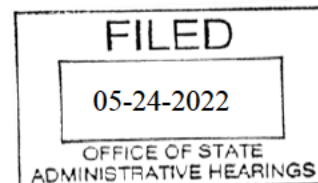


**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

IN RE J [REDACTED] H [REDACTED],
Petitioner.

*Petition for Direct Appeal to the Georgia
Office of State Administrative Hearings*

Docket No.: [REDACTED]
2225948-OSAH-DIRECT APPEAL-
PET_GREC-131-Boggs



ORDER DENYING PETITION FOR DIRECT APPEAL

I. INTRODUCTION

On May 6, 2022, Petitioner J [REDACTED] H [REDACTED] used an OSAH Form 2 to file a Petition for Direct Appeal with the Office of State Administrative Hearings (“OSAH”). On May 9, 2022, the undersigned Administrative Law Judge ordered the Georgia Real Estate Commission (“GREC”) to respond to the petition within ten (10) business days. On May 19, 2022, GREC filed a response in opposition to the petition and asked OSAH to dismiss it.

Upon review of both parties’ submissions, and for the reasons stated below, Mr. H [REDACTED]’s Petition for Direct Appeal is **DENIED**.

II. ANALYSIS

In the OSAH Form 2, Mr. H [REDACTED]n requested permission to file a hearing request directly with OSAH, pursuant to O.C.G.A. § 50-13-41(a)(1) and Ga. Comp. R. & Regs. 616-1-2-.03. He alleged he submitted a written request for a fair hearing to GREC on July 30, 2021, and that the agency had not transmitted the request to OSAH for a hearing. (Case File, OSAH Form 2.)

Specifically, Mr. H [REDACTED] asserted that GREC “would not approve” a license due to a physical altercation that occurred between himself and his then-wife in 2019. Attached to the OSAH Form 2 was a copy of Mr. H [REDACTED]’s criminal history from the Georgia Crime

Information Center, which showed an arrest for aggravated assault following an incident on April 28, 2019. Also attached to the OSAH Form 2 was a copy of a letter from GREC to Mr. H [REDACTED], dated April 20, 2022. The letter stated that, following receipt of Mr. H [REDACTED]'s Background Clearance Application, GREC determined he was "statutorily ineligible" to be an applicant for a salesperson's license pursuant to O.C.G.A. §§ 43-40-15(1.1) and (1.2). (Case File, OSAH Form 2.)

In opposing this Petition for Direct Appeal, GREC contended that on or about May 11, 2021, Mr. H [REDACTED] pled guilty to a felony count of aggravated assault (family violence) and was sentenced, pursuant to the First Offender's Act, to five years' probation and a \$1,500 fine. Although he fully disclosed this criminal action to GREC on April 9, 2022, GREC has argued that Mr. H [REDACTED], by statute, cannot be considered an "applicant for licensure" because he has not yet completed all terms of his sentence. As he is not an "applicant," he has no right to a hearing before OSAH. (Case File, Response and Motion to Dismiss Petition for Direct Appeal to the Georgia Office of State Administrative Hearings and Brief in Support Thereof.)

The undersigned agrees with GREC in this instance. Under the Administrative Procedure Act ("APA"), OSAH's jurisdiction is limited to "contested cases." O.C.G.A. §§ 50-13-2(2), 50-13-41(a)(1). A "contested case," in turn, is defined as "a proceeding, including . . . licensing, in which the legal rights, duties, or privileges of a party *are required by law* to be determined by an agency after an opportunity for hearing." O.C.G.A. § 50-13-2(2) (emphasis added). In other words, OSAH has the authority hold a hearing in a licensing dispute between Mr. H [REDACTED] and GREC, as long as the law gives Mr. H [REDACTED] a right to such a hearing.

With GREC, individuals who *first* qualify as applicants and are later denied a license do have a right to an OSAH hearing to appeal the denial. See O.C.G.A. § 43-40-16(a)¹; Ga. Comp.

¹ The provision is as follows: "If the commission, after an application *in proper form* has been filed with it, accompanied by the proper fee, shall refuse to issue a license to *such applicant*, the commission shall provide an

R. & Regs. 520-4-.01(1). However, the statutes controlling GREC licensing also specify that a person qualifies as an “applicant” only if they meet certain requirements. Specifically:

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, . . . and provided, further, 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.

O.C.G.A. § 43-40-15(b)(1.1); see also O.C.G.A. § 43-40-8(a)-(c). In this context, a “conviction” refers to a guilty plea on a felony charge, even if the sentence is issued under “first offender treatment.” O.C.G.A. § 43-40-15(b)(1)(A).

Hence, GREC has determined that Mr. H [REDACTED]’s 2019 conviction and ongoing probationary sentence mean he cannot qualify as an “applicant” for licensing. Accordingly, he cannot take advantage of the hearing rights that an “applicant” would have under O.C.G.A. § 43-40-16(a). Furthermore, the controlling law explicitly states that, to “qualify to become an applicant” for a salesperson’s license, an individual must comply fully with the criminal-conviction requirement in O.C.G.A. § 43-40-15(b), and that a failure to meet this requirement “shall be grounds for denial of license *without a hearing.*” O.C.G.A. § 43-40-8(b)(3.1) (emphasis added).²

opportunity for a hearing for such applicant in accordance with Chapter 13 of Title 50, the ‘Georgia Administrative Procedure Act.’” (Emphasis added.)

² Given the multiple affidavits and letters attached to his OSAH Form 2, Mr. H [REDACTED] may have been seeking a hearing so he could present evidence of his good character in mitigation of his criminal history. However, the law, as currently written, does not provide such an opportunity.

III. CONCLUSION

Because he does not have a right to a hearing “as required by law,” Mr. H [REDACTED] does not have a contested case that can be heard by an OSAH judge. See O.C.G.A. §§ 50-13-2(2), 50-13-41(a)(1). Accordingly, as OSAH does not have jurisdiction over this matter, the Petition for Direct Appeal is **DENIED**.

SO ORDERED, this 24th day of May, 2022.

Lisa Boggs

Lisa Boggs
Administrative Law Judge

