

State of Iowa
Before the Iowa Real Estate Commission

In the Matter of:)	Case No. 05-106
)	DIA No. 05DOCRE009
Peter J. Collison,)	
)	
Applicant-Salesperson)	Findings of Fact, Conclusions
)	of Law, and Order

This matter concerns a license denial entered on September 9, 2005. Applicant Peter Collison filed an appeal on September 13, 2005. The Real Estate Commission (the Commission) held a contested case hearing on November 3, 2005. The following board members were present: James Hughes, Laurie Dawley, James O'Neill, Patricia Daniels, Don Marple, Lori Diehl, and Karl Reichert. Jeffrey Farrell, an administrative law judge, assisted the commission.

John Lundquist, an assistant attorney general, represented the state of Iowa. The State's exhibits 1-9 were admitted into the record.

Eric Neu represented the applicant. Mr. Collison testified on his own behalf. Mr. Collison presented Cory Miller and Robert Madden as additional witnesses.

FINDINGS OF FACT

Peter Collison is an Iowa native who had been working in Arizona since graduating from college. Approximately one year ago, he and his wife decided to return to his home town of Carroll. Mr. Collison sought employment as a real estate agent because he had enjoyed working in the same field in Arizona. He was hired by a local agency, and thereafter filed an application with the Commission for a salesperson license.

An applicant for a salesperson license must complete two forms: the Commission's license application form and a criminal history background check form. (Exhibits 1-2). The criminal history form contains the following question: "Have you ever been convicted of a felony or misdemeanor criminal offense (other than scheduled traffic violations)?" Mr. Collison checked the "No" box. The application form contains the same question: "Have you ever been convicted of a felony or misdemeanor criminal offense? (other than scheduled traffic violations)." Mr. Collison again marked the "No" box.

The commission obtained a printout showing Mr. Collison's criminal history. (Exhibits 3-4). The criminal history shows Mr. Collison was convicted of operating a motor vehicle while intoxicated (OWI) on October 27, 1992. He was sentenced to two days in jail and fined \$500.

On August 25, 2005, Compliance Officer David Batts sent a letter to Mr. Collison. (Exhibit 5). The letter informed Mr. Collison that he reported false information on his application. The letter directed Mr. Collison to provide an explanation to the commission.

On August 29, 2005, Mr. Collison responded by email to Mr. Batts. (Exhibit 6). Mr. Collison stated that he did not intentionally exclude the conviction from his application. He admitted that the information regarding the conviction was correct. He stated that he thought the conviction dropped off his record after five years. He asked for the opportunity to submit a corrected application so he could obtain licensure in Iowa.

On September 9, 2005, Mr. Batts authored a letter to Mr. Collison stating that the Commission had denied his application based making a false statement on his application. Mr. Collison filed his appeal and the case was set for hearing.

Mr. Collison fully acknowledged his mistake at hearing. He admitted that he made a mistake when he committed the OWI offense, and that he made a second mistake when he failed to report the OWI on his application. He accepted that the Commission should or may impose some form of discipline. He only asked the Commission to reconsider the license denial.

Mr. Collison offered some evidence regarding positive aspects of his character. He was licensed by the State of Arizona when he worked there, although it is unclear whether Arizona asked the same questions during its application and background process.

Robert Madden was Mr. Collison's boss in Arizona. Mr. Madden testified by telephone that he had been in the real estate business for 30 years. He has known Mr. Collison for five years. He provided strong comments regarding Mr. Collison's ability and integrity. Mr. Madden stated that Mr. Collison was an outstanding realtor. Mr. Madden still receives referrals for Mr. Collison even though he has now been gone for more than a year. Mr. Madden has never received a complaint regarding Mr. Collison. He never heard of any problems with transactions Mr. Collison conducted. Mr. Madden regarded Mr. Collison as a high-integrity

person.

Cory Miller also testified on Mr. Collison's behalf. Mr. Miller is a minister in Carroll. Mr. Miller knows Mr. Collison through several capacities, including as a neighbor, member of rotary club, and through ads Mr. Miller has placed with Mr. Collison's family's radio business. Mr. Miller testified that Mr. Collison has been very active in reintegrating himself into the local community. Mr. Miller has heard nothing but positive comments about Mr. Collison from fellow members of the rotary club and the community as a whole. Mr. Miller also regards Mr. Collison as a high-integrity person.

