

FILED December 3, 2020 (Date)
IR&C
Board / Commission
[Signature]
Signature, Executive Officer

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:

CASE NO. 20-157

DIA NO. 21PLBREC0001

MICHAEL SORENSEN

4430 Ashley Park Dr.

West Des Moines, IA 50265

APPLICANT

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**

On September 16, 2020, the Iowa Real Estate Commission (Commission) sent a letter to Michael Sorensen (Applicant) notifying him that the Commission had voted to deny his application for a real estate salesperson license, based on his criminal history and professional license discipline. Mr. Sorensen filed a timely Notice of Appeal.

A prehearing conference was held on October 28, 2020. The hearing was held on November 5, 2020 at 10:30 a.m. Assistant Attorney General John Lundquist represented the state of Iowa. Attorney Jorge Gomez represented Mr. Sorensen. The following Commission members presided at the hearing: Terry Duggan, Chairperson, Broker Member; Dennis Stolk, Vice – Chairperson, Broker Member; Jim Clingman, Broker Member; Helen Kimes, Broker Member; Janet DeMott, Salesperson Member; Wendy Carminhato, Public Member; and Twee Duong, Public Member. Administrative Law Judge Kathleen O'Neill assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was open to the public, pursuant to 193 IAC 7.39.

After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2020), 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 Michael Sorensen, Traci Jo Sorensen, Scott Wendl, and Stephanie VanDerKamp. The parties stipulated to State Exhibits 1-6 (See Exhibit Index for description) and Applicant Exhibit A.

FINDINGS OF FACT

On July 13, 2020, Mr. Sorensen submitted an application for individual license to the Iowa Real Estate Commission. The application revealed that on June 13, 2008, Mr. Sorensen was convicted of one count of wire fraud in violation of 18 United States Code section 1343, which was a felony criminal offense. Mr. Sorensen supplemented his answer by providing

copies of relevant court documents. These documents showed that Mr. Sorensen was previously licensed as a real estate professional in the state of Alaska, and while in this position, participated in a scheme to defraud mortgage lenders. He did so by facilitating the undisclosed disbursement of real estate closing proceeds back to property buyers through a remodeling company he owned. As a consequence of his criminal conduct, in 2008, Mr. Sorensen voluntarily surrendered his Alaska Real Estate license. At the time of his license surrender, Mr. Sorensen was under investigation by the Alaska Real Estate Commission concerning allegations of misrepresentation and fraud.

The Commission reviewed the application and on September 16, 2020, issued a notice of intent to deny license. The commission found that the conviction constituted a criminal offense that involved obtaining money under false pretenses, conspiracy to defraud, or other similar offense. Further, under Iowa Code § 543B.15,

an applicant for a real estate 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 ground of the revocation, suspension, or other discipline.

Under Iowa Administrative Code 193-18.14(3), the Commission considered Mr. Sorensen's voluntary surrender under these circumstances a disciplinary action.

The Commission found Mr. Sorensen's actions that led to his felony criminal conviction for wire fraud detrimentally impacted the provision of fair and honest real estate brokerage services to the public. Further, the March 13, 2008 license surrender constituted additional, independent grounds warranting denial of Mr. Sorensen's application for an Iowa real estate salesperson license.

Mr. Sorensen filed a timely appeal of the denial of his license application.

At hearing, Michael Sorensen explained that he was currently employed as an electrician with Baker Electric. In 1993, Mr. Sorensen was a journeyman in the Alaska oil fields, and in 1999, obtained his Alaska real estate license. In 2007, he was charged with engaging in a mortgage fraud "cash-back scheme." Mr. Sorensen assisted buyers in obtaining inflated loans from mortgage lenders and channeling that money back to a company that he owned. The buyers he worked with agreed to a purchase price in excess of the property and Mr. Sorensen submitted closing statements for work that was not actually completed. When the title company forwarded proceeds to pay for non-existent work, Mr. Sorensen channeled money back to buyers, without the knowledge of the mortgage lenders. (Sorensen testimony)

