

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
JOHN O. PASTORE COMPLEX  
1511 PONTIAC AVENUE  
CRANSTON, RI 02920**

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**IN THE MATTER OF:**

**Michael Brady,**

**Respondent.**

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**DBR No. : 14-RE-009**

**DECISION**

**I. INTRODUCTION**

The above-entitled matter came before the Department of Business Regulation (“Department”) pursuant to a Notice of Intent to Deny License Application and Provide Opportunity of Hearing issued to Michael Brady (“Respondent”) on June 17, 2015 in response to his application (“Application”) for a real estate salesperson’s license (“License”). The Respondent timely requested a hearing and an Order Appointing Hearing Officer and Providing Notice of Departmental Hearing was issued on July 15, 2015. A prehearing conference was held in this matter on August 28, 2015 wherein the issues involved were clarified. A hearing on this matter was held on November 6 and 20, 2015. At the hearing, the Respondent represented himself and the Department was represented by counsel. The parties rested on the record.

**II. JURISDICTION**

The Department has jurisdiction over this matter pursuant to R.I. Gen. Laws § 5-20.5-1 *et seq.*, R.I. Gen Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

### III. ISSUE

Whether Respondent's application for a real estate salesperson's license ("License") should be denied pursuant to R.I. Gen. Laws § 5-20.5-14(a)(14).

### IV. MATERIAL FACTS AND TESTIMONY

William DeLuca ("DeLuca"), Real Estate Administrator, testified on behalf of the Department. He testified that the Respondent submitted an application and a Bureau of Criminal Identification ("BCI") background check. He testified that the BCI showed that the Respondent had pled *nolo contendere* to voluntary manslaughter so that it was determined that even though the Respondent had an offer of employment, he should not be licensed. See Department's Exhibits One (1) (Application); Two (2) (BCI); and Three (3) (letter from Department notifying Respondent that would not approve application for License).

The Department called Respondent to testify. He testified that he agreed with the BCI check. He testified that in February 1986, he was charged with intentional murder but he pled to assault with a dangerous weapon.<sup>1</sup> He testified that he was home in his apartment and he saw a man with a knife kicking the door in of the next door apartment and he shot at him and hit him but did not kill him. He testified that it turned out that the man was drunk and while he was holding a knife, the man was trying to go back inside the apartment to get a beer.

The Respondent testified that the incident that led to his plea to voluntary manslaughter happened in 1990. He testified that he was friends with the victim who was living with him and the victim used drugs and he (Respondent) would lend him money. He testified that he had decided to kick the victim out of his house because the victim owed him money and when he did this, the victim went into his room and went for his pillow and he (Respondent) knew the victim kept his

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<sup>1</sup> He received a five (5) year suspended sentence with one (1) year probation. See Department's Exhibit Two (2).

stash and his weapon there so he (Respondent) shot him first and he died. He testified he was not arrested immediately because there was no evidence, but later a relation of his was arrested on another charge and implicated him in the killing so he ended up pleading to involuntary manslaughter. He testified that he was culpable. He testified he served twelve (12) years in jail with six (6) years in maximum, four (4) years in minimum, and then on work release. He testified that he was on parole for about four (4) years and now is on supervised probation for which he goes every six (6) or eight (8) months and believes he is on probation for another six (6) years.

The Respondent testified on his behalf. He testified that he did do the crime and pled to the acts. He testified that when he came out of jail, he broke off contact with his old friends to change his life. He testified that he took approximately 35 programs in the ACI to change himself and learn to control his emotions and think before he acted. He testified that the classes were to change his ways of thinking and to learn communication skills and how to change his behavior. He testified he also took carpentry classes and bible study classes. See Respondent's Exhibit Two (2) (copies of certificates of classes he took in the ACI). He testified that while he jail, he worked his way down from maximum to work release and that he worked 17 months in work release installing windows. He testified he has been working at REM Management ("REM") for five (5) years. He testified that REM handles a lot of foreclosed property and he cleans the property by doing things such as landscaping, repairs, changing locks, and clearing the property.

