

FILED February 13, 2020 (Date)

JREC  
Board / Commission  
Signature Executive Officer

BEFORE THE REAL ESTATE COMMISSION  
OF THE STATE OF IOWA

IN THE MATTER OF:	)	CASE NO. 19-150
	)	DIA NO. 20REC0001
Richard J. Adams	)	
4510 Commerce Drive	)	
West Des Moines, IA 50266	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
APPLICANT-SALESPERSON	)	DECISION AND ORDER

On October 16, 2019, the Iowa Real Estate Commission (Commission) sent a letter to Mr. Richard J. Adams (Applicant) notifying him that the Commission had voted to deny his application for a real estate salesperson license, based on his criminal history, the nature of some of the crimes, and his failure to fully disclose his convictions on his application. The Applicant filed a timely Notice of Appeal, and a hearing was scheduled for December 5, 2019.

Following a prehearing conference on November 27, 2019, the hearing on the merits was held on December 5, 2019, commencing 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: Terry Duggan, Broker, Chairperson; Dennis Stolk, Vice-Chairperson, Broker; Jim Clingman, Broker; Janet Demott, Salesperson; Michael Telford and Twee Duong, public members. Administrative Law Judge Forrest Guddall assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was open to the public, pursuant to Iowa Admin. Code r. 193-7.39(3)(546,272C). After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code § 21.5(1)(f), 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, the testimony of Ms. Renee Paulsen and Applicant Richard Adams, and State Exhibits 1-5 (See Exhibit Index for description).

## FINDINGS OF FACT

1. On August 1, 2019, the Applicant submitted an Application for a Real Estate Salesperson License. (Exhibit A, p. 5). The Applicant responded "Yes" to the following question on the application:

2.7 Have you ever been convicted of a serious misdemeanor, aggravated misdemeanor, or felony (or equivalent) criminal offense? (A conviction of operating while intoxicated [OWI] (or equivalent) is not considered a traffic violation and **MUST** be disclosed). A "conviction" includes a guilty plea, a deferred judgment prior to discharge, and a finding of guilty by a judge or jury.

If yes, 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 (for example: felony, serious misdemeanor, etc.), the sentence imposed, and whether you have satisfied all terms of the sentence. ALL serious misdemeanor, aggravated misdemeanor, or felony (or equivalent) criminal convictions must be disclosed regardless of the date when entered or whether the criminal record has been expunged.

(Emphasis in original). In the "Comments" section of the question, the Applicant typed "bought stolen car 1976." No further information was provided. (State Exhibit 4; Paulsen, Adams testimony).

2. The Commission's staff independently verifies an applicant's criminal history through the Iowa Division of Criminal Investigation (DCI), the Federal Bureau of Investigation (FBI) and its own review of Iowa Courts Online. In order to conduct the criminal history background check, the Applicant had provided a "General – Request for Background Check Packet" to the Commission. (Paulsen testimony; State Exhibits 3 and 4).

3. Commission staff received the Applicant's criminal history from the FBI on August 6, 2019. Applicant was, in fact, convicted of "Received or Stealing of Stolen Auto" on October 16, 1975 (*not* 1976), and it was a felony. However, Investigator Paulsen discovered additional convictions that the Applicant did not disclose on his application:

- a. Larceny in the Nighttime, serious misdemeanor, April 15, 1974.
- b. Violation of Probation, felony, April 14, 1977.
- c. Prostitution (Procure for Prostitute who is a Minor), serious misdemeanor, August 28, 1986.
- d. Failure to Appear, serious misdemeanor, December 4, 1986.
- e. Possession of Cocaine, felony, June 22, 2001.
- f. Possession of Narcotic Equipment, serious misdemeanor, June 22, 2001.
- g. Probation Violation (from Possession of Cocaine), felony, August 7, 2002.
- h. Probation Violation (from Possession of Cocaine), felony, August 7, 2002.
- i. Possession of Cocaine, felony, September 27, 2002.
- j. Probation Violation (Possession of Cocaine), felony, December 18, 2002.

