

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

VICTOR ROTHAAAR,

Petitioner,

vs.

Case No. 17-1855

FLORIDA REAL ESTATE COMMISSION,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

On May 31, 2017, Administrative Law Judge Yolonda Y. Green, of the Division of Administrative Hearings ("Division"), conducted a duly-noticed final hearing by video teleconference at sites located in Tallahassee and Orlando, Florida.

APPEARANCES

For Petitioner: Victor Walter Rothaar, pro se  
1931 South 350 East  
Bountiful, Utah 84010

For Respondent: Tom L. Barnhart, Esquire  
Robert S. Milne, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether Petitioner's application for licensure as a real estate broker should be approved or denied.

PRELIMINARY STATEMENT

On January 12, 2017, the Department of Business and Professional Regulation, Florida Real Estate Commission ("Respondent" or "Commission"), issued a Notice of Intent to Deny ("NOID"), thereby notifying Petitioner ("Petitioner" or "Mr. Rothaar") of the Commission's intent to deny his application for licensure as a real estate broker. As reasons for denial, the NOID alleged Petitioner violated the following: sections 475.17(1)(a), 475.25(1)(f), and 455.201, Florida Statutes (2016).

On or about January 17, 2017, Petitioner received the NOID. On February 2, 2017, Petitioner requested a final hearing to dispute the reasons for the denial in the NOID. The Commission referred this matter to the Division to assign an Administrative Law Judge to conduct the final hearing.

On March 24, 2017, this matter was referred to the Division and assigned to the undersigned to conduct the final hearing.

On April 3, 2017, the undersigned issued a Notice of Hearing scheduling this matter for May 31, 2017, by video teleconference in Tallahassee and Orlando, Florida. The hearing was held as scheduled.

At the final hearing, Petitioner testified on his own behalf. Petitioner's Exhibits P-1, P-2, P-4, and P-5 were admitted in evidence over objection; Exhibit P-3 was not admitted. Respondent did not present any witnesses. Respondent

offered Exhibit R-1, of which pages 20-25 were excluded, otherwise, the exhibit was admitted.

Respondent requested a copy of the hearing transcript. The one-volume Transcript of the proceeding was filed on June 27, 2017. The deadline to file proposed recommended orders was July 7, 2017. Respondent timely filed a Proposed Recommended Order, which has been considered in preparation of this Recommended Order. Petitioner, however, has not filed any post-hearing submittal.

All statutory references shall be to the 2016 Florida Statutes, unless otherwise indicated.<sup>1/</sup>

#### FINDINGS OF FACT

Based on the testimony and documentary evidence presented in this proceeding, the following Findings of Fact are found:

1. Respondent is the state agency charged with regulating the practice of real estate in the State of Florida, pursuant to section 20.165, chapters 455 and 475, Florida Statutes.

2. Petitioner seeks to obtain a real estate broker license to practice real estate in Florida.

3. Petitioner is a resident of the State of Utah and has held an active real estate broker license in Utah for at least 24 months during the preceding five years from the date of his application.

4. In 2003, Petitioner was first licensed in Utah as a real estate sales agent. On February 12, 2007, Petitioner was issued a real estate broker license, and his limited-liability company, Ultimate Homes of Utah, LLC, was licensed as a real estate company in Utah.

5. On July 28, 2016, Petitioner submitted an on-line application for a Florida real estate broker license. The application included a section which requested background information. Question No. 1, one of the four questions on the application, requested information about Petitioner's criminal history. Specifically, Question No. 1 requested in pertinent part the following: "Have you ever been convicted or found guilty of, or entered a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction, or are you currently under criminal investigation?"

6. The application also directed applicants, who responded "yes" to Question No. 1, to provide details regarding any criminal offense, including description of the offense, offense type, penalty or disposition, and whether sanctions have been satisfied for each offense.

7. In his application, Petitioner answered Question No. 1 affirmatively. He disclosed that he plead guilty to one count of aggravated sexual abuse of a child, a first-degree felony, on

July 5, 1995. The criminal offense occurred in Utah. Further details of the criminal offense will be discussed below.

