

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Stan L. Fisher, :
Petitioner :
 :
v. : No. 1949 C.D. 2010
 : Submitted: January 7, 2011
Commonwealth of Pennsylvania, :
Bureau of Professional and :
Occupational Affairs, State Real :
Estate Commission, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: February 1, 2011

Stan L. Fisher (Applicant) appeals *pro se* from an order of the Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs, State Real Estate Commission (Commission) denying his Application for Initial Licensure as a real estate salesperson because he admitted on his application that he had been convicted of a felony. Because we find no fault with the reasoning of the Commission, we affirm its decision.

On November 9, 2009, Applicant submitted to the Commission an Application for Initial Licensure as a real estate salesperson. Question A.3.F. on

the application stated: “Have you ever been convicted of any felony or misdemeanor in a local, state or federal court or in a foreign county?” Applicant answered “Yes” to that question and was informed by the Commission that he was being scheduled for an informal conference with the Enforcement Committee due to his response.

As a result of that informal conference, the Commission voted to provisionally deny Applicant’s application under Section 604(a)(14) of the Real Estate Licensing and Registration Act (RELRA),¹ and Section 9124(c)(1) of the Criminal History Records Information Act (Criminal Records Act), 18 Pa. C.S.

¹ Act of February 19, 1980, P.L. 15, *as amended*, 63 P.S. §455.604(a)(14). That section provides, in relevant part:

Section 604. Prohibited acts.

The commission shall have the power to refuse a license or registration certificate for cause or to suspend or revoke a license or registration certificate or to levy fines up to \$1,000, or both, where the said license has been obtained by false representation, or by fraudulent act or conduct, or where a licensee or registrant, in performing or attempting to perform any of the acts mentioned herein, is found guilty of:

(14) Being convicted in a court of competent jurisdiction in this or in 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 any felony or pleading guilty or nolo contendere to any such offense or offenses.

§9124(c)(1).² Applicant was told that he had the right to a formal hearing before the Commission but if he did not appeal the Commission's decision within 30 days, the decision would become final. The Commission informed Applicant that he would have the burden of proving that he met all requirements for licensure, including good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate. Applicant requested the hearing before the Commission, at which time Applicant was represented by counsel.

Prior to testimony being taken, counsel for Applicant offered into evidence Applicant's prior performance reviews that he received while working for HCR ManorCare from 2004-2005;³ Applicant's credit score; Applicant's resume; Applicant's application to enroll in the University of Phoenix; and three references – one from his girlfriend, Susan Ballard; the second from a long-time friend; and the third from his insurance agent; and his guilty plea from a disorderly conduct charge.

² Section 9124(c)(1) of the Criminal Records Act provides:

(c) State action authorized. – Boards, commissions or departments of the Commonwealth authorized to license, certify, register or permit the practice of trades, occupations, or professions may refuse to grant or renew, or may suspend or revoke any license, certificate, registration or permit for the following causes:

(1) Where the applicant has been convicted of a felony.

³ Counsel for Applicant stated that Applicant had worked for HCR ManorCare for 10 years and had been discharged from his employment but did not have the ability to get all of his employment reviews.

Applicant then testified that in 1999, he and his-then wife purchased a car for \$3,000 cash. They were unsuccessful in getting the title and the paperwork for the car. When they tried to get possession of the necessary requirements for having the vehicle registered, they were told by the grandmother of the person who sold them the car that he was incarcerated. Because they paid in cash for the car, they did not notify the police department because “we couldn’t legalize or anything like that. The vehicle was parked. It was driven the day that I had an accident in the vehicle.” (January 26, 2010 Hearing Transcript at 17-18.) Applicant realized that he did not have his license and said he would go to his house, which he did, at which time he received a phone call from a police officer. He stated that he was going to go to the police station after work, but on his way home from work, he was apprehended. He was asked a lot of questions and then was charged with reckless driving, failing to have financial responsibility and tampering. Only when he had obtained counsel did he find out that the car might have been stolen and a felony charge of receiving stole property was filed against him. He testified that he pled guilty and he received two-year’s probation for his conviction.

Applicant also testified regarding a domestic dispute that he had with his current girlfriend, Susan Ballard, in 2009, which resulted in him pleading guilty to disorderly conduct. He explained that he was under stress as a result of them purchasing a home before selling their existing home. He grabbed her and she called the police. As a result, he had to take domestic violence classes for 12 weeks. Currently, he had taken eight of the 12 weeks of classes.

On cross-examination, Applicant stated that the individual that sold him and his-then wife the car was not someone he knew. They saw an ad in the paper to which they responded. They did ask the individual about the registration and title, and he replied to come back later. They did talk to him one more time, about a week later, but he was stalling and after that he was in prison. At the time they were discussing the sale, he did not represent the car as his own, just said that the car was for sale. At the time of the sale, Applicant stated that he was 32 or 33 years old and that he was now 43 years old.⁴ He also indicated that he worked at HCR ManorCare for six years rather than 10 years and was employed there until approximately one year prior to the hearing setting up the equipment for all of the admissions and all of the medical supplies for its facility. He admitted that he was not currently employed and did not offer any explanation as to why he had been terminated by HCR ManorCare.

