

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 LICENSE TO PRACTICE AS A	:	FINAL DECISION
REAL ESTATE SALESPERSON	:	AND ORDER
	:	LS0608141REB
JASON R. JANISZEWSKI,	:	
APPLICANT.	:	

Division of Enforcement Case No. 06REB147

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 30th day of March, 2007.

Secretary Celia M. Jackson
Department of Regulation and Licensing

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION FOR :
A LICENSE TO PRACTICE AS A : PROPOSED FINAL
REAL ESTATE SALESPERSON : DECISION AND
: ORDER
: :
JASON R. JANISZEWSKI, : LS0608141REB
APPLICANT. :

Division of Enforcement Case #06 REB 147)

TO: Jason R. Janiszewski
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A Class I hearing was conducted in the above-captioned matter on October 25, 2006, before Administrative Law Judge Colleen M. Baird. The respondent appeared *pro se*, representing himself in this proceeding. The Division of Enforcement acted by Attorney Lara Herman. Based upon the entire record in this case, the ALJ recommends that the Department adopt as its decision in the matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The applicant, Jason R. Janiszewski, date of birth 8/7/79, applied for a real estate salesperson's license on or about April 10, 2006.
2. Mr. Janiszewski's latest address on file with the Department of Regulation and Licensing is 9315 S. Orchard Park Circle, Apt. 3B, Oak Creek, WI 53154.
3. The Department of Regulation and Licensing ("Department") denied Mr. Janiszewski's application on July 5, 2006.
4. Mr. Janiszewski requested a hearing on the denial of his application within 45 days of receiving the notice of denial.
5. The application for a real estate salesperson's license requires that the applicant answer question "A" under "Statement of Arrest or Conviction" that states:

"Have you ever been convicted of a misdemeanor or felony or driving while intoxicated (DWI) in this or any other state, or are criminal charges currently pending against you? If yes, complete and attach Form #2252.
6. Mr. Janiszewski's response to the question was to check the box marked "Yes."
7. Mr. Janiszewski indicated on Form #2252 and other information that indicated he had a conviction for obtaining prescription drug with fraud, a misdemeanor.
8. Mr. Janiszewski also indicated on Form #2252 that at the time of his application, he had pending charges in Milwaukee

County for allegedly violating Wis. Stat. §961.41(3G)(F)- possession of GHB, GB, BDO, Ketamine, Flunitraz, a Class H felony and Wis. Stat. §961.41(1) HM) 1- manufacture/deliver designer drugs, a Class F felony.

9. The records of the Milwaukee County Circuit Court indicate that Mr. Janiszewski was subsequently convicted of obtaining prescription drug with fraud, a misdemeanor, on April 28, 2005, following a jury trial.
10. The records of the Milwaukee County Circuit Court indicate that Mr. Janiszewski was also convicted of possession of GHB, GB, BDO, Ketamine, Flunitraz, a Class H felony, on June 29, 2006, pursuant to a guilty plea.
11. Mr. Janiszewski was placed on probation for one year with thirty (30) days in the House of Corrections to begin July 7, 2006, with release for work and up to 3 hours daily of community service at Ace Boxing Club, and a prohibition against illegal drug use.
12. The records of the Milwaukee County Circuit Court indicate that other charges pending at the time of Mr. Janiszewski's application for licensure were dismissed.

ORDER

NOW, THEREFORE, IT IS ORDERED that the DENIAL of the application of Jason R. Janiszewski, for licensure as a real estate salesperson be, and hereby is, AFFIRMED.

OPINION

The central issue in this proceeding is whether the Department was justified in denying Mr. Janiszewski's application for a license to practice as a real estate salesperson on the basis of his criminal conviction record. Mr. Janiszewski was convicted in 2005 of obtaining a prescription by fraud. The police report indicates that Mr. Janiszewski forged a physician's signature on a prescription form, which he presented to a pharmacy to obtain controlled substances. In 2006, Mr. Janiszewski was convicted of another offense; possession of Gamma-Butyrolactone (GBL) and Gamma-Hydroxybutyrate (GHB), Ketamine and Flunitraz, which are Schedule I Controlled Substances.

Mr. Janiszewski's offered the following explanations for the conduct which resulted in his two recent convictions. As for the first conviction for obtaining a prescription by fraud, he claimed that he was addicted to prescription pain medications and forged the prescription because his physician refused to reissue his prescription. The information presented showed that Mr. Janiszewski had been under the care of a physician for a work-related back injury. During the course of treatment, the physician had prescribed pain medication. After several months of treatment, Mr. Janiszewski was released from treatment and his former physician refused to renew his prescription for pain medication. Mr. Janiszewski testified that his reason for forging the prescription was impulse and fear; not knowing where to go and what to do for help because he could not get the pain medication. [Transcript at pg. 88].

