

FILED September 8, 2022 (Date)
2022
Board / Commission
[Signature]
Signature, Executive Officer

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NO. 22-100
)	DIA NO. 23PLBREC0001
Daniel L. Davidson)	
21 Lincoln Dr.)	
Palo, IA 52324)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
PETITIONER)	DECISION AND ORDER

INTRODUCTION

Petitioner Daniel Davidson (Petitioner) appeals from a decision by the Iowa Real Estate Commission (Commission) and its determination of his Petition for Eligibility. Specifically, the appeal concerns whether Petitioner’s criminal convictions preclude him from eligibility for real estate licensure.

Following a prehearing conference on July 28, 2022, the hearing on the merits was held on August 4, 2022, 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: Jim Clingman, Broker, Chairperson; Dakotah Reed, Vice-Chairperson, Broker; John Sweeney, Broker; Helen Kimes, Broker; Janet DeMott, Salesperson; and Wendy Carminhato, public member. Administrative Law Judge Forrest Guddall assisted the Commission in conducting the hearing. A certified court reporter, Ms. Theresa Kenkel, recorded the proceedings. The hearing was closed to the public, pursuant to Iowa Admin. Code r. 193-15.4(2)(272C) (“The contested case hearing shall be closed to the public and the board's review of a proposed decision shall occur in closed session.”). 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. Iowa Admin. Code r. 193-7.10(4)(17A,272C).

THE RECORD

The record includes the State's Prehearing Conference Report, the testimony of Ms. Renee Paulsen and Petitioner Daniel Davidson, and State Exhibits 1-11 (See Exhibit Index for description). Although there are exhibits of varying lengths, the exhibits are also consecutively paginated, across all exhibits, in the lower right corner, denominated as "IREC p. __." In order to cite to the record accurately, reference will be to the specific record page number, rather than to the page of a specific exhibit number.

FINDINGS OF FACT

Effective June 25, 2020, the Iowa Legislature enacted Iowa Code § 272C.15. *See* IA LEGIS 1103 (2020), 2020 Ia. Legis. Serv. Ch. 1103 (H.F. 2627) (WEST), Section 29. This legislative enactment permitted potential licensees to apply to state agencies for a determination of eligibility for professional licensure. Consequently, the Professional Licensing and Regulation Bureau promulgated Iowa Administrative Code rules to implement statutory requirements. Iowa Admin. Code r. Agcy. 193, Ch. 15, Refs & Annos. ("These rules are intended to implement Iowa Code chapter 272C.").

On December 3, 2020, the Commission issued a list of offenses that directly relate to the real estate profession (Exhibit 10, IREC pp. 44-47) in response to Iowa Code § 272C.15(2). (Exhibit 11, IREC p. 50). The list includes, under the heading of "Crimes of Dishonesty" the following: "Perjury, Tampering, False Representation, Malicious Prosecution, and Interference with Judicial Acts Iowa code chapter 720." (Exhibit 10, IREC p. 44). Moreover, the list has "Useful Definitions," which include:

Any offense specified in the laws of another jurisdiction or prosecuted in a municipal, federal, military, or foreign court that is comparable to an offense listed.

* * *

"Dishonesty" means any criminal act which includes, but is not limited to, any offense constituting or involving perjury, bribery, forgery, counterfeiting, false or misleading oral or written statements, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations or the failure to disclose material facts.

(Exhibit 10, IREC p. 47).

Subsequently, Petitioner Davidson availed himself of this administrative eligibility process. On or about March 25 or 26, 2022, the Petitioner paid the fee for and submitted an Application to the Iowa Real Estate Commission concerning his Petition for Eligibility Determination. (Exhibit 3, IREC pp. 14-15). The application itself consists of a series of questions. Included in those questions are inquiries as to past criminal convictions.

Preliminarily, the application states:

This form may be used to request a prelicensure determination for an individual with a criminal conviction.

A "conviction" includes a guilty plea, a deferred judgment prior to discharge, and a finding of guilt by a judge or jury. 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.

(Exhibit 3, IREC p. 16). Petitioner indicated that he had read and understood the foregoing instructions.

