


MEMORANDUM

To: Kirby B. Green, III, Executive Director
From: Stanley J. Niego, Sr. Assistant General Counsel 
Date: February 25, 2005
Subject: Anthony G. Roberts v. St. Johns River Water Management District,
DOAH Case No. 04-4357
Entry of Final Order

Please find attached a draft Final Order for entry in the matter reference above. The Administrative Law Judge upheld the staff position that the applicant for a water well contractor license did not qualify to sit for the examination due to a lack of demonstrated experience in accordance with Rule 62-531.300, Fla. Admin. Code.

Please contact me if you have any questions.

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

ANTHONY G. ROBERTS,

Petitioner,

DOAH Case No. 04-4357

SJRWMD FOR No. 2004-89

v.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT,

Respondent.
_____ /

FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Administrative Law Judge, the Honorable Donald R. Alexander, held a formal administrative hearing in the above-styled case on January 12, 2005 in Macclenny, Florida. A Recommended Order, a copy of which is attached hereto as Exhibit A, was rendered on January 25, 2005. Pursuant to section 120.57(1)(k), Florida Statutes, and Rule 28-106.217, Fla. Admin. Code, the parties were allowed fifteen (15) days to file exceptions to the Recommended Order. None of the parties have filed exceptions.

ACCORDINGLY, IT IS HEREBY ORDERED:

The Recommended Order attached hereto as Exhibit A is hereby adopted in its entirety as the final order of this agency. Petitioner's application to sit for the water well contractor examination is denied based upon the findings of fact and conclusions of law stated in said Recommended Order.

DONE AND ORDERED this 28th day of February, 2005, in Palatka, Florida.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

BY:



Kirby B. Green, III
EXECUTIVE DIRECTOR

RENDERED this 28th day February, 2005.

BY: Kimberly C. Player for
Sandra Bertram
DISTRICT CLERK

Copies to:

Anthony G. Roberts
Post Office Box 638
Glen St. Mary, FL 32040-0638

Patrick W. Krechowski, Esq.
St. Johns River Water Management District
Post Office Box 1429
Palatka, Florida 32178-1429

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANTHONY G. ROBERTS,)
)
 Petitioner,)
)
 vs.) Case No. 04-4357
)
 ST. JOHNS RIVER WATER)
 MANAGEMENT DISTRICT,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, this matter was heard before the Division of Administrative Hearings by its assigned Administrative Law Judge, Donald R. Alexander, on January 12, 2005, in Macclenny, Florida.

APPEARANCES

For Petitioner: Anthony G. Roberts, pro se
Post Office Box 638
Glen St. Mary, Florida 32040-0638

For Respondent: Patrick W. Krechowski, Esquire
St. Johns River Water Management District
Post Office Box 1429
Palatka, Florida 32178-1429

ISSUE

The issue is whether Petitioner's application to sit for the water well contractor examination should be approved.

BACKGROUND

This matter began on August 23, 2004, when Respondent, St. Johns River Water Management District (District), issued its Notice of Staff Intent to Recommend Denial of Petitioner's application to sit for the water well contractor examination. The basis for the denial was that Petitioner had failed to provide satisfactory proof of two years' experience in the water well construction business, as required by Florida Administrative Code Rule 62-531.300(1)(b) and (6). After his first request for a hearing was denied without prejudice to refiling an amended request, on November 18, 2004, Petitioner filed his Corrected Request for Administrative Hearing Concerning Application No. 7300 (Water Well Contractor).

The matter was forwarded by the District to the Division of Administrative Hearings on December 8, 2004, with a request that an administrative law judge conduct a hearing.

By Notice of Hearing dated December 22, 2004, the matter was scheduled for hearing on January 12, 2005, in Macclenny, Florida.

At the hearing, Petitioner testified on his own behalf. Respondent presented the testimony of Catherine A. Walker, assistant director of the division of water use regulation, and Julian C. Varnes, Jr., a water resource representative III in the Jacksonville district office. Also, it offered District

Exhibits 1-4, which were accepted in evidence. Finally, the undersigned granted the District's Motion for Official Recognition of Florida Administrative Code Chapters 40C-3 and 62-531.

There is no transcript of the hearing. Proposed Findings of Fact and Conclusions of Law were filed by Respondent on January 21, 2005, and they have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the evidence presented by the parties, the following findings of fact are made:

1. On January 9, 2004, Petitioner, who resides in Baker County, Florida, filed his application with the District requesting that he be allowed to sit for the water well contractor examination. The requirements for qualification to take the examination are set forth in Florida Administrative Code Rule 62-531.300.

