

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA REAL ESTATE COMMISSION

FILED

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DIVISION OF
ADMINISTRATIVE
HEARINGS

DAWN J. ELLIS,

Petitioner,

Case No.: 08-0214

vs.

FLORIDA REAL ESTATE
COMMISSION,

Final Order No. BPR-2008-05111 Date: 6-17-08
FILED
Department of Business and Professional Regulation
AGENCY CLERK
Sarah Wachman, Agency Clerk

FINAL ORDER By: *Brendan M. Nishel*

THIS CAUSE came on to be heard before the Florida Real Estate Commission ("Commission") pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on May 20, 2008, in Orlando, Orange County, Florida, for the purpose of considering Administrative Law Judge Harry L. Hooper's Recommended Order in the above-styled case. A copy of said Recommended Order is attached hereto and incorporated as Exhibit "A". A copy of Respondent's Exceptions to Recommended Order is attached hereto and incorporated as Exhibit "B".

Petitioner was present. The Commission was represented by Mr. James Harwood, Esquire, Chief Attorney for the Department of Business and Professional Regulation, Division of Real Estate, Orlando, Orange County, Florida.

After a review of the complete record in this matter, including consideration of the Administrative Law Judge's Recommended Order and the arguments of each party, the Commission makes the following findings of fact and conclusions of law:

Findings of Fact

1. The Administrative Law Judge's findings of fact, except for paragraph 11, as set forth in Exhibit "A" are approved, adopted, and incorporated herein by reference.

2. Except for Paragraph 11, which is rejected in its entirety, there is competent, substantial evidence to support the Administrative Law Judge's findings of fact as adopted by the Commission. Paragraph 11 is rejected for the reasons set forth in Respondent's Exceptions to Recommended Order, Exception No.1.

Conclusions of Law

3. The Board has jurisdiction of this matter pursuant to Sections 120.569 and 120.57(1), Florida Statutes, Chapter 475, Part I, Florida Statutes, and Chapter 61J2 of the Florida Administrative Code.

4. The Administrative Law Judge's conclusions of law, except for Paragraphs 33, 34, 35, 37, 39, 41, 42 and 43, as set forth in Exhibit "A" are approved, adopted, and incorporated herein by reference.

5. Except for Paragraphs 33, 34, 35, 37, 39, 41, 42 and 43, which are rejected, there is competent, substantial evidence to support the Administrative Law Judge's conclusions of law in Exhibit "A" as amended and adopted by the commission. Paragraphs 33, 34, 35, 37, 39, 41, 42 and 43, are rejected for the reasons set forth in Respondent's Exceptions to Recommended Order.

Disposition

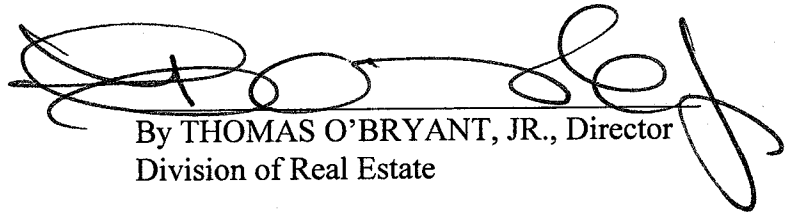
6. Notwithstanding the Findings of Fact and Conclusions of Law rejected by the Commission, the Administrative Law Judge's recommendation is approved and adopted by the Commission.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that:

Petitioner's application for licensure as a real estate sales associate is hereby **APPROVED**.

This Final Order shall take effect upon being filed with the Clerk of the Department of Business and Professional Regulation.

DONE and ORDERED this 10 day of June, 2008, by the Florida Real Estate Commission.



By THOMAS O'BRYANT, JR., Director
Division of Real Estate

Notice of Right to Judicial Review

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the agency clerk of the Department of Business and Professional Regulation and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal in the appellate district where the party resides. The Notice of Appeal must be filed within thirty (30) days of rendition of the Order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to Dawn J. Ellis, 3409 Cedarwood Trail, Tallahassee, Florida 32312; Harry L. Hooper, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building,

1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and Tom Barnhart, Senior Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, on this 17th day of June, 2008.

