

BEFORE THE
DEPARTMENT OF SOCIAL SERVICES
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	Case No. 7897227001
)	
RONALD G. FREEMAN)	OAH No. L 1997100125
Employee of Community)	(Exclusion Action)
Youth Sports)	
2093 W. 27th #1)	99 CDSS 10
Los Angeles, CA 90018)	
)	
Respondent.)	
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PROPOSED DECISION

On November 24, 1997 in Oakland, California, ALFRED P. KNOLL, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Ms. Kelly A. Hargreaves, Esq., counsel for the Department of Social Services ("Department"), State of California, represented the Complainant.

RONALD G. FREEMAN ("Respondent") appeared without counsel, In Pro Se, and represented himself.

Evidence was received, the record closed and the matter submitted on November 24, 1997.

FINDINGS OF FACT

I

Complainant MARTHA LOPEZ is the Deputy Director, Community Care Licensing Division for the Department, and made the Accusation in her official capacity and not otherwise.

II

Respondent was employed by Community Youth Sports & Arts Foundation at Community Youth Sports & Arts Foundation, a facility licensed by the Department, an agency of the State of California, responsible for the licensing and regulation of community care facilities pursuant to Health and Safety Code

Section(s) 1150, et seq., and California Code of Regulations, Division 6, Chapters 1 and 5, Sections 80,000 and 84,000 et seq.

III

On July 14, 1973, respondent was arrested, and on October 25, 1974, he was convicted in the Superior Court of Los Angeles, State of California, Department 104, of a violent felony, to wit: a violation of Penal Code Section 245(a) (Assault with a Deadly Weapon) which included "...using a firearm at the time of the commission of the offense."

On October 25, 1974, respondent was indeterminately sentenced to state prison for a period including, but not limited to, six (6) months to life imprisonment. He served four (4) years and released on parole, which he successfully completed.

Respondent has not obtained a Certification of Rehabilitation and/or Pardon pursuant to Penal Code Section 4852, et seq., nor a recommendation from the District Attorney in the county of his residence.

IV

On July 24, 1997, the Department denied respondent's request for an exemption to work at or to be present in a licensed facility based upon his conviction of a violent felony and that he had not received a Certificate of Rehabilitation and/or Pardon.

V

Factors of mitigation and respondent's rehabilitation were considered. The offense for which he was convicted occurred more than 24 years ago. He admits his wrongdoing. He was young and he has paid his price to society. He argues he should not be precluded from doing what he loves, which is taking his religious mission to street youths and the disadvantaged elderly.

Respondent has not been convicted or incarcerated since 1974. Respondent successfully completed his parole and would appear in every respect to be eligible for a Pardon and Certification of Rehabilitation under the requirements of Penal Code Section(s) 4852, et seq.

Respondent is an ordained minister. He spends most of his time working with seniors and underprivileged youths.

DETERMINATION OF ISSUES

I

Section 1558 of the Health and Safety Code ("Code") states in pertinent part that:

"(a) The department may prohibit a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee or prospective employee who has:

(2) Engaged in conduct which is inimical to the health, morals and welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1522."

II

Section 1522 of the Code states, *inter alia*, if a person has been convicted of a crime, the Department may, pursuant to subsection (c)(4), grant an exemption allowing such person to be employed or present at a licensed facility.

Pursuant to paragraph (g)(1), an exemption cannot be granted by the Department if the conviction was for a "violent felony" as specified in Penal Code Section 667.5(c), unless a Certification of Rehabilitation and/or Pardon has been received.

Penal Code Section 667.5(c) specifies as a "violent felony" under subsection (8):

"Any felony in which the defendant inflicts great bodily harm...or any felony in which the defendant uses a firearm which use has been charged and proven as provided in Section 12022.5."

Penal Code Section 12022.5 applies to a conviction where a firearm has been used in the commission of a felony. Subsection (d) provides that:

"The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245"

IV

By reason of respondent's conviction of a violent felony, and that he has not received a Certificate of Rehabilitation and/or Pardon, and that he was denied an exemption by the Department, as set out in the FINDINGS, paragraphs III and IV, cause exists for the prohibition of his contacting clients of, presence at or employment by Community Youth Sports & Arts Foundation pursuant to Code Sections 1522 and 1558(a)(3).

V

By reason of respondent's conviction of a violent felony, and that he has not received a Certificate of Rehabilitation and/or Pardon, as set out in the FINDINGS, paragraph III, cause exists for the prohibition of his contacting clients of, presence at or employment by Community Youth Sports & Arts Foundation pursuant to Code Section 1558(a)(2).

VI

Matters in mitigation, extenuation and rehabilitation set forth in FINDINGS, paragraph IV, have been considered in making the following Order. Despite respondent's commendable rehabilitation efforts and religious mission, he is statutorily precluded from being granted an exemption by the Department and, consequently, cannot be present at or employed by the facility licensed and regulated by the Department.

ORDER

Respondent RONALD G. FREEMAN cannot be present at, may not have contact with clients of, and may not be employed by the Community Youth Sports & Arts Foundation.