

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FRED STORCH, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 98-3794  
 )  
 DEPARTMENT OF BUSINESS AND )  
 PROFESSIONAL REGULATION, COMMUNITY )  
 ASSOCIATION MANAGERS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on February 10, 1999, at West Palm Beach, Florida, before Susan B. Kirkland, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Fred Storch, pro se  
7782 Edinborough Lane  
Delray Beach, Florida 33446

For Respondent: Thomas G. Thomas  
Assistant General Counsel  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792

STATEMENT OF THE ISSUE

Whether Petitioner's application for licensure as a community association manager by examination should be granted.

PRELIMINARY STATEMENT

On July 15, 1998, Respondent, Department of Business and

Professional Regulation (Department), issued a Notice of Intent to Deny Community Association Manager's Application for Licensure by Examination, advising Petitioner, Fred Storch (Storch), that the Department intended to deny his application for licensure. As its basis for denial, the Department stated that Storch failed to establish good moral character as required by Section 468.433, Florida Statutes, and Rule 61-20.001(5)(a) and (b), Florida Administrative Code.

Storch requested an administrative hearing, and the case was referred to the Division of Administrative Hearings on August 25, 1998, for assignment to an Administrative Law Judge.

At the final hearing, Storch testified in his own behalf and presented no exhibits. Respondent called no witnesses. Respondent's Exhibits A-G were admitted in evidence.

No transcript was ordered. The parties agreed to file proposed recommended orders by February 22, 1999. Petitioner did not file a proposed recommended order. Respondent timely filed a Proposed Recommended Order, which has been considered in rendering this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner, Fred Storch (Storch), filed an application with Respondent, Department of Business and Professional Regulation, Community Association Managers (Department) on April 14, 1998, for licensure as a community association manager by examination.

2. The application contained the following question:

Have you now or have you ever been licensed or certified in any profession such as real estate, insurance, securities, etc., in Florida or in any other state, province, district, territory, possession or nation?

If the applicant answered "yes" to the question, the application required the applicant to list the name of the profession, the license number, the date the license was first obtained, and the current status of the license. Storch answered "yes" to the question and indicated that he currently had a real estate salesperson's license in Florida and a real estate broker's license in New York.

4. At the final hearing, Storch testified that he had a current mortgage broker's license and a real estate salesperson's license from New York and that he was currently licensed in Florida as a real estate salesperson and had been licensed in Florida as a mortgage broker.

5. The application contained the following question:

Has any license, certification, registration, or permit to practice any regulated profession been revoked, annulled or suspended in this or any other state, province, district, territory, possession or nation or is any proceeding now pending? This includes any disciplinary action taken against you such as a reprimand, probation, etc.

Storch answered "no" to the question.

5. The following question was also on the application:

Have you ever relinquished or withdrawn from any license, certification, registration or permit to practice any regulated profession

in this or any other state, province,  
district, territory, possession or nation or  
is any proceeding now pending?

6. Storch answered "yes" to the question and provided the following explanation.

I relinquished my license as a Mortgage Broker because I was unable to submit to an audit on a timely basis due to my son's poor health. My son is afflicted with epilepsy, which cannot be controlled with medication. He is having surgery on April 21, 1998 at George Washington University Hospital, Washington, D.C., to eliminate the cause of his seizures. I have enclosed the documentation from the Comptroller's Office and my son's doctor.

7. In 1994, Storch and the Florida Department of Banking and Finance (DBF) entered into a Stipulation and Consent Order which was incorporated in a Final Order, dated January 13, 1995. Storch and DBF agreed that Storch's mortgage broker's license was suspended until a location and occupational license was obtained. Storch agreed to pay an administrative fine of \$500 and agreed to cease and desist all violations of Chapter 494, Florida Statutes.

8. On February 12, 1997, DBF entered a Default Final Order and Notice of Rights, finding that Storch had acted as a mortgage broker without a current active license and that Storch had failed to provide his books and records for inspection as requested by DBF. Storch was ordered to cease and desist from violating Chapter 494, Florida Statutes, and all registrations and licenses previously issued to Storch, which included his mortgage broker's license, were revoked.

