

sanctions have been imposed against her license. (Testimony of Investigator Bess Buckley and Respondent; Exhibit P-1.)

2.

On August 22, 2007, in the Superior Court of Tift County, Georgia, the Respondent entered a guilty plea to one felony count of Possession of Cocaine and one felony count of Possession of MDMA. An adjudication of guilt was deferred, and she was sentenced to three years of probation, to run concurrently. In addition, she was ordered to pay a fine of \$500.00 and complete a recovery program at Bridges of Hope in Morven, Georgia. (Testimony of Inv. Buckley and Respondent; Exhibits P-2A, R-2.)

3.

The Respondent did not report her criminal charges or subsequent guilty plea to the Commission.² On October 1, 2007, shortly after her sentencing, the Respondent's real estate salesperson's license was placed on lapsed status.³ (Testimony of Inv. Buckley and Respondent.)

4.

The Respondent successfully completed the Bridges of Hope program and complied with the terms and conditions of her probation. On October 27, 2009, after serving approximately two years of her probationary term, she was discharged without an adjudication of guilt. The Order of Discharge provided, in part, that the Respondent "shall not be considered to have a criminal conviction." (Testimony of Inv. Buckley and Respondent; Exhibits P-2B, P-3.)

² To the extent the Respondent testified that she was unable to report her conviction because she was prohibited from making contact with the Commission after her arrest, such testimony was not credible. (Testimony of Respondent.)

³ The Respondent's license was on inactive status at the time of her arrest and sentencing. (Testimony of Inv. Buckley and Respondent; Exhibits P-1, P-2A.)

5.

On February 2, 2009, approximately eight months prior to her discharge from probation, the Respondent applied to the Commission to reinstate her license. On her reinstatement application, the Respondent answered "yes" to the following question:

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?

(Italics added.) A strict reading of this question would not require an affirmative answer, as the Respondent was not convicted of a crime, did not plead *nolo contendere*, and was not afforded first offender treatment. However, she answered "yes" because she erroneously believed that she had entered a *nolo contendere* plea. (Testimony of Inv. Buckley and Respondent; Exhibits P-3, P-4A.)

6.

When an applicant for licensure responds affirmatively to a criminal history question, the Commission customarily conducts an investigation to determine if the application should be denied or a sanction imposed against the applicant. For reasons unknown, the Commission did not follow this routine procedure in the Respondent's case. Instead, her application was processed and her license reinstated as if she had not reported a criminal history. (Testimony of Craig Coffey.)

7.

On September 27, 2013, the Respondent applied to renew her real estate salesperson's license. On her application, she answered "yes" to the criminal history question⁴ and indicated that the details of her offense had already been reported to the Commission. This time, the Commission staff member who reviewed her application noted her affirmative answer and referred the matter for an investigation. (Testimony of Inv. Buckley, Mr. Coffey, and Respondent; Exhibit P-4A.)

8.

The Commission, after recognizing its 2009 error and reviewing the investigative findings, has proposed that the Respondent's license should be sanctioned but not revoked. The Respondent opposes any sanctioning of her license. (Testimony of Inv. Buckley, Mr. Coffey, and Respondent.)

9.

At the hearing, the Respondent explained that her first drug use occurred when she was a teenager, and that she used drugs as a means of coping with trauma she had experienced. She stopped using in adulthood but relapsed in 2006, when she was in her forties. At that time, she had left the real estate profession and moved to Florida to help care for her father, who was terminally ill. She has not used drugs since July 24, 2007, the date of her arrest. The Respondent completed a six-month inpatient rehabilitation program at Bridges of Hope, where she became a leader in the program. She continues to return to Bridges of Hope to share her experiences and help others who are beginning their recovery. (Testimony of Respondent; Exhibits P-3, R-2.)

⁴ The criminal history question on the Respondent's 2013 renewal application was substantially similar, although not identical, to the criminal history question on her 2009 reinstatement application. (Exhibits P-3, P-4A.)

10.

The Respondent bears a good reputation for honesty, trustworthiness, integrity, and competence among her peers in the real estate profession and in the community at large. Oma Millwood and Mary Jane Savage are real estate brokers who have known the Respondent for approximately twenty-five years. Both Ms. Millwood and Ms. Savage have found the Respondent to be an excellent real estate salesperson. The Respondent has disclosed her criminal history to them, and they have no concerns regarding her fitness to work in the real estate profession. (Testimony of Oma Millwood and Mary Jane Savage.)

III. CONCLUSIONS OF LAW

1.

The Commission bears the burden of proof in this matter. 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.

When a contested case is referred to the Office of State Administrative Hearings, the administrative law judge assigned to the case has “all the powers of the referring agency” O.C.G.A. § 50-13-41(b). The evidentiary hearing is *de novo*, and the administrative law judge “shall make an independent determination on the basis of the competent evidence presented at the hearing.” Ga. Comp. R. & Regs. 616-1-2-.21(1).

