

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 06-021
)	DIA NOS. 06DOCRE008
LENA GAINES-KEATLEY,)	
Applicant-Salesperson)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

On March 2, 2006, the Iowa Real Estate Commission (Commission) voted to deny the salesperson application filed by Lena Gaines-Keatley (Applicant). The Applicant appealed, and a notice of hearing was issued. A prehearing conference was held by telephone on May 19, 2006. The hearing was held on May 25, 2006 at 9:00 a.m. Applicant Lena Gaines-Keatley appeared and was represented by attorney Erin Flynn. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: James Hughes, Broker, Chairperson; Don Marple, Broker; Dan Berry, Broker; Patty Daniels, Salesperson; Lori Diehl, Salesperson; Laurie Dawley and James O'Neill, public members. 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 147.21(2005) and 543B.15(10)(Supp. 2005) and 21.5(1)(a)(2005).

After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2005), 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 Prehearing Conference Report; testimony of the Applicant; and State Exhibits 1-9.

FINDINGS OF FACT

1. On October 31, 2005, the Applicant signed the Commission's Waiver for Completing Criminal History Backgrounds Checks, which

authorizes the Commission to conduct both an Iowa criminal history background check with the Division of Criminal Investigation (DCI) and a national check through the Federal Bureau of Investigation (FBI). The Applicant truthfully responded "yes" to the question:

Have you ever been convicted of a felony or misdemeanor criminal offense (other than scheduled traffic violations)? A conviction includes a guilty plea, a deferred judgment prior to discharge, and a finding of guilt by a judge or jury.

In an attachment to the waiver, the Applicant disclosed that she had multiple misdemeanor convictions from 1991 through 1996 and fully disclosed the nature of the convictions. In November 2005, the DCI and the FBI sent the Commission copies of the Applicant's complete criminal history. (Testimony of Applicant; State Exhibits 2, 4, 5)

2. The Applicant completed the real estate education and successfully passed the examination required for real estate salespersons. The Applicant made an error in her first attempt to complete the Commission's Application For An Individual License. An employee of the Applicant's affiliating broker was asked to assist the Applicant in filling out her licensure application and stood alongside the Applicant as she completed the application. The Applicant truthfully answered "yes" to question 10a on the application, which asked if she had "ever been convicted of a felony or misdemeanor criminal offense?"

If applicants answer yes to this question, they are required to attach a "complete and detailed explanation of each conviction, including the date of conviction, the name and location of the court, the nature of each charge, the sentence imposed, and whether the terms of sentence had been satisfied." The Applicant felt shamed by the presence of the broker's employee and instead of describing all of her convictions as she had done on the waiver form, she provided only a partial list.

On February 16, 2006, the Applicant signed the licensure application in front of a notary. The Applicant's signature appears below the statement "...I personally completed this application and the answers appearing hereon are true and correct to the best of my knowledge and belief." The Applicant submitted her signed application to the Commission. (Testimony of Applicant; State Exhibit 3)

3. The Applicant's convictions were all related to her past drug use. The Applicant has not had any convictions since 1996, a period of nearly ten years. She has been clean and sober since October 10, 1997 and has been active in structured recovery groups. After completing her sentence in 1998, the Applicant volunteered to bring a Narcotics Anonymous (NA) meeting into the Women's Residential Correctional Facility. The Applicant chaired the meeting every three weeks for a period of five years and has sponsored other women in recovery. When she could no longer chair the NA meeting due to other obligations, the Applicant arranged for her replacement. (Testimony of Applicant; State Exhibits 7-1, 7-6)

4. The Applicant completed her associate degree at Des Moines Area Community College in 2003. She is currently attending Grandview College in Des Moines with an anticipated graduation date of December 16, 2006. The Applicant has submitted letters of recommendation from DMACC and Grandview College, which describe her as excelling in leadership, character, and service. (Testimony of Applicant; State Exhibit 7-2, 7-4, 7-5)

5. The Applicant has been employed by Prairie Meadows Inc. for a period of three years. The Applicant's supervisor describes her as dependable and a hardworking self-starter. In order to be employed at Prairie Meadows, the Applicant was required to pass security and become licensed. The Applicant fully disclosed her criminal history but was eligible to work at Prairie Meadows because her misdemeanor convictions were all more than five years old. (Testimony of Applicant; State Exhibit 7-3)

CONCLUSIONS OF LAW

I. Applicable 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(2005) provides, in relevant part:

543B.15 Qualifications

...

