

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

ROBERT M. FLANAGIN,	:	
	:	
Petitioner,	:	Docket No.
	:	OSAH-GREC-DEN-1505486-121-Kennedy
v.	:	
	:	GREC #14C0845
GEORGIA REAL ESTATE COMMISSION,	:	
	:	
Respondent.	:	



FILED
(18-01)

DEC 16 2014

INITIAL DECISION

INTRODUCTION


Kevin Westray, Legal Assistant

The hearing in this matter was held on September 29, 2014, pursuant to the Official Code of Georgia Annotated (O.C.G.A.) §§ 43-40-16(a) and 50-13-13, before the Office of State Administrative Hearings. The hearing record closed on October 15, 2014 with Respondent's filing of the Supplemented Record.

This hearing was held at Petitioner's request to determine whether the Commission should grant Petitioner's application for a real estate salespersons license. John Bell, Esq. represented Petitioner. Special Assistant Attorney Generals Lauren Otto, Esq. and Sam Robertson, Esq. represented the Commission. For the reasons set forth below, Petitioner's application for a real estate salespersons license is **GRANTED**.

FINDINGS OF FACT

1.

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

2.

Petitioner was previously licensed by the Commission as a real estate salesperson (#S146374) in the State of Georgia. He was initially granted a real estate salespersons license in Georgia on March 31, 1988. Thirteen years later, on August 28, 2001, Petitioner's Georgia real estate salespersons license was revoked by the Commission. *Testimony of Buckley; Exhibit R-1.*

3.

On or about January 23, 2014, Petitioner submitted an application to the Commission seeking to once again be licensed as a real estate salesperson in the State of Georgia. On this application Petitioner submitted all required documentation and fully disclosed his entire criminal record. *Testimony of Buckley; Exhibit R-2.*

4.

On his 2014 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?" *Testimony of Buckley; Exhibit R-2.*

5.

Petitioner also answered "yes" 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?" *Exhibit R-2.*

Criminal and Disciplinary History

6.

On or about November 29, 1983, Petitioner entered a plea of nolo contendere to charges of driving under the influence (DUI) and too fast for conditions in the State Court of Richmond County, Georgia. He was sentenced to twelve months, to be served on probation. He was also ordered to pay a fine in the amount of \$400. *Exhibits R-1, R-6.*

7.

On or about May 12, 1985, Petitioner was again charged with the offense of driving under the influence (DUI) in Richmond County, Georgia, to which he entered a plea of guilty. Petitioner was ordered to pay a \$600 fine. He was also ordered to perform 80 hours of community service. *Exhibit R-1.*

8.

On or about February 7, 1992, Petitioner entered a plea of nolo contendere to a charge of driving under the influence (DUI) and to a charge of fleeing or attempting to elude a police officer in the Augusta Municipal Court. *Exhibit R-1.*

9.

On or about July 30, 1993, Petitioner entered a plea of guilty and was convicted in the State Court of Richmond County, Georgia of the criminal offense of driving with unlawful alcohol concentration. Petitioner was sentenced to 12 months confinement, with 4 days to be served in jail and the remainder of the sentence to be served on probation. He was also fined \$600. His sentence further provided that he could complete 80 hours of community service as an alternative to confinement. State v. Flanagan, Criminal Case No. 93RCST3719, State Court of Richmond County, Georgia. *Testimony of Buckley; Exhibit R-6.*

10.

On or about November 24, 1993, Petitioner entered a plea of guilty and was convicted in the State Court of Richmond County, Georgia of the criminal offenses of driving under the influence (DUI) and violation of duty upon striking a fixture. Petitioner was sentenced to 24 months confinement (12 months for each offense to run consecutively), with 8 days to be served in jail and the remainder of the sentence to be served on

probation. He was also fined \$1,000. His sentence further provided he could perform 30 days of community service as an alternative to confinement. State v. Flanagin, Criminal Case No. 93 RCST19243-47, State Court of Richmond County, Georgia. *Testimony of Buckley; Exhibit R-7.*

11.

On February 21, 1995, Petitioner's real estate license was sanctioned by the Commission based upon having caused to be submitted to the Commission a falsified *Application to Transfer a Salesperson's License* on September 30, 1993.¹ More specifically, Petitioner failed to disclose his 1983 Conviction, 1985 Conviction and 1992 Convictions on his application. In fact, on the application Petitioner answered "no" to the question that asked if he had ever been convicted of, pled nolo contendere to, or been granted first offender treatment upon being charged with any traffic violation that involves driving under the influence of alcohol or attempting to elude a police officer. Based on Petitioner's violations of the real estate licensing rules and regulations in causing to be submitted an application that contained a false statement of material fact, Petitioner's real estate salespersons license was reprimanded and Petitioner was fined \$2,000. IN THE MATTER OF: ROBERT M. FLANAGIN, GREC #950001, Before the Georgia Real Estate Commission. *Testimony of Buckley; Exhibit R-1.*

12.

