

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DAWN J. ELLIS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 08-0214  
 )  
 FLORIDA REAL ESTATE COMMISSION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

This cause came on for final hearing before Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings, on February 21, 2008, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Dawn J. Ellis, pro se  
3409 Cedarwood Trail  
Tallahassee, Florida 32312

For Respondent: Garnett Chisenhall, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue is whether Petitioner's application for a real estate license may lawfully be denied based on her criminal history.

PRELIMINARY STATEMENT

Petitioner Dawn J. Ellis (Ms. Ellis) submitted an application for a real estate license as a sales associate that was received by the Department of Business and Professional Regulation (Department) on July 20, 2007. The Department provides administrative support to the Florida Real Estate Commission (Commission). Acting as representative of the Commission, the Department deemed the application incomplete and returned it to Ms. Ellis by letter, dated August 7, 2007.

Ms. Ellis provided additional information, including an affidavit dated November 7, 2007. Subsequently, the Commission issued its Notice of Intent to Deny. It was filed on December 12, 2007. Ms. Ellis submitted Petitioner's Response to Notice of Intent to Deny that was filed by the Division of Real Estate of the Department on January 4, 2008. The matter was referred to the Division of Administrative Hearings and filed on January 11, 2008. It was set for hearing on February 21, 2008, and was heard as scheduled.

At the hearing, Petitioner testified. She offered no exhibits into evidence. Respondent presented no testimony. Respondent offered Group Exhibit 1, which was accepted into evidence.

No transcript was ordered. After the hearing, Petitioner and Respondent timely filed their Proposed Recommended Orders on March 17, 2008.

References to statutes are to Florida Statutes (2007) unless otherwise noted.

FINDINGS OF FACT

1. The Commission is a state licensing and regulatory agency charged, inter alia, with granting or denying real estate licenses. Certain administrative services are provided to the Commission by the Division of Real Estate (Division) of the Department of Business and Professional Regulation (Department).

2. Ms. Ellis, at the time of the hearing, was a 34-year-old female residing in Tallahassee, Florida. She is currently employed as a legal secretary and has held a commission as a notary public in Florida since 1997.

3. On July 20, 2007, a DBPR 0010-2 Master Individual Application, prepared by Ms. Ellis, was received by the Department. The application sought a real estate sales associate license.

4. In a letter dated August 7, 2007, the Department notified Ms. Ellis that her application was incomplete. Specifically, the letter noted that she had checked the "yes" block on the inquiry addressing criminal matters and requested additional information with regard to her involvement with the

criminal justice system. The letter also requested matters, labeled "Questions 2, 3, and 4," that were not relevant to her application.

5. In a letter dated October 23, 2007, Ms. Ellis responded to the demand for additional information. She provided the Department with letters of recommendation written by her father, Tallahassee attorney Vinson Barrett, and fellow legal secretary Adriana Bernstein. The gist of the letters was that she is a good worker, honest, an exemplary mother, trustworthy, and maintains good working relationships with her fellow workers.

6. In a letter dated October 29, 2007, she provided additional documents illuminating her involvement with the criminal justice system.

7. Despite her input, the Commission rejected her application at its November 14, 2007, meeting. Ms. Ellis did not attend this meeting.

8. The Commission recited findings of fact using reference "keys" as follows:

1. CRIMES IN APPLICATION

Applicant's criminal record is revealed in application.

\* \* \*

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.

\* \* \*

9. The Commission made the following conclusions of law:

\* \* \*

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.

\* \* \*

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)(o), 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.

10. A "Summary of Applicants, FREC Meeting: November 14, 2007" prepared for the Commission meeting in Ms. Ellis' case, is inaccurate, and unless read closely and supplemented with additional facts, would cause a reasonable person to believe that Ms. Ellis was convicted of four offenses. In fact, she was found guilty of two offenses, battery and stalking.

11. Although 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 be adopted.

12. The events giving rise to the findings recited by the Commission, relate to incidents arising from Ms. Ellis' interaction with law enforcement authorities while a resident of Tampa, Florida.

