

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS
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In the Matter of the Application of

TESHAWN MASON

CORRECTED DECISION

Complaint No.: 2017-2334

For License as a Real Estate Salesperson
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The above noted matter came on for hearing before the undersigned, Aiesha L. Hudson, on April 18, 2018, at the office of the Department of State (“Department”) located at 123 William Street, New York, New York.

The applicant was represented by John Gross, Esq., on behalf of Mobilization for Justice, Inc., 100 William St, 6th Floor, New York, NY 10038.

The Division of Licensing Services (“DLS”) was represented by hearing presenter Aqil Qureshi.

ISSUE

The issue is whether the applicant demonstrates the requisite good character and trustworthiness under Real Property Law (“RPL”) Article 12-A and New York Correction Law (“Correction Law”) Article 23-A for licensure as a real estate salesperson despite his criminal conviction.

FINDINGS OF FACT

1) On July 31, 2017, the applicant applied for licensure as a real estate salesperson and indicated on his application that he had been convicted of a criminal offense. The application indicated his sponsoring broker is Dynamic Realty (State’s Ex. 2).

2) On July 30, 2013, the applicant was convicted, by plea of guilty, of Rape in the Second Degree, Penal Law (“PL”) § 130.30, a class D Felony, for having engaged in sexual intercourse with another person less than 15 years old (State’s Ex. 8). The Information and Felony Complaint underlying the applicant’s conviction allege that, at the time of the crime, the girl was 14 years old, while the applicant was 23 years old (State’s Ex. 7).

3) On August 8, 2017, the DLS sent the applicant an email directing him to provide the Certificate of Disposition and accusatory instrument related to his conviction, as well as a detailed statement describing the circumstances surrounding his conviction within 15 days (State’s Ex. 3).

On September 11, 2017, the DLS received the requested statement from the applicant, along with a copy of a certificate indicating the applicant's completion of a sex offender treatment program referenced in his statement and an order of protection issued in connection with his conviction (State's Ex. 4). According to the applicant's statement, the court granted the applicant a Certificate of Relief from Disabilities upon his completion of the sex offender treatment program, a copy of which the applicant provided to the DLS by fax dated September 29, 2017 (State's Ex. 4, 5).

4) By letter dated October 2, 2017, the DLS contacted the applicant acknowledging receipt of his Certificate of Relief from Disabilities and directing the applicant to submit proof of his rehabilitation and/or good conduct since his conviction within 30 days. The applicant responded by fax dated October 4, 2017, providing a brief statement nearly identical to the statement the applicant provided to the DLS in response to its August 8, 2017 letter (State's Ex. 6).

5) By letter dated October 18, 2017, the DLS informed the applicant that it proposed to deny his application because, notwithstanding the issuance of a Certificate of Relief from Disabilities, the "[a]pplicant's conviction, actions and circumstances which surround [his] conviction indicates (sic) a lack of good character and trustworthiness required for licensure" (State's Ex. 1). The applicant requested a hearing by letter received by the DLS on November 2, 2017. The applicant included with his request for a hearing additional documentation related to his rehabilitation and/or good conduct since conviction: a handwritten statement in support of his application, a copy of the Order and Condition of Probation relating to his conviction, and a reference letter from a psychologist, Dr. Michael J. Skoraszewski, documenting the applicant's successful completion of a 78-week sex offender treatment program (State's Ex. 1). The letter indicates that during the program, the applicant "demonstrated excellent attendance, a highly cooperative attitude, and full compliance with treatment expectations" (State's Ex. 1). Notably, Dr. Skoraszewski's letter also states that there had been "no further concerns about illegal or inappropriate behavior throughout [the applicant's] entire time in treatment" (State's Ex. 1).

6) The applicant was sentenced to 10 years of probation and 10 years of sex offender registration (Transcript at 11). He has had no other arrests prior to or since his 2013 conviction (Transcript at 13).

