

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
FROM THE BOARD OF REAL ESTATE APPRAISERS**

In the Matter of )  
KARA N ) OAH No. 10-0355-REA  
\_\_\_\_\_ ) Board Case No. 3301-10-001

**DECISION**

**I. Introduction**

Kara N requested a hearing to appeal the denial of her application for an appraiser trainee registration by the Board of Real Estate Appraisers (the Board). The Board denied Ms. N’s application due to criminal convictions for what the Board determined were crimes of moral turpitude. Although she appealed the Board decision and requested a formal hearing, Ms. N did not appear at the formal hearing.

The Division of Corporations, Business and Professional Licensing (the Division) presented uncontroverted evidence that Ms. N had been convicted of crimes of moral turpitude, including convictions for crimes of moral turpitude that she had not disclosed in her application and had not been considered by the Board when it denied her application.

The Division also presented uncontroverted evidence that Ms. N had recently been charged and sentenced for violating conditions of the probation that was part of a criminal sentence that she was still serving when she filed her application. The Division presented uncontroverted evidence that these recent charges for violating conditions of probation included charges for testing positive for illegal drug use within months of her application. This probation violations charges resulted in the imposition of additional jail time.

Based on the evidence in the record, the Board should deny Ms. N’s application.

**II. Facts**

Ms. N filed her request for a hearing without any explanation of the reasons for her appeal. Ms. N appeared at a pre-hearing conference and agreed to a hearing date, October 1, 2010, and prehearing schedule. An order served upon the parties memorialized the agreement.

As ordered, a scheduled status conference was held on September 28, 2010. The purpose of the status conference was to ensure that the parties were prepared to proceed with the hearing. At the status conference, Ms. N requested that the hearing be rescheduled to October 20, 2010. Her request was granted and the hearing rescheduled to the date Ms. N requested. Ms. N did not appear for her hearing, have further contact with the Office of Administrative Hearings or otherwise continue participating in her appeal.

The only evidence that Ms. N provided for her appeal was a one-page letter from Vocational Rehabilitation Counselor Vanessa Stevenson, CRC from the Alaska Division of Vocational Rehabilitation.<sup>1</sup> In this letter, Ms. Stevenson explains that Ms. N had been working with the Alaska Division of Vocational Rehabilitation since May of 2008. The letter describes the efforts Ms. N made toward becoming a licensed trainee appraiser. Ms. Stevenson praises Ms. N for taking responsibility for her past actions as well as her efforts in moving forward with her vocational goal. Ms. Stevenson also explains that after discussing the matter with the Division of Occupational Licensing, her understanding was that Ms. N was highly likely to become licensed despite her background.<sup>2</sup>

The following facts are based on uncontroverted evidence presented by the Division. Ms. N submitted an application to be registered as an appraiser trainee in Alaska on February 3, 2010.<sup>3</sup> In response to the question on the application that asks "Have you ever been convicted of a crime involving moral turpitude?" Ms. N wrote: "See attached letter."<sup>4</sup> Ms. N wrote in the attached letter that she had been convicted in 2007 of two felony charges, "Hindering Prosecution 1st Degree" and "Misconduct 3rd Degree," and a misdemeanor charge of "Theft 4th Degree." Ms. N also indicated in the letter that she had reported these convictions because she was not sure what types of criminal convictions fell into the category of "involving moral turpitude."<sup>5</sup>

At a meeting held on June 4, 2010, the Board voted unanimously to deny Ms. N's application. The Board concluded that Ms. N had been convicted of crimes of moral turpitude. Ms. N appealed the Board's decision.<sup>6</sup>

In preparing for the appeal, the Division looked further into Ms. N's criminal history.

The evidence submitted the Division shows Ms. N's extensive criminal history of arrests, charges and convictions, which are described below.

---

<sup>1</sup> Letter from Vocational Rehabilitation Counselor Vanessa Stevenson, CRC with the Alaska Division of Vocational Rehabilitation dated August 24, 2010. The letter is addressed "To Whom it May Concern."

<sup>2</sup> *Id.*

<sup>3</sup> Agency Record at 82.

<sup>4</sup> Agency Record at 82-83.

<sup>5</sup> Agency Record at 113.

<sup>6</sup> Agency Record at 5-6.

