

FILED August 26, 2014 (Date)

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

ISSUED
Board / Commission
Signature, Executive Officer

IN THE MATTER OF:)	CASE NO. 14-054
)	DIA NO. 14REC003
Michael Landau)	
4910 Algonquin Drive #4)	
Cedar Falls, Iowa 50613)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
APPLICANT)	DECISION AND ORDER

On May 5, 2014, the Iowa Real Estate Commission (Commission) sent a letter to Michael Landau (Landau/Applicant) notifying him that the Commission had voted to deny his application for a real estate salesperson license. The denial was based on Landau's two convictions for Assault Causing Bodily Injury, which the Commission determined were crimes of moral turpitude. Landau filed a timely Notice of Appeal, and a hearing was scheduled. A prehearing conference was held on July 31, 2014, and the parties exchanged exhibits and witness lists.

The hearing was held on August 7, 2014 at 9:30 a.m. Assistant Attorney General John Lundquist represented the state of Iowa. Michael Landau appeared and was represented by attorney Katie Graham. The following Commission members presided at the hearing: Dennis Stolk, Broker and Acting Chairperson; Helen Kimes, Broker; John Goede, Broker;¹ Janet DeMott, Salesperson; Carol Haines and Michael Telford, Public Members. Administrative Law Judge Margaret LaMarche assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was open to the public. After hearing the testimony and examining the exhibits, the Commission ~~convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2013),~~ 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.

¹ Shortly following the hearing, Commission member John Goede was called away for an emergency and was unavailable to participate in the Commission's deliberations.

THE RECORD

The record includes the Notice of Hearing, State's Prehearing Conference Report, testimony of Michael Landau and Brent Gilmore, State Exhibits 1-9, and Applicant Exhibits 2-10 (See Exhibit Indexes for description).

FINDINGS OF FACT

Application for a License as a Real Estate Salesperson

On March 31, 2014, Michael Landau submitted an Application for an Individual (Salesperson) License to the Commission after completing the required pre-licensure education and passing the Iowa real estate salesperson examination. Landau responded "yes" to the following question on the application:

10a. Have you ever been convicted of a felony or misdemeanor criminal offense (other than scheduled traffic violations-a conviction of operating while intoxicated [OWI] is NOT a scheduled traffic violation and MUST be disclosed) If yes, attach a complete and detailed explanation of each conviction, including the date of conviction, name and location of the court, the nature of each charge (for example: felony, aggravated misdemeanor, etc.), the sentence imposed, and whether you have satisfied all terms of the sentence. ALL convictions must be disclosed regardless of the date when entered or whether the criminal record has been expunged.

(State Exhibit 2, 2-2; Respondent Exhibit 10)

On his application, Landau disclosed three criminal convictions: two convictions for Assault Causing Bodily Injury (February 26, 2007 and March 16, 2012) and one conviction for Public Urination (December 6, 2004). The Public Urination conviction was not a factor in the Commission's initial decision to deny the application. (State Exhibit 2-4; State Exhibit 7)

February 26, 2007 Conviction for Assault Causing Bodily Injury

On May 5, 2006, Michael Landau was charged in Black Hawk County with Assault Causing a Serious Injury, which is a Class D felony. As explained by Landau, the underlying incident occurred at the University of Northern Iowa UNI-Dome following a concert. Landau and a male friend were leaving the floor of the UNI-Dome when another male approached Landau and persisted in calling him names. Landau did not

know the individual who approached him. Landau asked a security guard to separate them, and he then left the venue. After Landau got outside the UNI-Dome, the same individual approached him again, continued to make comments, and then put his finger in Landau's chest. Landau testified that he felt threatened because the individual was five inches taller than him. Landau admits taking a swing at this individual and striking him in the nose. Landau reports that he immediately apologized to the victim, and a security guard came over and told Landau and his friend to leave the area. Landau was later contacted by the police and informed that he had broken the victim's nose. Landau was arrested and charged with Assault Causing a Serious Injury. (Landau testimony; State Exhibit 5)

Landau admits that he consumed about four beers that evening. He testified that he was "possibly intoxicated," but he did not think that alcohol was a factor in the incident. On November 20, 2006, Landau entered a guilty plea, pursuant to a plea agreement, to the crime of Assault Causing Bodily Injury, which is classified as a serious misdemeanor. On February 26, 2007, Landau was sentenced to 365 days in jail, with all but 2 days of jail time suspended. Landau was placed on supervised probation for a period of one year. He was required to pay a \$250 fine plus an \$80.00 surcharge and \$45.00 in court costs. Landau was also ordered to pay restitution of \$899.72 to the victim by April 1, 2007. (State Exhibit 5; Applicant Exhibit 2).

