

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 09-123
)	DIA NOS. 09DOCRE021
Judy D. Kennedy)	
1603 Blues Grass Road)	
Ottumwa, Iowa 52501)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
APPLICANT)	DECISION AND ORDER

On July 2, 2009, the Iowa Real Estate Commission (Commission) sent a letter to Judy D. Kennedy (Applicant) notifying her that the Commission had voted to deny her application for a real estate salesperson license, based on the circumstances of the February 2008 revocation of her child care center license. The Applicant filed a timely Notice of Appeal and a hearing was initially scheduled for January 21, 2010. The hearing date was later rescheduled due to inclement weather.

A prehearing conference was held on March 19, 2010. The hearing was held on March 25, 2010 at 9:30 a.m. Assistant Attorney General John Lundquist represented the state of Iowa. The Applicant was self-represented. The following Commission members presided at the hearing: Laurie L. Dawley, public member and Chairperson; Dan Berry, Broker; Judy Stevens, Broker-Associate; Dick Robert, Broker; Lori Diehl, Salesperson; Patty Daniels, Salesperson; and James O'Neill, public member. Administrative Law Judge Margaret LaMarche assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was closed to the public at the request of the Applicant, pursuant to Iowa Code sections 543B.15(10) and 21.5(1)(a)(2009). After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2009), 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 the witness, State Exhibits 1-9 (See Exhibit Index for description) and Applicant Exhibit A.

FINDINGS OF FACT

1. In May 2009, the Applicant submitted an Application for an Individual (Salesperson) License. The Applicant responded "yes" to the following questions on the application:

9c. Have you ever had any other type of professional license revoked in any state? If yes, attach a complete and detailed explanation of each revocation including the date of revocation, the type of license, the state in which the revocation occurred, and the grounds upon which the license was revoked.

10b. Are there criminal charges now pending against you? (other than scheduled traffic violations) If yes, attach a complete and detailed explanation of each charge including the date of the arrest or charge, the arresting agency, the nature of each charge, the type of each charge (for example: felony, aggravated misdemeanor, etc.) and the name and location of the court. You will need to supplement this answer to provide the disposition of each pending charge once known.

The Applicant further disclosed that her license to operate a child care center in the state of Iowa had been revoked. (State Exhibit 2-4). The Applicant later submitted a copy of the June 5, 2007 administrative decision that affirmed the revocation following a hearing. The administrative law judge's decision was based on findings that the Applicant filed false billing records with the department of human services and allowed an unqualified person to provide care to children. (State Exhibit 6)

2. On November 25, 2008, the Applicant was charged by Trial Information with the Class C felony of Fraudulent Practices in the First Degree [Count I] and the Class D felony of Fraudulent Practices in the Second Degree [Count II]. The charges were based on allegations that the Applicant executed false documentation to obtain public funding benefits provided through two chapters of the Iowa Code: Child Care Facilities and the Family Investment Program. (State Exhibit 7) These criminal charges were pending when the Applicant submitted her application for licensure.

3. On August 27, 2009, the Applicant entered a guilty plea to the crime of Fraudulent Practices, Third Degree, which was a lesser included offense of the crime charged in Count I of the Trial Information. The Court granted the Applicant a deferred judgment, pursuant to Iowa Code section 907.3(1). The Court placed the

Applicant on supervised probation for a period of two years and ordered her to pay costs of her prosecution, her court-appointed attorney's fees, and victim restitution. The Court also required the Applicant to pay a civil penalty and law enforcement initiative surcharge. (State Exhibit 8)

As of the date of the hearing, the Court had not yet determined the amount of victim restitution owed by the Applicant. However, the County Attorney was originally asking for restitution in an amount exceeding \$100,000, which represented all of the public money paid to the Applicant when she was operating her child care center. (Testimony of Applicant)

CONCLUSIONS OF LAW

The legislature has established minimum qualifications for persons seeking licensure as real estate salespersons in the state of Iowa. Iowa Code section 543B.15(2009) 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.

c. For purposes of this section, "conviction" means a guilty plea, 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 of competent jurisdiction in this state, or in any other state, territory, or district of the United States, or in any foreign jurisdiction.

...

4. An applicant for a real estate broker's or salesperson's license who has had a professional license of any kind revoked or suspended or who has had any other form of discipline imposed, in this or any other jurisdiction, may be denied a license by the commission on the grounds of the revocation, suspension, or other discipline.

(emphasis supplied) See also 193E IAC 4.1(7), (8).

The Applicant disclosed the revocation of her license to operate a child care center when she filed her application. Pursuant to Iowa Code section 543B.15(4), the Commission was legally authorized to deny the license application based on the child care center license revocation. However, license denial was not statutorily required based on the license revocation.

The Applicant also disclosed on her application that she had felony charges pending against her for Fraudulent Practices in the First Degree and Fraudulent Practices in the Second Degree. The Applicant was required to report any disposition of the charges to the Commission. After the Commission denied her application, the Applicant entered a guilty plea to the aggravated misdemeanor crime of Fraudulent Practices in the Second Degree. Although the Applicant pled guilty to an aggravated misdemeanor crime and not a felony, the guilty plea still disqualifies the Applicant from licensure as a real estate salesperson because the offense that she pled to involved "obtaining money under false pretenses." Iowa Code section 543B.15(3)(a)(2).

The Iowa Code defines "Fraudulent Practices" to include:

3. Knowingly executes or tenders a false certification under penalty of perjury, false affidavit, or false certificate, if the certification, affidavit, or certificate is required by law or given in support of a claim for compensation, indemnification, restitution, or other payment.

Iowa Code section 714.8(3)(2005, 2007). The Applicant's offense of Fraudulent Practices in the Third Degree is disqualifying because it clearly involved obtaining money under false pretenses.

The sentencing Court granted Applicant a deferred judgment and placed her on probation for two years, subject to conditions. Pursuant to Iowa Code section 543B.15(3)(c)(2009), a deferred judgment is considered a conviction from the time of its entry until the time the defendant is discharged by the court without entry of judgment. The Applicant has not yet been discharged by the Court and is unlikely to be discharged until after she has completed her two year probation and has paid all fines, costs, surcharges, and restitution. The Commission recognizes that it was very difficult for the Applicant to appear at hearing and explain the circumstances of her offense. However, the Iowa Code requires the Commission to deny this application. The Commission has no discretion to grant a license to the Applicant until after she has successfully completed her probation and is discharged by the Court without entry of judgment.

DECISION AND ORDER

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

Dated this day of April , 2010.


Laurie L. Dawley, Chair
Iowa Real Estate Commission

cc: Judy D. Kennedy
1603 Blues Grass Rd.
Ottumwa, Iowa 52501 [CERTIFIED]

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

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.