On March 14, 1993, Ms. N, then age 18, was arrested in Ketchikan for the crime of Operating a Motor Vehicle While Intoxicated and Possession of an Alcoholic Beverage while Under Age 21. Ms. N's breath alcohol level was measured at .148 percent.<sup>7</sup> Ms. N pled no contest to both of these charges.<sup>8</sup>

For the crime of Operating a Motor Vehicle While Intoxicated, Ms. N received a sentence of 30 days in jail, with 27 days suspended, and received a \$500 fine, with \$250 suspended. She was also placed on probation for one year and her driver's license was revoked for 90 days. The court also ordered her to report to the Ketchikan Alcohol Safety Program for alcohol screening and to complete the treatment program that was recommended as a result of the screening.<sup>9</sup> For her Possession of an Alcoholic Beverage While Under Age 21 conviction, Ms. N was sentenced to 30 days, with 30 suspended, a fine of \$200, with \$100 suspended, and placed on probation for one year.<sup>10</sup>

During this period of probation, a Petition to Revoke Probation was filed with the court. The petition alleged that Ms. N failed to comply with the court's order that she report to the Ketchikan Alcohol Safety Program and comply with its requirements. This petition was later dismissed.<sup>11</sup>

On September 7, 1996, Ms. N was again arrested in Ketchikan on a charge of Operating a Motor Vehicle While Intoxicated. Her breath alcohol level at the time of her arrest was measured at .152 percent.<sup>12</sup> Ms. N pled no contest to this charge on September 18, 1996. For this offense she was sentenced to 40 days in jail, with 20 days suspended, and a fine of \$1,000, with \$500 suspended. Her driver's license was suspended for one year, and she was again ordered to report to the Ketchikan Alcohol Safety Program for alcohol screening and to complete the treatment program that was recommended as a result of the screening.<sup>13</sup>

On December 20, 1996, Ms. N was charged with the crime of Driving While License Revoked.<sup>14</sup> She pled no contest to this charge and was sentenced to 120 days in jail, with 90

---

<sup>7</sup> Division Exhibit A at 1-2.

<sup>8</sup> Division Exhibit A at 3-4.

<sup>9</sup> Division Exhibit A at 3.

<sup>10</sup> Division Exhibit A at 4.

<sup>11</sup> Division Exhibit A at 5-6.

<sup>12</sup> Division Exhibit B at 1.

<sup>13</sup> Division Exhibit B at 2-3.

<sup>14</sup> Division Exhibit C at 1.

days suspended, a fine of \$2,000, with \$1,000 suspended, and her driver's license was revoked for an additional 90 days. Ms. N was placed on probation for three years.<sup>15</sup> During this two-year period of probation, two Petitions to Revoke Probation were filed with the court. These petitions alleged that Ms. N had first failed to contact the Ketchikan jail to arrange a time to report to custody, and then failed to report to the jail on the date set. These petitions were later dismissed.<sup>16</sup>

On June 5, 1999, Ms. N was arrested in Ketchikan on the charged for the third time with Operation of a Motor Vehicle While Intoxicated and for Refusal to Submit to a Chemical Test.<sup>17</sup> On September 30, 1999, when Ms. N was convicted of Refusal to Submit to a Chemical Test when she pled no contest to this charge and the charge of Operating a Motor Vehicle While Intoxicated was dismissed.<sup>18</sup> As a result of this conviction, Ms. N was sentenced to 260 days in jail with 200 days suspended, and to a fine of \$2,000 with \$1,000 suspended. Her driver's license was revoked for three years, and Ms. N was again referred to the Ketchikan Alcohol Safety Program. The court recommended in-patient alcohol abuse treatment.<sup>19</sup>

After these incidents, record is silent on Ms. N's activities until 2007 when she was charged with several crimes ranging from shoplifting a Game Boy worth less than twenty dollars to selling methamphetamine:

- January 12, 2007 - Ms. N was charged with attempting to shoplift a Game Boy game worth \$19.82 from the Wal-Mart store in Ketchikan n.. This theft charge also resulted in her being charged with Violation of the Conditions of her Release.<sup>20</sup>
- February 9, 2007 - Ms. N was arrested for concealing her then-husband, Christopher N, from a police officer who had a felony warrant for his arrest. Concealing her husband resulted in Ms. N being charged with the crime of Hindering Prosecution in the First Degree.<sup>21</sup>
- March 29, 2007 and March 31, 2007 - Ms. N was charged with selling methamphetamine on these dates. This resulted in her being charged with two

---

<sup>15</sup> Division Exhibit C at 2.

<sup>16</sup> Division Exhibit C at 3-7.

<sup>17</sup> Division Exhibit D at 1-2.

