

IX. APPENDIX

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

E.H., III,

Appellant,

v.

Case No. 5D19-1780

DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES, DIVISION OF LICENSING,

Appellee.

Decision filed June 23, 2020

Administrative Appeal from the
Department of Agriculture &
Consumer Services,

E.H.,III, Ocala, pro se.

Leslie Bovis Fearington, Senior Attorney,
Department of Agriculture and Consumer
Services, Division of Licensing,
Tallahassee, for Appellee.

PER CURIAM.

AFFIRMED.

COHEN, EDWARDS and GROSSHANS, JJ., concur.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

E.H., III,

Appellant,

v.

CASE NO. 5D19-1780

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES,
DIVISION OF LICENSING,

Appellee.

DATE: July 24, 2020

BY ORDER OF THE COURT:

ORDERED that Appellant's Petition for Rehearing En Banc, filed July 3, 2020, is
denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Sandra B. Williams



SANDRA B. WILLIAMS, CLERK

Panel: En Banc Court

cc:

Leslie Bovis Fearington

E.H., III

Clerk Department of
Agriculture

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

E.H., III,

Appellant,

v.

CASE NO. 5D19-1780

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES,
DIVISION OF LICENSING,

Appellee.

_____/

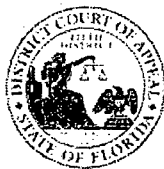
DATE: July 22, 2020

BY ORDER OF THE COURT:

ORDERED that Appellant's Motion for Rehearing and Written Opinion and Clarification, filed July 3, 2020, is denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Sandra B. Williams



SANDRA B. WILLIAMS, CLERK

Panel: Judges Cohen, Edwards, and Grosshans

cc:

Leslie Bovis Fearington

E.H., III

Clerk Department of
Agriculture (WX1884626)

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL OR BY PETITION, AND
AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION OR DECISION;

YOU ARE HEREBY COMMANDED THAT FURTHER PROCEEDINGS AS MAY BE REQUIRED
BE HAD IN SAID CAUSE IN ACCORDANCE WITH THE RULING OF THIS COURT AND WITH THE
RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE Kerry I. Evander, CHIEF JUDGE OF THE DISTRICT COURT OF
APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT, AND THE SEAL OF THE SAID COURT AT
DAYTONA BEACH, FLORIDA ON THIS DAY.

DATE: August 17, 2020

FIFTH DCA CASE NO.: 5D 19-1780

CASE STYLE: E.H., III v. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES,
DIVISION OF LICENSING

COUNTY OF ORIGIN: Marion

TRIAL COURT CASE NO.: WX1884626

I hereby certify that the foregoing is
(a true copy of) the original Court mandate.

Sandra B. Williams



SANDRA B. WILLIAMS, CLERK

Mandate and Opinion to: Clerk Department of Agriculture
cc: (without attached opinion)

Leslie Bovis Fearington
E.H., III

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
DIVISION OF LICENSING

IN RE:

Case Number WX1884626

ERNEST HEMSCHOT III,
Petitioner.

CERTIFIED
COPY

TRANSCRIBED FROM DIGITAL RECORDING

PROCEEDING: Informal Review Hearing of
Denial of Licensure

BEFORE: Hearing Officer Frank Hranicky
Tallahassee Regional Office
1276 Metropolitan Blvd., Suite 102
Tallahassee, Florida 32312

DATE: May 14, 2019

PLACE: Telephonic Appearances

TRANSCRIBED FROM
CD BY: SHELLY L. OWEN, CET
Certified Transcriptionist (AAERT)

APPEARANCES: Ernest Hemschot III
The Petitioner

CD IDENTIFIER: REC ID: 1576899019
WX1884626

OWEN & ASSOCIATES * (352) 624-2258 * owenassocs@aol.com

May 14, 2019

1

2

3

HEARING OFFICER: All right, if you're ready, you
can swear in the Petitioner.

4

5

6

THE NOTARY: Can you raise your right hand for me?
(At which time the Petitioner was administered the oath by
the notary, further proceedings recorded as follows:)

7

8

9

10

11

12

MR. HEMSCHOT: Yes, I do.

