

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



04/21/2023

Devin Hamilton, Legal Assistant

SANTANNA LIVELY,
Petitioner,

v.

**GEORGIA REAL ESTATE
COMMISSION,**
Respondent.

Docket No.: 2317446
2317446-OSAH-GREC-DEN-222-Beaudrot

Agency Reference No.: 2317446

INITIAL DECISION

1. Introduction

This matter is an appeal by Petitioner Santanna Maria Lively (formerly known as Santanna Maria Richardson) from the decision of the Georgia Real Estate Commission (“Commission”) denying her application for a real estate salesperson’s license.

The hearing in this case was held before the undersigned on March 23, 2023, at the Georgia Office of State Administrative Hearings, 225 Peachtree Street, NE, Atlanta, Georgia 30303. Witnesses at the hearing consisted of: Petitioner; Jazmine McCrae, Compliance Applications Manager for Respondent; and Tabius Tate, friend of Petitioner. Alison S. Spencer, Esq. appeared for Respondent. Petitioner appeared *pro se*. Documentary evidence tendered by the parties was admitted without objection by stipulation.

After considering the evidence and the arguments of the parties, for the reasons discussed below, Respondent’s action in refusing to proceed with Petitioner’s application for a real estate salesperson license based on her background clearance application is **AFFIRMED**.

2. Findings of Fact

1. Petitioner is not currently licensed in any capacity with the Commission.

(Testimony of Ms. McRae; Exh.R-1.)

2. On or about April 21, 2022, Petitioner submitted a Real Estate Reciprocal Application for a real estate salesperson's license (the "Application") to the Commission seeking licensure as a real estate salesperson. (Testimony of Ms. McRae; Exh. R-2.)

3. In Section "D" of the Application, Petitioner answered "Yes" to the question which reads as follows: "In Georgia, or any other state, jurisdiction, or country, 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) driving under the influence (DUI) of alcohol or drugs?" (Testimony of Ms. McRae; Exh. R-2.)

4. On or about June 30, 2004, Petitioner pled guilty and was convicted in the 19th Judicial District of Dearborn, Michigan, of three charges of the misdemeanor criminal offense of Larceny Under \$200. Petitioner was sentenced to twenty-four months on probation and payment of bond in the amount of \$150.00. On January 31, 2006, Petitioner's cash bond was forfeited in connection with a violation of probation. Additionally, Petitioner was ordered to complete a work program in lieu of jail. City of Dearborn v. Santanna Maria Richardson, Case Numbers 03C246994, 03C246995, 03C246996, 19th Judicial Circuit, Dearborn, Michigan. (Testimony of Ms. McRae; Exh. R-3.)

5. On or about July 8, 2004, Petitioner pled guilty and was convicted in the 22nd Judicial Circuit of Washtenaw, Michigan, of two counts of the felony criminal offense of Forgery and one count of the felony criminal offense of Uttering and Publishing. Petitioner was sentenced to twenty-four months of probation and community service in lieu of costs and attorney's fees. On May 18, 2006, a probation violation hearing was held and Petitioner was ordered to show cause why she should not be found in violation of the Court's Order. Petitioner pled guilty to violation

probation, submitted payment and was discharged from probation. State of Michigan v. Santanna Richardson, Case Number 04-821-FH, 22nd Judicial Circuit, Washtenaw, Michigan. (Testimony of Ms. McRae; Exh.R-4)

6. On or about April 6, 2006, Petitioner pled guilty and was convicted in the 17th Judicial Circuit of Redford, Michigan, of the misdemeanor criminal offense of Operating a Motor Vehicle while Visibly Impaired. Petitioner was sentenced to one day in jail, twelve months' probation, payment of a fine in the amount of \$500.00, restitution in the amount of \$164.00 and costs and miscellaneous expenses in the amount of \$1,429.00. Additionally, Petitioner was ordered to refrain from the use of alcoholic beverages. On June 20, 2006, Petitioner was found to have violated her probation in that she failed to refrain from the use of all alcoholic beverages. (Testimony of Ms. McRae; Exh. 5)

7. Petitioner pled guilty to violating her probation and her probation was extended for four months. On August 15, 2006, Petitioner was found to have violated her probation in that she failed to refrain from the use of all alcoholic beverages and she failed to attend counseling or show proof of counseling as required. On September 26, 2006, Petitioner pled guilty to violating her probation and was ordered to attend outpatient counseling or go to jail. On March 5, 2007, Petitioner violated her probation. On March 9, 2007, Petitioner pled guilty to violating her probation and was ordered to take alcohol screens one time per week in order to continue on probation. On July 3, 2007, Petitioner violated her probation. On August 24, 2007, Petitioner pled guilty to violating her probation and was discharged from probation. Nonetheless, on November 11, 2007, Petitioner was found to have violated her probation. On January 22, 2008, Petitioner failed to appear for her fifth violation of probation hearing at which time a warrant was issued for Petitioner. Petitioner appeared and paid her outstanding balance due the Court and her case was

closed. Township of Redford v. Santanna Marie Richardson, Case Number 0689779, State of Michigan 17th Judicial District. (Testimony of Ms. McRae; Exh. R-5)