13. Ms. Ellis moved into Ms. Lisa Nawrocki's home at East 99th Street, in Tampa during the latter part of 1998 with her two children. She and Ms. Nawrocki had a series of disputes with their neighbors. From late 1998 until October 1999, law enforcement was summoned by Ms. Ellis, Ms. Nawrocki, or their neighbors on 30 occasions.

14. On January 31, 1999, Ms. Ellis was arrested for a battery precipitated by a dispute with one of her neighbors. She pleaded not guilty, but was found guilty of battery at a bench trial. She was sentenced on May 26, 1999, to one year of probation and community service. Ms. Ellis was also directed to attend an anger management class.

15. Ms. Ellis alleged to the media that she and Ms. Nawrocki were victims of "hate" crimes. Ms. Ellis asserted to the media that their difficulties with their neighbors arose because she was a homosexual.

16. Ms. Ellis was arrested again on August 25, 1999, as a result of a confrontation with neighbors. The neighbors were witnesses against Ms. Ellis in another case so she was charged with witness tampering. In order to avoid a trial and possible imprisonment, with attendant separation from her children, she pleaded guilty to the lesser offense of stalking and was sentenced to one year of probation on October 27, 1999. Because the latter offense was a violation of probation on the battery offense of January 31, 1999, her probation was revoked. She was sentenced to 30 days in jail.

17. After serving six days in jail Ms. Ellis was released after promising the judge that she and Ms. Nawrocki would move out of their troubled neighborhood on East 99th Street, and relocate to Tallahassee, Florida. Ms. Ellis did in fact move to

Tallahassee and has experienced no involvement with the criminal justice system since her move.

18. Her probation, resulting from the battery conviction was successfully completed on March 7, 2000. Her probation resulting from the stalking charge, which was continued subsequent to her release from confinement, was successfully completed on May 15, 2001.

19. All of the charges resulted from the neighborhood dispute that began late 1998 and ended with her departure from her neighborhood early in November 1999. There is no record of Ms. Ellis' involvement with the criminal justice system before or since these events. The 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."

20. Ms. Ellis' unrebutted testimony at the hearing was that since the end of 1999, she has been employed as a legal secretary in Tallahassee. Ms. Ellis testified that she works with confidential attorney-client matters and that she has maintained the accounts of law firms.

21. Ms. Ellis' testimony at the hearing is supported by the written evidence of record, including a letter penned by Attorney Vinson Barrett, who stated that she was honest and trustworthy. Her testimony is deemed credible.



CONCLUSIONS OF LAW

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

23. The Commission and the Department are the state agencies responsible for regulating real estate brokers and sales associates. See generally Ch. 475, pt. I, Fla. Stat.

24. The Department is the agency that issues the real estate sales associate license, but it does so only after certification from the Commission that the applicant has satisfied the applicable statutory and rule criteria. See § 475.181, Fla. Stat.

25. It is Ms. Ellis' burden to prove by a preponderance of the evidence that she satisfies the criteria for licensure as a real estate sales associate, if she is to prevail. See § 120.57(1)(j), Fla. Stat., and Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

26. Licensing agencies such as the Commission have broad latitude in determining the fitness of applicants for licensure. See, e.g., Astral Liquors, Inc. v. Dept. of Business Regulation, 463 So. 2d 1130 (Fla. 1985).

27. The Department's duty to license an applicant certified by the Commission is ministerial, as is its duty to

deny licensure to an applicant not certified by the Commission.  
See § 475.181(1), Fla. Stat.

28. The Commission's certification (or not) of an applicant for licensure is subject to the provisions of Subsection 475.181(2), Florida Statutes, which references other statutes. The question of qualification in this case is limited to the issue of Ms. Ellis's conduct. Other requirements such as age, education, or license examinations are not in issue.

29. The first part of Subsection 475.181(2), Florida Statutes, provides, "The commission shall certify for licensure any applicant who satisfies the requirements of ss. 475.17, 475.175, and 475.180. The commission may refuse to certify any applicant who has violated any of the provisions of s. 475.42 or who is subject to discipline under s. 475.25." Section 475.175, Florida Statutes, relates to examinations, and Section 475.180, Florida Statutes, relates to nonresident licenses and are, therefore, irrelevant to this proceeding.

30. Subsection 475.17(1)(a), Florida Statutes, provides in part as follows:

475.17. Qualifications for practice--

(1)(a) 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. An applicant for . . . 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 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.

