MEDIATOR QUALIFICATIONS BOARD

In Re: Sarah Mootoo Case Number: MQB/QCC 2014-007

Panel: The Honorable Lee Ann Schreiber, Chair

Kara Lawson

Sal Gardino

Stephanie Murphy

Nancy Mag

Panel Advisor: Melvia B. Green, Esq.

APPEARANCES

Prosecutor: Irv J. Lamel, Esq.

Dispute Resolution Center Representative: Janice M. Fleischer, Esq.-Director

Applicant: Sarah Mootoo

FINAL PANEL DECISION

The Mediator Qualifications Board, by its duly designated five-member Panel, conducted a Hearing in this matter on June 8, 2015 in Ft. Myers, Florida pursuant to Rule 10.820, Florida Rules for Certified & Court-Appointed Mediators. Based upon all of the evidence adduced at the Hearing, the Panel concludes that the Dispute Resolution Center ("DRC") has demonstrated by a preponderance of the evidence that Sarah Mootoo ("applicant") fails to possess good moral character as required by Rule 10.110, Florida Rules for Certified & Court-Appointed Mediators, for certification as a Florida Supreme Court Certified Mediator in any area of mediation certification. Accordingly, the applicant's application for certification as a Florida Supreme Court Certified County Mediator shall be permanently denied, and no other application for mediator certification will be accepted, with

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costs assessed against the applicant in the total amount of twelve-hundred dollars (**$1200.00**). Within the thirty (30) days hereof, the applicant shall either make payment in full for these costs to the "State of Florida" or commence to make monthly payments in the amount of one-hundred dollars (**$100.00**) for a period of twelve (12) months. If the applicant fails to fully make any payment within this prescribed time, the DRC shall be entitled to convert the remaining amount in arrearage to a judgment and recoup any applicable statutory interest.

FINDINGS

Based upon the evidence presented at the Formal Hearing, the Panel finds by a preponderance of the evidence that:

1. On or about October 16, 2013, the applicant submitted a sworn Application for Mediator Certification with the DRC for certification as Florida Supreme Court County mediator. The applicant answered "No" to all of the following questions on the DRC's sworn Application:

   5.

   a. Have you ever been convicted of, pled guilty or pled no contest, regardless of whether adjudication of guilt or imposition of sentence was suspended, deferred, or withheld in relation to any of the following:

   (1) a felony, misdemeanor of the first degree, or misdemeanor of the second degree involving dishonesty or false statement;

   b. Have you ever been sanctioned for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association or other professional group?

   c. Have you ever been demoted, disciplined, suspended, terminated or formally reprimanded by an employer? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, the background and resolution of such action and relevant documentation.

d. At any time in your past, were you reprimanded, sanctioned or in any other way investigated or subject to disciplinary procedures of any type in any jurisdiction?

2. As part of the applicant's background check, the DRC ascertained the following criminal history:

   A. On March 13, 2004, the applicant was arrested in Palm Beach County and charged with the possession of cocaine and drug paraphernalia, both of which are felonies, and driving while her license was canceled, suspended or revoked. According to the arrest affidavit, a police officer stopped the car being driven by the applicant and found a substance which tested positive as cocaine and some pipes used for smoking cocaine. In addition, the applicant's driver license was suspended. A formal charging document, however, was not filed in this case and the charges were not pursued.

   B. On September 21, 2004, the applicant was arrested in Palm Beach County and charged by Information with two felonies, namely, organized scheme to defraud and grand theft. The applicant admitted that on numerous occasions, she and a co-worker at a Wal-Mart store procured merchandise from their Wal-Mart employer without paying for the same by either undercharging each other for the merchandise at the cash register or failing to charge at all for the merchandise. The applicant was permitted to enter into a Pretrial Intervention Program-Deferred Prosecution Agreement ("PTI") with the following Special Conditions: 1) Admission of guilt to the crimes as charged in the Information; 2) Employer notification; 3) Restitution to Wal-Mart-4375 Belvedere Road, West Palm Beach, Florida 33409 for the amount of $426.29; 4) No contact with Wal-Mart; 5) Substance abuse evaluation with any recommended treatment; 6) 12 month period of PTI supervision. The State Attorneys' Office nolle prossed this case against the applicant on April 17, 2006 based upon her successful completion of the PTI agreement.