Next, the application asked: "Do you have any convictions? A 'conviction' includes a guilty plea, a deferred judgment prior to discharge, and a finding of guilt by a judge or jury." Petitioner responded "Yes." Then Petitioner listed the type of conviction as "perjury and violation of 18 U.S.C. 1623" as well as provided the case number and the federal court location. The sentence was listed as 10 months of incarceration and three years of probation. Petitioner stated the terms of his sentence were satisfied on December 21, 2017. Further, there was nothing else pending regarding the matter. Petitioner's personal statement read:

I feel with the consequences I've received do to my criminal offense, that i am more then ready to put that part of my life in the past . Ive had my own business for 12 years. I also raise 5 boys that consume most of my life[.] [sic]

(Exhibit 3, IREC p. 17).

On April 8, 2022, Ms. Paulsen, then a Professional Licensing Bureau (PLB) investigator (she has since been promoted) authored an investigation document regarding Petitioner's eligibility application. (Exhibit 4, IREC p. 22). Paulsen confirmed the federal conviction. Additionally, Paulsen found Petitioner committed a serious misdemeanor because there was a conviction on March 18, 2012, for operating a motor vehicle while intoxicated or impaired (OWI) pursuant to Iowa Code § 321J.2, *et seq.* Further, there was another serious misdemeanor conviction for "Gathering for Use of Marijuana" on June 5, 2003.

During the course of the background check, Paulsen and Petitioner had several email communications. (Exhibit 5). On April 5, 2022, Paulsen requested more information from Petitioner. (Exhibit 5, IREC pp. 26-27). Petitioner responded and supplied some documents related to the perjury conviction. (Exhibits 5-8, IREC pp. 29-42). There were no other documents provided for the other state misdemeanor charges.

The documents revealed that Petitioner made a false material declaration under oath to a federal grand jury involving another individual. On January 5, 2017, the United States District Court for the Northern District of Iowa filed a judgment in *United States of America v. Davidson*, No. 1:16-cr-00070-LRR. (Exhibit 7, IREC pp. 34-39). The Petitioner was sentenced to 10 months of incarceration and three years of supervised release pursuant to 18 U.S.C. § 1623(a). (Exhibit 7, IREC pp. 35-36; Exhibit 11, IREC pp. 48-49).

Significantly, the documents reflect Petitioner was released from incarceration on December 21, 2017. Additionally, Petitioner was released for supervision (probation) approximately six months early on July 29, 2020. (Exhibit 9, IREC p. 43).

On June 15, 2022, the Commission informed Petitioner that he was ineligible for licensure due to his conviction for false declaration to a Grand Jury (Perjury) pursuant to 18 U.S.C. § 1623(a).

The Commission has determined that the offense of perjury directly relates to or otherwise implicates the practice of real estate and, in the absence of demonstrated rehabilitation, can constitute a disqualifying criminal offense. After review of the materials submitted in support of your petition and a balancing of the factors detailed in Iowa Code § 272C.15(4),

the Commission finds that clear and convincing evidence does not establish you are sufficiently rehabilitated and an appropriate candidate for licensure at this time. The above-listed conviction is currently disqualifying.

* * *

In light of these findings, you may submit another petition for eligibility determination or submit an application for licensure no sooner than December 21, 2022.

(Exhibit 1, IREC pp. 5, 7).

On June 16, 2022, Petitioner appealed. (Exhibit 2, IREC p. 11). At the hearing, Paulsen repeated her investigatory findings. In her opinion, honesty was important for a real estate practice under Iowa Code 543B.56. Paulsen's experience includes investigating approximately 300 Professional Licensing Board complaints per year. The majority of those complaints regard real estate professionals. Some of those complaints involve the handling funds, or securing financing, and may involve the accuracy of representations regarding funding, property, and disclosures. Baseline honesty was integral to the real estate profession.

Petitioner represented himself (pro se). Petitioner acknowledged the false declaration to the Grand Jury, or perjury, conviction. He pled guilty to the charge. The factual basis for the conviction was that he denied giving money to another individual under investigation by the Grand Jury. That was false because he had given money to the other person related to some real property. He did not have his own counsel present when he testified in front of the Grand Jury, although he had counsel for his guilty plea. He has paid fines or monies associated with his conviction. Petitioner pointed out that he was released from supervision early. Petitioner obtained his general education degree while incarcerated.

Petitioner also testified that he believes that he has grown personally. He came from a divorced family and a troubled childhood. There was weekend spent in juvenile hall at one point in time. Now, he is raising and providing for five children. He serves as a coach for their sports teams. He testified that he is a productive member of society and owns or manages six homes himself. He has worked in the construction business for approximately 13 years. He also works for approximately five builders in his local area in various capacities, including putting on siding for new construction. Some of the builders encouraged him to obtain a real estate license, hence his petition for eligibility. He has used realtors before and would like to become a real estate professional.

