

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

IN THE MATTER OF:

Joseph G. Edwards,

Respondent.

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DBR No. : 09-L-0165

DECISION

Hearing Officer: Catherine R. Warren, Esquire

Hearing Held: September 17, 2009

Appearances:

For the Department of Business Regulation: Ellen Balasco, Esquire

For Joseph G. Edwards, Respondent: *Pro Se*

I. INTRODUCTION

The above-entitled matter came before the Department of Business Regulation (“Department”) pursuant to an Order to Show Cause Why License Application Should not be Denied, Notice of Pre-hearing Conference, and Appointment of Hearing Officer issued to Joseph G. Edwards (“Respondent”) on July 28, 2009 in response to his application (“Application”) for a real estate salesperson’s license. A prehearing conference was held in this matter on August 19, 2009 wherein the issues involved were clarified. A hearing on this matter was held on September 17, 2009. At the hearing, the Respondent represented himself and the Department was represented by counsel.

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"), Acting Real Estate Administrator for the Department, testified on behalf of the Department. He testified that the Department received the Respondent's Application on June 15, 2009. He testified that a criminal background check ("BCI") is required for real estate applications since the Department must verify trustworthiness and honesty of applicants. He testified that Respondent falsely answered "No" to the question on the Application that asks whether an applicant has been convicted of a crime of dishonesty because Respondent's BCI indicated that he had several criminal convictions dating back to 1988 including breaking and entering, larceny, obtaining money under false pretenses, and several convictions for driving after the suspension of his driver's license. See Department's Exhibits One (1) (Application - question five (5)) and Two (2) (BCI). DeLuca testified that he was concerned with the felony convictions rather than the driving issues. He testified that because of the concern over Respondent's truthfulness and felony convictions, the Application was denied.

Kelly Vocatura ("Vocatura"), a real estate salesperson for Keller-Williams Realty ("Keller-Williams"), testified on the Respondent's behalf. She testified that she met the Respondent approximately two (2) years ago and encouraged him to take real estate

classes and pursue real estate salesperson licensing because she felt that he possessed qualities that would make him successful in real estate sales. She testified that the Respondent has a friendly disposition and is very knowledgeable about the history of Rhode Island. She testified that he is involved in the community, was previously a union president, was recently married, and was a local soccer coach.

Kathy Schmitt (“Schmitt”), a real estate broker for Keller-Williams, testified on the Respondent’s behalf. She testified that she met the Respondent through Vocatura. She testified that she interviewed the Respondent extensively and in great detail regarding his background including his criminal history. She testified that she found him to be forthright and very detailed in answering her questions including those on his criminal convictions. She testified that if the Respondent obtains his License she is prepared to offer him a position at Keller-Williams.

On cross-examination, Schmitt testified that at Keller-Williams, the Respondent would participate in an extensive training program. She testified that the Respondent explained to her how he checked off “No” to the felony question on his Application because he did not realize he had been charged with a larceny and had not fully remembered what his convictions since they were long time ago. She testified that she had concerns because of his convictions but based on her interview with him she felt he explained the circumstances.

In response to questioning from the undersigned, Schmitt testified that she has been licensed for 24 years with 23 years as a real estate broker. She testified that she would be willing to accept responsibility for supervising the Respondent if the Department were willing to grant him a provisional or conditional salesperson license.

Nicholas Lutzel (“Lutzel”) testified on the Respondent’s behalf. He testified that he has been friends with Respondent for approximately five (5) years and they worked together at the Blockbuster store for about three (3) years in Westerly where he (Lutzel) was the manager over Respondent and Respondent was responsible for customer service, handling of money, and had access to the store safe. He testified that Respondent demonstrated honesty and trustworthiness in the performance of his job. He testified that there were numerous times that he and the Respondent worked together on Friday, Saturday, and Sunday nights and would handle between \$4,000 to \$6,000 a night and there was never any problem with money.

Lutzel testified that he and Respondent remained friends after leaving Blockbuster and that Respondent suggested to him (Lutzel) that they became real estate salespersons together. He testified that he and the Respondent took the real estate classes and the licensing examination (“Examination”) together and both passed Examination. He testified that he and the Respondent plan to work together as a sales team if the Respondent is successful in obtaining his license.

