

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

In the Matter of	)	
	)	
CHARLES STONE	)	OAH No. 15-0464-REC
_____	)	Agency No. 2014-000211

**DECISION GRANTING SUMMARY ADJUDICATION**

**I. Introduction**

Charles Stone is a licensed real estate salesperson. The Division of Corporations, Business and Professional Licensing (“Division”) filed this case to revoke his real estate salesperson’s license. Mr. Stone requested a hearing to challenge the revocation action and subsequently filed a motion to dismiss the Accusation, which was denied. The Division has moved for summary adjudication and Mr. Stone has filed an Opposition to that motion.

This case does not present any genuine issues of material fact. Instead, the motion for summary adjudication focuses on the legal issue of whether Mr. Stone’s 2012 misdemeanor conviction for unsworn falsification in the second degree requires revocation of his real estate salesperson’s license. The applicable licensing statute, AS 08.66.071(a)(11), mandates that the license of a real estate salesperson who has been convicted of fraud be revoked. Because Mr. Stone’s 2012 criminal conviction is for fraud, he is subject to mandatory revocation of his real estate salesperson’s license. Therefore, summary adjudication is GRANTED in favor of the Division: Mr. Stone’s real estate license is revoked.

**II. Facts**

In January 2014, Charles Stone submitted an application for the biennial renewal of his real estate salesperson license, no. 15121, for the period from February 1, 2014, through January 31, 2016.<sup>1</sup> In response to a question on page 2 of this application, Mr. Stone disclosed that he had been convicted of a crime since the date of his last real estate license application.<sup>2</sup>

Court documents obtained by the Division revealed that in October of 2012, Mr. Stone had pled guilty to, and was convicted of, the misdemeanor offense of unsworn falsification in the second degree arising out of his failure to disclose a bank account and rental income from

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<sup>1</sup> Div. 00022-00023.

<sup>2</sup> Div. 00023. Mr. Stone’s attorney had previously notified the Division on June 24, 2013 that Mr. Stone had been convicted of a misdemeanor. See Div. 00024.

property he owned on an application he made for public benefits.<sup>3</sup> Because he did not disclose these assets, Mr. Stone received public benefit assistance in the form of food stamps, Alaska temporary assistance (ATAP), and Medicaid benefits that he would not otherwise have been entitled to receive.<sup>4</sup> As part of his sentence for this crime, Mr. Stone was required to pay restitution in the amount of \$11,434.89, to perform 120 hours of community work service, and was placed on probation for four years.<sup>5</sup> By April 16, 2013, he had discharged his restitution obligation.<sup>6</sup>

A member of the Real Estate Commission reviewed Mr. Stone's Application and the criminal records and concluded that this conviction affected Mr. Stone's ability to practice real estate competently and safely.<sup>7</sup> A voluntary surrender of his license was offered to Mr. Stone.<sup>8</sup> When Mr. Stone did not choose to voluntarily surrender his license, the Division filed an Accusation against Mr. Stone on April 14, 2015.<sup>9</sup> The Accusation concluded that Mr. Stone's actions were a violation of 12 AAC 64.130(5) and were grounds for discipline under AS 08.88.071(11).<sup>10</sup> Mr. Stone requested a hearing on the matters in the Accusation.<sup>11</sup> The Division subsequently amended its Accusation to reflect that Mr. Stone's actions were a violation of AS 08.88.071(a)(11) and 12 AAC 64.130(5) and were grounds for discipline pursuant to AS 08.01.075 and AS 08.88.071(a).

### **III. Discussion**

Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.<sup>12</sup> It is a means of resolving disputes without a hearing when the

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<sup>3</sup> Div. 00019. Unsworn Falsification in the 2d degree is a Class A misdemeanor under AS 11.56.210. Originally, Mr. Stone had also been charged with Theft in the 2d Degree, a felony. *See* Div. 00026.

<sup>4</sup> *See* Div. 00027; *see also* Div. 00178. As a condition of his probation, Mr. Stone was disqualified from receiving food stamps for one year and ATAP for six months, and was required to assign his PFD to restitution. Div. 00027.

<sup>5</sup> *See* Div. 00027.

<sup>6</sup> *See* Div. 00041.

<sup>7</sup> Div. 00019. While the Real Estate Commission member appears to have deemed Mr. Stone's conviction as an "other crime" under AS 08.88.071(11), Mr. Stone's conviction both is covered by the fraud provision of AS 08.88.071(11) and constitutes an "other crime" that the Commission has determined would prevent Mr. Stone from practicing as a real estate salesperson "competently and safely." *See* Amended Accusation, at ¶ 6; *see also* AS 08.88.071(a)(11).

<sup>8</sup> Div. 00019.

<sup>9</sup> Div. 00016-00019.

<sup>10</sup> Div. 00019.

<sup>11</sup> Div. 00015.

<sup>12</sup> *See, e.g., Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000).

central underlying facts are not in contention, but only the legal implications of those facts. Under such circumstances, an evidentiary hearing is not required.<sup>13</sup>

A review of the pleadings and pertinent portions of the record does not reveal any factual issues. The central, and undisputed, fact in this case is that Mr. Stone has a 2012 criminal misdemeanor conviction for second-degree unsworn falsification under AS 11.56.210(a)(1).

