

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

In the Matter of)
)
AURORA LANDAU)
_____)

OAH No 16-1068-REC
Agency No. 2016-001104

DECISION

I. Introduction

Aurora Landau applied for a real estate salesperson’s license. The Real Estate Commission denied her application because seven years had not passed since she completed probation for her misdemeanor conviction for theft. Ms. Landau requested a hearing to challenge the denial of her application.

Linda Cerro represented Ms. Landau. Assistant Attorney General Harriet Milks represented the Division of Corporations, Business and Professional Licensing (Division). The parties cross-filed motions for summary adjudication.

The Alaska real estate licensing statute, AS 08.88.171(c), contains a time limited bar for real estate salesperson license applicants who have not only felony convictions for theft, but also misdemeanor convictions for theft. The undisputed facts establish that Ms. Landau has a misdemeanor conviction for theft, and that seven years have not elapsed since she completed probation for that conviction. Consequently, she is barred from being licensed as a real estate salesperson. The denial of her application is upheld.

II. Undisputed Facts

Ms. Landau pleaded No Contest to and was convicted of Theft in the Third Degree, a violation of 11.46.140(a)(1), a class A misdemeanor, on September 29, 2010. She was represented by counsel. Ms. Landau was placed on probation for three years. Ms. Landau was 19 years old at the time of the underlying offense, which occurred on January 27, 2009.¹

Ms. Landau applied for a real estate salesperson license on August 9, 2016. She checked the “Yes” box on the application to the question asking if she 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

¹ Agency Record, pp. 15 – 17.

² Agency Record, pp. 7 - 8.

The Executive Administrator for the Real Estate Commission, acting under delegated authority, denied Ms. Landau's application on August 30, 2016, based upon Ms. Landau's prior theft conviction.³

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.⁴

Ms. Landau has a September 29, 2010 misdemeanor conviction for a crime involving theft. Her three-year probation would have been completed at the end of September 2013. If this statute applies to misdemeanor convictions, she will not be eligible to receive a real estate salesperson license until the end of September 2020.

Ms. Landau argues that the phrase "if convicted of such offense" in the statute barring an applicant who is "under indictment for forgery, theft, extortion, conspiracy to defraud creditors, or fraud, or, if convicted of such an offense" refers back to the phrase "under indictment." Her interpretation of the statute is that an applicant is barred from receiving a license if she is either under indictment (meaning a felony charge) for forgery, theft, etc., or if she had a felony conviction for forgery, theft, etc. Accordingly, because Ms. Landau has a misdemeanor conviction for theft, she argues that she is eligible for a real estate salesperson's license. The Division argues that the statute should be read as barring an applicant who has been convicted of one of the specified offenses, regardless of whether the conviction was for a felony or a misdemeanor.

It should be noted that the Commission has previously construed AS 08.88.171(c) as providing a time limited licensure bar for applicants who have misdemeanor convictions for forgery, theft, etc.⁵ However, in each of those cases, the parties were self-represented and did not argue that the licensure bar applied only to felony convictions. Accordingly, this case presents an issue of first impression for the Commission.

³ Affidavit of Sharon J. Walsh; Agency Record, p. 5.

⁴ AS 08.88.171(c).

⁵ *In the Matter of Bauer*, OAH Case No. 14-0429-REC (Real Estate Commission 2014) (available online at <http://aws.state.ak.us/officeofadminhearings/Documents/REC/REC140429.pdf>); *In the Matter of Weber*, OAH Case No. 14-1465-REC (Real Estate Commission 2014) (available online at <http://aws.state.ak.us/officeofadminhearings/Documents/REC/REC141465.pdf>).

