

FILED April 29, 2014 (Date)

BEFORE THE IOWA REAL ESTATE COMMISSION

I.R.E.C.
Board / Commission

Signal Executive Officer

IN THE MATTER OF:)

DAVID REDMAN,)

512 S. Park Street)
Osceola, IA 50213)

Applicant.)

) DIA No. 14REC002
) Case No. 13-288

) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW,**
) **DECISION & ORDER**

STATEMENT OF THE CASE

On March 11, 2014, the Iowa Real Estate Commission (the Commission) filed a Notice of Hearing and Statement of Charges against Applicant David Redman.¹ The notice indicates that the hearing shall address the Commission's denial of Redman's license application pursuant to Iowa Code section 543B.15(3)(a) and 193E Iowa Administrative Code 4.1(7).

An in-person hearing was held on April 3, 2014 at the offices of the Iowa Real Estate Commission in Des Moines, Iowa. Assistant attorney general John Lundquist represented the state of Iowa. Applicant David Redman appeared and was self-represented. Pursuant to 193 Iowa Administrative Code 7.39(3), the hearing was open to the public.

The following members of the Commission were present for the hearing: Susan Sanders, chairperson; Dennis Stolk; Terry Duggan; Carol Haines; Gail Flagel; Michael Telford; and John Goede. Administrative Law Judge Laura Lockard assisted the Commission in conducting the hearing. After hearing all the evidence, the Commission convened in closed session, pursuant to Iowa Code section 21.5(1)(f), to deliberate its decision. The administrative law judge was instructed to prepare the Commission's written decision in accordance with its deliberations.

THE RECORD

The record includes the Notice of Hearing and Statement of Charges; State's Exhibits 1 through 8; and Applicant's Exhibit A. The record also includes testimony from Sandy Malek, investigator with the professional licensing bureau, and Applicant David Redman.

¹ Although the filing is captioned Notice of Hearing and Statement of Charges, the Real Estate Commission has not charged Redman. The notice and hearing dealt only with the Commission's denial of Redman's license application.

FINDINGS OF FACT

On December 4, 2013, David Redman submitted an Application for an Individual License as a real estate salesperson to the Commission. In response to a question on the application, Redman disclosed that he had been convicted of a felony or misdemeanor. Redman submitted a statement with the application indicating that he had been convicted of third degree theft as a result of stealing from his previous employer. Redman disclosed that he was sentenced to one year of probation and paid restitution and court costs. (Exh. 2; Malek testimony).

The Commission requested a criminal history report from the Division of Criminal Investigation (DCI) in conjunction with Redman's application. The DCI report confirmed that Redman was convicted of Theft 3rd degree, a misdemeanor, on March 8, 2007. The conviction was the result of a guilty plea by Redman. Redman was ordered to pay restitution in the amount of \$802.58 and was assessed a fine of \$625. (Exh. 3, 4; Malek testimony).

Redman was discharged from probation on March 3, 2008. He satisfied the restitution and fine on September 27, 2010. (Exh. 4, 5; Malek testimony).

After reviewing Redman's application, the Commission issued a decision dated February 11, 2014 denying the application. The denial states:

Based on the "3rd degree Theft" conviction dated March 8, 2007 and the payment of the restitution and court costs fulfilled on September 27, 2010, the Commission voted to deny your application for licensure. As the code reads today, pursuant to Iowa Code § 543B.15(3)(b) (2013), you will be eligible to apply for an Iowa real estate license five (5) years after the completion of any applicable period of incarceration, payment of fines, or fulfillment of any other type of sentence; or in your particular circumstances, on September 27, 2015.

(Exh. 7-1).

Redman appealed the license denial on March 5, 2014. (Exh. 8-1).

At hearing, Redman testified that he was 18 years old at the time of his conviction in 2008. He was in a precarious financial situation at that time and acknowledges that his decision to steal from his former employer was wrong. Redman has been employed by other employers without incident since that time. He is currently employed by Mosaic and works with individuals with intellectual disabilities. Redman testified that the reason he did not pay all the costs associated with his conviction until September, 2010 was that he did not have much income. He was finally able to complete the payments when he received money from a car accident settlement. (Redman testimony).

Redman plans to work for real estate broker Shawnda Nine if he is able to obtain a salesperson license. Nine wrote a letter in support of Redman in which she indicated

that she is aware of his conviction and believes that he is a responsible, trustworthy, honest, and ethical person. (Exh. A; Redman testimony).

CONCLUSIONS OF LAW

Iowa law provides that an applicant for a real estate salesperson's license who has been convicted of an offense involving theft shall not be considered for licensure until at least five years has elapsed following completion of any applicable period of incarceration, or payment of a fine or fulfillment of any other type of sentence.² A conviction includes a guilty plea.³ In license denial cases, the applicant has the ultimate burden of persuasion as to the applicant's qualification for licensure.⁴

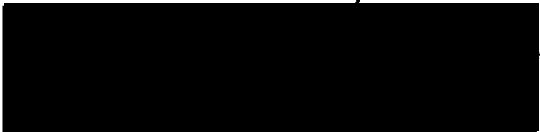
Redman does not dispute the existence of the theft conviction, nor does he dispute that he completed payment of the fine associated with his sentence on September 27, 2010. Redman's application, submitted in December, 2013, was submitted less than five years following September 27, 2010, the date on which he ultimately fulfilled all of the terms of his criminal sentence. Under these circumstances, the Commission's February 11, 2014 decision denying Redman's application to be licensed as a real estate salesperson was correct.

The Commission appreciates Redman's candor at hearing and applauds the actions that he has taken to straighten out his life since the time of his conviction. The Commission, however, has no discretion to consider Redman's application until at least five years have passed since the fulfillment of his criminal sentence; in Redman's case, that date would be September 27, 2015. At that time, Redman may submit a new application and the Commission may consider whether he meets all of the requirements for licensure.

ORDER

IT IS THEREFORE ORDERED that the Commission's February 11, 2014 decision denying Applicant David Redman's application for licensure as a real estate salesperson was correct and must be affirmed.

Dated this ^{29th} day of April, 2014.


Susan Sanders
Chairperson, Iowa Real Estate Commission

cc: David Redman, Applicant (BY FIRST CLASS MAIL)
John Lundquist, AAG (BY ELECTRONIC MAIL)

² Iowa Code § 543B.15(3)(a)(2) (2013).

³ Iowa Code § 543B.15(3)(c) (2013).

⁴ 193 Iowa Administrative Code (IAC) 7.39(3).