled guilty to one count of federal mail fraud, a felony.³

4. Mr. Rose's federal civil rights were restored in 2002.⁴

5. Mr. Rose's Florida civil rights were restored on September 3, 2004 via Executive Order #2004C-214 ("executive order").⁵

6. Mr. Rose seeks a position on the board but an objection has been raised to his candidacy based on the fact that he is not authorized to bear arms within his federal civil rights.⁶

¹ See § 718.103(2), Fla. Stat. (2009).

² See § 718.103(23), Fla. Stat. (2009)

³ Pet. for Decl Stmt at 1 (Mar. 12, 2010)

⁴ Id.

⁵ Id.

⁶ Id.

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes.

2. Mr. Rose, as a unit owner, has standing to petition for a declaratory statement.⁷

3. Section 120.565, Florida Statutes, provides:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinions as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

4. Rule 28-105.001, Florida Administrative Code (2007), provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

5. Mr. Rose was convicted of federal mail fraud, a felony under the laws of the United States.⁸ Under federal law, "[i]t shall be unlawful for any person who has been convicted in any court of, a crime punishable by imprisonment for a term

⁷ See §§ 718 103(28), 120.565, Fla Stat. (2009)

⁸ See 18 U S C § 1341 (2009)

exceeding one year; to possess any firearm”⁹ Additionally, “[n]o provision of this [section] shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter”¹⁰ Accordingly, Florida has adopted section 790.23(1)(c), Florida Statutes, which provides that “[i]t is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm if that person has been: [c]onvicted of or found to have committed a crime against the United States which is designated as a felony.”

6. Civil rights include the right to vote, the right to hold office, the right to serve on a jury, the right to bear arms, among other civil rights afforded by both the federal and state constitution.¹¹ Florida recognizes the right to possess a firearm as a “civil right,”¹² which may be restored pursuant to the Governor’s discretionary power of clemency under article IV, section 8 of the Florida Constitution. In particular, the Governor may grant a “Specific Authority to Own, Possess, or Use Firearms” pursuant to section 4(I)(F) of the Florida Rules of Executive Clemency. This type of clemency “restores to an applicant the right to own, possess, or use firearms, which were lost as a result of a felony conviction”¹³

7. Here, the Governor granted to Mr. Rose a “Restoration of Civil Rights in Florida” on September 3, 2004 by executive order. However, this type of clemency serves only as a partial restoration because it “restores to an applicant all of the

⁹ *Id.* § 922(g)(1)

¹⁰ *Id.* § 927.

¹¹ Bill of Rights, amends I-X, U S Const , art. I, Fla. Const

¹² *Thompson v. State*, 438 So 2d 1005, 1006 (Fla 2d DCA 1983), *France v State*, 436 So. 2d 428, 430 (Fla. 5th DCA 1983)

¹³ Fla Rules of Exec Clem § 4(I)(F).

rights of citizenship in the State of Florida enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms . . .¹⁴ Stated differently, Mr. Rose can no longer legally possess or own a firearm in Florida absent a complete restoration of his civil rights.

8. Section 4(I)(G) of the Florida Rules of Executive Clemency explain the basis for a partial restoration of civil rights without firearm authority:

[d]ue to federal firearms laws, the Clemency Board will not consider requests for firearm authority from individuals convicted in federal or out-of-state courts. In order to comply with the federal laws, a Presidential Pardon or a Relief of Disability from the Bureau of Alcohol, Tobacco and Firearms must be issued in cases involving federal court convictions. A pardon or restoration of civil rights with no restrictions on firearms must be issued by the state where the conviction occurred. (emphasis added).

9. As a result, even though most of Mr. Rose's federal and Florida civil rights were restored in 2002 and 2004, respectively, the association contends that he is ineligible for board membership under section 718.112(2)(d)(1), Florida Statutes, because "he has not been authorized to bear arms."¹⁵ Thus, the central issue is whether the right to possess a firearm is among those "civil rights" contemplated by section 718.112(2)(d)(1), Florida Statutes.

