

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

In the Matter of the Real Estate
Salesperson License Application of
Darrell Christopher Bland

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on November 4, 2005. The OAH record closed at the conclusion of the hearing.

Michael J. Tostengard, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce (Department).

The Respondent, Darrell C. Bland, 4215 Second Avenue South, Minneapolis, MN 55409, appeared on his own behalf without counsel.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days.¹ An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

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 (2004). 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 the Administrative Law Judge of the date on which the record closes.

¹ Unless otherwise noted, all references to Minnesota Statutes are to the 2004 edition and all references to Minnesota Rules are to the 2005 edition.

STATEMENT OF ISSUES

1. Did the Respondent engage in acts or practices demonstrating that he is untrustworthy and unqualified to receive a real estate salesperson license pursuant to Minn. Stat. § 45.027, subd. 7(a) (4)?

2. Did the Respondent engage in fraudulent, deceptive, or dishonest practices that would preclude him from receiving a real estate salesperson license pursuant to Minn. Stat. § 82.35 subd. 1(b)?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent is a 34-year-old man who worked for Burlington Northern Railway from 1993-2000 in Alabama. When he left Burlington Northern in 2000, he was a journeyman mechanic. Shortly thereafter he began working for Target Corp. in Minneapolis.²

2. After an investigation into the disappearance of laptop computers from a storage room at Target where the Respondent worked, the police discovered that the Respondent had pawned the computers at various pawnshops in Minneapolis and St. Paul. The Respondent subsequently admitted to taking more than ten laptop computers, valued in excess of \$45,000.00, from the storage room. In October 2001 he was charged with felony theft in violation of Minn. Stat. § 609.52, subd. 2(1) & 3(2).³

3. On February 21, 2002, the Respondent pleaded guilty to the offense as charged. He served 150 days in jail, was placed on probation for five years, and ordered to pay restitution in the amount of \$14,400.⁴ The Respondent served his sentence and has since complied with all conditions of probation. He has made payments of approximately \$4,000 toward his restitution obligation, which his probation officer considers to be at an appropriate rate and in compliance with his earnings and obligations. Upon release from probation, the felony conviction will be reduced to a misdemeanor.⁵

4. The Respondent has taken responsibility for his actions and maintains he has learned from his mistakes. He has been employed full-time at the Ford Motor Company Twin Cities Assembly plant since May 2002; he has enrolled in the National American University in Brooklyn Center; and he is close to completing his Bachelor of Science degree there in Applied Management. The Respondent provided favorable references from his employer and his student advisor, who strongly support his efforts to make a better life for himself.⁶ The

² Testimony of Darrell Bland.

³ Ex. 2.

⁴ Ex. 2.

⁵ Ex. 3.

⁶ Exs. 4 & 5.

Respondent has completed three 30-credit courses in real estate licensing and passed two examinations concerning state requirements for real estate sales.⁷

5. On July 15, 2005, the Respondent applied for a license to be a real estate salesperson. He disclosed his criminal record on the application.⁸

6. After reviewing the materials submitted by the Respondent, the Department determined that because of the Respondent's recent felony theft conviction, and because he is still on probation, he should not be licensed as a real estate salesperson.⁹

7. On October 3, 2005, the Commissioner of Commerce issued an Order Denying License, Statement of Charges, and Notice of Hearing. The Notice of Hearing provides that the Department initiated this action to determine whether Respondent violated Minn. Stat. §§ 45.027, subd. 7(4) and 82.35, subd. 1(b), and ordered the Respondent to show cause why his application for a real estate salesperson license should not be denied.

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 45.027, subd. 7, 82.35 and 14.50 (2004).

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural requirements.

4. The Commissioner may deny a real estate salesperson license if the applicant has engaged in an act or practice, whether or not the act or practice directly involves the business 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 or license granted by the commissioner.¹⁰

5. The Commissioner may deny real estate salesperson license upon finding that the applicant has engaged in deceptive or dishonest acts that demonstrate untrustworthiness.¹¹

⁷ Ex. 1.

⁸ Ex. 1.

⁹ Testimony of Cheryl Costello.

¹⁰ Minn. Stat. § 45.027, subd. 7(a)(4).

¹¹ Minn. Stat. § 82.35, subd. 1(b).

6. The Respondent's recent felony conviction for theft establishes that the Respondent has engaged in deceptive or dishonest acts that demonstrate untrustworthiness pursuant to Minn. Stat. §§ 82.35, subd. 1(b); and 45.027, subd. 7(a) (4).

7. An Order denying the Respondent's real estate salesperson license application would be in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Commerce deny Respondent's application for a real estate salesperson license.

Dated this 29th day of November, 2005.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape recorded (one tape)

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency 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

The Respondent argues that the passage of time since his conviction and the fact that he has remained law-abiding since then make licensure appropriate despite his conviction. The Respondent also emphasizes that he has taken full responsibility for the mistake he made. Although the Respondent has made commendable efforts to establish a history of trustworthiness and fitness to perform licensed duties during the last three years, he is still completing his probationary term. The Department indicated that upon completion of probation and payment of the restitution obligation, the Department might reach a different conclusion regarding his rehabilitation and fitness for licensure.

The Department's analysis is consistent with Minn. Stat. § 364.03, subd. 1, which provides that notwithstanding any other statutory provision to the contrary, "no person shall be . . . disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to the . . . occupation for which the license is

sought.”¹² In determining whether a conviction directly relates to the occupation for which the license is sought, the licensing authority must consider the following factors:

- (a) the nature and seriousness of the crime or crimes for which the individual was convicted;
- (b) the relationship of the crime or crimes to the purposes of regulating . . . the occupation for which the license is sought;
- (c) the relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the . . . occupation.¹³

The crime of theft for which the Respondent was convicted was a substantial theft from his employer and was an abuse of a position of trust. A licensed real estate sales person is in a similar position of trust because he or she has access to the unoccupied homes of sellers and handles client funds. Assuming Minn. Stat. § 364.03 to be applicable here, the Department has demonstrated that the Respondent’s theft conviction directly relates to licensure as a real estate sales person.

A person who has been convicted of a crime that directly relates to the occupation for which a license is sought shall not be disqualified from the occupation if the person can show “competent evidence of sufficient rehabilitation and present fitness to perform the duties of the . . . occupation for which the license is sought.”¹⁴ Sufficient evidence of rehabilitation may be established, in relevant part, by producing a copy of the local, state, or federal release order and evidence showing that at least one year has elapsed since release without subsequent criminal conviction and compliance with all terms and conditions of probation or parole, or a copy of the discharge order or other documents showing completion of probation or parole supervision.¹⁵

Respondent has not yet completed his term of probation and is still subject to supervision by a probation agent; nor has he satisfied his restitution obligation. Accordingly, the Respondent could not demonstrate sufficient evidence of rehabilitation and present fitness to perform the duties of a licensed real estate salesperson.

K.D.S.

¹² Although its analysis is similar, the Department contends based on Minn. Stat. § 45.027, subd. 10, that Chapter 364 does not apply here because the underlying conduct on which the conviction is based is grounds for denial of the license.

¹³ Minn. Stat. § 364.03, subd. 2.

¹⁴ Minn. Stat. § 364.03, subd. 3.

¹⁵ Minn. Stat. § 364.03, subd. 3(a)-(c).