

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 08-003
)	DIA NOS. 08DOCRE005
JOYCE E. MASKREY)	
710 John Goodhue)	
Carlisle, IA 50047)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER
)	

On October 31, 2008, the Iowa Real Estate Commission (Commission) found probable cause to file a Notice of Hearing and Statement of Charges against Joyce E. Maskrey (Respondent). The Statement of Charges alleged that Respondent's conviction of the federal felony of False Statement constituted grounds to deny the renewal of her real estate broker license.

A prehearing conference was held by telephone on January 9, 2009. The hearing was held on January 15, 2009 at 9:30 a.m. Respondent Joyce E. Maskrey appeared and was represented by attorney Ted Sporer. Assistant Attorney General John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: Laurie L. Dawley, public member and Vice-Chair; Dan Berry, Broker; Judy Stevens, Broker-Associate; Lori Diehl, Salesperson; and Patty Daniels, Salesperson. 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 Respondent's request, pursuant to Iowa Code section 272C.6(1)(2007).

After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2007), 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; and the following exhibits:

State Exhibit 1:	Respondent Licensing Information
State Exhibit 2:	Renewal Application

State Exhibit 3: Commission Meeting Minutes, 2/14/08
State Exhibit 4: Notice of License Denial, 2/15/08
State Exhibit 5: Appeal of License Denial
State Exhibit 6: Notice of Hearing
State Exhibit 7: Indictment, U.S. v. Maskrey, Criminal
Case Number 4:06-CR-189
State Exhibit 8: Plea Agreement, U.S. v. Maskrey
State Exhibit 9: Judgment in a Criminal Case, U.S. v.
Maskrey
State Exhibit 10: Amended Judgment in a Criminal Case
State Exhibit 11: Answer, 8/8/08
State Exhibit 12: Relevant Statutes and Administrative
Rules

FINDINGS OF FACT

1. Respondent's Iowa real estate broker associate license (B01765) was first issued on December 28, 1979 and expired on December 31, 2007. Respondent's license has not previously been disciplined by the Commission. (State Exhibits 1, 5; Respondent testimony)

2. On August 29, 2006, Respondent was indicted in the United States District Court for the Southern District of Iowa on two counts: False Statement (Count I) and Concealment of Material Fact (Count II). Count I alleged that on or about November 20, 2003, Respondent knowingly and willfully made and caused to be made in a Report of Continuing Disability Interview for disability insurance benefits to the Social Security Administration, a false statement and representation of material fact for use in determining rights to payment under Title 42, United States Code, Section 301 et.seq., to wit, a statement or representation regarding employment, in that she represented that she had not worked at all since August 1, 1999 when, in fact, she had worked as a real estate agent. (State Exhibit 7)

3. On August 20, 2007, Respondent entered a guilty plea to Count I, pursuant to a plea agreement, and Count II was dismissed. The Plea Agreement included a Stipulation of Facts to be used by the Court as the factual basis for the plea agreement, for purposes of sentencing, and for any subsequent litigation between the parties. The Stipulation of Facts stated, in relevant part:

1. On or about November 20, 2003 in a report filed with the Social Security Administration failed to relate a material fact, to wit: earned income. This

false omission and representation was material in that it related directly to the amount of benefit she would receive. The effect was to increase the amount of benefit...

2. The parties stipulate that the amount of loss to the Social Security program was \$59,750, and that restitution should be ordered in that amount as part of the resolution of this case.

3. Defendant hereby certifies that the facts set forth above are true and accurate to the best of her knowledge.

(Respondent testimony; State Exhibit 8)

4. On December 19, 2007, the United States District Court entered Judgment on Count I and sentenced Respondent to probation for a term of one year. Count II was dismissed. In addition, the Court ordered restitution in the amount of \$59,760. Respondent later successfully completed probation on December 19, 2008. (State Exhibit 9; Respondent testimony)

5. On December 20, 2007, Respondent completed, signed and dated an application to renew her broker license. Respondent answered "yes" to the question asking whether she had been convicted of a felony or misdemeanor since her last renewal. In an attachment, Respondent explained that she accepted a plea agreement in regard to a dispute with the Social Security Administration. Respondent described the dispute as resolving around whether she was "employed" as a real estate agent by the broker or working as an "independent sub-contractor" under another broker's license. (State Exhibit 2: Respondent testimony)

6. On February 13, 2008, the Court entered Amended Judgment in a Criminal Case. The Amended Judgment provided that Respondent would pay a \$100 lump sum payment immediately, followed by monthly restitution payments of \$50.00. (State Exhibit 10).

