

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ADDY MILLER, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-3023PL  
 )  
 DEPARTMENT OF BUSINESS AND )  
 PROFESSIONAL REGULATION, FLORIDA )  
 REAL ESTATE COMMISSION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on December 3, 2004, by video teleconference, at sites in Fort Lauderdale and Tallahassee, Florida, before Administrative Law Judge Michael M. Parrish of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ms. Addy Miller, pro se  
5813 Coral Lake Drive  
Margate, Florida 33063

For Respondent: Alfonso Santana, Esquire  
Department of Business and Professional  
Regulation  
400 West Robinson Street, Suite 801N  
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STATEMENT OF THE ISSUE

Whether Petitioner is qualified to take the examination for licensure as a real estate sales associate.

PRELIMINARY STATEMENT

At the final hearing on December 3, 2004, the Petitioner testified on her own behalf and also offered seven exhibits, all of which were received in evidence. The Petitioner did not call any additional witnesses at the hearing. The Respondent presented no testimonial evidence. Its evidentiary presentation was limited to offering ten exhibits. All of the Respondent's exhibits were received in evidence.

At the conclusion of the evidentiary portion of the hearing, due to vacation plans, counsel for the Respondent requested a deadline of January 15, 2005, for filing proposed recommended orders. The Petitioner agreed to that deadline.

A transcript of the hearing was filed with the Division of Administrative Hearings on December 22, 2004, and on January 14, 2005, both parties filed proposed recommended orders. (Petitioner's proposal was titled Summary Presentation of Petitioner.) The parties' proposals have been carefully considered during the preparation of this Recommended Order.

FINDINGS OF FACT

Based upon the evidence adduced at hearing and the record as a whole, the following Findings of Fact are made:

1. The Petitioner is presently sixty-eight years of age. She first became licensed as a real estate sales associate in

the State of Florida in 1982, and in December of 1988 she passed the examination for a broker's license.

2. Shortly after she passed the examination for a broker's license, the Petitioner began setting up her own real estate brokerage firm. At that time the Petitioner had her sales associate license placed with a broker named Robert F. Armand & Associates. Her arrangement with Mr. Armand was that she would pay him a flat monthly fee of \$250.00 in exchange for the services brokers usually provide for sales associates. The agreement provided that Mr. Armand would not receive any share of any commissions earned by the Petitioner.

3. While the Petitioner was in the process of making arrangements to terminate her relationship with Mr. Armand and start her own brokerage firm, the Petitioner was successful in obtaining a contract for the sale of a residence ("the Molina transaction"). At that time the Petitioner still had her license placed with Mr. Armand's brokerage firm and had not yet begun operation of her own brokerage firm. Because Mr. Armand had become very upset when the Petitioner told him she would soon be leaving, the Petitioner did not want to have any further dealings with Mr. Armand that were not absolutely necessary, so she did not tell Mr. Armand about the Molina transaction. Rather, she held the Molina transaction and

processed it through her own brokerage firm shortly thereafter.

4. The Molina transaction closed in due course and there was no financial harm to either the buyer or the seller. There was no financial harm to Mr. Armand, because he was not entitled to share in any commission related to the Molina transaction.

5. By some means not revealed in the record of this proceeding, the Respondent became aware of the manner in which the Petitioner had handled the Molina transaction and initiated disciplinary action against the Petitioner.<sup>1</sup> The Petitioner decided to resolve the disciplinary proceedings by agreeing to surrender her licenses for revocation. Towards that end, on April 10, 1989, the Petitioner signed a document titled Affidavit for the Voluntary Surrender of License, Registration, Certificate/Permit for Revocation. That document included the following statements by the Petitioner:

1. That my name is Addy Miller.

2. That I am currently the holder of a real estate license/registration/certificate or permit issued pursuant to Chapter 475, Florida Statutes and the Rules of the Florida Real Estate Commission.

3. That in lieu of further investigation and prosecution of the pending complaint(s) and case(s) received and filed with the Department of Professional Regulation, I do hereby consent to and authorize the Florida

Real Estate Commission of the Department of Professional Regulation to issue a Final Order revoking any and all of the licenses, registrations, certificates and permits issued to or held by the undersigned.

4. That the effective date of the revocation shall be April 10, 1989. All licenses, registrations, certificates and permits are hereby deemed surrendered and the undersigned hereby requests that the same be placed in and remain in inactive status pending final disposition by the Florida Real Estate Commission.

5. That I will not apply for nor otherwise seek any real estate license, registration, certificate or permit in the State of Florida for a period of not less than ten (10) years from the effective date of the revocation.

