

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SONIA L. TAYLOR, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 06-3036  
 )  
 DEPARTMENT OF BUSINESS AND )  
 PROFESSIONAL REGULATION, )  
 FLORIDA REAL ESTATE COMMISSION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on October 23, 2006, before Carolyn S. Holifield, a duly-designated Administrative Law Judge of the Division of Administrative Hearings. The hearing was conducted by video teleconference at sites in Tampa and Tallahassee, Florida.

APPEARANCES

For Petitioner: Sonia L. Taylor, pro se  
802 W. West Street  
Tampa, Florida 33602

For Respondent: Claudel Pressa, Esquire  
Assistant Attorney General  
Department of Legal Affairs  
The Capitol, Plaza Level 01  
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner is eligible for licensure as a real estate sales associate.

PRELIMINARY STATEMENT

By application dated November 25, 2005, Petitioner, Sonia L. Taylor (Petitioner), applied for licensure as a real estate sales associate. The application was considered by the Florida Real Estate Commission (Florida Real Estate Commission or Commission) at its meeting of April 18, 2006, in Orlando, Florida. The letter that notified Petitioner of the meeting advised her to furnish the Commission with at least three letters of recommendation "from persons who know of [her] honesty, truthfulness, trustworthiness, good character and good reputation," two of which must be from individuals who are not related to Petitioner. The letter from the Commission also advised Petitioner that the requested letters of recommendations would assist the Commission in determining her eligibility for licensure. Petitioner did not attend the Commission's April 18, 2005, meeting nor was she represented at the meeting.<sup>1</sup>

On May 19, 2006, the Florida Real Estate Commission issued a Notice of Intent to Deny Petitioner's application for licensure as a real estate sales associate. According to the Notice of Intent to Deny, the application was denied based on the following findings made by the Commission: (1) Petitioner's

criminal record as revealed in her application; (2) Petitioner's testimony/evidence in explanation/mitigation was unpersuasive<sup>2</sup>;

(3) Petitioner's criminal history in recent time;

(4) Petitioner's criminal history showed pattern and practice of criminal behavior over an extended period of time; and

(5) Petitioner is a convicted felon.

Based on the foregoing findings, the Commission determined that Petitioner did not meet the eligibility requirements for licensure in Subsection 475.17(1)(a), Florida Statutes (2005).<sup>3</sup> According to the Conclusions of Law reached in the Notice of Intent to Deny, Petitioner failed to demonstrate honesty, truthfulness, trustworthiness, and good character, and did not have a good reputation for fair dealing. The Commission also concluded that several of the findings were grounds for suspending or revoking a license and, thus, were a basis for denying Petitioner's application, pursuant to Subsection 475.17(1)(a) and Section 475.181, Florida Statutes 2005.<sup>4</sup>

Petitioner timely challenged the findings and conclusions in the Commission's Notice of Intent to Deny her application for licensure as a real estate associate. On August 18, 2006, the Commission forwarded the matter to the Division of Administrative Hearings for assignment of an administrative law judge to conduct a formal hearing.

At the hearing, Petitioner presented the testimony of one witness, Hector Cordero, and testified on her own behalf. Petitioner offered no exhibits at hearing, but the record was left open until October 30, 2006, to allow Petitioner to late-file exhibits.<sup>5</sup> However, as of the date of this Recommended Order, Petitioner had not filed any exhibits. The Commission presented no witnesses and had one composite exhibit admitted into evidence. By agreement of the parties, proposed recommended orders were to be filed on November 9, 2006.

The proceeding was recorded but was not transcribed.

As of the date of this Recommended Order, Petitioner had not filed a proposed recommended order. The Commission timely filed its Proposed Recommended Order, which has been considered in preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner was born on October 2, 1969.
2. On or about November 30, 2005, Petitioner applied to the Commission for a real estate sales associate license.
3. Question No. 1 was one of four questions on the application that asked the applicant to provide background information about himself/herself. Question No. 1 provided in pertinent part the following:

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? This question applies to any violation of the laws of any municipality, county, state or nation, including felony, misdemeanor and traffic offenses (but not parking, speeding, inspection, or traffic signal violations), without regard to whether you were placed on probation, had adjudication withheld, were paroled, or pardoned. . . .