In support of her argument, Ms. Landau argues that the statute is ambiguous and that the legislative history supports her interpretation. Alaska courts interpret statutes based on reason, practicality, and common sense, while taking into account the plain meaning of the words used, the purpose of the law, and the intent of the drafters.⁶ Even non-ambiguous language will not be construed in a way that is “plainly unreasonable in light of [the statute’s] intent.”⁷

Ms. Landau’s argument regarding the statute’s ambiguity is based upon a very strained construction of the statute. It would essentially rewrite the statute from barring eligibility to applicants “under indictment for forgery, theft, extortion, conspiracy to defraud creditors, or fraud, or, if convicted of such an offense” to “under indictment for forgery, theft, extortion, conspiracy to defraud creditors, or fraud, or, if convicted of a felony involving forgery, theft, extortion, conspiracy to defraud creditors, or fraud.” The Division’s construction is much more straightforward. It would provide for barring an applicant who is either under indictment for forgery, theft, etc., or who has a conviction for forgery, theft, etc. On its face, the statute does not support Ms. Landau’s interpretation.

The legislature made several changes to the relevant statutes in 2007. In 2006, AS 08.88.171(c) limited eligibility to salesperson applicants who were

not under indictment for forgery, theft, extortion, conspiracy to defraud creditors, or any other felony involving moral turpitude, or if convicted of such an offense, the person has completed the sentence imposed upon conviction.⁸

In 2007, a bill was introduced in the legislature modifying the statutory provision regarding the effect of criminal convictions for salesperson applicants.⁹ There were several committee meetings held on the bill, which included several amendments.¹⁰

The final version of the bill enacted into law is the committee substitute from the House Finance Committee. It changed the language to limit eligibility to salesperson applicants who were

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, or under indictment for forgery, theft, extortion, conspiracy to defraud creditors, or fraud, or, if convicted of such an offense,

⁶ *Young v. Embley*, 143 P.3d 936, 939 (Alaska 2006).

⁷ *Progressive Insurance Co. v. Simmons*, 953 P.2d 410, 517 (Alaska 1998).

⁸ AS 08.88.171(c) (Alaska Statutes 2006).

⁹ House Bill 205 § 3 (25th Alaska Legislature, First Session).

¹⁰ House Labor and Commerce Committee Substitute for House Bill 205 § 6 (25th Alaska Legislature, First Session); House Finance Committee Substitute for House Bill 205 § 6 (25th Alaska Legislature, First Session).

seven years have elapsed since the person completed the sentence imposed upon conviction.¹¹

That same legislation also changed the license application requirements for both brokers and associate brokers.¹² The licensing statute in 2006 limited eligibility to applicants who were

not under indictment for, or seven years have elapsed since the person has completed a sentence imposed upon conviction of forgery, theft, extortion, conspiracy to defraud creditors, or any other felony involving moral turpitude.¹³

The final version of the bill enacted into law limited eligibility for broker and associate broker applicants who were

not under indictment for or seven years have elapsed since the person has completed a sentence imposed upon conviction of a felony or other crime that, in the judgment of the commission, affects the person's ability to practice as a real estate broker competently and safely or upon conviction of forgery, theft, extortion, conspiracy to defraud creditors, or fraud.¹⁴

That same legislation revised the language for revocation of brokers' and associate brokers' licenses. In 2006, the statute provided for revocation of

the license of a broker or associate broker who is convicted of forgery, theft, extortion, conspiracy to defraud creditors, or a felony involving moral turpitude committed while licensed under this chapter; notwithstanding AS 08.88.171, a person whose license is revoked under this paragraph is not qualified for a license under AS 08.88.171(a) or (b) until seven years have elapsed since the person completed the sentence imposed for the conviction.¹⁵

The statute, as passed by legislature, provided for revocation of

the license of a broker or associate broker who 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 broker or associate broker competently and safely or who is convicted of forgery, theft, extortion, conspiracy to defraud creditors, or fraud; notwithstanding AS 08.88.171, a person whose license is revoked under this paragraph is not qualified for a license under AS 08.88.171(a) or (b) until seven years have elapsed since the person completed the sentence imposed for the conviction.¹⁶

¹¹ Alaska Statutes 2007; § 6 ch 51 SLA 2007.

¹² The original bill, House Bill 205, did not address criminal indictments/convictions and broker and associate broker license applications. The House Labor and Commerce Committee substitute and the subsequent House Finance Committee substitute do. See House Labor and Commerce Committee Substitute for House Bill 205 §§ 4 – 5; House Finance Committee Substitute for House Bill 205 §§ 4 – 5.

