

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHRISTOPHER NEITA,)
)
 Petitioner,)
)
 vs.) Case No. 03-3500
)
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted on November 7, 2003, by video teleconference at sites in Fort Lauderdale and Tallahassee, Florida, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Christopher Neita, pro se
19835 Northwest 10th Street
Pembroke Pines, Florida 33023

For Respondent: Juana Carstarphen Watkins, Esquire
Department of Business and
Professional Regulations
400 West Robinson Street
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether Petitioner's application to sit for the real estate appraiser trainee licensure examination should be granted or denied.

PRELIMINARY STATEMENT

On June 7, 2002, Petitioner submitted an application for registration as a "registered real estate appraiser assistant."¹ A prerequisite to such registration is the successful completion of a licensure examination. The application for registration in this case was received and processed by Respondent on behalf of the Florida Real Estate Appraisal Board (FREAB) as an application to sit for the licensure examination. Petitioner disclosed on the application form his prior criminal history. Because of that criminal history, the FREAB denied Petitioner's application. Petitioner thereafter requested a formal administrative hearing, the matter was referred to Division of Administrative Hearings, and this proceeding followed.

At the final hearing, Respondent presented its case first to facilitate the presentation of evidence. Respondent offered ten sequentially numbered exhibits, each of which was admitted into evidence without objections. After Respondent presented its documentary evidence, Respondent rested its case without calling any witnesses. Petitioner thereafter declined the opportunity to testify, and he offered no other testimony and no

exhibits. Respondent presented an argument as to why his application should be granted.

No transcript of the proceedings was filed. Respondent filed a Proposed Recommended Order, which has been duly-considered by the undersigned in the preparation of this Recommended Order. Petitioner did not submit a Proposed Recommended Order.

FINDINGS OF FACT

1. Respondent is the agency of the State of Florida responsible for regulating the practice of real estate appraising in Florida pursuant to Part II of Chapter 475, Florida Statutes (2003).² The FREAB is a board created by Section 475.613, Florida Statutes, and is responsible for registering real estate appraiser trainees.

2. Petitioner applied for registration as a real estate appraiser assistant by application dated June 7, 2002. Pursuant to Section 475.616, Florida Statutes, the successful completion of a licensure examination is a prerequisite to registration. Petitioner's application has properly been treated as an application to sit for the licensure examination that is a prerequisite for registration as a real estate appraiser trainee.

3. Petitioner disclosed by his answer to a question on the application that he had entered a plea of nolo contendere to a

charge of grand theft in March 2000. Petitioner's disclosed offense was a felony of the third degree.

4. At Respondent's request, Petitioner provided Respondent details of the felony conviction by letter dated July 24, 2002. That letter stated, in pertinent part, as follows:

I have been requested to provide details of and an explanation for the felony conviction disclosed on my application for licensing as an appraiser.

I pleaded [sic] guilty in March 2000 in the Circuit Court of Broward County, Florida, to the Theft of Goods from Brands Mart in South Florida; these offenses were committed jointly with an employee of Brands Mart and involved an accounting fraud. I have never been an employee of Brands Mart.

The Sentence [sic] was 5 years Probation [sic], which I am told, will terminate in September 2002 as there have been no breaches by me of my sentence and I intend to apply for the early termination of the sentence by September 2002.

All civil restitution I was ordered to pay has been made to Brands Mart and all criminal penalties have been paid in full and all requirements complied with. . . .

5. At its meeting held October 1, 2002, the FREAB discussed Petitioner's application and the fact that he had been convicted of a felony and when the conviction occurred. Petitioner did not attend this meeting, but he did provide the FREAB letters of recommendation on his behalf and a copy of his college diploma. The FREAB denied Petitioner's application following a discussion of his criminal record.³

6. The FREAB considered Petitioner's application for the second time at its meeting of February 4, 2003. Petitioner appeared at that meeting and answered questions from members of the FREAB as to his criminal history.⁴ The transcript of the February 4 meeting reflects that Petitioner informed the FREAB that he had stolen property from a Brands Mart store with assistance from an employee of the store. Petitioner received merchandise from the store employee at a loading dock without paying for the merchandise and later sold the merchandise. Petitioner told the FREAB that he was sentenced to five years' probation and ordered to pay restitution in the amount of \$20,000.00.