8. Petitioner appeared, pro se, at the December 14, 2016, Commission meeting where his application was considered. On January 12, 2017, Respondent entered a NOID, which stated a number of grounds for the intent to deny Petitioner's application.

9. Respondent's NOID recited key findings of fact 1 and 4, and key conclusions of law D, G, and M, as grounds for its proposed denial of Petitioner's application. Those key findings and conclusions, as set forth on the Key for License Denials, attached to Respondent's NOID, are as follows:

1. Crimes in Application. Applicant's criminal record is as revealed in application.

\* \* \*

4. Unpersuasive Testimony. Applicant's testimony or evidence in explanation/mitigation was unpersuasive.

\* \* \*

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)[sic], 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.

\* \* \*

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 easy access to the homes, families or personal belongings of the citizens of Florida. 455.201, F.S.

10. Regarding the circumstances of Petitioner's criminal offense, on December 13, 1994, an Information was filed by the County Attorney for Circuit Court of Davis County, State of Utah, which charged Petitioner with three counts as follows:

Count One: rape of a child, a first degree felony: On or about July 30, 1993, Petitioner engaged in sexual intercourse with a child under 14 years of age.

Count Two: Sodomy Upon a Child, a first degree felony: On or about July 30, 1993, Petitioner engaged in a sexual act involving the genitals of the actor and the child under the age of 14 and the mouth or anus of either person.

Count Three: Rape of a Child, a first degree felony: On or about August 13, 1993, Petitioner had sexual intercourse with a child who is under the age of 14.

11. The victim involved in the criminal offense was a 13-year-old female, while Petitioner was 21 years old.

12. Petitioner ultimately pled guilty to one count of aggravated sexual abuse of a child. On July 5, 1995, Petitioner was sentenced to an indeterminate term of three years to life, fined \$2,000, and ordered to pay restitution for costs of the victim's counseling. The court also recommended that Petitioner participate in a specialized sex offender treatment program. Petitioner served four years' imprisonment, followed by five years of parole. Petitioner was released from prison in 1999. Following Petitioner's release from prison, he was required to register as a sex offender and remained on the registry until October 10, 2015.

13. At hearing, Petitioner expressed remorse for his actions, and acknowledged that the facts of the offense were accurately described in the filed Information. According to Petitioner, the events giving rise to the criminal offense began with his childhood. Petitioner described his childhood as one where he did not have a close relationship with his parents and did not receive affection from them. That lack of affection affected him to the extent that he was "love-starved." Petitioner explained that "when he was 21 years old, a 13-year-old girl expressed interest in him and he made the mistake of pursuing her as a love interest."

14. After his release from prison, Petitioner worked in the food service industry until he lost his job in 2002. Thereafter, he pursued a career working in real estate.

15. During the time Petitioner has held a real estate license in Utah, he has earned various certifications related to real estate including, e-Pro Certification (2004), Distressed Property Expert (2011-2012), Short Sales and Foreclosure Resource Certification, and Residential Specialist Certification.

16. Petitioner was given the opportunity to submit letters of recommendation to show evidence of his reputation, honesty, truthfulness, trustworthiness, and good character. Petitioner offered several letters from past customers and business partners to attest to his work ethic, responsibility, and trustworthiness in real estate dealings. Those letters are of limited value as it relates to moral turpitude and rehabilitation because the authors of the letters had no knowledge of Petitioner's criminal history.

17. Petitioner's testimony regarding his otherwise blemish-free criminal history since the incident, employment history, and achievements since the criminal offense is found to be credible.

18. Petitioner acknowledged in his testimony at the final hearing that what he did in 1993 was wrong. He has not attempted to hide the incident from Respondent as he disclosed the details



of the incident on his application. It is undisputed that he completed a sex offender treatment program, completed his probation, and was released from the requirement to register on the Utah sex offender registry in 2015. Furthermore, there is no evidence that Petitioner has been involved in any criminal activity since the criminal offense in 1993, nearly 25 years ago.

