

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SAMUEL POPPELL,)
)
 Petitioner,)
)
 vs.) Case No. 11-3809
)
 FLORIDA REAL ESTATE COMMISSION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on November 6, 2011, in Orlando, Florida, before Susan Belyeu Kirkland, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Daniel Villazon, Esquire
Daniel Villazon, P.A.
1420 Celebration Boulevard, Suite 200
Celebration, Florida 34747

For Respondent: Thomas Barnhart, Esquire
Office of the Attorney General
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Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner's application for licensure as real estate sales associate should be granted.

PRELIMINARY STATEMENT

On July 14, 2011, Respondent, Florida Real Estate Commission (Commission), filed a Notice of Intent to Deny the application of Petitioner, Samuel Poppell (Mr. Poppell), for licensure as a real estate sales associate. The Commission's denial is based on Mr. Poppell's criminal history. Mr. Poppell requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on July 28, 2011, for assignment to an Administrative Law Judge to conduct the final hearing.

At the final hearing, Joint Exhibit 1 was admitted in evidence. Mr. Poppell testified in his own behalf. The Commission did not call any witnesses.

No transcript was ordered. The parties agreed to file their proposed recommended orders within ten days of the date of the final hearing. The Commission filed Respondent's Proposed Recommended Order on November 18, 2011. Mr. Poppell filed his Proposed Recommended Order on November 21, 2011.

FINDINGS OF FACT

1. On February 28, 2011, Mr. Poppell filed with the Commission an application for licensure as a real estate sales associate. In his application, Mr. Poppell stated that he was pleading not guilty to current charges of "trafficking, possession and receiving stolen property."

2. By letter dated April 7, 2011, Mr. Poppell sent to the Commission the Alabama Uniform Incident/Offense Report relating to his arrest in Tuscaloosa, Alabama, on September 12, 2010, for trafficking in illegal drugs and unlawful possession of a controlled substance. At the time of his arrest, Mr. Poppell was a student at the University of Alabama.

3. The criminal case against Mr. Poppell is currently pending, and Mr. Poppell does not anticipate that it will be resolved until 2012.

4. Mr. Poppell, who is 22 years old, posted bail of \$175,000. He currently lives in Florida and owns a pizza and sub restaurant with his mother in Niceville, Florida.

5. On July 14, 2011, the Commission filed a Notice of Intent to Deny Mr. Poppell's application. The Commission's denial was based on Mr. Poppell's criminal history as revealed in his application and the unpersuasive testimony or evidence presented by Mr. Poppell as an explanation or mitigating factors.

6. The Commission cited the following statutory basis for denying Mr. Poppell's application:

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.

* * *

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.

Additionally, the Commission cited section 455.213(3), Florida Statutes (2011),^{1/} as an additional ground for denial.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 & 120.57, Fla. Stat.

8. As the applicant seeking licensure, Mr. Poppell has the burden to establish by a preponderance of the evidence that he satisfies the requirements for licensure as a real estate sales associate. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996); Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 787 (Fla. 1st DCA 1981).

9. Section 475.181, Florida Statutes, provides:

(1) The department shall license any applicant whom the commission certifies, pursuant to subsection (2), to be qualified to practice as a broker or sales associate.

(2) 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. . . .

10. Section 475.17(1)(a) sets forth qualification for licensure as a real estate sales associate and provides:

(1)(a) An applicant for licensure who is a natural person must be at least 18 years of age; hold a high school diploma or its equivalent; be honest, truthful, trustworthy, and of good character; and have a good reputation for fair dealing. An applicant for an active broker's license or 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. . . . [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 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.

11. Section 475.25(1)(f) provides that the Commission may deny an application for licensure or discipline a licensee if it finds that the applicant or licensee "[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 or fraudulent or dishonest dealing."

12. The Florida Supreme Court defined "moral turpitude" as follows:

Moral turpitude involves the idea of inherent baseness or depravity in the private social relations or duties owed by man to man or by man to society. It has also been defined as anything done contrary to justice, honesty, principle or good morals, though it often involves the question of intent as when unintentionally committed through error of judgment when wrong was not contemplated.

State ex rel. Tullidge v. Hollingsworth, 146 So. 660, 661 (Fla. 1933) (citations omitted.)

13. Mr. Poppell has been charged with trafficking in illegal drugs and receipt of stolen property, which in the instant case was a firearm. Both crimes involve moral turpitude. Fla. Bar v. Wilson, 425 So. 2d 2 (Fla. 1983) (Drug trafficking is a crime of moral turpitude.); Page v. Watson, 192

So. 205 (Fla. 1938) (Possession of stolen property is a crime of moral turpitude.). Thus, if Mr. Poppell were convicted of these crimes, such convictions would serve as grounds for denial of his application for licensure.

14. Section 455.213(3) provides:

(3) The board, or the department when there is no board, may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of this chapter or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete.

15. Mr. Poppell has not been convicted of a crime of moral turpitude. He has been arrested and charged with crimes of moral turpitude. Thus, at this time, he is not in violation of section 475.25(1)(f).

16. No evidence was presented that Mr. Poppell has a reputation for fair dealing. Thus, Mr. Poppell did not satisfy that requirement of section 475.17 and, thus, cannot be certified by the Commission for licensure pursuant to section 475.181.

17. Mr. Poppell has been charged with trafficking in illegal drugs and receiving stolen property, and the prosecution of those charges has not been completed. Pursuant to section 455.213(3), the Commission may refuse to issue a

license to Mr. Poppell. If Mr. Poppell were to be convicted of these serious crimes, he would be in violation of section 475.25(1)(f) and would not meet the licensure requirements of section 475.17, except the requirements that he be at least 18 years of age and hold a high school diploma. Thus, the Commission correctly denied the application of Mr. Poppell.

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 Mr. Poppell's application.

DONE AND ENTERED this 1st day of December, 2011, in Tallahassee, Leon County, Florida.

Susan Belyeu Kirklund

SUSAN BELYEU KIRKLAND
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of December, 2011.

ENDNOTE

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2011 version.

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.