He has not committed any crimes since his release in 2017. He was unclear as to why he did not list the OWI on his criminal background, but it seems that the investigation was focused on the perjury conviction, so he did not put it down on the application. However, he acknowledged the conviction at the hearing. He spent a brief amount of time in jail for the OWI offense. Finally, regarding the marijuana-related conviction, he did not even recall there ever being a conviction.

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. However, effective July 1, 2022, the Legislature enacted Iowa Code 272C.15, entitled "Disqualifications for Criminal Convictions Limited." This specific statute narrows and limits some professional licensing agencies or entities from disqualifying licensure applicants based on criminal convictions.

A criminal conviction *may* be a basis to deny professional licensure. Iowa Code § 272C.15(1) ("Notwithstanding any other provision of law to the contrary . . . a person's conviction of a crime may be grounds for the denial, revocation, or suspension of a license only if an unreasonable risk to public safety exists because the offense directly relates to the duties and responsibilities of the profession and the appropriate licensing board, agency, or department does not grant an exception pursuant to subsection 4.").

The particular entity must promulgate offenses which could disqualify an applicant from professional licensure. Iowa Code § 272C.15(2) ("A licensing board, agency, or department that may deny a license on the basis of an applicant's conviction record shall provide a list of the specific convictions that may disqualify an applicant from receiving a license. Any such offense shall be an offense that directly relates to the duties and responsibilities of the profession."). The Commission has done so here. (Exhibit 10, IREC pp. 44-47). Specifically mentioned are "Perjury, Tampering, False Representation, Malicious Prosecution, and Interference with Judicial Acts Iowa code chapter 720" and "Any offense specified in the laws of another jurisdiction or prosecuted in a municipal, federal, military, or foreign court that is comparable to an offense listed." (Exhibit 10, IREC pp. 44, 47).

Additionally, an arrest (without a conviction) cannot serve as a basis for disqualification. Likewise, the Legislature has removed the Commission's discretion to disqualify a candidate for licensure based on a finding "that an applicant lacks good

character, suffers from moral turpitude, or on other similar basis.” Iowa Code § 272C.15(3).

Here, Petitioner sought a determination of whether he was eligible for professional licensure by the Commission. Iowa Code § 272C.15(5) (“An applicant may petition the relevant licensing board, agency, or department, in a form prescribed by the board, agency, or department, for a determination as to whether the applicant's criminal record will prevent the applicant from receiving a license.”). (Exhibit 3, IREC pp. 13-21).

On June 15, 2022, the Commission determined that Petitioner’s perjury conviction disqualified him from professional licensure.

a. A licensing board, agency, or department that denies an applicant a license solely or partly because of the applicant's prior conviction of a crime shall notify the applicant in writing of all of the following:

- (1) The grounds for the denial or disqualification.
- (2) That the applicant has the right to a hearing to challenge the licensing authority's decision.
- (3) The earliest date the applicant may submit a new application.
- (4) That evidence of rehabilitation of the applicant may be considered upon reapplication.

b. A determination by a licensing board, agency, or department that an applicant's criminal conviction is specifically listed as a disqualifying conviction and the offense directly relates to the duties and responsibilities of the applicant's profession must be documented in written findings for each factor specified in subsection 4 sufficient for a review by a court.

Iowa Code § 272C.15(6)(a), (b). The Commission notified Petitioner in accordance with that statute. (Exhibit 1, IREC pp. 5-10). Petitioner then appealed via email on June 16, 2022. (Exhibit 2, IREC p. 11).

The State, with its interest in protecting the public and regulating the real estate profession, bears the initial burden of proof that any relevant conviction “relates” to the particular professional duties and responsibilities. Iowa Code § 272C.15(6)(c) (“In any administrative or civil hearing authorized by this section or chapter 17A, a licensing

board, agency, or department shall carry the burden of proof on the question of whether the applicant's criminal offense directly relates to the duties and responsibilities of the profession for which the license is sought.”).

