

FILED December 22, 2015 (Date)

BEFORE THE REAL ESTATE COMMISSION
OF THE STATE OF IOWA

IREC
Board / Commission
[Signature]
Signature, Executive Officer

IN THE MATTER OF:)	CASE NO. 15-142
)	DIA NO. 15REC003
Nicholas E. Donkersloot)	
)	
240 290 th Avenue)	FINDINGS OF FACT,
Arnolds Park, IAS 51331)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
APPLICANT - SALESPERSON)	

On May 8, 2015, the Iowa Real Estate Commission ("Commission") received an application from Nicholas Edward Donkersloot to become a licensed real estate salesperson. Subsequently, on August 13, 2015, the Commission notified Donkersloot of its decision to deny the application. Mr. Donkersloot filed a timely Notice of Appeal and a hearing was scheduled for November 5, 2015.

A telephonic prehearing conference was held on October 29, 2015. The hearing was held at the Commission's offices as scheduled, on November 5, 2015. Assistant Attorney General John Lundquist represented the state of Iowa. Mr. Donkersloot was represented by his attorney, Lonnie Saunders. The following Commission members presided at the hearing: Terry Duggan, Chairperson and Broker member, Helen Kimes, Broker member, John Goede, Broker member, and Janet DeMott, Salesperson member. Administrative Law Judge Kerry Anderson assisted the Commission in conducting the hearing. A certified court reporter recorded the proceedings. After hearing the testimony and examining the exhibits, the Commission convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2015), 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 the witness, State Exhibits 1-9 (See Exhibit Index for description) and Applicant's Exhibit A.

FINDINGS OF FACT

The facts in this case are undisputed.

On May 8, 2015, the Commission received an application for a real estate salesperson's license from Nicholas Donkersloot. In answer to a question on the application, Donkersloot disclosed that he had been convicted of a criminal offense. He attached a letter to the application explaining that he had been convicted of a misdemeanor assault in February 1995. Mr. Donkersloot also explained that he was subsequently convicted of distributing narcotics, a federal felony, and he had been sentenced for that offense on August 4, 2010. (Exh. 2-1 – 2-4)

On November 25, 2009, a criminal information was filed against Mr. Donkersloot in the United States District Court for the Western District of Missouri, Western Division, charging him with a felony, distributing methamphetamine in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), during the period from January 1, 2002 through July 31, 2007. (Exh. 3-1; Donkersloot testimony). Also, on November 25, 2009, Donkersloot entered into a plea agreement pursuant to which he entered guilty plea to the charge. (Exh. 4) Judgment was entered on the plea on August 5, 2010 and Mr. Donkersloot was sentenced to five years of probation. (Exh. 5) Donkersloot complied with all conditions of his sentence and, on August 12, 2015, the United States District Court for the Northern District of Iowa entered an order discharging him from probation. (Exh. 6; Exh. A)

Mr. Donkersloot filed his application for a real estate salesperson's license on May 8, 2015, prior to the court's order discharging him from probation. (Exh. 2-1). On August 6, 2015 the Commission voted to deny the application based on the provisions of Iowa Code section 543B.15(3)(a)(1)(2015). On August 13, 2015, the Commission sent Donkersloot a letter notifying him of the decision. (Exh. 7) This appeal ensued. (Exh. 8)

At hearing, Mr. Donkersloot acknowledged his conviction to the federal felony charge. He explained that, in 1992, his father joined the El Forestero motorcycle club. Mr. Donkersloot's parents had divorced and, Donkersloot, who was in his late teens, discovered that if he wished to spend time with his father, he would have to become involved with the club. Donkersloot attended college at Iowa Lakes Community College and the University of Iowa while he was associated with the El Foresteros and, during this time, he became addicted to narcotics. The methamphetamine distribution charges arise out of Donkersloot's membership in the club. (Donkersloot testimony)

In 2005, Mr. Donkersloot's father was killed while riding with the El Foresteros when an intoxicated driver rear-ended his motorcycle. Donkersloot was with his father as he

died. Donkersloot then began to think about his time in the club and what effect his membership in the club was having on his children. (Donkersloot testimony)