Lutzel testified that Respondent is an active participant in the community. He testified that he is familiar with the Respondent’s previous employment at Bradford Dye where he was union president and also his position as a First Councilman of the Wiquapaug Eastern Pequot Indian Tribe. He also testified that he had knowledge of the Respondent’s criminal history from their employment at Blockbuster and afterwards.

Lutzel testified that Respondent called him the morning he found out he passed the Examination and told him he was going to obtain his BCI and they went together and obtained their BCI checks. He testified that the Respondent was surprised to see that he

had a larceny charge on his BCI. He testified that the Respondent didn't realize that that 1990 charge had been broken down into other charges and was categorized as larceny. He testified that because Respondent was so concerned that they went to the Attorney General's criminal records division to pull the Respondent's conviction records so that the Respondent could remember the details of the charges.

On questioning from the undersigned, Lutzel testified that he is waiting for the Respondent to obtain his License so they can work together. In response, Schmitt further testified that Respondent and Lutzel plan to work as a team and go through the Keller-Williams' training together which she thinks is a good idea because partners act as accountability partners for each other. Lutzel further testified that he agreed with Schmitt's testimony about his and Respondent's plans if Respondent obtains his License.

The Respondent testified on his behalf. He testified that he was born and raised in Hope Valley, Rhode Island and has lived here his whole life. He testified that he was employed at Bradford Dye Works for approximately nine (9) years until he was laid-off where he was union shop steward, union vice-president, and union president. He testified that he is presently a full-time student at the Community College of Rhode Island. He testified that he actively participates in the community as a soccer coach for his daughters and as a genealogist in Rhode Island and Connecticut. The Respondent testified that Vocatura encouraged him to pursue real estate because of his communication skills and his historical knowledge of South County.

The Respondent testified that in 1988 he committed a couple of breaking and entering of which he was not proud. He testified that he had just gotten out of the service at age 18 and was back in Rhode Island and was drinking with his buddies when he

committed the breaking and entering. He testified that he didn't realize that his 1990 larceny charge was classified as a larceny. He testified that the 1990 larceny charge concerned his brother and a friend who had stolen copper wire and asked him to drive them to sell the wire which he did. He testified that he "totally forgot about" the larceny charge while he remembered his earlier breaking and entering charges because it was near his 18th birthday. He testified that when he completed the Application, he hadn't obtained his BCI so he was surprised to find out that there was a larceny charge when he had answered "No" to the question about the larceny charge.

The Respondent testified he has four (4) daughters and one on the way. He testified that he tells his children to be good and not be like him and try to be better because you need a good head on your shoulder to go forward.

On cross-examination, the Respondent testified that his driver's license was suspended in 2004 and 2006 at various times for non-payment of speeding tickets because he couldn't afford to pay the tickets. He testified that the reason that he answered "No" to the question on the Application regarding criminal convictions was because he didn't realize his 1990 conviction was for larceny. He testified that he thought the larceny charge was part of the obtaining money under false pretenses.

The Respondent testified that in 1988, he pled *nolo contendere* to breaking and entering and in 1990 he pled *nolo contendere* to another breaking and entering charge. He testified that the 1990 larceny related to the copper wire sale and was categorized as two (2) charges: larceny over \$500 and obtaining money under false pretenses. He testified that he hadn't realized at first that his brother had stolen the copper wire until his brother and friends came out of the woods with the wire but he didn't feel he could leave

his brother on the side of the road. He testified that they each got \$320 for the copper wire. He testified that in retrospect, he should not have driven his brother to sell the wire. He testified that he pled *nolo contendere* to the charges in the amount of over \$500 because the total amount they received for the wire was approximately \$900.

The Respondent testified that he obtained from Westerly Police Department a copy of his 1994 charge for shoplifting because he couldn't remember what it was. He testified that he took responsibility for shoplifting a pregnancy test because he and his wife were having money problems and he didn't want his wife to get in trouble. See Respondent's Exhibit One (1) (Westerly Police Department 1994 charge) and Two (2) (daughter's birth certificate). The Respondent testified that the 1994 assault charge was a domestic charge because of an argument with his wife and a neighbor called the police and he and his wife were charged but there was no physical abuse.