The Commission issued a final adjudication and order again denying the Application under Section 604(a)(14) of the RELRA and Section 9124(c)(1) of the Criminal Records Act. The Commission noted that although Applicant asked the Commission to accept that he was now honest and trustworthy and he provided work performance appraisals completed for HCR ManorCare, the evaluations were from 2004 and 2005, one to two years prior to the time he ceased being employed

⁴ Applicant's girlfriend, Susan Ballard, testified on behalf of Applicant stating that she had known him for seven years and believed he was a hard worker, he was of fine moral character, and he would be a fine real estate agent because she did not question his integrity or honesty.

by that employer, and Applicant did not provide an explanation as to why he was terminated from HCR ManorCare.

Regarding Applicant's conviction, the Commission stated:

While Applicant asks the Commission to believe that he did not know that the car was stolen when he purchased it since he did not ask to see the seller's driver's license, it strains credulity to believe that Applicant thought that his cash car purchase was on the up-and-up. Further, even if the Commission accepts this testimony as naivety at the time the car was purchased, Applicant displayed untrustworthiness when he learned from the seller's grandmother that the seller was in jail and that he would not be receiving a title for the car. Instead of turning the car over to the police, Applicant continued using it, and the insurance, as if they were his. Having turned a blind eye to this fraud, the Commission cannot conclude that Applicant meets the standards for licensure.

(Commission's September 17, 2010 decision at 9.) It is from this decision that Applicant has filed his appeal to our Court.⁵

Applicant contends that the Commission's findings of fact are not supported by the evidence because it based its decision on one incident that occurred 10 years ago, "which was the unintentional purchase of a stolen vehicle (which led to the conviction for receiving stolen property) and is not equivalent to

⁵ Our scope of review is limited to determining whether the Commission committed an abuse of discretion, an error of law or made findings of fact which were not supported by substantial evidence. *Pivrotto v. State Real Estate Commission*, 554 A.2d 179 (Pa. Cmwlth. 1989).

theft. [However,] he has never been accused of, charged with or convicted of theft.” (Applicant’s brief at 9.) Applicant then contends that the Commission ignored his character and integrity that has been exhibited in the past 10 years and that led to a biased decision being made.

Not only is the crime of receiving stolen property a theft crime, *see* 18 Pa. C.S. §3924 – receiving stolen property, but Applicant pled guilty to a third degree felony of receiving stolen property. He may not collaterally attack his criminal plea or suggest that he did not commit the crime for which he pled guilty at this point in time. *Denier v. State Board of Medicine, Bureau of Professional and Occupational Affairs*, 683 A.2d 949 (Pa. Cmwlth. 1996). Consequently, his argument that his unintentional purchase of a stolen vehicle is not a “theft” is meritless.

As for Applicant’s character, Section 501 of the RELRA provides:

(a) Licenses shall be granted only to and renewed only for persons who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of broker, salesperson,.....and in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission as it shall by regulation require.

63 P.S. §455.501. The Commission was concerned with Applicant’s trustworthiness and it did not find that he was trustworthy because neither Applicant’s testimony nor his evidence was substantial support to award him a

license. Not only did the Commission disbelieve Applicant's explanation for failing to contact the police once he could not contact the man who sold him the car or for failing to attempt to obtain his own title and insurance, but in the testimony during the hearing before the Commission, the following additional information was elicited:

Mr. Tarantino: Okay. Did you go to the police when you didn't get the title after all those attempts?

Applicant: No, I did not.

Mr. Tarantino: Is there a reason why you wouldn't have reported that after you found out from his grandmother that he was in prison?

Applicant: The only thing --- I don't know consciously, thinking that when he was released we can resolve this. That was about it.

Mr. Tarantino: Did you know what he was in prison for?

Applicant: I do not know what he was in prison for. I don't know what he would have went to prison for, no.

Mr. Tarantino: Did you know in the Affidavit it states that your wife told the police that the guy was locked up for auto theft; did you know that?

Applicant: Yes. Again, I wouldn't know for sure, is what I'm saying. I mean, that's -- I didn't know exactly what she was saying in terms of the Affidavit, yes.

(Hearing Transcript at 34-35.) From this testimony, it appears that Applicant was aware that the man who sold him the car was in the business of selling stolen cars. The Commission found further evidence to bolster its decision when Applicant

informed it of his recent disorderly conduct charge for which he was taking domestic violence classes. Additionally, Applicant had been terminated from his prior employment but did not provide any explanation to the Commission as to why he had been terminated.

The Commission is the agency charged with the responsibility and authority to oversee the real estate profession and to determine the competency and fitness of an applicant to practice as a real estate salesperson within the Commonwealth. *Bhala v. State Real Estate Commission*, 617 A.2d 841 (Pa. Cmwlth. 1992). The weight the Commission assigns to evidence is a matter within its discretion. Absent a clearly unreasonable exercise of judgment, we cannot substitute our discretion for that of the Commission which is endowed with the expertise in matters subject to its jurisdiction. *Pastorious v. State Real Estate Commission*, 466 A.2d 780 (Pa. Cmwlth. 1983). Here, the Commission found Applicant's testimony outweighed his references and employment evaluation and credit history to prove trustworthiness. Because Applicant was aware that he was convicted of a felony, and the Commission had the authority to refuse to grant his Application for that reason alone under Section 604(a)(14) of the RELRA and Section 9124(c)(1) of the Criminal Record History Act, we will not disturb that determination.

Accordingly, the order of the Commission is affirmed.

DAN PELLEGRINI, JUDGE

