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OCT 30 2012

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

K. Westray

Kevin Westray, Legal Assistant

GEORGIA REAL ESTATE	:	
COMMISSION,	:	
	:	
Petitioner,	:	DOCKET NO.: OSAH-GREC-SAN-
	:	1308333-60-Howells
	:	
v.	:	
	:	
	:	
MARK J. GUGLIUZZA,	:	
	:	
Respondent.	:	

INITIAL DECISION

Petitioner, the Georgia Real Estate Commission (“Commission” or “Petitioner”) filed this matter seeking revocation of Mark J. Gugliuzza’s real estate salesperson’s license. The hearing was held before Administrative Law Judge Stephanie Howells on October 10, 2012. Petitioner was represented by Alison Spencer, Esq. Mark J. Gugliuzza (“Respondent”) was represented by Frances Cullen, Esq. and Lisa Curia, Esq. of Frances Cullen P.C. For the reasons stated below, the Respondent’s real estate salesperson’s license is **SUSPENDED** for a period of three months, and thereafter, subject to continuing restrictions upon reinstatement.

FINDINGS OF FACT

1.

Respondent is a licensed real estate salesperson in the State of Georgia. He has been licensed since October 18, 2010, and his license has been continuously affiliated with Coastal Area Partners, Inc. (Ex. P-1.)

2.

On April 3, 2012, in the Superior Court of Chatham County, Georgia, Respondent pleaded guilty to five felony and two misdemeanor charges, to wit: two counts of Sale of Marijuana (felonies), two counts of Use of Communication Facility in Committing a Felony (felonies), one count of Possession of Marijuana with Intent to Distribute (felony), and two counts of Possession of a Drug Related Object for Distribution (misdemeanors). (Ex. P-4.) Respondent was sentenced under the provisions of the First Offender Act to a period of ten years’ probation, four years’ probation, ten years’ probation, and twelve months’ probation on the above respective charges, to run concurrently. The court included the following special conditions: a suspended sentence of 120 to 180 days in Probation Detention Center, to serve only upon a positive drug screen or violation of probation; 150 to 250 hours of community service at the discretion of Probation; and upon successful completion of five years of probation, suspension of the remainder of the sentence. (Ex. P-4.)

3.

Respondent, upon first applying for a real estate salesperson's license in 2010, notified the Commission of the pending charges against him. (See Ex. P-2.) On April 12, 2012, Respondent provided written notice to the Commission that he had been sentenced pursuant to the First Offender Act. (Ex. P-2.)

4.

On two occasions, November 16, 2009 and December 7, 2009, Respondent, believing he was doing a favor for a friend, sold marijuana to a co-worker. The co-worker, however, was acting as an undercover police informant in exchange for a "deal," and, as such, was wearing a transmitting device (i.e., a "wire"). The police subsequently searched Respondent's home on December 14, 2009 and found more than an ounce of marijuana, a bong (drug paraphernalia), and a digital scale. Respondent originally obtained the scale to ensure that he was receiving the correct amount of marijuana when he purchased it for his personal use. (Testimony of Respondent.)

5.

At the time of the events, Respondent was a regular user of marijuana. He started smoking marijuana in high school, approximately eleven years prior to the charged crimes. Respondent attributed his continued marijuana usage to his employment in the restaurant industry, where marijuana use is commonplace due to the stress of the business and its cultural acceptance. While his usage was regular, it was limited to one marijuana cigarette in the evenings to relax. He denies using marijuana during work hours. He also denies using any other illegal substances. (Testimony of Respondent.)

6.

Respondent's criminal history prior to the offenses at issue here consisted of one misdemeanor conviction in Minnesota, resulting from an incident when he was 21 years old, where he supplied alcohol to his 20-year-old girlfriend. Subsequently, Respondent graduated from the University of Wisconsin with a Bachelor of Science degree in business finance. Respondent is currently 33 years old. (Testimony of Respondent.)

7.

Shortly after Respondent's arrest for the above offenses, he and his girlfriend, who was also indicted due to her presence at the scene, decided to turn their lives around. Both voluntarily began undergoing drug testing every three weeks. In the three years since beginning testing, Respondent's test results have been uniformly negative. Additionally, as a condition of his probation, Respondent is required to undergo random drug screens. Respondent testified that it was easy to stop using marijuana once he left the restaurant industry, where drug use is prevalent. (Testimony of Respondent; Ex. P-4.)

8.

