

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

CHRYSTAL MARVIN,

Petitioner,

v.

**GEORGIA REAL ESTATE
COMMISSION,**

Respondent.

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**Docket No.
OSAH-GREC-DEN-1311105-88-KENNEDY**


GREC #09C0865



NOV 1 2012

INITIAL DECISION

INTRODUCTION


Kevin Westray, Legal Assistant

The hearing in this matter was held on October 18, 2012, pursuant to the Official Code of Georgia Annotated (O.C.G.A.) § 43-40-16(a) and O.C.G.A. § 50-13-13, before the Office of State Administrative Hearings. This hearing was held at Petitioner's request to determine whether the Commission should grant Petitioner's application for a real estate salesperson's license. Petitioner appeared and represented herself. Alison Spencer, Senior Assistant Attorney General with the Law Department, represented the Commission. For the reasons set forth below, Petitioner's application for a real estate salesperson's license is **GRANTED**.

FINDINGS OF FACT

1.

Petitioner is not currently licensed in any capacity with the Georgia Real Estate Commission. *Testimony of Bess Buckley, Investigator with the Georgia Real Estate Commission and Georgia Real Estate Appraiser's Board; Exhibit R-1.*

2.

On or about April 23, 2012, Petitioner submitted a Certification of Accuracy Statement/License Application (hereinafter "License Application") to the Commission seeking licensure as a real estate salesperson. *Exhibit R-2.*

Criminal History

3.

On her License Application, Petitioner answered "Yes" to the question that reads as follows: "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

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

4.

Although Petitioner answered "Yes," she has not, in fact, been convicted of, pled nolo contendere to, or been granted first offender treatment for a criminal offense other than a traffic violation, or for a traffic violation that involved driving under the influence of alcohol or drugs, homicide or feticide by vehicle, fleeing the scene of an accident, attempting to elude a police officer, or impersonating a law enforcement officer. *Testimony of Buckley; Testimony of Petitioner; Exhibit R-2*.

5.

Petitioner, in 1996, was charged with Forgery in the 1st Degree in violation of Georgia law 16-9-1. However, the charge was subsequently nolle prossed. Petitioner's only other charge involved a traffic violation. Petitioner did not answer incorrectly in an attempt to mislead or defraud Respondent. Rather, Petitioner knew she had a charge on her criminal history report and did not want to appear as if she was concealing or withholding information so she answered "yes" in case Respondent considered the nolle prossed outcome to be similar to receiving first offender treatment. However, a nolle prossed charge, in and of itself, is not grounds for denial of an application. *Testimony of Buckley; Testimony of Petitioner; Exhibits P-1, R-2*.

Disciplinary History

6.

Petitioner obtained an Associate's Degree in Nursing in 1979. She was subsequently licensed as a Registered Professional Nurse on April 4, 1980 with the Georgia Board of Nursing. *Testimony of Petitioner; Exhibit R-3*.

7.

Petitioner worked as a registered professional nurse at Phoebe Putney Hospital in 1995 and 1996. During that time, she began diverting for self-use Demerol and morphine, controlled substances within the meaning of the Georgia Controlled Substances Act. *Testimony of Petitioner; Exhibit R-4*.

8.

On or about September 26, 1997, the Georgia Board of Nursing entered into a Consent Order with Petitioner regarding the sanctioning of her nursing license as a result of her drug use and misappropriation of controlled substances. The Consent Order provides for a one year suspension that was withheld, and the imposition of a four-year probationary period. While on probation, Petitioner agreed, among other requirements, (1) to participate in a structured aftercare program for chemical dependence, (2) to submit quarterly reports evaluating her progress in rehabilitation and reporting the results of any alcohol/drug screens, (3) to not have access to controlled drug substances, and (4) to provide a copy of the Order to any employer. *Testimony of Buckley; Exhibit R-4*.

9.

Petitioner complied with the requirements of the Consent Agreement for the next 18 months. Then, on or about March 31, 1999, Petitioner's license to practice nursing in the State of Georgia was revoked solely based on her failure to renew her license. *Testimony of Buckley; Testimony of Petitioner; Exhibit R-5.*

10.

The following year, on February 17, 2000, Petitioner's license was reinstated. Petitioner and the Georgia Board of Nursing agreed (1) that Petitioner's license would remain under probation for 20 months from the date of reinstatement, (2) that she would continue her aftercare program, and (3) that she would continue to have restricted access to controlled substances during the probationary period. The year after that, on or about October 23, 2001, the Georgia Board of Nursing found that Petitioner had met all requirements of her probationary period. Her nursing license was then fully reinstated and considered to be "free and clear." *Testimony of Buckley; Testimony of Petitioner; Exhibit R-5.*

11.

On her April 23, 2012 real estate license application, Petitioner inadvertently answered "no" to the question that reads: "Have you ever been disciplined by the Georgia Real Estate Commission or any state or federal licensing agency or authority that regulates any profession?" *Testimony of Buckley; Testimony of Petitioner; Exhibit R-2.*

12.

