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OSAH
OCT 10 2013
Kevin Westray, Legal Assistant

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

CARLA T. CROWDER,	:	
Petitioner,	:	
	:	**DOCKET NO.**
v.	:	**OSAH-GREC-DEN-1406403-43-Miller**
	:	
GEORGIA REAL ESTATE COMMISSION,	:	
Respondent.	:	

INITIAL DECISION

I. Summary of Proceedings

The Petitioner, Carla T. Crowder, appeals a decision by the Georgia Real Estate Commission ("Commission") to deny her application for licensure as a real estate salesperson in Georgia. The evidentiary hearing took place on September 23, 2013, pursuant to Georgia Code Sections 43-40-16(a) and 50-13-13, before the undersigned administrative law judge of the Office of State Administrative Hearings. The Petitioner appeared *pro se*. The Commission was represented by Assistant Attorney General Alison L. Spencer.

After consideration of the evidence and the arguments of the parties, and for the reasons stated below, the Petitioner's application for licensure is **GRANTED**.

II. Findings of Fact

1.

The Petitioner is not currently licensed by the Commission in any capacity. (Statement of Matters Asserted ["Matters Asserted"] ¶ 1; Petitioner's Answer to Matters Asserted ["Answer"] ¶ 1; Testimony of Investigator Bess Buckley; Exhibit R-1.)

2.

The Petitioner has applied for licensure in Georgia as a real estate salesperson. On February 20, 2013, in conjunction with her licensure application, the Petitioner submitted a Background Clearance Application to the Commission. Subsequently, on March 22, 2013, the Petitioner submitted a Certification of Accuracy Statement/License Application ("Accuracy Statement Application") to the Commission. (Matters Asserted ¶ 2; Answer ¶ 2; Testimony of Petitioner and Inv. Buckley; Exhibits R-3, R-4.)

3.

On her Background Clearance Application, the Petitioner answered "yes" to the following question:

> Have you ever been disciplined by the Georgia Real Estate Commission and Appraisers Board or any other state or federal licensing agency or authority which regulates any profession?

The Petitioner also answered affirmatively to a similar question on her Accuracy Statement Application. (Matters Asserted ¶ 3; Answer ¶ 3; Testimony of Petitioner and Inv. Buckley; Exhibits R-3, R-4.)

4.

The Petitioner was required to answer affirmatively to the questions regarding prior professional disciplinary actions due to events that occurred in 2006 and 2007, when the Petitioner held a real estate appraiser classification issued by the Georgia Real Estate Appraisers Board ("Board"). The Petitioner was classified as a registered appraiser from June 2005 until August 2006, when she obtained a licensed appraiser classification. She remained classified as a licensed appraiser until December 2007, when the Board revoked her classification. (Testimony of Petitioner and Inv. Buckley; Exhibit R-2.)

5.

From December 22, 2006, through January 23, 2007, the Petitioner's appraiser classification was suspended because she was in default on a student loan debt. At the hearing, the Petitioner explained that during this period, she had attempted to work and go to school at the same time. Unfortunately, she did not earn enough money to make the necessary payments on her student loans. The Petitioner's appraiser classification was reinstated as of January 24, 2007, after she entered into a repayment agreement.[1] (Statement of Matters Asserted ¶¶ 4-5; Answer ¶¶ 4-5; Testimony of Petitioner and Inv. Buckley; Exhibits R-2, R-5.)

6.

The Petitioner did not renew her appraiser classification, which caused it to lapse on November 1, 2007. At that time, the Petitioner was unemployed and in her ninth month of pregnancy. She was experiencing significant financial hardship and was unable to pay either the license renewal fee or the fee to complete the required continuing education courses. Her son was born on November 3, 2007, just two days after she allowed her license to lapse. (Testimony of Petitioner; Exhibits P-10, R-2, R-5.)

7.

