

BEFORE THE  
DEPARTMENT OF SOCIAL SERVICES  
STATE OF CALIFORNIA

In the Matter Of: )  
 ) No. 7896295001  
 )  
DARRYL L. POWELL ) OAH No. N9612124  
43 Wilson Street )  
Daly City, CA 94014 ) 99 CDSS 17  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

PROPOSED DECISION

On February 6, 1997, in Oakland, California, Ruth S. Astle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Gilbert Reynaga, Staff Attorney, represented the complainant.

Respondent was present and represented himself.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Martha Lopez made the accusation in her official capacity as the duly appointed Deputy Director, Community Care Licensing Division, Department of Social Services, State of California and not otherwise.

II

Darryl L. Powell (respondent) resides at the facility and has regular contact with the residents at the foster care facility of Vicky Byrd, his mother, who is a foster parent and whose home is located at 43 Wilson Street, Daly City. The facility is certified by Alternative Family Services, Inc.

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(Agency). The agency is licensed by the Department to operate a foster family agency located at 25 Division Street, Suite 201, San Francisco, California.

### III

On October 10, 1996, the Department informed the licensee that a criminal record exemption for respondent was denied. On October 17, 1996, respondent appealed.

### IV

On October 11, 1995, respondent plead nolo contendere and was convicted in San Mateo County of violating California Penal Code section 460(b) (Burglary) as a misdemeanor.

### V

Respondent was placed on 18 months probation and ordered to serve 5 days in jail which he could do through the Sheriff's Work Alternative Program. Respondent is still on probation.

### VI

On August 17, 1995, respondent admitted to the Daly City Police that he attempted to use a credit card that did not belong to him at several shopping mall stores. He claimed to have found the card at or near the shopping mall. On August 15, 1996, Respondent sent a letter to the Department denying any personal involvement in the crime. On September 26, 1996, when requested by the Department's staff to explain the inconsistencies between the police report and the letter he sent to the Department, respondent again denied that he attempted to use the credit card in any store.

### VII

Respondent was not telling the truth to the Department representative. He was embarrassed and felt that his telling a lie would not really matter. Both the attempted theft and the subsequent lies to the Department demonstrate that respondent does not possess the requisite good character to warrant an exemption for his criminal record. The Department must be able to trust the truth and veracity of those who deal directly with foster children especially when reporting any incidents that may arise as well as engendering honesty as a positive roll model for the children.

VIII

Respondent was engaged in conduct which is inimical to the health, morals, welfare, and safety of others and the State of California.

IX

Respondent had trouble connecting his inability to tell the truth to any problems with his character. He felt that there would be no consequences to his telling a lie so he did not see a problem with doing so.

X

Respondent has not demonstrated that he is rehabilitated. Less than a year and a half has elapsed since his conviction. He is 22 years old, lives at home and is unemployed. He helps his mother out with the foster children. However, respondent does not appreciate the serious nature of his criminal conviction. It would not be in the public interest to issue an exemption at this time.

DETERMINATION OF ISSUES

I

By reason of the matters set forth in Findings II through VIII, cause for denial of the exemption exists pursuant to sections 1522(b), g(1) and 1558(a)(2) and (3) of the Health and Safety Code and Title 22, sections 80019(a), (g) and 88019(a) of the California Code of Regulations.

II

The matters set forth in Findings IX and X have been considered in making the following order.

ORDER

Respondent is prohibited from employment in any facility licensed by the Department or certified by a foster family agency, from presence in any facility licensed by the Department or certified by a foster family agency, and from contact with clients of any facility licensed by the Department or certified by a foster family agency. The Department's denial of a criminal record exemption is upheld. Respondent's appeal from the denial of a criminal record exemption is denied.