3.

The Commission has the “full power” to issue and regulate real estate salespersons’ licenses, pursuant to O.C.G.A. § 43-40-14. 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.

The Commission is authorized to take disciplinary action against a licensee or applicant who has violated the statutes and/or rules governing the real estate profession.⁵ Pursuant to O.C.G.A § 43-40-25(a), the Commission is authorized to take any of the following actions:

- (1) Refuse to grant or renew a license to an applicant;
- (2) Administer a reprimand;
- (3) Suspend any license or approval for a definite period of time or for an indefinite period of time in connection with any condition that may be attached to the restoration of the license or approval;
- (4) Revoke any license or approval;
- (5) Revoke the license of a broker, qualifying broker, or associate broker and simultaneously issue such licensee a salesperson's license;
- (6) Impose on a licensee, applicant, approved school, or approved instructor monetary assessments in an amount necessary to reimburse the commission for the administrative, investigative, and legal costs and expenses incurred by the commission in conducting any proceeding authorized under this chapter or Chapter 13 of Title 50, the “Georgia Administrative Procedure Act”;
- (7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations with fines for multiple violations limited to \$5,000.00 in any one disciplinary proceeding or such other amount as the parties may agree;
- (8) Require completion of a course of study in real estate brokerage or instruction;
- (9) Require the filing of periodic reports by an independent accountant on a real estate broker's designated trust account; or

⁵ A licensee may be sanctioned upon any ground that would serve as the basis for the denial of an application. O.C.G.A. § 43-40-15(f).

- (10) Limit or restrict any license or approval as the commission deems necessary for the protection of the public.

O.C.G.A. § 43-40-25(a).

5.

Pursuant to O.C.G.A. § 43-40-15(i), a licensee who has been convicted of a felony offense “shall immediately notify the commission of that conviction.” Such notification, which must be in writing, “shall be given to the Commission within ten days of any conviction and shall include a copy of the indictment, accusation, and the conviction.” Ga. Comp. R. & Regs. 520-1-.05(5). In addition, “[t]he licensee’s license shall automatically be revoked 60 days after the licensee’s conviction unless the licensee makes a written request to the commission for a hearing during that 60 day period.” O.C.G.A. § 43-40-15(i). The term “conviction” is defined to include, *inter alia*, “a plea of guilty to a charge of a felony” O.C.G.A. § 43-40-15(b)(1)(A).

6.

The Commission proved, by a preponderance of the evidence and as detailed in the Findings of Fact, above, that the Respondent was convicted⁶ of a felony offense and failed to report her conviction to the Commission within ten days, as required by O.C.G.A. § 43-40-15(i) and Ga. Comp. R. & Regs. 520-1-.05(5). Further, by using illegal drugs, the Respondent demonstrated incompetency to act as a real estate licensee in such matter as to safeguard the interest of the public, in violation of O.C.G.A. § 43-40-25(b)(25).

⁶ Notwithstanding the potentially misleading nature of the Order of Discharge entered in the Respondent’s criminal case, her entry of a guilty plea under Georgia’s conditional discharge statute, O.C.G.A. § 16-13-2, is a “conviction” within the meaning of O.C.G.A. § 43-40-15(b)(1)(A).

7.

Under O.C.G.A. § 43-40-15(i), the Respondent's conviction should have resulted in the automatic revocation of her real estate salesperson's license, unless she had requested a hearing within sixty days. In this case, it is undisputed that the Respondent did not timely request a hearing. However, the Commission has elected to afford her a hearing at the present time, in light of the Commission's own error and the amount of time that has elapsed since the Respondent's conviction.

8.

After holding the hearing authorized by O.C.G.A. § 43-40-15(i), "the commission in its discretion may impose upon that licensee any sanction permitted by this chapter." Id. Here, the Commission seeks a reprimand of the Respondent and the imposition of a small fine. The Respondent argues, in contrast, that she should not receive any type of sanction because it was the Commission's error, and not her own, that caused the reinstatement of her license in 2009. However, the Respondent's conduct is not excused by the Commission's mistake. Moreover, the Respondent has already benefitted from the Commission's error, in that she was statutorily ineligible for licensure when her 2009 reinstatement application was erroneously granted. See O.C.G.A. § 43-40-15(b)(1.1) ("No person who has a conviction shall be eligible to become an applicant for a license . . . unless such person has successfully completed all terms and conditions of any sentence imposed for such conviction, provided that . . . if such individual has a single conviction, **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.") (emphasis added). Under these circumstances, the sanction proposed by the Commission is appropriate.

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent's real estate salesperson's license is hereby **SANCTIONED** as follows:

- (1) The Respondent shall pay a fine of \$500.00 to the Commission within thirty days of the entry of the Final Decision in this matter.
- (2) The Respondent shall receive a reprimand for her conduct.

SO ORDERED, this 23rd day of September, 2014.



KRISTIN L. MILLER
Administrative Law Judge