

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

In the Matter of)	
)	
DORAN JEFFREY POST)	OAH No. 23-0494-REC
_____)	Agency No. 2022-000970

DECISION

I. Introduction

Doran “Jeff” Post submitted an initial real estate broker application to the Alaska Real Estate Commission (Commission). On June 15, 2023, the Commission denied his application based on its conclusion that he falsely answered one of the questions on the application form. Mr. Post requested a formal hearing, which he received on November 15, 2023.

Based on the evidence presented at the hearing, Mr. Post established by a preponderance of the evidence that he is qualified to receive an Alaska broker license.

II. Facts

Jeff Post is a real estate broker with a lengthy professional history. He received a Nebraska salesperson license in 1996, a Nebraska broker license in 2002, and currently holds active real estate broker licenses in at least 17 different states.

In November 2021 Mr. Post applied for an Alaska real estate broker license by endorsement.¹ The application form he submitted solicits an applicant’s personal information, license history, insurance coverage, and principal occupation statement.² A list of professional fitness questions ask about prior criminal or disciplinary history, with the heading, “When in doubt, disclose or explain.” Applicants are directed to include an explanation and supporting documentation for any “yes” response.

Mr. Post answered “yes” to the question, “Have you ever been convicted of a crime or are you currently charged with committing a crime?” He attached court documents stemming from Driving Under the Influence charges out of Nebraska and Colorado between 1992 and 2005.

Mr. Post also provided requested documentation regarding the completion of education requirements, requisite insurance, and a copy of his passing score on the Alaska broker exam.

¹ Pursuant to AS 08.88.263, an “application by endorsement” waives some of the licensing requirements for an out of state applicant with a valid active real estate license.

² Ex. 6.

Additionally, he enclosed a copy of a May 22, 2020 letter sent to Mr. Post from an investigator with the Missouri Real Estate Commission.³ The letter states in relevant part,

This office recently received your application for a broker officer license. You answered "No" to question 4-12 on the application which asks, "Have you ever had a real estate application denied or your real estate license suspended, revoked, placed on probation, or otherwise disciplined in Missouri or any other state?"

The certification of licensure from Iowa indicated you were fined twice for failure to maintain Errors and Omissions Insurance. In case number 11-158 you were fined a civil penalty of \$1,000 on June 17, 2011. In case number 14-059 you were fined a civil penalty of \$2,000 on April 23, 2014.

Mr. Post did not provide any additional documents regarding being fined in Iowa, nor information about how the concerns raised by the Missouri Real Estate Commission resolved. He answered "No" to the professional fitness question, "Have you ever had a real estate license revoked, denied, suspended, surrendered, placed on probation or subject to any restriction, censure, reprimand or any other disciplinary or license action?"⁴ He also signed his application, affirming that he understood that any misrepresentations in the application could result in the denial of a license to practice in Alaska.⁵

The Alaska Department of Commerce, Community and Economic Development, Division of Professional Licensing (Division) performs administrative services for multiple state entities, including the Real Estate Commission.⁶ These services include processing applications, investigating possible fraud, and making licensing recommendations to the Commission.⁷ Generally, applications that indicate licensing requirements have been met are processed and recommended for approval, unless a concern triggers additional review. As the letter Mr. Post submitted from the Missouri Real Estate Commission suggested his "No" response to the professional fitness question about prior discipline was false, his application was referred for investigation.

On October 5, 2022, Division Investigator Anna Gabriel sent Mr. Post a Notice of Complaint directing him to provide a copy of any disciplinary action by the Iowa Real Estate Commission, and an explanation of the circumstances of the matter.⁸ Mr. Post immediately

³ Ex. 3.

⁴ Ex. 6.

⁵ Record 158.

⁶ AAC 08.01.050.

⁷ AS 08.88.

