

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FERNANDO FREIRE, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-1631  
 )  
 DEPARTMENT OF BUSINESS AND )  
 PROFESSIONAL REGULATION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

On June 25, 2004, an administrative hearing in this case was held by videoconference between Tallahassee and Orlando, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Fernando Freire, pro se  
5242 Millenia Boulevard, No. 304  
Orlando, Florida 32839

For Respondent: Alfonso Santana, Esquire  
Division of Real Estate  
Department of Business  
and Professional Regulation  
400 West Robinson Street, 801N  
Orlando, Florida 32801-1757

STATEMENT OF THE ISSUE

The issue in the case is whether the Petitioner should be permitted to take the examination for licensure as a real estate sales associate.

PRELIMINARY STATEMENT

By Orders dated December 19, 2003, and March 25, 2004, the Florida Real Estate Commission (Commission) denied the application of Fernando Freire (Petitioner) for licensure as a real estate sales associate. The Order dated December 16, 2003, states that the denial is "based on the applicant's criminal record and answer to the question regarding convictions." The Order dated March 25, 2004, states that the denial is "based on the applicant's record and answer to the question regarding convictions and a professional license disciplined."

The Petitioner requested an administrative hearing to address the application. The Department of Business and Professional Regulation (Respondent) forwarded the request for hearing to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner testified on his own behalf and presented the testimony of one witness. The Respondent had Exhibits numbered 1 through 11 admitted into evidence. The one-volume Transcript of the hearing was filed on July 19, 2004. The Respondent filed a Proposed Recommended Order on July 27, 2004. On July 30, 2004, the Petitioner filed a letter asking that he be permitted to take the state real estate examination.

FINDINGS OF FACT

1. In September 2003, the Petitioner filed an application for licensure by the State of Florida as a real estate sales associate.

2. In an application section titled "Background Information" question 1 asks in relevant part, "[h]ave you ever been convicted of a crime, found guilty, or entered a plea of guilty or nolo contendere . . ." to which the Petitioner responded in the affirmative. "Background Information" question 4 in relevant part asks, "[h]as any license, registration, or permit to practice any regulated profession, occupation, vocation, or business been revoked, annulled, suspended, relinquished, surrendered, or withdrawn . . ." to which the Respondent replied in the affirmative.

3. Question 1 directs an applicant who responds in the affirmative to disclose the full details of the incident(s) by completion of "form 0050-1." Question 4 directs an applicant who responds in the affirmative to disclose the full details of the termination(s) by completion of "form 0060-1." The disclosure forms completed by the Petitioner (if any) are not in the Respondent's files and are unavailable for review.

4. The Petitioner's application package was presented to the Commission on December 16, 2003. After considering his presentation, the Commission denied his application and

instructed him to return with additional information related to the disclosed charges.

5. The Petitioner apparently sought reconsideration, and his application package was again presented to the Commission on March 17, 2004. After reconsidering the Petitioner's background, the Commission again denied his application. The Petitioner then sought an administrative hearing to challenge the denial of his application.

6. On or about July 26, 2000, the Petitioner was arrested and charged with stalking. The Commission's records indicate that the Petitioner completed a pretrial program and was sentenced to 50 hours of community service. At the administrative hearing, the Petitioner testified that he was placed on probation for six months, and had to complete a six-month psychological evaluation. The stalking charge was nolle prossed.

7. At the hearing, the Petitioner stated that at the time of the stalking charge, he was working at a retail establishment. The object of his attention was a 16-year-old female who was working in the vicinity. The Petitioner was approximately 36 years old. The Petitioner asserted that he did not know the female was 16 years old at the time. He denied that he "stalked" the female, but stated that he merely spoke to her a few times in person and attempted to contact her once by

telephone. He continued to express surprise at the stalking charge.

8. On or about June 6, 2001, the Petitioner was arrested and charged with burglary of an unoccupied conveyance, a felony, and criminal mischief. He was sentenced to two years of probation, six months of psychological evaluation, and was required to pay court costs. Adjudication of guilt was withheld.

