

IN THE SUPREME COURT OF THE STATE OF FLORIDA

DALE NORMAN
Petitioner/ Defendant,

CASE NO.: SC15-650
LT: 4D12-3525

v.
STATE OF FLORIDA
Defendant.

_____ /

**PETITIONER’S MOTION TO TAKE JUDICIAL NOTICE OF
ADMINISTRATIVE AGENCY ORDER AND NOTICE OF
SUPPLEMENTAL AUTHORITY**

COMES NOW the Appellant by and through his undersigned counsel, pursuant to Secs. 90.202 and 90.203, Fla. Stat., and pursuant to Rule 9.225 Fla. R. App. P., and requests that the Court take judicial notice of an amended final order of the Department of Agriculture and Consumer Services, Division of Licensing and gives notice of filing the same as supplemental authority in this case and states:

1. A copy of the decision of the Department of Agriculture and Consumer Services Division of Licensing in the case of *Department of Agriculture and Consumer Services Division of Licensing v. Charlene V. Miale*, Case No.: WX1566881, is hereby attached.

2. The attached order constitutes an official action of an agency of the executive branch of the State of Florida, pursuant to Sec. 90.202 Fla. Stat.

3. A court shall take judicial notice of “[o]fficial actions of the . . . ,

RECEIVED, 06/06/2016 05:53:30 PM, Clerk, Supreme Court

executive, . . . departments of . . . any state, territory, or jurisdiction of the United States.” Sec. 90.202(5), Fla. Stat., when the opposing party is provided with “timely written notice” of the seeking party’s request for judicial notice and sufficient information is provided to the Court to “enable it to take judicial notice of the matter,” Sec. 90.203 Fla. Stat. (2015). Both of these requirements are met here.

4. Any issue as to the timeliness is due solely to the fact that the decision was only issued June 1, 2016.

5. In addition, judicial notice is appropriate because these records are highly relevant to the question of whether the availability of a license to carry a concealed firearm adequately protects the right to bear arms. See *Hunt v. State*, 613 So. 2d 893, 898 n.5 (Fla. 1992) (granting motion to take judicial notice of the record in another Florida case).

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing has been furnished this 6th day of June, 2016, via electronic service and e-mail, to the following:

<p>Ashley Minton, Esquire 207 South 2nd Street Fort Pierce, FL 34950-4350 ashley@mintonlawpa.com tiffany@mintonlawpa.com</p>	<p>Deepak Gupta, Esquire* 1735 20th Street, NW Washington, DC 20009 deepak@guptawessler.com <i>*admitted pro hac vice</i></p>
<p>Heidi L. Bettendorf Assistant Attorney General Florida Bar No. 0001805 1515 North Flagler Drive Ninth Floor West Palm Beach, FL 33401-3432 crimappwpb@myfloridalegal.com</p>	<p>Celia Terezino, Esquire Assistant Attorney General 1515 North FLagler Drive, Suite 900 West Palm Beach, FL 33401-3432 crimappwpb@myfloridalegal.com</p>
<p>Glenn Burhans, Jr., Esquire 106 East College Avenue, Suite 720 Tallahassee, FL 32301 gburhans@stearnsweaver.com</p>	<p>Jason Gonzalez, Esq. Shutts & Bowen LLP 215 South Monroe Street, Suite 804 Tallahassee, Florida 32301 jasongonzalez@shutts.com mpoppell@shutts.com</p>

FLETCHER & PHILLIPS

/s/ Eric J. Friday _____

Eric J. Friday, Esquire
Florida Bar No.: 0797901
541 East Monroe Street
Jacksonville, FL 32202
Telephone: (904) 353-7733
Facsimile: (904) 353-8255
FamilyLaw@FletcherandPhillips.com
EFriday@FletcherandPhillips.com
Attorneys for the Petitioner

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
DIVISION OF LICENSING,

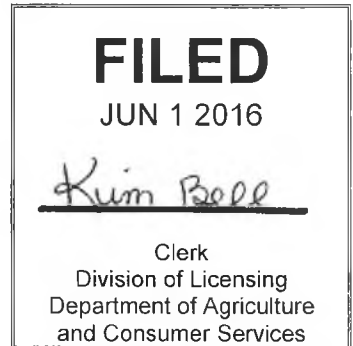
Petitioner,

V.

CHARLENE V. MIALE,

Respondent.

CASE NO.: WX1566881



AMENDED FINAL ORDER

THIS CAUSE, arising under Chapter 790, Florida Statutes, came before Frank Hranicky, a duly designated hearing officer of the Department of Agriculture and Consumer Services, Division of Licensing ("division"), on May 9, 2016, for consideration of a Notice of Suspension and final agency action in the above-styled case. The record in this matter is in accordance with Chapter 120, Florida Statutes.

