

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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	6/29/2016
File #	2016-05006

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2016019231

PATRICK JANDEBEUR, Unit Owner
MARINE TERRACE ASSOCIATION, INC.

DS 2016-031

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (hereinafter the "Division") issues this Declaratory Statement pursuant to section 120.565, Florida Statutes.

PRELIMINARY STATEMENT

The Division received a Petition for Declaratory Statement (hereinafter the "Petition") on April 19, 2016, from Patrick Jandebour (hereinafter the "Petitioner"), a unit owner and a member of Marine Terrace Association, Inc. seeking a declaratory statement as to whether a board member, who was found to have committed a felony, is eligible to serve on the board pursuant to section 719.106(1)(a)2., Florida Statutes.

The Division responded on April 25, 2016, to confirm receipt of the Petition, notify Petitioner of certain deficiencies in the Petition, and inform Petitioner that it would serve a copy of the Petition onto the Association.

Notice of receipt of the Petition was published in the April 25, 2016 issue of the Florida Administrative Register.

On May 9, 2016, the Division received Petitioner's supplemental information.

The Association did not intervene.

The Petitioner did not request a hearing.

The Division issues this Declaratory Statement.

FINDINGS OF FACT

The following findings of fact are based on information submitted by the Petitioner. The Division takes no position as to the accuracy of the facts and accepts them as submitted by Petitioner for the purposes of issuing this declaratory statement.

1. Marine Terrace Association, Inc. (hereinafter the "Association") is a Florida not-for-profit cooperative with its principle place of business located in Broward County, Florida.
2. The Association's Board of Directors is comprised of five (5) unit owners. One of the directors is Linda Fiorello.
3. On September 3, 2015, Ms. Fiorello was found to have violated six (6) Florida Statutes by the State of Florida Department of Business and Professional Regulation, Florida Real Estate Commission in Case No. 14-4147PL, DBPR Case No. 2012-012573.
4. Specifically, the six violations were of sections 475.25(1)(a), 475.25(1)(b), 475.25(1)(d), 475.25(1)(k), 475.42(1)(a), and 475.42(1)(d), Florida Statutes. As a result of a Final Order filed September 10, 2015, Ms. Fiorello's real estate license was revoked and was ordered to pay a fine of \$10,000.00.
5. Particularly, Petitioner refers to section 475.42(1)(a), Florida Statutes, that states, in part, "A person may not operate as a broker or sales associate without being the holder of a valid and current active license therefor. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, or, if a corporation, as provided in s. 775.083." Petitioner contends that by being adjudged to have violated this statute, Ms. Fiorello has committed a felony.
6. Petitioner also cites section 719.106(1)(a)2., Florida Statutes, which states in part, "A person who has been convicted of any felony in this state or in any United States District Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership..." Petitioner contends that the intent of this statute is to prevent persons who have been found to have committed a felony from serving on the Board of cooperatives.

7. The Petitioner is requesting an opinion as to the whether a board member, who was found to have committed a felony, is eligible to serve on the board pursuant to section 719.106(1)(a)2., Florida Statutes.

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 719.501 and 120.565, Florida Statutes.

2. Section 120.565, Florida Statutes, provides in part:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion 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.

3. Rule 28-105.001, Florida Administrative Code, 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.

4. Petitioner has standing to petition for a declaratory statement as a unit owner. §§ 719.103(26); 120.565, Fla. Stat. (2015).

5. Petitioner's question, whether a board member, who was found to have committed a felony, is eligible to serve on the board pursuant to section 719.106(1)(a)2., Florida Statutes, is answered in the affirmative.

6. Section 719.106(1)(a)2., Florida Statutes, provides, in relevant part:

A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property is suspended from office.

* * * * *

A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer.

* * * * *

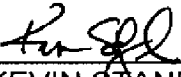
A person who has been convicted of any felony in this state or in any United States District Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. (Emphasis added.)

7. Florida law is well settled that absent ambiguity, the plain meaning of the statute prevails. Martin County v. Edenfield, 609 So 2d 27, 29 (Fla. 1992).
8. The language of section 719.106(1)(a)2, Florida Statutes, is clear and unambiguous in that it disqualifies a person who has been convicted of felony from serving on the board unless such felon's civil rights have been restored for at least five years from the election date. There is no ambiguity, dispute, or other reasonable interpretation as to the meaning of the term "convicted." If the drafters intended to restrict those who committed a felony from serving on the board, such language would have been included in the statute.
9. For criminal purposes, section 775.083, Florida Statutes, defines the term "conviction" as "a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld."
10. Although DBPR's Real Estate Commission found that Ms. Fiorella violated section 475.42(1)(a), which entails a commission of felony of the third degree, Petitioner has not submitted any evidence to show Ms. Fiorello has ever been convicted of felony.
11. Further, Petitioner has not submitted any evidence to show that Ms. Fiorello was charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property.
12. Therefore, the alleged commission of a felony does not disqualify Ms. Fiorello from serving on the board pursuant to section 719.106(1)(a)2., Florida Statutes, since she has not been convicted of a felony.

ORDERED that a board member, who was found to have committed a felony by the Real Estate Commission, is not disqualified from serving on the board pursuant to section 719.106(1)(a)2., Florida Statutes, since she has not been convicted of a felony.

DONE and **ORDERED** this 27th day of June 2016, at Tallahassee, Leon County, Florida.





KEVIN SPANFIELD, Director
Department of Business and
Professional Regulation
Division of Florida Condominiums, Timeshares,
and Mobile Homes
2601 Blairstone Road
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, 2601 BLAIRSTONE ROAD, TALLAHASSEE, FLORIDA 32399-2217; AGC.FILING@MYFLORIDALICENSE.COM; FAX (850) 488-5761, 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 Patrick Jandebeur, 401 N. Riverside Drive # 407, Pompano Beach, Florida 33062, on this 29th day of June, 2016.

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

Agency Clerk's Office

Copies furnished to:

Robin Smith
Chief Attorney

Marine Terrace Association, Inc.
c/o Kaye, Bender, Rembaum, Registered Agent
1200 Park Central Blvd.
Pompano Beach, FL 33064