9. At the hearing, the Petitioner stated that he went to the home of an ex-girlfriend to collect a \$500 debt she allegedly owed to him. He testified that he knocked on her door and got no response. As he left her residence, he saw that her automobile was unlocked. He opened the hood of the ex-girlfriend's vehicle and ripped out the spark plug cables. He asserted that he "didn't steal anything" because he threw the cables away and didn't keep them.

10. On or about September 5, 2001, the Department of State, Division of Licensing, entered an order based on the Petitioner's stipulation, revoking his Class "D" Security Officer's License, based on the burglary charge.

#### CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57(1), Fla. Stat. (2003).

12. As the party seeking the license, the Petitioner has the burden of proving entitlement to licensure by a preponderance of the evidence. Dept. of Banking and Finance, Div. of Securities and Investor Protection v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). The hearing to prove entitlement is de novo in nature and is not a review of the hearings previously conducted by the Florida Real Estate Commission. In this case, the Petitioner has failed to meet the burden of proof.

13. Section 475.25, Florida Statutes (2003), provides in relevant part, as follows:

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed \$1,000 for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

\* \* \*

(f) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the activities of a licensed broker or sales associate, or involves moral turpitude or fraudulent or dishonest dealing. 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. (emphasis supplied)

14. Moral turpitude involves the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society. It has also been defined as anything done contrary to justice, honesty, principle, or good morals, though it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated. State ex rel. Tullidge v. Hollingsworth, 108 Fla. 607, 146 So. 660, 661 (Fla. 1933). Stalking is contrary to principle and good morals, and is an act of moral turpitude. Burglary and criminal mischief are contrary to principle and one's duty to society, and are acts of moral turpitude.

15. Subsection 475.17(1)(a), Florida Statutes (2003), provides as follows:

(1)(a) An applicant for licensure who is a natural person must be at least 18 years of age; hold a high school diploma or its equivalent; be honest, truthful, trustworthy, and of good character; and have a good reputation for fair dealing. An applicant for an active broker's license or a sales associate's license must be competent and qualified to make real estate transactions and conduct negotiations therefor with safety to investors and to those with whom the applicant may undertake a relationship of trust and confidence. If the applicant has been denied registration or a license or has been disbarred, or the

applicant's registration or license to practice or conduct any regulated profession, business, or vocation has been revoked or suspended, by this or any other state, any nation, or any possession or district of the United States, or any court or lawful agency thereof, because of any conduct or practices which would have warranted a like result under this chapter, or if the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for revoking or suspending her or 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. The commission may adopt rules requiring an applicant for licensure to provide written information to the commission regarding the applicant's good character.  
(emphasis supplied)

16. In this case, the Petitioner acknowledged criminal offenses in his application. The arrest records and other relevant court records were not offered or admitted into the record of this hearing.

17. Because neither party offered detailed police or court records into evidence, the details of the offenses, especially the stalking charge, are somewhat murky. However, review of the Petitioner's testimony before the Commission and at the administrative hearing suggests that the information provided by the Petitioner has been less than candid. At the administrative



hearing, the Petitioner suggested that he didn't know the female was 16 years old, yet he clearly knew that the female with whom he was making contact was young. He acknowledged that on at least one occasion when he spoke with the female, her mother accompanied her. In his testimony to the Commission, he described the girl as "cute," but "not beautiful." It is reasonable to assume that an adult charged with stalking a juvenile and subsequently sentenced to probation and an extended psychological evaluation, did more than twice say "hello" and make a telephone call.

18. As to the burglary and criminal mischief charges, the Petitioner's actions demonstrate a lack of maturity and self-control. His assertion that he didn't "steal anything" because he did not retain the cables he ripped from the ex-girlfriend's vehicle, suggests that he continues to misunderstand the nature of his act.

19. The Petitioner has failed to meet his burden of establishing by a preponderance of the evidence, that because of lapse of time since the disqualifying offenses, and subsequent good conduct and reputation, his application for licensure should proceed.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Respondent enter a final order denying the Petitioner's application for licensure as a real estate sales associate.

DONE AND ENTERED this 17th day of August, 2004, in Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of August, 2004.

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.