

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

In the Matter of Larry Charles Smith

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

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on Thursday, September 27, 2007, at 9:30 a.m. at the Office of Administrative Hearings in St. Paul, Minnesota. The OAH record remained open until November 28, 2007, to permit Mr. Smith the opportunity to submit additional information. Mr. Smith submitted no further information, and the OAH record closed on November 28, 2007.

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

Larry C. Smith, 4217 28<sup>th</sup> Avenue South, Apt. 2, Minneapolis, MN 55406, ("Applicant") appeared on his own behalf with assistance from Ronald A. Edwards, P.O. Box 11363, Minneapolis, MN 55411.

**STATEMENT OF ISSUES**

The issue in this case is whether the Department's denial of the Respondent's application for a real estate salesperson's license should be affirmed because the Respondent has:

(1) demonstrated that he is untrustworthy and unqualified to hold a real estate salesperson's license pursuant to Minn. Stat. §§ 45.027, subd. 7(4) and 82.35, subd. 1(b); and

(2) provided the Department with false or misleading information on his licensing application in violation of Minn. Stat. §§ 45.027, subd. 7(a)(3).

The Administrative Law Judge recommends that the denial of the Respondent's license application be affirmed.

Based on the proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. The Respondent, Larry Charles Smith, applied to the Department of Commerce for a real estate salesperson license on October 11, 2006, after completing a real estate licensing course and passing the examinations required by the State.<sup>1</sup>

2. As part of the license application, applicants are required to be “affiliated with” a licensed real estate company, and a broker for that real estate company must certify on the application that upon issuance of the license, the applicant will be affiliated with and licensed by that real estate company. Respondent indicated on his application that he was affiliated with “Realty Executives Advantage Plus Group” in Minneapolis, and Halisi Edwards Staten certified that she was an authorized broker for the company and that upon issuance of the license, the Respondent would be affiliated with the company.<sup>2</sup>

3. On the license application, the Respondent also checked “yes” in response to the question: “Have you ever been charged, indicted, pleaded to, or convicted of a criminal offense in any State or Federal Court?”<sup>3</sup> The application instructed applicants to “include any felony, gross misdemeanors or misdemeanors,” except misdemeanor traffic violations, and to attach copies of documents regarding the criminal offenses. The Respondent submitted copies of documents relating to his 1996 criminal conviction in federal court with his application.<sup>4</sup>

4. On November 1, 1996, Respondent pled guilty to one felony count of conspiracy to distribute cocaine in federal district court in Minnesota. The Respondent was sentenced to 10 years in federal prison and 8 years of supervised release (probation). The Respondent served his sentence, and is currently on supervised release until May 21, 2012. As part of his probation, the Respondent is subject to random urinalysis.<sup>5</sup>

5. In addition to the documents he submitted with his application, the Respondent also submitted a letter of explanation to the Department. In the letter, the Respondent stated that he had been convicted of conspiracy to distribute narcotics and that he had spent over a decade of his life in prison for “bad decisions.” However, he explained that, while in prison, he made a commitment to change his life and began taking coursework and studying the real estate business. The Respondent urged the Department to grant his license and allow him to the opportunity to pursue a career in real estate.<sup>6</sup>

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<sup>1</sup> Ex. 1; Testimony of Larry Smith.

<sup>2</sup> Ex. 1; Testimony of Smith.

<sup>3</sup> Ex. 1 at 2.

<sup>4</sup> Exs. 2, 3 and 4.

<sup>5</sup> Exs. 2-6.

<sup>6</sup> Ex. 1.

6. Patricia Stock, senior investigator with the Department, reviewed the Respondent's application and documentation relating to his 1996 conviction, and determined that the Respondent's application should be denied. Ms. Stock based her decision on Respondent's 1996 felony conviction and the fact that he will remain on supervised release until at least 2012.<sup>7</sup>

7. By letter dated October 18, 2007, Ms. Stock notified the Respondent of the Department's recommendation to deny his license application. Ms. Stock further informed the Respondent of his right to request a contested case hearing before an Administrative Law Judge. Ms. Stock copied the letter to Halisi Edwards Staten of Realty Executive Advantage Plus Group.<sup>8</sup>

8. Prior to receiving Ms. Stock's letter, the Respondent was notified by an employee of Realty Executive Advantage Plus Group that his license application had been denied.<sup>9</sup>

9. The Respondent appealed the Department's decision to deny his license application and requested a hearing.

10. Sometime in February of 2007, Ms. Stock contacted the Respondent's federal probation officer, David Schwab, to obtain more information about the Respondent's 1996 conviction. During this conversation, Mr. Schwab informed Ms. Stock that the Respondent had a 1991 conviction in New Jersey for possession of cocaine with intent to distribute.<sup>10</sup>

11. By letter dated March 6, 2007, Ms. Stock asked the Respondent to provide her with information regarding his 1991 conviction and any other criminal offenses.<sup>11</sup>

12. On March 15, 2007, the Department received a letter from the Respondent in which he acknowledged his 1991 conviction for possession of cocaine with intent to sell. The Respondent attached to the letter his judgment of conviction, pre-sentence report, and parole board termination certificate. According to this documentation, the Respondent pled guilty in New Jersey Superior Court to one felony count of possession of cocaine with intent to distribute on April 16, 1991. He was sentenced to 10 years with eligibility for parole after serving three and one-third years.<sup>12</sup> Respondent served approximately three years in prison, and returned to Minnesota after his release.<sup>13</sup> He was released from parole for this conviction on January 5, 2007.<sup>14</sup>

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<sup>7</sup> Ex. 7 (The Respondent's supervised release date is given as May 21, 2012, in Ex. 6, and January 20, 2013, in Ex. 7.) .

