

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DARRYL MAURICE YOUNG,

Petitioner,

vs.

Case No. 19-0971

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

Respondent.

_____ /

RECOMMENDED ORDER

On May 1, 2019, Administrative Law Judge Robert J. Telfer III, of the Florida Division of Administrative Hearings (Division), conducted a duly-noticed hearing in Tallahassee and Jacksonville, Florida, by video teleconference, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2018).

APPEARANCES

For Petitioner: No appearance

For Respondent: Robert Antonie Milne, Esquire
Tom Barnhart, Esquire
Office of the Attorney General
Plaza Level 01
The Capitol
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue to determine in this matter is whether Petitioner Darryl Maurice Young's application for real estate license should

be denied for the reasons stated in Respondent Department of Business Regulation, Florida Real Estate Commission's (Commission), Notice of Intent to Deny, rendered April 5, 2018.

PRELIMINARY STATEMENT

On April 5, 2018, the Commission rendered a Notice of Intent to Deny, denying Mr. Young's application for a real estate sales associate license. The Commission determined that Mr. Young was not qualified to be issued a real estate sales associate license for numerous reasons, including: (a) his criminal record, as revealed in the application; (b) his testimony in explanation/mitigation was unpersuasive; (c) he had not had sufficient time free of government supervision to establish rehabilitation; (d) he was a convicted felon; (e) he failed to establish restoration of his civil rights under chapter 112, Florida Statutes; (f) he engaged in conduct or practices, which would have been grounds for revoking or suspending a real estate license; (g) he 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 or fraudulent or dishonest dealing, under sections 475.25(1)(f) and 475.181, Florida Statutes; and (h) he had not had a sufficient lapse of time, without government supervision, to establish rehabilitation by being crime-free.

On May 6, 2018, Mr. Young filed a petition with the Commission disputing the Notice of Intent to Deny. On February 21, 2019, the Commission referred this matter to the Division, which assigned the undersigned to determine the issues of material fact in dispute.

Pursuant to a Notice of Hearing by Video Teleconference, the undersigned conducted a final hearing on May 1, 2019, by video teleconference in Tallahassee and Jacksonville, Florida. Although the Notice of Hearing clearly stated that the hearing was to commence at 9:00 a.m., no one appeared on behalf of Mr. Young at the starting time. Both the undersigned and counsel for Respondent attempted to contact Mr. Young, with no success. At approximately 9:30 a.m., the undersigned convened the final hearing, without an appearance of Mr. Young. The Commission presented no witnesses. The undersigned received Respondent's Exhibits R1 through R5 into evidence, without objection.^{1/} Exhibit R5, the deposition transcript of Geneva Carter, was not completed at the time of the final hearing. The undersigned ruled that the final hearing record would remain open until the Commission filed Exhibit R5, and advised counsel for the Commission that proposed recommended orders were to be filed within 10 days of the filing of Exhibit R5 or the filing of the final hearing transcript, whichever was later.

In the afternoon of May 1, 2019 (well after the conclusion of the final hearing), Mr. Young filed a Request for Reconsideration for an Extended Hearing, stating that he received dental treatment that morning, causing him to miss the final hearing. On May 10, 2019, the undersigned entered an Order Denying Continuance of Final Hearing.^{2/} The Order advised Petitioner that he would be allowed to submit a proposed recommended order within 10 days of the filing of Ms. Carter's deposition transcript.

The one-volume Transcript of this final hearing was filed with the Division on May 7, 2019. The Commission filed Exhibit R5 on May 15, 2019. On May 15, 2019, the undersigned entered an Order Closing Hearing, which advised the parties to submit their proposed recommended orders within 10 days. The Commission timely filed a Proposed Recommended Order that the undersigned considered in the preparation of this Recommended Order. Petitioner did not file a post-hearing submittal.

All statutory references are to the 2018 codification of the Florida Statutes unless otherwise indicated.

FINDINGS OF FACT

1. On January 22, 2018, Mr. Young submitted a State of Florida, Department of Business and Professional Regulation, Florida Real Estate Commission, Application for Sales Associate License, Form # DBPR RE 1.

2. Background question 1, in Mr. Young's application, asks, in part:

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?

3. Mr. Young provided the following explanation for Background question 1:

DUI Manslaughter
Duval/Orlando, Florida
20 years in prison; 1 year probation
May 3, 1997.

4. Additionally, the Commission presented, through FDLE and court records, Mr. Young's lengthy past criminal offenses and convictions, dating back to 1987:

2/07/1987	Petty theft with prior
2/17/1987	Petty theft
6/01/1987	Burglary (dismissed when pled to above charges)
11/04/1987	Petty theft (merchandise)
8/29/1988	Burglary Petty theft and prior jail offenses Convicted/committed to prison
10/26/1988	Petty theft with priors CA Medical Facility Sentence - 1 year, 4 months
1/02/1991	Petty theft with priors Sentence - 2 years, state prison

1/30/1991	Petty theft Sentence - state prison
3/26/1992	Petty theft with priors Sentence - state prison
8/10/1995	Shoplifting/petit theft Resisting merchant Convicted of both misdemeanors
6/18/1996	Aggravated assault with weapon Felony conviction
7/08/1996	Fraud - failure to deliver a hired vehicle Felony conviction
5/03/1997	Resisting officer with violence Felony conviction
7/22/1997	Violation of Probation (Fraud) Felony conviction
8/22/1997	Violation of Probation (DUI Manslaughter) Felony conviction
8/22/1997	Leaving the scene of an accident Felony conviction
7/13/1999	DUI Manslaughter DUI with serious bodily injury Felony conviction Sentence - 20 years, 5 months, and 7 days

5. While in prison for the 20-plus year sentence for DUI Manslaughter, Mr. Young completed a substance abuse program, and a faith-based residential program.

