

BEFORE THE REAL ESTATE COMMISSION  
OF THE STATE OF IOWA

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IN THE MATTER OF:	)	CASE NO. 12-362
	)	DIA NOS. 12REC008
Mollie Petersen	)	
109 N. 1 <sup>st</sup> Street	)	
Terril, IA 51364	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
APPLICANT	)	DECISION AND ORDER

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On October 18, 2012, the Iowa Real Estate Commission (Commission) sent a letter to Mollie Petersen (Applicant) notifying her that the Commission had voted to deny her application for a real estate salesperson license, based on her criminal history, her outstanding monetary assessments, and her failure to fully disclose her convictions on her application. The Applicant filed a timely Notice of Appeal, and a hearing was initially scheduled for December 13, 2012. The hearing was continued at the Applicant's request.

A prehearing conference was held on March 5, 2013. The hearing was held on March 7, 2013 at 1:00 p.m. Assistant Attorney General John Lundquist represented the state of Iowa. The Applicant was self-represented. The following Commission members presided at the hearing: Judy Stevens, Broker, Chairperson; John Goede, Broker; Susan Sanders, Salesperson; Michael Telford and Carol Haines, public members. Administrative Law Judge Margaret LaMarche 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)(2013), 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 Jeff Evans and Mollie Petersen, State Exhibits 1-12 (See Exhibit Index for description) and Applicant Exhibits A-B.

## FINDINGS OF FACT

1. On October 15, 2012, the Applicant submitted an Application for an Individual (Salesperson) License. The Applicant responded "yes" to the following question on the application:

9f. Have you ever been convicted of a felony or misdemeanor criminal offense? (other than scheduled traffic violations- a conviction of operating while intoxicated (OWI) is NOT a scheduled traffic violation and MUST be disclosed). A "conviction" includes a guilty plea, a deferred judgment prior to discharge, and a finding of guilty by a judge or jury. If yes, 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, aggravated misdemeanor, etc.), the sentence imposed, and whether you have satisfied all terms of the sentence. ALL convictions must be disclosed regardless of the date when entered or whether the criminal record has been expunged.

The Applicant attached a letter to her application, which stated that all charges were simple misdemeanors that were the result of simply making bad choices and an extremely bad marriage. The letter further stated that the Applicant had "paid them off or still am making payments to have things paid off." The letter further states that the Applicant has been in the process of a divorce for well over two years, has grown up a lot, and is trying to make a better life for herself and her children. (State Exhibit 2; Evans, Applicant testimony)

2. The Applicant also attached copies of records from Iowa Courts Online, which document that she had the following seven (7) misdemeanor convictions:

- a. Theft-Financial Instrument (SMSM061015), Dickinson County, Sentenced 3/19/04, assessed \$564.65 (fine, costs, surcharge and restitution).
- b. Theft-Financial Instrument (SMSM026226), Emmet County, Sentenced 12/28/04, assessed \$296.79 (fine, costs, surcharge and restitution).
- c. Theft-Financial Instrument (SMSM063566), Dickinson County, Sentenced 3/31/06, assessed \$501.60 (fine, costs, surcharge and restitution).

- d. Theft-5<sup>th</sup> Degree (SRCR008676), Emmet County, Sentenced 5/1/06, assessed \$494.18 (fine, costs, surcharge and restitution).
- e. Theft-5<sup>th</sup> Degree (SRCR016217), Dickinson County, Sentenced 10/13/06, assessed \$688.15 (fine, costs, surcharge and restitution), still owes \$228.75.
- f. Theft-Financial Instrument (SMSM064659), Dickinson County, Sentenced 10/13/06, assessed \$473.39 (fine, costs, surcharge and restitution), still owes \$224.63.
- g. Theft-5<sup>th</sup> Degree (SRCR008739), Emmet County, Sentenced 10/16/06, assessed \$632.30 (fine, costs, surcharge and restitution).

(Evans testimony; State Exhibits 2, 3)

3. The Commission's staff independently verifies an applicant's criminal history through the Iowa Division of Criminal Investigation (DCI), the Federal Bureau of Investigation (FBI) and its own review of Iowa Courts Online. On July 9, 2012, the Applicant had provided a signed Waiver for Completing Criminal History Background Checks to the Commission. The only conviction listed for the Applicant on the DCI or the FBI database was for Driving While Barred-Habitual Offender in 2007. This is because simple misdemeanors are not reportable to the DCI's database. (Evans testimony; State Exhibit 4)

4. Commission staff also searched the Applicant's criminal history on Iowa Courts Online. Commission staff discovered five additional simple misdemeanor convictions that the Applicant did not disclose with her application:

- a. Theft-5<sup>th</sup> Degree-Under \$200 (SMSM023079), Emmet County, Sentenced 12/26/00.
- b. Theft-5<sup>th</sup> Degree-Under \$200 (SMSM023027), Emmet County, Sentenced 12/4/00.
- c. Theft-5<sup>th</sup> Degree-Under \$200 (SMSM023160), Emmet County, Sentenced 2/6/01.
- d. Theft-5<sup>th</sup> Degree-Under \$200 (SMSM023064), Emmet County, Sentenced 12/26/00.

