

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

In the Matter of)
)
 MARY HOLBROOK)
 _____)

OAH No. 14-1194-REC
Agency No. 2014-001388

DECISION

I. Introduction

Mary Holbrook applied for an Alaska real estate salesperson license on March 25, 2014. The Real Estate Commission (“Commission”), acting through its Executive Administrator, denied Ms. Holbrook’s application because she had been convicted of a felony within the last seven years. Ms. Holbrook requested a hearing to reconsider that decision.

A hearing was held on August 27, 2014, with both parties present at the hearing. Sharon Walsh, the Commission’s Executive Administrator (“Administrator”), testified on behalf of the Commission and was represented by the Commission’s counsel, Assistant Attorney General Todd Araujo. Ms. Holbrook represented herself.

Ms. Holbrook failed to prove by a preponderance of the evidence that her recent felony conviction arising from misconduct involving a controlled substance would not affect her ability to practice as a real estate salesperson safely. The Commission, therefore, should exercise its discretion to reject Ms. Holbrook’s license at this time.

II. Facts

On March 14, 2014, Mary Holbrook entered into a partial plea agreement in which she received a suspended imposition of sentence (SIS) for a Class B Felony involving the attempted manufacturing or delivery of a controlled substance or possession of a controlled substance with intent to manufacture or deliver.¹ The acts which gave rise to the SIS took place on or about July 14, 2013.²

Ms. Holbrook submitted an application for a real estate salesperson license on March 26, 2014.³ According to that application, Ms. Holbrook completed her pre-licensing education on January 26, 2014 and had passed the real estate salesperson examination on February 19, 2014.⁴

¹ Exh. 000022-000026.
² Exh. 000029-000031.
³ Exh. 000019-000021.
⁴ Exh. 000019.

In her application, Ms. Holbrook disclosed that she had been convicted of a felony and included a copy of her SIS.⁵

On March 28, 2014, Ms. Holbrook sent a letter to Beata Smith, a licensing examiner with the Commission, and provided a more detailed explanation concerning the background behind the incident which resulted in her SIS.⁶ In this letter, Ms. Holbrook described how she suffered from migraines resulting from a pituitary tumor that presses on her octave nerves, and said that she had been unable to find a doctor to treat her condition after she moved to Alaska.⁷ Ms. Holbrook explained that her brother-in-law had offered to send her pain medication from Oregon and told her he would be sending her a package of Vicodin, which she had used in the past for her migraines.⁸ Ms. Holbrook stated that she did not receive that package.⁹ She explained that her brother-in-law had been sending her pain medication since 2012.¹⁰

The underlying Information related to her felony conviction, which Ms. Holbrook submitted to the Commission, stated that two packages had been sent to Ms. Holbrook and that one package contained methadone and hydromorphone, both of which are controlled substances.¹¹ Alaska law enforcement received knowledge of these packages and “performed a controlled delivery of fake pills that were intended to look like the controlled substances.”¹² C M J, Ms. Holbrook’s son, accepted the package and immediately thereafter, the police executed a search warrant of the house.¹³ The Information stated that C, who had just turned eighteen years of age the preceding day, had made the following statements to law enforcement at the time they executed the search warrant:

C J admitted to law enforcement that they received the pills because his mother, Mary Holbrook, suffers from migraines and needs the pills to cope with the pain and he usually intercepts the packages so that his father does not find out about the pills. Further, he admitted that the pills were usually methadone and his mom uses some of the pills herself and sells some of the pills.¹⁴

⁵ Exh. 000020-000026.

⁶ Exh. 000027-000028.

⁷ Exh. 000027.

⁸ Exh. 000027.

⁹ Exh. 000027.

¹⁰ Testimony of Ms. Holbrook; *see also* Exh. 000027.

¹¹ Exh. 000029-000031.

¹² Exh. 000030.

¹³ Exh. 000030.

¹⁴ Exh. 000030-000031; *see also* Testimony of Ms. Holbrook.

The Information further stated:

Mary Holbrook also made admissions to law enforcement. She said, in essence, that she had done this to her son and she admitted that she had two pills in her purse left over from a previous package.¹⁵

In her letter to the Commission, Ms. Holbrook said that she had “accepted a plea bargain to accept all responsibility.”¹⁶ She further stated that she had not sold any drugs.¹⁷ Finally, Ms. Holbrook acknowledged that “receiving pain medication was wrong and [I] have come to terms with my punishment for that reason,” claiming she had not taken any pain medication since June, 2013.¹⁸

The Commission’s Administrator has been delegated authority to decide license applications with regard to statutory non-compliance.¹⁹ On July 1, 2014, the Commission’s Administrator wrote a letter to Ms. Holbrook which stated, in pertinent part, that:

