

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

In the Matter of:	)	
	)	
TABITHA R. SCOTT	)	OAH No. 10-0496-REC
_____	)	Agency Case No. 2010-000442

**DECISION**

**I. Introduction**

Tabitha Scott is an applicant for a new real estate salesperson’s license. On September 10, 2010, the Alaska Real Estate Commission preliminarily denied her application on the ground that she had falsely answered one of the questions on the application form.<sup>1</sup> Ms. Scott requested a formal hearing, which she received on November 8, 2010.

At the hearing, Ms. Scott testified, as did two officials of the Division of Corporations, Business and Professional Licensing. The numbered agency record, Division Exhibits 1 and 4, and Ms. Scott’s exhibit pages 1-11 were admitted without objection or restriction.<sup>2</sup> Division Exhibit 3A (a redacted transcript of a bankruptcy proceeding) was held in abeyance; it is now admitted over objection for the limited purpose of showing what Ms. Scott heard at that hearing.<sup>3</sup>

Based on the evidence received at the hearing, this decision concludes that Tabitha Scott has not carried her burden of demonstrating that she should receive a real estate license at this time.

**II. Facts**

Tabitha Scott presently works in an unlicensed capacity in a real estate office in Anchorage.<sup>4</sup> In the spring of 2010 she completed a pre-licensing course with Royse and Associates and passed the Real Estate Salesperson Examination.<sup>5</sup>

On June 14, 2010, Ms. Scott completed the Alaska Real Estate Application by Examination.<sup>6</sup> She filled out the form alone in her real estate office.<sup>7</sup> She then had the form notarized, swearing:

---

<sup>1</sup> Division Exhibit 4.

<sup>2</sup> The limitation on use of hearsay evidence in AS 44.62.470 does not apply to these exhibits. *See* Scheduling Order (October 14, 2010), Part IV.

<sup>3</sup> It is not admitted as evidence that any of the statements made in it are true.

<sup>4</sup> Testimony of Ms. Scott.

<sup>5</sup> Agency Record (A.R.) 007-008.

<sup>6</sup> A copy of her application is at A.R. 005-006. The copy is accurate except that the circle around the number 6 on page A.R. 005 was made by licensing personnel during the review process, not by Ms. Scott.

- “that the information contained in this application is true to the best of my knowledge”;
- that “I am not omitting any information which might be of value to this commission in determining my qualifications;” and
- “that any falsification, omission, or withholding of information of [sic] facts concerning my qualifications . . . shall serve as sufficient grounds for the suspension, cancellation, or revocation of my broker certificate, even though it is not discovered until after issuance.”<sup>8</sup>

Both her proposed broker, Butch Jacques, and her proposed associate broker, Matt Dimmick, signed the application.<sup>9</sup>

The application for a salesperson license has questions that are used by the Commission staff for screening purposes in handling the more than 1000 applications received every year. An affirmative answer to one of the questions leads to further review. A negative answer to all questions ordinarily leads directly to approval, assuming the applicant has met the basic requirements.<sup>10</sup>

There are only six questions on the application. Question 6 asks:

Have you had a lawsuit filed against you alleging deceit, fraud, misrepresentation or conversion of funds? YES  NO

Ms. Scott reports that she paused on this question, and then concluded that it did not apply to her.<sup>11</sup> She checked the “NO” box.<sup>12</sup>

As Ms. Scott now acknowledges, the “NO” answer to this question was inaccurate. On September 2, 2008 she was one of three third-party defendants added by Northern Trust Real Estate, Inc. to an Alaska Superior Court lawsuit entitled *Ian Frazer v. Northern Trust Real Estate, Inc. and Realty Executives Alaska, Inc.*, No. 3AN-08-0595 CI.<sup>13</sup> The other two third-party defendants were David Dowd and Ms. Scott’s husband, Aaron Scott. The third-party complaint alleged that Ms. Scott “participated” in a “theft, misappropriation, and conversion” of

---

<sup>7</sup> Testimony of Ms. Scott.