Michael Riley (senior) testified on behalf of the Respondent. He testified that his wife owns Westcott Properties and he owns REM which works for Westcott Properties. He testified that he hired the Respondent because the Respondent's cousin worked for him. He testified that he was concerned about the Respondent's past since he was just out of prison so that in the beginning, he sent Respondent out on jobs with someone else, but that he no longer sends the

Respondent out with a partner. He testified the Respondent will meet building inspectors at properties. He testified that the Respondent has been with REM for six (6) years without a problem and is a very trustworthy employee. He testified that the Respondent has an opportunity to become a salesperson and he believes the Respondent can control himself. He testified that the Respondent currently handles tense situations such as often he goes to foreclosed properties and people are still living there and the Respondent has to tell them they need to leave and there has not been any issues. See Respondent's Exhibit One (1) (his letter of recommendation).

Pat Pagliarini testified on the Respondent's behalf. She testified she is an associate broker with Westcott and has been there for eighteen (18) years. She testified that she has known the Respondent the entire time he has worked at REM and that he is very polite, attentive, careful, and goes above to do the right thing. She testified he has met her children. She testified that if he is not sure something is right, he will call. For example, she testified that if he thinks a house has not been abandoned, he would call to verify that. She testified that she would be willing to sign something on his behalf as his supervising broker and knowing his background. She testified that obviously he does not show houses, but he will go with an appraiser to a house or with building inspectors. See Respondent's Exhibit One (1) (her letter of recommendation).

Melissa Riley testified on behalf of the Respondent. She testified that she works at Westcott Properties and relies on the Respondent all the time. She testified that she assigns him work every day and he does whatever he is told and is super cautious, checks in, and calls with questions. She testified that he calls on a foreclosure if there are people there and is very reliable and respectful. She testified he has done work in her house and she trusts him with her house, her child, and her dog. She testified that he is very reliable and very capable and she thinks he has the capability to be a realtor. See Respondent's Exhibit One (1) (her letter of recommendation).

Michael J. Riley (junior) testified on the Respondent's behalf. He testified he works at Westcott Property and is an associate broker in Providence, Rhode Island and is a principal broker in Florida. He testified that the Respondent was initially hired in the Providence office and he naturally had reservations of the Respondent because of his background. He testified that because of his reservations about the Respondent, he sent him out with someone else (but not his cousin who recommended him) to do the work at the houses. He testified that it is not the type of job that people necessarily want and after the Respondent worked two (2) years with a partner, he is now on his own. He testified that the Respondent is very responsible and that they took a chance on him and it worked out. He testified that the Respondent checks the rental properties that they own and will change the locks and that his attendance is impeccable. On cross-examination, he testified that if the Respondent relocated to Florida, he would not have a problem signing an affidavit on his behalf as a principal broker in Florida. See Respondent's Exhibit One (1) (his letter of recommendation).

Iris Ribeiro testified on behalf of the Respondent. She testified that she is a real estate sales person for Westcott and the sales manager so that she interacts with REM a lot which includes the Respondent and Mike Senior and Melissa. She testified that she started at the company three (3) years ago and did not know about the Respondent's background but just knew him as the "field guy." She testified that she handles admissions for a real estate school and she thought he should pursue it because he would be good as a real estate salesperson if he was licensed and it would take him to the next level. She testified that if he is licensed, she would like to work with him as a partner. She testified that he is not just a coworker but a friend and she has twin daughters and he has been to her house. See Respondent's Exhibit One (1) (her letter of recommendation).

Michael R. Brady testified on behalf of the Respondent. He testified that the Respondent is his uncle and has known him since he was born and he has relied on him and his uncle taught him the difference between right and wrong and his (witness) kids love him. He testified that he lives with his grandmother who is also the Respondent's mother and they can always count on the Respondent. Upon questioning from the undersigned, he testified that he did believe the Respondent had changed once he got out of jail since he was meaner and angry before jail and now he is calmer. In fact, he testified that if he (the witness) gets aggravated he will call his uncle to help calm himself down. See Respondent's Exhibit One (1) (his letter of recommendation).

Robert A. Verrier testified on the Respondent's behalf. He testified he owns a tree service and he is the Respondent's landlord and also lives next door. He testified that he has known the Respondent for eight (8) years. He testified that he knew about the Respondent's felony as the Respondent is his wife's cousin. He testified the Respondent has keys to his house and house sits, walks the dog, and shovels his sidewalk. He testified that he never can get up early enough to shovel his own sidewalk. He testified that the Respondent is trustworthy and will do anything and just needs the chance. See Respondent's Exhibit One (1) (his letter of recommendation).

