

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BRADFORD NUTTING,)
)
 Petitioner,)
)
 vs.) Case No. 05-4510
)
 FLORIDA REAL ESTATE COMMISSION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

An administrative hearing was conducted in this case on March 3, 2006, in Cocoa, Florida, before Bram D.E. Canter, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Daniel Villazon, Esquire
Daniel Villazon, P.A.
1020 Verona Street
Kissimmee, Florida 34741

For Respondent: Daniel R. Biggins, Esquire
Department of Legal Affairs
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue in this case is whether the Florida Real Estate Commission (Commission) lawfully denied the application of Bradford Nutting (Petitioner) for licensure as a Florida real estate broker.

PRELIMINARY STATEMENT

On October 21, 2005, the Commission denied Petitioner's application to obtain a real estate broker's license. The denial was based on Petitioner's criminal record as revealed in his license application, the lack of persuasiveness of Petitioner's testimony in explanation or mitigation of his past crimes, and the recent occurrence of the crimes. The Commission concluded that there had not been a sufficient lapse of time to establish Petitioner's rehabilitation. Petitioner requested an administrative hearing to contest the denial of his application, and the case was referred to DOAH to conduct an evidentiary hearing.

At the hearing, Petitioner testified on his own behalf and also presented the testimony of Timothy Alvin, Steven Romano, and Monique de Graw. Petitioner offered no exhibits into evidence. The Commission called no witnesses. The Commission's Exhibits 1 and 2 were admitted into evidence.

A court reporter recorded the hearing, but no transcript was filed with DOAH. The parties submitted Proposed Recommended Orders that were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Commission is the agency responsible for regulating the practice of real estate sales in Florida.

2. Sometime in 2003, Petitioner applied for licensure as a real estate sales associate. In the application form for this license, Petitioner disclosed that he had been convicted, found guilty, or entered a plea of nolo contendere to three crimes: driving under the influence (DUI) in 1990, possession of a controlled substance in 1991, and another DUI in 2001.

3. The Commission issued Petitioner a license as a real estate sales associate, and Petitioner currently works as a real estate sales associate.

4. The Commission has never taken disciplinary action against Petitioner's current license.

5. In May 2005, Petitioner applied for licensure as a Florida real estate broker. That is the application which is the subject of this case. In his broker's license application, Petitioner disclosed that he was convicted of three counts of domestic violence in November 2003 to which he pled nolo contendere. For these crimes, Petitioner was ordered to serve three years of probation.

6. In May 2005, shortly after he applied for his broker license, Petitioner was convicted of one count of assault and one count of domestic violence. For these most recent offenses, Petitioner was sentenced to probation and ordered to attend a 26-week batterer's intervention program. Petitioner completed the intervention program, but he is still on probation.

7. The matter of Petitioner's broker's license application was heard by the Commission in a public hearing held on August 16, 2005. With regard to the 2003 and 2005 convictions for domestic violence, Petitioner claimed to have pled to the crimes to avoid more serious charges made by his ex-wife and the possibility of going to prison. When asked whether his client was claiming to be innocent of the charges made by his wife, Petitioner's attorney replied, "Well, I don't know if you're totally innocent--I've never seen someone totally innocent."

8. At the hearing before the Commission, Petitioner's testimony regarding the circumstances of the domestic violence incidents was evasive, ambiguous, and less than candid. One Commissioner tried, without success, to get Petitioner to explain the circumstances of the domestic violence convictions:

Commissioner: What exactly happened that caused you to plea to those cases?

Petitioner: It started with an incident . . . at my mother's condominium. And over a period of over approximately a week, all these various things happened. I basically got --

Commissioner: What happened?

Petitioner: Well she kept claiming that -- well, she went out to a bar one night and got beat up. She came to my place of residence and asked me to help her.

* * *

She came back, you know, two or three days later, started harassing me again.

* * *

I got in my automobile and tried to leave the state and go back to Georgia, where I'm originally from. She followed me there. Ultimately, I ran to the point of having to stop for gas . . . and had another incident.

Commissioner: What was the incident?

Petitioner: Well, she was on pain pills again.

Commissioner: What did you do that caused you to plead?

Petitioner: I'm not sure I understand the question, sir.

* * *

Commissioner: But what happened to [make you] plead to the assault? Did you ever touch her?

Petitioner: I physically touched her, which is, you know, a domestic violence charge.