After my review of your application for a Real Estate Salesperson license, I found that you did not qualify for licensure in Alaska . . . In your application packet, you provided the Real Estate Commission with court documentation that indicated you were convicted of a felony. According to statute [AS] 08.88.171(c), it appears that seven (7) years have not elapsed since the time of your conviction. Therefore, this makes you ineligible to obtain a real estate salesperson license at this time.²⁰

Ms. Walsh’s letter to Ms. Holbrook also advised her that she could request a hearing to challenge this decision.²¹

Ms. Holbrook responded by sending a letter on July 10, 2014 to the Division of Corporations, Business & Professional Licensing which requested a hearing to reconsider Ms. Walsh’s decision.²² In her letter, Ms. Holbrook stated that she did not feel that her felony conviction would affect her ability to perform her duties as a real estate salesperson competently and safely.²³ In support of her request for reconsideration, Ms. Holbrook also stated:

¹⁵ Exh. 000031.
¹⁶ Exh. 000028.
¹⁷ Exh. 000027.
¹⁸ Exh. 000028.
¹⁹ Exh. 000018.
²⁰ Exh. 000012.
²¹ Exh. 000012.
²² Exh. 000011.
²³ Exh. 000011.

I have never had any charges involving forgery, theft, extortion, conspiracy to defraud creditors, or fraud. In fact, my entire working career has been spent dealing with Federal funds and funding. I have worked in the banking industry for almost twenty (20) years and then worked in the financial aid department for a private college for six (6) additional years.²⁴

Ms. Holbrook further observed that she “will no longer have a felony on [her] record as of March, 2017,” alluding to her SIS.²⁵

Ms. Holbrook has exercised her right to seek reevaluation of her application on the basis of a full evidentiary hearing. That hearing was held on August 27, 2014, with both parties presenting testimony in support of their respective positions.

III. Discussion

According to the record, the Commission’s Administrator concluded that Ms. Holbrook’s felony conviction bars her from being licensed as a real estate salesperson for seven years.²⁶ AS 08.88.171(c) is the statutory provision which contains the licensing requirements for real estate salespersons. Persons who have been convicted of certain crimes – *i.e.*, forgery, theft, extortion, conspiracy to defraud creditors, or fraud – are automatically barred from getting a real estate salesperson’s license for seven years.²⁷ However, with regard to other types of crimes, AS 08.88.171(c) provides, in pertinent part, that:

A natural person qualifies for a real estate salesperson license if the person is . . . not under indictment for a felony or other crime that, in the judgment of the commission, affects the individual’s ability to practice as a real estate salesperson competently and safely.²⁸

This language, which was added to AS 08.88.171(c) in 2007, gives the Commission discretion to determine whether a particular type of felony conviction is one that would affect an applicant’s “ability to practice as a real estate salesperson competently and safely.”²⁹ Indeed, Assistant Attorney General Gail Horetski testified at the hearings for HB 205 – the underlying legislation for this amendment to AS 08.88.171 – that the intent was to provide the Commission with

²⁴ Exh. 000011.

²⁵ Exh. 000011. It is a common misperception in Alaska that a conviction is expunged after the terms of an SIS are satisfied.

²⁶ Exh. 000012.

²⁷ See AS 08.88.171(c).

²⁸ AS 08.08.171(c).

²⁹ Committee Minutes: House Finance Committee, April 17, 2007 (testimony of Dave Feeken, the chair of the Industry Issues Working Group for the Alaska Association of Realtors, which had introduced HB 205 to amend AS 088.66.171(c)); see also *In the Matter of Kameron Draper*, OAH No. 12-0186-REC, at p. 4.

discretion to determine if a particular felony conviction affected a person's ability to practice in this profession, and she proffered a drug felon as an example.³⁰

Because a felony conviction, in and of itself, does not automatically bar Ms. Holbrook from being licensed as a real estate salesperson for seven years, the issue here is whether her felony conviction is one which, in the Commission's judgment, has an impact on her ability to practice as a real estate salesperson safely and competently. Ms. Holbrook's testimony at the hearing focused on her recent felony drug conviction and the circumstances surrounding her arrest in July of 2014 on the charges that led to that conviction.³¹ Ms. Holbrook was forthright and candid about what had occurred. Ms. Holbrook testified that she did not know where her brother-in-law had gotten the pills he sent her, which were controlled substances, but said that he had been in jail before for possession of stolen property.³²

Ms. Holbrook pointed out that she had held responsible jobs over the years and had no prior convictions.³³ Ms. Holbrook also testified that she had received a drug assessment after she got out of jail, completed a three-day course on drugs and alcohol, and has only taken Advil since her arrest.³⁴ As part of her SIS, Ms. Holbrook is on ankle monitoring for one year, and will be on probation for two years.³⁵ She also testified that she undergoes drug testing one time a week and will have to undergo random drug testing for two years.³⁶ In 2017, her sentence will be suspended if she complies with all the terms of her SIS.³⁷