HEARING OFFICER: All right, thanks a lot. Good
morning. My name is Frank Hranicky. I'm the hearing
officer assigned to this matter. Can you hear me okay?

MR. HEMSCHOT: Good morning. Yes, I can hear you
fine. Thank you.

13

14

15

16

HEARING OFFICER: All right, before we start, I'm
going to make you aware of two things. We have an
observer, Marissa Atherly (phonetic) in the room today.
Any objections?

17

18

19

MR. HEMSCHOT: No, I don't.

HEARING OFFICER: And the hearing is being
recorded. Any objections to that?

20

21

22

23

24

25

MR. HEMSCHOT: No, I don't.

HEARING OFFICER: Okay, I'm going to make a brief
prepared statement for the record and, after I've
completed that statement, you'll have an opportunity to
ask any questions you have about the hearing process and
present your testimony and evidence.

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1 So, for the record, this is an informal hearing in
2 the matter of a denial of licensure taken by the
3 Department of Agriculture and Consumer Services Division
4 of Licensing against Ernest Hemschot.

5 Is it Hemscot (phonetic) or -shot (phonetic)?

6 MR. HEMSCHOT: Shot (phonetic), sir.

7 HEARING OFFICER: Hemschot, Ernest Hemschot III.
8 You are the Petitioner in Case Number WX1884626, being
9 held in Jacksonville and Tallahassee, Florida. The date
10 is May 14, 2019, and the time now is 9:31 a.m., and
11 that's Eastern Daylight.

12 For the record, the Department of Agriculture and
13 Consumer Services Division of Licensing is not
14 represented by an attorney at this hearing, which will
15 be conducted, pursuant to Section 120.57(2), Florida
16 Statutes.

17 I've reviewed the Department's case file and read
18 the denial letter in your case, and the purpose of the
19 hearing is to give you an opportunity to present any
20 legal or factual arguments you believe are relevant to
21 the Division's final decision in this matter.

22 Before the close of the hearing, you may present a
23 brief summary or closing statement, if you so desire.
24 After the hearing, I'll be reviewing the evidence and
25 the legal arguments presented. A final order will be

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1 issued and mailed to you, and contain instructions for
2 appealing it, should you decide to do so.

3 Any questions about what I just read there, Mr.
4 Hemschot?

5 MR. HEMSCHOT: No, sir, I don't.

6 HEARING OFFICER: All right, if there are no
7 questions, we'll proceed.

8 The denial in your case is based upon failure to
9 qualify under Section 790.062 in Florida Statutes.
10 Information received by the Department indicates you're
11 prohibited, under federal law, from possessing a
12 firearm, pursuant to the National Instant Criminal
13 Background Check System.

14 You can appeal the determination that you're
15 ineligible to possess a firearm under federal law, as
16 explained in the Firearm Possession Nonapproval Appeal
17 Form that was attached to this denial letter, and must
18 be filed with the Florida Department of Law Enforcement.

19 The appeal of your denial is separate, a separate
20 process. You can appeal your denial for Concealed
21 Weapon or Firearm License, as explained in the Election
22 of Rights Form, as well.

23 When you sent in your Election of Rights Form, did
24 you ever send in the appeal form to Florida Department
25 of Law Enforcement?

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1 MR. HEMSCHOT: Yes, I did.

2 HEARING OFFICER: Do you have a copy of that
3 anywhere? I don't see it.

4 MR. HEMSCHOT: A copy of the appeal?

5 HEARING OFFICER: Uh-uh (affirmative).

6 MR. HEMSCHOT: One, one second. Let me see if I
7 have that. I have their letter back to me, but let me
8 see if --

9 HEARING OFFICER: You have a letter back from FDLE?

10 MR. HEMSCHOT: I do. Yes, sir.

11 HEARING OFFICER: I haven't seen that. Have you
12 submitted that yet?

13 MR. HEMSCHOT: No, I didn't. I assumed that you
14 would get this in due course, but I did not submit it.

15 HEARING OFFICER: Do you have that with you now?

16 MR. HEMSCHOT: I do, sir. Yes.

17 HEARING OFFICER: That needs to -- if you have a
18 letter from FDLE, that needs to be part of your exhibit,
19 okay?

20 MR. HEMSCHOT: Okay, I didn't know that.

21 HEARING OFFICER: Can -- you need to -- I'm going
22 to put the recorder on hold, okay, --

23 MR. HEMSCHOT: Okay.

24 HEARING OFFICER: -- on pause here, and if you'll
25 get that young lady to scan that in for you, I'll leave

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1 this on pause until we can take a look at that, okay?

