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BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

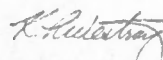
EDMOND ANDRE DOUGLAS,
Petitioner,

v.

GEORGIA REAL ESTATE COMMISSION,
Respondent.

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Docket No.: OSAH-GREC-DEN-1308371-
60-Howells


Kevin Westray, Legal Assistant

INITIAL DECISION

Petitioner Edmond Andre Douglas ("Petitioner") appeals the denial of his application for a real estate salesperson's license by the Georgia Real Estate Commission ("Commission" or "Respondent"). The hearing in this matter was held on September 24, 2012. Petitioner appeared *pro se*. Respondent was represented by Senior Assistant Attorney General Alison Spencer. For the reasons stated below, this tribunal finds that Petitioner's application for a real estate salesperson's license was appropriately **DENIED**.

Findings of Fact

1.

Petitioner is not currently licensed in any capacity with the Commission. (Exhibit R-1.)

2.

In March of 2010, Petitioner submitted a Background Clearance Application ("Application") for a real estate salesperson's license. At the time, Petitioner was not eligible to apply for the license.¹ Petitioner became eligible to apply for the license in May of 2012. The Commission considered Petitioner's Application at its May 2012 meeting, and after reviewing Petitioner's conviction, character references, and the investigative report denied the Application. (Testimony of Oil Mata; Testimony of Petitioner; Exhibits R-2, R-2a, R-4.)

3.

With his Application, Petitioner submitted a criminal history report, which was obtained through the Georgia Criminal Information Center ("GCIC"), as well as copies of the accusation, plea, disposition, and discharge from probation. On the Application, Petitioner answered "Yes" to the question which reads as follows: "In Georgia, or any other state, jurisdiction, or country, have you ever been convicted of, pled nolo contendere to, or been granted first offender treatment upon being charged with: (1) any criminal offense other than a traffic violation or (2) any traffic violation that involved driving under the influence of alcohol or drugs, homicide or

¹ See O.C.G.A. § 43-40-15(b)(1.2)(A) (providing that a person with a single conviction is not eligible to apply for a license until two years have passed since the individual satisfied all terms and conditions of his sentence).

feticide by vehicle, fleeing the scene of an accident, attempting to elude a police officer, or impersonating a law enforcement officer?" (Exhibits R-2a, R-3.)

4.

On or about May 13, 2009, Petitioner pled nolo contendere to and was granted First Offender Treatment for felony Deposit Account Fraud in the Superior Court of Rockdale County, Georgia. Petitioner was sentenced to two years of probation, ordered to pay a fine in the amount of \$1,000.00, and ordered to pay restitution in the amount of \$7,665.00. As a special condition of probation, the court noted that Petitioner's probation could be terminated once the fine and restitution were paid. (Exhibits R-3, R-3a.)

5.

While on probation, Petitioner asked his DeKalb County probation officer if he could skip three months of payments toward the restitution and fine to attend and complete real estate school. Once completing real estate school, Petitioner intended to make extra payments to catch up with the payment plan. Petitioner's understanding from his local probation officer was that his request was acceptable. Nonetheless, in April of 2010, Petitioner was arrested for violating his probation because he failed to continue making payments toward the fine and restitution. Petitioner remained in jail for approximately two to three weeks. Upon being arrested, Petitioner contacted his sister and asked her to get money from his friends to pay the outstanding fine and restitution amount. On or about May 3, 2010 Petitioner paid the remaining amount of the fine and restitution, and was released from custody. (Testimony of Petitioner; Exhibits R-2a, R-3, R-3a.)

6.

On February 17, 2012, Petitioner was discharged under the First Offender Act. (Exhibit R-3.)

7.

The events that form the basis of Petitioner's arrest for and nolo contendere plea to felony Deposit Account Fraud occurred in 2007 while Petitioner was a builder/developer. At the time, Petitioner was building custom homes in a subdivision that he had developed. He was in the process of building a home for a client who lived in California. The client had requested multiple upgrades to the home, including an elevator, a steam shower, and a theater. The client provided Petitioner with a check for slightly more than \$30,000.00 as a deposit for the upgrades. Petitioner deposited the check into his operating account. He claims that he waited three days before writing checks for the client's home. On September 18, 2007, Petitioner wrote a check drawn on his BB&T operating account, in the amount of \$7,300.00, for the installation of a septic system for the client's home.² Within the next couple of days the client's check was returned for insufficient funds. Shortly thereafter, several checks that Petitioner wrote, including the check for the septic system were not honored. (Testimony of Petitioner; Exhibit R-3.)