<sup>8</sup> Ex. 7.

<sup>9</sup> Testimony of Smith.

<sup>10</sup> Testimony of Stock.

<sup>11</sup> Testimony of Stock; Ex. 5.

<sup>12</sup> Ex. 5.

<sup>13</sup> Testimony of Smith.

13. The Department issued a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges on April 16, 2007. By agreement of the parties, the hearing in this matter ultimately was held on September 27, 2007.

14. Respondent's current federal probation officer, Odell Wilson III, submitted a letter on behalf of the Respondent in this matter. Based on his observations of the Respondent in his home and current work environments, Mr. Wilson stated that it appears the Respondent "is focused on becoming a positive role model to his children and a productive member of society." Mr. Wilson further noted that the Respondent is in compliance with all court-ordered conditions of his probation.<sup>15</sup>

15. The Respondent currently owns and operates a used car dealership under the name Checkmate Auto Incorporated.<sup>16</sup> In order to operate this business, the Respondent was required to obtain a dealer license from the Minnesota Department of Public Safety.<sup>17</sup>

16. The Respondent is not currently affiliated with any licensed real estate company. At the conclusion of the hearing in this matter, the Administrative Law Judge held the record open to allow the Respondent time to submit information showing that a real estate broker had certified that the Respondent was affiliated with and would be licensed to the broker's real estate company upon issuance of a license. The Respondent did not submit any information prior to the close of the record on November 28, 2007.

Based on 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 Minnesota Statutes §§ 14.50 and 45.027, subd. 7.

2. The 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 legal requirements.

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<sup>14</sup> Ex. 5.

<sup>15</sup> Ex. 6 (Letter from Wilson dated September 27, 2007).

<sup>16</sup> Testimony of Smith; Ex. 6.

<sup>17</sup> Testimony of Smith.

4. The burden of proof in this proceeding is on the Respondent to show by a preponderance of the evidence that he should be granted a license.<sup>18</sup>

5. The Commissioner of Commerce may deny an application for a real estate salesperson license if the applicant provides false, misleading, or incomplete information in the licensing application.<sup>19</sup>

6. The Commissioner of Commerce may deny an application for a real estate salesperson's license if the Commissioner finds that it is in the public interest to do so and the applicant has "engaged in an act or practice, whether or not the act or practice directly involves 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 or license granted by the commissioner."<sup>20</sup>

7. The Respondent failed to disclose on his license application his 1991 conviction for possession of cocaine with intent to distribute. By failing to make this disclosure, the Respondent provided the Department with misleading and incomplete information on his licensing application in violation of Minnesota Statutes § 45.027, subd. 7(a)(3).

8. Minn. Stat. § 45.027, subd. 10, specifies that "Chapter 364 [relating to rehabilitation of those convicted of crimes] does not apply to an applicant for a license . . . where the underlying conduct on which the conviction is based would be grounds for denial . . . of the license."

9. The underlying conduct on which the Respondent's convictions are based demonstrate that the Respondent is untrustworthy or otherwise incompetent or unqualified to act as a real estate salesperson under Minn. Stat. § 45.027, subd. 7(a)(4), and that he has "engaged in a fraudulent, deceptive, or dishonest practice" in violation of Minn. Stat. § 82.35, subd. 1(b). This conduct directly relates to the occupation for which the license is sought and warrants the denial of his license application under Minn. Stat. § 45.027, subd. 10. The occupation of a real estate salesperson requires trustworthiness, especially in matters involving the handling of client properties and money.

10. The Respondent has failed to demonstrate by a preponderance of the evidence that he is not in violation of the provisions cited above.

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

12. These Conclusions are reached for the reasons discussed in the Memorandum below. The Memorandum is incorporated into these Conclusions.

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<sup>18</sup> Minn. R. 1400.7300, subp 5.

<sup>19</sup> Minn. Stat. § 45.027, subd. 7(a)(3).

<sup>20</sup> Minn. Stat. § 45.027, subd. 7(a)(4).

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

### **RECOMMENDATION**

IT IS RECOMMENDED that the Department's denial of Larry Charles Smith's application for a real estate salesperson's license be AFFIRMED.

Dated: December 18, 2007

s/Barbara L. Neilson

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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared).

### **NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. 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 the office of the Commissioner of Commerce, 85<sup>th</sup> Seventh Place East, Suite 500, St. Paul, Minnesota 55101-2198, for information about the procedure for filing exceptions or presenting argument.

