

BEFORE THE IOWA REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN RE:)	Case No. 13-059
)	DIA No. 13REC005
BONNER K. TUINSTRA)	
Salesperson (S59026000))	
Expired)	
)	
655 Juliann Road)	FINDINGS OF FACT, CONCLUSIONS
West Des Moines, IA 50265)	OF LAW, DECISION AND ORDER
)	
APPLICANT.)	

On March 26, 2013, Applicant Bonner K. Tuinstra submitted an Application for Reinstatement of an Individual License ("Application") to the Iowa Real Estate Commission to obtain a salesperson license. On May 6, 2013, the Commission sent Tuinstra a letter, notifying Tuinstra the Commission had voted to deny his Application based on his disclosure of five criminal convictions between 2009 and 2012. Tuinstra timely appealed.

A contested case hearing was held on June 6, 2013 at 9:30 a.m. Assistant Attorney General John Lundquist represented the state of Iowa. Tuinstra was self-represented. The following Commission members presided at the hearing: Gail Flagel, Vice Chair and Broker; Terry Duggan, Broker; John Goede, Salesperson; Carol Haines, Public Member; Dennis Stolk, Broker; and Michael Telford, Public Member. Administrative Law Judge Heather Palmer assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was held open to the public at Tuinstra's request. After testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The Commission instructed the Administrative Law Judge to draft Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the state's Prehearing Conference Report, testimony of Jeffrey Evans and Tuinstra, State Exhibits 1 through 6, and Tuinstra Exhibit A.

FINDINGS OF FACT

Tuinstra obtained a salesperson license from the Commission on November 6, 2007. He renewed his license in 2010. Tuinstra's license expired on December 31, 2012. Tuinstra submitted the Application on March 26, 2013. Commission staff reviewed Tuinstra's Application and found Tuinstra had disclosed criminal convictions. Evans reviewed the Application. Evans found Tuinstra had engaged in the following criminal acts:

Date	Crime	Resolution
8/04	Solicitation – Misdemeanor	Fine
9/06	False Imprisonment and Harassment – Misdemeanors	Probation, charges expunged
5/07	Assault – Misdemeanor	Fine
10/09	Possession of a Controlled Substance – Misdemeanor	Probation
9/11	Assault	10 days in jail and probation
9/11	Harassment	Fine
5/12	Operating a Motor Vehicle While Intoxicated - Misdemeanor	Fine and probation
9/12	Disorderly Conduct – Misdemeanor	Fine and probation

The first three crimes occurred before Tuinstra's original application. The fourth crime occurred before Tuinstra submitted his renewal. The crimes since his renewal include assault, harassment, OWI, and disorderly conduct.

Evans prepared a report that was referred to the Commission with Tuinstra's Application. The Commission reviewed Tuinstra's Application and Evans' report. The Commission voted to deny Tuinstra's Application based on his disclosure of five criminal convictions between 2009 and 2012.

Tuinstra has a chronic pain disorder from years of playing football. He has also struggled since his father passed away in 2011. Tuinstra acknowledged he has made poor choices in the past and would like another chance to work as a salesperson in Iowa.

CONCLUSIONS OF LAW

Iowa Code section 543B.15 (2013) establishes the minimum qualifications for a person seeking a salesperson license in Iowa. This case concerns a license denial based on criminal convictions. When considering a license denial, the Commission is required to consider

the nature of the offense; any aggravating or extenuating circumstances which are documented; the time lapsed since the revocation, conduct, or conviction; the rehabilitation, treatment or restitution performed by the applicant; and any other factors the commission deems relevant. Character references may be required but shall not be obtained from licensed real estate brokers or salespersons.¹

The Commission is precluded from issuing a license to an individual convicted of certain crimes, as follows:

3.a. An applicant for a real estate broker's or salesperson's license who has been convicted of an offense specified in this subsection *shall not be*

¹ Iowa Code § 543B.15(6).

considered for licensure until the following time periods have elapsed following completion of any applicable period of incarceration, or payment of a fine or fulfillment of any other type of sentence:

(1) For an offense which is classified as a felony, two years.

(2) Notwithstanding subparagraph (1), for offenses including or involving forgery, embezzlement, obtaining money under false pretenses, theft, arson, extortion, conspiracy to defraud, or other similar offense, any offense involving moral turpitude, or other offense involving a criminal breach of fiduciary duty, five years.

b. After expiration of the time periods specified in paragraph “a”, an application shall be considered by the commission pursuant to subsection 6 and may be denied on the grounds of the conviction. An applicant may request a hearing pursuant to section 543B.19 in the event of a denial.