8. On or about October 21, 2014, Petitioner pled guilty and was convicted in the 24th Judicial District of Melvindale, Michigan, of the misdemeanor criminal offenses of Operating While Impaired by Liquor. Petitioner was sentenced to twelve months' probation, a fine of \$500.00, restitution in the amount of \$435.70 and miscellaneous costs of \$865.00. Additionally, Petitioner was sentenced to an outpatient treatment program and alcohol testing. On March 27, 2015, Petitioner violated the terms of her probation when she failed to appear for testing and subsequently tested positive for alcohol. On June 1, 2015, a probation violation hearing was held and Petitioner was given a supplemental sentence of 40 hours of community service in lieu of jail. On June 2, 2015, Petitioner was allowed to plead guilty to the probation violation and pay \$300.00 in lieu of community service. City of Melvindale v. Santanna Maria Richardson, Case Number 14M634963, 24th Judicial District, Melvindale, Michigan. (Testimony of Ms. McRae; Exh. R-6).

9. On or about July 7, 2015, Petitioner pled guilty and was convicted in the 6th Judicial Circuit of Oakland, Michigan, of the felony criminal offense of Operating While Impaired 3rd Offense. Petitioner was sentenced on August 21, 2015, to 30 days in jail, two years of probation, a fine in the amount of \$1,000.00, costs of \$500.00. 60 days of community service; participate in electronic monitoring program, no alcohol use allowed, and participation in outpatient treatment. On April 10, 2017, Petitioner was committed to jail for violation of her probation. On April 18, 2017, a Motion and Order for Discharge from Probation was entered and Petitioner's probation was terminated. State of Michigan v. Santanna Richardson, Case Number 15-253432-FH, 6th Judicial Circuit, Oakland County, Michigan. (Testimony of Ms. McRae; Exh. R-7.)

10. Based upon its review of the foregoing, the Commission concluded that the Petitioner does not bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a real estate salesperson in such a manner as to safeguard the interest of the public. (Testimony of Ms. McRae; Exh. R-8.)

11. In conducting its review, the Commission did not have the opportunity to speak with Petitioner. Nor did the Commission have the benefit of other live testimony or documentary evidence that was not submitted to it. Its decision is necessarily limited to the “paper” record it has before it, which includes written responses from the Petitioner. (Testimony of Ms. McRae.)

12. In her testimony, Petitioner frankly acknowledged her prior criminal convictions. Although she noted that in some particulars the criminal record was not fully informative as to the underlying facts of the convictions, she does not dispute the seriousness at the core of the convictions reflected in her record. Nor does she disagree with the Commission’s application of the “Five Year Rule” of O.C.G.A. § 43-40-15(b)(1.2)(A) to her prior application to obtain a Georgia real estate salesperson’s license. Finally, she frankly acknowledges her years of alcohol abuse. Petitioner argues forcefully, however, that these matters, while serious, are in the past and that she is a different person. (Testimony of Petitioner.)

13. Petitioner is 38 years old. She notes that at the time of her earlier offences, she was quite young. She points to her circumstances as a disadvantaged resident of Detroit as contributing to her youthful offenses. As to her incidents of driving under the influence and associated findings of parole violations, she acknowledges that she is a recovering alcoholic. She notes proudly that she has now maintained sobriety for a number of years. (Testimony of Petitioner)

14. At the hearing, Petitioner testified and submitted evidence that she has overcome her prior history and is now a thriving entrepreneur. Petitioner’s particulars in support of her

assertions are impressive. She operates a tax return preparation business with 9 agents. She is a motivational speaker working with those undergoing addiction recovery and other issues. She writes grants to assist low-income individuals to obtain funding to purchase homes. She conducts this latter activity through a tax-exempt entity “Finance My Future”. She holds a real estate individual broker license in Michigan and has held that license for more than five years. She operates a real estate business in Michigan under the names “Ritzy Realty, LLC” (the Ritzyrealtor.com) and “Ritzy Realty Group” with offices at 25900 Greenfield Suite 350, Oak Park Michigan 48237. She conducts a financial consulting business that has four employees located in Michigan which has an independent accountant on site. She pursues continuing professional education in several of these areas. (Testimony of Petitioner; Exhibits P-1 through P-9.)