The foregoing information and offense verbiage was, in fact, based on the FBI criminal history report. (Paulsen testimony; State Exhibit 3).

4. Investigator Paulsen also noted several names and social security numbers were associated with Applicant's fingerprints. Investigator Paulsen contacted Applicant regarding the discrepancies. Applicant stated he had a given name at birth, was then adopted which led to his first name change, and finally as an adult he legally changed his name. He did not recall having any other social security number. Applicant did say to Investigator Paulsen that he "did have some cocaine charges but they were a long time ago." (Paulsen testimony; State Exhibit 3).

5. At the hearing, the Applicant did not dispute the accuracy of his FBI criminal history record. He did not provide any documentation on his behalf; rather, he simply testified on his own behalf. Applicant first explained why he sought a real estate salesperson's license and stated the following. Applicant does have family members in the construction and real estate businesses. He helps out with the family businesses. For instance, he will demolish or refurbish homes and takes pride in his work. He also serves as a groundskeeper, performing snow removal and cleaning duties. But, he

would also like to assist in other ways, e.g. hosting open houses, even though he is semi-retired. He would be willing to comply with any conditions the Commission would place on a salesperson license. (Adams testimony).

6. At the hearing, Applicant next addressed his criminal history and stated the following about the offenses. Applicant claimed he did not know that an undercover law enforcement officer was posing as a prostitute and the charge resulted from what initially started as innocent banter between the two. The larceny charge resulted from his breaking into a pinball machine to steal quarters. The stolen car was bought at a keg party when the individuals that stole the vehicle indicated they were going to wreck it. It was a nice car and he did not want to see it ruined. The failure to appear charge was the result of his attorney telling him he did not have to appear in court when he actually was required to be there. Regarding the first cocaine charge, Applicant stated he began using drugs during a relationship. He never sold drugs; rather, he personally used drugs or gave it away. He had an ounce of cocaine on him when his significant other reported him to law enforcement following some argument or disagreement between the two of them. He did not know he was also convicted of the narcotic equipment charge. Regarding the second cocaine charge, he was going into a supervised correctional facility and his significant other placed some cocaine in a cigarette pack without his knowledge and placed it in his pocket. The cocaine was discovered when he was searched by staff upon intake to the facility. Applicant stated he was not hiding his criminal history by omitting this information. Rather, he was filling out the online application and thought he would return to the screen for question 2.7 in order to provide more information later. However, when he was at the "Manage Submissions" screen at the end of the application, there was a section entitled "Previous Criminal Convictions – Documentation" at the bottom of the screen. Unlike some of the other sections of the application listed on that screen, this "Criminal Convictions" section did not have the "Required" column box checked. The section was not "required" because a particular licensee candidate may not have a criminal history to report (or documents to upload with the application). So, despite the mandatory disclosure required by question 2.7, Applicant mistakenly believed no further documentation (or information) was required. Applicant did not realize at the time that the "Manage Submissions" screen of the online application was, in fact, the place where documents relating to an applicant's criminal history (if there was any criminal background to report) were to be uploaded for disclosure to the Commission. (Adams testimony).

7. At hearing, the Applicant cited reasons for the Commission to grant him a salesperson license. He has had a clean criminal record since 2002 – his only citation since then was for a seat belt violation. He has been gainfully employed raising cattle in Arkansas as well as helping his family with real estate development during the

intervening years. He has also worked for an oil company as a boiler maker, has driven a semi-truck as a professional driver, and even worked as a cook for an all-terrain vehicle park. He studied for and passed the examination for a real estate salesperson license on his first attempt. He has taken his pursuit of a salesperson license seriously. He has bought and sold his own property in the past without incident. He does not believe in “puffery” or aggressive sales tactics. He would like to host open houses and has sought a salesperson license in order to legally do so.<sup>1</sup> He is also active in a men’s group at his church. (Adams testimony).