On or about February 20, 1997, Petitioner entered a plea of guilty and was convicted in the State Court of Richmond County, Georgia, of the criminal offenses of reckless driving, running a stop sign, and violation of a habitual violator license. Petitioner was sentenced to 36 months confinement (12 months for each offense to run consecutively), with 20 days to be served in jail and the remainder of the sentence to be served on probation. He was also fined \$3,250. State v. Flanagin, Criminal Case No. 96RCST16079-38, State Court of Richmond County, Georgia. *Exhibit R-1.*

13.

On or about October 23, 1998,² Petitioner entered a plea of guilty and was convicted in the Superior Court of Richmond County, Georgia of the criminal offense of habitual violator, a felony, and the criminal offense of driving under the influence (DUI), a misdemeanor. Petitioner was sentenced to five years confinement, with 10 days to be served in jail and the remainder of the sentence to be served on probation. He was also fined \$1,500. State v. Flanagin, Criminal Case No. 98RCCR912, Superior Court of Richmond County, Georgia. *Exhibits R-1, R-5.*

14.

On August 28, 2001, Petitioner's real estate salespersons license was revoked by the Commission based upon his falsification of a *Salesperson or Community Association Manager Renewal Application*, which he submitted to the Commission on or about

¹ Petitioner stated at the hearing in this matter that he had entered into a rehabilitation program and was an in-patient for at least 18 days. He further states that he did not complete the application but, rather, asked someone else to complete it on his behalf. Although he felt he was not responsible for the falsification since he did not personally complete the application, he nevertheless chose to voluntarily accept a sanction for the violation of Georgia real estate rules and regulations. *Testimony of Petitioner.*

² Exhibit R-1 references the conviction date as October 23, 1998, while Exhibit R-5 references the conviction date as October 13, 1998.

August 31, 2000. According to the revocation order, Petitioner failed to disclose his 1997 and 1998 Convictions. IN THE MATTER OF: ROBERT M. FLANAGIN, GREC #010462, Before the Georgia Real Estate Commission. *Exhibit R-1*.

15.

A review of Petitioner's August 31, 2000 application reveals he carelessly wrote in a statement attached to his application that he had prior DUI convictions in 1993, 1994, 1996 and 1998. His statement failed to indicate that he had convictions in 1997 for Reckless Driving, Running a Stop Sign and Violation of a Habitual Violator License. Additionally, since Petitioner did not attach any documentation regarding his convictions, as required, he failed to timely notify the Commission that his 1998 conviction constituted a felony. For unknown reasons, Petitioner's statement indicated he had convictions in 1994 and 1996, even though he did not have convictions in those two particular years. *Testimony of Buckley; Exhibit R-1; Respondent's Supplemented Record, Exhibit A*.

16.

On October 10, 2001, Petitioner and the South Carolina Real Estate Commission entered into a Consent Order, whereby Petitioner admitted that his 1998 Convictions were grounds for disciplinary action pursuant to S.C. Code Ann. 40-1-110(h). Petitioner was reprimanded and fined \$500 per the terms of the Consent Order. IN THE MATTER OF: ROBERT M. FLANAGIN, File #193-01-RSC, Before the South Carolina Real Estate Commission. *Testimony of Buckley; Exhibit R-5*.

17.

On or about July 15, 2004, Petitioner pled guilty and was convicted in the State Court of Richmond County, Georgia, of the criminal offenses of driving with an unlawful alcohol concentration and expired tag. Petitioner was sentenced to 24 months of confinement (12 months for each offense to run consecutively), with 24 hours to be served in jail and the remainder of the sentence to be served on probation. He was also fined \$500, and ordered to perform 40 hours of community service. State v. Flanagan, Criminal Case No. 03RCST29606, State Court of Richmond County, Georgia. *Testimony of Buckley; Exhibit R-8*.

South Carolina Real Estate License & Current Reputation

18.

Petitioner holds a real estate salespersons license in South Carolina. He has continuously worked in South Carolina as a real estate agent since his last disciplinary action in 2001, and last conviction in 2004. *Testimony of Buckley; Testimony of Kathy Larrabee, Real Estate Broker*.

19.