Ms. Walsh, the Commission's Administrator, testified that she believes that Ms. Holbrook's recent felony conviction would affect her ability to practice as a real estate salesperson in a safe and competent manner.³⁸ For that reason, Ms. Walsh had rejected Ms. Holbrook's application for licensing.³⁹ Ms. Walsh stated that a real estate salesperson must have the complete trust of clients and expressed concern that Ms. Holbrook would have access to homes where there might be controlled substances.⁴⁰ She also expressed concern that if Ms. Holbrook was under the influence of a controlled substance, she might not be able to perform her

³⁰ Committee Minutes: House Finance Committee, April 18, 2007 (testimony of Gail Horetski); *see also In the Matter of Kameron Draper*, OAH No. 12-0186-REC, at p. 4.

³¹ Testimony of Ms. Holbrook.

³² Testimony of Ms. Holbrook.

³³ Testimony of Ms. Holbrook.

³⁴ Testimony of Ms. Holbrook.

³⁵ Testimony of Ms. Holbrook.

³⁶ Testimony of Ms. Holbrook.

³⁷ Testimony of Ms. Holbrook.

³⁸ Testimony of Ms. Walsh.

³⁹ Testimony of Ms. Walsh.

⁴⁰ Testimony of Ms. Walsh.

duties competently.⁴¹ However, this latter concern does not appear to be justified because Ms. Holbrook has held responsible jobs which she performed competently for many years, despite taking controlled substances to reduce the pain from her migraines.⁴²

The safety issue, however, is a valid concern. This would be an entirely different case if Ms. Holbrook had completed her SIS without incident prior to applying for her real estate license.⁴³ There would be evidence demonstrating that Ms. Holbrook had successfully completed her probation without a single violation and that she had not gone back to using unlawfully-obtained controlled substances to deal with the pain from her migraine headaches. For example, *In the Matter of Kameron Draper*, the applicant for an associate real estate broker's license had a felony DUI conviction.⁴⁴ The *Draper* decision pointed out that four years had elapsed since Mr. Draper's arrest, he had completed an alcohol treatment program, and he successfully completed his criminal probation without a single violation.⁴⁵ Consequently, the *Draper* decision recommended that the Commission exercise its discretion in Mr. Draper's favor and grant his application because his DUI conviction did not affect his ability to practice safely and competently.⁴⁶

By contrast, Ms. Holbrook's arrest occurred approximately nine months prior to the time she submitted her application for licensing.⁴⁷ The terms of her probation were only finalized in March of this year, less than two weeks before she submitted her application for a real estate salesperson's license.⁴⁸ Although Ms. Holbrook, like Mr. Draper, has completed a course in drug and alcohol use, she simply does not yet have the four-year track record that Mr. Draper had at the time he applied for a license.

Real estate salespersons have unsupervised access to sellers' homes. Such sellers may have prescribed medications that are controlled substances in their medicine chests, on their kitchen counter, or elsewhere in the home. Because of the recent nature of Ms. Holbrook's arrest and conviction, she has not met her burden of proof in establishing that she is not a safety risk if placed in a situation where she may have unsupervised access to controlled substances. She has not yet completed her probation and is still being monitored for drug use through periodic

⁴¹ Testimony of Ms. Walsh.

⁴² See Exh. 000011; see also Testimony of Ms. Holbrook.

⁴³ See *In the Matter of Kameron Draper*, OAH No. 12-0186-REC, at p. 10

⁴⁴ *In the Matter of Kameron Draper*, OAH No. 12-0186-REC, at p. 1.

⁴⁵ *In the Matter of Kameron Draper*, OAH No. 12-0186-REC, at p. 10.

⁴⁶ *In the Matter of Kameron Draper*, OAH No. 12-0186-REC, at pp. 10-11.

⁴⁷ Compare Exh. 000029-000031 with Exh. 000019-000021.

⁴⁸ See Exh. 000027-000028, 000019 & 000022.

testing.⁴⁹ Accordingly, the Board should exercise its discretion and deny her application because she was recently convicted of a felony that affects her ability to practice safely.

Dated this 25th day of November, 2014.

By: Signed
Kathleen A. Frederick
Administrative Law Judge

Adoption

The Alaska Real Estate Commission adopts this Decision and Order 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 and Order.

DATED this 3rd day of December, 2014.

By: Signed
Signature
Anita Bates
Name
Chairperson
Title

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

⁴⁹ Testimony of Ms. Holbrook.