

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION :

FOR A REAL ESTATE LICENSE : FINAL DECISION AND ORDER
: LS0606291REB

JOHNNY L. JONES, :
APPLICANT. :

(Division of Enforcement Case File No. 06REB040)

TO: Daniel Meylink
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Madison, WI 53708-8935

A Class I hearing was conducted in the above-captioned matter on September 22, 2006, before Administrative Law Judge Colleen M. Baird. The respondent appeared in person, represented by his attorney, Daniel Meylink. The Division of Enforcement appeared by Attorney Mark Herman. The Administrative Law Judge issued a Proposed Decision on November 29, 2006.

Upon review of the Proposed Decision, the Department of Regulation and Licensing adopts and issues the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Johnny L. Jones, applicant herein, filed his application for a license to practice as a real estate salesperson in Wisconsin on February 2, 2006.
2. On March 21, 2006, the Department issued its Notice of Denial of Mr. Jones' application. The basis for the denial was stated as follows:

Documentation on file establishes that you have been convicted of violations, the circumstances of which substantially relate to the practice of a real estate profession. The legal basis for this decision is Wis. Stat. §§ 452.03, 452.09(1)(e) and 111.35(1)(c)1.

3. Form 2252 of the application for licensure requires the applicant to list all felonies, misdemeanors, and other violations of state or federal law of which the applicant has ever been convicted in this state or any other, whether the conviction resulted from a plea of no contest or a guilty plea or verdict.
4. In his application for licensure, Mr. Jones listed four (4) criminal convictions and indicated that he was enclosing all prior case records that he was able to obtain from the Milwaukee County and Racine County Courts. The copies of criminal records submitted by Mr. Jones included substantially all of his convictions.
5. The Criminal and Traffic Disposition of Milwaukee County Circuit Court indicate the following convictions of record

for Mr. Jones:

Operating After Revocation of License, Misdemeanor, December 7, 1993
Operating After Revocation of License, Misdemeanor, December 7, 1993
Operating After Revocation of License, Misdemeanor, December 7, 1993
Battery, Class A Misdemeanor, December 7, 1993
Obstructing an Officer, Misdemeanor, April 3, 1995
Entry into a Locked Vehicle – Party to a Crime, Misdemeanor, April 3, 1995
Armed Robbery, Two Counts, Class B Felonies, September 2, 1997

6. As a result of his conviction for Armed Robbery, Mr. Jones was imprisoned from 1997 to October 2003.
7. Since his release from prison, Mr. Jones has been under supervision by the State of Wisconsin, Department of Corrections, Division of Probation and Parole. Mr. Jones will continue to be supervised by the Department of Corrections until 2010, unless he is granted early release or discharge.
8. Lyn Gilbert, the Probation and Parole Officer who supervised Mr. Jones from the time of his release from prison until her retirement in July 2006, indicated that Mr. Jones maintained a positive approach regarding his supervision in the community, she had never received any negative telephone calls regarding him, and she would approve of Mr. Jones receiving his real estate license.
9. Since the date of his release from prison, Mr. Jones has been employed full-time as a mason and has paid his monthly supervision fees and maintains compliance with parole supervision.
10. Mr. Jones has not been arrested for, charged with, or convicted of any criminal offenses since August, 2000.
11. The extent of Mr. Jones' police contacts since his release from prison have been four (4) traffic citations for Speeding - May 4, 2004; Failure to Obey Traffic Signal - March 14, 2005; Operating While Registration Suspended - May 2, 2005; Speeding - March 24, 2006.
12. Since his release from prison, Mr. Jones has become a property owner, including the purchase of several rental properties.
13. Since his release from prison, Mr. Jones has successfully completed the course for licensure as a real estate salesperson and passed the real estate salesperson licensing examination.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter under Wis. Stats. § 452.05(1)(a).
2. The circumstances of the convictions detailed above substantially relate to the circumstances of the practice of a real estate salesperson within the meaning of § 111.335, Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that JOHNNY L. JONES shall be, and hereby is, granted a LIMITED license to practice as a real estate salesperson, subject to the following limitations, terms and conditions:

PRACTICE LIMITATIONS

1. Mr. Jones shall practice as a real estate salesperson exclusively as an employee of a licensed real estate business entity which shall be pre-approved by the Department.
2. The business entity shall designate a supervising broker for Mr. Jones who is a licensed real estate broker in good standing, with no prior discipline, and is pre-approved by the Department.
3. The supervising broker for Mr. Jones shall submit a statement to the Department Monitor indicating that he or she has been designated as the supervising broker for Mr. Jones and that he or she accepts the responsibility for providing supervision as follows:
 - a. During at least the first year of Mr. Jones' licensure and until otherwise ordered by the Board, the supervising broker shall provide direct and personal supervision of Mr. Jones practice of real estate. "Direct and personal supervision" means that the broker shall be immediately available to continually coordinate, direct and inspect at first hand the practice of Mr. Jones.
 - b. Following one year of satisfactory employment and upon receipt of notification from the Department Monitor, the supervising broker shall provide general supervision of Mr. Jones, until otherwise ordered by the Department. "General supervision" means the broker shall on a regular basis coordinate direct and inspect Mr. Jones' practice of real estate, similar to other salespersons the broker may supervise in the course of his or her practice.
4. Mr. Jones shall provide a copy of this Final Decision and Order to his supervising broker at all settings where Mr. Jones works as a real estate salesperson.
5. Mr. Jones shall not be given access to any real property which contains the personal property of another person, unless he is accompanied by another licensee or the owner of the property, or the owner's agent, for the first twelve (12) months of his licensure.
6. Mr. Jones shall not hold or disburse any client funds as defined in § Wis. Stats. 452.13.
7. Until such time as approved by the Department, Mr. Jones may not personally transport clients or customers in his own vehicle for the purpose of viewing real properties, attending open houses or transacting real estate sales.

REPORTING REQUIREMENTS

8. Mr. Jones shall be responsible for submission to the Department Monitor written quarterly reports prepared by his employer setting forth his real estate sales activities and progress in his employment, including his interactions with clients and customers. These reports shall verify that Mr. Jones is in compliance with the laws governing the practice of real estate and the terms of this Order. The Department Monitor shall notify Mr. Jones of the due dates scheduled for submission of reports.
9. Mr. Jones shall remain in full compliance with all terms and conditions of probation and/or parole imposed upon him. He

shall immediately provide a complete copy of any Final Decision and Order to his probation agent and arrange for his probation agent to immediately notify the Department Monitor if there is a violation of the terms of his probation or of this Order.

10. Mr. Jones shall promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order.

11. Mr. Jones shall not be convicted of or charged with any traffic violations or ordinance violation concerning the operation of vehicle or providing false or misleading information to any governmental official. Any conviction including traffic citations must be reported to the Department Monitor within 48 hours of the entry of judgment and may result in additional sanctions or restrictions upon his license.

12. Mr. Jones shall report to the Department any change of employment status, residence, address or telephone number within five (5) days of the date of a change. If Mr. Jones changes his employer, he shall provide a complete copy of this Final Decision and Order to the new business entity, and he shall be responsible for having the new business entity comply with this Order.

COSTS

13. Within thirty days from the date of signing of this Order, Mr. Jones shall pay the investigative costs in the amount of \$200.00. Payments shall be made by certified check or money order, payable to the Wisconsin Department of Regulation and Licensing and sent to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 261-7904
Fax (608) 266-2264

14. Failure of Mr. Jones to make timely payment in full on or before thirty days from the date of signing of this Order shall constitute a violation of this Order.

PETITIONS FOR MODIFICATIONS

15. Mr. Jones may petition the Department for a modification of the terms of this Order after two (2) years from the effective date of this Order. Any such modification shall be accompanied by a written recommendation from Mr. Jones's employer and probation or parole officer expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license under s. 227.01 (3) (a), Wis. Stats., and Mr. Jones shall not have a right to any further hearings or proceedings on the denial. Until such time that he has successfully completed the limitations, terms and conditions of this Order, Mr. Jones shall not be eligible to apply for or be granted a real estate broker's license.

SUMMARY SUSPENSION / ADDITIONAL DISCIPLINE

16. The Department may conduct proceedings for a summary suspension under Wis. Admin. Code ch. RL 6 or initiate a separate disciplinary action under Wis. Stat. § 452.14 for violations of this Order.

OPINION AND EXPLANATION OF VARIANCE

Opinion

The evidence presented at the hearing shows a history of criminal convictions for Mr. Jones which are substantially related to the practice of a real estate salesperson. Criminal acts involving dishonesty, theft, robbery or violence constitute adequate

grounds for disciplinary actions or denial of a real estate salesperson license. However, the fact that Mr. Jones' convictions are substantially related to the circumstances of the practice of a real estate salesperson does not necessarily lead to the conclusion that he is completely foreclosed from any form of licensure. The threshold question whether an applicant may be eligible for a license and, if so, whether limitations should be imposed upon that license, depends upon whether the risk to public safety can be safely assumed to no longer exist.

In *County of Milwaukee v. LIRC*, 139 Wis.2d 805 at 820, 407 N.W. 2d 908 (1987), the Court set forth the test to be utilized in making that determination:

We reject an interpretation of this test which would require, in all cases, a detailed inquiry into the facts of the offense and the job. Assessing whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. What is important in this assessment is not the factual details related to such things as the hour of the day the offense was committed, the clothes worn during the crime, whether a knife or a gun was used, whether there was one victim or a dozen or whether the robber wanted money to buy drugs or to raise bail money for a friend. All of these could fit a broad interpretation of "circumstances." However, they are entirely irrelevant to the proper "circumstances" inquiry required under the statute. It is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person.