## CONCLUSIONS OF LAW

The legislature has established the minimum qualifications for persons seeking licensure as real estate brokers or salespersons in the state of Iowa. Iowa Code § 543B.15 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.*

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<sup>1</sup> See Iowa Admin. Code r. 193E-21.1(17A,543B) (“The commission is authorized to issue a cease and desist order and to impose a civil penalty of up to the greater of \$10,000 or 10 percent of the real estate sale price against any person who is not licensed by the commission but who acts in the capacity of a real estate broker or salesperson, pursuant to Iowa Code section 543B.34.”).

b. After expiration of the time periods specified in paragraph "a", an application shall be considered by the commission pursuant to subsection 6 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, "convicted" or "conviction" means a conviction for an indictable offense and includes a court's acceptance of 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. A copy of the record of conviction is conclusive evidence of such conviction.

...

5. *A person who makes a false statement of material fact on an application for a 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.*

6. The commission, when considering the denial 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; 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.

(Emphasis added). Thus, an applicant's criminal history and the applicant's full and accurate disclosure of all convictions are relevant and material to the applicant's statutory eligibility for licensure as either a real estate broker or salesperson.

Here, the preponderance of the evidence established that the Applicant has been convicted or otherwise adjudicated of four serious misdemeanor charges, three felonies, and four probation violations based on those felony offenses. The Applicant's last conviction was in 2002, which is more than five years ago. Thus, Applicant meets the statutory waiting period for eligibility for a salesperson's license.

Nevertheless, the Applicant did not submit an amended criminal history in the application process or take other steps to correct the omissions for all of his convictions. In fact, only the "Received or Stealing of Stolen Auto" charge was disclosed on the application. A "complete and detailed explanation of each conviction," as required by question 2.7, was not provided by Applicant. Applicant asserts that his failure to correct his criminal history omissions was due to his misunderstanding of the directions for the online application and his lack of sophistication regarding the technology. However, even if the omissions were unintentional or not the result of obfuscation, Applicant did not take any further steps to ensure a full background criminal history was presented to the Commission. For instance, he did not provide the Commission with court documents to provide details of the offenses for its consideration of the application. Rather, a cursory acknowledgement of the omissions occurred only after Investigator Paulsen contacted Applicant.

In a similar licensure case, the Iowa Board of Medical Examiners denied a license to an applicant who submitted an application through another person, and the other person filled out the application both incorrectly and with omissions. *Rosen v. Bd. of Med. Examiners of Iowa*, 539 N.W.2d 345, 348 (Iowa 1995) ("He explained that the inaccuracies and incomplete information in his application resulted from the fact that he foolishly entrusted Knapp with the responsibility of filling it out."). The Iowa Supreme Court upheld the Board's decision to deny licensure:

We believe Rosen's argument begs the larger question of whether an applicant's honesty, integrity, and judgment—as demonstrated in the licensure process or anywhere else—are material to decisions made by a licensing board. We have no reason to question the board's judgment that they are. Moreover, we are unwilling to hold, as a matter of law, that the board must regard Rosen's dishonesty as immaterial just because the facts to which he swore were not, standing alone, material to the question of licensure.

*Id.*, 539 N.W.2d at 351. Similarly, here Applicant's omissions are also disqualifying for licensure.

Further, the Commission finds the nature of some of the crimes constitute moral turpitude. The Commission's rules define "moral turpitude" as:

*"Moral turpitude"* means 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 without limitation forcible felonies as delineated in Iowa Code section 702.11.

Iowa Admin. Code r. 193E-2.1(543B).