Joy Riley testified on behalf of the Respondent. She testified she is a principal broker and owner of Westcott Properties which contracts with REM for management and take over services for property. She testified that the Respondent has worked for REM for six (6) years. She testified that when he was first hired, she was concerned about his record, but his relative had approached them about giving him a second start and she did meet with him. She testified that they share a faith and that she definitely has seen that he has changed as a person. She testified that he has shown honesty, timeliness, loyalty, and is conscientious and diligent. She testified he goes above and beyond what is expected. She testified that he will go with agents to difficult areas, but he

obviously cannot act as a real estate licensee. She testified she teaches real estate classes and he asked her about taking them and she told him that she was not sure if he would be able to be licensed but that education never hurt. She testified that he took her class and was very interested and was a great student. She testified as a principal broker, part of her job is to see where a new salesperson will fit in the industry and that she thinks initially that the Respondent will meet other agents with MLS listings and let them in and he could spend two (2) years meeting people and opening doors. She testified that she does not believe that just because a person has a license, that a new licensee should jump in right away. She testified that the Respondent needs to be an apprentice and to see how things are done and it will be good for him to work with other agents and that he will be able to grow and mature as a professional. She testified he will never be drafting contracts or negotiating contracts as that is done in-house. She testified that he will be opening doors and then they can see how fast he learns and as time goes on he will learn more and mature as a professional. On questioning from the undersigned, she testified that she would be willing to sign an affidavit as his principal broker. See Respondent's Exhibit One (1) (her letter of recommendation).

On further questioning from the Department, the Respondent testified that he was comfortable with Joy Riley's vision of him as a licensee and that he was not looking to jump in and sell right away. He testified that he believes he has to learn and he was happy with that vision.

## V. DISCUSSION

### A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the

Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

**B. Standard of Review for an Administrative Hearing**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).



### C. Arguments

The Department argued that the Respondent did not meet the statutory requirements for licensing but the Department acknowledged that he had been honest on his application and at hearing about his convictions.

The Respondent argued that he has done everything he can to try to change himself and become a productive member of society and that he just wants the chance to further himself.

### D. The Statute

The question on the Application that asks about felony convictions states as follows:

Have you ever been convicted of or pled guilty or *nolo contendere* to forgery, to embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any other offenses of any type which would reasonably cause the Department to question your honesty, trustworthiness, integrity, good reputation or competency?

See Department's Exhibit One (1).

R.I. Gen. Laws § 5-20.5-14(a) provides that the Department may deny an application for a real estate salesperson's license for certain reasons. R.I. Gen. Laws § 5-20.5-14(a)(14) provides as follows.

(a) . . . The director has [the] power to refuse a license for cause . . .

(14) Being convicted of any criminal felony in a court of competent jurisdiction of this or any other state or federal court, involving dishonesty, breach of trust, forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, fraud, false dealing or any similar offense(s) or by pleading guilty or *nolo contendere* to any such criminal offense or offenses;

As the Department has found previously:

All of the crimes listed in R.I. Gen. Laws § 5-20.5-14(a)(14) involve an element of deceit which compromise a licensee's honesty, trustworthiness, and/or competence. Under the analysis set forth regarding legislative intent and statutory construction, the purpose of the Act in authorizing the Department to take administrative action against a license is to protect the public from dishonest, untrustworthy and incompetent individuals. *In the Matter of John A. Scungio*, DBR No. 00-L-0003 (6/15/01) at 7.

In this situation, the Respondent has been convicted of the felony of involuntary manslaughter. The statute includes *nolo contendere* pleas.<sup>2</sup> There was no dispute that the Respondent's convictions fell under this statute.

#### **E. The Stanton Criteria**

The Department follows the four (4) criteria set forth in *In the Matter of William J. Stanton*, DBR No. 98-L-0035 (12/15/98) when determining whether to license felons. See *In the Matter of Donald Bennett*, DBR No. 08-L-0092 (5/22/10 and 11/24/10) (on reconsideration); *In the Matter of Lynn Holston*, DBR No.: 09-I-0179 (5/3/10); and *In the Matter Joseph G. Edwards*, DBR No.: 09-L-0165 (10/30/09).