- e. Theft-Financial Instrument (SMSM025006), Emmet County, Sentenced 5/5/03.

(Evans testimony; State Exhibit 5)

5. Information was obtained from the Dickinson County Clerk concerning the outstanding fines/assessments still owed by the Applicant as a result of her misdemeanor theft convictions. The Dickinson County Clerk provided a printout showing that as of October 15, 2012, the Applicant still owed:

- \$228.75 on SRCR016217 (conviction date 10/13/06); and
- \$280.79 on SMSM64659 (conviction date 10/13/06).

(Evans testimony; State Exhibit 6)

6. Commission staff asked the Applicant to provide an explanation for her record of convictions and for her outstanding monetary assessments. The Applicant claimed that the only outstanding assessment for a theft conviction was the \$228.75 that she owed for a bad check written in 2006. The Applicant stated that her divorce attorney advised her not to pay this assessment because "this resulted due to my soon to be ex-husband's problems." The Applicant contended that any other amounts that she owed the court were either for court costs associated with obtaining a restraining order against her husband or for traffic violations. The printout from Dickinson County clearly shows, however, that the Applicant owed \$280.79 for SMSM64659, which was one of her October 2006 convictions for Theft-Financial Instrument. (Evans, Petersen testimony; State Exhibit 6)

7. At hearing, the Applicant submitted documentation of two additional misdemeanor convictions, which she had not previously disclosed to the Commission:

- a. Theft-5<sup>th</sup> Degree- Under \$200 (SMSM037335), Palo Alto County, Sentenced 6/22/01, assessed \$143.53 (fine, costs, surcharge and restitution).
- b. Theft-5<sup>th</sup> Degree- Under \$200 (SMSM055735), Dickinson County, Sentenced 12/3/99, assessed \$134.04 (fine, costs, surcharge and restitution).

(Petersen testimony; Applicant Exhibit A)

8. The Applicant has been making payments to the Dickinson County District Court on her outstanding fines, restitution, and court costs pursuant to a payment plan. On March 6, 2013, the Applicant paid the remaining outstanding balance that she owed from her convictions in Criminal Nos. SRCR016217 and SMSM64659. District Associate Judge David C. Larson issued a Calendar Entry, dated March 6, 2013, which states, in relevant part:

From a review of the files, the court finds that judgment was rendered in said files on October 13, 2006, and all costs associated with said files **have been paid as of the date of this Calendar Entry**. The court further finds that the date of disposition in the above-captioned matters is October 13, 2006, and that the criminal charges were effectively closed as of that date.

(emphasis supplied; Petersen testimony; Applicant Exhibit A; State Exhibits 7, 8)

9. The Applicant has been licensed as a life and health insurance agent in Iowa for almost two years and is currently employed selling insurance.<sup>1</sup> As a licensed insurance agent, the Applicant must handle client money and ensure that it is properly deposited. (Applicant testimony; State Exhibit 6-1)

#### 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(2011, 2013) 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.

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<sup>1</sup> The statutes and rules governing the eligibility of persons to hold an insurance license are different from the statutes and rules governing the licensure of real estate brokers and salespersons. See, e.g. Iowa Code section 522B.11, 522B.16B.

(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*.

b. After expiration of the time periods specified in paragraph "a", an application shall be considered by the commission pursuant to subsection 7 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, "conviction" means 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.

5. A person who makes a false statement of material fact on an application for a real estate broker's or salesperson's license, or who causes to be submitted, or has been a party to preparing or submitting any false application for such license, may be denied a license by the commission on the grounds of the false statement or submission.

(emphasis supplied).

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

The preponderance of the evidence established that the Applicant has been convicted of 14 misdemeanor theft charges. The Applicant's last theft conviction was in October 2006, which is more than five years ago. Nevertheless, the Applicant did not finish paying the monetary assessments (fine, costs, surcharges, and restitution) on two of her misdemeanor theft convictions until March 6, 2013. Prior to March 6, 2013, the Appellant still owed \$509.54 to the Dickinson County District Court for these two convictions.

Iowa Code section 543.15(3)(a) explicitly provides:

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 ...payment of a fine or fulfillment of any other type of sentence:


(2) ...for offenses including or involving...theft..., five years.

The Commission recognizes that the Applicant has made many positive changes in her life and has had no new convictions in more than six years. Nevertheless, the Iowa Code requires the Commission to deny this application. Under the current statute, the Commission has no discretion to grant a real estate salesperson's license to the Applicant until after March 6, 2018.

#### DECISION AND ORDER

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

Dated this 4th day of April, 2013.

  
Judith E. Stevens, Chairperson  
Iowa Real Estate Commission

cc: Respondent Mollie Petersen [CERTIFIED]  
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.