

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

**ROHAN BRAMBLE**

**DECISION**

For a License as a Real Estate Salesperson

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The above noted matter came on for a hearing before the undersigned, Roger Schneier, on May 15, 2018 at the office of the Department of State located at 123 William Street, New York, New York.

The applicant, having been advised of his right to be represented by an attorney, chose to represent himself.

The Division of Licensing Services (hereinafter "DLS") was represented by Matthew Wolf, Esq.

**ISSUE**

The issue before the tribunal is whether the applicant should be denied a license as a real estate salesperson because of a prior criminal conviction.

**FINDINGS OF FACT**

1) By on-line application received on October 2, 2017 the applicant applied for a license as a real estate salesperson (State's Ex. 2 and 3).

2) On December 17, 2012 the applicant pled guilty to Grand Larceny in the 3<sup>rd</sup> Degree, Penal Law §155.35, a class D felony (State's Ex. 5).

3) The applicant was granted a Certificate of Relief from Disabilities on September 14, 2017 (State's Ex. 3).

4) At the time of the conclusion of the crime in November 2010 the applicant was approximately 43 years old (State's Ex.3).

5) The conviction arose out of a scheme in which numerous payments of insurance premiums made to the insurance brokerage firm run by the applicant were not forwarded to the insurance companies, and numerous insurance policies were opened using fraudulent bank information and numerous suspicious email addresses associated with an IP address utilized by

the respondent's business (State's Ex. 4). The applicant's testimony related to only one policy, and he asserted that he was charged only because of his status as broker for the business.

6) By letter dated November 30, 2017 DLS advised the applicant that it proposed to deny his application because of the conviction and that he could request a hearing, which he did by letter received on December 22, 2017 (State's Ex. 1).

### **OPINION AND CONCLUSIONS OF LAW**

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he is entitled to be licensed as a real estate salesperson. State Administrative Procedure Act (SAPA), §306(1). Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. *300 Gramatan Avenue Associates v State Div. of Human Rights*, 45 NY2d 176, 408 NYS2d54, 56-57 (1978); *Tutuianu v New York State*, 22 AD3d 503, 802 NYS2d 465 (2nd Dept. 2005)."The question...is whether a conclusion or ultimate fact may be extracted reasonably--probatively and logically." *City of Utica Board of Water Supply v New York State Health Department*, 96 A.D.2d 710, 465 N.Y.S.2d 365, 366 (1983), quoting *300 Gramatan Avenue Associate, supra*, 408 NYS2d at 57.

II- Pursuant to Real Property Law (RPL) §441(1) (b), an applicant for a license as a real estate salesperson must establish that he or she is trustworthy. Any criminal convictions to which the applicant has been subject must be considered in determining whether that applicant is trustworthy.

In considering whether the license should be granted, it is necessary to consider, together with the provisions of RPL Article 12-A, the provisions of Correction Law Article 23-A, which imposes an obligation on licensing agencies

to deal equitably with ex-offenders while also protecting society's interest in assuring performance by reliable and trustworthy persons. Thus, the statute sets out a broad general rule that...public agencies cannot deny...a license to an applicant solely based on status as an ex-offender. But the statute recognizes exceptions either where there is a direct relationship between the criminal offense and the specific license...sought (Correction Law §752(1)), or where the license...would involve an unreasonable risk to persons or property (Correction Law §752(2)). If either exception applies, the employer has discretion to deny the license...." *Matter of Bonacorsa*, 71 NY2d 605, 528 NYS2d 519, 522 (1988).

In exercising its discretion, the agency must consider the eight factors contained in Correction Law §753(1).

The interplay of the two exceptions and §753(1) is awkward, but to give full meaning to the provisions, as we must, it is necessary to interpret §753 differently depending on whether the agency is seeking to deny a license...pursuant to the direct relationship exception...or the unreasonable risk exception.... Undoubtedly, when the... agency relies on the unreasonable risk exception, the eight factors...

should be considered and applied to determine if in fact an unreasonable risk exists.... Having considered the eight factors and determined that an unreasonable risk exists, however, the... agency need not go further and consider the same factors to determine whether the license... should be granted....

§753 must also be applied to the direct relationship exception... however, a different analysis is required because ‘direct relationship’ is defined by §750(3), and because consideration of the factors contained in §753(1) does not contribute to determining whether a direct relationship exists. We read the direction of §753 that it applies ‘[i]n making a determination pursuant to section seven hundred fifty-two’ to mean that, notwithstanding the existence of a direct relationship, an agency... must consider the factors contained in §753, to determine whether... a license should, in its discretion, issue.” *Bonacorsa, supra*, 528 NYS2d at 523.

A direct relationship is one wherein the offense bears directly on the applicant’s ability or fitness to perform one or more of the duties or responsibilities necessarily related to the license, Correction Law §750(3). There is no statutory definition of “unreasonable risk” which “depends upon a subjective analysis of a variety of considerations relating to the nature of the license... and the prior misconduct.” *Bonacorsa, supra*, 528 NYS2d at 522.