Although Petitioner answered no, she nevertheless submitted to Respondent a copy of the February 17, 2000 Consent Agreement for Reinstatement that she executed with the Georgia Board of Nursing. The Consent Agreement for Reinstatement includes a statement that provides "On or about September 26, 1997, the Applicant entered into a Consent Order with the Board as a result of her use of cocaine and diversion of controlled substances from her workplace." Petitioner did not intentionally conceal or withhold this information from Respondent. Instead, she mistakenly answered "no" to the question on the License Application because she did not thoroughly read the question and thought it pertained only to prior sanctions that may have been imposed by Respondent. *Testimony of Buckley; Testimony of Petitioner; Exhibit R-2.*

Character

13.

In the late 1990s, Petitioner successfully completed a day treatment program for chemical dependency at Phoebe Putney Hospital. She later completed a 28-day program at Touchstone. Petitioner overcame her addiction, and has remained drug-free for over 12 years. She continues to attend AA meetings. Ms. Hamsely knew Petitioner when she struggled with a controlled substance abuse problem. Ms. Hamsley has not seen any signs in the past 12 years that Petitioner is either abusing controlled substances or is otherwise involved with the use of controlled substances. *Testimony of Lisa Hamsley; Testimony of Petitioner.*

14.

After Petitioner's nursing license was fully reinstated in 2001, Petitioner was hired by Palmyra Hospital in Albany, Georgia. She has worked full-time at the hospital as a registered nurse since December 17, 2001. She has had no recurrence of alcohol or drug use in the past 12 years. She also has had no interest or temptation to divert any drug to her self-use or for any other purpose. *Testimony of Lisa Hamsley; Testimony of Petitioner; Exhibit R-2.*

15.

Over the past 12 years, Petitioner has developed an excellent reputation for honesty, integrity, trustworthiness and competence within her community, both on a personal level and a professional level. Petitioner bears a good reputation among her family members and friends, her co-workers, her patients and the community in general. Lisa Hamsley who has known Petitioner for 33 years, worked with her in an emergency room setting, and even lived with her for approximately 2 years, has no concerns about entrusting Petitioner with her checkbook, and the lives of her family members. Ms. Hamsley believes that she could call on Petitioner at any time and that Petitioner would be there if she were needed. *Testimony Hamsley; Testimony of Thomas Crowley; Testimony of Petitioner.*

16.

Petitioner currently bears a good reputation as an individual who is capable of working within the real estate field in a manner that will safeguard the public. She is seen as someone who has the capability and mentality to abide by the rules and regulations that govern real estate work. *Testimony of Hamsley; Testimony of Crowley.*

17.

Petitioner also bears a good reputation within her religious community. Years ago Petitioner attended a 12 step class offered at her church. Petitioner has gained a good reputation within her church community despite her past transgressions. *Testimony of Petitioner.*

18.

Walden and Kirkland, a real estate firm located in Albany, Georgia, has extended Petitioner an offer to associate with their firm should she be granted a license. Thomas Crowley, an Associate Broker with Walden and Kirkland, has been in constant contact with Petitioner for approximately 18 months. During that time, he has found Petitioner to be honest and forthcoming in all of her dealings with him and in explaining her past transgressions. Mr. Crowley, aware that Petitioner was interested in working within the real estate industry, took time to talk with Petitioner about her interests and the real estate field in general. Mr. Crowley also took the time to inquire about Petitioner's reputation in the community prior to the firm extending an offer of work to her to ensure that the company would be comfortable having her work under the firm's name. Mr. Crowley discovered that Petitioner bears a good reputation for the requisite statutory characteristics, and that she also bears a good reputation for having a strong work ethic. He specifically discovered that Petitioner is "thought of very highly at her current job." *Testimony of Petitioner; Testimony of Crowley.*

19.

Petitioner currently has no outstanding criminal issues other than a speeding ticket. *Testimony of Petitioner.*

CONCLUSIONS OF LAW

1.

The Georgia Real Estate Commission has the "full power" to regulate the issuance of real estate salesperson's licenses. O.C.G.A. § 43-40-14.

2.

Real estate salesperson's licenses are "granted 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 and only after satisfactory proof of such qualifications has been presented to the Commission." O.C.G.A. § 43-40-15(a).

3.

In addition to requiring that an applicant bear a good reputation for the requisite statutory characteristics, the Georgia Real Estate Commission is authorized to deny the application of any applicant who has been previously sanctioned by a licensing agency or authority that regulates any profession. O.C.G.A. 43-40-15(e) and (h).

4.

In this matter, Petitioner bears the burden of proof to show, by a preponderance of the evidence, that her application should be granted. OSAH Rule 616-1-2-.07(1) and OSAH Rule 616-1-2-.21(4).

5.

As set forth in the Finding of Facts, above, Petitioner has submitted satisfactory proof that she currently bears 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. She has further shown that her past transgressions have been overcome, and that her License Application should be granted despite the prior sanction imposed by the Georgia Board of Nursing in 1997 against her nursing license.

DECISION

IT IS HEREBY ORDERED THAT Petitioner's application for a real estate salesperson's license is **GRANTED**.

This 1st day of November, 2012.



ANA KENNEDY
Administrative Law Judge