AS 08.88.071(a)(11) requires the Commission to revoke a salesperson's license if the salesperson "is convicted of a felony or other crime committed while licensed under this chapter that, in the judgment of the commission, affects the ability of that person to practice as a . . . real estate salesperson competently and safely or who **is convicted** of forgery, theft, extortion, conspiracy to defraud creditors, or **fraud**["]."<sup>14</sup> Thus, the legal issue presented here is whether the crime of unsworn falsification in the second degree is "fraud" so as to mandate the revocation of Mr. Stone's real estate salesperson license pursuant to AS 08.88.071(a)(11).

A. Unsworn Falsification In the Second Degree Is a Form of Fraud

There is no statutory crime called "fraud."<sup>15</sup> Instead, a variety of crimes involving acts of dishonesty are listed in the general index for the Alaska Statutes under the heading of "fraud."<sup>16</sup> The crime of unsworn falsification in the second degree is part of a sub-category of crimes listed in Title 11 under subject heading of "Perjury and Related Offenses."<sup>17</sup> In the general index to the Alaska Statutes, "perjury" is one of the sub-topics under the term "Fraud"<sup>18</sup> and the term "perjury" in the general index includes a listing for "unsworn falsification generally."<sup>19</sup>

Although Mr. Stone has argued that the crime of unsworn falsification in the second degree is not a "crime of fraud" within the meaning of AS 08.88.071(a), this argument lacks merit. Under AS 11.56.210, the crime of unsworn falsification in the second degree involves a person who submits "a *false written or recorded statement that the person does not believe to be true*" in "an application for a benefit" with the "intent to mislead a public servant in the performance of a duty."<sup>20</sup> The term "fraud" is defined in Black's Law Dictionary as:

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<sup>13</sup> See Smith v. State of Alaska, 790 P.2d 1352, 1353 (Alaska 1990); 2 PIERCE, ADMINISTRATIVE LAW TREATISE § 9.5, 813 (5th ed. 2010).

<sup>14</sup> AS 08.88.071(a)(11)(emphasis added).

<sup>15</sup> See AS 11.16.100 *et seq.*

<sup>16</sup> See General Index, Alaska Statutes (2012), at pp. 526-528.

<sup>17</sup> See AS 11.56.200 – 11.56.240.

<sup>18</sup> See General Index, Alaska Statutes (2012), at pp. 526-528.

<sup>19</sup> See General Index, Alaska Statutes (2012), at pp. 896.

<sup>20</sup> AS 11.56.210.

A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Any kind of artifice employed by one person to deceive another.<sup>21</sup>

Thus, the elements of the crime of unsworn falsification in the second degree squarely fit within the definition of fraud found in Black's Law Dictionary.

The Oxford Dictionary defines the term “welfare fraud” as: “The acquisition of welfare benefits by fraudulent means.”<sup>22</sup> The term “fraud” is also defined in a publication from Alaska’s Department of Health and Human Service (DHSS) as follows:

#### **What is Fraud?**

Fraud is **intentionally** making false statements, misrepresenting facts, or situations to get benefits a person is not eligible to receive.

A person commits fraud if they deliberately:

. . . conceal, misrepresent or withhold eligibility information . . . speak or write false or misleading statements.<sup>23</sup>

Here, Mr. Stone obtained food stamps, ATAP, and Medicaid by failing to report that he had a checking account at Key Bank and misrepresenting his income by failing to disclose he was receiving rent from real estate that he owned.<sup>24</sup> This conduct meets the definition of “fraud” as defined by DHSS, the Alaska State agency that issued the welfare benefits which Mr. Stone received because he misrepresented his income and assets.<sup>25</sup> Thus, Mr. Stone’s conviction for unsworn falsification in the 2<sup>nd</sup> degree is a conviction for “fraud.”

Another case involving the revocation of a real estate salesperson license reached a similar conclusion. In the Matter of Susan Sook Cho, Ms. Cho had a criminal misdemeanor conviction for medical assistance fraud arising out of a “knowingly [made] false entry in or falsely alter[ed] medical assistance record” under AS 47.05.210(a)(5).<sup>26</sup> Such conduct was deemed to constitute “fraud” within the meaning of AS 08.88.071(a), which resulted in granting

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<sup>21</sup> BLACK’S LAW DICTIONARY, 594 (5th ed. 1979).

<sup>22</sup> See <http://www.oxforddictionaries.com/definition/english/welfare-fraud> (last visited Sept. 25, 2015); see also Mitchell v. State, 818 P. 2d 1163, 1164 (Alaska App. 1991) (noting that appellant had been charged with five counts of “**unsworn falsification** based on the **fraudulent** unemployment benefit claims she had submitted to the Department of Labor”) (emphasis added).

<sup>23</sup> *Fraud Control*, DIV. OF PUB. ASSISTANCE, <http://dhss.alaska.gov/dpa/Pages/features/org/fraud.aspx> (last visited Sept. 25, 2015).

<sup>24</sup> See Div. 00178-00182.

