

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GARY L. STOBBE,)
)
 Petitioner,)
)
 vs.) CASE NO. 81-1924
)
 DEPARTMENT OF PROFESSIONAL)
 REGULATION, BOARD OF REAL)
 ESTATE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted in this matter on October 29, 1981, in CLEARWATER, Florida.

APPEARANCES

For Petitioner: Petitioner appeared on his own behalf.

For Respondent: Linda A. Lawson
Tallahassee, Florida

ISSUE

The Petitioner filed an application for licensure as a real estate salesman with the Board of Real Estate. The Board denied the application and advised Petitioner of his right to request a hearing. Petitioner requested a hearing, and the matter was filed with the office of the Division of Administrative Hearings on August 5, 1981. The final hearing was scheduled to be conducted as set out above by notice dated September 11, 1981.

At the hearing, the Petitioner testified as a witness on his own behalf. Respondent's Composite Exhibit 1 was received into evidence. Respondent has submitted a posthearing legal memorandum which includes proposed findings of fact and conclusions of law. The proposed findings and conclusions have been adopted only to the extent that they are expressly incorporated into the Findings of Fact and Conclusions of Law which follow. They have been otherwise rejected as either not supported by the evidence or irrelevant to the issues.

The issue in this proceeding is whether the Petitioner's application for licensure as a real estate salesman should be denied.

FINDINGS OF FACT

1. Petitioner is 34 years old, and resides in Clearwater, Florida.

2. During August, 1977, a five-count indictment was filed against the Petitioner and two other individuals in the United States District Court for the District of Arizona. The indictment alleged various charges of manufacturing counterfeit obligations, concealing counterfeit obligations, sale of counterfeit obligations, and conspiracy. On December 8, 1977, Petitioner plead guilty to Count I of the indictment. Count I of the indictment charged as follows:

That beginning on or about October 1974 and continuing until March 1977 in the District of Arizona . . . the defendants, wilfully [sic] and knowingly did combine, conspire, confederate, and agree together with each other, and with diverse other persons to the grand jury unknown, to commit the following offense against the United States: to counterfeit obligations of the United States, that is, to falsely make, forge, and counterfeit Twenty Dollar (\$20.00) Federal Reserve Notes, with the intent to defraud, in violation of Title 18, United States Code, Section 471.

In furtherance of the conspiracy and to effect the objects thereof, the defendants performed the following overt act:

During January or February 1975, [one of the other defendants purchased a Davidson Duplicator Model 221 Offset Printing Press, Serial Number 4858, in Phoenix, Arizona.

All in violation of Title 18, United States Code, Section 371.

The Court adjudicated Petitioner guilty of the charges alleged in Count 1 of the indictment, and sentenced him to serve two years in prison, with execution of the sentence suspended with the exception of the first five months, to be followed by two years' probation. Petitioner was also fined \$1,000.

3. Petitioner served that portion of his sentence which was not suspended, with time off for good behavior, paid the fine, and has completed the period of his probation. Petitioner's civil rights have been restored, except the right to carry firearms.

4. Prior to the time that he was indicted and sentenced, the Petitioner was employed in a responsible position in Michigan. After he served his sentence, his employer rehired him. Petitioner moved to Florida during 1979, and operated his own business, a restaurant, in Clearwater, from October, 1979, until July, 1981. At that time, he sold his business because he wished to return to sales work. Petitioner is seeking a real estate license so that he can actively operate as a real estate salesman specializing in sales of commercial properties.

5. Petitioner testified that he considers himself completely rehabilitated. No competent evidence was offered, however, as to the Petitioner's character, and his reputation for honesty, truthfulness, trustworthiness, and for fair dealing.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this proceeding. Sections 120.57(1), 120.60, Florida Statutes.

7. Section 475.25(1)(f) , Florida Statutes, provides in pertinent part:

The board may deny an application for licensure . . . if it finds that the applicant has:

(f) Been found guilty, regardless of whether adjudication was withheld, of a crime against the laws of this state or any other state or of the United States, which crime directly relates to the activities of a licensed broker or salesman or involves moral turpitude or fraudulent or dishonest dealing. . . .

Conspiracy to counterfeit Federal Reserve Notes is a crime involving moral turpitude and fraudulent and dishonest dealing. Section 475.17(1), Florida Statutes, provides in pertinent part:

An applicant for licensure . . . shall be . . . honest, truthful, trustworthy, and of good character and shall have a reputation of fair dealing. . . .[i]f the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for revoking or suspending his license under this chapter had the applicant then been registered, the applicant shall be deemed not to be qualified, unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it shall appear to the board that the interest of the public and investors will not likely be endangered by the granting of registration.

Petitioner's conviction would serve as good grounds for revoking or suspending his license to practice as a real estate salesman in Florida had he been registered. The Petitioner was adjudicated approximately four years ago, and the offenses occurred approximately two years prior to that. He has served his sentence and the period of his probation; his civil rights have been restored. It appears that there has been adequate lapse of time; however, there is no evidence, other than the Petitioner's own testimony, respecting his subsequent good conduct and reputation. Petitioner is not a competent witness as to his own reputation.

8. Petitioner has the burden of establishing his entitlement to licensure as a real estate salesman. The evidence offered in this proceeding is inadequate to establish that he is entitled to licensure.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is, hereby,

RECOMMENDED:

That a final order be entered by the Board of Real Estate denying the application of Gary L. Stobbe for licensure as a real estate salesman.

RECOMMENDED this 1st day of December, 1981, in Tallahassee, Florida.

G. STEVEN PFEIFFER
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of December, 1981.

COPIES FURNISHED:

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