6. That I will not perform any act or service without first being the holder of a valid and current license, registration, certificate or permit thereof [sic] at the time the act or service is performed.

7. That I waive any right to be noticed of any further administrative proceedings in this matter.

8. That I waive any right to appeal or otherwise seek judicial review of the Final Order of revocation to be rendered in accordance with the provisions of this affidavit. [Emphasis added.]

6. The above-quoted affidavit was considered at a meeting of the Florida Real Estate Commission on April 18, 1989. At that meeting the Commission issued a Final Order, the material parts of which read as follows:

On April 18, 1989, the Florida Real Estate Commission heard this case to issue

a Final Order. On April 10, 1989, the Respondent voluntarily surrendered her license and entered a written agreement that her license would be revoked. A copy of this agreement is attached hereto as Exhibit A and made a part hereof.

Based upon this information and upon the information provided to the Florida Real Estate Commission at its meeting of April 18, 1989, the Commission ORDERS that the license of the Respondent be revoked, effective April 10, 1989.

7. Prior to the incident that led to the 1989 order described immediately above, the Petitioner had never before had a complaint filed against her.

8. Consistent with paragraph 8 of the affidavit quoted above, the Petitioner did not appeal the Final Order issued on April 18, 1989. The Petitioner has complied with all of the terms of the Final Order issued on April 18, 1989.

9. The loss of the Petitioner's real estate license has adversely affected her ability to make a living and support herself. In recent years she has been working in sales and marketing with several different companies. She appears to be highly regarded by some of her employers. During the fifteen years since the revocation of her license, the Petitioner has lived a moral and honorable life and has not been involved in any matters that would cast doubt upon her good character and her reputation for fair dealing.

10. During the fifteen years since the revocation of her

license, the Petitioner has not been the subject of any criminal charges.

11. The Petitioner acknowledges that her conduct related to the Molina transaction so many years ago was improper and is committed to avoiding any improper conduct in the future. Further, the Petitioner is sincerely embarrassed about her conduct in that matter and is remorseful regarding her actions in that regard. In view of the long lapse of time (more than fifteen years) since her misconduct related to the Molina transaction, and in view of her good conduct and reputation during that fifteen-year period, it is unlikely that the interests of the public and investors will be endangered by the granting of her application for relicensure.

12. On or about March 19, 2004, the Petitioner filed an application to be relicensed as a sales associate. At a meeting on May 19, 2004, the Florida Real Estate Commission considered the Petitioner's application to be relicensed. Following such consideration the Commission voted to deny the application. The Commission's order denying the application gave the following reason for the denial: "After completely reviewing the record and being otherwise fully advised, the Board ORDERS that the application be DENIED based on the applicant's answer to the question regarding a professional license disciplined."

13. Apparently, at the May 19, 2004, meeting the Commission was somewhat less than "fully advised," because at a Commission meeting on June 16, 2004, there was staff discussion of the fact that at the prior meeting "we did not have the information that you have today," and that at the prior meeting "we could not locate the old information." At the June 16, 2004, meeting staff confirmed that "[s]ince the May meeting we have found the old file. That's in your packet today." At the June 16, 2004, meeting, the Commission tabled further consideration of the Petitioner's application because the Petitioner was sick and could not attend that meeting.

14. The Petitioner's application for relicensure was reconsidered at a Commission meeting on July 21, 2004. During that meeting there was some discussion of the Petitioner's background. During the course of that discussion the Petitioner agreed with the observation of one of the Commissioners that during the past fifteen years she had "been absolutely squeaky clean." During the course of the meeting, without any statement of the reason for doing so, one of the Commissioners moved to deny the application, another seconded the motion, and without any further discussion the Petitioner's application was denied by a vote of five to one.

15. Following the July 21, 2004, Commission meeting, the Commission issued a written order again denying the



Petitioner's application to be relicensed. The written order contained the following reason for the denial: "After completely reviewing the record and being otherwise fully advised, the Board ORDERS that the application be DENIED based on the applicant's answer to the question regarding the discipline of a professional license."

16. The question on the application regarding any prior discipline of a license called for a "yes" or "no" answer. The Petitioner truthfully checked the "yes" box. Instructions on the application form asked those who checked the "yes" box to also:

. . . please provide the full details of any . . . administrative action including the nature of any charges, dates, outcomes, sentences, and/or conditions imposed; the dates, name and location of the court and/or jurisdiction in which any proceedings were held . . . and the designation and/or license number for any actions against a license or licensure application.