CONCLUSIONS OF LAW

The Iowa Real Estate Commission was created to monitor and regulate the real estate profession in the State of Iowa.¹ The commission regulates the profession, in part, by reviewing applications to work as a real estate salesperson. Any person who works in the field must apply for a license and comply with all requirements of the commission and the statute.² The commission is required to review each application to determine whether the applicant is qualified to enter into the profession.³

The commission may deny a license if the applicant has made a false statement of material fact on the application.⁴ The Commission is unquestionably within its authority to deny Mr. Collison's application in this case. The application and background form contained clearly worded questions asking whether Mr. Collison has ever been convicted of a criminal offense. The questions were not limited by time or whether they remained on record. The only limitation on the response for scheduled traffic offenses; an OWI obviously is not a schedule traffic offense. Mr. Collison violated section 543B.15(5) by submitting false information on his application and background forms.

SANCTION

The more important question in this case concerns the level of sanction. The statute provides that the Commission may deny the application. However, it is not required by law to do so. The Commission shall consider the following factors when deciding whether to deny the application:

1 Iowa Code sections 543B.8, 543.18.

2 Iowa Code section 543B.1.

3 Iowa Code section 543B.15.

4 Iowa Code section 543B.15(5).

1. the nature of the offense;
2. any aggravating or extenuating circumstances;
3. the time lapsed since the offense;
4. any rehabilitation, treatment, or restitution performed;
5. any other factors the commission deems relevant.⁵

In this case, all factors weigh in favor of Mr. Collison. Mr. Collison failed to report a criminal offense, but the offense was nearly 13 years old at the time he filed his application. The conviction was for a misdemeanor offense, and not one that would disqualify him from licensure. Mr. Collison has not been convicted of any offenses since that date, and the conviction is the only one on his record. There is no evidence to indicate he is a risk to commit another criminal offense.

Mr. Collison's explanation as to why he did not report his offense does not excuse his conduct, but it is not completely irrational. The Department of Transportation purges driving offenses from a drivers' records after set periods of time.⁶ It is possible that a lay person would not understand that the Division of Criminal Investigation does not similarly purge its criminal history database.

Mr. Collison's licensure and experience in Arizona supports his plea for licensure in Iowa. Mr. Madden's testimony demonstrated that Mr. Collison is an able and honest salesperson. While Mr. Collison did not have a long work history in the real estate business in Arizona, his experience there was extremely positive as to ability and integrity. There is no basis for belief that he would act outside the standards for licensees in Iowa. In fact, other than the untrue statement on his application, the record as a whole demonstrates that he will very likely serve as an asset to the profession and his local community.

The Commission cannot condone an applicant who makes a false statement on an application. If the Commission did not take strong action, it would risk undermining the public's confidence in the real estate profession. However, there may some cases in which the Commission can protect the integrity of the profession without imposing the ultimate sanction of license denial. This is one of those unique cases.

For the reasons discussed above, the Commission grants Mr. Collison's license application conditioned upon payment of a \$2000 civil penalty.⁷ The Commission notes that this is a unique

5 Iowa Code section 543B.15(7).

6 See Iowa Code section 321.12.

7 See Iowa Code section 543B.48 (granting authority to issue a

Case No. 05-106
Page No. 5

factual case, and that license denial will typically be justified when an applicant makes a false statement on an application.

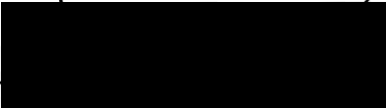
ORDER

The Iowa Real Estate Commission orders Peter Collison to pay a civil penalty of \$2,000.00 for violation of Iowa Code section 543B.15(5). The civil penalty must be paid within thirty days of acceptance of this order by the Commission, come under a cover letter addressed to the Commission's Executive Officer, 1920 S.E. Hulsizer Road, Ankeny, Iowa 50021, and refer to case 04-157.

The Commission grants Mr. Collison's application for a salesperson license, based on its decision to impose a civil penalty rather than denying his application, and provided he demonstrates that all other licensing requirements have been met. The license shall be issued effective on the date the Commission receives full payment of the civil penalty.

Mr. Collison shall also pay \$75.00 for fees associated with conducting the disciplinary hearing.⁸ In addition, the executive officer of the Commission may bill Mr. Collison for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Mr. Collison shall remit payment for these expenses within thirty days of receipt of the bill.

Dated this 14th day of DECEMBER, 2005.


James Hughes, Chair
Iowa Real Estate Commission

cc: AG - John Lundquist

civil penalty not to exceed \$2,500.00).
8 See Iowa Code section 272C.6(6).

Notice

Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure act. 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.⁹

⁹ 193 IAC 7.37.