2. Relevant to this controversy is the requirement that an applicant present "satisfactory proof of two years experience in the water well construction business." This requirement is normally met by the applicant providing a list of at least ten water well jobs he has completed during a consecutive 24-month period (together with their locations, major use, and approximate depth and diameter), the name and address of the

owner of the well, and the approximate date the activity took place. See Fla. Admin. Code R. 62-531.300(6)(a). If the work has been completed in Florida, the applicant is also required to submit copies of completion reports for each of the ten wells. Id. Completion reports are filed by the contractor with the District within thirty days after the work is completed. See Fla. Admin. Code R. 40C-3.411. Finally, the applicant must submit letters from three persons attesting to the length of time the applicant has been working in the water well construction business as a major activity. See Fla. Admin. Code R. 62-531.600(6)(a).

3. Alternatively, an applicant may present "satisfactory proof of equivalent experience," which may be accepted by the District "on an individual basis." See Fla. Admin. Code R. 62-531.300(6)(b). While this option has rarely, if ever, been used by any applicant, at hearing the District suggested that this provision would allow an applicant to submit other credible documentary evidence, such as affidavits, attesting to the applicant's equivalent experience.

4. Mr. Julian C. Varnes, Jr., a District water resource representative III, is in charge of reviewing water well contractor applications in four northeast Florida counties, including Baker County. Mr. Varnes reviewed Petitioner's application and concluded that he had failed to submit proof of

two years' experience in the water well contracting business or satisfactory proof of equivalent experience, as required by the rule.

5. In this case, Petitioner submitted ten completion reports with his application, but none of the reports indicated that he had been involved on those projects, and Petitioner acknowledged at hearing that he could not recall if he was even present on the job site. This is probably because the reports related to jobs performed between November 10, 1982, and July 31, 1985, by his father, a licensed water well contractor, when Petitioner was less than fifteen years old. In addition, the reports submitted by Petitioner covered work performed over a 32-month period, rather than over a 24-month period, as required by the rule, and some of the reports did not have the complete address of the location of the well.

6. By letter dated February 4, 2004, the District advised Petitioner that his application was deficient because he had failed to submit the information required in Florida Administrative Code Rule 62-531.300(1)(b) and (6) relative to experience. The letter advised Petitioner that he must submit an "acceptable list of ten wells together with their completion reports, for wells that [he had] constructed, repaired, or abandoned, with completion dates distributed over a consecutive 24-month time period."

7. Further telephonic discussions between Petitioner and District personnel concerning the request for additional information occurred on March 25 and 29, 2004, but they did not resolve the District's concerns.

8. On June 15, 2004, the District staff again notified Petitioner in writing that he must submit the requested information within 30 days or his application would be denied. When no response was received from Petitioner, on July 27, 2004, the staff issued a Technical Staff Report recommending that the application be denied because of Petitioner's failure to comply with the requirements of Florida Administrative Code Rule 62-531.300(1)(b) and (6).

9. On August 23, 2004, a Notice of Staff Intent to Recommend Denial of Water Well Contractor Application No. 7300 and Notice of Rights was issued by the District. Petitioner's request for a hearing was then filed. After his first request for a hearing was dismissed, on November 18, 2004, Petitioner filed an amended request for a hearing. In that request, he alleged that the District was "not capable of locating completion reports filed by [Petitioner] and/or his father"; that the experience of he and his father was well known to two District staffers; that he had purchased a well drilling company from another individual and operated under the seller's license for over a year; that he is entitled to licensure because he has

satisfactory equivalent experience; and that his father has paid all outstanding fines previously imposed by the District. As relief, Petitioner has requested that he be allowed to take the contractor's examination.

10. At hearing, Petitioner explained that his father was in the water well contracting business for twenty years, and that beginning in 1983, when he was thirteen years old, he had helped his father on "hundreds of jobs" until his father's retirement in 1994. However, Petitioner cannot recall the names and addresses of customers who were serviced by his father's business, which is necessary in order for the District to retrieve completion reports presumably filed by his father. Because of the large number of completion reports filed by contractors throughout its multi-county jurisdiction, in order to retrieve one, the District must have the following information: the year the job was completed, the county in which the job was performed, and the address (township and range) of the well's owner. Petitioner is unable to provide this information.¹

11. In addition, Petitioner stated that he had purchased a water well contractor's business (from Tim Johnson) shortly after his father retired in 1994 and that he operated the business under Mr. Johnson's license for a little more than a year. Although Petitioner produced no documentation concerning

jobs he may have performed under Mr. Johnson's license, even if he had, that work would still constitute less than 24 consecutive months of experience, as required by the rule.

