

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

In the Matter of)	
)	
LANDON BAUER)	OAH No. 14-0429-REC
<hr style="width:100%; border: 0.5px solid black;"/>)	Agency No. 2014-000098

DECISION

I. Introduction

Landon Bauer applied for a real estate salesperson license. The Real Estate Commission initially denied his application for two independent reasons. The first was because 7 years had not passed since he completed probation for his criminal conviction for Theft III. The second was because his application did not disclose that conviction. Mr. Bauer requested a hearing to challenge the denial of his application.

Mr. Bauer represented himself. The Division of Corporations, Business and Professional Licensing (Division) was represented by Assistant Attorney General Todd Araujo. The hearing was held on July 17, 2014. Mr. Bauer did not appear for the hearing, which proceeded in his absence.

This decision confirms that Mr. Bauer is barred from having a real estate salesperson license until July 2016 due to his criminal conviction. The evidence also demonstrates that Mr. Bauer intentionally omitted the fact of his conviction from his application. The Commission should therefore uphold the denial of his application.

II. Facts

Mr. Bauer pleaded guilty and was convicted of a misdemeanor criminal charge, Theft III - AS 11.46.140(a), on July 10, 2008. He had a suspended imposition of sentence and was placed on probation for one year.¹

Mr. Bauer applied for a real estate salesperson license on December 6, 2013. He checked the “No” box on the application to the question asking if he had been convicted of a crime. That question explains that the term “crime” applies to both misdemeanors and felonies, and that the term “conviction” includes cases involving a suspended imposition of sentence.²

A Division investigator contacted Mr. Bauer about his application. Mr. Bauer responded in writing that he read through the application quickly and that his “No” answer to the criminal

¹ Agency Record, p. 28.
² Agency Record, pp. 13 – 14.

conviction question “was an honest mistake.”³ The Associate Real Estate Broker, Edward Erickson, who signed Mr. Bauer’s application, also provided a written statement, saying that he was present when Mr. Bauer filled out that application, that they discussed it, and that he “was the one that advised [Mr. Bauer] to say no to the question that has caused the delay in his licensing . . . my interpretation of the question on the spot was to answer it no.”⁴

III. Discussion

A. Theft Conviction

Alaska Statute 08.88.171(c) provides that, in addition to other requirements, a natural person is qualified to be a real estate salesperson if he or she is not under indictment for forgery, theft, extortion, conspiracy to defraud creditors, or fraud, or, if convicted of such an offense, seven years have elapsed since the person completed the sentence imposed upon conviction.^[5]

Mr. Bauer fits solidly under this statutory proscription: he was convicted of Theft III on July 10, 2008. His one year probation would have been completed in July 2009. He does not qualify to be a real estate salesperson until seven years thereafter, or July of 2016.

B. Application

Although Mr. Bauer wrote a letter averring that his “No” answer was an honest mistake, the associate broker who signed Mr. Bauer’s application wrote that he discussed the question and its answer with Mr. Bauer. In light of this contradiction, Mr. Bauer, who has the burden of proof to demonstrate his qualification for a license, has failed to show that it is more likely than not true that the “No” answer was a mere oversight.

The Commission’s regulation, 12 AAC 64.160(a), provides that “[m]aking any false . . . representation or material misstatement on an application for a license . . . is grounds for denial of a license.” This is discretionary with the Commission. The Commission has in at least one prior instance denied licensure due to a knowingly false answer provided on an application.⁶ Consistent with that prior case, the Commission should exercise its discretion and deny Mr. Bauer’s application.

IV. Conclusion

There are two independent grounds for denying Mr. Bauer’s application. First, he is barred from being a real estate salesperson until July 2016. This bar is mandatory, not

³ Agency Record, p. 15.

⁴ Agency Record, p. 20.

⁵ AS 08.88.171(c).

⁶ *In Re Scott*, OAH Case No. 10-0496-REC (Real Estate Commission 2010). *Also see In Re Moser* (Real Estate Broker disciplined for false statements made to the Commission), OAH Case No. 04-0294-REC (Real Estate Commission 2005) *aff’d on appeal* Superior Court Case No. 3AN-05-09859CI.

discretionary, and the Commission must deny the license on this basis. Second, he made a knowingly false representation on his application. This ground is discretionary, but the Commission should exercise its discretion to deny the license on this additional ground. In sum, the Commission should uphold the denial of his application.

Dated this 31st day of July, 2014.

By: Signed
Lawrence A. Pederson
Administrative Law Judge

Adoption

The Alaska 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 this decision.

DATED this 10th day of September, 2014.

By: Signed
Signature
Anita Bates
Name
Chairperson
Title

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