¹³ Brokers: AS 08.88.171(a) (Alaska Statutes 2006); Associate Brokers 08.88.171(b) (Alaska Statutes 2006).

¹⁴ Brokers: AS 08.88.171(a); Associate Brokers 08.88.171(b). (Alaska Statutes 2007; §§ 4 - 5 ch 51 SLA 2007).

¹⁵ AS 08.88.071(a)(10) (Alaska Statutes 2006).

¹⁶ AS 08.88.071(a)(10) (Alaska Statutes 2007; § 1 ch 51 SLA 2007).

The 2007 legislative history for House Bill 205, as comprehensively pointed out by Ms. Landau in her briefing, is laden with references to felony convictions:

- The sponsor statement for the original bill provides that the proposed legislation would “[e]stablish that a person indicted for a felony involving moral turpitude can not obtain a real estate license until seven years has lapsed since the completion of the sentence.”¹⁷
- In the House Labor and Commerce Committee hearing held on April 13, 2007, the committee substitute was introduced which removed the “moral turpitude” language, and also added the revocation language for broker and associate broker licenses. The transcript of that hearing contains multiple references to felony convictions. There is no reference to the licensing proscriptions also pertaining to misdemeanor convictions.¹⁸
- In the House Finance Committee meeting held on April 18, 2007, the discussions again referred to felony convictions and not misdemeanors. For example, Representative Gara stated “if it’s forgery, theft, extortion, fraud, or conspiracy to defraud, then you do lose your license. For the other felonies, the commission can consider those.”¹⁹
- In the Senate Labor and Commerce Committee hearing held on May 8, 2007, the discussion again centered on felony convictions, with no discussion of whether a misdemeanor conviction would bar an applicant.²⁰

However, these references are not inconsistent with the Division’s reading of AS 08.88.171(c) that temporarily bars an applicant with a misdemeanor theft conviction as well as an applicant with a felony theft conviction from obtaining a real estate salesperson license.

The June 5, 2007 transmittal letter to the governor for the final version of the bill enacted by the legislature, Finance Committee Substitute for House Bill 205, is also part of the relevant legislative history, and it supports the Division’s reading of the statute.²¹ It provides, in relevant part, that:

- Section 1 of the bill expands the list of crimes for which a broker’s or associate broker’s license is revoked to

¹⁷ Applicant’s Motion and Memorandum in Support, Ex. 2.

¹⁸ Transcript of April 13, 2007 House Labor and Commerce Committee meeting (Applicant’s Motion and Memorandum in Support, Ex. 5): Dave Feeken testimony (pp. 24 – 25); Representative Les Gara (pp. 30 – 31).

¹⁹ Transcript of April 18, 2007 House Finance Committee meeting. (Applicant’s Motion and Memorandum in Support, Ex. 5, p. 54).

²⁰ Transcript of May 8, 2007 Senate Labor and Commerce Committee meeting (Applicant’s Motion and Memorandum in Support, Ex. 5, pp. 65 - 66).

²¹ The transmittal letter is not contained in the record. It is attached to this decision as Appendix A.

include a felony or other crime that, in the judgment of the [Real Estate Commission], “affects the ability of that person to practice as a broker or associate broker competently and safely”, as well as a conviction for forgery, theft, extortion, or fraud.²²

- Sections 4 and 5 of the bill similarly expand the types of crimes for which the [Real Estate Commission] may deny a license as a real estate broker or associate broker to include a felony or other crime that, in the judgment of the [Real Estate Commission], affects the ability of that person to practice competently and safely, as well as a conviction for forgery, theft, extortion, or fraud.²³
- Section 6 of the bill changes “the real estate salesperson license requirements in AS 08.88.171(c) regarding disqualifying criminal convictions, consistent with the similar changes in secs. 1, 4, and 5, of the bill.”²⁴

