

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Real Estate
Salesperson License of Darryl E. Rozelle

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above-entitled matter came before Administrative Law Judge Barbara Case for a hearing on August 2, 2016. The record closed on August 2, 2016.

John R. Mulé, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Darryl E. Rozelle (Respondent) did not appear at the hearing.

STATEMENT OF THE ISSUES

1. Did Respondent provide material misstatements in his application for a real estate salesperson license in violation of Minn. Stat. §§ 82.81, subd. 12(b)(5); .82, subd. 1(a) (2016)?
2. Did Respondent provide false, misleading, or incomplete information to the Department in violation of Minn. Stat. § 45.027, subd. 7(4) (2016)?
3. Has respondent shown that he is incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. §§ 45.027, subd. 7(4); 82.82, subd. 1(f) (2016)?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge finds that the Department established by a preponderance of the evidence that Respondent made misstatements in his application for a real estate salesperson license, provided false, misleading, or incomplete information to the Department and showed himself to be incompetent, untrustworthy or financially irresponsible.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 2, 2015, the Department served Respondent with an Order to Show Cause.¹
2. The Order to Show Cause imposed the following sanctions;
 - a. Revocation of Respondent's real estate salesperson license, no. 40026086; and,
 - b. Imposition of a \$10,000 civil penalty against Respondent, with \$7,000 stayed, provided that if Respondent applied for a real estate salesperson license, the stayed amount will become immediately due and payable.²
3. Respondent currently holds real estate salesperson license, n.o. 40026086, which was issued by the Department on May 1, 2007.³
4. In October 2010 and November 2012, Respondent filed renewal applications for Respondent's license. On each application Respondent answered "No" to the question: "[h]ave you or any business in which you were an owner, partner, officer or director, or member or manager of limited liability company ever been involved in an administrative proceeding regarding any professional or occupational license, or registration?"⁴
5. Respondent was the subject of a licensing order issued by the Department of Labor and Industry (DLI) on June 21, 2010, related to Respondent's contracting work. DLI issued the licensing order to Darryl Evan Rozelle, individually, and d/b/a Dovetail Construction a/k/a Dovetail Construction.⁵
6. DLI found that Respondent misrepresented his licensure status, claimed other individuals' and entities' credentials as his own, and failed to complete work as promised. According to DLI's order:
 - a. In 2009, Respondent applied to DLI for a residential building contractor license, prior to which Respondent never held a residential building contractor license.
 - b. In reviewing Respondent's application, DLI discovered that Respondent represented on Respondent's website that he built and remodeled homes for clients. Respondent used the names Dovetail Construction and Dovetail Construction on the website.

¹ Order to Show Cause attached to Notice and Order for Hearing (Apr. 4, 2016).

² *Id.*

³ Exhibit (Ex.) 2.

⁴ Ex. 3; Testimony (Test.) of Timothy Knautz.

⁵ Ex. 1; Test. of Wayne G. Gartland.

- c. Dovetail Construction was a business operated by different individual, who unlike Respondent, was a licensed contractor. That licensed contractor maintained an assumed name certificate for Dovetail Construction with the secretary of state.
- d. Similarly, Respondent claimed on a different website he was a licensed contractor and owner of "Property Preservation Specialists." Property Preservation Specialists was the assumed name of a mortgage corporation that was not licensed as a residential contractor with DLI.
- e. Respondent submitted a building permit application to the City of Orono, on which Respondent listed himself as the contact person for "Dovetail Carp" with a DLI license No. 2365381. The license was held by a different individual, R.K., a sole proprietor d/b/a Dovetail Carpentry, who did not engage in construction on the subject property or try to obtain a permit.
- f. Respondent contracted to remodel a kitchen at a home on Baker Street in St. Paul before obtaining a DLI license. Respondent collected \$9,886 from the homeowner, but never completed the job.
- g. Respondent contracted to remodel a home on Fuller Avenue in St. Paul before obtaining a DLI license. Respondent promised to obtain a permit and collected \$3,145 from the homeowner, but never obtained a permit.
- h. Respondent failed to respond to DLI's request for information during the investigation.⁶

7. Based on these facts, DLI concluded in the licensing order that Respondent committed multiple legal violations; denied Respondent's application for the license; ordered Respondent to cease and desist from acting or holding himself out as a residential building contractor, remodeler, or roofer; and imposed a \$5,000 civil penalty against Respondent.⁷

8. Respondent did not respond to DLI's licensing order and therefore, the order became final and the civil penalty became due and owing.⁸

9. DLI reduced the civil penalty to judgment in Ramsey County (file no. 62-CV-11- 4435) and Carver County (file no. IO-CV-12-868).⁹

⁶ Ex. 1.