19. In his testimony, Petitioner also highlighted his qualifications as a broker, which were corroborated by the letters of support from Petitioner's former clients that were offered at the hearing. Petitioner is a father of three children, has been married for more than 20 years, has been a licensed real estate broker in the state of Utah for 14 years, and has not exhibited a pattern or practice of violations before or after the incident in 1993. Rather, the incident in 1993 stands alone as the only blemish on Petitioner's record.

20. No evidence was presented at hearing of any prior discipline against Respondent's license in any jurisdiction.

#### CONCLUSIONS OF LAW

21. The Division has jurisdiction over the parties to and the subject matter of this proceeding pursuant to section 120.569 and 120.75(1), Florida Statutes (2016).

22. Respondent is authorized to certify for licensure as a real estate broker any applicant who satisfies the requirements of section 475.17. See § 475.181, Fla. Stat.

23. Petitioner bears the ultimate burden of proving his entitlement to a license. Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). Petitioner must prove by a preponderance of the evidence that he satisfied relevant statutory criteria to be licensed as a real estate broker in Florida.

24. Section 475.17(1)(a) describes the qualifications for licensure of a real estate professional and provides in pertinent part:

An applicant for licensure who is a natural person must be . . . honest, truthful, trustworthy, and of good character; and have a good reputation for fair dealing. 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. If the applicant has been denied registration or a license or has been disbarred, or the applicant's registration or license to practice or conduct any regulated profession, business, or vocation has been revoked or suspended, by this or any other state, any nation, or any possession or district of the United States, or any court or lawful agency thereof, because of any conduct or practices which would have warranted a like result under this chapter, or 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.

25. Section 475.181 authorizes the Commission to certify certain applicants for licensure and provides in pertinent part:

(2) The commission shall certify for licensure any applicant who satisfies the requirements of ss. 475.17, 475.175, and 475.180.

26. Section 475.25(1) authorizes Respondent to deny an application for licensure if it finds that the applicant

(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. 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.

(g) Has had a broker's or sales associate's license revoked, suspended, or otherwise acted against, or has had an application for such licensure denied, by the real estate licensing agency of another state, territory, or country.

27. To determine whether a conviction for aggravated sexual abuse of a child is directly related to the practice of or the ability to practice real estate, that question has not been

limited to the technical ability of Petitioner to be a real estate broker. If the crime relates to or presents a danger to public welfare, that in itself would be sufficient grounds to deny a license. As stated by the First District:

Several cases demonstrate that, although the statutory definition of a particular profession does not specifically refer to acts involved in the crime committed, the crime may nevertheless relate to the profession. In Greenwald v. Department of Professional Regulation, the court affirmed the revocation of a medical doctor's license after the doctor was convicted of solicitation to commit first-degree murder. 501 So. 2d 740 (Fla. 3d DCA 1987). The Fifth District Court of Appeal has held that although an accountant's fraudulent acts involving gambling did not relate to his technical ability to practice public accounting, the acts did justify revocation of the accountant's license for being convicted of a crime that directly relates to the practice of public accounting. Ashe v. Dep't of Prof'l Regulation, Bd. of Accountancy, 467 So. 2d 814 (Fla. 5th DCA 1985). We held in Rush v. Department of Professional Regulation, Board of Podiatry, that a conviction for conspiracy to import marijuana is directly related to the practice or ability to practice podiatry. 448 So. 2d 26 (Fla. 1st DCA 1984). These cases demonstrate, in our view, that appellee did not err by concluding Doll's conviction was "related to" the practice of chiropractic medicine or the ability to practice chiropractic medicine.

Doll v. Dep't of Health, 969 So. 2d 1103, 1106 (Fla. 1st DCA 2007).

28. Respondent's behavior in engaging in aggravated sexual abuse of a child shows total disregard for one of the most vulnerable members of our population. It is the lack of respect for and exploitation of another, for personal pleasure, that demonstrates impaired judgment. Petitioner's crime directly relates to the practice of real estate.