\* \* \*

31. Parts of Section 475.25, Florida Statutes, asserted to be pertinent to this case follow:

475.25. Discipline --

(1) The commission may deny an application for licensure . . . if it finds that the . . . applicant:

(a) Has violated any provision of s. 455.227(1) or s. 475.42. However, licensees under this part are exempt from the provisions of s. 455.227(1)(i).

\* \* \*

(f) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction . . . involves moral turpitude or fraudulent or dishonest dealing. The record of a conviction certified or

authenticated in such form as to be admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

\* \* \*

(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.

\* \* \*

32. Section 475.42, Florida Statutes, addresses unlawful activities in which a licensed person may engage. Nothing in that statute applies to the matters alleged in this case.

33. Because Subsection 475.25(1)(a), Florida Statutes, provides that a violation of Subsection 455.227(1), Florida Statutes, may be a disqualifying matter, the single relevant subsection is provided:

§ 455.227. Grounds for discipline;  
penalties; enforcement

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

\* \* \*

(c) Being 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.

\* \* \*

34. Ms. Ellis 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.

35. Section 455.201, Florida Statutes, is recited in the Commission's conclusions of law, but nothing in that statute appears to regulate individual conduct.

36. With regard to the Commission's "Findings of Fact," Ms. Ellis did reveal her criminal history in the application, and the Commission so stated. No standard was offered against which to measure whether Ms. Ellis' criminal history was "recent." Eight years have passed since the last criminal act. It is found as a fact that a crime committed in 1999 is not recent.

37. Subsection 475.17(1)(a), Florida Statutes, set forth above, also requires that the applicant demonstrate through "subsequent good conduct and reputation . . . that the interest of the public and investors will not likely be endangered . . ." by granting the application. Successfully 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.

38. No standard was offered against which to measure whether Ms. Ellis' criminal history demonstrates a pattern and practice of criminal behavior over a period of time. The period during which the neighborhood dispute was ongoing did not exceed nine months. It is found as a fact that nine months is not an extended period of criminal behavior. As noted above, this is particularly so when one considers the nature of the offenses cited.

39. With regard to the Commission's "Conclusions of Law," it was found that Ms. Ellis failed 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," citing Subsection 475.17(1)(a) and Section 475.181, Florida Statutes. One 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.

40. With regard to Subsection 475.25(1)(f), Florida Statutes, 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.

41. Applying 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.

42. A review of similar cases where disqualification was based on criminality is illuminating. For instance, an applicant received a recommended order of disqualification subsequent to being convicted of 13 felony counts involving 12 fraudulent applications for FHA and VA loans. Wozniak vs. Florida Real Estate Commission, Case No. 88-0188 (DOAH May 10, 1988). In another case, a recommendation of denial issued to an applicant who pleaded guilty to conspiracy to counterfeit twenty-dollar bills. Stobbe vs. Department of Professional Regulation, Board of Real Estate, Case No. 81-1924 (DOAH December 1, 1981). In yet another, a recommendation of denial

was issued to an applicant who entered a guilty plea to fraud, submitting false claims, stealing mail, larceny, and signing a false statement and who later pled to a charge of criminal sexual contact and endangering the welfare of children.

Denicola vs. Department of Business and Professional Regulation,  
Case No. 03-3498 (DOAH March 5, 2004).

43. The offenses in the cases cited above seem quite serious when compared to the charges involving Ms. Ellis. Involving 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.

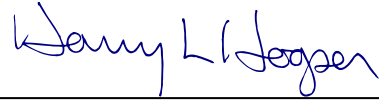
#### RECOMMENDATION

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

RECOMMENDED that the Florida Real Estate Commission withdraw its Notice of Intent to Deny the Application of Dawn J. Ellis, if she is otherwise qualified, that the Commission certify to the Department of Business and Professional Regulation that Dawn J. Ellis has satisfied the applicable statutory and rule criteria for licensure as a real estate sales associate.



DONE AND ENTERED this 25th day of March, 2008, in  
Tallahassee, Leon County, Florida.



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HARRY L. HOOPER  
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Filed with the Clerk of the  
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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.