C. On July 25, 2006, the applicant was arrested and charged with second degree petit theft. According to the arrest affidavit, the applicant was observed taking and consuming candy and headache medication without paying. The applicant confessed to the same as well as taking a pair of pants the week earlier. The total amount of the merchandise taken by the applicant was $21.68. On August 24, 2006, the applicant pled no contest to this charge, adjudication of guilt was withheld, and she was placed on probation. On February 9, 2007, a warrant alleging that the applicant had violated her probation was issued and the applicant was arrested on the warrant. The applicant subsequently pled guilty to the violation of probation and was adjudicated guilty of the petit theft on December 7, 2007.

3. As part of the applicant's background check, the DRC further ascertained the following administrative sanctions imposed by the State of Florida/Board of Nursing against the applicant:

A. The applicant was a Licensed Practical Nurse ("LPN") beginning on October 31, 1996. In a Final Order by the Department of Health/ Board of Nursing Case No. 2003-17927 and dated June 1, 2004, the applicant's LPN license was suspended due to a positive test for cocaine and her refusal to participate in a recommended impaired nursing program or other drug treatment program. This Final Order also directed the applicant to pay investigative costs of $2,864.31 in full within sixty (60) days.

B. In a Final Order by the Department of Health/Board of Nursing Case No. 2004-30792 and dated June 15, 2005, the applicant's LPN license was both reprimanded due to her failure to pay the ordered investigative costs in the amount of $2,864.31 in Case No. 2003-17927. This Final Order also imposed an administrative fine against the applicant in the amount of $250.00; investigative costs in the amount of $110.50; and suspended her LPN license until she made payment of this fine and costs and

demonstrated compliance with each and every term of the Final Order in Case No. 2003-17927 filed on June 2, 2004.

C. In a Final Order by the Department of Health/ Board of Nursing Case No. 2010-12524 and dated January 4, 2011, the Board of Nursing accepted the applicant's voluntary relinquishment of her LPN license as a resolution of this case. In this Final Order, the applicant specifically agreed that the Board of Nursing's acceptance of her voluntary relinquishment of her LPN license was to be construed as disciplinary action against her license pursuant to Section 456.072(1) (f), Florida Statutes. The applicant further agreed that as with any disciplinary action, her relinquishment would be reported to the National Practitioner's Data Bank as a disciplinary action and that licensing authorities in other states may impose discipline in their jurisdiction based on this discipline taken in Florida.

4. The applicant failed to self-report the above-referenced criminal and administrative disciplinary history to the DRC. With the exception of her March 13, 2004 arrest, all of her remaining criminal and administrative disciplinary history should have been disclosed to the DRC on her sworn Application for Mediation Certification.

5. The applicant received an Associate of Arts degree as a paralegal from Keiser University in June 2013 and a Bachelor of Arts degree in legal studies from Keiser University in June 2015. Based upon her legal studies background, the applicant was (or should have been) aware of her responsibility to truthfully answer all questions on the DRC's sworn Application for Mediation Certification as well as the consequences for failing to do so.

6. The applicant's failure to disclose her criminal and administrative disciplinary history on her sworn Application for Mediation Certification was an intentional and knowing act to conceal the same from the DRC.

CONCLUSIONS

7. Based upon the foregoing findings, the Panel concludes by a preponderance of the evidence adduced at the Formal Hearing that the applicant fails to possess good moral character as required by Rule 10.110, Florida Rules for Certified & Court-Appointed Mediators, for certification as a Florida Supreme Court Certified Mediator in any area of mediator certification and is hereafter permanently barred from mediator certification in any area.

8. Rule 10.110 (a) ("Certification Requirements") of the Florida Rules for Certified & Court-Appointed Mediators specifies generally that "[N]o person shall be certified by this Court as a mediator unless such person first produces satisfactory evidence of good moral character as required by rule 10.100.

9. Specifically, Rule 10.800 (Good Moral Character; Professional Discipline") provides, in relevant part, as follows:

   (a) Good Moral Character.

   (1) Prior to approving an applicant for certification...as a mediator the center shall review the application to determine whether the applicant appears to meet the standards for good moral character...