The Respondent testified that he knew when he answered the Application question about felonies that he had the breaking and entering charges and the 1994 charges. He testified that he didn't think the felonies would harm him since they occurred nearly twenty (20) years ago and that "he has proven himself" since that time. He testified that the question asked if he pled guilty to charges that would cause the Department to question his honesty and knows he is trustworthy and honest but he probably should have answered "Yes." The Respondent testified that in 2004 he filed a Superior Court Motion to Expunge one (1) of his breaking and entering charges so he could go back into the Army National Guard but the motion was denied because the law states that if an applicant has two (2) separate felonies, the felony can't be expunged. See Respondent's Exhibit Three (3).

V. DISCUSSION

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).

A. Respondent's Conviction Falls Within R.I. Gen. Laws § 5-20.5-14(a)(14)

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 in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses, or pleading guilty or *nolo contendere* to any such 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 convicted¹ of breaking and entering, larceny, obtaining money under false pretenses, shoplifting, and assault. R.I. Gen. Laws

¹ R.I. Gen. Laws § 12-18-3 provides that pleas of *nolo contendere* followed by a suspended or deferred sentence are considered convictions.

§ 5-20.5-14(a)(14) specifically provides that pleas of *nolo contendere* be considered by the Department. Breaking and entering, larceny, obtaining money under false pretenses, and shoplifting all involve an element of dishonesty and deceit. They fall under the purview of R.I. Gen. Laws § 5-20.5-14(a)(14). See *Scungio; In the Matter of Catalano*, DBR No.02-L-0060 (11/25/02); and *In the Matter of Antony Constantine*, DBR No. 98-L-0004 (7/15/98). As such, Respondent's convictions can be considered by the Department in determining whether Respondent's Application should be denied.

B. 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.

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.

The Respondent's felony convictions occurred between fifteen (15) and twenty (20) years ago. Specifically, one charge of breaking and entering occurred in the year 1988 and Respondent testified that he remembered that charge because he had just turned eighteen (18) years old and he had been drinking with some buddies. The Respondent pled *nolo contendere* and received a two-year suspended sentence with probation. The Respondent also testified that he pled *nolo contendere* to another charge of breaking and

entering in 1990. He expressed regret for his involvement in these incidents. In 1990, the Respondent pled *nolo contendere* to charges of larceny and obtaining money under false pretenses. The Respondent explained that his brother and a friend asked him to drive them to redeem copper wire they had “found” and in retrospect, he should not have gotten involved. The Respondent explained that he did not remember he had pled to a larceny charge which is why he answered “No” on the Application. The Respondent explained his “embarrassing” shoplifting charge and the assault charge from 1994.

The last of Respondent’s felony convictions was fifteen (15) years ago. He was never sentenced to serve time in jail but rather his sentences were suspended and/or probation. He admitted his responsibility to all of the charges. He explained the nature and circumstances of all the convictions.

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. Since the Respondent’s convictions, he has worked for Bradford Dye Works for nine (9) years acting as union shop steward, union vice president, and union president. He worked for Blockbuster for three (3) years and his manager at Blockbuster testified to his honesty and integrity and wishes to be real estate partners with the Respondent. The Respondent has fully acknowledged his wrongdoing, expressed contriteness, and remorse. The Respondent has fully taken responsibility for his actions. Vocatura and Schmitt, both real estate professionals, testified on Respondent’s behalf. Schmitt has offered Respondent a position as a real estate salesperson.

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 Examination. Schmitt is willing to employ Respondent and Lutz (who is already licensed) to work as a team.

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 felonies had taken place over ten (10) years prior to the applicant's application to the Department and the applicant cooperated with the authorities investigating the applicant's crimes and his co-conspirators. As in *Stanton*, the Respondent in this matter provided a full explanation of his crimes and showed extensive evidence of rehabilitation.