<sup>18</sup> Division Exhibit D at 3-5.

<sup>19</sup> Division Exhibit D at 4-5.

<sup>20</sup> Division Exhibits E & F.

<sup>21</sup> Division Exhibits I at 1-4, J at 1-3.

counts of the crime of Misconduct Involving a Controlled Substance in the Third Degree, which is a class B felony.<sup>22</sup>

- April 1, 2007 - Ms. N was charged with allowing her then-husband to operate her car, knowing that he did not have a valid driver's license. As a result, she was charge with the crime of Permitting an Unauthorized Person to Drive, and with Violation of Conditions of Release.<sup>23</sup>
- April 6, 2007 - Ms. N was charged with driving a car while her license was revoked, and concealing her then-husband in her car from a police officer who had a warrant for his arrest. As a result Ms. N was charged with the crimes of Driving While License Revoked, and Hindering Prosecution in the First Degree, and with Violation of Conditions of Release.<sup>24</sup>
- July 7, 2007 - Ms. N was charged with violating the conditions of her release on the pending charges because she left the company of her court-approved third-party custodians.<sup>25</sup>

All of these 2007 criminal charges against Ms. N were resolved on October 19, 2007 as part of a negotiated disposition. The negotiated agreement resulted in Ms. N pleading guilty to the misdemeanor Theft charge, for which Ms. N was sentenced to 15 days in jail, with credit for time served.<sup>26</sup> It also resulted in her pleading guilty to one count of Misconduct Involving a Controlled Substance in the Third Degree, a class B felony, for which she was sentenced to three years in custody, with all but nine months suspended and was placed on probation for four years following her release from custody.<sup>27</sup> Ms. N also pled guilty to the charge of Hindering Prosecution in the Third Degree, a class C felony for which she was sentenced to two years in custody, with all but 90 days suspended, however, this sentence was made to run consecutive to the sentences on the Theft and MICS convictions. Ms. N was also placed on probation for four years following her release from custody.<sup>28</sup> All of the other criminal charges in 2007 pending against N were dismissed.<sup>29</sup>

On April 19, 2008, Ms. N's Probation Officer filed a Petition to Revoke Probation alleging that Ms. N had violated her conditions of probation by consuming alcohol based on a test showing a breath alcohol level of .046 percent, and by knowingly associating with two

---

<sup>22</sup> Division Exhibit F at 1-4.

<sup>23</sup> Division Exhibit G at 1-2.

<sup>24</sup> Division Exhibit H at 1-5.

<sup>25</sup> Division Exhibit K at 1.

<sup>26</sup> Division Exhibit E at 2.

<sup>27</sup> Division Exhibit I at 6-11.

<sup>28</sup> Division Exhibit H at 8-13.

<sup>29</sup> Division Exhibits F at 5-6, G at 3-4, H at 6-7, I at 5, K at 2.

convicted felons.<sup>30</sup> The court found that Ms. N had violated the conditions of her release, and ordered Ms. N to reside at a Community Residential Center, a half-way house, for up to six months and comply with its rules and recommendations.<sup>31</sup>

A second Petition to Revoke Probation was filed against Ms. N on April 15, 2010. This petition alleged that Ms. N's Probation Officer had conducted a home visit at Ms. N's residence on March 27, 2010, that Ms. N had refused to provide a urine sample for analysis, but had admitted that she had consumed a prescription medication not prescribed for her. It also alleged that urine sample provided by Ms. N the following day tested positive for Suboxone, Oxycontin, and cocaine.<sup>32</sup> In response to the petition, Ms. N admitted the violation of her conditions of probation, and the court sentenced her to serve ten days in jail, which was converted to 80 hours of community work service.<sup>33</sup>

At the hearing, the Division also presented evidence of the importance of the Board's duty to ensure that those who work as certified appraisers and registered trainees do not have a history of dishonesty, moral weakness or any lack of personal integrity, such as would be demonstrated by a conviction for a crime involving moral turpitude. Both certified appraisers and registered trainees work in on residential property without the owner being present, and both may be subject to pressure to file an inaccurate appraisal in order to facilitate a conveyance.

### **III. Discussion**

As an applicant appealing the initial denial of a license, Ms. N had the burden of proof by a preponderance of the evidence to show that Division's position regarding any of the facts in dispute relevant to the propriety of its denial of her application are incorrect.<sup>34</sup> Ms. N has failed to meet her burden. As she did not file any explanation of her appeal other than the letter from Ms. Stevenson and did not appear for her hearing, Ms. N did not directly present evidence or arguments to challenge propriety the Board's denial of her application. Rather than raising factual or legal issues to contest the Board's decision, the result of the hearing that Ms. N requested, but did not attend, was to provide significantly more uncontested evidence in support

---

<sup>30</sup> Division Exhibits H at 14-17, I at 12-15.