In an effort to change the trajectory of his life, Respondent enrolled in and completed a real estate course. Subsequently, he passed the real estate exam and applied for his real estate salesperson's license, which he obtained in October of 2010. His girlfriend likewise left the

restaurant industry, and she has recently completed a degree in nursing. (Testimony of Respondent.)

9.

Nancy Thompson, Operating Partner at Keller Williams Realty, Coastal Area Partners, LLC, in Savannah, Georgia, testified on Respondent's behalf. Due to her position as an operating partner, overseeing 215 agents, Ms. Thompson has the opportunity to hear others' assessments of agents, and she has never heard anything negative regarding Respondent. She also interacts with Respondent several times a month and perceives him to be professional, detail-oriented, and caring. Respondent, in addition to producing excellent results as a buyer's agent, goes out of his way to help clients when giving advice regarding the purchase of a home and in drafting sales contracts. She trusts Respondent to handle clients' money and believes he has taken responsibility for his past actions. Her confidence in Respondent is based, in part, on her own experience with Respondent and, in part, on her confidence in Don Callahan, a well-respected agent, who recommended Respondent for employment at Coastal Area Partners. Finally, Ms. Thompson's own business reputation would be harmed if her assessment of Respondent's character proved to be inaccurate. (Testimony of Nancy Thompson.)

10.

Steven Busch is the Team Leader & Managing Broker of Keller Williams Realty, Coastal Area Partners, LLC. Mr. Busch testified that he met Respondent in September 2011 at a training event and has since has an opportunity to get to know him through regular workplace interactions and a business-related road trip. He stated that Respondent regularly handles confidential client information and finances, is uncommonly successful for his level of experience, and has a good reputation in the real estate community, something which is very important in the business. Mr. Busch's confidence in Respondent is such that he would find Respondent some other type of work in the business in the event Respondent's license is suspended. (Testimony of Steven Busch.)

11.

Don Callahan is a long-time and very well-respected member of the Savannah, Georgia, real estate community. He is known for working only with the best. (Testimony of Nancy Thompson; Testimony of Steven Busch.) He is also a partner at Keller Williams Realty Savannah Downtown and Keller Williams Coastal Area Partners. Mr. Callahan met Respondent in 2002, when Respondent rented an apartment from him. At that time, Respondent began helping Mr. Callahan in his business renovating homes. Since then, the two have become friends and Mr. Callahan has become Respondent's professional mentor. After Respondent obtained his real estate license, Mr. Callahan began referring business to him and eventually made Respondent part of his team. As part of Mr. Callahan's team, Respondent's responsibilities have continued to increase. Respondent has become the face of Mr. Callahan's business and Mr. Callahan trusts Respondent implicitly with his long-term clients. He stated "with absolute confidence" that he is willing to risk his considerable reputation within the real estate business by placing Respondent in a position of trust. Furthermore, Mr. Callahan is familiar with Respondent's reputation in the real estate community, which he testified is very good. While he did not know all the details of Respondent's criminal offenses at the time they occurred,

Respondent has always been open with him and has never minimized his actions. (Testimony of Don Callahan.)

CONCLUSIONS OF LAW

1.

The Commission seeks to sanction Respondent by revoking his license. Therefore, the Commission bears the burden to prove, by a preponderance of the evidence, that Respondent's real estate salesperson's license should be revoked. Ga. Comp. R. & Regs. r. 616-1-2-.07(1), -.21(4).

2.

Upon a finding that a licensee has violated any of the statutes in Title 43, Chapter 40, or any of the rules and regulations promulgated by the Commission, the Commission has the authority and discretion to revoke or suspend a license for a definite or indefinite period and impose restrictions, among other sanctions. O.C.G.A. § 43-40-25(a).

3.

Notwithstanding, Georgia law *requires* a licensing agency to impose, at minimum, a three-month suspension of a license in the event a licensee is convicted for the first time of a charge involving the sale or possession of marijuana. O.C.G.A. § 16-13-111(b)(1). Discretion to impose a lesser sanction is only permitted when the conviction is for a misdemeanor offense. *Id.*

4.

In general, the Commission is charged by law to grant licenses only to persons who "bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such manner as to safeguard the interest of the public." O.C.G.A. § 43-40-15(a). Further, the Commission may deny a license to an applicant or impose "any sanction permitted by [chapter 40]" upon a licensee if the applicant or licensee has been convicted of a felony O.C.G.A. § 43-40-15(b)(2), (f).

5.