Brandon M. Nichols

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA REAL ESTATE COMMISSION

FILED

Department of Business and Professional Regulation
DEPUTY CLERK

DAWN J. ELLIS,

Petitioner,

CLERK

DATE

Brandon M. Nichols
4-9-2008

v.

DOAH CASE #: 08-0214

Comm'n Case #: SOA 008-11-2007

FLORIDA REAL ESTATE COMMISSION

Respondent.

RESPONDENT'S EXCEPTIONS TO RECOMMENDED ORDER

Pursuant to Rule 28-106.217(1) of the Florida Administrative Code, the Respondent ("the Commission") files the following Exceptions to the Recommended Order issued on March 25, 2008 in the above-referenced case and states:

Exception #1

1. The Commission takes exception to Paragraph #11 on page 6 of the Administrative Law Judge's Recommended Order. In Paragraph #11, the Administrative Law Judge ("ALJ") found that "[a]lthough it is apparent that the Commission once had rules in place that perhaps provided guidance in relation to the standards expected of an applicant's behavior, the rules have been repealed and new rules have not [been] adopted."

2. The Undersigned thoroughly reviewed the LEXIS database and was unable to locate any repealed rules of the Commission that would have had anything to do with "the standards expected of an applicant's behavior." If the Commission never had any rules of that nature in place, then it should reject Paragraph #11.

Exception #2

3. The Commission takes exception to Paragraph #s 19 and 38 on pages 8 and 14 of the Recommended Order. In Paragraph #19, the ALJ found that "[t]he period of the neighborhood dispute is insufficiently long to be termed as a 'pattern and practice of criminal behavior over an extended period of time.'" In Paragraph #38, the ALJ stated "[i]t is found as a fact that nine months is not an extended period of criminal behavior."

4. To the extent the statements noted directly above amount to an interpretation of any statute within the Commission's substantive jurisdiction, the Commission objects to the ALJ's interpretation.¹ As explained in more detail in the exceptions below, the Commission can grant this exception because the Commission's interpretation of a statute within its substantive jurisdiction prevails over an ALJ's contrary interpretation. Moreover, whether or not an applicant qualifies for licensure as a real estate sales associate is a matter infused with overriding policy considerations. In such instances, the Commission's judgment also prevails over that of an ALJ.

Exception #3

5. The Commission takes exception to Paragraph #s 33 and 34 on pages 12 and 13 of the ALJ's Recommended Order. In Paragraph #33, the ALJ cited section 475.25(1)(a), Florida Statutes, for the proposition that a licensure application can be denied if any of the applicant's past conduct would have constituted a violation of any provision within section

¹ While it is not clear from the Recommended Order, the ALJ may have been interpreting section 475.25(1)(o), Florida Statutes (2007), which provides for denial of a licensure application if the applicant "[h]as 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."

455.227(1), Florida Statutes.² Then, the ALJ noted in Paragraph #33 that a licensee is subject to discipline under section 455.227(1)(c), Florida Statutes, for “[b]eing convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee’s profession.” Finally, the ALJ concluded in Paragraph #34 that the Petitioner “was not convicted of any crime that related to the practice of or the ability to practice as a real estate sales associate as contemplated by Subsection 455.227(1)(c), Florida Statutes.”

6. Paragraph #s 33 and 34 should be rejected because they do not reflect why the Commission denied the Petitioner’s licensure application. Also, they do not reflect any additional grounds for denial set forth in the Commission’s Proposed Recommended Order. As evident from the Notice of Intent to Deny rendered by the Commission on December 12, 2007, the Commission did not cite section 455.227(1), Florida Statutes, as a basis for denying the Petitioner’s application. Instead, the Commission cited section 475.25 of the Florida Statutes, and that statute enumerates a series of grounds for which the Commission may deny a licensure application. See §475.25(1)(a)-(v), Fla. Stat. In the Notice of Intent to Deny, the Commission concluded the Petitioner’s application should be denied on the basis of section 475.25(1)(o), Florida Statutes, which provides that an application can be denied if the applicant has been “[f]ound guilty of a course of conduct or practices which show that [the applicant] is so incompetent, negligent, dishonest, or untruthful that money, property, transactions, and rights of investors, or those with whom [the applicant] may sustain a confidential relation, may not safely be entrusted to [the applicant].”