In the Commission's view, the car theft conviction, the larceny conviction, and the prostitution conviction clearly involve moral turpitude. The Iowa Supreme Court has held those type of convictions have been the basis for attorney discipline. *See e.g., Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Lyzenga*, 619 N.W.2d 327, 330 (Iowa 2000) ("These convictions [for theft, forgery, and deceptive practices] also constitute illegal conduct involving moral turpitude[.]") (citations omitted). The Court also described prostitution-related offenses as involving moral turpitude:

While society has in recent years become more open and tolerant of certain activities, and while some have advocated the legalization of prostitution, we think society in general still views prostitution as immoral conduct. For this reason and because prostitution remains proscribed by our criminal law, we conclude Lyzenga's prostitution convictions constitute illegal conduct involving moral turpitude in violation of [the disciplinary rules].

*Id.*, 619 N.W.2d at 331.

Thus, aside from the criminal history omissions, the nature of some of the offenses involve moral turpitude and serve as an aggravating factor for denying Applicant's application. The Commission recognizes that the Applicant has made



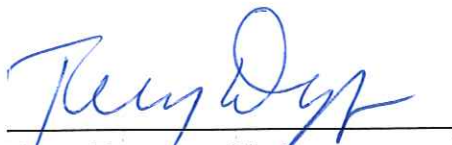
many positive changes in his life and has had no new convictions in more than 17 years. Nevertheless, while Applicant's last conviction occurred in 2002, Applicant was still 46-years old at that time. Applicant's most recent felony occurred when he was a mature adult and is an aggravating circumstance. *Compare State v. Brown*, 834 N.W.2d 873 (Iowa Ct. App. 2013) ("Here, we take the district court's comments regarding Brown's age as another way of saying Brown was a mature adult and that her criminal act was not just some youthful indiscretion that might have warranted some leniency. Brown was a mature adult with many life experiences, and she acknowledged she 'knew better.'"). Finally, protection of the public is the consideration which must be paramount for the Commission. On the whole, the Commission's concerns regarding Applicant's criminal history and the Commission's duty to public safety outweigh the passage of time since Applicant's last crime.

Although civil penalties or a term of probation were possible alternatives, at this point the Commission finds that denial of a real estate salesperson's license for Applicant is the appropriate result. Upon this record and the foregoing legal authority, the Commission denies this application.

### DECISION AND ORDER

IT IS THEREFORE ORDERED that the application filed by Richard Adams for a real estate salesperson license in the State of Iowa is hereby DENIED.

Dated this 13<sup>th</sup> day of FEBRUARY, 2020.



Terry Duggan, Chairperson  
Iowa Real Estate Commission

cc: Respondent Richard Adams [CERTIFIED]  
Assistant Attorney General John Lundquist [LOCAL]

## APPEAL RIGHTS

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 pursuant to Iowa Admin. Code r. 193-7.33(17A), a judicial review petition must be filed with the district court within 30 days after the issuance of the Commission's final decision. The Commission's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order. Iowa Admin. Code r. 193-7.37(17A,272C).

BEFORE THE IOWA REAL ESTATE COMMISSION  
200 EAST GRAND, SUITE 350  
DES MOINES, IA 50309

**FILED** October 16, 2019 (Date)  
JREC  
Board / Commission  
[Signature]  
Signature, Executive Officer

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IN RE: )  
          ) CASE NUMBER: 19-150  
Richard J. Adams )  
          ) NOTICE OF INTENT TO  
4510 Commerce Drive ) DENY LICENSE  
West Des Moines, IA 50265 )  
          )  
APPLICANT - SALESPERSON )

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**PURSUANT TO IOWA CODE SECTIONS 543B.19 AND 543B.35, THE IOWA REAL ESTATE COMMISSION ISSUES THE FOLLOWING NOTICE:**

1. On or about August 1, 2019, **Richard J. Adams** (APPLICANT) submitted an Application for Individual License to the Iowa Real Estate Commission (COMMISSION) for a new Iowa real estate salesperson's license. Following its review of the APPLICANT's license application at its October 3, 2019 meeting, the COMMISSION authorized the issuance of this Notice of Intent to Deny License.