Sometime prior to November 1, 2007, the Board initiated an investigation of the Petitioner. The investigation stemmed from criminal charges of mortgage fraud that were then pending against the Petitioner's former supervising appraiser, Daniel Thompson. Because the Petitioner was listed as the appraiser on two appraisals that prosecutors suspected were involved in the alleged fraud, the Board opened an investigation of the Petitioner. However, the Petitioner did not receive notice of the investigation, and the Board abandoned the investigation when her appraiser classification lapsed. Further, the appraisals in question occurred when the Petitioner

[1] The Petitioner's student loans are currently in deferment. (Testimony of Petitioner; Exhibits P-7, P-8, P-9.)

was new to the appraiser profession and held only a registered classification, which required direct supervision of her appraisal work.[2] (Testimony of Ms. Buckley and Petitioner; Exhibits R-2, R-7.)

8.

After closing its investigation, the Board revoked the Petitioner's appraiser classification by Final Order dated December 12, 2007. The Final Order stated that the Petitioner's classification had been revoked, in accordance with O.C.G.A. § 43-39A-14(g), because the Petitioner had "allowed her real estate appraiser classification to lapse on November 1, 2007, after the Board initiated an investigation and prior to the Board's filing a Notice of Hearing . . . ." The Petitioner, as she was not aware of the mortgage fraud investigation, believed that the revocation was related to her student loan default. (Testimony of Petitioner and Inv. Buckley; Exhibits R-2, R-7.)

9.

The Petitioner did not request a hearing in response to the revocation order. Rather, in February 2008, she submitted a new Background Clearance Application to the Board. The Board responded by letter dated February 28, 2008, stating that due to the revocation of her appraiser classification, she would be ineligible for a new classification for at least five years. (Testimony of Petitioner; Exhibits R-14, R-15.)

10.

After receiving the Board's letter, the Petitioner duly waited five years from the date of the revocation order to seek licensure as a real estate salesperson.[3] In the interim, she started a

[2] Although the Petitioner was unable to recall with certainty the particular appraisals that gave rise to the investigation, she testified that she had never engaged in mortgage fraud. When Mr. Thompson was arrested, she found work with a new supervising appraiser. (Testimony of Petitioner.)

sewing business and worked as a waitress. She also completed two years of a chiropractic program at Life University before deciding that she did not want to become a chiropractor.[4] The Petitioner currently works at State Farm Insurance in a temporary position. However, she enjoyed her prior work as an appraiser and remains committed to pursuing a career in real estate. (Testimony of Petitioner.)

11.

Prior to applying for a real estate salesperson's license, the Petitioner completed a real estate training course taught by Judge Parker, a broker who has been licensed since 2001. Mr. Parker noted that the Petitioner exhibited an excellent work ethic by helping other students and always coming to class prepared. The Petitioner demonstrated integrity as a student, and she disclosed to Mr. Parker that her appraiser classification had been revoked. Mr. Parker has offered the Petitioner a salesperson position with his new agency, TAP Realty, if she obtains licensure. In that capacity, he would trust her to handle clients' earnest money and to keep the keys to his office. Mr. Parker believes, based on his experience in the profession and his knowledge of the Petitioner, that she is honest, trustworthy, and competent to handle real estate transactions. (Testimony of Judge Parker.)

12.

Sylvia Foster has known the Petitioner, who is a friend of Ms. Foster's daughter, for many years. In 2009, Ms. Foster hired the Petitioner to work as a waitress at a restaurant she co-owned with her son. Ms. Foster found the Petitioner to be a remarkably reliable and competent

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[3] Due to the affiliation between the Commission, which regulates real estate salespersons and brokers, and the Board, which regulates appraisers, the Petitioner believed that she was required to wait five years before submitting an application to either entity. She hopes to reapply for appraiser certification in the future. (Testimony of Petitioner.)