<sup>31</sup> Division Exhibits H at 24, I at 22.

<sup>32</sup> Division Exhibits H at 25-28, I at 23-26.

<sup>33</sup> Division Exhibits H at 36, I at 34.

<sup>34</sup> AS 44.62.460(e)(2).

of the Board's denial of Ms. N's application, and additional legal authority for the Board's action.

An individual applying to the Board to become certified as a real estate appraiser may receive a license if the applicant has not been convicted of a crime involving moral turpitude.<sup>35</sup>

The term "moral turpitude" is broadly defined by Black's Law Dictionary as "[c]onduct that is contrary to justice, honesty, or morality."<sup>36</sup> A legal encyclopedia describes it more specifically as follows:

[I]n general, shameful wickedness -so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people.<sup>37</sup>

In general, crimes of moral turpitude are crimes that involve dishonesty, "depraved and inherently base" conduct, or—at the lower end of the spectrum—acts that indicate "bad character" or that reflect adversely on one's "personal values."<sup>38</sup> Thus, while moral turpitude encompasses heinous crimes, it also can encompass conduct that is not punished especially heavily by the penal system. By way of example, bookmaking has been classified as a crime of moral turpitude.<sup>39</sup> In Alaska cases, the phrase "moral turpitude" has been used to describe crimes fraud, dishonesty, violence, and sexual assault.<sup>40</sup>

---

<sup>35</sup> AS 08.87.110(a)(4). The language of this statute indicates that the Board has no discretion to grant certification to an individual convicted of a crime of moral turpitude. It should be noted, however, that in *Bierne v. State Medical Board*, 3AN-Q7-11110CI (Alaska Superior Court, Nov. 20, 2008), the court held that similarly structured language in the medical board statutes should be read as discretionary rather than mandatory. Whether or not the language in AS 08.87.110(a)(4) is mandatory would not change the outcome in this case because the evidence shows that it would not be an appropriate exercise of discretion to grant either certification or trainee registration to Ms. N.

<sup>36</sup> Black's Law Dictionary, p. 1026 (7th ed. 1999). See also *Kinniry v. Professional Standards and Practices Commission*, 678 A.2d 1230, 1234 (Pa. 1996)("conduct done knowingly contrary to justice, honesty or good morals").

<sup>37</sup> 50 Am. Jur. 2d Libel and Slander § 165, at 454 (1995).

<sup>38</sup> See *Blizzard v. State*, 2002 WL 272415 (Alaska App.) and cases collected therein at note 5.

<sup>39</sup> See *Carp v. Florida Real Estate Comm'n*, 211 So. 2d 240, 241 (Fla. App. 1968), cited with approval by *Wendte v. State, Bd. of Real Estate Appraisers*, 70 P.3d 1089, 1092 n.13 (Alaska 2003).

<sup>40</sup> E.g., *Disciplinary Matter Involving Schuler*, 818 P.2d 138, 140, 144 (Alaska 1991) (misdemeanor theft is conduct involving moral turpitude); *Matter of Webb*, 602 P.2d 408, 410 (Alaska 1979) (accessory after the fact of first degree murder is conduct involving moral turpitude); *Kenai Peninsula Borough Board of Education v. Brown*, 691 P.2d 1034 (Alaska 1984)(sexual immorality); *Matter of Preston*, 616 P.2d 1 (Alaska 1980)(felony distribution of cocaine).

There is no real dispute that Ms. N been convicted of crimes involving moral turpitude. Crimes involving moral turpitude include crimes of dishonesty, such as Ms. N's theft conviction, as well as her hindering prosecution conviction, which involved attempting to deceive the police in the course of an investigation.<sup>41</sup>

Ms. N was not denied a license to become certified as a real estate appraiser, however. Ms. N applied to become a registered trainee real estate appraiser. There is no explicit statutory or regulatory prohibition against become a registered trainee real estate appraiser. Alaska Statute 08.87.310(a), which sets out the process for becoming a registered trainee real estate appraiser provides as follows:

A person engaged in the practice of real estate appraisal who is employed by or under the direct supervision of a certified real estate appraiser may become a registered trainee by submitting proof to the board that the person has successfully completed the number of classroom hours required by the board in regulation of courses in subjects related to real estate appraisal from an appraisal organization or academic institution approved by the board.

