

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

STEPHEN J. MATALA, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO. 93-5603  
 )  
 DEPARTMENT OF BANKING AND FINANCE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings by its duly designated Hearing Officer, K. N. Ayers, held a formal hearing in the above-styled case on January 14, 1994, at Tampa, Florida.

APPEARANCES

For Petitioner: Stephen J. Matala, pro se  
32414 Marchmont Circle  
Dade City, Florida 33525

For Respondent: Lisa L. Elwell, Esquire  
Department of Banking and Finance  
1313 Tampa Street, Suite 615  
Tampa, Florida 33602-3394

STATEMENT OF THE ISSUES

Whether Respondent was wrongfully denied licensure as a mortgage broker.

PRELIMINARY STATEMENT

By letter dated September 13, 1993, Stephen J. Matala, Petitioner, contests the decision of the Department of Banking and Finance, Respondent, that he is disqualified for licensure by reason of conviction of a crime involving moral turpitude. Petitioner requested a formal hearing, the matter was referred to the Division of Administrative Hearings, and these proceedings followed.

At the hearing, Respondent presented Petitioner's Application for Licensure as a Mortgage Broker as Exhibit 1, a rap sheet on Petitioner as Exhibit 2, composite court records in cases involving the State of Florida v. Stephen Matala, in the Pasco County Circuit Court, as Exhibit 3, and Respondent's denial letter as Exhibit 4. Exhibit 3 consists of six convictions of grand theft and burglary on August 1, 1980, and 1984 and one count of attempted grand theft on October 26, 1990. Petitioner testified in his own behalf and submitted a letter to him from Respondent dated June 30, 1993, as Exhibit 5.

Respondent's proposed findings are accepted. Those proposed findings not included herein are deemed unnecessary to the conclusions reached. Having fully considered all evidence presented, I submit the following.

#### FINDINGS OF FACT

1. Exhibit 2 evidences some 13 arrests of Petitioner, most of which are for the offense of larceny. Although this document is hearsay, Petitioner readily acknowledged that in 1980 and 1984 he was a drug addict and supported his habit by stealing. Exhibit 3 consists of 6 convictions of grand theft and burglary on August 1, 1980, another count in 1984 and one count of attempted grand theft on October 26, 1990. The period between 1980 and 1984 was a period in Petitioner's life immediately following his discharge from the armed forces.

2. On October 26, 1990, Petitioner was adjudicated guilty of grand theft following a plea of nolo contendere to the charge of obtaining or using or attempting to obtain or use the property of another with intent to deprive the owner of the use thereof of personal property of the value of \$300 or more.

3. Petitioner testified that in 1990 his 19 year old stepson, who was preparing to enter college, while driving Petitioner's pickup truck, stopped near a parked vehicle and attempted to steal personal property therefrom, but fled when someone observed him. The license number of the pickup was traced to Petitioner. The stepson confessed his actions to Petitioner and when the police arrived, Petitioner, who already had a criminal record that could hardly be blemished further, told the police that he was the driver of the pickup. He was charged with the offense of attempted grand larceny, pled nolo contendere, was adjudicated guilty and was sentenced to 5 years in prison of which he served some 7 months. The stepson graduated from college and is now married, gainfully employed, and raising a family.

4. When submitting his application for licensure, Petitioner further testified that he researched the definition of moral turpitude, spoke to his lawyer and other people regarding his conviction of grand larceny, and was told that the offense did not necessarily constitute an offense involving moral turpitude. Accordingly, Petitioner assumed that he had not been convicted of an offense involving moral turpitude and marked item 5 on his application "No" which asked if he had ever been found guilty of a crime involving fraud, dishonest dealing, or any other act of moral turpitude.

5. Petitioner contends that he told Respondent's employees, with whom he discussed his application for licensure, of his criminal record and was told this was not disqualifying. Accordingly, he spent the money to obtain the required mortgage broker education certificate and to take and pass the examination for mortgage broker license, only to be told after these efforts that he could not qualify for licensure.

#### CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

7. Section 494.041, Florida Statutes, provides in pertinent part:

(1) Whenever the Department finds a person in violation of an act specified in subsection (2), it may enter an order imposing one or more of the following penalties against the person:

\* \* \*

(f) Denial of a license or registration.

(2) Each of the following acts constitute a ground for which the disciplinary action specified in subsection (1) may be taken:

(a) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which involves fraud, dishonest dealing, or any other act of moral turpitude.

\* \* \*

(c) A material misstatement of fact on an initial or renewal application.

8. Although Petitioner contends that he researched the definition of moral turpitude, it is evident his research was not complete. In *Carp v. Florida Real Estate Commission*, 211 So.2d 240 (Fla. 3rd DCA 1968), the court held a real estate broker who was convicted of bookmaking was guilty of a crime involving moral turpitude for which his license could be revoked. In *Winkleman v. Department of Banking and Finance*, 537 So.2d 951 (Fla. 3rd DCA 1989), it was held that willfully assisting in the preparation of false income tax returns is an offense involving moral turpitude and conviction thereof supports revocation of license of an "associated person." In *Ciringlario v. Florida Police Standards Commission*, 409 So.2d 80 (Fla. 1st DCA 1982), it was held that a misdemeanor conviction of embezzlement involve moral turpitude.

9. As a general rule it may be said that almost all crimes involving fraud, larceny, or dishonest dealing involve moral turpitude.

10. A further factor supporting the denial of Petitioner's license is the inaccurate statement on his application that he has not been of a crime involving fraud, dishonest dealing, or any other act of moral turpitude.

11. In these proceedings Petitioner presented no evidence of good character other than his own self-serving testimony. To overcome the disqualification for licensure resulting from a conviction of grand larceny, an applicant must present evidence that despite the conviction, sufficient time has elapsed to demonstrate that he has turned his life around and that at the present time he can conduct the business of a mortgage broker with safety to those with whom he deals.

12. Petitioner failed to present any witness to testify to his present good character and that, if issued a license as a mortgage broker, he could safely be trusted to carry out the duties of a mortgage broker, with clients served by him.

13. From the foregoing it is concluded that Petitioner has failed to prove that he is qualified for licensure as a mortgage broker.

RECOMMENDATION

It is RECOMMENDED that a Final Order be issued denying the application of Stephen J. Matala for a licensure as a mortgage broker.

DONE AND ENTERED this 27th day of January 1994 in Tallahassee, Leon County, Florida.

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K. N. AYERS  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of January 1994.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this recommended order. All agencies allow each party at least ten days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.