2 MR. HEMSCHOT: Okay, sure. She's gone out front.

3 I'll have to bring it out to her.

4 HEARING OFFICER: All right, what I'm going to do
5 is, right now, I'm going to put this on pause, okay?

6 MR. HEMSCHOT: All right, thank you. I'll be right
7 (Pause in hearing recording is noted, further proceedings
8 recorded as follows:)

9 HEARING OFFICER: Okay, I have the recorder back
10 on. Hold on just a second. Okay, so you sent in your
11 appeal and you got this letter back. I'm, I'm going to
12 go through everything that you've sent me so far,
13 okay, --

14 MR. HEMSCHOT: Yes.

15 HEARING OFFICER: -- before we do anything, all
16 right?

17 MR. HEMSCHOT: Yes.

18 HEARING OFFICER: So, back in December, with your
19 Election of Rights Form, you sent in a written
20 statement, hoping that you could clear up the
21 discrepancy. You sent in a copy of your birth
22 certificate and your United States passport; is that
23 correct?

24 MR. HEMSCHOT: That is correct, sir.

25 HEARING OFFICER: Okay, that was back in December.

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1 And then in January, on the 25th, you, you sent in an
2 amended petition to us, and, basically, looking at the
3 Second Amendment; is that correct?

4 MR. HEMSCHOT: Yeah, yes, sir. It was a five-page
5 document.

6 HEARING OFFICER: Yeah, basically, looking at the
7 Second Amendment of the United States Constitution,
8 right?

9 MR. HEMSCHOT: I cite that, yes, sir.

10 HEARING OFFICER: And then another amended
11 petition. It looks like the same thing. It must have
12 been -- they must have put two copies in there.

13 MR. HEMSCHOT: Okay.

14 HEARING OFFICER: So, it was a five-page copy,
15 okay? And then -- so that was in January. And then,
16 this morning, you sent in something that had to do with
17 an expungement.

18 MR. HEMSCHOT: Correct.

19 HEARING OFFICER: Of what case?

20 MR. HEMSCHOT: Of mental health records.

21 HEARING OFFICER: Okay, mental health records?
22 Okay. And then you sent in your -- your final, final
23 exhibit is a letter from FDLE, right?

24 MR. HEMSCHOT: Yes.

25 HEARING OFFICER: And that is dated January 31,
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1 2019.

2 MR. HEMSCHOT: Yes, sir.

3 HEARING OFFICER: And the basis of this letter
4 says: After review, based upon information received, it
5 has been determined that you are still prohibited from
6 purchasing or possessing a firearm. And so I'm going to
7 admit that into evidence.

8 With that, I'll take your testimony on all this.

9 MR. HEMSCHOT: Okay, when I received the letter
10 from the FDLE that you just referred to, they cited the
11 New Jersey court system as being the source of the
12 record in NICS that rendered me disqualified. When I
13 saw that I realized what the, what the problem was.
14 Originally, I didn't know why I was disqualified,
15 because I received the paperwork as you recited, saying
16 that I'm ineligible to purchase a firearm, therefore,
17 I'm ineligible to carry a firearm. It didn't say why,
18 specifically. It just said, by law, you're, you're
19 ineligible, so I wasn't quite clear on what the problem
20 was.

21 Originally, when I called up, when I had the first
22 communication, I was told the problem had something to
23 do with my name. That's the reason I sent them a copy
24 of my passport and birth certificate, to clear up any
25 discrepancy, according to name.

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1 That, however, was not the issue, apparently,
2 because I got this letter January 31st from FDLE.

3 Now, when I saw this letter and I saw the reference
4 to the administration of the courts of New Jersey, I
5 realized what probably happened was I was admitted for
6 bipolar disorder to an institution in New Jersey in 1996
7 and again in 2000.