Thus, it is necessary to consider the totality of the person and the circumstances involved in the criminal conduct when determining whether the circumstances of a conviction are substantially related to employment interests.

It is evident that the legislature sought to balance at least two interests. On the one hand, society has an interest in rehabilitating one who has been convicted of crime and protecting him or her from being discriminated against in the area of employment. Employment is an integral part of the rehabilitation process. On the other hand, society has an interest in protecting its citizens. There is a concern that individuals, and the community at large, not bear an unreasonable risk that a convicted person, being placed in an employment situation offering temptations or opportunities for criminal activity similar to those present in the crimes for which he had been previously convicted, will commit another similar crime. This concern is legitimate since it is necessarily based on the well-documented phenomenon of recidivism. This law should be liberally construed to effect its purpose of providing jobs for those who have been convicted of crime and at the same time not forcing employers to assume risks of repeat conduct by those whose conviction records show them to have the "propensity" to commit similar crimes long recognized by courts, legislatures and social experience.

Mr. Jones' last criminal conviction was on September 2, 1997; with the actual conduct having occurred in June 1995. The conviction stemmed from a dispute between Mr. Jones and the victim over a drug debt. Mr. Jones testified that he retaliated against a guy who owed him money. The criminal complaint indicated that Mr. Jones and 5 other people were involved in the incident. The stolen property consisted of a \$50.00, a ring and watch. Mr. Jones was convicted of Armed Robbery and Party to a Crime. Mr. Jones was given a 15 year sentence and served 8 years.

Mr. Jones testified that while in prison, he made a genuine commitment to radically change his life.

When I was incarcerated I took time to read, find myself, and do things that I know that will make me a better person when I come home. Some people change once they go to prison and go through the prison experience, and they wanted – I knew that I had changed. I knew that crime wasn't for me when I went into booking. In 1995 it was over for me. Over for me. I made commitment to myself, a commitment to my family. It was over. I'm not going to do it anymore. I'm finished with it. I started looking at ways to better myself. Being honest, when I got into this, I said to myself I want to go into real estate. I said real estate because my record will never be used against me in real estate. How wrong was I? I felt that that was an arena that I could go in and I would never really be judged by my

past experiences, being I was done. (Hearing Transcript at pg. 64)

Mr. Jones was released from prison approximately three years ago. Since his release from prison, he has not had any new criminal convictions.^[1] He has rebuilt his life and earned the respect and support of many people in his community. Mr. Jones testified that his primary goal after release from prison was to re-establish his relationship with his son. It was also his goal to get a job. While in prison, Mr. Jones received training as a mason. Upon his release, he immediately sought employment in that trade. He has been steadily employed as a mason since then and is doing well. His current employer, Masonry Specialists, described Mr. Jones as a very good employee who diligently executes his job responsibilities and is well liked by his co-workers.

In addition to maintaining full-time employment as a mason, Mr. Jones began to work toward another personal goal - that goal was to pursue a career in real estate sales. Mr. Jones testified that he began by establishing himself with people in the real estate community, such as brokers and mortgage lenders. He completed the real estate salesperson licensure course with the Shorewest Realty Company. He then studied and passed the real estate salesperson examination. While studying for his real estate salesperson license, Mr. Jones purchased his first rental property. He has continued to invest in real estate and now owns four rental properties. Mr. Jones has owned these properties for approximately two years and has an ownership interest in four other properties. He testified that one of his proudest moments was when he purchased a home for his mother. Mr. Jones testified that someday he would like to own his own real estate company and be involved in real estate development.

Mr. Jones testified that he has proven by his current work record that is trustworthy.

I know that people have a lot of concern about my record going into houses. I believe I've proven myself. I own several properties with several tenants. I have not taken from them. I build new construction every day. I build houses out of the ground. I'm there when the houses come up. I'm there to the last minute of masonry. If I wanted to go in and be deceptive, I could go in and take as much as I wanted. I'm not that person. I have keys to everything at the job site, everything. I'm not in there taking anything from them. I don't want to be that person. I'm not that person anymore. Of course, that's me on record. That's me on record. I'm not even here to argue did I do it. Yes, I did. People change. That's not me no more. Whether I get this position of salesperson, become broker, my life of crime is over. I don't do crimes anymore. I'm a productive member of my community. I can honestly say that. Those letters prove it. I can say that I know I am. I know that I'm worthy and I know I've done what it has taken for me to get there. (Hearing Transcript at pgs. 71-72)

Numerous written letters of recommendations were submitted from individuals who were familiar with Mr. Jones' background and character. These letters of recommendations were impressive both in terms of quality and quantity, thirteen in total number. Mr. Jones is obviously well known and active in his community. One letter was from a senior loan officer and alumni of Marquette University; and another letter was from a mortgage consultant who had worked with him for several years; both writers attested to his professionalism, efficiency and abilities. Another letter was from a human resources officer who was familiar with his work ethic and rated his personal character as excellent. Another letter was from a retired teacher/registered drug prevention specialist who has known Mr. Jones since he was in the 6th grade. This former teacher wrote that Mr. Jones is a positive and strong-minded character who intends to contribute good to society.