Kathy Larrabee serves as Petitioner's South Carolina real estate broker. Petitioner works as an independent contractor for Ms. Larrabee's office. He attends weekly team meetings and has always appeared professional at the meetings. In the past four years, Ms. Larrabee has not observed any behavior that would cause her concern. Petitioner has had no negative complaints filed against him, and he has had no issues arise with his contract writing. *Testimony of Larrabee*.

20.

Ms. Larrabee is aware that Petitioner has had issues with alcohol in his past, but she is not fully aware of the extent of his criminal history, or his disciplinary history. Ms. Larrabee knows that Petitioner's Georgia real estate license was revoked, but thought the revocation was related to personal issues. In the four years Ms. Larrabee has worked with Petitioner in a professional capacity she has found him to be honest, trustworthy and competent. She has not observed any signs that would lead her to believe Petitioner has any current issues with alcohol. *Testimony of Larrabee.*

21.

Petitioner has assisted many clients in real estate transactions in South Carolina. For example, Jamie DeStefano purchased an oceanfront property in Hilton Head in 2008 with Petitioner's assistance. She was highly satisfied with Petitioner's services. He never gave her a reason to question his competency or his trustworthiness. *Testimony of Jamie DeStefano; Exhibit R-2.*

22.

Dr. DeStefano considers herself to be a good judge of character due, in part, to her past experience on the admissions committee for Georgia Regents University, College of Dental Medicine. In the 12 years that Dr. DeStefano has known Petitioner, she has found him to be friendly, kind, intelligent, skilled, and of high ethical standards. *Exhibit R-2.*

23.

Dr. DeStefano met Petitioner at a local gym. They worked out together three days per week. At the present time they communicate weekly via text. She considers Petitioner to be a good friend. She believes he has a "strong moral character even though in younger years he . . . made some bad choices." *Testimony of DeStefano; Exhibit R-2.*

24.

Dr. DeStefano is aware that Petitioner had a prior issue with alcohol abuse, but she believes he has "worked diligently to not have a problem anymore." She is aware that he has had prior DUI convictions, but did not know that one of his convictions was classified as a felony. She also is not fully aware of Petitioner's prior disciplinary history. *Testimony of DeStefano.*

25.

Dr. DeStefano has trusted Petitioner with her personal financial information and would do so again. She highly recommends him to hold a real estate license in Georgia. She knows that he is "constantly trying to learn and improve" and "would represent the Georgia Real Estate [industry] highly." *Testimony of DeStefano; Exhibit R-2.*

26.

Kevin O'Brien, President of Xytex Cryo International Limited,³ has used Petitioner's real estate services for both personal and business transactions. He, his wife, and his company have been highly satisfied with Petitioner's services in real estate transactions. Petitioner assisted Mr. O'Brien in purchasing two or three properties on behalf of Xytex

³ Xytex Cryo International Limited is a human tissue bank. Among the services provided by the company are processing stem cells, selling sperm and eggs, and storing cord blood. *Testimony of O'Brien.*

Cyro International Limited. Petitioner also helped Mr. O'Brien and his spouse purchase a retirement property three years ago in Beaufort, South Carolina. *Testimony of Kevin O'Brien; Exhibit R-2.*

27.

Mr. O'Brien has known Petitioner for 34 years. When Mr. O'Brien first met Petitioner, they were both employed in the banking industry. At that time, Petitioner was employed as an auditor with Bankers First. Subsequently, Petitioner got involved in real estate and obtained his real estate salespersons license. *Testimony of O'Brien.*

28.

Mr. O'Brien believes Petitioner "has always demonstrated excellent knowledge of the real estate market and has consistently demonstrated both integrity and strong commitment to his client's requirements." He strongly recommends Petitioner to hold a real estate license in Georgia "for both his knowledge and professionalism." *Testimony of O'Brien; Exhibit R-2.*

29.

Mr. O'Brien and Petitioner talk two to three times per month. Mr. O'Brien is aware that at one time Petitioner had an alcohol problem. He also knows that Petitioner has a prior felony, had his Georgia real estate salespersons license revoked, and failed to disclose his convictions to the Commission. However, he believes Petitioner has overcome his substance abuse issues and no longer has an alcohol problem. Mr. O'Brien believes that Petitioner's issues were due, in part, to a medical condition that is currently being managed by medication. He also believes Petitioner currently bears a good reputation in the community. Mr. O'Brien would feel comfortable using Petitioner's services again in the future, and in recommending him to others. *Testimony of O'Brien; Testimony of Petitioner.*

30.