Landau served his 2 day jail sentence from April 11-April 13, 2007. On April 30, 2007, Landau was discharged from supervision by the Department of Correctional Services and was placed on informal probation until February 26, 2008. (Applicant Exhibit 4). Also on April 30, 2007, the Department of Correctional Services issued a Field Discharge Report stating that Landau had completed his court obligations by serving two days in jail and by paying his costs of \$1274.72 in full. (Applicant Exhibit 5)

March 16, 2012 Conviction for Assault Causing Bodily Injury

On November 22, 2011, Michael Landau was charged with Assault Causing Bodily Injury, which is a serious misdemeanor, based on an incident that occurred at Toads Bar on October 31, 2011. The criminal complaint states that Landau and the victim got into an argument over the music that was being played on the juke box, and Landau struck the victim on the forehead with a beer bottle. The victim had a cut to the left side of his forehead. Landau gave a voluntary statement and admitted hitting the victim. (Applicant Exhibit 6; State Exhibit 6).

At hearing, Landau explained that he had been at Toads Bar for an employee party. He approached a male who was putting money into the jukebox and playing songs over the songs selected and paid for by a female attending the party. Landau reports that he asked the male to "show some respect," and the male responded by asking him if he had a weapon. Landau told him "no," but then took out his pocket knife and told the male that he only had a pocket knife. Landau reports that the male then tried to grab the knife from him, and they scuffled. Landau had a beer bottle in his other hand, and he hit the male in the face with the beer bottle, cutting his face. Landau admits that he had a "couple" of drinks that evening, but he does not believe that he was intoxicated and does not believe that alcohol was a factor in the incident. (Landau testimony)

On March 16, 2012, Landau entered a guilty plea to Assault Causing Bodily Injury. He was sentenced to 365 days in jail, with all but 7 days suspended. He was placed on unsupervised probation for a period of one year and was fined \$315.00, court costs, and surcharges, for a total financial obligation of \$577.78. On July 5, 2012, Landau paid the fines, court costs, and surcharges associated with this conviction in full. (State Exhibit 6-7, 6-8; Applicant Exhibits 7, 9) Landau subsequently served his jail sentence for this second assault conviction from September 18-25, 2012. (Applicant Exhibit 8)

Applicant's Background and Character Reference

At hearing, Landau testified concerning his employment background and his decision to pursue licensure as a real estate salesperson. Landau is currently a Territory Sales Manager for MUDD Advertising and is responsible for sales in five states. Landau held this position from June 2013-August 2013 and from June 2014 to the present. In the interim, he worked as a subcontractor doing sales and installation of satellite television. From 1999-March 28, 2013, Landau was the General Manager for Doughy Joey's Peetza Joynt. (Landau testimony; Applicant Exhibit 10)

When asked if he had been involved in other fights without criminal charges being filed, Landau responded that there have been some instances when he had to break up fights while serving as the manager of Doughy Joey's Peetza Joynt. Landau testified that most of these incidents were "in the line of work." (Landau testimony)

Landau made the decision to pursue a career in real estate because he enjoys sales and working with people. He has discussed his criminal history with his proposed broker in Cedar Falls prior to submitting his licensure application. (Landau testimony)

Brent Gilmore is a financial advisor who first met Landau about ten years ago while Landau was working as the manager of Doughy Joey's. Gilmore was a regular lunch customer of the restaurant, and he also took his children to the restaurant when Landau was working. Gilmore became friends with Landau after realizing that they shared a common interest in hunting. They currently attend the same church and socialize together. Gilmore described Landau as a "people person" with a magnetic personality. He has never observed Landau exhibit any propensity for violence. (Gilmore testimony)

CONCLUSIONS OF LAW

I. *Applicable Statute*

The legislature has established minimum qualifications for persons seeking licensure as real estate salespersons in the state of Iowa. Iowa Code section 543B.15(2013) provides, in relevant part:

543B.15 Qualifications

...

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 7 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.

...

(emphasis supplied)

Therefore, if an applicant has been convicted of one of the offenses listed in Iowa Code section 543B.15(3)(a), the Commission is precluded from issuing the applicant a license until the expiration of the time period (2 years or 5 years) specified in the statute.

II. *Analysis*

A. *The Applicant's Two Convictions for Assault Causing Bodily Injury Are "Offenses Involving Moral Turpitude."*

Assault Causing Bodily Injury is not a felony and is not one of the crimes specifically listed in 543B.15(3)(a)(2). In its initial decision denying the application, the Commission determined that Landau's convictions for Assault Causing Bodily Injury fell within the category of "offenses involving moral turpitude" because the conduct (underlying his convictions) was contrary to good morals. The initial issue presented on appeal is whether or not the Commission has properly classified these two convictions as offenses "involving moral turpitude," thereby triggering the mandatory five year waiting period established in Iowa Code section 543B.15(3)(a)(2).

As pointed out by the State in closing argument, Iowa Code section 543B.15(3)(a)(2) did not originally include the phrases "or other similar offense" and "any offense involving moral turpitude." These two phrases were added to the statute during the 2008 legislative session.² The Commission believes that by adding both of these phrases to the existing statute the legislature intended to expand the list of disqualifying offenses beyond the types of crimes that were already listed.