Similarly, the regulation covering the process for becoming a registered trainee real estate appraiser merely sets out the process for showing that the required course work has been completed and does not explicitly disqualify an applicant with a criminal conviction that would prevent the applicant from becoming certified as a real estate appraiser to become a registered trainee.<sup>42</sup>

The Board's conclusion that Ms. N should not be licensed as a registered trainee real estate appraiser is, however, a reasonable construction of the meaning of the statutes and the regulations governing trainee registration and appraiser certification. In denying Ms. N's application, the Board read the requirements of the statutes and regulations governing registration and certification to prohibit trainee registration to an individual convicted of a crime involving moral turpitude. This interpretation is consistent with reading of the trainee registration and appraiser certification requirements as working together in setting out the certification process. Trainee registration is a step in this process that implicitly requires a

---

<sup>41</sup> See *Wendte v. State, Board of Real Estate Appraisers*, 70 P.3d 1089 (Alaska, 2003), for a discussion of the significance of a conviction of a crime involving moral turpitude in the context of a disciplinary action by the Board.

<sup>42</sup> 12 AAC 70.125



trainee applicant to have the potential to meet the certification requirements at the end of that process.

This reading is also consistent how the statutory scheme for trainee registration and certification sets out when certification is required. The Division explained at the hearing that being registered as a trainee has little utility under this statutory scheme other than as a step in the certification process. The Division's witnesses explained that trainees are not allowed to hold themselves out as certified appraisers. The Division's witnesses also explained that one need not be a trainee to work for a certified appraiser, or indeed to do appraisals for compensation when federal law does not require that the appraisal be conducted by a certified appraiser.<sup>43</sup> The trainee registration requirements, therefore make little sense without the implicit requirement that a trainee must have the potential to be able to meet the requirements for certification.

When read in the context of the certification process as a whole, the lack of explicit language in the trainee registration portions of the statutes and regulations does not mean that a criminal conviction that would prevent the applicant from becoming certified as a real estate appraiser would not also prevent an applicant like Ms. N from becoming a registered trainee. Statutory construction begins with an analysis of the language of the statute construed in light of its purpose. Here, the general purpose of the prohibition on certification of those who have been convicted of crimes of moral turpitude is to protect the public. The Board's understanding of purpose of its trainee registration statute is that it trainee registration is simply a step in the process of becoming certified, which is only open to those that the Board is not prohibited from certifying.

When the language of the statutes governing trainee registration, certification, and the limitations on practice without certification, are read together and analyzed in light of these purposes, the Board's conclusion that Ms. N is not eligible for trainee registration is consistent with that language despite the lack of an explicit prohibition.

The extent of Ms. N's criminal history, much of which was not disclosed by Ms. N, but rather was discovered by the Division in the course of its investigation show that even if the

---

<sup>43</sup> See AS 08.87.340, & AS 08.87.100.

Board has the discretionary authority to grant a trainee application from an individual convicted of a crime of moral turpitude, granting Ms. N's application would not be an appropriate exercise of that discretion. Ms. N has not shown that she has rehabilitated herself. The evidence shows that Ms. N was still on probation when she filed her application and that she violated the conditions of her probation after she filed. The circumstances of that violation do not reflect well on Ms. N's honesty in her interactions with her probation officer or her success in her ongoing struggle with substance abuse. The fact that the substances she abused on this occasion were controlled substances that were not prescribed to her shows that Ms. N's criminal activities continued after she filed her trainee registration application.

The evidence showed that Ms. N failed to follow the law and the directions of the court. These failures bring into question the likelihood that Ms. N would successfully follow the law and her employer's direction when acting as a registered trainee. Finally, as explained by the Division, Ms. N may continue to work in the appraisal field without registration as a trainee.

#### **IV. Conclusion**

Ms. N's application to be registered as an appraiser trainee under AS 08.86.310(a) is denied.

DATED this 16<sup>th</sup> day of January, 2011

By: Signed  
Mark T. Handley  
Administrative Law Judge

## Adoption

The undersigned, on behalf of the Alaska Board of Real Estate Appraisers, adopts this Decision and Order under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 26<sup>th</sup> day of May, 2011.

By: Signed  
Signature  
Gene H. Shafer  
Name  
Chair  
Title

---

[This document has been modified to conform to the technical standards for publication.]