6. The Florida Department of Corrections discharged Mr. Young from supervision (probation) on April 25, 2016.

7. Michelle Gordon testified that she has known Mr. Young since his release from prison, has had a friendly working relationship with Mr. Young, and that she shared a few culinary classes with him. She further testified that he was a helpful and nice person.

8. Tracy Pray testified that she too has known Mr. Young since his release from prison, and that Mr. Young had assisted her in obtaining a food truck, and that they worked together for about two years. Ms. Pray testified that Mr. Young voluntarily helped her complete the paperwork for the food truck operation.

9. Geneva Carter testified that she works for PRIDE Enterprises as a transition specialist. She testified that she helped Mr. Young gain some useful work experience while he was incarcerated. Ms. Carter further testified that she met with him briefly on two occasions after his release to help him make the transition from prison to working outside of prison.

10. Petitioner failed to establish the following requirements for a real estate sales associate license: that he is honest, trustworthy, of good character, has a reputation for fair dealing, and he is competent and qualified to make real estate transactions and conduct negotiations with safety to investors and others.

11. Petitioner also failed to overcome the disqualification for eligibility found in section 475.25(1)(f), which results from

convictions to multiple crimes involving moral turpitude or fraudulent or dishonest dealing.

12. Based on Mr. Young's failure to appear and offer evidence, there is no evidentiary basis on which findings can be made that he satisfied the requirements for a real estate sales associate license.

CONCLUSIONS OF LAW

13. The Division has jurisdiction of the subject matter of this proceeding and of the parties, pursuant to sections 120.569 and 120.57, Florida Statutes.

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

15. Mr. Young, as the applicant, has the burden to prove, by a preponderance of the evidence, that he satisfies the requirements of a real estate sales associate license. See Dep't of Banking & Fin. v. Osborne, Stern & Co., 670 So. 2d 932, 934 (Fla. 1st DCA 1996).

16. Section 475.17(1)(a) describes the qualifications for licensure of a real estate sales associate:

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 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.

17. Section 475.25(1)(f) authorizes Respondent to deny an application for licensure if it finds the applicant:

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 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.

18. Mr. Young failed to carry his burden, by a preponderance of the evidence, that he satisfied the requirements for a real estate sales associate license.

19. Mr. Young failed to prove, by a preponderance of the evidence, that he is honest, truthful, trustworthy, of good moral character, has a good reputation for fair dealing, and that he is competent and qualified to make real estate transactions and conduct negotiations with safety to investors and others, all of which are required for licensure under section 475.17(1) (a).

20. Further, it is clear to the undersigned that Mr. Young's numerous convictions from 1987 to 1999, which include theft, fraud, aggravated assault with a weapon, leaving the scene of an accident, and DUI manslaughter (with a 20-plus year prison sentence), constitute crimes of moral turpitude within the meaning of section 475.25(1) (f). See, e.g., Cambas v. Dep't of Bus. & Prof'l Reg., 6 So. 3d 668, 671 (Fla. 5th DCA 2009) (holding that leaving the scene of an accident with injury constitutes a crime of moral turpitude); Antel v. Dep't of Bus. & Prof'l Reg., 522 So. 2d 1056, 1057-58 (Fla. 5th DCA 1988) (holding that manslaughter conviction constitutes a crime of moral turpitude and affirming denial of license); Bruner v. Bd. of Real Estate, 399 So. 2d 4, 5 (Fla. 5th DCA 1981) (affirming denial of license based on previous guilty plea to theft).

21. Mr. Young also failed to establish, by a preponderance of the evidence, that he should not be automatically disqualified from licensure pursuant to section 475.17(1) (a), "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 the granting of the application. Mr. Young did not appear for his final hearing, and did not present any disinterested witnesses to support his assertions of good moral character, honesty, trustworthiness, and truthfulness.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned RECOMMENDS that the Commission issue a final order deny Mr. Young's application for licensure as a real estate sales associate.

DONE AND ENTERED this 31st day of May, 2019, in Tallahassee, Leon County, Florida.



ROBERT J. TELFER III
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of May, 2019.

ENDNOTES

^{1/} Exhibit R3 was the deposition transcript of Michelle Gordon, and Exhibit R4 was the deposition transcript of Tracy Pray.

^{2/} On May 9, 2019, Mr. Young filed with the Division numerous documents, which the undersigned has not considered in the preparation of this Recommended Order.

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.