

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CLYDE STROCKBINE, III,)
)
 Petitioner,)
)
vs.) Case No. 05-1138
)
DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
)
 Respondent.)

)

RECOMMENDED ORDER

Pursuant to notice, this cause was heard by Linda M. Rigot, the assigned Administrative Law Judge of the Division of Administrative Hearings, on June 10, 2005, by video teleconference with sites in Lauderdale Lakes and Tallahassee, Florida.

APPEARANCES

For Petitioner: Daniel Villazon, Esquire
Daniel Villazon, P.A.
419 West Vine Street
Kissimmee, Florida 34741

For Respondent: Barbara Rockhill Edwards, Esquire
Department of Legal Affairs
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue presented is whether Petitioner's application for licensure as a real estate sales associate should be granted.

PRELIMINARY STATEMENT

By Notice of Denial dated November 10, 2004, the Florida Real Estate Commission advised Petitioner that his application for licensure was denied, and Petitioner timely requested an administrative hearing regarding that preliminary determination. This cause was thereafter transferred to the Division of Administrative Hearings to conduct the evidentiary proceeding.

Petitioner testified on his own behalf. Additionally, Joint Exhibit numbered 1 and Petitioner's Exhibit numbered 1 were admitted in evidence.

Both parties filed proposed recommended orders after the conclusion of the evidentiary hearing. Those documents have been considered in the entry of this Recommended Order.

FINDINGS OF FACT

1. On his application for licensure as a real estate sales associate Petitioner answered in the affirmative to question numbered 1 requesting background information. Question numbered 1 reads, in part, as follows:

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

2. On January 30, 2000, Petitioner, who had just turned 19 years of age, was arrested for grand theft, loitering and prowling, resisting arrest without violence, and burglary of an

unoccupied structure. The affidavit forming the basis for the charges indicates that a police officer saw Petitioner standing next to a truck, that a window in the truck had been broken and the truck had been burglarized, that several items of property that had been removed from the truck were on the ground next to the truck and Petitioner, that Petitioner ran away from the police officer, and that he was apprehended after a pursuit on foot.

3. Petitioner subsequently pled guilty, and adjudication was withheld. He was sentenced to one year of community control, which was followed by two years of probation, 80 hours of community service, and restitution in the amount of \$200 for the truck window he broke.

4. On March 14, 2000, Petitioner was arrested and charged with criminal mischief over \$1,000, a third-degree felony. He was driving his motor vehicle around on a golf course. The affidavit forming the basis of the charge states that the damage was done willfully and maliciously. Petitioner pled guilty. The record in this cause suggests that adjudication was withheld but is not clear as to the sentence that was imposed.

5. On July 30, 2002, Petitioner violated his probation with some type of traffic offense. His probation was extended and additional community service hours were required of him.

6. Petitioner's probation was terminated on March 13, 2003.

7. By letter dated September 7, 2004, the Department directed Petitioner to submit three letters of recommendation and to appear at the October 20, 2004, meeting of the Florida Real Estate Commission in support of his application. Although Petitioner received that letter, he failed to submit any letters of recommendation and failed to appear at the Commission's meeting.

8. At the time of the final hearing in this cause Petitioner was employed in pharmaceutical sales and was engaged to be married.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter hereof and the parties hereto. §§ 120.569 and 120.57(1), Fla. Stat.

10. Section 475.25(1), Florida Statutes, authorizes the Florida Real Estate Commission to deny an application for licensure if it finds that the applicant 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.

§ 475.25(1)(f), Fla. Stat.

11. Section 475.17(1)(a), Florida Statutes, requires that an applicant for licensure, inter alia, be honest, truthful, trustworthy, of good character, and have a good reputation for fair dealing. That statute further provides that if an applicant has been found guilty of conduct which would be grounds for revoking or suspending his license, the applicant shall be deemed not qualified for licensure ". . . unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears . . . that the interest of the public and investors will not likely be endangered by the granting . . ." of a license. Petitioner's guilty pleas would be grounds for suspending or revoking a license if he had held one. See § 475.25(1)(f), Fla. Stat.

12. Petitioner has the burden of proving his entitlement to licensure. Dept. of Banking & Finance, Division of Securities & Investor Protection v. Osborne, Stern & Co., 670 So. 2d 932 (Fla. 1996). Petitioner has failed to meet his burden of proof.

13. Petitioner's excuse for the January 2000 criminal charges against him is that he was having a hard time because his parents had divorced and he had moved to Florida. He testified that he, therefore, abused alcohol which resulted in his criminal acts. Even ignoring Petitioner's underage use of

alcohol, his suggestion that his criminal acts are excusable for the reason given is without merit.

14. Further, Petitioner testified that he had broken into the truck only to sleep because he was too drunk to drive the two miles to his home; that testimony does not explain the items which were taken from the truck. Later in the final hearing he also testified that he was so drunk that he had no recollection as to why he broke into the truck. Similarly, he testified that he had no family in Florida, and he later testified that he was too drunk to drive to his father's house. Thus, Petitioner has demonstrated a lack of truthfulness and honesty and, therefore, a lack of good character by his conflicting testimony.

15. As to the criminal mischief charge, Petitioner offered no explanation as to why he drove willfully and maliciously around on a golf course. He simply states that he made a dumb decision. The willful destruction of another's real property is more serious than simply being a mistake. Petitioner's failure to explain why he intentionally damaged another's real property leaves concern as to whether he might make a similar decision in the future.

16. Petitioner argues that he is entitled to licensure due to the passage of time. Section 475.17(1)(a), Florida Statutes, however, requires both the passage of time and subsequent good conduct and reputation. Viewing both prongs of the test leads

one to conclude that Petitioner has satisfied neither. First, a little more than two years has passed since Petitioner's probation was terminated. In other words, he has only been unsupervised for that length of time. Second, the only "good conduct" offered by Petitioner is that he has a job and plans to be married. Neither endeavor is sufficient to prove subsequent good conduct.

17. Moreover, Petitioner was given an opportunity to submit letters of recommendation to the Florida Real Estate Commission as well as the opportunity to produce witnesses at the final hearing who could have testified that Petitioner is honest, truthful, trustworthy, of good character and possessing a good reputation for fair dealing. Petitioner chose to take advantage of neither opportunity and, instead, simply downplayed his criminal history involving other people's property without appearing to take responsibility for it. Petitioner has not demonstrated that the granting of a license to him at this time will not likely endanger the interest of the public or investors.

RECOMMENDATION

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

RECOMMENDED that a final order be entered denying Petitioner's application for licensure as a real estate sales associate.

DONE AND ENTERED this 29th day of June, 2005, in Tallahassee, Leon County, Florida.

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LINDA M. RIGOT
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of June, 2005.

COPIES FURNISHED:

Daniel Villazon, Esquire
Daniel Villazon, P.A.
419 West Vine Street
Kissimmee, Florida 34741

Barbara Rockhill Edwards, Esquire
Department of Legal Affairs
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

Leon Biegalski, General Counsel
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-2202

Juana Watkins, Acting Director
Division of Real Estate
Department of Business and
Professional Regulation
400 West Robinson Street, Suite 802, North
Orlando, Florida 32801

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.