8 I made an -- New Jersey developed a procedure,
9 pursuant to federal law, for curing that disability, and
10 the procedure in New Jersey is called an expungement.
11 And what happens is you petition the Court. There's
12 certain proofs you have to produce and, at the end of
13 the hearing, the Court will either grant an expungement,
14 or not grant the expungement. Mine was granted, as per
15 a copy of the order that I sent you, back in 2010.

16 So what I figured out must have happened was my
17 records from 1996 and 2000 must have already been
18 submitted for inclusion in the NICS system, and the
19 expungement order either got lost in the shuffle or, for
20 some reason, didn't make it into the NICS system.

21 So I think that's the problem here. The bottom
22 line is that the expungement of those records renders
23 them, basically, nonexistent, at this point. So I took
24 advantage of the procedure in New Jersey for relieving
25 the disability from carrying or purchasing a firearm.

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1 That's how it's done in New Jersey. That's the relief
2 system in New Jersey. And I adhered to that and
3 submitted my proofs and got that order.

4 So, at this hearing, I'm hoping that I can cure the
5 problem by producing a copy of that expungement order
6 from New Jersey.

7 The, the statute that I'm referencing is 790.06,
8 which is the weapons and firearms chapter of the Florida
9 Statutes. And, basically, it said the Department of
10 Agriculture and Consumer Services shall, shall issue a
11 license, if the applicant has not been committed to a
12 mental institution, under Chapter 394. An applicant who
13 has been granted relief from firearms disabilities,
14 pursuant to law, or, or pursuant to the law of the state
15 in which the commitment is deemed not to have been
16 committed in the mental institution in this paragraph.

17 So that, that language states that the State of
18 Florida must accept a copy of the New Jersey relief from
19 the disabilities order, which is the expungement, and
20 accept that, as if a commitment never occurred.

21 Legally, according to that expungement order, I am
22 permitted to answer any question about that commitment
23 in the negative. And I am permitted to say there's no
24 record of the commitment and it never occurred, which is
25 what I've done since 2010 in the state of New Jersey,

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1 whenever this issue arose.

2 So that, in a nutshell, is, is my argument here, is
3 that the State of Florida should honor that expungement
4 order and correct the record to allow me to get the
5 concealed carry permit or purchase a firearm.

6 I am separately, with the State of New Jersey,
7 pursuing the expungement issue, because I also want to
8 clear the NICS record, as well, so I don't have any
9 disability or disqualification in the future.

10 But, at this hearing, I'm hoping to correct the
11 record, at least as far as the Department is concerned,
12 Department of Agriculture, so that I can get that
13 concealed carry permit. And that, in essence, is, is
14 basically the whole thrust of my argument today.

15 HEARING OFFICER: Okay, well, that's duly noted and
16 I appreciate that. And you still have this letter from
17 FDLE, --

18 MR. HEMSCHOT: Yes.

19 HEARING OFFICER: -- which explains the appeal
20 process to New Jersey and to FDLE that you must do; is
21 that correct?

22 MR. HEMSCHOT: That's correct.

23 HEARING OFFICER: So that means you need to notify
24 FDLE, so the status can be verified, and then, in that
25 event, FDLE will notify you and the Department of the

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1 change in your status.

2 So, once you've done all that, then you need to get
3 that back to us, okay?

4 MR. HEMSCHOT: Okay. The letter didn't say that I
5 could appeal the letter. It said that I may want to
6 check or pursue an appeal with the New Jersey Civil
7 Practice Division of the Administration of the Courts,
8 which I have done. I have communicated with them. It's
9 a state bureaucracy and moves very slowly, --

10 HEARING OFFICER: Right.

11 MR. HEMSCHOT: -- so I haven't gotten anything back
12 from them yet. When I checked the other day, they were
13 still working on it, quote, unquote. So that's in the
14 works.

15 But I didn't do anything directly with FDLE because
16 the letter said FDLE will take no further action
17 regarding the information in NICS. So I assumed that
18 the application, as far as FDLE is concerned, is dead.

19 HEARING OFFICER: Well, what it does -- the letter
20 went on to say, just to be clear with you, that once you
21 communicate with New Jersey and that results in the
22 modification of the record or determine that your
23 determination that you're not subject, then you need to
24 notify FDLE, so FDLE's status can be verified, and then
25 they will notify you and our Department of the change in

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1 your status.

