

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 10-347
)	DIA NOS. 10DOCRE008
PATRICK J. MURPHY)	
Broker Associate (B05709))	
First Realty LTD)	FINDINGS OF FACT,
d/b/a Prudential First Realty)	CONCLUSIONS OF LAW,
5500 Westown Pkwy, Suite 120)	DECISION AND ORDER
West Des Moines IA 50266)	
)	
RESPONDENT)	
)	

On July 26, 2010, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against Patrick J. Murphy (Respondent). The Statement of Charges alleged that the Respondent's conviction of the federal felony of Structuring constituted grounds to revoke his real estate broker license.

A prehearing conference was held by telephone on August 9, 2010. The hearing was held on August 11, 2010 at 9:30 a.m. Respondent Patrick J. Murphy appeared and was represented by attorney Ted Sporer. Assistant Attorney General Pam Griebel represented the state of Iowa. The following Commission members presided at the hearing: Laurie L. Dawley, public member and Chair; Dan Berry, Broker; Judy Stevens, Broker-Associate; Lori Diehl, Salesperson; Dick Robert, Broker; and Jim O'Neill, Public Member. Administrative Law Judge John M. Priester assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1)(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; Respondent's testimony; testimony of Respondent's witnesses: L. Martin Lee, Gail Flagel, Jake Stanton, John Busch, Mike Knapp, John Schmitz, and David Stamp; and the following exhibits:

State Exhibit 1:	Respondent's File, applicable law and cases;
Respondent B:	Superseding Indictment, <i>USA v. Harriette Cooper</i> , (No. CR 06-35 LRR) before the United States District Court for the Northern District of Iowa, dated 5/10/06;
Respondent C:	Letter from Dave Bert, CEO Iowa Association of Realtors to Laurie Dawley and Commissioners;
Respondent D:	Letter from L. Martin Lee to Members of the Iowa Real Estate Commission.

FINDINGS OF FACT

1. The Respondent's Iowa real estate broker associate license (B05709) was issued in 1974 and is scheduled to expire on December 31, 2010. The Respondent's license has not previously been disciplined by the Commission. (State Exhibits 1; Respondent testimony)
 2. In November 2009, the Respondent was indicted in the United States District Court for the Southern District of Iowa on four counts: one count of false statements to the IRS, two counts of structuring, and one count of forfeiture of property. (State Exhibit 1; Respondent testimony)
 3. In February 2010, the Respondent entered into a plea agreement in which he agreed to plead guilty to one count of structuring. He acknowledged guilt and stipulated to the background facts about the offense. He agreed his mental health was a factor a sentencing judge may consider. (State Ex. 1; Respondent Testimony)
 4. The undisputed facts were that the Respondent was aware prior to 2003 that financial institutions reported withdrawals from accounts in two banks totaling over \$100,000 in increments just under \$10,000. The Respondent made two deposits in April of 2004 that triggered bank reporting. Two years later, in a four-month period in 2006, the Respondent made 10 structured deposits into a new account at a new bank, totaling nearly \$100,000, again in increments just under the reporting requirement. (State Ex. 1; Respondent Testimony)
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5. The Respondent claimed that he withdrew the cash to protect his money from his wife. Barbara Lee Murphy, the Respondent's wife, filed for Bankruptcy on November 2, 2001. On that filing she listed debts totaling over \$95,000 with the vast majority of the debts being credit card debts. (State Ex. 1, pp. 38-40).

In an affidavit submitted in the Respondent's dissolution of marriage action filed in 2002, the Respondent disclosed the existence of the accounts to his wife. (State Ex. 1, p. 37). The Respondent removed the money from the accounts in 2003 believing that the funds were at risk because of his wife's heavy credit card usage. (State Ex. 1; Respondent testimony)

6. The Respondent's witnesses all testified, and it was undisputed, that the Respondent has had a very distinguished career as a broker. He received the O.G. Powell Distinguished Service Award, the highest award given by the Iowa Realtors' Association, in 2009, while the criminal case was pending. (Testimony of Respondent's witness: L. Martin Lee, Gail Flagel, Jake Stanton, John Busch, Mike Knapp, John Schmitz, and David Stamp)

7. The Respondent testified that the money was his own, he was not stealing from anyone nor was he trying to hide the money from his wife during the divorce. He was just trying to protect the money from his soon to be ex-wife's spending. When asked why he did not just withdraw the entire amount in one transaction, a legal act, the Respondent could not provide an explanation to the Commission. The Respondent attributed the actions to his Obsessive Compulsive Disorder. (Testimony of Respondent)

CONCLUSIONS OF LAW

Iowa law provides that a professional license may be revoked or suspended if a licensee is convicted of a felony related to the profession or occupation of the licensee. Iowa Code § 272C.10. Iowa Code section 543B.15(2009) provides, in relevant part:

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

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7. The commission, when considering the denial or revocation of a license pursuant to this section, shall 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 or licensee; and any other factors the commission deems relevant.

