



FILED

AUG 8 2014

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

RASHEEM AMEER WASHINGTON,
Petitioner,

v.

GEORGIA REAL ESTATE COMMISSION,
Respondent.

Kevin Westray, Legal Assistant

Docket No.: OSAH-GREC-DEN-
1452650-33-Howells

INITIAL DECISION

Petitioner Rasheem Ameer Washington ("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 July 10, 2014. 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 should be GRANTED.

Findings of Fact

- 1. Petitioner is not currently licensed by the Commission in any capacity. (Exhibit R-1.)
2. On or about August 26, 2013, Petitioner submitted an application for a real estate salesperson's license. (Exhibit R-2.)
3. On the application, Petitioner answered "Yes" to the question: "[H]ave 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 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?" Petitioner also attached the following documents to his application: a GCIC report, certified copies of court records for two convictions, a statement concerning the circumstances surrounding his criminal history, and three letters from character references. (Exhibit R-2.)
4. On February 1, 2010, Petitioner pled guilty to the felony offense of Possession of More Than One Ounce of Marijuana in the Superior Court of Carroll County, Georgia. He was sentenced under the terms of the Conditional Discharge Statute to one year of probation, ordered to obey a midnight

curfew, and ordered to pay a fine in the amount of \$750.00 and fees totaling \$670.50. Petitioner completed the terms of his probation and was granted a Conditional Discharge without an adjudication of guilt on February 25, 2011. (Exhibits R-3, R-4; Testimony of Petitioner.)

5.

On September 18, 2012, Petitioner pleaded guilty to the misdemeanor offense of Violation of Georgia Controlled Substances Act (Possession of Marijuana – Less Than One Ounce) in the State Court of Cobb County, Georgia. He was sentenced under the terms of the Conditional Discharge Statute to 12 months of probation and ordered to pay a fine in the amount of \$200.00. Petitioner completed the terms of his probation and was granted a Conditional Discharge without an adjudication of guilt on October 24, 2012. (Exhibit R-5.)

6.

At the time of the two offenses, Petitioner was in college at the University of West Georgia. It was the first time he had been away from home. His mother attributes his illegal behavior to his youth and his association with the wrong people. (Testimony of Petitioner; Testimony of Veronica Washington.)

7.

Petitioner admits that at the time of the first offense, he was dealing marijuana to other college students. He did not need the money, as his mother was able to assist him with his expenses. In explaining his actions, Petitioner believes that he did not fully understand the seriousness of keeping his record clean. After the first arrest, he stopped dealing. (Testimony of Petitioner; Testimony of Veronica Washington.)

8.

The second offense occurred the day after Petitioner returned from his brother's funeral in Nebraska. Petitioner and his mother attribute the second incident to his emotional state after losing his brother, with whom he was close. Petitioner no longer uses marijuana and was able to quit without any difficulty. (Testimony of Petitioner; Testimony of Veronica Washington.)

9.

After the second arrest, Petitioner graduated from the University of West Georgia with a bachelor's degree in business administration. Shortly thereafter, he was accepted into AmeriCorps, which is a volunteer program administered by the federal government's Corporation for National and Community Service.¹ Through AmeriCorps Petitioner performed 1700 hours of community service, including repairing tribal monuments in Flagstaff, Arizona, preparing a summer camp for the arrival of young children and teaching and mentoring the children after their arrival in Granbury, Texas, and helping homeless and less fortunate individuals get back on their feet at an action center in Denver, Colorado.² (Testimony of Petitioner.)

¹ The volunteer work through AmeriCorps was not related to his criminal convictions. Rather, Petitioner applied for the position with AmeriCorps on his own accord.

² Petitioner noted that some of the individuals he saw at the action center used drugs. He saw the effect it had on their lives. That experience helped him to understand that it was not the path for him.

10.

After AmeriCorps, Petitioner obtained a job as a site supervisor with IST Management, which is a company that provides mail, copy and scanning services for other companies. He worked for IST Management approximately 8 months. Currently, Petitioner works for Home Depot in the paint department. His duties include assisting customers with home improvement projects. Within the next two to five years, Petitioner hopes to obtain a master's degree in finance or accounting. He does not expect that real estate will be his sole career. However, he has spoken with real estate broker Laura Watkins and she has expressed a willingness to allow Petitioner to associate his license with her firm, if he were to obtain one. (Testimony of Petitioner.)