9. By letter dated February 13, 1997, Storch advised DBF that he would be willing to turn in his license if DBF would not pursue any action against him then or in the future.

10. On September 18, 1997, the Department of Business and Professional Regulation, Division of Real Estate, filed an Administrative Complaint against Storch alleging that Storch had violated Section 475.25(1)(s), Florida Statutes, because his residential mortgage broker's license had been revoked.

11. On December 17, 1997, the Department of Business and Professional Regulation, Division of Real Estate, entered a Final Order, disciplining Storch's real estate salesperson's license. The Final Order stated that Storch was guilty of violating Section 475.25(1)(s), Florida Statutes, as charged in the Administrative Complaint and required Storch to pay an administrative fine of \$100.00 and investigative costs of \$313.60.

#### CONCLUSIONS OF LAW

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

13. Section 468.433(1), Florida Statutes, sets forth the requirements which an applicant for licensure as a community association manager must meet in order to qualify to sit for the examination and provides:

- (1) A person desiring to be licensed as a community association manager shall apply

to the department to take the licensure examination. Each applicant must file a complete set of fingerprints that have been taken by an authorized law enforcement officer, which set of fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. The cost of processing shall be borne by the applicant. The department shall examine each applicant who is at least 18 years of age and who the department certifies is of good moral character.

(a) Good moral character means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

(b) The department may refuse to certify an applicant only if:

1. There is substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a community association manager.

2. The finding by the department of lack of good moral character is supported by clear and convincing evidence.

(c) When an applicant is found to be unqualified for a license because of a lack of good moral character, the department shall furnish the applicant a statement containing its findings, a complete record of the evidence upon which the determination was based, and a notice of the rights of an applicant to a rehearing and appeal.

14. Rule 61-20.001(5), Florida Administrative Code, further delineates the requirements for establishing good moral character and provides:

(5) Good Moral Character.

(a) Unless the division denies the application for incompleteness under paragraph (4)(a) of this rule, the division shall evaluate the application and make appropriate inquiry to determine the applicant's moral character. Demonstration of all of the following will establish the applicant's good moral character:

1. The completion of a criminal history records check by the Florida Department of Law Enforcement and self-disclosure by the applicant that establishes that the applicant has no criminal record; and

2. The absence of civil lawsuits or administrative actions decided adversely to the applicant which involved matters bearing upon moral character, including, for example: fraud, dishonesty, misrepresentation, concealment of material facts, or practicing a regulated profession without a license or certificate as required by law or rule; and

3. No prior history of violations by the applicant of chapter 468, Part VIII, Florida Statutes, any rule of the division relating to community association management, or any lawful order of the division

previously entered in a disciplinary proceeding, or of failing to comply with a lawfully issued subpoena of the division; and



4. The absence of other information generated in the course of the application process which negatively reflects on the applicant's moral character including, for example: gross misconduct or gross negligence in the applicant's prior work experience whether or not the prior work was related to the professional responsibilities of a community association manager; and

5. That the applicant has not committed the following in connection with an application:

a. Given to the division a check for payment of any fee when there are insufficient funds with which to pay the same, if the applicant, upon notification by the division, fails to redeem the check or otherwise pay the fee within 30 days of the date of written notification by the division; or

b. Failed to provide full and complete disclosure, or failed to provide accurate information.

(b) If the applicant has failed to establish good moral character under paragraph (5)(a), the division will then consider the following additional factors to determine whether an applicant has good moral character for purposes of licensure under chapter 468, Part VIII, Florida Statutes:

1. If commission of a second degree misdemeanor is the only reason the applicant did not meet the requirements of paragraph (5)(a) of this rule, the applicant will be considered to have good moral character. However, if there are also other reasons why the applicant did not meet the requirements of paragraph (5)(a) of this rule, the second degree misdemeanor will be considered along with the other factors in determining the applicant's good moral character;

2. If the applicant has committed a first degree misdemeanor or a felony, and the applicant's civil rights have been restored, this alone shall not preclude a finding of good moral character unless the crime is directly related to the professional responsibilities of a community association manager. Crimes that are deemed to be directly related to the professional

responsibilities of a community association manager include, for example, fraud, theft, burglary, bribery, arson, dealing in stolen property, forgery, uttering a forged instrument, sexual battery, lewd conduct, child or adult abuse, murder, manslaughter, assault, battery, and perjury. The applicant has the burden of proving restoration of civil rights by certified true copy of government or court records reflecting such action.