<sup>25</sup> See Div. 00177-00182.

<sup>26</sup> See In the Matter of Susan Sook Cho, OAH No. 14-0940 REC (Real Estate Comm’n 2014).

summary adjudication on behalf of the Division along with the concomitant revocation of Ms. Cho's real estate salesperson license. In other words, "fraud" under AS 08.88.071(a)(11) is not a specific crime – since there is no such crime in Alaska – but instead refers to a category of crime that involves conduct which is *fraudulent in nature*.<sup>27</sup>

Thus, Mr. Stone's conviction constitutes "fraud" within the meaning of AS 08.88.071(a), and the Commission is required to revoke his license. Summary adjudication on behalf of the Division is, therefore, warranted.

B. Unsworn Falsification in the Second Degree Involves Obtaining Money Under False Pretenses Under 12 AAC 64.130(5)

There is also another ground for granting the Division's motion for summary adjudication in this case. The Commission can suspend or revoke a license under 12 AAC 64.130(5) if a licensee is "found guilty of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or other similar offenses committed while licensed."<sup>28</sup>

Black's Law Dictionary defines a "false pretense" as follows:

[The] representation of some fact or circumstances which is not true and is calculated to mislead; representation may be implied from conduct or may consist of concealment or nondisclosure where there is a duty to speak, and may consist of any acts, work, symbol or token calculated and intended to deceive.<sup>29</sup>

Mr. Stone has argued that the crime of unsworn falsification is not specifically mentioned in this regulation and thus would fall under the "other similar offenses" language of the regulation. However, there is no crime entitled "obtaining money under false pretenses" in Alaska.<sup>30</sup> Consequently, the regulation cannot be listing a specific crime – no such crime exists under Alaska's criminal statutes – and thus can only be referring to a category of crimes that involve obtaining money through false pretenses.

Here, the record shows that Mr. Stone received \$10,434 in public assistance benefits that he would not otherwise have received but for his unsworn falsification.<sup>31</sup> The judgment imposed

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<sup>27</sup> *Id.*; Cf. In the Matter of John M. Downs, OAH No. 10-0501 REC (Real Estate Comm'n 2011) (failure to disclose an existing debt on an application for a personal home loan was considered sufficient grounds upholding the Commission's decision to deny Mr. Downs' application for a real estate salesperson license because he had committed fraud).

<sup>28</sup> AS 08.88.071(a).

<sup>29</sup> BLACK'S LAW DICTIONARY, 541 (5th ed. 1979).

<sup>30</sup> See generally AS 11.31.100 - AS 11.76.140.

<sup>31</sup> Div. 00025-00027.

upon him the obligation to make restitution as part of his sentence.<sup>32</sup> In other words, Mr. Stone submitted a false statement that he did not believe to be true with intent to mislead a public servant in order to get certain public assistance benefits, he received such benefits, and he was paid public benefits in excess of \$10,000 that he was not entitled to receive. Because such conduct involved “obtaining money by false pretenses,” the Division also can revoke Mr. Stone’s license under 12 AAC 64.130(5).<sup>33</sup> Accordingly, summary adjudication in favor of the Division on these grounds is appropriate.

C. It Is not Necessary to Address Mr. Stone’s Argument on the Validity of 12 AAC 64.130(5)

Respondent has argued that 12 AAC 64.130(5) creates a per se rule that permits the Commission to suspend or revoke a license when there are “similar offenses” that are not one of the crimes specifically named in this regulation. According to respondent, such a rule exceeds the authority granted to the agency in AS 08.88.071(a) to determine if a licensee has committed a crime that, in the judgment of the Commission, affects the ability of that person to practice competently and safely.

Except in very unusual circumstances that are not present here, executive branch decision makers do not have authority to declare a regulation invalid; that is a function solely for the courts. Here, however, Mr. Stone’s argument on the validity of the “similar offenses” clause of 12.AAC 64.130(5) need not be addressed. Under this Order, Mr. Stone’s criminal conviction results in revocation of his license under the revocable offenses specifically identified in AS 08.88.071(a) and 12 AAC 64.130(5). Thus, the “other similar offenses” clause of 12 AAC 64.130(5) does not come into play in this case.

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<sup>32</sup> Div. 00025, 00027.

<sup>33</sup> In light of the conclusion that Mr. Stone’s license must be revoked pursuant to AS 08.88.071(a), there is no need to discuss whether a suspension under 12 AAC 64.130(5) would be an appropriate penalty in this case.

**IV. Conclusion**

For the reasons set forth above, the Division’s Motion for Summary Adjudication is GRANTED. Because Mr. Stone has a 2012 criminal misdemeanor conviction for unsworn falsification in the second degree, the Commission is required to revoke his real estate salesperson’s license under AS 08.88.071(a). This is a mandatory, not a discretionary, revocation. Mr. Stone’s real estate license is, therefore, revoked.

DATED: September 29, 2015.

By: Signed  
Kathleen A. Frederick  
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 2nd day of November, 2015.

By: Signed  
Signature  
  
Nancy Davis  
Name  
  
Chairperson, Real Estate Commission  
Title

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