² Petitioner failed to explain why the check for the septic system was not honored, when the client's deposit was for the upgrades (i.e., the elevator, steam shower, and theater). In other words, if the client's check was a deposit for upgrades, then one would expect a check to one of the vendors or contractors for the upgrades to have been the check that was not honored. A reasonable inference from Petitioner's testimony is that he was relying on the client's check to pay for expenses other than the upgrades.

8.

Petitioner conducted his building and development operations through two different companies; first Freedom Builders and then Castleworks. Petitioner stopped building houses in 2008 or 2009. When questioned about whether he obtained a builder's license, Petitioner testified that when he started building houses there was no requirement to be licensed. He further testified that he was subsequently "approved to be grandfathered in," but he did not complete the paperwork. Ultimately, he did not obtain a license.³

9.

Toward the end of his building and development business, Petitioner had approximately four or five liens placed on individual homes by subcontractors. He specifically recalls one involving a plumbing company. Additionally, Petitioner defaulted on the mortgage for his office building. Petitioner does not think that his inability to keep his building and development business afloat reflects poorly on him. Rather, he blames the crash of the financial and real estate markets. He asserts that he had no control over what happened with respect to the client's home and the bad check to the septic tank company.⁴ (Testimony of Petitioner.)

10.

Since his arrest and plea, Petitioner has continued to invest in real estate and assist others with finding properties in which to invest. He also owns an Italian ice company called Knightz Italian Ice. (Testimony of Petitioner.)

11.

At the hearing, Petitioner presented the testimony of five witnesses who have known Petitioner for between ten and fifteen years. Each witness testified that they believe Petitioner to be honest and trustworthy. Some of the witnesses met Petitioner through church, and others through business. Between 1997 and 2000, Mr. Keith Graves owned an automobile brokerage company with Petitioner called D&K Auto Brokers. Mr. Graves has trusted Petitioner with a line of credit and a credit card. Other witnesses testified that they would trust Petitioner with their homes and their families. Nevertheless, one of Petitioner's witnesses testified that he has known of situations where Petitioner has "borrowed from Peter to pay Paul." (Testimony of Petitioner, Kenneth Gipson, Keith Graves, Michael Hughes, Kirya Duncan, and Curtis Augustin.)

Conclusions of Law

1.

As the applicant for a real estate salesperson's license, Petitioner bears the burden of proof. Ga. Comp. R. & Regs. r. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

³ Petitioner's testimony on this point was vague and unclear.

⁴ Notwithstanding, in a letter to the Commission, Petitioner acknowledged that accepting only bank checks or writing checks only up to the amount of his account balance could prevent a recurrence of this incident. (Ex. R-2a.)

2.

Real estate salesperson's licenses shall be granted "only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee *in such a manner as to safeguard the interest of the public* and only after satisfactory proof of such qualification has been presented to the commission." O.C.G.A. § 43-40-15(a) (emphasis added).

3.

A conviction for forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other like offenses, or for a felony, or a crime involving moral turpitude may be a sufficient ground for refusing a real estate salesperson's license. O.C.G.A. § 43-40-15(b)(2).

4.

Notwithstanding, Georgia Code Section 43-40-15(b)(1.2) provides, in pertinent part:

A person who has a conviction . . . shall be eligible to become an applicant for a [license] . . . only if:

(A) Such person has satisfied all terms and conditions of any conviction . . . ; provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; and provided that if such individual has been convicted of a single felony or of a single crime of moral turpitude, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval;

(B) No criminal charges for forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, a felony, a sex offense, a probation violation, or a crime involving moral turpitude are pending; and

(C) Such person presents to the commission satisfactory proof that the person now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

O.C.G.A. § 43-40-15(b)(1.2).