4. The application directed applicants, who responded "yes" to Question No. 1, to provide details regarding "any criminal conviction, . . . including the nature of the charges, dates, outcomes, sentences, and/or conditions imposed."

5. Petitioner answered Question No. 1 in the affirmative. In accordance with the directions on the application, Petitioner provided the details related to all the criminal matters with which she had been charged and/or convicted and the ultimate disposition or action taken as a result thereof.

6. Petitioner was forthright and honest in disclosing the background information that was requested. In all, Petitioner listed ten separate offenses on a form that was submitted as part of her application packet. For each offense, Petitioner was required to and did provide the type and description of the offense; the date and place (county and state) the offense occurred; and the penalty imposed and/or the disposition of the matter. Finally, in accordance with the directions on the

application, Petitioner indicated whether all sanctions had been satisfied, with respect to each offense.

7. Petitioner listed a "disorderly conduct" offense which occurred on November 26, 1988, in Hillsborough County, Florida. This incident involved an altercation with a family member (her mother) and resulted in the police being called. As a result of this incident, Petitioner received counseling and adjudication was withheld. At the time of this incident, Petitioner was 19 years old.

8. Petitioner listed an offense related to passing six worthless checks. At the time of this offense, Petitioner was 24 years old. This offense occurred in Hillsborough County, Florida, on October 22, 1993. As a result of this offense, Petitioner was put on six months' probation. Petitioner paid the checks and the required fines and also successfully completed probation. Adjudication was withheld in the case.

9. According to Petitioner, the worthless check charge was the result of her allowing her brother to rent a car, using Petitioner's debit/checking card. When Petitioner's brother kept the rental car longer than he had agreed to, the rental company assigned the additional charges to her debit card. At the time this occurred, Petitioner was unaware that her brother had kept the rental car for an extended time and that the additional rental car charges were debited from her checking

account, thereby reducing her checking account balance. As a result, there was no money in her account to pay for several (presumably six) checks that Petitioner had written on that debit/checking account.

10. Between June 1994 and April 1996, Petitioner was involved in four offenses involving theft. Three of the four offenses involved petty theft and one involved grand theft. Petitioner described these four "theft" offenses on her application as set forth in paragraphs 11 through 14.

11. On December 9, 1994, Petitioner was charged with grand theft and resisting a merchant. The incident which led to this charge occurred in Marion County, Florida. In describing the incident which resulted in the grand theft charge, Petitioner stated that she was with two people who were shoplifting and one of those people gave her the merchandise (clothes) to take to the vehicle. As to the incident which led to the resisting merchant charge, Petitioner stated that as she was "exiting the door, a man came behind me and grabbed me by the neck without [identifying] himself." In response to this action, Petitioner stated that she "snatched away" from the man. As a result of the foregoing offenses, Petitioner was placed on three (3) years probation. Adjudication was withheld upon Petitioner's successful completing probation.

12. On March 29, 1995, Petitioner was charged with petty theft as a result of her "shoplifting a watch that was \$12.99." Petitioner was convicted of this offense and placed on six months' probation. Petitioner completed her probation and paid all applicable fines.

13. On May 19, 1995, in Hillsborough County, Petitioner was charged with petty theft. According to Petitioner, she was pulled over for a traffic violation and after the law enforcement officer(s) ran a check of the tag, it was determined that the tag had been reported as stolen. Petitioner indicated that she was unaware that the tag was stolen. Petitioner was found guilty of petty theft for this incident and was put on probation for one year. Petitioner satisfied all sanctions imposed for this conviction.

14. On April 26, 1996, Petitioner was charged with and convicted of petty theft, in Hillsborough County, Florida. This offense was the result of Petitioner's "shoplifting [a] tool [worth] less than \$10.00." As a result of her conviction of this petty theft charge, Petitioner was put on probation for one year. Petitioner completed the probationary period.

15. Petitioner was charged on two separate occasions with violation of probation. Both of these charges relate to Petitioner's probation as a result of the grand theft and resisting merchant conviction discussed in paragraph 11 above.