15. As noted earlier, Petitioner grew up in Michigan, in the Detroit area, in disadvantaged circumstances. She graduated from Davenport University in 2007 with a degree in business administration. She worked to put herself through college. She has a daughter born in 2011 who is a dancer and runs track. Petitioner married in 2020 and it was at that time her name changed to Santanna Maria Lively from Santanna Maria Richardson. (Testimony of Petitioner.)

16. Petitioner testifies she spends approximately thirty percent of her time in Georgia currently and is seeking to expand her businesses into Georgia. She understands that if granted a real estate salesperson license, she will be required to associate with a licensed broker. She has not yet identified who that broker would be, although she has undertaken preliminary discussions. (Testimony of Petitioner.)

17. Mr. Tate is an Atlanta-based musician, music producer and television performer. He describes himself as a close friend of Petitioner, has known her for over 10 years, and has known her well for over 5 years. He met Petitioner after hearing her give a presentation as a

motivational speaker. He describes Petitioner as a “good human” whom he trusts completely, as though she were a “third sister,” someone who exhibits “phenomenal character” and who is honest, trustworthy and exhibits absolute integrity. (Testimony of Mr. Tate.)

18. Petitioner appeared *pro se* in this matter. Petitioner is not a lawyer and does not have legal training. The Court observed that Petitioner is articulate, well spoken, persuasive and highly intent upon obtaining her real estate salesperson license in Georgia as she is eager to pursue business opportunities in this state.

3. Conclusions of Law

1. Petitioner, as an applicant for licensure, 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. O.C.G.A. § 43-40-14 provides the Commission with “full power” to regulate the issuance of licenses. In approving licenses, O.C.G.A. § 43-40-15(a) requires licenses are to 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.

3. O.C.G.A. § 43-40-15(b)(1.2)(A) provides that a person who has a conviction in a court of competent jurisdiction in this state or another state is only eligible to become an applicant for licensure if such person has satisfied all terms and conditions of any conviction such person may have had before making application for licensure or approval, provided that...if such individual has been convicted of 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.

4. O.C.G.A. § 43-40-15(b)(1.2)(C) provides that a person who has a conviction in a court of competent jurisdiction of this state or is eligible to become an applicant for licensure only if 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(e) provides that the grounds for suspension or revocation of a license are also grounds for refusal to grant a license.

5. There is no question that Petitioner's prior criminal record is *prima facie* basis for the Commission's decision in this matter. The issue for decision is whether Petitioner has met her burden and established by a preponderance of the evidence at the hearing that she 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.

6. Although Petitioner did an impressive job presenting her case and showing the significant progress she has made as an individual and business person, it is not surprising that as a lay person she missed a key point in her presentation of evidence. The issue in this case is not whether Petitioner is honest, trustworthy, has integrity and is competent to transact business. On the record at the hearing, Petitioner has made a strong and persuasive case that she indeed has those characteristics. What is missing is the evidence as to whether she 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.

7. The burden is on Petitioner to show by a preponderance of the evidence that she has the requisite reputation. What is missing from the record in this matter is testimony of persons

who have worked with Petitioner professionally and who can affirm her good *reputation* for honesty, trustworthiness, integrity, and competence. While Mr. Tate's testimony on this score is helpful, it did not get into Petitioner's professional reputation as much as his personal assessment of her character. While evidence of Petitioner's character is extremely important, it does not address the reputational issue in the way that the statutory language requires. And while it is possible to surmise from her accomplishments that Petitioner now enjoys the requisite good reputation, that is an inference from the evidence that was introduced, and not evidence itself.

8. It should be noted also that this evidence as to good reputation must be submitted to the Commission. The Commission did not have the benefit of this evidence.

9. Petitioner's entrepreneurship and drive to succeed are impressive. One is left with the sense that Petitioner does not understand why she must jump through all these hoops yet again. As she points out, she has done so repeatedly and successfully in Michigan. The Court can understand how from the Petitioner's perspective, her prior accomplishments, and in particular her licensure in Michigan, should carry the day with the Commission. But the Court also understands that the Commission is required to make an independent determination on an independently developed record.

10. The Commission is appropriately careful in its review of applications. The Court is optimistic that if Petitioner reapplies for a salesperson license and provides the requisite reputational evidence from professional and business associates as to her honesty, trustworthiness, integrity, and competence along with the information and documentation presented in the hearing on this matter, the Commission may well reach a different conclusion. But in the absence of specific evidence as to Petitioner's good reputation, the Court concludes that Petitioner has not proved by a preponderance of the evidence that she enjoys a good reputation as to her honesty,

trustworthiness, integrity, and competence.

4. Decision

Based upon the record as developed at the hearing in this matter, the decision of the Commission must be **AFFIRMED**.

SO ORDERED, this 21st day of April, 2023.



CHARLES R. BEAUDROT, JR.
Administrative Law Judge