In 2007 Mr. Donkersloot left the El Foresteros and in 2008 he last used illegal drugs. In 2009 he was approached by federal agents investigating the motorcycle club for the illegal distribution of narcotics. That meeting led to Donkersloot's cooperation with the government in prosecuting other club members and, in return, Donkersloot was offered the plea arrangement set out above. (Donkersloot testimony)

Mr. Donkersloot noted that during his probation he was periodically required to submit urine samples for chemical analysis, none of which tested positive for illegal drugs. Additionally, he performed 1000 hours of community service which included, among other things, picking up trash and sandbagging during floods. He also worked at an art center and a nature center as a part of his community service. (Donkersloot testimony) Donkersloot emphasized that he has been clean and sober since 2008. He left the El Foresteros because he was no longer enamored with the lifestyle the club presented and he wanted something better for his three children. Donkersloot now farms and does odd jobs. He coaches his children's soccer teams and helps with their softball teams. Mr. Donkersloot has attempted to help other addicts and has written a book about his life and his addiction during his association with the El Foresteros. Donkersloot testified he now has a licensed real estate broker who is willing to take him on. Mr. Donkersloot took the applicable classes and passed the exam for licensure as a salesperson in April 2015. (Donkersloot testimony; Exh. 2-1).

CONCLUSIONS OF LAW

The legislature has established minimum qualifications for persons seeking licensure as real estate salespersons in the state of Iowa. Iowa Code section 543B.15(2015) 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.

(emphasis supplied) See also 193E IAC 4.1(4).

The legislature's use of the term "shall" imposes a duty. Iowa Code section 4.1(30(a).

Mr. Donkersloot acknowledges he has been convicted of a federal felony offense. He further admits he did not fulfill all of the provisions of his sentence for that offense until August 12, 2015 – three months after the date of his application for licensure. Donkersloot argues, however, that another subsection of Iowa Code section 543B.15 allows the Commission to exercise discretion in these circumstances. He points to Iowa Code section 543B.15(6), which states:

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.

Based on this subsection, Donkersloot contends the statute is ambiguous. He further argues the Commission should interpret the statute to allow the use of discretion to decide whether to grant a license to an individual prior to the passage of two years from the date the individual finally discharges the terms of his or her sentence for a felony conviction. This assertion is without merit.

The meaning of Iowa Code section 543B.15 is clear: by its plain language, section 543B.15(3)(a) prohibits the Commission from granting licensure to an individual who has been convicted of a felony until at least two years after he or she has fulfilled all provisions of the sentence for such conviction.¹ Section 543B.15(3)(b) then provides that "[a]fter 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

¹ Because Mr. Donkersloot filed his application prior to two years from the date he completed his sentence for his felony conviction, the Commission need not address at this time whether the offense for which he was convicted is one involving moral turpitude.

the grounds of the conviction. ..." Section 543B.15(6) is the section cited to by Mr. Donkersloot which allows the Commission to discretion to grant a license after considering various factors. That section clearly does not come into play until after the expiration of the appropriate exclusionary period.

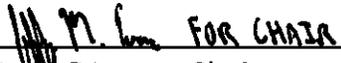
Mr. Donkersloot has made obvious efforts to get his life on track. He should be applauded for the steps he has taken towards gaining sobriety, fulfilling the terms of his sentence, making a better life for his children, and becoming a productive member of his community. However, the Commission's authority in this case is clearly and unambiguously defined by statute: the Commission may not grant Mr. Donkersloot licensure until at least two years after the date he was finally discharged from probation for his felony conviction – August 12, 2017. Further, without deciding the issue, if Donkersloot's offense involved moral turpitude, the Commission may not grant him licensure until five years after he completed his sentence – August 12, 2020. Only upon expiration of the appropriate statutorily-mandated exclusion period is the Commission authorized to exercise discretion and consider whether Donkersloot may be licensed as a real estate sales person.

Based on the foregoing, the application filed by Mr. Donkersloot must be denied.

DECISION AND ORDER

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

Dated this 22nd day of December, 2015.



Terry Duggan, Chairperson
Iowa Real Estate Commission

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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.