16. The first charge of violating probation occurred on June 6, 1995, in Alachua County, Florida, when Petitioner went to court on the petty theft charge, based on the March 1995 shoplifting incident in that county. When Petitioner appeared in court for that petty theft charge, a warrant was issued for a probation violation in connection with the grand theft conviction in Marion County. As a result of the probation violation, Petitioner's probation in Marion County was reinstated and Petitioner attended counseling for six weeks. Adjudication was withheld in this probation violation case.

17. On December 5, 1997, Petitioner was, for the second time, charged with violating her probation. Based on Petitioner's explanation, this violation of parole was related to Petitioner's changing her address and about "new [criminal] charges."<sup>6</sup> As a result of this probation violation, her probation was reinstated until the required fee was paid. Apparently, the fee was paid, and thereafter, Petitioner's probation was terminated in June 1998.

18. During the period of time between 1994 and 1996, Petitioner was charged, on two separate occasions, with driving with a suspended license. Petitioner was first charged with driving with a suspended license on June 6, 1994, in Alachua County, Florida, after she was pulled over for a traffic violation. For this offense, Petitioner was placed on six-month

non-reporting court probation. All sanctions were satisfied and adjudication was withheld.

19. On August 31, 1996, in Hillsborough County, Florida, Petitioner was, again, charged with driving with a suspended license. In this case, Petitioner paid outstanding tickets and adjudication was withheld.

20. Petitioner appears remorseful about the criminal activities in which she engaged. She testified that the time period in which most of the criminal activities occurred was a difficult time in her life, having recently experienced the death of two close relatives (her father and grandmother) and a close friend. According to Petitioner, this was a traumatic time in her life and the events (the deaths of three people with whom she had close relationships) that occurred near that time affected her behavior. Petitioner explained that soon thereafter, she moved to Gainesville, where she had previously attended college, and got involved with the "wrong" crowd.

21. It is undisputed that Petitioner has not been charged with a criminal offense for over nine years. Furthermore, there is no evidence that Petitioner has been involved in any criminal activity since completing her probation in June 1998.

22. Since 1996, Petitioner has worked on a regular basis and held positions of responsibility. From 1996 through 1998, Petitioner worked in a six-doctor office as an office clerk. In

that position, she posted payments and assisted in collections. In 1998 through 1999, Petitioner worked for a cars sales company and was the lead collection person for the dealership. In 2000, Petitioner returned to the six-doctor office, where she had previously been employed. This time, Petitioner worked in the collections area and was also the internal computer person for the office. After leaving the six-doctor office, Petitioner went to work for a collection agency as a free agent. In addition to the foregoing positions, Petitioner has worked in marketing, where she increased her client base from six (6) to seventy-one (71). At the time of the hearing, Petitioner was self-employed in business aimed at assisting customers with "credit repair."

23. In about 1998, Petitioner joined a church in Tampa. Petitioner is still an active member of that church and is involved in several church activities. Currently, Petitioner is in the church choir and is secretary of the young adult women mission circle.

24. Petitioner is a volunteer in various community service activities. Currently, Petitioner is a volunteer coach for a youth basketball team at the Boys and Girls Club. Petitioner also serves as a mentor to children.

25. Hector Cordero, a member of the same church as Petitioner, and a personal friend of Petitioner<sup>7</sup> testified on Petitioner's behalf and vouched for her honesty and integrity.

26. Petitioner's testimony regarding her past criminal offenses, her employment history, and her community service activities is found to be credible.

27. Notwithstanding the credible testimony of Petitioner, she has failed to comply with a directive of the Commission. In a letter advising Petitioner of the meeting at which her application would be considered, the Commission directed Petitioner to furnish at least three letters from persons who know of her honesty, truthfulness, trustworthiness, good character and good reputation, two of which must be from individuals not related to her. The letter explicitly stated the letters of recommendation would assist the Commission in determining her eligibility for licensure. As of the date of this hearing, there is no evidence that Petitioner ever provided the requested letters of recommendation.