² All statutory references are to the 2007 version of the Florida Statutes.

7. The Petitioner's stalking conviction resulted from her attempt to intimidate two other females who were witnesses in a legal action pending against her. Without a doubt, such an action demonstrates the Petitioner cannot be trusted with "the money, property, transactions, and rights of investors, or those with whom [she] may sustain a confidential relation, . . ." See §475.25(1)(o), Fla. Stat.

Exception #4

8. The Commission takes exception to Paragraph #35 on page 13 of the Recommended Order. In that paragraph, the ALJ concluded "[s]ection 455.201, Florida Statutes, is recited in the Commission's conclusions of law, but nothing in that statute appears to regulate individual conduct."

9. Paragraph #35 should be rejected. The Commission appropriately cited section 455.210, Florida Statutes, as authority in support of its conclusion that "it would be a breach of its duty to protect the health, safety and welfare of the public to license this applicant and thereby provide him/her easy access to the homes, families or personal belongings of the citizens of Florida."

Exception #5

10. The Commission takes exception to Paragraph #36 on page 13 of the Recommended Order. In that paragraph, the ALJ concluded "[e]ight years have passed since the last criminal act. It is found as a fact that a crime committed in 1999 is not recent."

11. This conclusion of law should be rejected because it does not accurately describe the role played by the passage of time in determining whether an applicant should be licensed. Specifically, section 475.17(1)(a), Florida Statutes, provides that

if an applicant has been found guilty of conduct or practices . . . 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, . . . it appears to the commission that the interest of the public and investors will not likely be endangered by the granting of the registration.

(emphasis added)

12. The analysis of whether enough time has passed to show the applicant has been rehabilitated should not depend exclusively on the amount of time since the applicant committed his or her crime. Instead, the analysis should consider all of the relevant circumstances, especially the seriousness of the crime. For example, some crimes may be so serious that no amount of time (by itself) is sufficient to demonstrate the offender has been rehabilitated. On the other hand, other crimes may be so minor that a few months to a year constitutes a sufficient amount of time.

13. Accordingly, the conclusion of law set forth in Paragraph #36 of the ALJ's Recommended Order should be rejected, and the Commission has the authority to do so because this particular conclusion of law implicates a matter infused with overriding policy considerations (i.e., whether or not an applicant qualifies for licensure as a real estate sales associate).

14. As explained by the Fifth District Court of Appeal in Gross v. Dep't of Health, 819 So. 2d 997, 1002 (Fla. 5th DCA 2002), "[m]atters infused with overriding policy considerations include instances where an agency must interpret one of its own rules, as was the case in *Baptist Hospital*, or where a statute confers broad discretionary authority upon the agency which depends on whether certain criteria are found by the agency to exist, as was the case in *McDonald*." (emphasis added; italics in original).

15. The instant case clearly implicates a situation in which "a statute confers broad discretionary authority upon the agency which depends on whether certain criteria are found by the agency to exist, . . ." As noted above, section 475.17(1)(a), Florida Statutes, provides that

if an applicant has been found 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 the registration.

(emphasis added)

16. Therefore, the Commission has broad discretionary authority under section 475.17(1)(a), Florida Statutes, to determine whether an applicant satisfies the criteria for licensure, and that is a matter infused with overriding policy considerations.

Exception #6

17. The Commission takes exception to Paragraph #37 on pages 13 and 14 of the Recommended Order. In that paragraph, the ALJ concluded that

[s]uccessfully performing as a person commissioned by the State of Florida as a notary public, and working in a position of trust and confidentiality in an attorney's office for many years, is sufficient proof that her conduct subsequent to her criminal activity has been good. This is particularly so when one considers the nature of the offenses cited.

18. In Paragraph #37 of the Recommended Order, the ALJ essentially determined that work as a notary and/or work in a law office is conclusive evidence of the applicant's "subsequent good conduct and reputation."