7) At the hearing, the applicant testified that his conviction is the result of a sexual relationship he had with a girl he knew was underage (*i.e.*, under 18 years old) that he met in a chat room of an online video game (Transcript at 12, 23-26).¹ The applicant stated that he did not enter the chat room intending to find someone underage, but that the girl approached him asking to become friends. He admitted that he knew the girl's age when she contacted him because her age was listed on her profile (Transcript at 19). The applicant stated he made the "poor decision" to become friends with a girl who was underage (Transcript at 19). The applicant further testified that the girl initially invited him to her house to meet, which he agreed to despite reservations about her age and the 2-hour commute from his home in Brooklyn to her house in Yonkers, NY (Transcript at 19, 23). According to the applicant, during the course of their four-month relationship, he had sex with the girl 15 times (Transcript at 25-26). He was arrested by the police

¹ Although the girl's exact age was not addressed at the hearing, the Westchester County Superior Court Information, to which the applicant pled guilty, alleged that the girl was 14 years old (State's Ex. 7). The applicant was 23 years old at the time of the offense (Transcript at 21).

after the girl's mother discovered text messages between him and the girl on the girl's cell phone (Transcript at 29).

8) The applicant was forthcoming about the details of his conduct, and admitted he knew what he did was wrong (Transcript at 13). The applicant testified that he stopped seeing the girl three months before her family became aware of the sexual relationship and pressed criminal charges because he knew his behavior was wrong and it was "haunting" him (Transcript at 13). In his testimony, the applicant took responsibility for his crime and expressed remorse for how his actions may have affected not only the girl, but also her family (Transcript at 15, 27-28). He stated that he understood that he took advantage of the girl's mother, who was raising the girl on her own, by committing a crime in her home in her absence (Transcript at 27).

9) Since his conviction, the applicant has completed a 78-week sex offender treatment program (State's Ex. 1; Transcript at 17). The applicant testified that the program helped him to make sense of why he engaged in the inappropriate relationship, although he had a difficult time clearly articulating it to the tribunal other than to say he was "fed up," "acted out," and decided to "do something he had never done before" because of some frustration in his personal life (Transcript at 18). However, the applicant stated that the program has put him in a healthier mind set (Transcript at 18). He testified that, through the program, he has learned to identify and deal with triggers, as well how to avoid the "wrong ways to approach to relationships" (Transcript 26-27). The program also helped him to focus on improving himself to successfully reenter society (Transcript at 27). As a result, the applicant has endeavored to change his life by focusing on his goals, removing himself from potentially bad situations, and being careful about the relationships in which he engages (Transcript at 30-31). He has also been a steady member of a church since 2014 where he works with the pastors to "stay in a good space" (Transcript at 31). Currently, the applicant participates in once a month sex offender relapse prevention program with the same psychologist associated with the 78-week sex offender treatment program (State's Ex. 1; Transcript at 17).

10) At the hearing, the applicant testified to his job history in the retail and customer service industries since he graduated from high school in 2006 (Transcript at 10-11). Since his conviction, he has worked in various restaurants, most recently as product manager at a restaurant in Greenwich Village where he worked for two years until about January 2018 (Transcript at 11; State's Ex. 4). At the hearing, the applicant provided an undated employment reference letter from his supervisor at Rosemary's Enoteca and Trattoria ("Rosemary's), which states that he has known the applicant for more than a year and describes the applicant as organized, responsible, and having a good work ethic. The letter also describes the applicant as committed to helping others (Applicant's Ex. A). The applicant testified that he will start work at a movie theater as a prep cook within a few weeks of the hearing (Transcript at 9).

11) The applicant enrolled in Independence University in 2014 and has been taking online classes to obtain a bachelor's degree in Business Administration (Transcript at 10; State's Ex. 4).

12) The applicant has been offered a job to work with a friend who is real estate broker, Rezia Luke, who has agreed to sponsor him if he is granted a real estate salesperson license

(Transcript at 16). The applicant testified that he wants to use the real estate salesperson license to build a better life and is optimistic about doing so (Transcript at 16-17).