With respect to the GBL and GHB convictions, Mr. Janiszewski testified that he was misled to believe that he could use these substances to treat his injuries and strengthen his body. Mr. Janiszewski introduced evidence from various body building magazines and websites that GBL and GHB were safe and legal. He also argued that he did not realize the possession of the substances was a felony. However, the information presented at the hearing shows that Mr. Janiszewski does not satisfactorily explain or mitigate the underlying pattern of dishonesty shown in his conduct. In fact, the media articles submitted by Mr. Janiszewski identified the considerable controversy surrounding the substances, GBL and GHB. On August 1, 2000, the *Body International*, a national body building magazine, published an article stating that law enforcement officials were arresting anyone selling or possessing the substances. *Body International*, August 1, 2000. Also troubling is the fact that when Mr. Janiszewski was questioned about his possession of GBL and GHB, he told the officers that he was using the substances for his "truck." Yet, after further questioning, he admitted that he used the substances for "sleeping." (Exhibit 3)

The record shows that the police had to obtain a search warrant because Mr. Janiszewski refused to allow the officers to search his apartment. After returning with the warrant, the officers found more substances in his apartment, including equipment consisting of a scale and a hot plate, used in the operation of a "manufacturing lab." The transcript of the Plea and Sentencing Hearing in Milwaukee County Circuit Court indicates that one of the substances found in Mr. Janiszewski's possession has been used as a "date rape" drug; a highly toxic and dangerous substance, also referred to as a "designer drug." This information contradicts the explanation that Mr. Janiszewski gave at the hearing; that he was misled to believe that the substances were safe and legal. Instead, the evidence suggests that

Janiszewski was had sufficient reason to know that he was involved with activities and substances that were illicit.

The evidence presented shows that Mr. Janiszewski's criminal acts are substantially related to the practice of a real estate sale; and inconsistent with the responsibilities of a real estate salesperson. Real estate sales involve significant financial transactions. A real estate salesperson is entrusted with the duty to represent the interests of others. A real estate salesperson has relatively unfettered access to the homes and property and can enter such property when the owners are not present. A real estate salesperson prepares important legal documents, such as Offers to Purchase and Listing Agreements. A real estate salesperson receives and handles buyer's earnest money. Honesty and trustworthiness are critical traits in the real estate profession.

The remaining issue in this proceeding is whether Mr. Janiszewski has submitted sufficient proof of his rehabilitation since his convictions to warrant his licensure. Again, the concern is whether an applicant will pose an unreasonable risk to public safety if placed in an employment situation offering temptations or opportunities for criminal activity. Unfortunately, the evidence presented at the hearing did not convincingly show that Mr. Janiszewski has made significant rehabilitative progress. In fact, the testimony of Mr. Janiszewski's psychotherapist, Mr. Angert, was unfavorable. The therapist indicated that Mr. Janiszewski had not fully disclosed the extent of his problems with the law involving drug use; that he revealed his history of drug use in a piecemeal fashion even until the time of the hearing. The therapist also testified that Mr. Janiszewski failed to inform him of the extent to which he was abusing medication and using alcohol and marijuana.

In response to questioning by Mr. Janiszewski, Mr. Angert testified as follows:

Q: Well, the stuff that you and I talked about while, we when I was in treatment, was I honest to you about the issue we did speak about them?

A: Well, again, as I was treating you, you began treatment on June 17th. You waited until July 15th to tell me of your conviction for abusing pain medication. I had no knowledge of that. And then again, let me see, where are we, in October '04 you admitted that you were using alcohol and I had no idea you were doing that. And then in November '04 you came to tell me that you were using marijuana. And I helped you with all these things, but it would have been nice if you had everything from the very beginning. Your treatment would have been different then.

Q: Okay

A: In other words, since you have engaged in that kind of behavior, at this moment I have no idea how well you're behaving.

(Hearing Transcript at pgs. 102, 103)

The therapist was told by Mr. Janiszewski that his fraudulent prescription conviction was caused by his doctor's errors in prescribing pain medication. He also told his therapist that he was challenging the conviction on appeal. The therapist had no idea that Mr. Janiszewski had actually created a phony prescription for oxycodone and had taken it to Walgreens to get it filled.

The therapist testified that his professional opinion of Mr. Janiszewski had changed due to his conduct during treatment:

Q: Okay.

A: For example, the moment that your ankle bracelet was removed from you, you went to a bar and you were drinking with your friends. I told you that I did not approve of that.

Q: Yes.

A: So I can no longer say, as I did in this letter that it is my professional opinion that you're a good citizen. I don't know.

(Hearing Transcript at pgs. 107)

Nor was any evidence introduced to show whether Mr. Janiszewski had been compliant with his court ordered requirements.

monitoring and drug testing while on probation. Instead, the documentary evidence showed that Mr. Janiszewski's probation was revoked and a warrant for his arrest was issued on July 5, 2005, for failure to comply with the terms and conditions of his supervision. Mr. Janiszewski testified at the hearing that he purposefully intended to convert his probation to straight jail time; this had always been an option for him and that is why his probation was revoked. However, Mr. Janiszewski's explanation was not corroborated by the court or probation documents.

A significant factor in determining whether to grant licensure is the passage of time that the applicant has been conviction-free. A concern is that society should not have to bear an unreasonable risk that a convicted person, being placed in an employment situation offering temptations or opportunities for criminal activity, will commit another crime. This concern is based on the well-documented phenomenon of recidivism. Mr. Janiszewski's convictions are fairly recent; having occurred in 2005 and 2006. There is nothing in the record showing that Mr. Janiszewski has been rehabilitated during the brief period since his convictions. Prior to granting of a license, the licensing authority must have reliable proof that the applicant with a recent conviction record has successfully rehabilitated.

The record presented shows that Mr. Janiszewski's criminal convictions are substantially related to the practice of a real estate salesperson. The record evidence does not show meaningful rehabilitation. Accordingly, the decision of the Department to deny Mr. Janiszewski's application for a license as real estate salesperson was justified and should be affirmed.

Dated this _____ day of February, 2007.

Colleen M. Baird
Administrative Law Judge
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