The legislature has authorized the Commission to adopt rules to carry out and administer the provisions of Iowa Code chapter 543B.³ Pursuant to this authority, the Commission has adopted an administrative rule defining "*moral turpitude*" to mean:

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 section 543B.15(3) shall include

² See 2008 Acts, Chapter 1099, Section 1.

³ Iowa Code section 543B.9.

without limitation forcible felonies as delineated in Iowa Code section 702.11.⁴

The administrative rules do not define the terms "baseness," "vileness" or "depravity." 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

As noted by both parties in closing arguments, the Commission has concluded in a previous contested case that the crime of Assault Causing Bodily Injury is an "offense involving moral turpitude."⁸ In the prior case, as in this case, the applicant engaged in a serious assault of a stranger. Upon reviewing this precedent and the applicable statutes and rules, the Commission is persuaded that Landau's two convictions for the crime of Assault Causing Bodily Injury constitute offenses "involving moral turpitude."

Pursuant to Iowa Code section 708.1(2), a person commits an assault when, without justification, the person does any of the following:

- a. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.
- b. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

Injury is not a required element for some of the assault classifications, including simple misdemeanor assault.⁹ Assault Causing Bodily Injury, however, does require proof that the person who committed the assault caused bodily injury or mental illness to the

⁴ 193E IAC 2.1.

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.*

⁸ In Re: Bonner K. Tuinstra, Case No. 13-059 (filed 10/1/2013).

⁹ See Iowa Code section 708.1, 708.2(1), (3), (6)(2013). Although the citations are to the current Code, the Code provisions relating to assault have not changed since the time of Applicant's first conviction.

victim.¹⁰ By pleading guilty to the crime of Assault Causing Bodily Injury, in violation of Iowa Code section 708.2(2), Landau has admitted that **without justification**, he committed an act that was (1) **intended** to cause pain or injury, or (2) **intended** to result in physical contact which will be insulting or offensive to another, or (3) **intended** to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act. Moreover, Landau admitted that his act in fact caused bodily injury to both victims (broken nose, cut on the head). Both victims were strangers to Landau and both suffered significant injury as a result of Landau's act.

The Commission finds that Landau's two convictions for the serious misdemeanor crime of Assault Causing Bodily Injury are offenses "involving moral turpitude" because the commission of such an offense "is contrary to the accepted and customary rule of right and duty between person and person" and constitutes conduct that is "contrary to justice, honesty, and good morals." Licensed real estate brokers and salespersons have significant daily contact with members of the public in a variety of circumstances. They frequently meet with members of the public alone, and they must be able to handle difficult personalities and situations in a calm manner without escalating any conflict that may arise. The Commission must be confident that those persons licensed as real estate salespersons have the necessary professionalism and self-control to ensure that the public is treated in a safe, fair, and respectful manner.

B. Waiting Period Prior to Eligibility for Licensure

The preponderance of the evidence in this record established that Landau completed the sentence for his February 26, 2007 Assault Causing Bodily Injury, including payment of victim restitution, on April 30, 2007. (Applicant Exhibit 4). Therefore, based solely on this first conviction, Landau would have been eligible to apply for licensure as a real estate salesperson as early as April 30, 2012, if he had no further disqualifying convictions. Even after April 30, 2012, however, the Commission was still authorized to consider whether his application should be denied based on the nature of the offense; the documented aggravating or mitigating circumstances; the time elapsed since the conviction; the rehabilitation, treatment or restitution performed by the him; and any other relevant factors.¹¹

Landau did have a second disqualifying conviction for Assault Causing Bodily Injury on March 16, 2012. The preponderance of the evidence in the record established that

¹⁰ Iowa Code section 708.2(2)(2013).


¹¹ Iowa Code sections 543B.15(3)(b), 543B.15(6)(2013).

Landau did not complete the sentence for this second disqualifying conviction until he was discharged from his one year period of probation, which would have been on March 16, 2013. Although Landau paid his financial obligations on this conviction on July 5, 2012 and finished serving his jail term on September 25, 2012, there is no evidence that Landau was granted an early discharge from probation. Therefore, application of the mandatory five year waiting period to Landau's most recent conviction for Assault Causing Bodily Injury means that he will not be eligible to apply for licensure as a real estate salesperson until March 16, 2018, absent any further disqualifying convictions or any significant change in the law. If Landau files another application after March 16, 2018, the Commission may consider the factors established in Iowa Code section 543B.15(6) in determining if the application should be granted.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the application filed by Michael Landau for a real estate salesperson license in the state of Iowa is hereby DENIED.

Dated this 26th day of August, 2014.

 Dennis Stolk FOR VICE-CHAIR
Dennis Stolk, Broker,
Acting Chairperson
Iowa Real Estate Commission

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Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure act, from and after the date of the commission's order. If a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the commission's final decision. 193 IAC 7.37.