

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IN THE MATTER OF:)	CASE NOS. 04-164, 06-009
)	DIA NOS. 06DOCRE013
LEONARD R. FAZIO)	
Broker (B08546))	
)	FINDINGS OF FACT,
FREEDOM REALTY, INC.)	CONCLUSIONS OF LAW,
d/b/a Freedom Realty)	DECISION AND ORDER
3201 Valley Ridge Court		
West Des Moines, Iowa 50265		

On January 9, 2006, Leonard R. Fazio (Respondent) filed an Application for Renewal of his Iowa Real Estate License as a broker. On April 18, 2006, the Iowa Real Estate Commission (Commission) denied the renewal application. Respondent filed a timely appeal.

On September 6, 2006, the Commission filed a Notice of Hearing and Confidential Statement of Matters Asserted charging Respondent with having been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offense, or of any crime involving moral turpitude in a court of competent jurisdiction in this state, or in any other state, territory, or district of the United States in violation of Iowa Code sections 543B.15(3), 543B.29(5), and/or 272C.10(5) (2005). The hearing was scheduled for November 2, 2006.

On September 21, 2006, Respondent filed an Application For Continuance of Prehearing Conference and Hearing. The state filed a Resistance on September 26, 2006. The Commission denied the Application for Continuance on October 5, 2006.

A prehearing conference was held by telephone on October 27, 2006. On October 31, 2006, Respondent filed a Renewed Application for Continuance of Hearing. The Commission considered the renewed motion at the time scheduled for hearing and granted a continuance to December 7, 2006, with the provision that no further continuances would be granted absent extraordinary circumstances. On November 20, 2006, Respondent filed a handwritten continuance request.

The hearing was held on December 7, 2006 at 1:00 p.m. Attorney Kerry Gaines represented Respondent. Assistant Attorney General

John Lundquist represented the state of Iowa. The following Commission members presided at the hearing: James Hughes, Broker, Chairperson; Don Marple, Broker; Dan Berry, Broker; Patty Daniels, Salesperson; Lori Diehl, Salesperson; James O'Neill and Laurie Dawley, public members. Administrative Law Judge Margaret LaMarche assisted in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was closed to the public at the Respondent's election, pursuant to Iowa Code section 272C.6(1)(2005).

At the commencement of the hearing, Respondent's attorney filed an Application To Delay Hearing And Decision Until After Respondent's January Appeal. The state resisted, and the Commission denied both the request to continue the hearing and the subsequent request to hold the record open until after ruling by the Eighth Circuit Court of Appeals. The state's exhibits were received without objection and no testimony was offered. The Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2005), 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; Application For Continuance of Prehearing Conference, Resistance, and Ruling; Renewed Application For Continuance and Order Granting Continuance; Respondent's Request For Continuance, received 11/20/06; Appearance by Respondent's Counsel; Application To Delay Hearing And Decision Until After Respondent's January Appeal and attachments; and the following exhibits:

- State Exhibit 1: Licensing Information for Respondent
- State Exhibit 2: Application for Renewal of Iowa Real Estate License
- State Exhibit 3: Notice of License Denial
- State Exhibit 4: Appeal of License Denial
- State Exhibit 5: Notice of Hearing re: Case No. 06-009 (License Denial)
- State Exhibit 6: Notice of Hearing & Statement of Charges in Disciplinary Case; Confidential Statement of Matters Asserted
- State Exhibit 7: Proof of Service

- State Exhibit 8: Indictment, U.S.A. v. Fazio, Criminal Case Number 4:04-CR-315, United States District Court for the Southern District of Iowa
- State Exhibit 9: Final Jury Instructions, U.S.A. v. Fazio
- State Exhibit 10: Jury Verdict Form, U.S.A. v. Fazio
- State Exhibit 11: Judgment In A Criminal Case, U.S.A. v. Fazio
- State Exhibit 12: Relevant Statutes and Administrative Rules

FINDINGS OF FACT

1. On February 7, 1991, the Commission issued real estate broker license number B08546 to Leonard R. Fazio. Respondent was the broker officer and designated broker in charge of Fazio Realty, Inc. d/b/a RE/MAX A-1 Best Realtors in Urbandale, Iowa until on or about March 28, 2006. Since then, Respondent has been licensed as Freedom Realty, Inc. (State Exhibits 1, 2, 6)

2. On December 15, 2004, an indictment was entered against Respondent in the United States District Court for the Southern District of Iowa, Criminal Case Number 4:04-CR-315. The indictment charged Respondent with six separate counts of mail fraud, in violation of Title 18, United States Code, section 1341, and three separate counts of wire fraud, in violation of Title 18, United States Code, section 1343. The following relevant portions of the Introductory Allegations pertain to all of the counts:

a. On or about January 28, 2002 and continuing to on or about November 20, 2003, [Respondent] knowingly and willfully devised and participated in, and intended to devise and participate in, a scheme and artifice to defraud, and to obtain money and property by means of material false and fraudulent pretenses, representations, promises and omissions of material fact.

b. It was part of the scheme and artifice that [Respondent] submitted false claims, statements, documents and made material omissions to a company to which he provided real estate services.

c. [Respondent] was a real estate broker and agent operating as RE/MAX A-1 Best Realtors located in Urbandale, Polk County, Iowa. (State Exhibit 8)

d. [Respondent] was the person on behalf of RE/MAX A-1 Best Realtors responsible for listing and selling certain residential real estate properties that had been foreclosed on by Deutsche Bank Trust Company Americas d/b/a Homecomings Financial, Inc. (hereinafter "Homecomings").

e. [Respondent] submitted or caused to be submitted through the mail falsified bills to Homecomings for repairs or clean-up to properties that had been foreclosed on by Homecomings and that such falsified bills were submitted between January 28, 2002, and November 10, 2003.

f. [Respondent] submitted false documents, claims and made material omissions to Homecomings via mail and wire transmissions regarding the value, repair/clean-up costs and purchaser of a property identified as 1048 315th Street, New Virginia, Iowa and that such false documents or claims were submitted between July 20, 2003 and November 20, 2003.

g. As a result of the scheme and artifice alleged herein, [Respondent] abused his position of trust within the entity known as RE/MAX A-1 Best Realtors, and said abuse of trust within that entity facilitated the commission of and concealment of the scheme and artifice and offenses alleged herein.