There was a subsequent change to the licensing statutes in 2009. That change is consistent with the Division’s interpretation of AS 08.88.171(c). The revisions made in 2007, which provided for revocation of an existing broker’s or associate broker’s license for conviction of a crime did not provide the Real Estate Commission the ability to revoke a salesperson’s license for conviction of a crime. That omission was rectified and the applicable statute, AS 08.88.071, was amended to provide the Real Estate Commission with the ability to

revoke the license of a broker, associate broker, or real estate salesperson who 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 broker, associate broker, or real estate salesperson competently and safely or who is convicted of forgery, theft, extortion, conspiracy to defraud creditors, or fraud; 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.²⁵

The legislative history for real estate licensing therefore shows that under AS 08.88.171(a) and (b), a broker or associate broker cannot obtain a license when they have a recent conviction for “forgery, theft, extortion, conspiracy to defraud creditors, or fraud.” A broker, associate broker, and salesperson are each subject to mandatory license revocation under AS 08.88.071(a)(11) when they have a recent conviction for “forgery, theft, extortion, conspiracy to defraud creditors, or fraud.” Neither the initial licensing statutes for brokers,

²² Appendix A, p. 1.

²³ Appendix A, p. 2.

²⁴ Appendix A, p. 2.

²⁵ AS 08.88.071(a)(11) (§ 1 ch 54, SLA 2009).

associate brokers, or the revocation statute for brokers, associate brokers, or salespersons, provide that the bar is limited to only felony convictions. Accordingly, these statutes contain a bar for convictions, both felony and misdemeanor, for “forgery, theft, extortion, conspiracy to defraud creditors, or fraud.”

Ms. Landau’s position that AS 08.88.171(c) bars licensure for salespersons with specified felony convictions, but not their misdemeanor equivalents, would lead to two incongruous results:

- Applicants for salesperson’s licenses, who have misdemeanor convictions for theft, etc., could obtain licensure when applicants for broker’s and associate broker’s licenses could not.
- Applicants for salesperson’s licenses, who have misdemeanor convictions for theft, etc., could obtain a license when that exact same conviction, based upon an offense committed while licensed, would lead to a mandatory revocation.

In addition, when Ms. Landau’s argument that the phrase “if convicted of such an offense” necessarily relates back to “under indictment”, contained in AS 08.88.171(c) (“under indictment for forgery, theft, extortion, conspiracy to defraud creditors, or fraud, or, if convicted of such an offense”) is further examined, it would not lead to barring applicants with only felony convictions. It would result in an applicant who has been indicted for a listed felony, who then has a misdemeanor conviction resulting from that felony charge, being barred from licensure. However, a person who only had a misdemeanor conviction without a preceding indictment, would not be barred from licensure.

It therefore follows that Ms. Landau’s position is not persuasive. Her interpretation of AS 08.88.171(c) is strained, and not supported by the statutory scheme. Although the legislative history surrounding the 2007 changes to AS 08.88.171(c) contains numerous references to felony convictions, interpreting the statute as applying only to felony convictions for theft, etc., would lead to incongruous results. The Division’s position that Ms. Landau’s misdemeanor conviction for theft is a time limited bar to her licensure is consistent with the statutory scheme, which provides the following:

- All applicants for real estate licensure, be it for a salesperson’s license, a broker’s license, or an associate broker’s license, are time-barred from licensure if they have a recent conviction, either felony or misdemeanor, for “forgery, theft, extortion, conspiracy to defraud creditors, or fraud.”

- All license holders, be they salespersons, brokers, or associate brokers, are subject to having their licenses mandatorily revoked for a period of time if they have a conviction, based upon an offense committed while licensed, either felony or misdemeanor, for “forgery, theft, extortion, conspiracy to defraud creditors, or fraud.”

This interpretation is consistent with the statements made in the letter transmitting the legislation to the governor for signature.²⁶ Consequently, Ms. Landau is not eligible, pursuant to AS 08.88.171(c), for a real estate salesperson’s license until seven years have elapsed since she completed her sentence for misdemeanor theft.

IV. Conclusion

Ms. Landau is barred from being a real estate salesperson until the end of September 2020. 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 16th day of February, 2017.

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 29 day of March, 2017.

By: Signed
 Signature
Eric M. Bushnell
 Name
Chairman, Real Estate Commission
 Title

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

²⁶ See Appendix A.