   (3)The qualifications complaint committee shall review all documentation relating to the good moral character of any applicant...in a manner consistent, insofar as applicable, with rule 10.810. In relation to an applicant, the qualifications complaint committee shall either recommend approval or, if it finds there is probable cause to believe that the applicant lacks good moral character, it shall refer the matter to a hearing panel for further action...

   (4) The panel shall take appropriate action on the issue of good moral character by dismissing the charges, denying the application in relation to an applicant...

(5) All such hearings shall be held in a manner consistent, insofar as applicable, with rule 10.820.

10. In assessing whether the applicant's conduct in the instant case demonstrates a present lack of good moral character, the Panel has considered the following relevant factors set forth in Rule 10.110(c)(4) of the Florida Rules for Certified & Court-Appointed Mediators:

(A) The extent to which the conduct would interfere with a mediator's duties and responsibilities: The mediator's lack of candor to the DRC on her application as well as her past criminal conduct involving dishonesty and failure to adhere to the directives imposed by the Florida State Department of Health/Board of Nursing demonstrate an impairment of the applicant's judgment as well as her continuing inability to adhere to the integrity required (and expected) of certified mediators, both by the Florida Supreme Court and the public at large.

(B) The area of mediation in which certification is sought or held: The applicant is seeking certification as a County mediator. If certified, the Panel notes that the applicant would likely mediate a large percentage of disputes involving unrepresented parties. Given the applicant's past and present impaired judgment and/or candor, the Panel concludes that the applicant's certification as a County mediator might prove to be particularly detrimental in disputes involving unrepresented parties and further concludes that due to her responses on the application combined with her testimony at the Hearing, warrants a permanent bar from mediator certification in any mediator certification area.

(C) The factors underlying the conduct: The basis for the applicant's underlying conduct appears to be her usage of and/or addiction to an illegal drug, *to wit*, cocaine. The Panel concludes that a preponderance of the evidence adduced at the Final Hearing failed to demonstrate that the applicant has successfully completed or is successfully completing a rehabilitation program for her addiction.

(D) The applicant's or mediator's age at the time of the conduct: The evidence at the Final Hearing established that applicant was between approximately forty (40) and fifty (50) years of age at the time of conduct. As such, the applicant was well past the age of majority at the time of such conduct.

(E) The recency of the conduct: The applicant's lack of candor to the DRC on the Application for Mediator Certification about her criminal history and administrative disciplinary action occurred recently on October 16, 2013. The applicant's criminal and administrative disciplinary history all occurred within the past ten (10) years and thus, was fairly recent.

(F) The reliability of the information concerning the conduct: The prosecutor presented certified copies of documents evidencing the conduct, which was not disputed by the applicant at the Final Hearing. Accordingly, the Panel deems such information to be both reliable and credible.

(G) The seriousness of the conduct as it relates to mediator qualifications: The Panel concludes that the applicant's past criminal activities; conduct leading to her administrative disciplinary sanctions; and her lack of candor about the same on her sworn Application for Mediator Certification to the DRC, are all serious enough to undermine the integrity and trust placed in certified mediators both by the Florida Supreme Court and public at large.

(H) The cumulative effect of the conduct or information: The Panel concludes that the applicant's past criminal actions; administrative disciplinary proceedings; and her lack of candor to the DRC on her sworn Application for Mediator Certification all evidence the applicant's lack of maturity and inability to fully accept responsibility for her actions.

(I) Any evidence of rehabilitation: Neither the applicant's oral testimony as to her rehabilitation or the written letters of support introduced into evidence at the Final Hearing is deemed sufficient proof of the applicant's rehabilitation by the Panel.

(J) Denial of application, disbarment, or suspension from any profession: The Board of Nursing's acceptance of the applicant's voluntary relinquishment of her LPN license as resolution to the issue of the applicant's failure to adhere to the conditions of two earlier Final Orders of suspension imposed by Department of Health/Board of Nursing, constitutes administrative disciplinary action pursuant to Section 456.072(1) (f), Florida Statutes.

Honorable Lee Ann Schreiber
Hearing Panel Chairperson

June 18, 2015

Date