For the purposes of granting or sanctioning a real estate salesperson's license, a "conviction" is defined as:

[A] finding or verdict of guilty or a plea of guilty to a charge of a felony or any crime involving moral turpitude, regardless of whether an appeal of the conviction has been brought; a sentencing to *first offender treatment* without an adjudication of guilt pursuant to a charge of a felony or any crime involving moral turpitude; or a plea of *nolo contendere* to a charge of a felony or any crime involving moral turpitude.

O.C.G.A. § 40-43-15(b)(1)(A) (emphasis added).

6.

A felony includes any offense which is “deemed a felony under the laws of [Georgia] or under the laws of the United States.” O.C.G.A. § 43-40-15(b)(B)(i).

7.

Individuals with a felony conviction are not eligible to *apply* for a license until at least two years have passed since that individual satisfied all the terms and conditions of his or her sentence. O.C.G.A. § 40-43-15(b)(1.1). Georgia law does not impose a similar restriction on *current* license holders. On the contrary, the law allows “the commission in its discretion [to] impose upon [a licensee convicted of a felony] *any sanction*,” including the revocation or suspension of a license, administering a reprimand, imposing a fine, or limiting or restricting a license as the Commission deems necessary to protect the public. O.C.G.A. § 43-40-15(i) (emphasis added); O.C.G.A. § 43-40-25(a).

8.

Because Respondent pled guilty under the First Offender Act on April 3, 2012 to five drug-related felonies, the Commission is required to suspend the Respondent’s license for a minimum period of three months. *See* O.C.G.A. § 16-13-30(j) (felony); O.C.G.A. § 16-13-32.3 (felony); O.C.G.A. § 16-13-111(b)(1) (three month suspension mandatory). Respondent also pleaded guilty to two misdemeanor convictions, for which the Commission may impose a lesser sanction, or no sanction at all. *See* O.C.G.A. § 16-13-32.2 (misdemeanor); O.C.G.A. § 16-13-111(b)(1). Because Respondent is a *current license holder*, as opposed to an applicant, the Commission has discretion to impose any sanction permitted by Chapter 40. O.C.G.A. §§ 43-40-15(f) and (i).

9.

The Commission is tasked with safeguarding the interest of the public. To that end, it only permits those individuals with a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of licensees. While felony convictions certainly raise concerns regarding a licensee’s character, in this instance, Respondent has satisfactorily demonstrated that he now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a real estate salesperson.

10.

Respondent feels remorse for his actions and has taken significant steps to turn his life around. Immediately following his arrest, he deliberately removed himself from a negative environment, ceased marijuana usage, and voluntarily subjected himself to regular drug screens. In the time since his criminal offense, he also completed a real estate course and obtained his real estate salesperson’s license. He has established himself as a successful salesperson, with integrity and a good reputation. His reputation was attested to by established members of the Savannah real estate community where Respondent works. While those testifying on his behalf have a financial stake in retaining Respondent as a salesperson, the witnesses also concurred that if their trust in Respondent were misplaced, their own professional interests could be harmed. This is especially true given that the Savannah real estate business community is small and places great emphasis on reputation. Also persuasive was the fact that all those testifying on the Respondent’s behalf demonstrated unwavering confidence in Respondent, as well as genuine concern about his

fate, as they considered him to be honest, careful, and dedicated to the welfare of his clients. Accordingly, for the reasons stated above, the undersigned concludes that revocation or a lengthy suspension would be too harsh a sanction.

DECISION

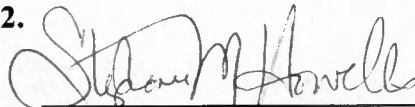
For the above and foregoing reasons, Respondent's real estate salesperson's license is hereby **SUSPENDED** for a period of three months.

Upon expiration of the three-month suspension, Respondent's license shall be reinstated with the following **RESTRICTION**:

Respondent shall comply with the terms and conditions of his criminal probation for the period of its duration. Further, every quarter (i.e., March 31, June 30, September 30, and December 31), he shall submit to the Commission: (1) drug screen test results, and (2) a report from his probation officer, stating that he is complying with the terms of his probation.¹ Should Respondent fail to timely submit these items, the Commission may revoke Respondent's license. Further, if Respondent fails to comply with the terms of his criminal probation, the Commission shall be entitled to revoke Respondent's license.

Upon completion of his criminal probation, Respondent shall be entitled to request, in writing, that the Commission remove the restriction from his license, provided that Respondent submits documentation showing that he has been discharged from probation.

SO ORDERED THIS 30th day of October, 2012.



STEPHANIE M. HOWELLS
Administrative Law Judge

¹ Both the drug screen results and the report from the probation officer must be dated within twenty days of the date they are submitted to the Commission.