##### **1. Nature and Circumstances of the Misconduct**

The first criteria delineated in *Stanton* include the nature and circumstances of the crime.

Considerations in this area include: (i) when the misconduct took place, (ii) whether the misconduct was a misdemeanor or a felony, (iii) the type of sentence imposed, (iv) the age of the applicant at the time of the misconduct, (v) the reason(s) given by the applicant for committing the misconduct and the applicant's acknowledgement of responsibility for the crime(s), and (vi) whether the misconduct relates to the license for which applicant has applied. *Stanton*, at 5-6.

It goes without saying that the crime which the Respondent committed is grave and serious. The Respondent killed the victim in 1990, but was only later convicted of this crime when he pled *nolo contendere* in 1998 to the charge (after being arrested in 1997). The Respondent's testimony was that he had a dispute with his friend who was living with him and owed him money and that he was trying to kick him out and thought the victim could be going for a gun. The Respondent acknowledged that he was responsible for his actions.

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<sup>2</sup> According to the online criminal records, the Respondent pled *nolo contendere* to the involuntary manslaughter charge. See [http://courtconnect.courts.state.ri.us/pls/ri\\_adult/ck\\_public\\_qry\\_doct.cp\\_dktrpt\\_frames?backto=P&case\\_id=P1-1997-2958A&begin\\_date=&end\\_date=](http://courtconnect.courts.state.ri.us/pls/ri_adult/ck_public_qry_doct.cp_dktrpt_frames?backto=P&case_id=P1-1997-2958A&begin_date=&end_date=)

## **2. Conduct and Reformation; Present Character**

The second and third factors to be considered under *Stanton* are the applicant's subsequent conduct and reformation and his present character. While the Respondent was in prison, he worked his way down from maximum security to work release. The Respondent testified that when he was in prison he tried to change himself for the better by taking many classes there which he credited in helping him change his behavior and responses to situations. Since the Respondent's release he has worked at REM. Several of his colleagues testified to his good character including reliability and very importantly, his ability to handle tense situations. His employers testified that they had reservations when first hiring him because of his conviction but that he had proved himself as an invaluable and reliable and conscientious employee. The Respondent has fully acknowledged his wrongdoing and taken responsibility for his actions.

## **3. Present Qualifications**

The fourth factor to consider under *Stanton* is the applicant's present qualifications and competence in the area of the license requested. The Respondent has passed the licensing examination. Several real estate professionals testified on Respondent's behalf and are willing to vouch for him. Westcott Properties has offered Respondent a position as a real estate salesperson.

### **C. Whether the Respondent Should be Licensed**

*Stanton* held that these four (4) factors are not to be given equal weight in determining whether to deny an application. Instead, a combination of these factors provides guidance for deciding whether to grant or deny a license. In *Stanton*, the pertinent felony had taken place over 20 years prior to the applicant's application to the Department. As in *Stanton*, the Respondent in this matter provided a full explanation of his crimes and showed extensive evidence of rehabilitation since he committed the crime and since his incarceration.

The Respondent currently is on probation. However, unlike *In the Matter of: David Catalano*, DBR No. 02-L-0060 (10/25/02) where that respondent was still on probation but also failed to give a complete explanation of his criminal charges and plea, and did not fully accept responsibility for such, this Respondent has fully explained his crimes and convictions and accepted responsibility. He has not tried to hide his convictions from the Department. Based on the *Stanton* criteria, the Respondent has demonstrated that he has met the criteria for licensing subject to the recommended conditions enumerated below in the Recommendation section.

## VI. FINDINGS OF FACT

1. On or about June 17, 2015, the Department issued a Notice of Intent to Deny License Application and Provide Opportunity of Hearing issued to Respondent in relation to his Application for License. The Respondent timely requested a hearing and an Order Appointing Hearing Officer and Providing Notice of Departmental Hearing was issued on July 15, 2015.

2. A prehearing conference was held in this matter on August 28, 2015.

3. A hearing on this matter was held on September November 6 and 20, 2015.

4. Respondent's BCI showed that Respondent had been convicted of assault with a dangerous weapon and involuntary manslaughter. See Department's Exhibit Two (2).