19. This conclusion of law should be rejected because it inappropriately suggests that work in certain fields can be conclusive evidence of one's "subsequent good conduct and reputation." Instead, that determination should be based on all facets of one's personal and

professional life, and the Commission is free to substitute such a conclusion for the ALJ's. As discussed above in Exception #5, the determination of whether an applicant satisfies the criteria for licensure set forth in section 475.17(1)(a), Florida Statutes, is a matter infused with overriding policy considerations.

Exception #7

20. The Commission takes exception to Paragraph #39 on page 14 of the Recommended Order. In that paragraph, the ALJ concluded that "[o]ne of the two offenses charged was witness tampering. This was never proven. She was allowed to plead to a lesser offense. Consequently, there is no evidence indicating that Ms. Ellis is not honest, truthful, or without good character."

21. Paragraph #39 misstates the burden of proof in licensure cases before the Commission. It was not the Commission's burden to present evidence demonstrating the Petitioner is not honest, truthful, or without good character. Instead, "it was the Petitioner's burden to establish by a preponderance of the evidence that, 'because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, . . . the interest of the public and investors will not likely be endangered' by granting [her] application." Barnes v. Fla. Real Estate Comm'n, case #07-4522 (DOAH 2008)(final order pending).

22. Moreover, even though the Petitioner pled to the lesser offense of stalking, stalking is a very serious crime and certainly casts a great deal of doubt on the Petitioner's character. See Freire v. Dep't of Bus. & Prof'l Regulation, Case # 04-1631, ¶14 (DOAH 2004)(concluding that "[s]talking is contrary to principle and good morals, and is an act of moral turpitude.").

Exception #8

23. In Paragraph #40 on pages 14 and 15 of the Recommended Order, the ALJ concluded that

no offense was committed that amounts to "moral turpitude or fraudulent or dishonest dealing." The closest behavior that might be found to amount to moral turpitude was the August 25, 1999, confrontation that involved persons scheduled to testify against Ms. Ellis. If tampering with a witness had actually occurred, it seems unlikely that the court would have allowed a plea to a lesser offense.

See §475.25(1)(f), Fla. Stat. (providing that a licensure application may be denied if the applicant "[h]as been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which . . . involves moral turpitude . . .").

24. This conclusion of law completely overlooks the fact that the August 25, 1999 incident ultimately resulted in a conviction for stalking. While the ALJ does not appear to consider stalking a serious offense, at least one other ALJ has concluded that "[s]talking is contrary to principle and good morals, and is an act of moral turpitude." Freire Case # 04-1631, ¶14 (DOAH 2004).

25. Indeed, the Petitioner's stalking conviction resulted in her being sentenced to 30 days in jail, and the Petitioner was only released after six days because she agreed to follow through with her plan to move to Tallahassee, Florida.

26. In sum, the Commission should interpret the term "moral turpitude" in section 475.25(1)(f) to encompass stalking. Such a conclusion is within the Commission's substantive jurisdiction because the Commission administers section 475.25, Florida Statutes, and an administrative body's interpretation of a statute it administers is entitled to a substantial degree of deference. See Wallace Corp. v. City of Miami Beach, 793 So. 2d 1134, 1140 (Fla. 1st DCA 2001)(noting that "[a]n agency construction of a statute which it is given the power to administer

will not be overturned on appeal unless it is clearly erroneous.”). See generally Pershing Indus., Inc. v. Dep’t of Banking & Fin., 591 So. 2d 991, 993 (Fla. 1st DCA 1991)(noting that “[i]f an agency’s interpretation is one of several permissible interpretations, it must be upheld despite the existence of reasonable alternatives.”). PW Ventures, Inc. v. Nichols, 533 So. 2d 281, 283 (Fla. 1988)(noting that “[t]he courts will not depart from such a construction unless it is clearly unauthorized or erroneous.”). Dep’t of Prof’l Regulation, Bd. of Med. Examiners v. Durrani, 455 So. 2d 515, 517 (Fla. 1st DCA 1984)(noting that “the agency’s interpretation of a statute need not be the sole possible interpretation or even the most desirable one, it need only be within the range of *possible* interpretations.”)(superseded on other grounds by statute)(italics in original).