2 So read that letter, the next to the last
3 paragraph, carefully, okay?

4 MR. HEMSCHOT: Yes, sir.

5 HEARING OFFICER: And, and it looks like that's
6 what needs to be done, okay?

7 MR. HEMSCHOT: Yes, sir.

8 HEARING OFFICER: Okay. All right, is there any
9 further this morning?

10 MR. HEMSCHOT: No, sir, nothing further.

11 HEARING OFFICER: Okay, well, I appreciate you
12 coming by and presenting your testimony and evidence,
13 and I wish you a lot of good luck with this, okay?

14 MR. HEMSCHOT: All right, thank you, sir, very
15 much.

16 HEARING OFFICER: Take care.

17 MR. HEMSCHOT: All right, bye-bye.

18 HEARING OFFICER: And that will conclude our
19 hearing at 9:47.

20 (Recording ends.)

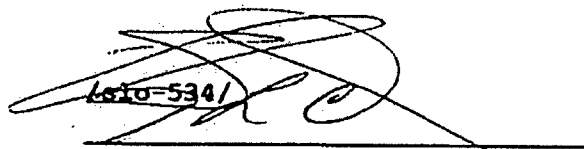
21

TRANSCRIPTIONIST'S CERTIFICATE

I, SHELLY L. OWEN, Transcriptionist, certify that I was authorized to and did transcribe from digital recording the foregoing proceedings in re: ERNEST HEMSCHOT III, before the Division of Licensing, Florida Department of Agriculture and Consumer Services, held on May 14, 2019, and that the transcript is a true and correct record of the proceedings recorded to the best of my ability.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or interested in the action.

DATED this 10th day of July, 2019, at Ocala, Marion County, Florida.

A handwritten signature in black ink, appearing to be "Shelly L. Owen", is written over a horizontal line. The signature is stylized and somewhat cursive.

SHELLY L. OWEN, CET (AAERT)
CERTIFIED TRANSCRIPTIONIST
OWEN & ASSOCIATES
Post Office Box 157
Ocala, Florida 34478
(352) 624-2258

OWEN & ASSOCIATES * (352) 624-2258 * owenassoc@aol.com

STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

ERNEST HEMSCHOT III,

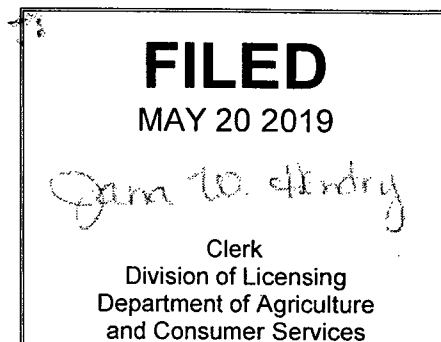
Petitioner,

V.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
DIVISION OF LICENSING,

Respondent.

LICENSE NO.: WX1884626



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 14, 2019, for consideration of a denial of licensure and final agency action in the above-styled case. The record in this matter is in accordance with Chapter 120, Florida Statutes.

APPEARANCES

For Petitioner:

Ernest Hemschot III
8432 Southwest 109th Street
Ocala, Florida 34481

STATEMENT OF THE ISSUES

Whether the division should uphold and affirm its denial of Petitioner's application for a Concealed Weapon or Firearm License pursuant to Section 790.06(2)(n), Florida Statutes.

PRELIMINARY STATEMENT

Petitioner personally appeared at the informal hearing. Petitioner's Composite Exhibits 1 and 2 and Exhibits 3 and 4 were admitted into evidence.

FINDINGS OF FACT

1. On or about November 9, 2018, Petitioner submitted an application for a Concealed Weapon or Firearm License pursuant to Chapter 790, Florida Statutes.
2. By Administrative Denial letter dated November 13, 2018, the division notified Petitioner that it received information from the Florida Department of Law Enforcement ("FDLE") that Petitioner is prohibited under Federal law from possessing a firearm pursuant to the National Instant Criminal Background Check System. Petitioner is therefore ineligible for licensure pursuant to section 790.06(2)(n), Florida Statutes. A Firearm Ineligibility Appeal Form was provided with the denial letter.