⁸ R. 200.

responded by sending Ms. Gabriel an email apologizing for having misread the professional fitness question and acknowledging prior disciplinary action in Iowa in 2011 and 2014. He provided documentation of the following matters:

1. In June 2011 Mr. Post signed an Informal Consent Agreement with the Iowa Real Estate Commission stating that a random audit revealed that he was not carrying the mandatory Errors and Omissions Insurance. This issue resolved with his agreeing to pay a civil penalty of \$1000.⁹
2. In 2014 another random audit by the Iowa Commission showed that Mr. Post was again out of compliance. He did not contest the allegation of failing to carry Errors and Omissions Insurance and signed a settlement agreement imposing a \$2000 fine.
3. Regarding the Missouri Real Estate Commission's concerns about his not disclosing the 2011 and 2014 Iowa disciplinary actions, that issue was resolved without disciplinary action, and Mr. Post was issued a Missouri real estate broker license.¹⁰

After Ms. Gabriel received these additional records she included them in a file with his original application. She drafted a memo outlining her investigation and the alleged violations under 12 AAC 64.160(a) and AS 08.88.401(f)(2), both of which address making a false or misleading statement to the Commission. Additionally, Ms. Gabriel identified resolutions reached in five cases involving similar violations brought before the Commission within the prior six years. In three of those cases, the Commission imposed a \$250 fine; in the fourth, the Commission imposed a year of probation and 2 additional hours of continuing education; the final case was closed by a Letter of Advisement. Pursuant to 12 AAC 64.059, Ms. Gabriel provided the complete file to a Commission member for additional review.

After receiving approval from the reviewing Commission member, the Division negotiated a consent agreement with Mr. Post that granted him a broker license, but with imposed sanctions. The terms included a probationary period of one year, 2 hours of continuing education on Disclosure, and the imposition of a \$250 civil fine.¹¹ Mr. Post signed the agreement on March 1, 2023.

On June 15, 2023, the Commission met for its quarterly meeting. It voted to reject the proposed consent agreement and deny Mr. Post's broker application. The Commission

⁹ R. 222-225.

¹⁰ R. 242-243.

¹¹ R. 318-323.

reconvened on July 27, 2023 to determine if members wanted to reconsider the application denial. The Commission elected to let its original decision stand.

III. Procedural History

On July 28, 2023, the Commission’s Executive Administrator notified Mr. Post that the Commission had denied his broker application for failing to disclose prior disciplinary action in Iowa. The letter explained that under the Administrative Procedure Act he had a right to request a hearing to challenge the denial. On August 8, 2023, Mr. Post filed the requisite Notice of Defense soliciting a hearing, and this matter was referred to the Office of Administrative Hearings and assigned an administrative law judge. The hearing was held via Zoom on November 15, 2023. Nancy Harris, Executive Administrator of the Real Estate Commission, and Anna Gabriel, Investigator for the Division of Professional Licensing, testified for the Division. Mr. Post represented himself and testified on his own behalf.

IV. Discussion

Proceedings before the Alaska Real Estate Commission are subject to AS 44.62, the Administrative Procedure Act (APA).¹² Because he was initially denied licensure, Mr. Post has the burden of proving by a preponderance of the evidence that he should receive a broker license.¹³ To prove something by a preponderance of the evidence is to establish that it is more likely than not true, or that there is a greater than fifty percent chance it is true.¹⁴

A. Applicable Law

The Alaska Real Estate Commission was created by the legislature to oversee the practice of real estate in Alaska.¹⁵ It is tasked with protecting the public from fraud by enforcing established industry standards.¹⁶ The Commission is empowered to make final licensing decisions and take disciplinary action against those who violate licensing laws.¹⁷ Real estate licensees and applicants are subject to both the Commission’s regulations, as well as the Alaska statutes governing businesses and professions.¹⁸

There is no dispute that Mr. Post incorrectly answered a professional fitness question on his broker application. Under the Commission’s regulations that specifically address “prohibited

¹² AS 08.01.090.

¹³ AS 44.62.460(e)(2).

¹⁴ See *Dairy Queen of Fairbanks, Inc. v. Travelers Indemnity Co. of America*, 748 P.2d 1169, 1170-72 (Alaska 1988).