9. Petitioner showed similar evasiveness and lack of candor at the evidentiary hearing before the undersigned. Even though he pled to three counts of domestic violence in 2003, he claimed not to understand how he came to be charged with three separate counts. That claim is not credible.

10. At the hearing, Petitioner repeated the evasive response he had given the Commission on August 16, 2006, to the effect that any touching amounts to an assault. His obvious

purpose in giving this response was to imply that he had merely touched his wife during the incidents for which he was convicted of domestic violence. That claim is also not credible.

11. Based on the more persuasive evidence in the record and taking into consideration the demeanor of Petitioner, his claim that he was not guilty of the crimes for which he was convicted, but pled no contest simply to avoid the possibility that his ex-wife's false charges would result in more serious sentences, is not credible.

12. Every time Petitioner was asked a question about the circumstances of his domestic violence offenses, his answers omitted any description of his own actions and placed all blame on his ex-wife.

13. Petitioner's evasiveness and lack of candor demonstrate his failure to acknowledge and take responsibility for his past actions. Petitioner's rehabilitation will not be complete before that occurs.

14. The testimony by Petitioner's colleagues about his character was not sufficient to establish that Petitioner has been rehabilitated. Except (possibly) for Ms. de Graw, the witnesses were unaware of the circumstances of Petitioner's past convictions. Mr. Romano, who hired Petitioner in his current position as a real estate sales associate and who is Petitioner's supervisor, was unaware of the crimes for which

Petitioner had been convicted and was unaware that Petitioner was on probation.

15. Petitioner did not express confidence that he was rehabilitated.

16. Insufficient time has passed from Petitioner's criminal offenses to support a finding that Petitioner is rehabilitated.

CONCLUSIONS OF LAW

17. DOAH has jurisdiction over the parties to and subject matter of this proceeding pursuant to Sections 120.569 and 120.57, Florida Statutes (2005).¹

18. As the applicant for a license, Petitioner bears the burden to prove his entitlement to the license. Antel v. Dept. of Professional Regulation, Florida Real Estate Commission, 522 So. 2d 1056 (Fla. 5th DCA 1988); Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

19. Subsection 475.25(1)(f), Florida Statutes, authorizes the Commission to deny an application for licensure if 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.

20. Moral turpitude has been defined as involving "the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society." State ex rel. Tullidge v. Hollingsworth, 108 Fla. 607, 611 146 So. 660, 661 (1933).

21. No court decision was cited by the parties or is known to the undersigned that involves the question of whether domestic violence is a crime involving moral turpitude.

22. Subsection 741.28(2), Florida Statutes, defines domestic violence as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member."

23. Petitioner argues that the courts have only found crimes involving personal gain to be crimes of moral turpitude. Yet, Petitioner cites the Antel case, supra, which held that manslaughter was a crime of moral turpitude. It would be illogical to view crimes such as the sale of bogus diplomas (State ex rel. Munch v. Davis, 143 Fla. 236, 196 So. 491 (Fla. 1940)) or bookmaking (Carp v. Florida Real Estate Commission, 211 So. 2d 240 (Fla. 3d DCA 1968)) as crimes involving moral

turpitude, but not crimes of physical violence against another person that result in injury or death.

24. It is the conclusion of the undersigned that domestic violence is a crime involving moral turpitude.

25. Subsection 475.17(1)(a), Florida Statutes, provides in pertinent part:

An applicant for licensure who is a natural person must . . . be honest, truthful, trustworthy, and of good character; and have a good reputation for fair dealing . . . 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 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.

26. Petitioner failed to satisfy his burden of proof. Because of his failure to acknowledge and take responsibility for his past crimes, Petitioner failed to rebut the presumption in Subsection 475.17(1)(a), Florida Statutes, that he is not qualified for licensure as a real estate broker.

RECOMMENDATION

Based upon the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED that the Commission issue a final order denying Petitioner's application for licensure as a real estate broker.

DONE AND ENTERED this 18th day of April, 2006, in Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
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 18th day of April, 2006.

ENDNOTE

1/ All references to Florida Statutes are to Florida Statutes (2005).

COPIES FURNISHED:

Daniel R. Biggins, Esquire
Department of Legal Affairs
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

Daniel Villazon, Esquire
Daniel Villazon, P.A.
1020 Verona Street
Kissimmee, Florida 34741

Nancy B. Hogan, Chairman
Real Estate Commission
Department of Business and
Professional Regulation
400 West Robinson Street, Suite 801N
Orlando, Florida 32801

Josefina Tamayo, General Counsel
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-0792

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.