“Convicted” means a guilty plea and deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court.² Tuinstra’s last four criminal charges resulted in misdemeanor convictions. None of the convictions involve crimes of dishonesty. The question is whether the convictions are crimes of moral turpitude. If any of the crimes are an offense of moral turpitude, then the Commission is precluded from granting Tuinstra a license.

The statute is silent on what crimes constitute crimes of moral turpitude. The other offenses mentioned in the paragraph include crimes of dishonesty and arson. The prohibition period is longer for these offenses than the general felonies listed in subsection (1) above.

The Commission’s rules define moral turpitude as

An act of baseness, vileness, or depravity, in the private and social duties which a person owes to another person or to society in general, contrary to the accepted and customary rule of right and duty between persona and person. It is conduct that is contrary to justice, honesty and good morals. Various factors may cause an offense which is generally not regarded as constituting moral turpitude to be regarded as such. A crime of moral turpitude as specified in Iowa Code sections 543B.15(3) shall include without limitation forcible felonies as delineated in Iowa Code section 702.11.³

The administrative rules do not define the terms baseness, vileness, or depravity. “When a statute or rule is plain and its meaning is clear, the rules of statutory construction do not

² *Id.* § 543B.15(3)c.

³ 193 IAC 2.1

permit courts to search for meaning beyond its express terms.”⁴ The courts generally presume words in agency rules “are used in their ordinary and usual sense with the meaning commonly attributed to them.”⁵ Webster’s Dictionary, a source of the ordinary meaning of words, defines the term “base” as “crafty, cunning, vulgar, immoral” and implying an outrage of one’s sense of decency or propriety.”⁶ Webster’s Dictionary defines the term “vile” as “morally despicable or abhorrent” and the term “depravity” as “a corrupt act or practice.”⁷

Tuinstra’s convictions for assault, harassment, OWI and disorderly conduct do not comport with the dictionary definitions of baseness, vileness, or depravity. The state has not proven Tuinstra has been convicted of a crime of moral turpitude, precluding licensure in this case. Tuinstra’s Application should be granted.

The Commission is concerned about the poor choices Tuinstra has made in recent years. Tuinstra’ license shall be placed on probation for three years.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the application filed by Bonner K. Tuinstra for a real estate salesperson license in the state of Iowa is GRANTED, subject to probation for three years. Tuinstra shall abide by the laws and rules governing salespersons in Iowa. Tuinstra shall submit an annual report to the Commission prepared by his employing broker. Should Tuinstra violate or fail to comply with any of the terms or conditions of probation, the Commission may initiate action to revoke or suspend his license, as authorized by Iowa Code chapters 272C and 543B and 193E IAC chapter 18.

Dated this 11 day of July, 2013.



Gail Flagel, Vice Chair
Iowa Real Estate Commission

cc: Bonner K. Tuinstra
655 Juliann Road
West Des Moines, IA 50265 (Certified)

John Lundquist
Assistant Attorney General
Hoover State Office Building (Local)

⁴ *Office of Consumer Advocate v. Iowa Utilities Bd.*, 744 N.W.2d 640, 643 (Iowa 2008) (citing *State v. Snyder*, 634 N.W.2d 613, 615 (Iowa 2001).

⁵ *Id.* (citing *Am. Home Prods. Corp. v. Iowa State Bd. of Tax Rev.*, 302 N.W.2d 140, 142-43 (Iowa 1981)).

⁶ *Merriam-Webster’s Collegiate Dictionary* (10th Ed. 1998).

⁷ *Id.*

FILED 10/1/2013 (Date)

REAL ESTATE
Board/Commission

BEFORE THE IOWA REAL ESTATE COMMISSION
OF THE STATE OF IOWA

Signature, Executive Officer

IN RE:) Case No. 13-059
) DIA No. 13REC005
BONNER K. TUINSTRA)
Salesperson (S59026000))
Expired)
)
655 Juliann Road) **FINDINGS OF FACT, CONCLUSIONS**
West Des Moines, IA 50265) **OF LAW, DECISION AND ORDER**
) **ON REHEARING**
APPLICANT.)

On March 26, 2013, Applicant Bonner K. Tuinstra submitted an Application for Reinstatement of an Individual License ("Application") to the Iowa Real Estate Commission to obtain a salesperson license. On May 6, 2013, the Commission sent Tuinstra a letter, notifying Tuinstra the Commission had voted to deny his Application based on his disclosure of five criminal convictions between 2009 and 2012. Tuinstra timely appealed.