OPINION AND CONCLUSIONS OF LAW

I – As the person who requested a hearing, the burden is on the applicant to prove by substantial evidence that he is entitled to register as a real estate salesperson. State Administrative Procedure (“SAPA”) § 306; Real Property Law (“RPL”) § 441. Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. *Gray v. Adduci*, 73 N.Y.2d 741, 536 N.Y.S.2d 40 (1988). In determining whether substantial evidence has been presented by the applicant, “the question . . . is whether a conclusion or ultimate fact may be extracted reasonably—probatively and logically.” *Division of Licensing Services v. Cirrincione*, 246 DOS 98 (1998) (citing *City of Utica Water Supply v. New York State Health Department*, 96 AD2d 710, 465 NYS2d 365, 66 (1983)).

III – Pursuant to RPL § 441, a real estate salesperson must be trustworthy and competent and the Department is empowered to investigate applicants to determine if they meet that standard. Given that the applicant has obtained a Certificate of Relief from Disabilities, the conviction in itself cannot and does not bar him from obtaining a real estate license. RPL § 440-a. In assessing how the applicant’s criminal conviction factors into whether he is trustworthy and competent, the Department must abide by New York Correction Law (“Correction Law”) Article 23-A in order to “deal equitably with ex-offenders while also protecting society’s interest in assuring performance by reliable and trustworthy persons.” *Matter of Bonacorsa*, 71 N.Y.2d 605, 611 (1988). Accordingly, DLS may only use a person’s criminal conviction as the basis for denying a license where (1) there is a direct relationship between a previous criminal offense and the specific license or employment sought by the applicant, or (2) where the issuance of the license would involve an unreasonable risk to property or the safety or welfare of others. Correction Law § 752.

There is a direct relationship between a criminal offense and the license sought when “the nature of [the] criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license...in question.” Correction Law § 750(3). As it is not defined by statute, a finding of unreasonable risk “depends upon a subjective analysis of a variety of considerations relating to the nature of the license...sought and the prior misconduct.” *Bonacorsa*, 71 N.Y.2d at 612. When neither exception is applicable, “a conviction cannot be considered as a basis for denying a license.” *Bonacorsa*, 71 N.Y.2d at 612.

In determining whether there is a direct relationship between the crime of which the applicant was convicted and licensure as a real estate salesperson, it is first necessary to consider the duties of a real estate salesperson. The primary duties of a real estate salesperson are the buying, selling, exchanging, and leasing of real estate, the negotiating of a loan upon an interest in real estate, the managing of real property, and the conduct of these duties in compliance with law. *See* RPL § 440. In the course of his or her employment, a real estate salesperson acts as an agent for principals who are sellers, buyers, lessors, and lessees of real property. The relationship of agent and principal is fiduciary in nature, “founded on trust or confidence reposed by one person

in the integrity and fidelity of another." *Mobil Oil Corp. v. Rubenfeld*, 72 Misc. 2d 392, 339 N.Y.S.2d 623, 632 (Civil Ct. 1972), *aff'd* 77 Misc. 2d 962, 357 N.Y.S.2d 589, *rev'd on other grounds* 48 A.D.2d 428, 370 N.Y.S.2d 943; *Wende C. v. United Methodist Church*, 6 A.D.3d 1047, 776 N.Y.S.2d 390 (4th Dept. 2004).

An element of the criminal offense for which the applicant in this case was convicted, Rape in the Second Degree, is sexual contact between an adult male (*i.e.*, a male being eighteen years old or more) and a female of less than fifteen years old. As a licensed real estate salesperson and fiduciary agent, it is probable that in the performance of the duties and responsibilities necessary to affect the sale, rental, financing, managing of real property, the applicant would have unrestricted access to homes at times when minor female occupants are alone or unsupervised by an adult. *See Matter of Application of Kenneth A. Brown*, 33 DOS 93 (1993); *Davioli v. Division of Licensing Services*, 33 DOS 02 (2002). Accordingly, the applicant's felony rape conviction bears directly on his fitness to perform and to meet the responsibilities legally imposed on a real estate salesperson. Therefore, his conviction must be evaluated in light of the *Bonacorsa* factors codified in Correction Law § 753:

- (a) The public policy of [New York] . . . to encourage the licensure . . . of persons previously convicted of one or more criminal offenses;
- (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person;
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities;
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses;
- (e) The age of the person at the time of occurrence of the criminal offense or offenses;
- (f) The seriousness of the offense or offenses;
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct;
- (h) The legitimate interest of the public agency . . . in protecting property, and the safety and welfare of specific individuals or the general public.