The Appellant began this process in order to help his clients purchase multi-family properties, which due to closing costs and down payments, were unable. Initially, he asked a closing agent if she had a creative way to help buyers buy more properties with money

back. She explained that there were two sets of HUD settlement statements, one that the lender would see and one that the lender would never see. Mr. Sorensen believed this was a win for both parties, as the seller got what he or she wanted and he got a closing with a commission. However, he noted that his commission was based on the original listing price of the property, not the increased amount. As Mr. Sorensen began this process, he did not verify or discuss this with a supervising broker. He did this for approximately two years. (Sorensen testimony)

Mr. Sorensen was indicted on six counts and accepted a plea agreement. The agreement read, in part,

The defendant agrees to plead guilty to Count 4 of the six count indictment in this case. The defendant accepts responsibility for all conduct in the remaining counts. The defendant also agrees to permanently surrender his real estate license and not attempt to obtain another one. The defendant agrees to pay a fine in this case; at a minimum, the amount of the fine will equal the total of the commissions he personally received from the sales of the properties alleged in the indictment. The United States agrees to recommend a sentence of probation in this case as long as the defendant continues to accept responsibility in this matter; the United States also agrees to dismiss the remaining counts of the indictment following imposition of the defendant's sentence.

(Ex. 4, p. 70).

Mr. Sorensen explained that his fine was based on amount of commissions earned, so he paid \$60,000.00 and received three years of probation. He was released from probation after two years. As part of the plea agreement, Mr. Sorensen surrendered his Alaska real estate license and did not apply for another one. He believed that he would have been eligible seven years after his probation was complete. He understood the plea agreement stated that he would permanently surrender his real estate license; he asked his attorney to take that part out of the agreement, but his attorney said this provision was federal, so it was up to the individual state to decide. He wished that he would have negotiated that provision out, but did not think it was applicable anymore. (Sorensen testimony)

After the probation, Mr. Sorensen's family moved to Iowa, as his wife was from Des Moines and he had family in Minnesota. He was seeking a real estate sales license because he was passionate about real estate and the relationships it developed. Mr. Sorensen was successful in real estate and loved doing it. He was involved in the community, a church, his children's activities, and coached youth swimming. (Sorensen testimony)

Mr. Sorensen believed that he had the qualifications for licensure. He had not had his license denied within the last 12 months; his real estate license had not been revoked within two years; he was over 18; he was sentenced to probation, which ended 2010; he fulfilled all probation requirements; he successfully took his pre-license courses; he had

taken and passed his real estate examination; and he had a sponsoring broker, Scott Wendl. Mr. Sorensen believed that he could uphold the integrity of the profession and saw it as a privilege that he did not see before. He owed it to his family and the real estate industry to comply with all obligations and perform the job with complete ethical ability. He understood that he had done things that were wrong, but he was a different person now. He previously asked for forgiveness rather than permission, and now he wanted to reverse that. (Sorensen testimony)

Traci Jo Sorensen has been married to Michael Sorensen for 17 years and they had three combined children. He was very involved with the children and was remorseful for what he had done. If given an opportunity, he would adhere to all rules and obligations imposed upon him. (T. Sorensen testimony)

Scott Wendl is a realtor and part owner of ReMax Precision brokerage in Iowa. He had been a realtor for 24 years and was president of the Iowa Association of Realtors. ReMax Precision had 275 agents, with 14 at his location. Mr. Wendl met with Mr. Sorensen as he was going through licensing classes, in order to see if they had a rapport and to determine how he would treat agents and clients. Mr. Sorensen was transparent about his past and disclosed his felony conviction. Mr. Wendl understood the 2008 crisis, as he was a part of it and saw what agents went through. He felt like his company was absolutely ready to supervise Mr. Sorensen. His brokerage had strict protocols, a full time attorney on staff to make sure everyone was in compliance, and were stringent about making sure all paperwork was completed. He believed that Mr. Sorensen would keep him informed, and even go over the top to do so. (Wendl testimony)

Stephanie VanDerKamp, principal broker with ReMax Precision, is responsible for providing supervision to sales people. She had a phone conversation with Mr. Sorensen in order to see if he was remorseful for his previous actions and to determine whether he was comfortable asking questions and seeking assistance. Mr. Sorensen assured her that he had learned from his mistakes and understood the need to seek advice. Ms. VanDerKamp explained that ReMax had many people in place for supervision, guidance, and education, as well as layers of compliance. She believed Mr. Sorensen could be a part of their team. (VanDerKamp testimony)

CONCLUSIONS OF LAW

The legislature has established minimum qualifications for persons seeking licensure as real estate brokers or salespersons in the state of Iowa. Iowa Code section 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**, an offense including or involving forgery, embezzlement, obtaining money under false pretenses, theft, arson, extortion, conspiracy to defraud, or other similar offense, or any 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 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.