3. An applicant for a real estate broker's or salesperson's license who has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offense, *or of any crime involving moral*

turpitude in a court of competent jurisdiction in this state,...may be denied a license by the commission, on the grounds of the conviction. For purposes of this section, "conviction" means an indictable offense and includes 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 guilty by a court of competent jurisdiction.¹

...

5. A person who makes a false statement of material fact on an application for real estate broker's or salesperson's license, or who causes to be submitted or has been a party to preparing or submitting any false application for such license, may be denied a license by the commission on the grounds of the false statement or submission...

...

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. Character references may be required but shall not be obtained from licensed real estate brokers or salespersons.

...

10. An applicant for an initial real estate broker's or salesperson's license shall be subject to a national criminal history check through the federal bureau of investigation. The commission shall request the criminal history check and shall provide the applicant's fingerprints to the department of public safety for submission through the state criminal history repository to the federal bureau of investigation. The applicant shall authorize release of the results of the criminal history check to the real estate commission...The results of a criminal history check conducted pursuant to this subsection shall not be considered a public record under chapter 22.

¹ "Indictable offense" means an offense other than a simple misdemeanor. Iowa Code section 801.4(4)(2005).

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

II. Discussion

The Commission has legal grounds to deny this application. The Applicant has a history of convictions for crimes involving moral turpitude. Iowa Code section 543B.15(3)(2005); 193E IAC 4.1(7). In addition, the Commission may deny an application if an applicant makes a false statement of material fact on the licensure application. Iowa Code section 543B.15(5)(2005). While the Applicant fully disclosed her criminal history when she completed the Commission's waiver form, she omitted some of her convictions when describing the nature of her criminal history on the Commission's licensure application. A complete criminal history is clearly material to the Commission's licensing decision. The Commission must be satisfied that applicants have truthfully answered all questions on the application.

The Commission has considered the factors set out in Iowa Code section 543B.15(7)(2005), particularly the length of time that has elapsed since the Applicant's last arrest and conviction and the evidence of the Applicant's rehabilitation since that time. The Commission was impressed by the Applicant's tenacity in pursuing her educational and professional goals during the last eight years. The Applicant has overcome obstacles and has made significant changes in her life. The Applicant appears prepared to assume and fulfill the responsibilities of a real estate salesperson. The Commission remains troubled by the Applicant's misrepresentation of her criminal record on her application for licensure. In prior cases involving material misrepresentation on a licensure application, the Commission has either permanently denied the license or has required the applicant to pay an appropriate civil penalty as a condition of licensure. 193 IAC 7.39(4) provides that after a hearing on license denial, the Commission may state conditions upon which the application for licensure might be granted, if applicable. Based on the Applicant's presentation at hearing and the particular circumstances of the Applicant's misrepresentation, the Commission has determined that she may be granted a license as a real estate salesperson upon a timely payment of a \$500 civil penalty.

ORDER

IT IS THEREFORE ORDERED that Lena Gaines-Keatley shall pay a civil penalty to the Commission in the amount of \$500 no later

than thirty (30) calendar days after the issuance of this Decision and Order. The civil penalty must be submitted with a cover letter to the Commission's Executive Officer, referring to Case No. 06-021.

IT IS FURTHER ORDERED that upon payment of the \$500 civil penalty, and timely submission of the corrected license application, Lena Gaines-Keatley will be issued a license as a real estate salesperson in the state of Iowa.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that the Applicant shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the hearing.

Dated this _____ day of June, 2006.


James Hughes, Chairperson
Iowa Real Estate Commission

cc: Erin M. Flynn
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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.