APPEARANCES

For Respondent:

Charlene V. Miale (via written statement)
1009 Jefferson Avenue
Lehigh Acres, Florida 33936

STATEMENT OF THE ISSUES

Whether the division should uphold and affirm its suspension of the processing of Respondent's Concealed Weapon or Firearm License application pursuant to Section 790.06(3), Florida Statutes.

PRELIMINARY STATEMENT

Respondent elected to appear by written statement at the informal hearing. Respondent's Composite Exhibit 1 was admitted into evidence.

STATEMENT OF FACT

1. On or about December 14, 2015, Respondent submitted an application for a Concealed Weapon or Firearm License issued pursuant to Section 790.06, Florida Statutes.

2. Criminal History information received by this department indicates that on June 17, 1976 in Middletown, Connecticut, Respondent was arrested for or formally charged with Falsely Reporting Incident and Bad Check.

3. By Notice of Suspension of Application dated March 3, 2016, the division notified Respondent of the suspension of the processing of Respondent's application license pursuant to Section 790.06(3), Florida Statutes.

4. Respondent timely requested an informal hearing by written statement. The matter was referred for informal hearing, and this proceeding followed.

5. With her Election of Rights form, Respondent submitted a written statement in which she does not dispute the grounds upon which the agency action is based. Respondent detailed the events that led to her arrests on the above stated charges, and stated she regrets her past mistake.

6. Respondent stated she has been a productive, law abiding, responsible citizen since her mistake of forty years ago.

7. Respondent submitted a copy of her State of Florida certificate as a Notary Public. (Composite Exhibit 1).

8. Respondent failed to provide either a clerk certified disposition document, or clerk certified letter indicating the record no longer exists, relating to the criminal history arrest listed in the Notice of Suspension of Application dated March 3, 2016.

CONCLUSIONS OF LAW

1. The division has jurisdiction over this matter pursuant to Chapter 790, Florida Statutes, and Section 120.57(2), Florida Statutes.

2. The Notice of Suspension of Application cites Section 790.06(3), Florida Statutes, as grounds for the suspension of Respondent's application.

3. Section 790.06(3), Florida Statutes, provides in pertinent part that the division shall suspend processing an application for licensure if the applicant is arrested for or formally charged with a crime that would disqualify such person from having a license under Section 790.06, Florida Statutes, until final disposition of the case.

4. The division proved by clear and convincing evidence that Respondent was arrested for or formally charged with Falsely Reporting Incident and Bad Check, as outlined in the Notice of Suspension of Application dated March 3, 2016.

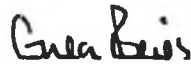
5. If convicted of the above stated charges, Respondent could be disqualified from having a license pursuant to Florida law.

6. As Respondent failed to provide certified information relating to her criminal history arrest as listed in the Notice of Suspension of Application dated March 3, 2016, Respondent's license application is subject to the suspension provisions of Section 790.06(3), Florida Statutes.

ORDER

WHEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, and a complete review of the record, it is ORDERED and ADJUDGED that the **SUSPENSION OF THE PROCESSING** of Respondent's application for a Concealed Weapon or Firearm License is **AFFIRMED and UPHELD**.

DONE AND ENTERED this 1st day of June, 2016, in Tallahassee, Florida.



Grea Bevis, Director
Department of Agriculture and Consumer Services
Division of Licensing

NOTICE OF RIGHTS

This Order constitutes final agency action. Any party who is adversely affected by the Order may seek judicial review under Section 120.68, Florida Statutes. Such proceedings are commenced by filing a Notice of Appeal, pursuant to Rule 9.190, Florida Rules of Appellate Procedure, with the Deputy Clerk of the Department of Agriculture and Consumer Services, Division of Licensing, P.O. Box 5708, Tallahassee, Florida 32314-5708; and by filing a copy of the Notice of Appeal, accompanied by the applicable filing fees, with the First District Court of Appeal, or with the District Court of Appeal in the appellate district where the party resides. The Notice of Appeal must be filed within 30 days of the day this Order is filed with the Deputy Clerk of the Division.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order was sent by U.S. Mail this 1st day of June, 2016, to Charlene V. Miale; 1009 Jefferson Avenue, Lehigh Acres, Florida 33936.



Donald D. Hockman Jr., Esq.
P. O. Box 5708
Tallahassee, Florida 32314-5708
(850) 245-5491

CWFOASUSPEND