⁷ *Id.*

⁸ Exs. 1, 5.

⁹ Ex. 5.

10. In addition to the civil penalty, Respondent has the following outstanding judgments:

- a. *Star Tribune v. Rozelle*, \$2,231.43, May 21, 2004 (Carver County file no.10-CV-04-499)
- b. *Ford Motor Credit Co. v. Rozelle*, \$5,646.59, Sept. 8, 2006 (Carver County file no. 10-CV-06-909)
- c. *Market Street Station LLC v. Rozelle*, \$14,504, Feb. 27, 2007 (Carver County file no. 10-CV-07-156)
- d. *Arrow Building Center v. Rozelle*, \$3,716.18, Nov. 23, 2010 (Washington County file no. 82-C0-10-871; Carver County file no. 82-CV-10-7481)
- e. *Baker Vicchiollo Law LLC v. Rozelle*, \$6,187.55, Mar. 1, 2013 (Carver County file nos. 10-C0-12-499, 10-CV-13-166)¹⁰

11. Any finding of fact herein which should be deemed a conclusion of law is hereby adopted as such.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Department and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 45.027, subds, 6, 7, 11; 82.82; 14.50 (2016).

2. The Department timely served Respondent with a Notice of Hearing pursuant to Minn. Stat. § 14.50.

3. Respondent received due, proper, and timely notice of the charges against him and of the time and place of hearing. Therefore, this matter is properly before the Commissioner of the Department of Commerce (Commissioner) and the Administrative Law Judge.

4. The Department has complied with all substantive and procedural requirements of rule and law.

5. The Department must prove by a preponderance of the evidence that the alleged violations occurred.¹¹

¹⁰ Ex. 5.

¹¹ Minn. R. 1400.7300, subp. 5 (2015).

6. The Department may, by order, deny, suspend, or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the Commissioner if the Department “finds that the person has provided false, misleading, or incomplete information to the commissioner...”¹²

7. By failing to disclose DLI’s licensing investigation and order on two renewal applications, Respondent provided false, misleading, or incomplete information to the Department in violation of Minn. Stat. § 45.027, subd. 7(3).

8. The Department may, by order, deny, suspend, or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the Commissioner if the Department finds that “the person has engaged in an act or practice, whether or not the act or practice directly involved the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority of license granted by the commissioner.”¹³

9. By engaging in unlicensed contracting, fraudulently applying for a construction permit, and failing to complete contracting work, Respondent has shown that Respondent is incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 45.027, subd. 7(4).

10. Revocation of Respondent’s real estate salesperson license and imposition of a \$10,000 civil penalty are appropriate sanctions in this case.

11. This order is in the public interest.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Findings of Fact and Conclusions of Law, the Administrative Law Judge recommends that the Commissioner revoke the real estate salesperson license of the Respondent and take other appropriate disciplinary action.

Dated: August 17, 2016



BARBARA J. CASE
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

¹² Minn. Stat. § 45.027, subd. 7(a)(3).

¹³ Minn. Stat. § 45.027, subd. 7(a)(4).

NOTICE

This report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2016), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner, Department of Commerce, Attn: Melissa Knoepfler, Suite 500, 85 Seventh Place East, St. Paul, MN 55101, (651) 296-2715, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2016) In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1 (2016), the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

This case has just one issue: whether the Department has proven by a preponderance of the evidence that the Respondent committed acts which give the Department a sufficient basis for revoking the real estate salesperson license of the Respondent and to take other appropriate disciplinary action. Respondent did not appear at the hearing.

Although Respondent did not appear, the Department put in its exhibits and called as witnesses an investigator with the Department and an investigator with DLI. Both witnesses were professional and credible. Through its exhibits and witnesses the Department proved by a preponderance of the evidence that Respondent has violated various laws pertaining to real estate salespersons. The Department correctly notes that because Respondent procured a real estate salesperson license by providing false information he is untrustworthy. Therefore, respondent should not be licensed to assist consumers in making what is likely to be one of the largest purchases of their lives.

Respondent misrepresented his credentials as a licensed contractor to a number of homeowners and compounded that violation of law by failing to complete work for the homeowners. He then failed to disclose these violations and subsequent judgements to the Department when reapplying for his real estate license. On the basis of the Respondent's actions, the Administrative Law Judge finds that the sanctions, both the

license revocation and the fine, sought by the Department are reasonable and commensurate to the violations Respondent committed.

B. J. C.