Exception #9

27. The Commission takes exception to Paragraph #41 on page 15 of the Recommended Order. In that paragraph, the ALJ concluded that

[a]pplying the facts adduced to all of the law asserted to be pertinent to this case, it is concluded that Ms. Ellis’ conduct was not of the sort that is likely to affect her ability to perform as a professional realtor. Her participation in a neighborhood dispute, even assuming she was the instigator, does not reflect on her trustworthiness and does not indicate she is not suitable to be a real estate sales person.

28. First of all, the ALJ misstates the facts associated with the instant case. The Petitioner’s criminal history did not result from a single, isolated neighborhood dispute. Instead, her criminal history results from a long-running dispute between herself and her neighbors, and the local news media reported that police were called to the neighborhood more than 30 times between the summer of 1998 and August of 1999.

29. Moreover, the ALJ failed to note in the Recommended Order that the Petitioner's neighbors reported to the media that the Petitioner and her companion intimidated them and threatened everyone on the block, including children.

30. Indeed, the neighbor involved in the stalking conviction was quoted in a newspaper article as saying, "We live in terror on our street. We just want our lives back." Upon learning that the Petitioner and her companion were moving to Tallahassee, the neighbor stated to a reporter, "When they're gone, and my neighbors can sleep peacefully, that's when we'll feel better."

31. The Commission can reject this conclusion of law because it pertains to the determination of whether an applicant satisfies the criteria for licensure set forth in section 475.17(1)(a), Florida Statutes, and that is a matter infused with overriding policy considerations best left to the Commission.

Exception #10

32. The Commission takes exception to Paragraph #s 42 and 43 on pages 15 and 16 of the Recommended Order. In Paragraph #42, the ALJ cites previous licensure cases in which the criminal offenses committed by the applicants in question were (for the most part) particularly egregious. In Paragraph #43, the ALJ compares the instant Petitioner's offenses to those committed by the applicants in the previous cases and concludes "[i]nvolving oneself in an ongoing neighborhood dispute for a period of nine months, and having been twice convicted of offenses related to that dispute, almost nine years ago, is not the sort of criminality that should affect Ms. Ellis' fitness to be licensed as a real estate sales associate."

33. The analysis set forth in Paragraph #42 is misleading. The ALJ appears to have "cherry-picked" Wozniak, Stobbe, and Denicola, in an attempt to make the instant Petitioner's

offenses seem inconsequential by comparison. However, past cases clearly demonstrate that an applicant's criminal history does not have to rise to the level described in Wozniak, Stobbe, and Denicola in order to justify denial. See Barnes, Case # 07-4522 (DOAH 2008)(final order pending)(recommending denial of the petitioner's licensure application even though the petitioner's drug-related and victimless offenses occurred more than twenty years before the hearing); Cabrera v. Fla. Real Estate Comm'n, Case # 07-4117 (DOAH 2007)(adopted by a Final Order rendered on January 31, 2008)(recommending denial of a licensure application from a petitioner whose criminal background consisted solely of an incident in which she stole \$743 worth of items from a Home Depot store).

34. Because the conclusion of law set forth in Paragraph #42 is contrary to Commission precedent, it must be rejected. See Gessler v. Dep't of Bus. & Prof'l Regulation, 627 So. 2d 501 (Fla. 4th DCA 1993)(holding "it is nevertheless apparent the legislature intends there be a principle of administrative stare decisis in Florida.")(superseded on other grounds described in Caserta v. Dep't of Bus. & Prof'l Regulation, 686 So. 2d 651 (Fla. 5th DCA 1996)). See generally North Miami Gen. Hosp., Inc. v. Office of Cmty. Medical Facilities, Dep't of Health & Rehab. Serv., 355 So. 2d 1272, 1278 (Fla. 1st DCA 1978)(holding that "such inconsistent results based upon similar facts, without a reasonable explanation, violate not only express provisions of the Administrative Procedure Act (Chapter 120, F.S.), but are violative of the equal protection guarantees of both the Florida and United States Constitutions. For this reason, in addition to the other reasons set forth herein, we find that the respondent's order denying petitioner's application should be reversed.").