<sup>8</sup> A.R. 006.

<sup>9</sup> *Id.*

<sup>10</sup> Direct testimony of Nancy Harris.

<sup>11</sup> Testimony of Ms. Scott.

<sup>12</sup> A.R. 005.

<sup>13</sup> A.R. 073-087.

\$440,000 of Ian Frazer’s money by signing a “sham” legal instrument by which Mr. Frazer was parted from that money.<sup>14</sup>

Ms. Scott knew about the Superior Court case against her. When she later filed for bankruptcy, she listed the Northern Trust claim among those from which she wanted to be discharged.<sup>15</sup> On October 13, 2009, she attended a bankruptcy hearing in Texas in which Northern Trust’s attorney described the Superior Court allegations as being against “the Scotts.”<sup>16</sup> With that said, there is no question that the main thrust of the Superior Court suit was against her husband and against David Dowd. On March 2, 2010 (three months before she applied for her real estate license), she was dismissed as a party from that case, and no fault or wrongdoing was ever allocated to her by the jury.<sup>17</sup>

Ms. Scott has described her failure to check the “yes” box for question 6 on her application as an inadvertent oversight. The details of her explanations of how this oversight occurred have varied.

On July 15, 2010, she told the Commission that “I was aware that I was added to a lawsuit as a Third Party Defendant by Northern Trust Real Estate back in 2008, but did not recall that the allegations that were passed through to me as a Third party defendant alleged deceit, fraud, misrepresentation or conversion of funds.”<sup>18</sup> Later in the same letter, she said she knew of the outcome of the lawsuit and “assumed that I was no longer involved.”<sup>19</sup> This second explanation—that she thought her dismissal somehow affected her obligation to disclose—is a little different from the first.

Her explanation at the hearing initially followed primarily the second line of reasoning. She said she knew she was added to the suit by a Northern Trust broker “possibly as a way for her to get money from us later,” but “then I really thought, once I was dismissed, that I really definitely was off the hook, um, the uh, as far as what the Real Estate Commission was concerned.”<sup>20</sup> Later in the hearing, her explanation was different. She said, “I had no idea that I

---

<sup>14</sup> A.R. 085. This alleged fraud has come before the Commission before in a surety fund case entitled *Frazer v. Dowd*, OAH No. 08-0271-RES (Decision adopted Sept. 15, 2008). Ms. Scott was not a party to that proceeding and, with respect to Ms. Scott, facts found in that proceeding should be treated as no more than allegations. In any event, there was no suggestion of a fraudulent role by Ms. Scott in *Frazer v. Dowd*.

<sup>15</sup> Div. Ex. 2 at 6.

<sup>16</sup> Div. Ex. 3A.

<sup>17</sup> Scott Ex. at 9-10.

<sup>18</sup> A.R. 009.

<sup>19</sup> *Id.*

<sup>20</sup> Hearing recording at 36:00.

was named, I thought it was all against [my husband].”<sup>21</sup> She delivered this last remark while speaking volubly, in the midst of other remarks. It did not seem to be a calculated shift in her story, but rather a careless or offhand self-justification.

### **III. Discussion**

#### ***A. Discretion to Grant or Deny License***

A longstanding regulation of the Commission, 12 AAC 64.160, provides that “[m]aking any false . . . representation or material misstatement on an application for a license . . . is grounds for denial of a license.” In a published decision, the Commission has observed that “even an innocent ‘false representation’ or ‘material misstatement’ meets the regulation’s standard.”<sup>22</sup>

At the hearing, one of the Division’s witnesses gave the impression that the Division believes it is almost automatic that an incorrect answer to one of the questions on the application must result in denial of the application.<sup>23</sup> As the Division’s counsel later conceded, however, this is not so. The regulation gives the Commission discretion to deny a license based on a false answer, but the Commission also has discretion to grant the license.<sup>24</sup> The Commission may weigh the degree of innocence, negligence, or outright deception behind the untrue answer in making this determination.