Bryant English has also worked with Petitioner in a professional capacity. He has interacted with Petitioner intermittently over the past twenty years, and more closely in the last five years. Mr. English appreciated Petitioner's recent assistance on a complicated real estate transaction involving a foreclosure. He found that throughout the process Petitioner was honest and trustworthy. He is not aware of any complaints being filed against Petitioner, and he would readily use Petitioner's services again in the future if needed. In fact, he intends to ask Petitioner to assist him in listing a house for sale. *Testimony of Bryant English.*

31.

Mr. English is unaware of Petitioner's past issues with alcohol, his criminal history and his disciplinary history with the Georgia and South Carolina Real Estate Commissions. During the time that he has worked with Petitioner he has always found him to be sober and professional. He calls on Petitioner twice a year to help with real estate matters and plans to continue to do so. *Testimony of English.*

32.

In the years that Petitioner served as a real estate licensee in Georgia (1988-2001), and in the years that he has served as a real estate licensee in South Carolina (late 1980s to the

present), he has not had any public citizen, employer or broker file a complaint against him. Petitioner is 57 years old and feels a change in careers is no longer an option. He desires to have the opportunity to work in Georgia to expand his clientele and service area. He believes he can do so competently, in part, because he has overcome his past issues and because his medical condition has been properly managed by medication for the past seven years. *Testimony of Petitioner; Testimony of O'Brien.*

CONCLUSIONS OF LAW

1.

The Georgia Real Estate Commission has full power to issue and regulate salespersons licenses. O.C.G.A. § 43-40-14.

2.

Real Estate Salespersons 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.

This matter involves a license application. Accordingly, Petitioner bears the burden of proof to submit satisfactory proof that he currently bears the requisite statutory characteristics to be granted a real estate salespersons license. OSAH Rule 616-1-2-.07(1) and OSAH Rule 616-1-2-.21(4). Petitioner has met his burden.

4.

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. Several witnesses testified as to Petitioner’s reputation and competency. All but one witness was aware that Petitioner had a prior issue with alcohol, and that he has a criminal record. Every witness was able to speak directly to Petitioner’s competency and professionalism within the real estate business, and each spoke highly of their experiences with Petitioner serving as a real estate agent.

5.

Although Petitioner has been convicted of a felony, which can serve as grounds for the denial of a license, Petitioner has shown that he has overcome his issues with alcohol that led to his felony conviction. O.C.G.A. § 43-40-15(b)(2).

6.

Additionally, although Petitioner was previously sanctioned by the Commission for submitting a falsified application on August 31, 2000 by failing to disclose his 1997 convictions, it should not serve as grounds for denial of the current application when Petitioner has shown that his prior application was carelessly completed during a time when he was abusing alcohol. O.C.G.A. § 43-40-15(d). On the application submitted in 2000, Petitioner admitted to having convictions in 1993, 1994, 1996 and 1998, even though he did not have any convictions in 1994 or 1996, and he failed to disclose that he had convictions in 1997. Petitioner’s incomplete and misleading application in 2000 was

submitted at a time when he was in the midst of his alcohol issues, which he has since overcome. Petitioner's most recent application, and the one at issue in this matter, was completed properly and included all required documentation.

7.

Finally, Petitioner has also previously been sanctioned by the Commission and by another occupational licensing body, both of which are also sufficient grounds for refusal of a real estate salespersons license. O.C.G.A. 43-40-15(h), (m). However, the evidence shows that Petitioner has complied with real estate rules and regulations for almost fourteen years without incident, and that he is currently capable of performing the duties of a real estate licensee in a competent manner. Moreover, Petitioner has never been accused of violating a rule or regulation when working directly with the public. Rather, his violations related directly to the submission of applications to the Commission that contained a false statement of material fact. The falsification of the applications calls into question Petitioner's reputation, honesty, integrity, trustworthiness, and competency, but the evidence presented in this case shows that Petitioner has overcome his past issues with alcohol, and that he currently bears a good reputation for the requisite statutory characteristics to be granted a real estate salespersons license.

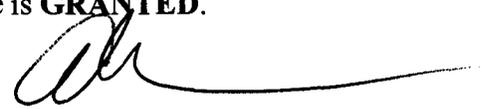
8.

In this matter, Petitioner has provided satisfactory proof that he currently bears a good reputation for honesty, trustworthiness, integrity and competence to transact the business of a real estate licensee in the State of Georgia in such manner as to safeguard the interests of the public.

DECISION

Petitioner's application for a real estate salespersons license is **GRANTED**.

This 15th day of December 2014.



ANA KENNEDY
Administrative Law Judge