Pursuant to 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. 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. 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.

### **MEMORANDUM**

Although the Respondent fully disclosed his 1996 federal conviction for conspiracy to distribute cocaine on his license application, he failed to disclose his 1991 conviction in New Jersey on a similar charge. Respondent contends that his failure to do so was inadvertent, and that he did not intend to deceive or mislead anyone at the Department. The Respondent explained that because the

sentence he received for the 1996 federal conviction was enhanced by his prior conviction, he believed that the later conviction “entailed the New Jersey conviction,” and that by disclosing the 1996 conviction and providing all the paperwork relating to it, he had completely responded to the question on the application.

Respondent also maintains that, since his conviction in 1996, he has changed his life and is focused on becoming a responsible and hard-working member of society. Respondent points out that he invested significant time and money in taking the exams and educational courses required for licensure, and he asserts that this investment reflects his commitment to changing his life. In addition, Respondent is adamant that selling real estate is a career he would enjoy and one that would allow him to better support his family. He asserts that he has taken full responsibility for his past mistakes and has remained law-abiding since his release from prison in 2006. Respondent maintains that he should be found fit to be licensed as a real estate salesperson.

The question on the license application asks whether the applicant has ever been charged with or convicted of a criminal offense in any State or Federal Court, including any felony, gross misdemeanors or misdemeanors. Applicants are instructed to include any and all criminal offenses except misdemeanor traffic violations. If applicants answer yes to this question, they are directed to attach a written statement explaining the circumstances of each incident, and copies of the criminal complaint, sentencing order, and final judgment/parole resolution. The question on the application form and the description of the materials to be provided by applicants are clear. By failing to disclose his 1991 conviction for possession of cocaine with intent to distribute, the Respondent provided the Department with incorrect, misleading and incomplete information on his application. The Respondent’s assertion that he believed he did not have to disclose the 1991 conviction because it enhanced the sentence he received for his more serious 1996 conviction does not provide a convincing explanation for his failure to disclose the 1991 conviction in light of the express request on the application form for information concerning *all* criminal convictions other than misdemeanor traffic violations.

The Respondent’s submission of incomplete and misleading information is grounds for the Commissioner to deny his application. Moreover, his failure to disclose his 1991 felony conviction on his license application demonstrates a lack of honesty and untrustworthiness that make him presently unqualified to perform the duties of a real estate salesperson pursuant to Minn. Stat. § 45.027, subd. (a)(4).<sup>21</sup>

To the extent that Minn. Stat. § 364.03 (relating to rehabilitation of those convicted of crimes) is applicable here, the Department has demonstrated that the conduct underlying Respondent’s convictions is serious in nature and

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<sup>21</sup> Minn. Stat. § 45.027, subd. (a)(4).

sufficiently related to licensure as a real estate salesperson to justify denial of his application at this time.<sup>22</sup> Licensed real estate salespersons are required to demonstrate a history of honesty and integrity because they hold a position of trust with their clients and have access to clients' homes, money, and personal belongings. Respondent's felony-level drug possession and conspiracy to distribute cocaine reflect deceptive or dishonest acts in violation of Minn. Stat. § 82.35, subd. 1(b), and demonstrate that the Respondent is untrustworthy or otherwise unqualified to act as a licensed real estate salesperson under Minn. Stat. § 45.027, subd. 7(a)(4).

The Administrative Law Judge also notes that, while the misconduct on which Respondent's convictions are based occurred more than 10 years ago, Respondent was only released from prison for his second conviction in 2006, and is still completing his probationary term for that offense. Respondent will continue to be supervised by a probation officer until May 21, 2012. Given that less than two years has passed since the Respondent served his prison time and he has years left on supervised probation, he cannot demonstrate sufficient evidence of rehabilitation and present fitness to perform the duties of a licensed real estate salesperson.<sup>23</sup> It is possible, however, that upon completion of probation, the Department may reach a different conclusion regarding the Respondent's fitness for licensure.

Finally, as part of the license application, applicants are required to be "affiliated with" a licensed real estate company. A broker for that real estate company must certify on the application that, upon issuance of the license, the applicant will be affiliated with and licensed by that real estate company. Respondent indicated on his application that he was affiliated with "Realty Executives Advantage Plus Group" in Minneapolis, and Halisi Edwards Staten certified that she was an authorized broker for the company.<sup>24</sup> However, at the hearing the Respondent testified that he was no longer affiliated with this real estate company. The Administrative Law Judge held the record open until November 28, 2007, to allow the Respondent time to submit information showing that another real estate broker had certified that the Respondent was affiliated with and would be licensed to that broker's real estate company upon issuance of a license. Because the Respondent failed to submit any information demonstrating that he has become affiliated with another licensed real estate company, his application is incomplete.

For all of the reasons above, the Administrative Law Judge concludes that it is appropriate to deny the Respondent's license application.

**B. L. N.**

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<sup>22</sup> Minn. Stat. § 45.027, subd. 10.

<sup>23</sup> See Minn. Stat. § 364.03, subd. 2.

<sup>24</sup> Ex. 1; Testimony of Smith.