29. Petitioner's crime also involves moral turpitude. The Supreme Court once defined a crime of moral turpitude as a crime that is evidenced by an act of baseness, vileness, or depravity in the private and social duties, which, according to the accepted standards of the time a man owes to his or her fellow man or to society in general. The act itself, and not its prohibition by statute, fixes the moral turpitude. See State ex rel. Tullidge v. Hollingsworth, 108 Fla. 607, 611, 146 So. 660, 661 (1933). The crime for which Respondent was convicted would be repugnant by any standards. The crime certainly raises substantial doubts as to Petitioner's honesty, fairness, and respect for the rights of others and for the laws of his home state and other states, such as Florida.

30. Here, Petitioner was convicted of aggravated sex abuse of a child and the victim of the crime was a 13-year-old child. At age 13, the vulnerability of the victim is exacerbated by Petitioner's age of 21. Petitioner's crime was a deviation from the standard of conduct acceptable in the community and was a

depraved act. The depraved nature of the act arose from exploiting a minor's vulnerability. As such, Petitioner's crime clearly involves moral turpitude.

31. Although Petitioner's crime may have served as grounds to disqualify him for a real estate license, he has demonstrated that the interest of the public and investors will not likely be endangered if he is granted a license.

32. Respondent argued in its Proposed Recommended Order that Petitioner has not met his burden of proving he is rehabilitated. Respondent argued that Petitioner presented no disinterested witnesses to support his claims of good moral character, honesty, trustworthiness, and truthfulness and relied upon Taylor v. Department of Business and Professional Regulation, Florida Real Estate Commission, Case No. 06-3036 (Fla. DOAH January 9, 2007; Fla. DBPR March 22, 2007). However, that case is distinguished from this matter. In Taylor, Petitioner offered the testimony of a friend to attest to her good character. She did not offer witnesses or letters from disinterested persons.

33. Here, Petitioner has offered letters from business partners and customers attesting to his good moral character and his reputation for fair and honest dealings in real estate transactions. Further, he has been gainfully employed in the real estate arena for 14 years with access to the homes of

customers without any complaints. Petitioner has met all conditions of his sentence and has been released from his requirement to register as a sex offender. Furthermore, there has been a substantial passage of time since his criminal offense, nearly 25 years ago. The greater weight of evidence establishes that the criminal offense was an isolated incident rather than part of a pattern of similar conduct, which is a relevant factor when considering whether he would be a danger to the public. Respondent did not offer evidence of misconduct or lack of good moral character since the incident in 1993 to rebut Petitioner's evidence that he will not pose a threat to the public and investors. Thus, his application should be approved.

34. There was no evidence offered at hearing that Petitioner had a real estate broker's or sales associate's license disciplined or denied by any jurisdiction. Therefore, this factor should not be considered when determining whether Petitioner's application should be approved or denied.

35. Based on the foregoing, Petitioner met his burden in this case to prove that he meets the requirements for a real estate broker license, that he is rehabilitated, and that he will not pose a threat to the public and investors. Therefore, Petitioner's real estate broker license application should be approved.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Real Estate issue a final order approving Victor Rothaar's application for licensure as a real estate broker.

DONE AND ENTERED this 26th day of July, 2017, in Tallahassee, Leon County, Florida.

*Yolonda Y. Green*

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YOLONDA Y. GREEN  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th day of July, 2017.

ENDNOTE

<sup>1/</sup> Petitioner's application for licensure is governed by the law in effect at the time the final licensure decision is made. See Lavernia v. Dep't of Prof'l Reg., 616 So. 2d 53, 54 (Fla. 1st DCA 1993); See also Bruner v. Bd. of Real Estate, 399 So. 2d 4, 5 (Fla. 5th DCA 1981).



COPIES FURNISHED:

Tom L. Barnhart, Esquire  
Robert S. Milne, Esquire  
Office of the Attorney General  
The Capitol, Plaza Level 01  
Tallahassee, Florida 32399  
(eServed)

Victor Walter Rothaar  
1931 South 350 East  
Bountiful, Utah 84010  
(eServed)

Claude "Chip" Boring, III, Chair  
Florida Real Estate Commission  
Department of Business  
and Professional Regulation  
400 West Robinson Street, Suite N801  
Orlando, Florida 32801

Jason Maine, General Counsel  
Department of Business  
and Professional Regulation  
Capital Commerce Center  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2202  
(eServed)

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.