(State Exhibit 8)

3. A jury trial was held on the indictment between October 3, 2005 and October 11, 2005. On October 11, 2005, the jury returned a verdict of guilty on Count 2 (mail fraud) and Counts 8 and 9 (wire fraud) and returned a verdict of not guilty on the remaining six counts. (State Exhibits 9-11)

a. Count 2 alleged that on or about August 23, 2002, Respondent voluntarily and intentionally devised a scheme and artifice to defraud and obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, or omissions of material facts, and for purposes of executing the scheme, did knowingly cause to be sent, delivered and moved by the United States Postal Service a request for reimbursement from RE/MAX A-1 Best Realtors to Homecomings Financial for trash out of property identified as 3315 5th Avenue, Des Moines, Iowa.

b. Count 8 alleged that on or about August 20, 2003, Respondent voluntarily and intentionally devised a scheme and artifice to defraud and obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, or omissions of material facts, and for purposes of executing the scheme, did knowingly transmit, or cause to be transmitted, by wire transmission (facsimile) from Leonard Fazio to Homecomings Financial, conveyed an offer to purchase property identified as 1048 315th Street, New Virginia, Iowa, purportedly from Candy Olson, in the amount of \$48,000.

c. Count 9 alleged that on or about November 20, 2003, Respondent voluntarily and intentionally devised a scheme and artifice to defraud and obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, or omissions of material facts, for purposes of executing the scheme, did knowingly transmit, or cause to be transmitted, by wire transmission (facsimile) from Central Iowa Escrow, d/b/a Russell Closings, Inc., to Homecomings Financial, in the amount of \$41,267.79, representing net funds at closing sale to Candy Olson.

Respondent's three felony convictions are directly related to his practice of real estate in Iowa. (State Exhibits 8-12)

4. Respondent made application to renew his real estate broker license on January 9, 2006. Respondent disclosed his convictions on the application. On April 18, 2006, the Commission denied Respondent's renewal application, based on his convictions, and Respondent filed a timely appeal. (State Exhibits 1-4)

5. On August 3, 2006, the Court entered judgment against Respondent and sentenced him to serve 24 months imprisonment. The Court further ordered Respondent to serve a term of three years supervised release upon his release from prison and to pay a fine of \$40,000 and restitution of \$13,115.00. (State Exhibit 11) Respondent has appealed his convictions to the Eighth Circuit Court of Appeals. (Application To Delay Hearing And Decision Until After Respondent's January Appeal)

CONCLUSIONS OF LAW

An applicant for a real estate broker's or salesperson's license who has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offenses, or of any crime involving moral turpitude in 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, may be denied a license by the commission, on the grounds of conviction. For purposes of this section, "conviction" means a conviction for an indictable offense...Iowa Code section 543B.15(3) (2005).

Iowa Code section 543B.29(5) (2005) provides, in relevant part:

543B.29 Revocation or suspension.

A license to practice the profession of real estate broker and salesperson may be revoked or suspended when the licensee is guilty of the following acts or offenses:

...

5. Conviction of an offense included in section 543B.15, subsection 3. For purposes of this section, "conviction" means a conviction for an indictable offense...A copy of the record of conviction, guilty plea, deferred judgment, or other finding of guilt is conclusive evidence.

Iowa Code section 272C.10(5) (2005) provides, in relevant part:

A licensing board established after January 1, 1978 and pursuant to the provisions of this chapter shall by rule include provisions for the revocation and suspension of a license which shall include but is not limited to the following:

...

5. Conviction of a felony related to the profession or occupation of the licensee. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

See 193E IAC 18.2(1), (4).

The evidence conclusively established that Respondent has been convicted of three felonies, all of which were related to the practice of real estate and constituted crimes of obtaining money under false pretenses or moral turpitude, in violation of


Iowa Code section 543B.15(3), 543B.29(5), and 272C.10(5) (2005). The nature and seriousness of the convictions amply support the Commission's decision to deny Respondent's application to renew his Iowa real estate broker license. Moreover, the nature and seriousness of Respondent's three felony convictions cannot be reconciled with the professional ethics and honesty required of all licensed real estate brokers in the state of Iowa. Protection of the public requires revocation of Respondent's broker license.

ORDER

IT IS THEREFORE ORDERED that real estate broker license B08546, issued to Respondent Leonard R. Fazio, is hereby REVOKED, effective immediately upon service of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing. If the Commission issues a separate order assessing additional costs or expenses, the Respondent shall promptly comply with the terms of that order.

Dated this 14th day of DECEMBER, 2006.


James E. Hughes, Chairperson
Iowa Real Estate Commission

cc: Kerry A. Gaines
2910 Grand Avenue
Des Moines, Iowa 50312 (CERTIFIED)

John Lundquist
Assistant Attorney General
Hoover State Office Building (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.