A direct relationship can be found where the applicant’s prior conviction was for an offense related to the industry or occupation at issue [denial of a liquor license warranted because the corporate applicant’s principal had a prior conviction for fraud in interstate beer sales]; [application for a license to operate a truck in garment district denied since one of the corporate applicant’s principals had been previously convicted of extortion arising out of a garment truck racketeering operation], or the elements inherent in the nature of the criminal offense would have a direct impact on the applicant’s ability to perform the duties necessarily related to the license or employment sought [application for employment as a traffic enforcement agent denied; applicant had prior convictions for, *inter alia*, assault in the second degree, possession of a dangerous weapon, criminal possession of stolen property, and larceny]. *Marra v. City of White Plains*, 96 AD2d 17, 467 NYS2d 865, 869 (2<sup>nd</sup> Dept. 1983).

While the issuance of a Certificate of Relief from Disabilities creates a presumption of rehabilitation, as explained by the Court in *Bonacorsa*, that presumption is only one factor to be considered along with the eight factors set forth in Correction Law §753(1) in determining whether there is an unreasonable risk or, if a determination has already been made that there is a direct relationship, in the exercise by the agency of its discretion. *Hughes v Shaffer*, 154 AD2d 467, 546 NYS2d 25 (1989); *Matter of Mahshie*, 192 AD2d 1133, 598 NYS2d 756 (4th Dept. 1993).

The presumption of rehabilitation which derives from...a certificate of relief from civil disabilities, has the same effect, however, whether the...agency seeks to deny the application pursuant to the direct relationship exception or the unreasonable risk exception. In neither case does the certificate establish a prima facie entitlement to the license. It creates only a presumption of rehabilitation, and although rehabilitation is an important factor to be considered by the agency...in determining

whether the license...should be granted (see §753(1) (g)), it is only one of the eight factors to be considered. *Bonacorsa, supra*, 528 NYS2d at 523.

Further, an agency which seeks to deny an application has no obligation to rebut the presumption of rehabilitation which derives from the Certificate of Relief so long as it properly considers the other factors set forth in Correction Law §753(1). *Arrocha v Board of Education of the City of New York*, 93 NY2d 361, 690 NYS2d 503 (1999).

In determining whether there is a direct relationship between the crime of which the applicant was convicted, Offering a False Instrument for Filing, and a license as a real estate salesperson, it is first necessary to consider the functions of a real estate salesperson. A real estate salesperson acts in a fiduciary capacity, and in the course of his or her employment deals with large sums of money, leases, and mortgage applications. There is a direct relationship between the crime of which the applicant was convicted, Grand Larceny, and those functions.

There being a direct relationship, it is necessary to consider the factors set forth in Correction Law §753.

The pertinent duties and responsibilities of a real estate salesperson (§753(1) (b)) have already been discussed in regards to the question of direct relationship. The fact that the applicant was convicted of a crime directly related to those duties leads a negative inference regarding his fitness to perform those duties and to meet those responsibilities (§753(1) (c)).

Over seven years have passed since the commission of the crime (§753(1) (d)), which occurred when the applicant was approximately 43 years of age (§753(1) (e)).

The seriousness of the crime (§753(1) (f)) is established by its status as a felony.

In the applicant's favor is the public policy of encouraging licensure of ex-offenders (§753(1) (a)), and the issuance to him of a Certificate of Relief from Disabilities (§753(2)).<sup>1</sup>

All of the above must be considered in the light of the legitimate interest of DLS in the protection of the safety and welfare of the public (§753(1) (h)).

The weighing of the factors is not a mechanical function and cannot be done by some mathematical formula. Rather, as the Court of Appeals said in *Bonacorsa*, it must be done through the exercise of discretion to determine whether the direct relationship between the "convictions and the license has been attenuated sufficiently." *Bonacorsa, supra*, 528 NYS2d at 524.

The applicant was convicted of a serious crime involving theft. According to the criminal complaint (State's Ex. 4) he was involved in a continuing course of conduct to defraud an insurance company and persons who paid for insurance. Yet he testified to a problem with only one insurance policy. Having hearing and observed his testimony I did not find it to be credible. Rather, he

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<sup>1</sup> The several letters of reference submitted by the applicant are of no value as they do not state whether the writers are aware of the conviction and, if so, how the existence of that conviction does or does not affect the writer's appraisal of the applicant's character.

appears to have attempted through that testimony to falsely minimize his involvement in a fairly extensive, if not terribly sophisticated, fraudulent scheme.

Therefore, after having given due consideration to the factors set forth in Correction Law §753 and to the requirements of RPL Article 12-A, and having weighed the rights of the applicant against the rights and interests of the general public, it is concluded that the applicant has not established that he is sufficiently trustworthy to be licensed as a real estate salesperson.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT**, pursuant to Real Property Law §§441(1) (b) and 441-e, the application of Rohan Bramble for a license as a real estate salesperson is denied.

/s/  
Roger Schneier  
Administrative Law Judge

Dated: May 15, 2018