¹⁵ AS 08.88.071.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ AS 08.88, 12 AAC 64.

conduct” within the profession, 12 AAC 64.160 provides that “[m]aking any false . . . representation or material misstatement on an application for a license . . . is grounds for denial of a license.” The parallel real estate licensing statute, AS 8.08.401(f)(2), states that a person may not “give false or forged evidence to the commission or to a representative of the commission in an attempt to obtain a license[.]”

The first issue before the Commission, therefore, is whether his answer constitutes a violation of the applicable law regarding conduct standards. It is important to note that in making this decision, the Commission has broad discretion in how it handles the issue.¹⁹ While the Commission has observed that “even an innocent ‘false representation’ or ‘material misstatement’ meets the regulation’s standard,”²⁰ every application presents a unique set of circumstances.²¹ If it is determined a violation occurred, the error may be evaluated within the context of the situation, and the Commission can weigh the degree of innocence, negligence, or outright deception behind the untrue answer.²²

The second issue presented is how to address a confirmed misstatement in the context of a pending license application. The Commission could approve the license, approve the license with conditions, or deny the application.²³ If the conditions involve imposing a sanction, the Commission still has discretionary authority, but is obligated to seek consistency in the imposition of disciplinary measures.²⁴

B. Mr. Post’s license application

a. His false statement within context

Mr. Post responded “No” to a single application question about whether he had been previously disciplined, which was false. He was fined for violations in Iowa in 2011 and 2014. As the entity tasked with governing real estate professionals in Alaska, the Commission clearly has a significant interest in ensuring that real estate salespeople and brokers are honest and forthright. It is of no surprise, therefore, that the relevant real estate regulation is unambiguous regarding “[m]aking any false . . . representation or material misstatement on an application for a license ..[.]”²⁵

¹⁹ See AS 08.88.071.

²⁰ *In re Moser*, OAH No. 04-0294-REC (AREC 2005).

²¹ The memo Investigator Gabriel provided the Commission member who reviewed Mr. Post’s application also referenced the sanctions imposed in five prior licensing decisions for consideration.

²² *In re Scott*, OAH No. 10-0496-REC (AREC 2010).

²³ AS 08.88.071.

²⁴ AS 08.01.075(f).

²⁵ 12 AAC 64.160.

However, while Mr. Post answered the prior discipline question falsely, he provided with his application a copy of the 2020 letter from the Missouri Real Estate Commission (MREC) that referenced the 2011 and 2014 discipline matters. Therefore, although his inaccurate application response may demonstrate disappointing carelessness - an undeniably concerning trait for a broker - the inclusion of the letter indicates that he was not trying to hide the fact that he had been disciplined. Additionally, the letter effectively provided the discipline history being solicited by the Commission. The Alaska Supreme Court has repeatedly rejected the strict application of procedural requirements if the result elevates form over substance, frustrating the clear intent of the process.²⁶ Focusing solely on the ticked boxes on the application, not the application as a whole, is an example of missing the objective of ascertaining the truthfulness of applicants and obtaining discipline history.

Furthermore, under the related real estate licensing statute, a person may not “give false or forged evidence to the commission or to a representative of the commission in an attempt to obtain a license[.]” Had Mr. Post failed to include the 2020 letter from MREC, potentially being deceptive about prior disciplinary history would be plausible. But marking the application box “no,” and then providing documentation of the 2011 and 2014 violations resulted in a lengthy investigation and contributed to the considerable delay in processing his 2021 license application. Given that his conduct as a whole could only result in confusion and delay, even if Mr. Post’s wrong answer were considered “false or forged evidence,” it was not done “in an attempt to obtain a license.”

b. An “unintentional mistake” under the law

The Commission’s approach to a misrepresentation on an application is one of intolerance, and this stance is firmly supported by the plain language of the guiding regulation and statute. However, people make mistakes.²⁷ When evaluating contracts that similarly leave no room for oversights, the courts have long recognized “scrivener’s errors.”²⁸ These are unintentional mistakes that can often occur when drafting, preparing, revising or editing a document, described

²⁶ *Laidlaw Transit, Inc., v. Anchorage School District and First Student Inc.*, 118 P.3d 1018, Supreme Court of Alaska, 2005, *Native Village of Tununak v. State, Dept. of Health & Social Services, Office of Children's Services*, 334 P.3d 165(Alaska 2014), *Vernon Solomon v. Interior Regional Housing Authority*, 140 P.3d 882 (Alaska 2006).