2. A person who makes a false statement of material fact on an application for an Iowa real estate salesperson's license may be denied a license by the Commission solely on the grounds of the false statement. See Iowa Code § 543B.15(5) (2019).

3. Although the APPLICANT did answer question 2.7 on his August 1, 2019 license application by stating that he did have a criminal conviction (or equivalent) for a serious misdemeanor, aggravated misdemeanor, or felony offense, the criminal history checks conducted by the Iowa Division of Criminal Investigations and the Federal Bureau of Investigation pursuant to Iowa Code 543B.15(9) (2019) and a search of Iowa Courts Online established that the APPLICANT failed to accurately and/or completely disclose his criminal history as requested by question 2.7 on the Application.

4. Truthful and complete disclosure of one's criminal history is essential to the Commission's determination of whether an applicant meets all requirements for obtaining an Iowa real estate salesperson license. See Iowa Code § 543B.15(3) (2019). The APPLICANT's failure to accurately and completely disclose his criminal history on his license application constitutes a false statement of material fact for which denial of his application for a real estate salesperson license is warranted.

5. Furthermore, an applicant for a real estate salesperson's license who has been convicted of a criminal offense which is classified as a felony, an offense including or involving forgery, embezzlement, obtaining money under false pretenses, theft, arson, extortion,



conspiracy to defraud, or other similar offense, any other offense involving a criminal breach of fiduciary duty, or any offense not described involving moral turpitude may be denied a license by the COMMISSION on the grounds of the conviction. See Iowa Code § 543B.15(3) (2019).

6. Review of the APPLICANT's criminal history establishes that the APPLICANT was convicted on or about April 15, 1974, on or about August 28, 1986, and on or about August 16, 2002 of indictable criminal offenses involving moral turpitude. See 193E Iowa Admin. Code r. 2.1 (defining "moral turpitude").

7. Review of the APPLICANT's criminal history establishes that the APPLICANT was convicted on or about October 16, 1975, on or about May 22, 2002, and on or about February 6, 2003 of felony criminal offenses.

8. Upon a balancing of the factors delineated in Iowa Code section 543B.15(6), the COMMISSION finds that the APPLICANT's multiple indictable misdemeanor criminal convictions involving moral turpitude and multiple felony criminal convictions each constitute an additional, independent ground warranting denial of the APPLICANT's application for a real estate salesperson license.


9. The APPLICANT is hereby notified that his application for an Iowa Real Estate License shall be **DENIED** for the above-stated reasons unless a timely appeal is filed pursuant to Iowa Code § 543B.19. The notice of appeal shall be in writing and must be filed with the offices of the Iowa Real Estate Commission, 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, no later than **November 15, 2019**. See Iowa Code §§ 543B.19, 543B.35.

10. Upon receipt of a timely notice of appeal, the COMMISSION shall set a hearing to address the issues cited by the COMMISSION for the denial of the APPLICANT's real estate salesperson license application. The Applicant shall have the right to respond to the reasons cited for the license denial, produce evidence on his behalf, cross-examine witnesses and examine any documents introduced at hearing. The Applicant may appear personally and be represented by counsel at his own expense at any such hearing.

11. In the event that the COMMISSION does not receive a timely written notice of appeal, a final order confirming the denial of APPLICANT's real estate salesperson license application shall be issued forthwith and there will be no further opportunities for appeal.

**Notice issued this 16<sup>th</sup> day of October 2019, to Richard J. Adams via restricted, certified mail, return receipt requested, to resident address 4510 Commerce Drive, West Des Moines, IA 50265.**

  
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Jeffrey M. Evans, Executive Officer  
Iowa Real Estate Commission

  
\_\_\_\_\_  
Date

In re: Richard J. Adams; IREC Case No. 19-150  
Notice of Intent to Deny License  
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Copies to:  
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Dorrance L Brezina, Developers Realty Group LLC