10. Section 718.112(2)(d)(1), Florida Statutes (2009), provides in part:

[a] person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction that would be considered a felony if committed in this state, is not eligible for board

¹⁴ Id. § 4(I)(G) (emphasis added)

¹⁵ See Pet. at 1

membership unless such felon's civil rights have been restored for a period of no less than 5 years as of the date on which such person seeks election to the board.¹⁶

11. Before 2008, this section more narrowly defined the qualifications for board members in stating that “[a] person who has been convicted of any felony by any court of record in the United States and who has not had his or her right to vote restored is not eligible for board membership.”¹⁷ Since the 2008 amendment, a felon must now obtain a restoration of his “civil rights” as opposed to only a “right to vote” to be eligible for board membership. This is evidence of the legislature’s intent to encompass the right to possess a firearm with all other civil rights as a qualification for board membership.

12. Florida’s Constitution and Election Code further illustrate the legislature’s intention to include all “civil rights” in section 718.112(2)(d)(1), Florida Statutes. Article VI, section 4(a) of the Florida Constitution provides that “[n]o person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.”¹⁸ The legislature enacted section 97.041(2)(b), Florida Statutes, which provides that “[t]he following persons, who might be otherwise qualified, are not entitled to register or vote: [a] person who has been convicted of any felony by any court of record and who has not had his or her right to vote restored pursuant to law.”¹⁹ The legislature identified one of a number of civil rights,

¹⁶ Ch. 2008-28, § 7, at 18 Laws of Fla. (amending § 718.112(d)(1) eligibility criteria for felons) (emphasis added)

¹⁷ § 718.112(d)(1), Fla. Stat. (emphasis added).

¹⁸ Art. VI, § 4, Fla. Const. (emphasis added)

¹⁹ § 97.041(2)(b), Fla. Stat. (emphasis added)

the “right to vote” in this section and excluded other civil rights such as the “right to serve as a juror”²⁰ or the “right to hold public office.”²¹

13. On the other hand, the legislature in 2008 amended section 718.112(2)(d)(1), Florida Statutes, to broaden the eligibility requirements. That is, by replacing the “right to vote” with “civil rights,” the legislature intended to more broadly define what civil rights must be restored in order for felons to qualify for board membership. The legislature abandoned a partial restoration of civil rights (i.e., the right to vote) in favor of a complete restoration of civil rights, which necessarily includes the right to possess a firearm upon a plain reading of the statute and its utilization of the plural form of the noun “right.”

14. The legislature’s intent to impose more stringent requirements for board membership is consistent with the extensive list of qualifications already enumerated under section 718.112(2)(d)(3), Florida Statutes. Ultimately, the right to possess a firearm is among those “civil rights” contemplated by section 718.112(2)(d)(1), Florida Statutes. Therefore, the fact that Mr. Rose’s federal and Florida partial restorations of civil rights failed to encompass his right to possess a firearm makes him ineligible for board membership.

For the reasons stated above it is hereby:

ORDERED that Jules Rose is ineligible to serve on the board until his federal and Florida civil right to possess a firearm, along with all other civil rights, has been

²⁰ See Watts v. Buck, 454 So. 2d 1079 (Fla. 2d DCA 1984) (“refers to the right to serve on a jury as a civil right”)

²¹ See Crossley v. State, 334 So. 2d 17 (Fla. 1976) (“refers to the right to hold public office as a civil right”)

restored for a period of no less than 5 years as of the date on which Mr. Rose seeks election to the board under section 718.112(2)(d)1, Florida Statutes.

DONE and **ORDERED** this 12th day of April 2010, at Tallahassee, Leon County, Florida.



A handwritten signature in black ink, appearing to read "M. Cochran", written over a horizontal line.

MICHAEL T. COCHRAN, Director
Department of Business and
Professional Regulation
Division of Florida Condominiums, Timeshares,
and Mobile Homes
Northwood Centre
1940 North Monroe Street
Tallahassee, FL 32399-1030

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY ADVERSELY AFFECTED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(c), FLORIDA RULES OF APPELLATE PROCEDURE BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217 WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Jules Rose, 455 Longboat Club Road – PH08, Longboat Key, FL 34228, on this 28th day of April 2010.

for Brandon M. Nichols
Robin McDaniel, Division Clerk

Copies furnished to:

Janis Sue Richardson
Chief Attorney

The Pierre Association, Inc.
c/o Argus Property Management, Inc.
Registered Agent
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