A contested case hearing was held on June 6, 2013. Assistant Attorney General John Lundquist represented the state of Iowa. Tuinstra was self-represented. The following Commission members presided at the hearing: Gail Flagel, Vice Chair and Broker; Terry Duggan, Broker; John Goede, Broker; Carol Haines, Public Member; Dennis Stolk, Broker; and Michael Telford, Public Member. Administrative Law Judge Heather Palmer assisted the Commission in conducting the hearing. A certified court reporter recorded the proceeding. The hearing was held open to the public at Tuinstra's request. After testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The Commission instructed the Administrative Law Judge to draft Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

After the Findings of Fact, Conclusions of Law, Decision and Order was issued, the State filed an Application for Rehearing pursuant to Iowa Code section 17A.16(2). The Commission granted the State's request. A rehearing was held on September 5, 2013. The following Commission members presided at the rehearing: Susan Sanders, Chair and Salesperson, Flagel, Duggan, Goede, Haines, Stolk, and Telford. Administrative Law Judge Palmer assisted the Commission with the rehearing. The rehearing was held open to the public at Tuinstra's request. After testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The Commission instructed the Administrative Law Judge to draft Findings of Fact, Conclusions of Law, Decision and Order on Rehearing, in conformance with their deliberations.

THE RECORD

The record includes the state's Prehearing Conference Report, testimony of Jeffrey Evans and Tuinstra, State Exhibits 1 through 6, and Tuinstra Exhibit A. At the rehearing the State offered Exhibit 7, which was received into the record.

FINDINGS OF FACT

Tuinstra obtained a salesperson license from the Commission on November 6, 2007. He renewed his license in 2010. Tuinstra's license expired on December 31, 2012. Tuinstra submitted the Application to the Commission on March 26, 2013. Commission staff reviewed Tuinstra's Application and found Tuinstra had disclosed criminal convictions. Evans reviewed Tuinstra's Application. Evans found Tuinstra disclosed the following crimes:

Date	Crime	Resolution
8/04	Solicitation – Misdemeanor	Fine
9/06	False Imprisonment and Harassment – Misdemeanors	Probation, charges expunged
5/07	Assault – Misdemeanor	Fine
10/09	Possession of a Controlled Substance – Misdemeanor	Probation
9/11	Assault	10 days in jail and probation
9/11	Harassment	Fine
5/12	Operating a Motor Vehicle While Intoxicated - Misdemeanor	Fine and probation
9/12	Disorderly Conduct – Misdemeanor	Fine and probation

The first three crimes occurred before Tuinstra's original application. The fourth crime occurred before Tuinstra submitted his 2010 renewal. The crimes since his renewal include assault, harassment, OWI, and disorderly conduct.

Evans prepared a report that was referred to the Commission with Tuinstra's Application. The Commission reviewed Tuinstra's Application and Evans' report. Evans' report did not identify whether the convictions were for simple, serious or aggravated misdemeanors. The Commission voted to deny Tuinstra's Application based on his disclosure of five criminal convictions between 2009 and 2012.

Tuinstra has a chronic pain disorder from years of playing football. He has also struggled since his father passed away in 2011. Tuinstra acknowledged he has made poor choices in the past and would like another chance to work as a salesperson in Iowa.

During the rehearing the State introduced a copy of Tuinstra's criminal history from Iowa Courts on Line, Exhibit 7. Exhibit 7 shows Tuinstra received a conviction for assault causing bodily injury, a serious misdemeanor on May 6, 2011.

CONCLUSIONS OF LAW

The Iowa Legislature has imposed differing restrictions for initial licensure and for licensees. Iowa Code section 543B.15 (2013) establishes the minimum qualifications for a person seeking a salesperson license in Iowa. The Commission is precluded from issuing a license to an individual convicted of certain crimes, as follows:

3.a. An applicant for a real estate broker's or salesperson's license who has been convicted of an offense specified in this subsection *shall not be* considered for licensure until the following time periods have elapsed following completion of any applicable period of incarceration, or payment of a fine or fulfillment of any other type of sentence:

(1) For an offense which is classified as a felony, two years.

(2) Notwithstanding subparagraph (1), for offenses including or involving forgery, embezzlement, obtaining money under false pretenses, theft, arson, extortion, conspiracy to defraud, or other similar offense, any offense involving moral turpitude, or other offense involving a criminal breach of fiduciary duty, five years.

b. After expiration of the time periods specified in paragraph "a", an application shall be considered by the commission pursuant to subsection 6 and may be denied on the grounds of the conviction. An applicant may request a hearing pursuant to section 543B.19 in the event of a denial.

If an applicant is convicted of one of the listed offenses, the Commission is precluded from issuing the applicant a license until the expiration of the appropriate period as defined in the statute.