17. The Petitioner complied with this request by including as part of her application a typed statement and a handwritten statement which, respectively, read as follows, in pertinent part:

THE TYPED STATEMENT

I held real estate licenses from 1982-1989. I voluntarily surrendered my license to the Department in 1989. I was not involved in any litigation, with the DPR or the courts, and there was no payment made from the Recovery Fund. However, my license was

suspended for ten years that was fulfilled in April, 1999. The Department informed me that once I had served my suspension term, I would be able to start again with the salesman's classroom requirements and apply for and pass the state examination as I am presently doing with the Gold Coast School of Real Estate.

If you require additional information, please do not hesitate to contact me.

THE HANDWRITTEN STATEMENT

I voluntarily surrendered my license in April 1989. I held on to escrow money for a longer period of time than the law allows. The transaction was successfully closed and it was to be my last. My suspension was for a maximum of ten years that was satisfied in 1999. There was no other consequence other than my ability to practice real estate for ten years.

18. The answers quoted above appear to be truthful and candid answers consistent with the requirements of the instructions on the application form. The details in the answers provide some enlightenment regarding the basis for the Commission's disciplinary action against the Petitioner in 1989, but those details, standing alone, do not provide any enlightenment regarding the basis for the Commission's vote to deny the pending application for relicensure.

19. It appears that since the revocation of her real estate license in 1989, the Petitioner has rehabilitated herself and that therefore it is not likely that her relicensure would endanger the public.<sup>2</sup>

CONCLUSIONS OF LAW

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

21. The Petitioner is seeking to be licensed as a real estate sales associate.

22. The Department of Business and Professional (Department) is the state agency responsible for licensing real estate sales associates in the State Florida. § 475.181, Fla. Stat.

23. Pursuant to Section 475.181(1), Florida Statutes, the Department must "license any applicant whom the [Florida Real Estate C]ommission certifies pursuant to subsection (2), to be qualified to practice as a . . . [real estate] sales associate."

24. Section 475.17, Florida Statutes, prescribes the qualifications that an applicant for licensure must possess. Subsection (1)(a) of Section 475.17, Florida Statutes, provides as follows:

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;<sup>3</sup> 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.

25. In the instant case, the Commission has preliminarily determined that the Petitioner is not "qualified to practice as a . . . [real estate] sales associate." This determination appears to be based on the fact that her real estate license was previously revoked by the Commission, because the Commission has not specified any other basis for its determination.<sup>4</sup>

26. The revocation of Petitioner's license in 1989 was

not permanent, and therefore relicensure is possible. See Turner v. Department of Professional Regulation, 591 So. 2d 1136, 1137 (Fla. 4th DCA 1992); Schiffman v. Department of Professional Regulation, Board of Pharmacy, 581 So. 2d 1375, 1378 (Fla. 1st DCA 1991); Jordan v. Department of Professional Regulation, 522 So. 2d 450, 452-53 (Fla. 1st DCA 1988); Holmes v. Department of Professional Regulation, Board of Nursing, 504 So. 2d 1338, 1340 (Fla. 1st DCA 1987); Wood v. Department of Professional Regulation, Board of Dentistry, 490 So. 2d 1079, 1081 (Fla. 1st DCA 1986); Section 475.25(3), Florida Statutes ("The [D]epartment [of Professional Regulation] shall reissue the license of a licensee against whom disciplinary action was taken upon certification by the [C]ommission that the licensee has complied with all of the terms and conditions of the final order imposing discipline.").

27. Effective October 1, 1992, the following provision was added to Section 455.227, Florida Statutes:

In the event the board, or the department when there is no board, determines that revocation of a license is the appropriate penalty, the revocation shall be permanent. However, the board may establish, by rule, requirements for reapplication by applicants whose licenses have been permanently revoked. Such requirements may include, but shall not be limited to, satisfying current requirements for an initial license.

This provision is now found in subsection (5) of Section

455.227, Florida Statutes. On February 13, 1996, the Commission's Rule 61J2-24.005, Florida Administrative Code, became effective. It provides as follows:

(1) Pursuant to s. 455.227(5), F.S., revocation of a license is permanent except for the following violations:

(a) Section 61J2-3.015, F.S. -- filing an application for renewal of a license when the individual had not complied with the provisions of 61J2-3.009 or 61J2-3.020, F.A.C., whichever is applicable.

(b) Section 475.25(1)(m), F.S. -- obtaining a license by means of fraud, misrepresentation or concealment when the licensee had filed an application for licensure which contained false or fraudulent information or answers.