However, there is also an issue of the Respondent's answer on his Application regarding his felony convictions. The Application question at issue asks whether an applicant has been convicted of certain felonies or any felony that would cause the Department to question the applicant's honesty. Obviously, a breaking and entering charge as well as larceny or obtaining money under false pretenses would cause the Department to question an applicant's honesty. The Respondent explained his "No" answer by focusing on the fact that he hadn't realized that the 1990 charge was a larceny charge though it was both a larceny charge as well as an obtaining money under false pretenses charge and the question specifically mentions both larceny and obtaining money under false pretenses.

However, the Respondent's confusion over what charges he had pled guilty to was confirmed by Lutzel who was with the Respondent when the Respondent obtained his BCI. The Respondent explained that since his convictions were so long ago that he did not think that his honesty would be questioned. While the Respondent might believe that he is honest, at the time of his Application, the Department only knew of his criminal convictions so would question his honesty. However, the Respondent's explanation of his "No" answer was credible in light of the length of time since his last felony conviction and his confusion over the wording of the question.

Based on the *Stanton* criteria and the Respondent's credible explanation of his "No" answer, 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 July 28, 2009, an Order to Show Cause Why License Application Should not be Denied, Notice of Pre-hearing Conference, and Appointment of Hearing Officer was issued to Respondent.

2. The prehearing conference was held on August 19, 2009.

3. A hearing was held on September 17, 2009.

4. Respondent's BCI showed that Respondent had been convicted of six (6) felonies between 1988 to 1994. 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 statutory requirements of R.I. Gen. Laws § 5-20.5-1 *et seq.*, it is necessary to monitor Respondent's conduct during the first year of 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. 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. 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 Respondent leaves the employ of Keller-Williams, 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 Respondent's License should be revoked, maintained without further conditions, or whether other additional conditions shall be placed upon it.

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

5. Assuming no change in the circumstances of Respondent's employ and his currently clean criminal record, the Respondent may request that the Department waive these conditions one (1) year after the execution of this decision. At such time, the Department may decide by letter, or by consent agreement, or by hearing to allow the Respondent maintain his License without condition(s), with the same conditions, or with different condition(s).

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.

Dated: October 21, 2009

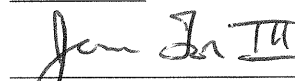

Catherine R. Warren
Hearing Officer

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: 10/30/09


A. Michael Marques
Director
by Joseph Torti III

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 3rd November day of October, 2009 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid to –

Mr. Joseph Edwards
7 Clam Shell Drive
Westerly, RI 02891

and by hand-delivery to Ellen Balasco, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 68, Cranston, Rhode Island, Maria D'Alessandro, Associate Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 68, Cranston, Rhode Island and William DeLuca, Acting Adminsitrator, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Building 68, Cranston, Rhode Island

A B Ellison

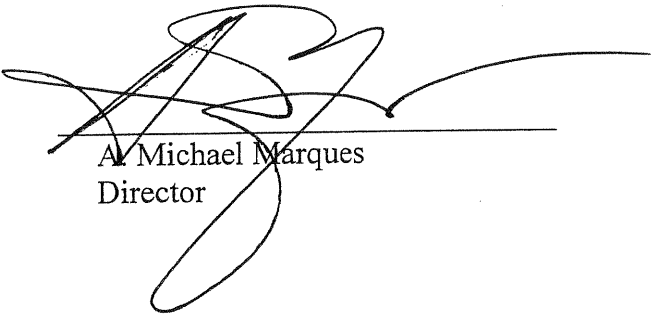


State of Rhode Island and Providence Plantations
Department of Business Regulation
OFFICE OF THE DIRECTOR
1511 Pontiac Avenue, Bldg. 68, 2nd Floor
Cranston, RI 02920
Tel: (401) 462-9551/9552
Fax: (401) 462-9532
Email: www.dbr.state.ri.us
TTY: 711

DELEGATION OF AUTHORITY

This is to certify that I have delegated to Maria D'Alessandro, Associate Director for the Securities Division or Joseph A. Torti, III, Associate Director for the Insurance Division, full authority to act in my stead during any absences from the Department. Their authority shall include, but not be limited to, the execution and delivery of certificates, licenses, administrative orders and decisions, financial examination reports and all other forms, documents and correspondence relating to the Department. They shall also have full authority to manage and direct the Department's operations during my absence.

June 30, 2009


Al Michael Marques
Director