Here, the Commission is satisfied that the State has met its initial burden by a preponderance of the evidence. Paulsen testified as to the necessity of baseline honesty required of professionals in the real estate profession. The Commission, based on its own knowledge, education, experience, and training, agrees. At the hearing, it was uncontested that honesty and candor is required to fulfill the duties of real estate licensees. The Legislature has established duties incumbent upon real estate professionals:

Duties to all parties in a transaction. In providing brokerage services to all parties to a transaction, a licensee shall do all of the following:

- a. Provide brokerage services to all parties to the transaction honestly and in good faith. . . .
- c. Disclose to each party all material adverse facts that the licensee knows except for the following:
- d. Account for all property coming into the possession of a licensee that belongs to any party within a reasonable time of receiving the property.

Duties to a client. In addition to the licensee's duties under subsection 1, a licensee providing brokerage services to a client shall do all of the following:

- a. Place the client's interests ahead of the interests of any other party, unless loyalty to a client violates the licensee's duties under subsection 1, section 543B.58, or under other applicable law.
- b. Disclose to the client all information known by the licensee that is material to the transaction and that is not known by the client or could not be discovered by the client through a reasonably diligent inspection. . . .
- d. Disclose to a client any financial interests the licensee or the brokerage has in any business entity to which the licensee or brokerage refers a client for any service or product related to the transaction.

Iowa Code § 543B.56(1)(a),(c)-(d), (2)(a)-(b), (d).

The Legislature specifically required honesty to be part of all transactions. Likewise, disclosure of all material adverse facts places a duty on a licensee for openness even when it is to one's personal detriment. Concomitant to those obligations are the accounting for property and a truthful accounting is required. Especially to one's client. "The relationship between a broker or agent and his or her principal is confidential and fiduciary, including a strict duty of undivided loyalty and disclosure." *Menzel v. Morse*, 362 N.W.2d 465, 474 (Iowa 1985)(citations omitted; emphasis added).

Moreover, the Commission's duty to the public is not to be undermined by the personal preferences or tactics of a licensee.

The Commission's regulatory view is much broader. It has fashioned rules that are preventative and prophylactic, prohibiting practices that it deems are unethical or carry a high risk of harm or detriment to the public. It is not irrational for the Commission to take this approach, rather than that apparently advocated by Franich, which would seem to allow any practice so long as it does not result in actual harm to a particular person.

Franich v. Real Est. Comm'n of State, 681 N.W.2d 620, 625 (Iowa 2004).

In contrast to the frank, open, honest, and candid attributes required of real estate licensees, there is the question of whether Petitioner's making a false statement to a federal grand jury under oath, or perjury,¹ pursuant to 18 U.S.C. § 1623(a) "directly relates to the duties and responsibilities" of a real estate professional. The answer is unequivocally in the affirmative. Iowa Code § 543B.56(1)(a),(c)-(d), (2)(a)-(b), (d). (Exhibit 10, IREC pp. 44, 47).

We have now dislodged the antiquated concept of caveat emptor in most business transactions. . . . Today, the trend in

¹ "While it is clear that the perjury and false declaration statutes are not equivalents, it is equally clear that s 1623 is a species of perjury." *United States v. Gross*, 511 F.2d 910, 915 (3d Cir. 1975) (footnote omitted). *State v. Deets*, 195 N.W.2d 118, 122 (Iowa 1972), *overruled by State v. Walker*, 574 N.W.2d 280 (Iowa 1998) ("It is thus evident perjury may be committed by giving false testimony, of a material nature, before a grand jury.").

our law has been to enhance the “obligations of agents and fiduciaries, functioning in positions of trust and confidence, to perform their duties in complete candor, honesty, loyalty and good faith.”

Arthur v. Brick, 565 N.W.2d 623, 625 (Iowa Ct. App. 1997) (citations omitted). *See also Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 286 (Iowa 2000) (“Our statutes make it a crime to commit perjury, suborn perjury, or tamper with a witness. . . . Moreover, this public policy is not simply confined to the refusal to commit perjury but clearly embraces a broader public policy to provide truthful testimony in legal proceedings.”) (citation omitted).

Nonetheless, although the Petitioner’s conviction is directly related to the duties and responsibilities for a real estate professional, that determination is not dispositive of this matter.