28. At this proceeding, Petitioner was given the opportunity to provide letters of recommendation. Such letters could have been from previous employers, community organizations and others with whom she had worked, who know of and could vouch for Petitioner's honesty, truthfulness, trustworthiness, good character and good reputation. Also, these letters of

recommendations could verify and support Petitioner's employment history and community service activities for the past nine or ten years and thereby show rehabilitation. Although the record in this case was left open to provide Petitioner an opportunity to late-file letters of recommendation for consideration, she failed to provide any such letters or documentation.

29. In view of the fact that Petitioner's criminal history spanned nine years, it was important that she provide evidence that established that she met the eligibility requirements for the licensure as noted in Subsection 475.17(1), Florida Statutes. Also, in light of her criminal background, Petitioner should have provided evidence to demonstrate that she is now rehabilitated and will pose no threat to the public and investors.

30. The evidence presented by Petitioner in this case is insufficient to demonstrate that she meets the eligibility requirements for licensure as a real estate sales associate and that she is rehabilitated.

#### CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. 2006.

32. The Commission is authorized to certify for licensure as a real estate salesperson, any applicant who satisfies the

requirements of Section 475.17, Florida Statutes, and other applicable statutory provisions. See § 475.181, Fla. Stat.

33. Petitioner has the burden of proving by a preponderance of the evidence that she qualifies for the licensure she seeks. Florida Department of Transportation v. J.W.C., Co., 396 So. 2d 778 (Fla. 1st DCA 1981), and Subsection 120.57(1)(j), Florida Statutes.

34. Subsection 475.17(1)(a), Florida Statutes, pertains to the licensure of real estate professionals in the State of Florida, and provides in pertinent part the following:

(1)(a) An applicant for licensure who is a natural person must be . . . honest, truthful, trustworthy, and of good moral character; and have a good reputation for fair dealing. An applicant for an active broker's license or 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. . . . [I]f 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 a 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 the registration.

35. Subsection 475.17(1), Florida Statutes, authorizes the Commission to deny an application for licensure, and to suspend, revoke, or otherwise discipline a real estate broker's or salesperson's license for the grounds set forth therein.

36. The Commission determined that Petitioner's application should be denied based on the following provisions of Subsection 475.25(1), Florida Statutes:

(1) The [C]ommission may deny an application for licensure . . . if it finds that the . . . applicant:

\* \* \*

(b) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme, or device, culpable negligence, or breach of trust in any business transaction in this or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a listing contract. . . .

\* \* \*

(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. . . .

\* \* \*

(o) Has been found guilty, for a second time, of any misconduct that warrants her or his suspension or has been found guilty of a course of conduct or practices which show that she or he is so incompetent, negligent,

dishonest, or untruthful that the money, property, transactions, and rights of investors, or those with whom she or he may sustain a confidential relation, may not safely be entrusted to her or him.

37. According to Subsection 475.17(1), Florida Statutes, an applicant for licensure must be honest, truthful, trustworthy, and of good character and have a good reputation for fair dealing. Furthermore, when an applicant has committed an act or offense which would be grounds for disciplining his license if he or she had been registered, there must be a lapse of time and subsequent good conduct and reputation, or other good reason deemed sufficient in order to be eligible for licensure.

38. Pursuant to the terms of Subsection 475.25(1)(f), Florida Statutes, quoted above, the Commission may deny a person's application for licensure if the applicant has been convicted of or pled guilty or nolo contendere, regardless of whether adjudication was withheld, to a crime involving moral turpitude.

39. The evidence is undisputed and Petitioner acknowledged that she was convicted of crimes that involve moral turpitude (i.e. petty theft and grand theft). Based on this admission and undisputed evidence, the Commission appropriately determined that Petitioner was not qualified for licensure as a real estate sales agent.



40. Given that Petitioner is guilty of conduct in Subsection 475.25(1)(f), Florida Statutes, and described in paragraph 39, Petitioner must show she is qualified to be licensed as a real estate sales associate. To prove that she is qualified, Petitioner must demonstrate that "because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient," that the interest of the public and investors will not likely be endangered by granting the license.

See § 475.17(1)(a), Fla. Stat.

41. To meet his burden, Petitioner must offer more than her own statements and those of her personal friend attesting to her good conduct over the past nine years. Such statements are insufficient to meet the required burden of proof. Rather, Petitioner must present evidence from individuals who know of her honesty, truthfulness, trustworthiness, good character and good reputation, subsequent to the time she was convicted of crimes involving moral turpitude.