(2) An individual whose license has been revoked for the above listed violations may not apply for a sales associate's license for a period of five (5) years after the date of filing of the final order revoking the license unless the Commission specifies a lesser period of time in the final order, said lesser period of time based upon mitigating factors presented by the Respondent. The applicant must meet all the requirements for initial licensure as a sales associate, including examination, as required in Sections 475.17 and 475.175, F.S. The Commission may refuse to certify the applicant pursuant to Section 475.17(1)(a), 475.181 or 475.25(1), F.S.

Neither Section 455.227(5), Florida Statutes, nor the Commission's Rule 61J2-24.005, Florida Administrative Code, however, was in effect in 1989 when the Commission revoked the Petitioner's real estate license, and cannot be applied retroactively to make the revocation of the Petitioner's license permanent and bar her from seeking relicensure. See

Middlebrooks v. Department of State, Division of Licensing, 565 So. 2d 727, 728-29 (Fla. 1st DCA 1990); Willner v. Department of Professional Regulation, Board of Medicine, 563 So. 2d 805, 806 (Fla. 1st DCA 1990); Lewis v. Criminal Justice Standards and Training Commission, 462 So. 2d 528, 529 (Fla. 1st DCA 1985).

28. At the Section 120.57(1) hearing that was held in the instant case, the burden was on the Petitioner to establish by a preponderance of the evidence that "because of lapse of time [since the violations that led to the revocation of her license] and [her] subsequent good conduct and reputation, or other reason deemed sufficient, . . . the interest of the public and investors will not likely be endangered by the granting of [her application for licensure as a sales associate]." See Pershing Industries, Inc., v. Department of Banking and Finance, 591 So. 2d 991, 994 (Fla. 1st DCA 1991); Cordes v. Department of Environmental Regulation, 582 So. 2d 652, 654 (Fla. 1st DCA 1991); Department of Transportation v. J.W.C., Co., 396 So. 2d 778, 787 (Fla. 1st DCA 1981); Department of Health and Rehabilitative Services v. Career Service Commission, 289 So. 2d 412, 414-15 (Fla. 4th DCA 1974).

29. The Petitioner has met her burden of proof.

30. By having presented at the Section 120.57(1) hearing

held in this case unrefuted evidence of her good post-revocation conduct and reputation, she has established her rehabilitation and the absence of a likelihood that her relicensure (more than fifteen and a-half years following the revocation of her license) would result in harm to any member of the public.

31. In view of the foregoing, the Commission should not decline to certify the Petitioner as qualified to practice as a sales associate based upon the previous revocation of her license. See Aquino v. Department of Professional Regulation, 430 So. 2d 598 (Fla. 4th DCA 1983).

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Commission issue a final order finding that the Petitioner is qualified to practice as a real estate sales associate, subject to passing the licensure examination.



DONE AND ENTERED this 23rd day of February, 2005, in  
Tallahassee, Leon County, Florida.



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MICHAEL M. PARRISH  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 23rd day of February, 2005.

ENDNOTES

1/ The record in this case does not contain any details about the nature of the complaints or the nature of the charges that were brought against the Petitioner as a result of the manner in which she handled the Molina transaction.

2/ There is no evidence in the record of this case that is inconsistent with the Petitioner's assertions that she is an honorable, trustworthy person of good moral character who very much regrets the conduct that led to the revocation of her prior license. (The Respondent's proposed recommended order concedes that the Petitioner ". . . provided uncontested testimony of compliance with the conditions imposed in the previous disciplinary judgement [sic], and showed remorse as well as a resolution to adhere to principles of correct conduct.")

3/ "Good character" is "not only the ability to distinguish between right and wrong, but the character to observe the difference; the observance of the rules of right conduct, and conduct which indicates and establishes the qualities

generally acceptable to the populace for positions of trust and confidence." Zemour, Inc. v. State Division of Beverage, 347 So. 2d 1102, 1105 (Fla. 1st DCA 1977). A person demonstrates a lack of "good character" when he engages in "acts and conduct which would cause a reasonable [person] to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and nation." Florida Board of Bar Examiners Re: G.W.L., 364 So. 2d 454, 458 (Fla. 1978).

4/ When an agency intends to deny an application for a license, Section 120.60(3), Florida Statutes, requires that the applicant be provided with written notice of the agency's intended action. With exceptions not relevant here, "[t]he notice must state with particularity the grounds or basis for the . . . denial of the license. . . ."

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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.