3. Whether the applicant has exhibited a pattern of unlawful behavior which would indicate that the applicant has little regard for the law, the rules of society, or the rights of others. All unlawful acts will be considered in determining whether the applicant has exhibited a pattern of unlawful behavior, even though any one of the unlawful acts by itself might not be directly related to the professional responsibilities of a community association manager. It is the applicant's repeated flaunting of or ignoring the law that evinces a lack of the moral character needed to perform the duties and assume the responsibilities of a community association manager, not the particular relationship of any one of the violations to the professional responsibilities of a community association manager.

4. Whether the applicant is disqualified from applying for a license by reason of section 775.16, Florida Statutes, pertaining to conviction of certain offenses involving controlled substances.

5. Conduct of the applicant relied upon by the division to determine that the applicant lacks good moral character shall be directly related to the professional responsibilities of a community association manager.

6. Written evidence the division will consider in determining the applicant's good moral character shall include:

a. A statement from the applicant explaining the applicant's criminal/unlawful conduct and the reason the applicant believes the division should issue the license;

b. Evidence as to the length of time since the conduct occurred or the age of the

applicant at the time the conduct occurred;

c. Evidence of successful rehabilitation;

d. Recommendations from parole or probation employees who have supervised the applicant;

e. Recommendations from the prosecuting attorney or sentencing judge;

f. Character references from individuals other than immediate family members, who have known the applicant for 3 years or longer;

g. Police reports or transcripts which reveal the underlying facts of the crime;

h. Evidence that the conduct was an isolated occurrence contrary to the applicant's normal pattern of behavior; and

i. Evidence of community or civil activities with which the applicant has been associated.

It is the applicant's responsibility to provide such mitigating evidence to the division.

7. If the applicant makes incomplete, misleading or false statements regarding material facts in making an application, such action will establish the applicant's lack of good moral character, and the application will be denied.

(c) If the applicant has failed to meet the requirements of paragraph (5)(a) of this rule and has been unable to present sufficient evidence to establish good moral character pursuant to paragraph (5)(b) of this rule within the time limitations of this rule and section 120.60, Florida Statutes, the application will be denied. However, the applicant will be given an opportunity by the division to waive the time limits of this rule and section 120.60, Florida Statutes, if it appears to the division that, through the submission of additional information or with additional time for investigation and verification, the applicant's good moral character might be established. The applicant bears the burden of affirmatively providing the division with evidence of good moral character.

15. Storch has not demonstrated good moral character. He

did not make a full and complete disclosure and failed to provide accurate information on his application for licensure as a community association manager. In answer to the question on the application concerning licenses and certificates, Storch did not indicate that he had held a mortgage broker's license in Florida

and that he currently held a mortgage broker's license in New York.

16. On his application, Storch stated that he had never had a license revoked, suspended or annulled. Storch's Florida mortgage broker's license had been suspended in 1994 and revoked in 1997. Storch did not reveal either the revocation or suspension.

17. On his application, Storch stated that he had relinquished his mortgage broker's license, when in fact the license had been revoked prior to Storch advising the Department of Banking and Finance that he would relinquish his license under certain conditions.

18. Storch did not reveal on his application that his Florida real estate salesperson's license had been disciplined in 1997.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a Final Order be entered denying Fred Storch's application for licensure as a community association manager.

DONE AND ENTERED this 22nd day of March, 1999, in  
Tallahassee, Leon County, Florida.

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SUSAN B. KIRKLAND  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of March, 1999.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.