A licensing board, agency, or department shall grant an exception to an applicant who would otherwise be denied a license due to a criminal conviction if the following factors establish by clear and convincing evidence that the applicant is rehabilitated and an appropriate candidate for licensure:

- a. The nature and seriousness of the crime for which the applicant was convicted.
- b. The amount of time that has passed since the commission of the crime. There is a rebuttable presumption that an applicant is rehabilitated and an appropriate candidate for licensure five years after the date of the applicant’s release from incarceration, provided that the applicant was not convicted of sexual abuse in violation of section 709.4, a sexually violent offense as defined in section 229A.2, dependent adult abuse in violation of section 726.26, a forcible felony as defined in section 702.11, or domestic abuse assault in violation of section 708.2A, and the applicant has not been convicted of another crime after release from incarceration.
- c. The circumstances relative to the offense, including any aggravating and mitigating circumstances or social conditions surrounding the commission of the offense.
- d. The age of the applicant at the time the offense was committed.

- e. Any treatment undertaken by the applicant.
- f. Whether a certification of employability has been issued to the applicant pursuant to section 906.19.
- g. Any letters of reference submitted on behalf of the applicant.
- h. All other relevant evidence of rehabilitation and present fitness of the applicant.

Iowa Code § 272C.15(4) (emphasis added).

“The clear and convincing evidence standard ‘means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence.’” *Smith v. State*, 845 N.W.2d 51, 56 (Iowa 2014) (quotation omitted).

A review of the factors reveals the following. A violation of 18 U.S.C. § 1623(a) is a serious crime, punishable by a fine or imprisonment for not more than five years, or both. The fine was \$20,000.00. (Exhibit 7, IREC p. 38). The sentence was 10 months imprisonment and three years of supervised release. (Exhibit 8, IREC pp. 35, 43). The factual basis for the crime involved “misrepresent[ing] your own actions associated with the sale and financing of a business and real property.” (Exhibit 1, IREC p. 6; Exhibit 8, IREC p. 41).

Petitioner committed the offense on July 14, 2015. (Exhibit 8, IREC p. 40). However, he was not released from incarceration until on or about December 21, 2017. He was released from supervision on or about July 29, 2020. (Exhibit 8, IREC p. 43). Petitioner is not entitled to the rebuttable presumption that he is rehabilitated because it has not been “five years after the date of the applicant's release from incarceration.”

The circumstances surrounding the offense are somewhat muddled. It is unclear whether Petitioner believes that he was convicted because of money transfers to the other person, a property transfer to the other person, or some combination of both. To his credit, Petitioner pled guilty to the offense. Petitioner also readily admitted to the offense at the administrative hearing.

Appellant's age at the time of the offense works against him. It appears he was in his early 30's when the offense took place. This was not a juvenile or a person with a diminished capacity, at least on this record, but rather an adult. *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.”).

Petitioner has not submitted any evidence of “treatment” undertaken or completed to bolster his application. To some extent, it is understandable because it is unclear what “treatment” for perjury is available. *Cf. In re D.C.*, 741 N.W.2d 825 (Iowa Ct. App. 2007) (“He completed . . . a criminal thinking class[.]”) (unpublished). However, Petitioner did complete a General Educational Development (GED) degree. Unfortunately, he did not receive a certificate of employability pursuant to Iowa Code § 906.19 (he was ineligible for that certification because he was not convicted and incarcerated or supervised in Iowa by Iowa officials on Iowa charges).

Petitioner did not submit any letters of support on his initial application. Likewise, the Commission was somewhat disappointed that no character or reference letters were submitted at the hearing, nor did any witnesses appear to testify on his behalf. Also concerning was the omission of the other convictions on his criminal background check.


There were positives for Petitioner. The Commission recognizes Petitioner is busy raising his children and engaged with coaching at least some of them in their extracurricular activities, which is encouraging. Likewise, ownership and active management of real properties works to his advantage. He followed up with the in-person hearing indicating a dedicated intent to become a licensed real estate professional. Further, there have been no new criminal convictions for Appellant since the perjury conviction.

Ultimately, however, the Commission finds that Petitioner is not entitled to professional licensure at this time. Upon this factual record, and the foregoing legal authority, the Commission denies this application and upholds its earlier determination that the earliest Petitioner may apply for professional licensure is December 21, 2022.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the application or Petition for Eligibility Determination filed by Daniel Lee Davidson for a real estate license in the State of Iowa is hereby DENIED. Petitioner Davidson can reapply on or after December 21, 2022 and provide evidence of rehabilitation upon reapplication.

Dated this 8 day of Sept, 2022.


James Clingman, Chairperson
Iowa Real Estate Commission

cc: Respondent Daniel D. Davidson [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).