

December 5, 2013, and placed on probation for a three year period, in addition to other sanctions, which included 90 days of suspended imprisonment.⁴

Ms. Cho applied to renew her real estate salesperson's license on January 31, 2014. She disclosed her conviction on that application.⁵ Ms. Cho's license was renewed, but her application was referred for investigation.⁶ The Division subsequently initiated this license revocation action on May 22, 2014.

III. Discussion

Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.⁷ It is a means of resolving disputes without a hearing when the central underlying facts are not in contention, but only the legal implications of those facts. Under these circumstances, the evidentiary hearing is not required.⁸ Summary adjudication, however, is not automatically granted when one party does not file an opposition to a motion for summary adjudication. In order to grant summary adjudication, even when an opposition is not filed, there must still be a determination that there is no genuine issue of material fact and that the moving party is legally entitled to judgment.⁹

A review of the pleadings and pertinent portions of the record does not reveal any factual issues. The salient fact for this case is that Ms. Cho has a 2013 criminal misdemeanor conviction for medical assistance fraud, AS 47.05.210(a)(5), which means that she was convicted of having "knowingly [made] a false entry in or falsely alter[ed] a medical assistance record." This is a conviction for fraud.¹⁰

AS 08.88.071(a) mandates that a real estate salesperson's license be revoked in the event the salesperson has been convicted of fraud as follows:

(a) The [Real Estate Commission] shall

* * *

(11) revoke the license of a . . . real estate salesperson . . . who is convicted of forgery, theft, extortion, conspiracy to defraud creditors, or fraud;

⁴ Division Record, pp. 404 – 405, 408. The underlying facts regarding the criminal charges and Ms. Cho's subsequent guilty plea and conviction are admitted in paragraphs 2 through 4 of Ms. Cho's Answer to the Division's Accusation.

⁵ Division Record, pp. 378 – 379.

⁶ Division Record, pp. 365, 371.

⁷ See, e.g., *Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000).

⁸ See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); 2 Pierce, *Administrative Law Treatise* § 9.5 at 813 (5th ed. 2010).

⁹ See, e.g., *Martinez v. Ha*, 12 P.3d 1159, 1162 (Alaska 2000).

¹⁰ Fraud is defined as "[a] knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment." *Black's Law Dictionary* at 731 (9th Ed., 2009).

notwithstanding AS 08.88.171, a person whose license is revoked under this paragraph is not qualified to obtain or renew a license under AS 08.88.171(a) - (c) until seven years have elapsed since the person completed the sentence imposed for the conviction.

Ms. Cho's 2013 criminal conviction is for fraud; she is on probation for three years. She would therefore not complete her sentence until 2016. As a result, the licensing statute requires that Real Estate Commission revoke her license, and she is not eligible for relicensure until seven years after she completes her sentence.

The Division's accusation also presents two other theories in support of its revocation action. However, because this decision finds that Ms. Cho's license is revoked based upon AS 08.88.071(a)(11), it is not necessary to discuss those alternative theories.

IV. Conclusion

Because Ms. Cho has a 2013 criminal misdemeanor conviction for medical assistance fraud, the Commission is required to revoke her real estate salesperson's license. This is a mandatory, not discretionary, revocation.

Dated this 29th day of December, 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 25th day of February, 2015.

By: Signed
Signature
Anita Bates
Name
Chair of REC
Title

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