[4] The Petitioner enrolled in chiropractic school at the urging of her father, who is a currently practicing chiropractor. (Testimony of Petitioner and Charles Crowder.)

employee. The Petitioner arrived on time, worked hard, interacted pleasantly with customers and co-workers, and did whatever was asked of her. Ms. Foster trusted the Petitioner to operate the restaurant's cash register, a duty that Ms. Foster was otherwise hesitant to delegate. The Petitioner often talked about her desire to pursue a career in real estate, and Ms. Foster believes that the Petitioner will be a competent and trustworthy real estate salesperson. (Testimony of Sylvia Foster.)

13.

The Petitioner also presented the testimony of other character witnesses, including her mother, father, grandmother, uncle, and aunt. All of her family members noted her strong work ethic and good moral character, as well as her enthusiasm for the real estate profession. The Petitioner bears a good reputation in both her extended family and the wider community for honesty, trustworthiness, integrity, and competence. (Testimony of Valencia Crowder, Charles Crowder, Dolores Crowder, Trambus Rogers, and Juattee Rogers.)

14.

The Petitioner has a strong interest in commercial real estate and hopes to focus her work in that area if she is granted licensure as a real estate salesperson. Although she has struggled financially in recent years, she has maintained a positive attitude and has worked diligently to provide for her son. The Court found the Petitioner to be candid and sincere in her testimony. (Testimony of Petitioner and Valencia Crowder.)

15.

The Commission notified the Petitioner by letter dated March 13, 2013, that it had made a preliminary decision to deny issuance of a real estate salesperson's license to her. The Petitioner filed a timely request for hearing. (Exhibits R-8, R-9.)

III. Conclusions of Law

1.

As an applicant for licensure, the Petitioner bears the burden of proof in this matter. 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).

2.

The Georgia Real Estate Commission has the "full power" to issue and regulate real estate salespersons' licenses, pursuant to O.C.G.A. § 43-40-14.

3.

Real estate salespersons' 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 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).

4.

Pursuant to O.C.G.A. § 43-40-15(h), "[w]henever any occupational licensing body of this state or any other state has disciplined the license of an applicant for any license authorized by this chapter or whenever such an applicant has allowed a license to lapse or has surrendered a license to any occupational licensing body of this state or any other state after that body has initiated an investigation or a disciplinary process regarding such applicant's license, such discipline, lapsing, or surrender in itself <u>may</u> be a sufficient ground for refusal of a license." (Emphasis added.)

5.

In this case, the Petitioner's Georgia appraiser classification was revoked in December 2007, after she allowed her license to lapse while an investigation was pending. Although the Commission must consider the 2007 revocation order in determining whether she should be licensed as a real estate salesperson, the prior order is not an absolute bar to licensure. O.C.G.A. § 43-40-15(h). Moreover, the Petitioner was not aware that an investigation was pending when she allowed her certification to lapse, and more than five years have now passed since the order was entered. These factors diminish the significance of the 2007 order, especially when it is viewed in light of the evidence presented at the hearing regarding the Petitioner's current good reputation.

6.

The Petitioner carried her burden to prove, by a preponderance of the evidence, that she meets the qualifications for licensure as a real estate salesperson. At the hearing, multiple witnesses testified in support of her application, and each of these witnesses, including the Petitioner, was credible and worthy of belief. As detailed in the Findings of Fact, above, the Petitioner 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, as required by O.C.G.A. §§ 43-40-15(a).

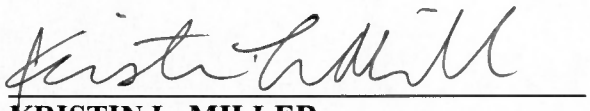
7.

Based upon the foregoing, the Court concludes that the Petitioner should be granted a real estate salesperson's license in Georgia.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Petitioner's application for licensure as a real estate salesperson is hereby **GRANTED**.

SO ORDERED, this 9th day of October, 2013.



KRISTIN L. MILLER
Administrative Law Judge