42. In Antel v. Department of Professional Regulation, Florida Real Estate Commission, 522 So. 2d 1056 (Fla. 5th DCA 1988), Antel applied for a real estate license shortly after being released from prison. The application was denied because the crime for which Antel was convicted involved moral turpitude, and the hearing officer found that there was insufficient evidence of the applicant's rehabilitation. In affirming the

Commission's denial, the court found that the applicant "presented nothing more than the facts of the crime itself, and a scant employment history since her release on parole--barely more than a year prior to the hearing." Id. at 1057. The court held that:

In view of the short time period since Antel's release from prison, and the scant record presented at hearing, we cannot find that the Commission erred in finding Antel failed to establish her rehabilitation and right to be licensed. Id. at 1058.

43. In the instant case, the undisputed evidence is that a substantial amount of time has passed, more than nine years, since Petitioner was charged with a criminal offense. However, considering the number of charges and convictions that Petitioner had over a period that spanned several years, the record in this case is scant as to evidence or testimony of Petitioner's subsequent good conduct and reputation. Except for Petitioner's own testimony and that of her friend, there is no evidence in the record regarding Petitioner's employment record or other activities subsequent to her criminal convictions and completion of her probation.

44. The evidence presented by Petitioner was insufficient to show that she is honest, truthful, trustworthy, of good character, or that she has a good reputation for fair dealing. Therefore, Petitioner failed to demonstrate that she meets the

qualifications for licensure established in Subsection 475.17(1)(a), Florida Statutes.

RECOMMENDATION

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

RECOMMENDED:

That the Florida Real Estate Commission enter a final order denying Petitioner's application for licensure as a real estate salesperson.

DONE AND ENTERED this 9th day of January, 2007, in  
Tallahassee, Leon County, Florida.

*Carolyn S. Holifield*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 9th day of January, 2007.

ENDNOTES

1/ Based on a letter from Petitioner dated June 5, 2006, Petitioner did not attend the April 18, 2006 meeting because of a misunderstanding as to the date of the meeting.

2/ Despite this finding by the Commission, there is nothing in the record to indicate that Petitioner attended the April 18, 2006, Commission meeting at which the decision on her application was made or that any evidence was presented on Petitioner's behalf at that meeting.

3/ All references to Florida Statutes are to Florida Statutes (2005), unless otherwise indicated.

4/ As a result of the findings, the Commission concluded that Petitioner's conduct was a basis for suspending or revoking a real estate license, and, thus, a basis for denying her licensure, pursuant to Subsection 475.25(1), Florida Statutes. Specifically, the Commission alleged that Petitioner was (1) guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme, or device, culpable negligence or breach of trust (Subsection 475.25(1)(b), Florida Statutes); (2) was convicted or found guilty or entered

a plea of nolo contendere to, regardless of adjudication, a crime which directly relates to activities of a licensed broker or sales associate or involves moral turpitude or fraudulent or dishonest dealing (Subsection 475.25(1)(f), Florida Statutes); and (3) has been found guilty of a course of conduct or practices which would show that Petitioner is so incompetent, negligent, or dishonest that money, property and rights of others may not safely be entrusted to applicant (Subsection 475.25(1)(o), Florida Statutes). In connection with Petitioner's criminal record, the Commission concluded that Petitioner had not had sufficient lapse of time, without government supervision, to establish rehabilitation.

Finally, the Commission concluded that it would be a breach of its duty to protect the health, safety and welfare of the public to license Petitioner, and thereby, provide her with easy access to the homes, families or personal belongings of the citizens of Florida (Subsection 455.201, Florida Statutes).

5/ The exhibits which Petitioner was to late-file related to her employment history.

6/ According to Petitioner, her former probation officer had approved her moving to another location, but apparently the probation officer to whom she was later assigned did not approve or know about the change. Petitioner also indicated that her former probation officer knew about the new charges, but did not issue a violation. However, Petitioner states that when the new probation officer came on board, he issued a probation violation and required her to appear in court.

7/ According to Mr. Cordero, he and Petitioner have dated for the last three-to-four years.

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.