²⁷ In the July 28, 2023 Statement of Issues, Executive Administrator Nancy Harris advised Mr. Post that the Commission had denied his license application due to “prior disciplinary action with the Iowa Real Estate Commission in 2020 that was not reported...” R. 2. In truth, his Iowa disciplinary actions occurred in 2011 and 2014.

²⁸ 6 PETER LINZER, CORBIN ON CONTRACTS § 25:19, at 270 (2010) (describing a scrivener's error as “a typing or computation error that no one noticed”).

as “difficult to prevent.”²⁹ Of more significance, the courts have observed that “no useful societal purpose is served by enforcing . . . mistaken term[s.]”³⁰

Executive Administrator Harris and Investigator Gabriel both testified very candidly at the hearing about their interactions with Mr. Post throughout the investigation. Ms. Gabriel described contacting Mr. Post, and his immediate and apologetic response to her questions regarding sanctions in Iowa.³¹ She reported that he was very responsive and provided additional documentation she requested very promptly.³² Both women represented that Mr. Post was consistently cooperative with the investigation.³³ Additionally, Mr. Post credibly testified on his own behalf and took full responsibility for answering the professional fitness question incorrectly.³⁴ He explained that he had simply filled out the form too quickly, did not read the question correctly, and called the misrepresentation a “horribly unfortunate mistake.” He expressed his sincere remorse for the error.

In contrast, in other matters that have come before the Commission that have resulted in sanctions or the denial of a license, applicants deliberately and deceptively omitted information on their applications. This has included knowingly failing to disclose an ongoing fraud lawsuit or prior criminal conviction, and outright lying about ever having previously held a license.³⁵ Mr. Post takes complete ownership of his mistake, lending credence to the argument that his was a “scrivener’s error,” not a reflection of his potential dishonesty as a practitioner.

In short, here we do not have a “material misrepresentation” or an “innocent false representation.” We have an application that, taken as a whole, informs us that the applicant was disciplined in another state.

V. Conclusion

Doran “Jeff” Post unintentionally ticked “no” in answer to a professional fitness question about prior discipline on his broker license application. This is evidenced by a letter he included with his application informing the Commission of his prior disciplinary actions. Viewed as a whole, therefore, his application successfully fulfills the overarching objective of the professional

²⁹ *S.T.S. Transp. Serv., Inc. v. Volvo White Truck Corp.*, 766 F.2d 1089, 1093 (7th Cir. 1985); *see also Tiger Fibers, LLC v. Aspen Specialty Ins. Co.*, 594 F. Supp. 2d 630, 641 (E.D. Va. 2009).

³⁰ *Id.*

³¹ Gabriel test.

³² *Id.*

³³ Harris and Gabriel test.

³⁴ Post test.

³⁵ *In re Keating & Griebel*, OAH No. 10-0474-REC, 10-0475-REC, (AREC 2011) *In re Bauer*, OAH Case No. 14-0429-REC (AREC 2014), *In re Downs*, OAH No. 10-0501-REC (AREC 2011).

fitness question, which is to ascertain an applicant's historical discipline record. Denying his application based on a scrivener's error would serve no useful purpose in protecting the public from fraudulent practitioners.

In all other respects, Mr. Post proved that he met the qualifications for award of a real estate broker license. Therefore, the Commission grants him an Alaska broker license.

DATED: December 15, 2023.

By: [signature redacted for publication]

Danika B. Swanson
Administrative Law Judge

Adoption

The 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 distribution of this decision.

DATED this 1 day of February, 2024.

By:  _____
Signature

Traci Heaton

Name

Vice Chair of the Real Estate Commission

Title