

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

In the Matter of )  
 )  
SAMANTHA WEBER )  
\_\_\_\_\_ )

OAH No. 14-1465-REC  
Agency No. 2014-001743

**DECISION**

**I. Introduction**

Samantha Weber applied for a real estate salesperson license. The Real Estate Commission denied her application because seven years had not passed since she completed probation for her criminal conviction for Theft III. Ms. Weber requested a hearing to challenge the denial of her application.

Ms. Weber represented herself. The Division of Corporations, Business and Professional Licensing (Division) was represented by Assistant Attorney General Harriet Milks. The hearing was held on December 2, 2014. Ms. Weber did not appear for the hearing, which proceeded in her absence.

This decision confirms that Ms. Weber is barred from having a real estate salesperson license until September 2017 due to her criminal conviction. The Commission should therefore uphold the denial of her application.

**II. Facts**

Ms. Weber was criminally charged with and convicted of Theft in the Third Degree, a violation of 11.46.140(a)(1), a class A misdemeanor, on September 24, 2009. She was represented by counsel. Ms. Weber received a suspended imposition of sentence (SIS), but was ordered to spend three days in jail. She was placed on probation for a one year period. Ms. Weber was 18 years old at the time of the underlying offense, which was for shoplifting that occurred on July 17, 2009.<sup>1</sup> Ms. Weber's conviction was set aside on January 20, 2011, under the terms of her SIS.<sup>2</sup>

Ms. Weber applied for a real estate salesperson license on June 27, 2014. She checked the "Yes" box on the application to the question asking if she had been convicted of a crime.

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<sup>1</sup> Agency Record, pp. 19 – 20, 22 - 23.

<sup>2</sup> Agency Record, p. 24.

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.<sup>3</sup>

The Executive Administrator for the Real Estate Commission, acting under delegated authority, denied Ms. Weber’s application on August 18, 2014, based upon Ms. Weber’s prior theft conviction.<sup>4</sup>

### III. Discussion

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.<sup>[5]</sup>

Ms. Weber fits solidly under this statutory proscription: she was convicted of Theft III on September 24, 2009. Her one year probation would have been completed in September 2010. Even though her conviction was set aside, she remains a person who was “convicted” for licensing purposes.<sup>6</sup> Ms. Weber therefore does not qualify to be a real estate salesperson until seven years after the completion of her sentence, which will be in September 2017.<sup>7</sup> Although this was a youthful offense, given that Ms. Weber was only 18 years old at the time, the statute does not provide the Commission with any discretion.

### IV. Conclusion

Ms. Weber is barred from being a real estate salesperson until September 2017. This bar is mandatory, not discretionary, and the Commission must deny her application for licensure. The Commission should uphold the denial of her application.

Dated this 29<sup>th</sup> day of December, 2014.

By: Signed  
Lawrence A. Pederson  
Administrative Law Judge

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<sup>3</sup> Agency Record, pp. 13 – 14.

<sup>4</sup> Agency Record, pp. 8 – 9.

<sup>5</sup> AS 08.88.171(c).

<sup>6</sup> *State, Division of Corporations, Business and Professional Licensing, Alaska Board of Nursing v. Platt*, 169 P.3d 595, 599 – 600 (Alaska 2007) (regardless of the setting aside of the conviction, the applicant remained a “person who ‘has been convicted’ of a criminal offense.”).

<sup>7</sup> See *In re Bauer*, OAH Case No. 14-0429-REC (Real Estate Commission, September 2014).

## 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 25<sup>th</sup> day of February, 2015.

By: Signed  
Signature  
Anita Bates  
Name  
Chair  
Title

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