A licensee's license may be suspended or revoked if the licensee is convicted of a listed offense in Iowa Code section 543B.15(3).¹ Tuinstra has received four misdemeanor criminal convictions since his late renewal. During the rehearing the State presented Exhibit 7, which shows Tuinstra was convicted of assault causing bodily injury on May 6, 2011, a serious misdemeanor.

None of Tuinstra's convictions involve crimes of dishonesty. During the rehearing the State argued Tuinstra's May 6, 2011 conviction for assault causing bodily injury is a crime of moral turpitude. Under the provisions pertaining to licensees, the term "conviction" means a conviction for an indictable offense, and includes the court's acceptance of a guilty plea, . . ." Iowa Code chapter 801 governs criminal procedure in Iowa. Under Iowa Code section 801.4, an "indictable offense" means an offense other than a simple misdemeanor." Tuinstra's May 2011 conviction was a serious misdemeanor, which meets the definition of an indictable offense. During the rehearing, the State acknowledged Tuinstra's remaining convictions since his most recent renewal were not indictable

¹ Iowa Code section 543B.29f.

offenses. The State contends Tuinstra's May 2011 conviction for assault causing bodily injury is a crime of moral turpitude.

The statute is silent on what crimes constitute crimes of moral turpitude. The Commission's rules define moral turpitude as

an act of baseness, vileness, or depravity, in the private and social duties which a person owes to another person or to society in general, contrary to the accepted and customary rule of right and duty between person and person. It is conduct that is contrary to justice, honesty and good morals. Various factors may cause an offense which is generally not regarded as constituting moral turpitude to be regarded as such. A crime of moral turpitude as specified in Iowa Code sections 543B.15(3) shall include without limitation forcible felonies as delineated in Iowa Code section 702.11.²

The administrative rules do not define the terms baseness, vileness, or depravity. "When a statute or rule is plain and its meaning is clear, the rules of statutory construction do not permit courts to search for meaning beyond its express terms."³ The courts generally presume words in agency rules "are used in their ordinary and usual sense with the meaning commonly attributed to them."⁴ Webster's Dictionary, a source of the ordinary meaning of words, defines the term "base" as "crafty, cunning, vulgar, immoral" and implying an outrage of one's sense of decency or propriety."⁵ Webster's Dictionary defines the term "vile" as "morally despicable or abhorrent" and the term "depravity" as "a corrupt act or practice."⁶

Tuinstra's assault conviction involved a person he does not know personally. The assault of the stranger was serious. The Commission found the crime was a crime of moral turpitude because the conduct was contrary to good morals, in violation of Iowa Code section 532B.29f.

In considering whether Tuinstra's license should be suspended or revoked, the Commission considers "the nature of the offense; any aggravating or extenuating circumstances which are documented; the time lapsed since the conduct or conviction; the rehabilitation, treatment or restitution performed by the licensee; and any other factors deemed relevant."⁷ Tuinstra's conviction occurred over two years ago. Tuinstra has problems with chronic back pain and has made poor choices in the past. He is attending church regularly and has engaged in no additional criminal conduct. Tuinstra has shown he has a problem with controlling his anger in the past. The Commission is particularly concerned with Tuinstra's assault conviction because as a salesperson, Tuinstra will be involved with the public, outside of regular business hours. The Commission believes Tuinstra's license should be placed on probation for three years to ensure public safety.

² 193 IAC 2.1

³ *Office of Consumer Advocate v. Iowa Utilities Bd.*, 744 N.W.2d 640, 643 (Iowa 2008) (citing *State v. Snyder*, 634 N.W.2d 613, 615 (Iowa 2001).

⁴ *Id.* (citing *Am. Home Prods. Corp. v. Iowa State Bd. of Tax Rev.*, 302 N.W.2d 140, 142-43 (Iowa 1981)).

⁵ *Merriam-Webster's Collegiate Dictionary* (10th Ed. 1998).


⁶ *Id.*

⁷ Iowa Code § 542.29f(2).

DECISION AND ORDER

IT IS THEREFORE ORDERED that the application for reinstatement filed by Bonner K. Tuinstra for a real estate salesperson license in the state of Iowa is GRANTED, subject to probation for three years. Tuinstra shall abide by the laws and rules governing salespersons in Iowa. Tuinstra shall submit an annual report to the Commission prepared by his employing broker. Should Tuinstra violate or fail to comply with any of the terms or conditions of probation, the Commission may initiate action to revoke or suspend his license, as authorized by Iowa Code chapters 272C and 543B and 193E IAC chapter 18.

Dated this 16 day of October ~~September~~, 2013.


Susan Sanders, Chair
Iowa Real Estate Commission

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