35. The conclusion of law set forth in Paragraph #43 should also be rejected. The Commission has a duty to protect the health, safety and welfare of the public. See §455.201(2),

Fla. Stat. If the Petitioner's application were to be granted, she would have frequent contact with people and open access to their homes and personal belongings. Given the serious nature of the Petitioner's criminal history, the newspaper accounts about how she allegedly terrorized her neighbors, and the complete lack of persuasive evidence regarding the Petitioner's "subsequent good conduct and reputation," granting the Petitioner's application represents too great of a risk to the health, safety, and welfare of the public.³ Under those circumstances, the Commission certainly would not be abusing its discretion by denying the Petitioner's licensure application.

36. Furthermore, the Commission has the authority to reject the conclusion of law in Paragraph #43 because it pertains to whether the Petitioner satisfies the criteria for licensure, and that is a matter infused with overriding policy considerations.

CONCLUSION

Accordingly, for the reasons set forth above, the Commission respectfully requests that the instant Exceptions be granted, that the Commission substitute its own findings of fact and conclusions of law where appropriate, and that the Petitioner's licensure application be denied.

³ For an explanation as to why the Petitioner's evidence is unpersuasive, please refer to pages 12 through 15 of the Commission's Proposed Recommended Order which is being filed along with the instant Exceptions.

Respectfully submitted on this the 9th day of April 2008.

BILL MCCOLLUM
ATTORNEY GENERAL

Garnett W. Chisenhall

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CERTIFICATE OF SERVICE

I CERTIFY that a copy hereof has been furnished by U.S. Mail to Dawn Janell Ellis,
3409 Cedarwood Trail, Tallahassee, Florida 32312 on this the 9th day of April 2008.

Garnett W. Chisenhall

Garnett W. Chisenhall

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA REAL ESTATE COMMISSION

FILED
Department of Business and Professional Regulation
DEPUTY CLERK

CLERK *Brandon M. Nichols*

DATE 12-12-2007

IN RE: APPLICATION OF DAWN J. ELLIS
FOR A REAL ESTATE LICENSE

/ SOA 008-11-2007

NOTICE OF INTENT TO DENY

THIS APPLICATION came on for consideration by the Florida Real Estate Commission (Commission) at its regularly scheduled meeting in Orlando, Florida on November 14, 2007. Applicant was not present, and was not represented by counsel.

The Commission reviewed the Application, the disclosed criminal history, any and all documents presented on applicant's behalf, and being otherwise fully apprised in the circumstances:

Findings of Fact

1. The "Key For License Denials," attached hereto as Exhibit "A," is hereby adopted and incorporated by reference as the Key to the Commission's Findings of Fact in this case.

2. Pursuant to the Key for License Denials, the Commission finds the following facts in this case, to wit: 1,4,5,6.

Conclusions of Law

1. The "Key For License Denials," attached hereto as Exhibit "A," is hereby adopted and incorporated by reference as the Key to the Commission's Conclusions of Law in this case.

2. The Commission concludes that the admitted criminal

violations and other facts found constitute the following violations of statutory provisions set forth in the Key for License Denials, to wit: B,C,F,L,M.

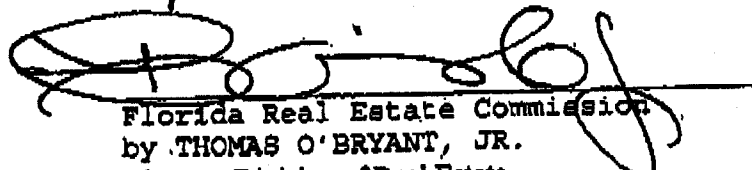
3. The violations of the statutory sections listed above are grounds for denial of this license application.

WHEREFORE, it is hereby ORDERED and ADJUDGED that:

Applicant's license application is DENIED.

This Order is effective when filed with the clerk of the Department of Business and Professional Regulation.