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.

...

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).¹

Thus, an applicant’s criminal history and Mr. Sorensen’s full and accurate disclosure of all convictions is relevant and material to Mr. Sorensen’s statutory eligibility for licensure as a real estate broker or salesperson.

¹ Iowa Code (ICA) § 543B.15(3), (4)(2020).

As noted above, an applicant for a real estate broker or salesperson license who has been convicted of either a felony criminal offense or 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.² When considering the denial of a license, the Commission shall consider the nature of the offense; any aggravating or extenuating circumstances that 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.³

On March 19, 2008, Mr. Sorensen pleaded guilty to count four of a six count indictment in the United States District Court of Alaska. The Commission finds that the violations that led to this felony plea agreement raise serious concerns about Mr. Sorensen's ability to practice as a real estate salesperson in a competent and ethical manner, consistent with the public interest. Real estate salespersons are relied on by the public to properly handle client funds, to properly and effectively complete all required documentation related to real estate transactions, and to promptly respond to inquiries and concerns from their clients, from other licensed salespersons and brokers, and from the public. It is critical for licensees to perform their duties in a trustworthy manner. Licensees are expected to fulfill these and other professional obligations regardless of any pressures they may be experiencing.

It has been approximately twelve years since Mr. Sorensen surrendered his real estate license and ten years since he completed probation. Mr. Sorensen appeared sincere and credible in his belief that he had been rehabilitated and appeared contrite about his previous actions. Persuasive evidence of rehabilitation was the testimony of Mr. Wendl and Ms. VanDerKamp and their willingness to employ and advise him, as well as Mrs. Sorensen and her description of his rehabilitation. It is clear that Mr. Sorensen has taken steps to correct areas in his professional shortcomings that led to his conviction.

That said, the Commission could not overlook the fact that Mr. Sorensen was found guilty of a felony in federal court that related directly to the profession of real estate. The felony involved him defrauding the profession in a very direct manner. The Commission is tasked with protecting the public, and must consider whether a fraudulent action in one jurisdiction could occur in another jurisdiction, or affect that other jurisdiction.

In his testimony before the Commission, Mr. Sorensen contended that he would have been eligible for a real estate license in Alaska seven years after his probation was complete. The plea agreement, however, specified that he would permanently surrender his real estate license. The Commission found that Mr. Sorensen's testimony was somewhat misleading, as the plea agreement appeared to have restrictions and ramifications to Iowa licensure. At a minimum, the plea agreement was unclear as to ramifications in Iowa,

² ICA § 543B.15(3), (4).

³ ICA § 543B.15(6).


which Mr. Sorenson seemed to dismiss. Even if Mr. Sorensen was allowed to be licensed by each individual state, the fact that the agreement specified permanent relinquishment of his license conveyed a message regarding the seriousness of the offense.

After vigorous discussion, the Commission upholds the denial of Mr. Sorensen's real estate license. The Commission appreciates Mr. Sorensen's candor at hearing and applauds the actions that he has taken to straighten out his life since the time of his conviction, but finds the initial felony action an egregious offense directly related to the real estate profession. The Commission is not persuaded that Mr. Sorensen can fulfill the professional and ethical obligations placed upon licensed real estate salespersons in the state of Iowa.

DECISION AND ORDER

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

Dated this 3rd day of December, 2020.



Terry Duggan, Chairperson
Iowa Real Estate Commission

cc: Respondent - Michael Sorensen [CERTIFIED]
Attorney - Jorge Gomez
Assistant Attorney General - John Lundquist [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.