5.

Thus, while Section 43-40-15(b)(2) states that a conviction, in and of itself, for certain types of offenses *may be* a sufficient ground for denying a license, section 43-40-15(b)(1.2) provides that applicants with convictions, even those for felonies or crimes of moral turpitude, "shall become eligible to become an applicant for licensure" if a certain conditions are met. Subpart (b)(1.2) does not state that such applications *will* be granted. It merely provides that such applicants may *apply*. Nevertheless, when the two sections are read together it is clear that

the Commission has the discretion to grant licenses to applicants with prior convictions, provided certain conditions are met. Therefore, in this case, Petitioner has the burden to prove that this tribunal, standing in the place of the Commission, should exercise that discretion.

6.

Petitioner pleaded nolo contendere to and was given First Offender Treatment for one count of Deposit Account Fraud in violation of Georgia Code section 16-9-20.⁵ The check at issue was for \$7,300.00. Accordingly, Petitioner pleaded nolo contendere to a felony. O.C.G.A. § 16-9-20(b)(3). Furthermore, Deposit Account Fraud is also an offense “like” forgery, embezzlement, obtaining money under false pretenses, theft, extortion, and conspiracy to defraud. Thus, Petitioner’s conviction may be a sufficient ground to deny Petitioner’s application for a license. See O.C.G.A. § 43-40-15(b)(2).

7.

In order for Petitioner to overcome the grounds to deny his application (i.e., the conviction), Petitioner must prove that he “bear[s] a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee *in such a manner as to safeguard the interest of the public* and only after satisfactory proof of such qualifications has been presented to the commission.” O.C.G.A. § 43-40-15(a) (emphasis added). Here, Petitioner has failed to present satisfactory proof.

8.

Petitioner failed to explain why the check for the septic system was not honored, if, in fact, the client’s deposit was for the upgrades (i.e., the elevator, steam shower, and theater). In other words, if the client’s check was a deposit for upgrades, then one would expect a check to one of the vendors or contractors for the upgrades to have been the check that was not honored. A reasonable inference from Petitioner’s testimony is that he was relying on the client’s check to pay for expenses other than the upgrades. A further reasonable inference is that Petitioner did not have the funds in his account to pay for basic items in the house, such as a septic system, and was relying on monies for future expenditures.

9.

Moreover, at no time did Petitioner take any responsibility for his actions. Instead, he blamed the crash in the financial and real estate markets. He asserted that he had no control over what happened with respect to the dishonored check. Surely, Petitioner could have waited until the check actually cleared, before writing checks.

⁵ For the purpose of granting or sanctioning a real estate license, “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. § 43-40-15(b)(1)(A). Furthermore, Georgia courts have recognized that state entities tasked with issuing or revoking licenses or permits may define conviction to include first offender treatment. See *Foss v. Probate Court of Chatham County*, 232 Ga. App. 612 (1998) (recognizing that a civil permit statute may lawfully define “conviction” to include first offender treatment); see also *Priest v. State*, 261 Ga. 651, 652 (1991) (recognizing that a guilty plea pursuant to the First Offender Act can be properly treated as a conviction, if the statute’s definition of “conviction” is sufficiently broad.)

10.

Petitioner's testimony and the facts of this case leave the undersigned with the lingering impression that when faced with another tough financial situation Petitioner would take risks and continue to operate using funds he does not have.

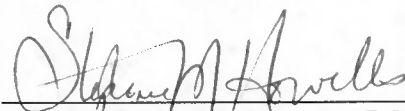
11.

While it is clear that Petitioner's witnesses held a great deal of esteem for him and would trust him with their money, homes, and families, this tribunal must be concerned with safeguarding the public's interest. At this time, the undersigned is not convinced that Petitioner would transact the business of a real estate licensee in a manner that that would safeguard the interest of the public.

Decision

For the above and foregoing reasons, Petitioner's application for a real estate salesperson's license was appropriately **DENIED**.

SO ORDERED this 26th day of October, 2012.

A handwritten signature in cursive script, reading "Stephanie M. Howells", written in black ink over a horizontal line.

STEPHANIE M. HOWELLS
Administrative Law Judge