11.

Lawrence Hunt was a real estate salesperson with RE/MAX Around Atlanta for twenty-two years. He retired from the business in November of last year. He has known Petitioner for approximately six years. Petitioner has discussed his interest in real estate with Mr. Hunt. While he was still working as a real estate salesperson, Mr. Hunt enlisted Petitioner to do some of the manual labor to prepare a property for sale. Mr. Hunt considers Petitioner to be persistent, motivated, and trustworthy. Mr. Hunt lives approximately one and a half miles from Petitioner. He has not heard anything negative about Petitioner in the community. Mr. Hunt is aware that Petitioner has had some mishaps with the law. Although he does not know the details of Petitioner's legal problems, he is confident that Petitioner will abide by the rules and regulations of the real estate profession. (Testimony of Lawrence Hunt; Ex. R-2.)

12.

Veronica Washington is a tax analyst with the Internal Revenue Service ("IRS"). She has been employed with the IRS for more than 30 years. She is also Petitioner's mother. She is aware of Petitioner's arrests and convictions. She attributes his legal troubles to his youth. Since that time, she has seen him mature. She realizes that her son is not perfect, but she believes that he has learned from his mistakes. He has not been in any other trouble with the law and she has no concerns that he will make those mistakes again. (Testimony of Veronica Washington.)

13.

Ms. Washington has purchased homes in the past and has observed Petitioner studying to obtain his real estate license. She believes he is competent to transact real estate business. She also believes that Petitioner is an honest and trustworthy person, who will have his clients' interests at heart. (Testimony of Veronica Washington.)

14.

Ms. Washington serves as a volunteer tax preparer. Petitioner has been a greeter at the volunteer tax preparation events. In that capacity, he has had access to taxpayers' financial information. Ms. Washington has heard no complaints regarding Petitioner's handling of that information. In addition to assisting her with the volunteer tax preparation, Petitioner has also participated in other volunteer activities such as helping to serve at the scholarship fundraiser dinner for AIM IRS and Hosea Feed the Hungary. Ms. Washington has tried to instill Petitioner with a sense of volunteerism. (Testimony of Veronica Washington.)

Conclusions of Law

1.

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

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).

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. Admittedly, 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. Accordingly, 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 has two prior convictions. The first conviction was for the felony offense of Possession of More Than One Ounce of Marijuana. O.C.G.A. § 16-13-30(j). The second conviction was for the misdemeanor offense of Violation of Georgia Controlled Substances Act (Possession of Marijuana – Less Than One Ounce), which was not a crime involving fraud or false pretenses or a crime of moral turpitude. O.C.G.A. § 16-13-2(b); *O’Neal v. Kammin*, 263 Ga. 218 (1993) (misdemeanor conviction for possession of less than one ounce of marijuana is not a crime of moral turpitude). Therefore, Petitioner has one conviction (i.e. the felony), which could be a sufficient ground to deny his license.

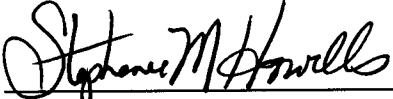
7.

Petitioner satisfied the terms and conditions of his felony conviction in February of 2011, more than three years ago. Other than the two convictions, Petitioner has had no other trouble with the law. Thus, there are no pending charges. Finally, Petitioner presented the testimony of a recently retired real estate salesperson and his mother. Both individuals believe that Petitioner is honest, trustworthy, and competent to transact real estate business. Since his convictions, Petitioner has spent a significant amount of time engaged in volunteer activities giving back to his and other communities. After completing his term with AmeriCorps, Petitioner has been gainfully employed; first with IST Management and now with Home Depot. At the hearing, Petitioner was forthright, humble, and deferential. For these reasons, this Tribunal finds that Petitioner has presented satisfactory proof that he 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.

Decision

For the above and foregoing reasons, Petitioner’s application for a real estate salesperson’s license should be **GRANTED**.

SO ORDERED, this 7th day of August, 2014.


STEPHANIE M. HOWELLS
Administrative Law Judge