3. Petitioner timely requested a formal hearing, which was denied. The matter was referred for informal hearing and this proceeding followed.

4. At the informal hearing Petitioner testified that he was admitted for bipolar treatment in New Jersey in 1996 and 1999, and that an expungement was granted in 2010. Respondent claimed his records were submitted for NICS expungement as well, but apparently didn't make it to FDLE's attention.

5. Respondent testified that he hoped the expungement would cure the problem and referenced Section 790.06, Florida Statutes.

6. Petitioner stated that in addition to submitting expungement records, he was separately pursuing with the State of New Jersey to clear the NICS record. Petitioner was advised of the wording of a letter he was submitting from the Florida Department of Law Enforcement and acknowledged that after he receives correspondence from New Jersey regarding the NICS record, he would notify FDLE of the findings.

7. With his Election of Rights form, Petitioner submitted the following evidence that was admitted as Composite Exhibit 1, including:

- a) A written statement in which he stated that the denial letter fails to specifically state what other provision of Florida or federal law is at issue, and that it is impossible for him to address the specific reason for denial;
- b) In his written statement, Petitioner claimed he was informed that the problem involves his name, but that he has had it all his life, and gave the names of his father and grandfather in hopes of clearing up any discrepancy;
- c) A copy of Petitioner's Certification of Birth;
- d) A copy of Petitioner's United States Passport;
- e) A copy of Petitioner's Social Security Card.

8. On or about January 23, 2019, Petitioner submitted the following evidence that was admitted as Composite Exhibit 2, including:

- a) Two copies of an Amended Petition;
- b) The Amended Petition included a statement of when and how the Petitioner received notice of the agency decision, a statement of all disputed issues of Material fact, and a copy of Section 790.06, Florida Statutes;
- c) The Amended Petition reiterates that Petitioner cannot successfully defend his rights if he does not know what other provision of state or federal law has been violated;
- d) In the Amended Petition, Petitioner denies having any lawful disability under state or federal law;
- e) The Amended Petition includes a statement of specific rules or statutes the Petitioner contends require reversal or modification of the agency's proposed action, and a Statement of the relief sought by Petitioner.

9. At the informal hearing, Petitioner submitted a copy of an Expungement of Civil Commitment from the Superior court of New Jersey Sussex County-Law Division dated January 14, 2010, (Exhibit 3), and correspondence to Petitioner from the Florida Department of Law Enforcement dated January 31, 2019. (Exhibit 4).

10. The correspondence submitted by Petitioner from the Florida Department of Law Enforcement, is insufficient to demonstrate that this matter was resolved by FDLE in Petitioner's favor.

11. Petitioner is prohibited under Federal law from possessing a firearm pursuant to the National Instant Criminal Background Check System.

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 Administrative Denial cites Section 790.06(2)(n), Florida Statutes, as grounds for the denial of Petitioner's application.

3. Section 790.06(2)(n), Florida Statutes, requires the division to deny licensure if the applicant is prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

4. The division correctly applied Section 790.06(2)(n), Florida Statutes, as Petitioner is prohibited under Federal law from possessing a firearm pursuant to the National Instant Criminal Background Check System.

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 **DENIAL** of Petitioner's application for a Concealed Weapon or Firearm License, WX1884626, is **UPHELD and AFFIRMED**.

DONE AND ENTERED this 20th day of May, 2019, in Tallahassee, Florida.



Paul Pagano, CFE, CPM
Assistant Director
Department of Agriculture and Consumer Services
Division of Licensing

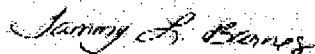
NOTICE OF RIGHTS

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 20th day of May, 2019, to Ernest Hemschot III; 8432 Southwest 109th Street, Ocala, Florida 34481.



Tammy Barnes
P. O. Box 5708
Tallahassee, Florida 32314-5708
(850) 245-5491

CWFO DENY



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER ADAM H. PUTNAM

November 13, 2018

Ernest Hemschot III
8432 SW 109th St
Ocala, FL 34481

Ref #: WX1884626

RE: Administrative Denial of License WX1884626

Dear Mr. Hemschotiii:

Your application for a Concealed Weapon or Firearm License has been denied for the reasons set forth on the following page.