Ms. Scott, as an applicant for a new license, bears the burden of proving that she ought to be licensed.<sup>25</sup>

#### ***B. The Current License Application Should be Denied***

Until just three months before she applied for a license, Ms. Scott was a defendant in a case alleging very serious fraud in a real estate transaction. This is exactly the kind of information question 6 of the application is intended to elicit, so that the Commission’s staff will be alerted to investigate the matter and give the Commission the full information it needs to safeguard the public. The question asks, in simple language, whether the applicant has ever been sued based on allegations of deceit, fraud, misrepresentation, or conversion.

---

<sup>21</sup> Hearing recording at 1:20:20.

<sup>22</sup> *In re Moser*, OAH No. 04-0294-REC (Alaska Real Estate Commission, Proposed Decision adopted June 14, 2005), at 11.

<sup>23</sup> Testimony of Michele Wall-Rood.

<sup>24</sup> It may also be within the Commission’s authority to grant a license conditionally, requiring an applicant agree to discipline of some kind in order to receive a license. The Division takes the position that this is possible.

<sup>25</sup> AS 44.62.460(e)(2).

Because the question was clear, this case is entirely different from the one the Commission faced earlier this year in *In re Bevington*.<sup>26</sup> In that case, the Division had asked an ambiguous question on an application form, and then imposed draconian consequences on a licensee who did not happen to interpret the question the same way the Division had intended it. The Commission overruled the Division's handling of that matter. Here, the question asked of Ms. Scott could not have been more straightforward. There was only one correct answer, and she did not give that answer.

None of the explanations Ms. Scott has given for the wrong answer is satisfactory. The explanation that she knew she was a defendant in the case but thought the allegations of fraud and theft were directed only against her husband is difficult to credit, since the case against the Scotts had no other basis besides fraud and theft. The explanation that she thought she was "off the hook" when she was dismissed from the case misses the mark, since the question asks if the applicant has ever been sued, not whether the applicant is currently being sued. The final explanation, that she "had no idea that I was named," simply cannot be true in light of her other explanations. Moreover, it is disconcerting that she would give inconsistent explanations during the very hearing convened to evaluate her alleged lack of candor.

The overall impression left by Ms. Scott's original wrong answer and her explanations for her error is not that she engages in premeditated deception but rather that she is careless about being completely accurate. This is unacceptable in a sworn license application, and it is equally or more unacceptable in sworn testimony at a hearing about that application. To protect the public from being misled, real estate professionals need to have the ability to focus carefully and give a perfectly accurate answer to a straightforward question. Ms. Scott has not demonstrated that ability.

### ***C. Ms. Scott Is Not Permanently Barred from Licensure***

Ms. Scott asked repeatedly at the hearing whether her inaccurate 2010 application precludes her for life from receiving a real estate license. Nothing in the real estate statutes and regulations suggests that it does. Ms. Scott may apply again for a license. If she does so, and if the new application is approved, her punishment for her lack of accuracy on her first application will have been the delay in achieving licensure.

---

<sup>26</sup> OAH No. 10-0110-REC (Alaska Real Estate Commission, Decision and Order adopted May 27, 2010).

**IV. Conclusion**

Because Tabitha Scott gave a false answer to a question on her application, the Real Estate Commission has discretion to deny her a salesperson license. Because her presentation at the hearing did not put to rest the concerns raised by that false answer, the Commission exercises its discretion to withhold the license.

Dated this 18<sup>th</sup> day of November, 2010.

By: Signed \_\_\_\_\_  
Christopher Kennedy  
Administrative Law Judge

**Adoption**

The Real Estate Commission adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 1<sup>st</sup> day of December, 2010.

By: Signed \_\_\_\_\_  
Signature  
Bradford Cole \_\_\_\_\_  
Name  
Chairman AREC \_\_\_\_\_  
Title