

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT L. PARKER,)
)
 Petitioner,)
)
 vs.) Case No. 02-0558
)
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION,)
 FLORIDA REAL ESTATE COMMISSION,)
)
 Respondents.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on April 10, 2002, by video teleconference, with the parties appearing in Miami, Florida, before Patricia Hart Malono, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Donna K. Ryan, Esquire
Department of Business and
Professional Regulation
Hurston North Tower
400 West Robinson Street, Suite N308
Orlando, Florida 32801-1772

For Respondent: Robert L. Parker, pro se
44 Douglas Drive
Boynton Beach, Florida 33435

STATEMENT OF THE ISSUE

Whether the Petitioner's application for licensure as a real estate salesperson should be granted or denied.

PRELIMINARY STATEMENT

In an Order entered November 27, 2001, the Florida Real Estate Commission ("Commission") denied the application of Robert L. Parker for licensure as a real estate salesperson. The Commission stated in the Order that the application was denied "based on the applicant's criminal record and answer to Question #9." Mr. Parker timely requested an administrative hearing, and the Department of Business and Professional Regulation, Division of Real Estate, transmitted the matter to the Division of Administrative Hearings for assignment of an administrative law judge. Pursuant to notice, the final hearing was held on April 10, 2002.

At the hearing, Mr. Parker testified in his own behalf; he did not offer any exhibits into evidence. The Commission did not present the testimony of any witnesses, but Respondent's Exhibits 1 through 6 were offered and received into evidence. Official recognition was accorded to Chapters 120, 455, and 475, Florida Statutes, and to Rule Chapter 61J-2.

The transcript of the proceedings was filed with the Division of Administrative Hearings on April 23, 2002. Neither party filed proposed findings of fact or conclusions of law.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The Commission operates within the Department of Business and Professional Regulation and is the entity responsible for certifying to the Department that an applicant for licensure under Chapter 475 is qualified to practice as a real estate broker or salesperson. Sections 475.02 and .181, Florida Statutes (2001).

2. On or about June 12, 2001, Mr. Parker submitted his application for licensure as a real estate salesperson to the Commission.

3. In the application, Mr. Parker answered "yes" to Question 9, which asks in pertinent part:

Have you ever been convicted of a crime, found guilty, or entered a plea of guilty or nolo contendere (no contest), even if adjudication was withheld? . . .

If you answered "Yes," attach the full details including dates and outcome, including any sentence and conditions imposed, on a separate sheet of paper.

4. Mr. Parker attached to his application the results of a North Carolina criminal records check, which consisted of a cover sheet and three pages.

5. Relevant to this proceeding, the information attached to Mr. Parker's application establishes the following:

a. On May 26, 1994, Mr. Parker was found guilty of misdemeanor larceny; there is no indication that he received a sentence or paid a fine, court costs, or restitution.

b. On June 29, 1995, Mr. Parker was found guilty of driving while impaired; he was sentenced to one year's unsupervised probation and paid either a fine or court costs in the amount of \$160.00.

c. On July 8, 1996, Mr. Parker waived trial on a charge of passing a worthless check; he paid either a fine or court costs in the amount of \$60.00 and restitution in the amount of \$76.30.

d. On July 31, 1998, Mr. Parker was convicted of misdemeanor larceny; he was sentenced to six month's unsupervised probation and paid either a fine or court costs in the amount of \$130.00.

e. On June 12, 2000, Mr. Parker was found guilty of violating a domestic violence protective order; he was sentenced to six month's unsupervised probation and paid either a fine or court costs in the amount of \$186.00.

f. On August 6, 2000, Mr. Parker was charged with driving while impaired and driving without a license in his possession; trial was scheduled for February 21, 2001, but no disposition is indicated in the materials Mr. Parker provided.

6. Mr. Parker admits to having driven while impaired in August 2000, but he has not been in trouble since his arrest on this charge. He completed an alcohol treatment program and has not consumed alcohol for one and one-half years.

7. Mr. Parker understands that he has had problems in the past and believes that he has done better in the past two years. He moved to Florida in January 2001 in order to make a new life. At the time of the hearing, he was employed as a server at a restaurant. In that job, he routinely handles up to \$1,000.00 in cash each day and always turns the money over to management.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2001).

9. Because this case involves the denial of Mr. Parker's application for licensure as a real estate salesperson, it is his burden to prove by a preponderance of the evidence that he meets the minimum requirements for licensure. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932, 933-34 (Fla. 1996).

10. Section 475.181(2), Florida Statutes (2001), provides that the Commission "may refuse to certify any applicant who . . . is subject to discipline under s. 475.25."

11. Pursuant to Section 475.25(1)(f), Florida Statutes (2001), the Commission may discipline a licensee or deny an application for a real estate license if it finds that the applicant "[h]as been convicted or found guilty of . . . a crime in any jurisdiction which . . . involves moral turpitude or fraudulent or dishonest dealing.

12. In Pearl v. Florida Board of Real Estate, 394 So. 2d 189, 191 (Fla. 3d DCA 1981), the court found "that moral turpitude involves duties owed by man to society, as well as acts 'contrary to justice, honesty, principle, or good morals,'" and it held that "[c]rimes constituting violations of one's duties in dealings with members of society may be classified as crimes involving moral turpitude."

13. Based on the findings of fact herein, Mr. Parker has admitted to having been found guilty of the crimes of misdemeanor larceny, passing worthless checks, and driving while impaired. These crimes involve moral turpitude and dishonesty, and the Commission may, therefore, refuse to certify Mr. Parker for licensure pursuant to Sections 475.181(2) and 475.25(1)(f), Florida Statutes (2001).

14. However, the Commission's authority to deny an application for licensure is discretionary, as indicated by the legislature's use of the word "may" in Sections 475.181(2) and 475.25(1), Florida Statutes (2001). Accordingly, Mr. Parker has the opportunity to establish that he is entitled to licensure by proving that he is "honest, truthful, trustworthy, and of good character." Section 475.17(1)(a), Florida Statutes (2001).

15. Based on the findings of fact herein, Mr. Parker has not proven by a preponderance of the evidence that he is trustworthy or of good character given his arrest and apparent conviction for driving while impaired in August 2000. Mr. Parker is apparently turning his life around and, perhaps, in time, he will be able to meet this burden of proving entitlement to licensure as a real estate salesperson. Cf. Antel v. Department of Professional Regulation, Florida Real Estate Commission, 522 So. 2d 1056 (Fla. 5th DCA 1988)(even though applicant was convicted of crime involving moral turpitude, applicant may be granted license if he proves rehabilitation).

RECOMMENDATION

Based on 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 Robert L. Parker for licensure as a real estate salesperson.

DONE AND ENTERED this 26th day of June, 2002, in
Tallahassee, Leon County, Florida.

PATRICIA HART MALONO
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of June, 2002.

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.