You have the right to a hearing before this denial becomes final. In order to be granted a hearing you must complete the enclosed Election of Rights form and file it with the Division of Licensing within 26 days (21 days plus 5 days for mailing) of the date of this letter. Failure to do so will be deemed a waiver of your right to a hearing and this letter will become final agency action 26 days from this date. If this letter becomes final agency action as described above, you may appeal by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, within 30 days of this date of final agency action.

If you have any questions regarding this letter, please contact a representative in our Public Inquiry Section at (850)245-5691.

Division of Licensing
Public Inquiry Section
TELEPHONE: (850)245-5691
FAX: (850)245-5502

/bm

Enclosure

EXPLANATION

Failure to qualify under section 790.06(2)(n), Florida Statutes. Information received by the Department indicates that you are prohibited under federal law from possessing a firearm pursuant to the National Instant Criminal Background check system. You can appeal the determination that you are ineligible to possess a firearm under federal law as explained in the attached Firearm Possession Non-Approval Appeal Form that **must** be filed with the Florida Department of Law Enforcement.

The appeal of your denial for a Concealed Weapon or Firearm License is a **separate** appeal process. You can appeal your denial for a Concealed Weapon or Firearm License as explained in attached Election of Rights Form that must be filed with the Florida Department of Agriculture and Consumer Services' Division of Licensing.



Florida Department of Agriculture and Consumer Services
Division of Licensing

**ELECTION OF RIGHTS
LICENSE DENIAL – WX1884626**

ADAM H. PUTNAM
COMMISSIONER

This form must be filed at the Division of Licensing office in Tallahassee, Florida, within twenty-six (26) days (21 days plus 5 days for mailing) of the Notice of Denial. Failure to do so shall be deemed a waiver of your right to an administrative hearing.

Select one of the following options and sign below:

☐ **Stipulation**

I have read and understand the enclosed Letter of Denial. By signing the agreement I choose not to litigate the issues or facts alleged, hereby waive my right to a hearing under Sections 120.569 and 120.57, Florida Statutes, and will abide by the conditions imposed.

☐ **Informal Hearing**

I do not dispute the facts upon which the agency action is based. I wish to make an explanation of those facts by speaking on my behalf at an informal hearing. The informal hearing will be conducted before a hearing officer of the Department of Agriculture and Consumer Services in accordance with Sections 120.569 and 120.57(2), Florida Statutes, and applicable portions of Chapter 28-106, Florida Administrative Code.

☐ **Informal Hearing by Written Statement**

I do not dispute the facts upon which the agency action is based. I wish to make an explanation of those facts by submitting a signed written statement to a hearing officer and I waive my right to appear in person at an informal hearing. The informal hearing will be before a hearing officer of the Department of Agriculture and Consumer Services in accordance with Sections 120.569 and 120.57(2), Florida Statutes, and applicable portions of Chapter 28-106, Florida Administrative Code.

☒ **Formal Hearing**

I dispute the facts upon which the agency action is based. I have attached to this form a petition or written statement of the disputed issues of material fact and hereby request a formal hearing to be conducted pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and applicable portions of Chapter 28-106, Florida Administrative Code. I realize that failure to state the disputed issues of material fact may result in the denial of my request for a formal hearing. The formal hearing will be held before an Administrative Law Judge of the Division of Administrative Hearings where I may present evidence and argument on the issues.

I have read and understand the Election of Rights form and understand that I have the right to be represented by counsel or qualified representative at either an informal or formal hearing.

Mediation, pursuant to Section 120.573, Florida Statutes, is not available as an alternative remedy.