12. Petitioner further asserted that Mr. Varnes, who oversees the water well contractors in Baker County, personally "knows" that he is an experienced well driller (having gained such experience through working for his father for many years) and that he possesses the skills necessary to take the examination. However, Mr. Varnes did not agree with this assertion.

13. Finally, Petitioner asked that he be allowed to take the examination, which would be the best indicator of whether he possesses the necessary knowledge to be a contractor. He also pointed out that each completed project must be inspected by a District employee, and that such inspections would verify and ensure that his work is satisfactory. However, the rules require that before the examination can be taken, certain requirements must be met. Petitioner has not satisfied those requirements.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over this matter pursuant to Sections 120.569 and 120.57, Florida Statutes (2004).

15. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal. Balino v. Department of Health & Rehabilitative Servs., 348 So. 2d 349, 350 (Fla. 1st DCA 1977). Therefore, Petitioner has the burden of proving entitlement to sit for the examination.

16. The issue here is whether Petitioner's application to sit for the water well contractor examination should be approved. The requirements to do so are set forth in Florida Administrative Code Rule 62-531.300. Pertinent to this controversy are the requirements in subsections (1) and (6) which read as follows:

(1) The Water Management Districts shall accept applications for licensing as a water well contractor from any person who is at least 18 years of age, has knowledge of those rules adopted by the Department and the District which deal with the regulation of water wells, has had not less than two years experience in constructing, repairing, or abandoning wells, and beginning July 31, 2004, has taken and completed a minimum of 12 approved coursework hours. In addition, each application shall:

* * *

(b) Contain proof of experience as provided in subsection (6) below.

* * *

(6) Satisfactory proof of two years experience in the water well construction business shall be demonstrated by providing:

(a) A list of at least ten water wells, together with their locations, major use, and approximate depth and diameter, that the applicant has constructed, repaired, or abandoned. This list shall provide the name and address of the owner or owners of each well, and the approximate date the construction of each well was completed. For water wells drilled in Florida, a copy of the completion report for each water well shall accompany the list. Completion dates of the ten wells shall be distributed over a consecutive 24-month period. In addition, the applicant shall provide letters from three persons attesting to the length of time the applicant has been working in the water well construction business as a major activity.

(b) In lieu of the methods described above, satisfactory proof of equivalent experience may be presented to the District and may be accepted on an individual basis.

17. The evidence shows that Petitioner has failed to comply with the requirements of Florida Administrative Code Rule 62-531.300(1)(b) and (6)(a), which requires that the applicant submit a list of ten water wells that the applicant has constructed, repaired, or abandoned over a 24-month period, together with copies of the related completion reports.

18. The evidence also shows that Petitioner has failed to submit any documentary (or other) proof of equivalent experience, as required by Florida Administrative Code Rule 62-531.300(1)(b) and (6)(b).

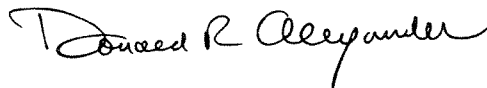
19. Therefore, the application should be denied, without prejudice to Petitioner reapplying at a later date should he choose to do so.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the St. Johns River Water Management District enter a final order denying Petitioner's application to sit for the water well contractor examination.

DONE AND ENTERED this 25th day of January, 2005, in Tallahassee, Leon County, Florida.



DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of January, 2005.

ENDNOTE

1/ The completion reports attached to Petitioner's application were taken from the files of the Suwannee River Water Management District, which is apparently able to retrieve reports by name of the contractor and without the additional level of detail required by the St. Johns River Water Management District.

COPIES FURNISHED:

Anthony G. Roberts
Post Office Box 638
Glen St. Mary, Florida 32040-0638

Patrick W. Krechowski, Esquire
St. Johns River Water Management District
Post Office Box 1429
Palatka, Florida 32178-1429

Kirby Green, Executive Director
St. Johns River Water Management District
Post Office Box 1429
Palatka, Florida 32178-1429

NOTICE OF RIGHT TO FILE EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.