DONE and ORDERED this 05 day of December, 2007.


Florida Real Estate Commission
by THOMAS O'BRYANT, JR.
Director, Division of Real Estate

NOTICE OF RIGHTS

You may seek review of this Order, pursuant to Sections 120.569 and 120.57, Florida Statutes, by filing a petition with the Division of Real Estate within 21 days of receipt of this Order.

If you dispute any material fact upon which the Commission's decision is based, you may request a hearing pursuant to Section 120.57(1), Florida Statutes; your petition must contain the information required by Rule 28-106.201, Florida Administrative Code, including a statement of the material facts which are in dispute.

If you do not dispute any material fact, you may request a hearing pursuant to Section 120.57(2), Florida Statutes; your petition must include the information required by Rule 28-106.301, Florida Administrative Code.

Pursuant to Section 120.573, Florida Statutes, you are

hereby notified that mediation pursuant to that section is not available.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Certified Mail to Dawn J. Ellis, 3409 Cedarwood Trail, Tallahassee, Florida 32312 , and to Jeannie Adkinson, Division of Real Estate, 400 W. Robinson Street, Suite N 801, Orlando, FL 32801-1757 on this 12th day of December, 2007.

Dawn Workman

KEY FOR LICENSE DENIALS

MOTION: I Move the Commission Find the Following Facts: (Use All that Apply)

- 1. CRIMES IN APPLICATION Applicant's criminal record is as revealed in application.
- 2. FAILURE TO DISCLOSE Applicant's complete criminal record was not revealed in application.
- 3. UNLICENSED PRACTICE Applicant has operated as though licensed while unlicensed.
- 4. UNPERSUASIVE TESTIMONY Applicant's testimony or evidence in explanation/mitigation was unpersuasive.
- 5. CRIMES RECENT Applicant's criminal history is recent in time.
- 6. PATTERN OF CRIME Applicant's criminal history shows a pattern and practice of criminal behavior over an extended period of time.
- 7. NO SHOWING REHABILITATION Applicant has not had sufficient time free of government supervision to establish rehabilitation.
- 8. OTHER LICENSE DISCIPLINE Applicant has had other licenses _____ (specify) revoked or suspended in _____ (jurisdictions) for dishonesty mishandling funds business activities that impacted the health, safety or welfare of the public.
- 9. CONVICTED FELON Applicant is a convicted felon.

MOTION: I move the Commission reach the Following Conclusions of Law

- A Failure to establish restoration of civil rights. Chapter 112, F.S.
- B Failing to demonstrate: honesty, truthfulness, trustworthiness and good character, a good reputation for fair dealing competent and qualified to conduct transactions and negotiations with safety to others. 475.17(1)(a), 475.181 F.S.
- C Having engaged in conduct or practices which would have been grounds for revoking or suspending a real estate license. 475.17(1)(a), 475.181, F.S.
- D Having been denied licensure or having a license to practice any regulated business, profession or vocation, for conduct which would constitute a violation of this Chapter. 475.1791(a), 475.181 F.S.
- E 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; 475.25(1)(b), 475.181 F.S.
- F Found guilty of a course of conduct or practices which show applicant is so incompetent, negligent, or dishonest that money, property and rights of others may not safely be entrusted to applicant. 475.25(1)(c), 475.181 F.S.
- G 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. 475.25(1)(f), 475.181 F.S.
- H Applicant has not had sufficient lapse of time, without government supervision, to establish rehabilitation by being crime free.
- I Having operated as a broker or sales associate without holding a license to do so. 475.42, 475.181, F.S.
- J Having been a sales associate who operated as a broker or a sales associate not registered as his or her employer. 475.42, 475.181
- K Other violation of Section 475.42 _____ (specify), 475.181, F.S.
- L Applicant is subject to discipline under 475.25 _____ (specify), 475.181, F.S.
- M The Commission concludes that it would be a breach of its duty to protect the health, safety and welfare of the public to license this applicant and thereby provide him/her easy access to the homes, families or personal belongings of the citizens of Florida. 455.201, F.S.