Ernest Hemlock III
Applicant's Signature

ERNEST HEMLOCK III
Type or print your name

8432 SW 109th ST
Applicant's mailing address

Ocala, FL 34481
Applicant's city, state and zip

973-951-7350
Applicant's telephone number

Attorney's Signature if represented

Type or print attorney's name

Attorney's mailing address

Attorney's city, state and zip

Attorney's telephone number

Upon completion of this form, return it to:

Florida Department of Agriculture and Consumer Services
Division of Licensing
Post Office Box 5708
Tallahassee, Florida 32314-5708

Note: In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in a hearing should contact the Division no later than seven (7) days prior to the hearing at which such special accommodation is required. The Division may be contacted at Capital Center Office Complex, 4040 Esplanade Way, 1st Floor, Suite 101, Tallahassee, Florida 32399. Hearing and voice impaired persons may call the Florida Relay Service at (800) 955-8771 (TDD) to reach (850) 245-5691.

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**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

ERNEST HEMSCHOT III,

Petitioner,

V.

LICENSE NO.: WX1884626
Jacksonville Regional Office

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
DIVISION OF LICENSING,

Respondent.

NOTICE OF INFORMAL HEARING

A hearing will be scheduled and held in this case before an agency hearing officer of the Division of Licensing.

Date: May 14, 2019
Time: 9:30AM
Location: Jacksonville Regional Office
Concealed Weapon or Firearm License
7825 Baymeadows Way, Suite 106-A
Jacksonville, Florida 32256
Phone: (904) 828-3100, Option 1

Issue: As set forth in the Denial Letter

Authority: Section 120.57(2), Florida Statutes and Rule 28-106, Florida Administrative Code

The parties have the right to testify, call witnesses, and to be represented by counsel in accordance with Rule 28-106.106, Florida Administrative Code. The parties must arrange to have witnesses present and shall bring any documents they wish to present.

Should unforeseen circumstances prevent your attendance at the scheduled date and time, you are required to notify the undersigned, in writing, at least three days in advance of the hearing. Continuances will be granted only for good cause shown based upon unforeseen occurrences.

You have the option of submitting a written statement instead of appearing at the hearing. The statement, along with any supporting documentation, must be received by the undersigned prior to the time of the hearing.

Frank Hranicky
Hearing Officer
Department of Agriculture and Consumer Services
Office of the Clerk and Informal Hearings
Jacksonville Regional Office

Copies furnished this 11th day of February 2019 to:

Ernest Hemschot Iii
8432 Southwest 109th Street
Ocala, Florida 34481

c: Legal Section/Tallahassee

FILED

JAN 14 2010

WILLIAM J. MCGOVERN III, J.S.C.
JUDGE'S CHAMBERS
SUSSEX COUNTY COURTHOUSE

ERNEST HEMSCHOT III, ESQ.
93 SPRING STREET, SUITE 504
NEWTON, NEW JERSEY 07860
FAX/PHONE: 973-300-1192
ERNESTHEMSCHOT@JUSTICE.COM

IN RE EXPUNGEMENT OF : SUPERIOR COURT OF NEW JERSEY
SUSSEX COUNTY-LAW DIVISION

CIVIL COMMITMENT : DOCKET NO. **SSX-L-978:09**

ORDER PURSUANT TO NJSA 30:4-80.9

THIS MATTER has been opened to the Court by petitioner Ernest Hemschot III, and whereas the petitioner has been subjected to two civil commitment orders entered by the Superior Court of New Jersey in 1996 and again in 2000, and whereas NJSA 30:4-80.9 permits the Superior Court to order the expungement of such civil commitment records if no reason appears to the contrary, and whereas the Court has considered the Verified Petition and the submission by Dr. Robert C. Lieb, petitioner's physician, and whereas the Court is satisfied that the petitioner meets the statutory requirements, it is therefore on this 14TH day of January, 2010:

1.) **ORDERED** that the clerk of the Superior Court and the Sussex County Adjuster shall fully and completely expunge petitioner Ernest Hemschot's civil commitment records from 1996 and 2000 in accordance with the provisions of NJSA 30:4-80.9; it is further

2.) **ORDERED** pursuant to NJSA 30:4-80.11 that said commitments shall be deemed not to have occurred for all legal purposes; it is further

3.) **ORDERED** that this Order, Petition and entire file be **SEALED** by the Clerk of the Superior Court until further Order of this Court; it is further

4.) **ORDERED** that a copy of this Order shall be served on all interested parties within seven days of the entry hereof.



JUDGE OF THE SUPERIOR COURT
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WILLIAM J. MCGOVERN III
J.S.C.