Correction Law § 753(1).

Where a direct relationship exists between the criminal offense in question and the license sought, the eight factors of Correction Law § 753(1) are applied to determine whether a license should be granted in spite of the relationship. *Bonacorsa*, 71 N.Y.2d at 613. The tribunal must keep in mind that "the weighing of the factors is not a mechanical function and cannot be done by some mathematical formula, but rather . . . must be done through the exercise of discretion to determine whether the direct relationship between the 'convictions and the license has been attenuated sufficiently.'" *Perez v. Division of Licensing Services*, 21 DOS APP 13 (2013) (citing *Matter of Bonacorsa*, 71 NY2d at 612).

Applying the factors outlined above, while it is in the public policy of New York State to encourage the licensure of ex-offenders, it is also the responsibility of the Department of State to ensure the welfare of the general public (Corrections Law §§ 753(1)(a), (h)). Thus, although the actions that led to the applicant's conviction occurred almost six years ago, the tribunal's analysis must also weigh the seriousness of his offense, which is evident by the fact that it is a felony requiring the applicant to be registered on the New York State sex offender registry for ten years (Corrections Law § 753(1)(f)). Further, it weighs against the applicant's licensure that he committed the offense when he was 23 years old, a fully-formed adult, who admittedly knew what he was doing was wrong at the time he was engaging in the unlawful behavior over a four-month period (Corrections Law § 753(1)(e)).

That said, the applicant was granted a Certificate of Relief from Disabilities, and, since his conviction, has taken significant steps toward rehabilitation and putting his life back on the right track. The tribunal credits the applicant's testimony that he ended the relationship with the girl prior to his arrest because his actions were weighing on his conscience. Although the cessation of the relationship before discovery does not excuse or nullify his illegal behavior, it is evidence of the applicant's moral character. Further, after his conviction, the applicant completed a 78-week sex offender treatment program during which his psychologist observed "no further concerns regarding illegal or inappropriate behavior." His continued participation in a monthly aftercare group shows this tribunal the applicant's commitment to rehabilitation and relapse prevention. Moreover, in the years since his conviction, the applicant has made positive steps to rehabilitate himself by finding gainful employment working at several restaurants. The reference letter from his supervisor at his most recent employer, Rosemary's, describes the applicant as someone with the trustworthiness and good character required to be licensed as a real estate salesperson (Corrections Law § 753(1)(g)). Therefore, the risk posed by the direct relationship that exists between the criminal offense for which the applicant was convicted and the duties of a real estate salesperson is sufficiently attenuated by the applicant's post-conviction behavior and employment history which exhibit a determined effort towards rehabilitation.

The applicant testified credibly and sincerely regarding the circumstances underlying his conviction, and it is apparent through his testimony that he understands what he did was wrong. He expressed remorse that seemed earnest. It weighs in the applicant's favor that he has had no other arrests before or after the arrest underlying his conviction. The applicant is seeking a second chance to make a better life for himself. This tribunal finds there is sufficient evidence in the record of the applicant's steps toward rehabilitation to support that he has met his burden of proof and earned that second chance. Having heard and observed the applicant's credible testimony, having given due consideration to the factors set forth in Correction Law § 753 and the requirements of RPL Article 12-A, and having weighed the rights of the applicant against the rights and interests of the general public, this tribunal concludes that the applicant has established by substantial evidence that he is sufficiently trustworthy to be licensed as a real estate salesperson and the issuance of said license to the applicant would not present a threat to the welfare and safety of the public.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT, the application of Teshawn Mason, for licensing as a real estate salesperson, is granted.

/S/

Aiesha L. Hudson
Administrative Law Judge

Dated: July 11, 2018