

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 REAL ESTATE	:	FINAL DECISION
SALESPERSON,	:	AND ORDER
	:	LS0707032REB
JAMES FARR,	:	
APPLICANT.	:	

Division of Enforcement Case No. 07REB094

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 18th day of October, 2007.

Secretary Celia M. Jackson
Department of Regulation and Licensing

IN THE MATTER OF THE APPLICATION :
FOR A LICENSE TO PRACTICE AS A :
REAL ESTATE SALESPERSON : PROPOSED DECISION
: AND ORDER
: Case No. LS0707032REB
JAMES FARR, :
APPLICANT. :
:

[DOE Case File #07REB094]

The parties to this action for purposes of §227.53, Wis. Stats., are:

Mr. James Farr
3385 North Sherman Boulevard
Milwaukee, WI 53216

Department of Regulation and Licensing
Division of Professional Credentialing Processing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on September 11, 2007, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by attorney Angela Arrington. Mr. Farr appeared *pro se*.

Based on the entire record in this case, the undersigned administrative law judge recommends that the Department of Regulation and Licensing adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. James Farr's date of birth is September 2, 1958. He submitted his application for a real estate salesperson license on or about February 12, 2007. The Department denied his application on or about March 30, 2007.
2. Mr. Farr's latest address on file with the Department of Regulation and Licensing is 3385 North Sherman Boulevard in Milwaukee, Wisconsin.
3. Mr. Farr made a timely request for hearing on the denial of his application for a license.
4. The application for a real estate salesperson's license requires that the applicant answer the following question:
"Have you ever been convicted of a misdemeanor or a felony or driving while intoxicated (DWI) in this or any other state, **OR** are criminal charges or DWI charges currently pending against you? If YES, complete and attach Form #2252.
5. Mr. Farr responded to that question by checking the box marked "Yes."

6. Mr. Farr completed Form #2252 and reported a 2001 conviction for loan fraud.
7. Information received from the United States District Court, Eastern District of Wisconsin office indicated that Mr. Farr was convicted of the following:

July 16, 2001 – Felony – One count of Bank Fraud, one count of Interstate Transfer of Stolen Funds and two counts of Unlawful Financial Transaction, Case Number 00-CR-187.

CONCLUSIONS OF LAW

The Wisconsin Department of Regulation and Licensing has jurisdiction in this matter pursuant to §§ 111.335 (1) (b), 111.335 (1) (c) 1., 452.03, 452.05, and 452.09, Wis. Stats.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that James Farr is granted a real estate salesperson's license subject to the following limitations, terms, and conditions:

1. Mr. Farr may practice as a real estate salesperson only as an employee of an Supervising Broker Employer (Employer) approved in advance by the Department of Regulation and Licensing (Department). The Employer shall be a Wisconsin licensed real estate broker or real estate entity who agrees to comply with issuing quarterly reports for Mr. Farr.
2. Mr. Farr shall file with the Department quarterly reports within five (5) days before or after the following dates of each year: February 1, May 1, August 1, and November 1 until further order of the Department.

3. Each report shall include:
 - a. Mr. Farr's address and telephone number, and the name, address and telephone number of his supervising broker-employer.
 - b. A statement from Mr. Farr confirming his compliance with all the terms of his limited license and with the statutes and rules governing the practice of a real estate salesperson.
 - d. A statement from the supervising broker-employer evaluating Mr. Farr's performance as a real estate salesperson and whether or not he has followed all guidelines and requirements of the supervising broker-employer.
4. Mr. Farr shall comply with all the terms of his probation and immediately notify the Department of any violation of his probation terms.
5. Mr. Farr shall not personally receive, hold, or disburse "client funds", as that term is defined in § 452.13 (1) (a), Wis. Stats.

452.13 Trust accounts. (1) DEFINITIONS. In this section:

(a) "Client funds" means all down payments, earnest money deposits or other money related to a conveyance of real estate that is received by a broker, salesperson or time-share salesperson on behalf of the broker's, salesperson's or time-share salesperson's principal or any other person. "Client funds" does not include promissory notes.

6. Mr. Farr shall not perform real estate activities under a different supervising broker-employer without first obtaining advance permission from the Department of Regulation and Licensing. Any new supervising broker-employer must agree, in writing, to the terms of this Order.
7. Mr. Farr shall provide a complete copy of the Department's Final Decision and Order to his supervising broker-employer. The supervising broker-employer shall immediately notify the Department Monitor if Mr. Farr violates the terms of this Order.
8. The limitations contained in this Order, in whole or in part, may be removed only upon a showing of successful compliance with all of the terms of this Order and in no event earlier than five years from the date of the signing of this Order by the Department Secretary. Mr. Farr may petition the Department for the issuance of a real estate salesperson's license without limitations following the five year limitation period.
9. Failure to timely comply with the terms of this Order may result in the revocation of Mr. Farr's limited real estate salesperson's license without further notice or hearing or other proceedings.
10. Any further criminal conviction may result in the revocation of Mr. Farr's limited real estate salesperson's license without further notice or hearing or other proceedings.
11. Mr. Farr shall immediately notify the Department in writing of any changes in his employment and personal information as it relates to the limitations of his real estate salesperson's license.
12. Any reports or documentation required by the terms of this Order shall be addressed to:

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

13. This Order shall become effective upon the date of its signing.

OPINION

In July of 2001, James E. Farr was convicted in federal court of bank fraud, interstate transmission of stolen funds, and unlawful financial transaction, all of which stemmed from activities that occurred in 1996. As a result of those convictions, Mr. Farr was sentenced to twenty-seven months of imprisonment. He was released from prison in August of 2003, and is currently serving a five year term of supervised release, which will expire on August 20, 2008. According to Mr. Farr's probation agent, Jessica L. Grube, he is presently in compliance with his court-ordered conditions. *See Ex. 4.*

Since his release from prison, Mr. Farr has been independently employed as a cab driver in Milwaukee, and has also worked delivering pizzas. Mr. Farr indicated that other than a minor seat belt violation, he has had no other police contacts, arrests, or convictions while being on probation, nor does it appear as if Mr. Farr had any other criminal convictions prior to 2001. He further indicated that he abstains from alcohol and drug use, and does not have any anger management issues. In an effort to rehabilitate himself and to ensure that others do not find themselves similarly situated, Mr. Farr has made an effort to educate members of his church about how to avoid the difficulties he encountered that ultimately led to his convictions.

Mr. Farr appears sincere in his desire to become a real estate salesperson. He has taken and successfully passed the required real estate coursework, and made contact with a potential employer who has expressed a preliminary interest in hiring him. *See Ex. 1 and 5.* He appears to have a positive relationship with the cab company with whom he is affiliated as well as with the pastor of his church. *Id.*

What remains, therefore, is a determination of whether the circumstances of Mr. Farr's convictions are substantially related to the practice of a real estate salesperson. In *County of Milwaukee v. LIRC*, 139 Wis. 2d 805 at 823, 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.

The full assessment of what may be termed the "fostering" circumstances may, at times, require some factual exposition. For instance, in "disorderly conduct" cases the type of offensive circumstances is not as explicit as it is in sexual assault, armed robbery, theft or embezzlement convictions for example. However, such factual inquiry would have as its purpose ascertaining relevant, general, character-related circumstances of the offense or job.

Given Mr. Farr's positive adjustment following his conviction and release from prison, it would be erroneous to conclude that the character traits that he demonstrated at the time of his illegal activities are necessarily indicative of the nature of his character today. Beyond his conviction in 2001, Mr. Farr has not engaged before or since in any other criminal activities.

The Wisconsin Supreme Court extensively discussed the policy objectives of the prohibition against discrimination in employment and licensure, and the exceptions to it for substantially related convictions in *County of Milwaukee v. LIRC*. That discussion included the following:

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.

It is highly desirable to reintegrate convicted criminals into the work force, not only so they will not remain or become public charges but to turn them away from criminal activity and hopefully to rehabilitate them. This is a worthy goal and one that society has shown a willingness to assume, as evidenced by the large sums of money expended in various rehabilitative programs. However, the legislature has clearly chosen to not force such attempts at rehabilitation in employment settings where experience has demonstrated the likelihood of repetitive criminal behavior. *Id.* at 805.

There is sufficient evidence to suggest that Mr. Farr's rehabilitation is well underway. However, given his criminal conviction, it is appropriate to include limitations on his real estate salesperson license in order to ensure that the public is adequately protected.

The Department of Regulation and Licensing has a long-standing record of issuing limited licenses to individuals seeking real estate salesperson licenses who have had criminal convictions. One recent example includes Ili J. Subhan who was convicted of felony attempted armed robbery as well as criminal trespass to a dwelling, and two OWIs. He was granted a limited license as a real estate broker with conditions. *See In re Ili J. Subhan, LS0604031REB.* Another example involves Randall G. Wedig who applied for a real estate salesperson license in June of 2005. Mr. Wedig had previously been convicted of a felony theft, two OWI offenses, and two batteries but was nevertheless issued a limited license as a real estate salesperson with terms and conditions attached to it. *See In re Randall G. Wedig, LS0507271REB.* A limited license as a real estate broker was also issued to Isaac S. Myszka who was convicted of various offenses including theft, criminal damage to property, and resisting an officer. *See In re Isaac S. Myszka, LS0510201REB.* Jesse C. Witt was also issued a limited license as a real estate salesperson after having been convicted of an OWI, obstructing an officer, and operating a motor vehicle with a suspended driver's license. *See In re Jesse C. Witt, LS0510071.* Finally, Paul A. Henningsen was granted a limited license as a real estate salesperson following his conviction for federal mail fraud. *See In re Paul A. Henningsen LS0606011REB*

These cases illustrate the many applicants who have applied for and received real estate salesperson licenses despite their serious criminal convictions. They have all received limited licenses which include safeguards that are intended to protect the public from any future wrongdoing by them. Mr. Farr is a similarly situated applicant, having been convicted of a criminal offense. He, like the other applicants, has demonstrated several rehabilitative efforts and is now seeking an alternative career. In light of the positive efforts in which Mr. Farr has engaged since his conviction, it is my sincere hope that he will not reoffend in a similar manner. Consequently, based upon the entire record in this case an affirmation of his application denial is not justified. Instead, it is recommended that he be granted a limited license so that he may practice as a real estate salesperson.

Dated at Madison, Wisconsin, this 27th day of September, 2007.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION & LICENSING
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Madison, Wisconsin 53708
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Jacquelynn B. Rothstein
Administrative Law Judge