

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOYCE CAROL LILLQUIST,)
)
 Petitioner,)
)
 vs.) CASE NO. 86-2902
)
 DEPARTMENT OF PROFESSIONAL)
 REGULATION, FLORIDA REAL)
 ESTATE COMMISSION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Joyce Carol Lillquist, of Seminole, pro se, for Petitioner.

Lawrence S. Gendzier, Esquire, of Orlando, for Respondent.

The issue in this case is whether Petitioner, Joyce Carol Lillquist, has proved herself to be "honest, truthful, trustworthy, and of good character and [to have] a good reputation for fair dealings," as required for licensure as a real estate salesman under Section 475.17(1)(a), Florida Statutes (1985).

The final hearing on the issue in this case was held in St. Petersburg on November 26, 1986. The parties asked for and received until December 18, 1986, in which to file proposed recommended orders.

FINDINGS OF FACT

1. Petitioner, Joyce Carol Lillquist, is a 38 year old mother of a 14-year old son. Approximately ten years ago, her ex-husband abandoned her and her son, leaving her to pay the family bills.

2. In 1978, Petitioner moved to Illinois and took a job as a loan officer in an Illinois bank.

3. In 1980, Petitioner's mother became ill with cancer. In order to finance her return to Florida to be with her mother and father, Petitioner took an improper \$7500 loan without required authorization.

4. When she returned to Florida, Petitioner took a job as a loan officer for the Barnett Bank. She took an improper \$5000 loan from the Barnett Bank to pay off the remaining debt of the Illinois bank loan.

5. While coping with her mother's illness, which eventually terminated in death, Petitioner never paid off the Barnett Bank loan. She just kept renewing the loan when it came due.

6. When the Barnett Bank became aware of the improper loan, the Petitioner turned herself in to the authorities.

7. Principal and interest owed to Barnett Bank at the time Petitioner turned herself in amounted to \$12,828.78.

8. Petitioner was charged with and pled guilty to the charge of embezzlement in 1984, in Case No. 84-72-CRT-10, in the U.S. District Court, Middle District of Florida.

9. Petitioner was convicted of the above charge and sentenced to 4 years of imprisonment (3.5 of which were suspended), and 3 years of probation.

10. No restitution was or has been made to Barnett Bank. At the time of Petitioner's conviction, her financial condition was such that restitution was not made a condition of her probation. Petitioner now has the ability to begin making some restitution, but she has gotten the impression that the Barnett Bank is not seeking restitution.

11. Petitioner was not prosecuted for the Illinois loan.

12. Petitioner's probation period began August 3, 1984, and is due to terminate August 3, 1987.

13. Petitioner submitted an application for licensure as a real estate salesman on or about October 2, 1985. The application disclosed Petitioner's embezzlement conviction.

14. Petitioner has held responsible jobs since her conviction and considers herself of good moral character. She swears that she has not committed dishonest acts other than the two mentioned above and that she will not repeat her past offenses. However, no one else testified to Petitioner's present character and fitness.

CONCLUSIONS OF LAW

15. Section 475.17(1)(a), Florida Statutes (1985), provides in pertinent part:

An applicant for licensure who is a natural person shall be ... honest, truthful, trustworthy, and of good character and shall have a good reputation for 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 appears to the commission that the interest of the public and investors will not likely be endangered by the granting of registration.

16. In addition, Section 475.29(1)(f), Florida Statutes (1985), provides that the Commission may deny an application if it finds that the applicant:

(f) Has been convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the activities of a licensed broker or salesman or involves moral turpitude or fraudulent or dishonest dealing. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

17. Section 475.25(1) also authorizes the Commission to suspend or revoke a license if the Commission finds that a licensee has done any of the acts set forth in its subparagraphs.

18. There is no question but that Petitioner is guilty of conduct that would have been grounds for suspension or revocation under Section 475.25(1)(f) had she been a licensee. Under Section 475.17(1)(a), the issue becomes:

(1) Whether "because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient ... the interest of the public and investors will not likely be endangered" if Petitioner's application is granted; and

(2) Whether Petitioner is "honest, truthful, trustworthy, and of good character and shall have a good reputation for fair dealing".

19. The burden of proof is on Petitioner. *J.W.C. Company, Inc. v. Department of Transportation*, 396 So.2d 778 (Fla. 1st DCA 1981). A real estate salesman places himself in a position of trust and in a position to be tempted by funds and property placed in trust in his hands by his clients. It is therefore important, particularly where an individual has in the relatively recent past succumbed to a similar temptation, to hold the individual to the legal burden of proof.

20. Under the facts of this case, Petitioner did not meet her burden of proof. There was no testimony from her probation officer or anyone else to corroborate her testimony or add assurance to her promises. In addition, only two years have elapsed since her conviction, and she remains on probation until August, 1987. It is not found or concluded that Petitioner is not honest, truthful, trustworthy, of good character and of good reputation for fair dealing, or that it is likely that the interest of the public and investors will be endangered if Petitioner's application is granted. It is simply concluded that Petitioner has not presented sufficient proof to establish that the contrary is true at this time. It can be hoped that, with passage of time and with sufficient evidence, Petitioner will be able to prove, on another occasion, that her sworn testimony and promises are true and the she is indeed worthy of licensure.

RECOMMENDATION

Based upon the foregoing Findings Of Fact and Conclusions Of Law, it is RECOMMENDED that the Florida Real Estate Commission enter a final order DENYING the application of Petitioner, Joyce Carol Lillquist, for licensure as a real estate salesman.

RECOMMENDED this 14th day of January, 1987, in Tallahassee, Leon County, Florida.

J. LAWRENCE JOHNSTON
Hearing Officer
Division of Administrative Hearings
The Oakland Building
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of January, 1987.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 86-2902

All of Respondent's proposed findings of fact are accepted and are incorporated in the Findings Of Fact along with additional findings. Petitioner did not submit proposed findings of fact.

There rulings comply with Section 120.59(2), Florida Statutes (1985).

COPIES FURNISHED:

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