7. On February 14, 2008, the Commission took action to deny Respondent's renewal application and find probable cause in complaint case number 08-003. (State Exhibit 3) On March 7, 2008, Respondent filed a formal appeal from the license denial. (State Exhibit 5)

CONCLUSIONS OF LAW

Iowa Code section 543B.15(3)(a)(2007 Supp.)¹ 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, arson, extortion, conspiracy to defraud, or other offense involving a criminal breach of fiduciary duty, five years.

The preponderance of the evidence established that Respondent entered a guilty plea and was convicted of False Statement, in violation of 42 U.S.C. §408(a)(2), on December 19, 2007. This crime is classified as a felony. (State Exhibit 12-9, 12-10). Due to her felony conviction, Iowa Code section 543B.15(3)(a) explicitly bars Respondent's licensure as a real estate broker in Iowa for either two years or five years following completion of any incarceration, payment of any fine, or fulfillment of any other type of sentence.

Respondent argues that the two year disqualification period applies and that it should run from the date of her conviction, December 19, 2007. However, upon review of the Respondent's record of conviction and the mandatory terms of the statute, the Commission is convinced that Respondent must be disqualified from licensure as a real estate broker or salesperson for a minimum period of five years from the date that she completed her one year term of probation.

Respondent was sentenced to a one year period of probation, in lieu of incarceration. She was not fined, although she is required to make restitution to the Social Security Administration. Respondent "fulfilled" her sentence, as that term appears in the statute, upon completion of the one year

¹ 2007 Acts, ch. 187 §§1, 2, effective 7/1/07.

term of probation on December 19, 2008. That is the date that triggers the statutory disqualification period.

In determining whether the two year or five year time period applies, the Commission primarily considered the nature of the crime and the Stipulation of Facts supporting Respondent's guilty plea. Respondent was convicted of the crime of "False Statement," in violation of 42 U.S.C. §408(a)(2). That statute provides:

Whoever makes or causes to be made any false statement or representation of material fact in any application for payment or for a disability determination under this subchapter, ...shall be guilty of a felony.

In the Stipulation of Facts attached to her guilty plea, Respondent certified that on or about November 20, 2003 she:

- filed a report with the Social Security Administration that failed to relate a material fact, i.e. earned income;
- this false omission or representation was material in that it related directly to the amount of benefit she would receive; and
- the effect was to increase the amount of the benefit.


The crime of "False Statement," as further explained through the Stipulation of Facts attached to Respondent's guilty plea, falls squarely under the category of "obtaining money under false pretenses," which triggers the minimum five year period of disqualification for licensure as a real estate broker or salesperson. Iowa Code section 543B.15(3)(a)(2)(2007 Supp.). Respondent entered a voluntary plea admitting that she made a material false omission or representation and that the effect of the false omission or representation was to increase the amount of benefit that she received from the Social Security Administration. The disqualification consequences of this type of conviction are mandated by the legislature through the statute.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the license renewal application filed by Respondent Joyce Maskrey, on or about January 3, 2008, is hereby DENIED. IT IS FURTHER ORDERED that by operation of Iowa Code section 543B.15(3)(a)(2)(2007 Supp.), Respondent is disqualified from holding a license as a real estate broker or salesperson in the state of Iowa for a minimum period of five

years from the date completed her term of probation, i.e. until after December 19, 2013.

Dated this 12 day of *FEBRUARY*, 2009.


Laurie L. Dawley, Vice 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.