7. Petitioner also represented to the FREAB that he had made full restitution as ordered by the court and that the court had terminated his probation in November 2002. Petitioner represented that this was his first criminal offense and that he had learned from his mistake. Petitioner said that he knew at the time that he was wrong to commit the crime, but that he had been out of work and committed the crime to support his family.

8. The FREAB voted to deny Petitioner's application⁵ at the conclusion of the proceeding conducted February 4.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this

case pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

10. Section 475.615(6), Florida Statutes, pertains to qualifications for registration as a real estate appraiser trainee and provides, in pertinent part, as follows:

(6) All applicants must be competent and qualified to make real estate appraisals with safety to those with whom they may undertake a relationship of trust and confidence and the general public. If . . . the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for disciplining her or his registration, license, or certification under this part had the applicant then been a registered trainee appraiser or a licensed or certified appraiser, 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 board that the interest of the public is not likely to be endangered by the granting of registration, licensure, or certification.

11. Section 475.624, Florida Statutes, provides, in pertinent part, as follows:

The [FREAB] may deny an application for registration, licensure, or certification . . . if it finds that the registered trainee, licensee, or certificateholder:

* * *

(5) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime . . . which involves moral turpitude or fraudulent or dishonest conduct. . . .

12. Petitioner has the burden of proving by a preponderance of the evidence that his application for registration as a real estate appraiser trainee should be granted. See Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

13. Grand theft is a crime that involves moral turpitude and dishonest conduct within the meaning of Section 475.615(6), Florida Statutes. Petitioner's burden required him to establish as provided in Section 475.615(6) that notwithstanding his criminal history, the FREAB should conclude that the interest of the public is not likely to be endangered by the granting of his registration.

14. Petitioner failed to meet his burden of proof in this proceeding.⁶ The lapse between the commission of his crime and his application was relatively brief and does not support his argument for licensure. The only evidence that could arguably go to Petitioner's reputation and subsequent good conduct were the letters of recommendation he submitted to the FREAB prior to its October meeting. Those letters cannot be the sole basis for finding that granting Petitioner's application will not endanger the public because the letters constitute hearsay evidence that would not be admissible over objection in a civil proceeding and

do not supplement or explain other evidence. See Section 120.57(1)(c), Florida Statutes, which provides for the limited use of hearsay evidence in administrative proceedings as follows:

(c) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the FREAB enter a final order denying Petitioner's application.

DONE AND ENTERED this 4th day of December, 2003, in Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of December, 2003.

ENDNOTES

- 1/ Because of a revision to the pertinent legislation, the correct terminology is now "registered real estate appraiser trainee."
- 2/ Unless otherwise indicated, all statutory references are to Florida Statutes (2003).
- 3/ The transcript of the October 1 meeting reflects that at least one member wanted to table Petitioner's application until Petitioner could appear in person in front of the board to explain his criminal record, but the board's counsel advised the members that the only appropriate action was to vote to grant or deny Petitioner's application.
- 4/ Respondent has described the proceeding on February 4 as being an informal hearing.
- 5/ The members voting to deny the application voiced concern as to the nature of the crime, the fact that relatively little time had passed since its occurrence, and the fact that Petitioner had been on probation until November 2002. Those members were also concerned that the duties of a real estate appraiser trainee present opportunities for wrongdoing and require that applicants be of good moral character. The FREAB invited Petitioner to reapply for registration after additional time had passed since the date of the crime and the termination of his probation.
- 6/ Paragraph 21 of Respondent's Proposed Recommended Order is as follows:

After the passage of further time and (with) recent evidence of good character, the FREAB would likely look more favorably on Petitioner's application, as suggested by the FREAB at the February 4, 2003, informal hearing.

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.