5. Pursuant to R.I. Gen. Laws § 5-20.5-14(a)(14), these felonies are to be considered in deciding whether to grant Respondent's application for a License.

6. The facts contained in Section IV and V are reincorporated by reference herein.

## VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 5-20.5-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

2. There exists a sufficient basis for the conditional granting of Respondent's application for License pursuant to R.I. Gen. Laws § 5-20.5-1 *et seq.*

3. However, given Respondent's conduct and the requirements of R.I. Gen. Laws § 5-20.5-1 *et seq.*, it is necessary to monitor Respondent's conduct during this conditional License.

### **VIII. RECOMMENDATION**

Based on the above analysis, the Hearing Officer recommends that Respondent's application for License be granted conditioned upon the following:

1. The Respondent shall not handle any money whether cash, check, money order or any other form of money while acting as a licensee of this Department.

2. The Respondent shall inform the Department in writing within ten (10) days of any criminal charges brought against him. Such charges may result in administrative action against Respondent's License.

3. If the Respondent leaves the employ of Westcott Properties, he shall notify the Department in writing within ten (10) days. At that time, the Department may decide either by letter, by hearing, or by consent agreement whether the Respondent's License should be revoked, maintained without further conditions, or whether other additional conditions shall be placed upon it.

4. Joy Riley shall submit a written affidavit to the Department acknowledging that she has and will continue to exercise supervisory authority over the Respondent and could be held responsible by the Department for any misconduct that the Respondent engages in as a real estate licensee.<sup>3 4</sup> The Department shall not issue the License until such affidavit satisfactory to the Department is submitted.

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<sup>3</sup> The Department indicated at hearing that it had form affidavit that it used these type of matters.

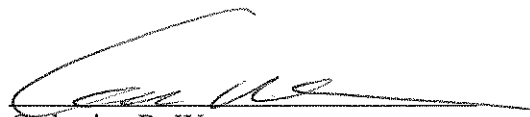
<sup>4</sup> If for some reason, Joy Riley leaves the company, the Respondent's new supervising broker must submit the same affidavit.

5. Assuming no change in the circumstances and the Respondent's currently clean criminal record, the Respondent may request that the Department waive these conditions anytime subsequent to three (3) renewal cycles from this decision and prior to the completion of his criminal probation period. At the end of the Respondent's criminal probation period,<sup>5</sup> if there are no changes in circumstances, the Respondent has not had any further criminal charges, and he has successfully followed the conditions of this decision, the conditions on his License shall be lifted.

6. The Respondent must pay all statutory or regulatory licensing fees, comply with all other statutory requirements, and submit an updated application, if determined to be necessary by the Department.

7. That at such time that the Department receives written notice of a complaint against Respondent regarding his real estate license, the Department may initiate an action to revoke the Respondent's real estate license.

Dated: JANUARY 19, 2016

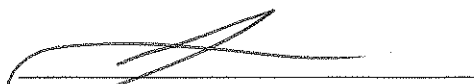
  
Catherine R. Warren  
Hearing Officer

**ORDER**

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT  
 REJECT  
 MODIFY

Dated: 1/21/16

  
Macky McCleary  
Director

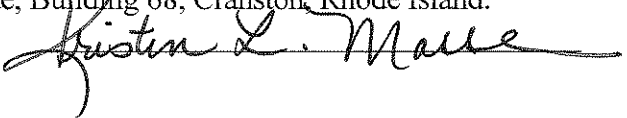
<sup>5</sup> The Respondent must promptly confirm the date that his probation ends to the Department.

**NOTICE OF APPELLATE RIGHTS**

**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.**

**CERTIFICATION**

I hereby certify on this 22<sup>nd</sup> day of January, 2016 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid to Mr. Michael Brady, 753 Nooseneck Road, West Greenwich, RI 02817 and by hand-delivery to Ellen Balasco, Esquire, Maria D'Alessandro, Deputy Director, and William DeLuca, Administrator, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 68, Cranston, Rhode Island.



**DIRECTOR'S MODIFICATION OF RECOMMENDED DECISION**

The Director hereby modifies the recommended decision as follows:

Condition #1 in Section VIII of the decision is deleted since the Respondent's past criminal offenses did not involve handling of money. The Department commends the Respondent for his perseverance and pursuit of rehabilitation and education and apologizes for the duration of the administrative process.