Another letter of support was from a registered nurse who has known Mr. Jones for over thirteen years; she wrote that despite his poor decisions in the past, she believes that he has become a caring father, a hard worker, and a productive citizen. Likewise, two Milwaukee high school teachers submitted letters on Mr. Jones' behalf requesting that he be given a real estate license; including one teacher who was a former classmate of Mr. Jones. This teacher stated that he had observed Mr. Jones' challenges with what he described as the "vicissitudes of life," and that he had witnessed his post-incarceration diligence and developments leading to his application for real estate licensure. He stated as follows:

Mr. Jones has taken those elements of younger life and used them as a catalyst for change within himself and as a testimony to those who he encounters. It is because of my sincere admiration for this man that I request of the Department of Regulation and Licensing that he receive his real estate license so that as a citizen he can be an example that changes for the better can happen for productivity if due diligence is applied. (Exhibit 9)

Mr. Jones' parole officer appeared by telephone and testified that she found Mr. Jones to be very forthcoming and responsible. She illustrated that by the fact that Mr. Jones had obtained not one, but two jobs, within a few weeks of being paroled. Mr. Jones reported to his parole officer about twice per month. She also did a home visit each month for about six months. During his supervision, Mr. Jones was randomly tested for drug and alcohol, which always proved to be negative. Based upon his overall cooperation, compliance and risk assessment, the parole officer reclassified Mr. Jones to minimum status. She summarized her favorable opinion of Mr. Jones by testifying that in all her years of doing law enforcement (since 1989), she could name on one hand about five clients that she would be willing to go to bat for, and Mr. Jones was one of them. She believed that Mr. Jones was a deserving recipient of a real estate salesperson license and he would prove that he is worthy of having a chance.

The evidence of record shows Mr. Jones' rehabilitation is well underway and the risk that he will re-offend in a similar manner is low. Clearly, he is on the right road to a successful and productive life. However, given his prior criminal record, it would be reasonable to initially impose certain limitations or restrictions upon Mr. Jones' real estate salesperson's license to ensure public safety. These limitations are consistent with previous orders issued by the Department which has a long-standing record issuing limited licenses to individuals seeking real estate salespersons licenses who have had criminal convictions, provided there is sufficient proof of rehabilitation. These limitations extend the "safety net" for public protection, without unduly denying the opportunity for rehabilitated applicants to obtain an occupational license.

Explanation of Variance.

The Department accepts the Findings of Fact and Conclusions of Law of the Proposed Decision in this matter. The Department, however, has modified the Order in the following respects:

- The Department clarified that during the first year of licensure the supervising broker will be required to provide direct supervision to Mr. Jones. Following successful completion of one year of real estate practice, the level of supervision will decrease to general supervision;
- The Department increased the period of time to 12 months for the amount of time Mr. Jones shall be restricted from unaccompanied access to real property;
- The Department clarified that the Department Monitor will notify Mr. Jones of the due dates for work reports;
- The Department clarified the convictions must be reported within 48 hours from the entry of judgment, in accordance with the requirements of Wis. Admin. Code §. RL 4.09(2);
- The Department added notice of the potential consequences of violation of its Order, including summary suspension or other discipline; and
- The Department imposed costs payable to the Department in the amount of \$200.00.

These modifications extend the "safety net" for public protection in conjunction with the issuance of this license. As to the issue of costs, the arguments hinge in great part upon the contents of Exhibit 8, a document withdrawn as an exhibit and not an official part of this record. The Department is entitled to costs in this matter, pursuant to Wis. Stat. § 440.03(13)(d). The Applicant has offered payment of \$200 in costs; given the circumstances, this offer is accepted as reasonable.

Dated at Madison, Wisconsin, this 23rd day of January, 2007.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION & LICENSING

Celia M. Jackson
Secretary
1400 East Washington Avenue
P.O. Box 8935

[1] Mr. Jones did receive traffic citations for speeding, driving while suspended and operating while registration was suspended since his release from prison. His parole officer testified that she did not consider these to be significant law violations and it did not alter her opinion or recommendation for licensure.