"A license to practice the profession of real estate broker and salesperson may be revoked or suspended when the licensee is guilty of the following acts or offenses: . . . Conviction of an offense included in section 543B.15, subsection 3." Iowa Code § 543B.29(1), as amended by S.F. 2326 (2010).

The preponderance of the evidence established that Respondent entered a guilty plea and was convicted of Structuring, in violation of 18 U.S.C. sections 3559 and 5324, on July 15, 2010. This crime is classified as a felony. (State Ex. 1, pp. 20-34). Structuring is found to be a crime that is a criminal breach of a fiduciary duty.

The preponderance of the evidence also establishes that the Respondent pled guilty to a felony listed in Iowa Code section 543B.15, subsection 3.

The Commission has weighed the mitigating factors in this case: the Respondent's lengthy record as a law-abiding real estate broker, the fact that the money involved in the structuring act was the Respondent's own to do as he desired with, and the Respondent's mental health issues.

However, the Commission is at a loss to understand why the Respondent committed this illegal act. Even when asked the specific question of why the Respondent committed the acts he could not answer.

The Commission has reviewed the record and found that the Respondent's wife filed for bankruptcy in 2001 with debts exceeding \$95,000. The Respondent filed for divorce in 2002. The Respondent withdrew the money in amounts just below the reporting limit of \$10,000 in 2003. The withdrawals were nearly 2 years after the Respondent's wife filed for bankruptcy.

Something happened in 2003 that precipitated the Respondent's withdrawing the \$100,000. The Respondent was not able to clearly explain what happened, and why he did not simply withdraw the money all in one withdrawal.

Along with the unexplained reason for the Respondent's action, the Commission finds aggravating facts of the nature of the offense (a felony) and that the felonious acts were committed over a period of time.

Based upon the Commission's findings, it determines that the Respondent's real estate broker license should be revoked. The Respondent's license shall be downgraded to that of a real estate sales agent without the possibility of regaining his broker's license. The Respondent shall not act as a supervisor of a licensed assistant.

The Respondent shall be placed on probation. The probation shall run concurrently with the Respondent's federal criminal probation. The Respondent's real estate sales license shall be suspended for six months. However, that suspension shall be stayed as long as the Respondent complies with the requirements of his probation.

During the Respondent's probation he shall be required to provide quarterly reports to the Iowa Real Estate Commission. The quarterly reports shall be required to include:

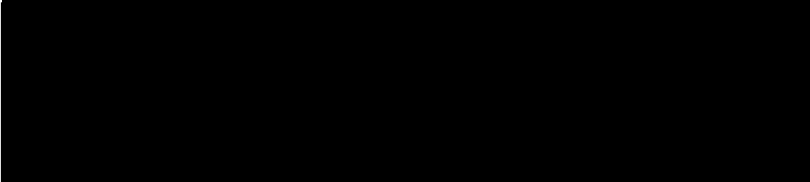
1. A report from his probation officer;
2. A report from his employer. His supervising broker shall report the number of transactions completed in the quarter, if any complaints were filed against the Respondent, confirm that the Respondent is not acting as a supervisor, and the reporter shall provide a summary of the supervisor's observations of the Respondent;
3. Any other reports that the Commission's employees determine is necessary or appropriate.
4. The Respondent shall sign a medical release and have his physician certify that he is competent to practice real estate.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the real estate broker license issued to Respondent Patrick J. Murphy is hereby REVOKED and his license is downgraded to a real estate sales license. His real estate sales license is suspended for six months, but that suspension is stayed as long as the Respondent complies with the requirements of his probation. The Respondent shall be placed on probation to run concurrently with his Federal probation. The Respondent shall be required to provide quarterly reports as outlined above.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing. If the Commission issues a separate order assessing additional costs or expenses, the Respondent shall promptly comply with the terms of that order.

Dated this ⁷7 day of September, 2010.



Laurie L. Dawley, Chair
Iowa Real Estate Commission

cc: Ted Sporer
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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.
