

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2000-1766

**Bureau of Commercial Services,
Petitioner**

Agency No. 65-98-2139-00

v

**Agency: Bureau of Commercial
Services**

**Deborah S. Brown,
Respondent**

Case Type: Sanction

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**Issued and entered
this 22nd day of May, 2001
by Edward F. Rodgers
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Request for Hearing on September 19, 2000. Following the receipt of the request, the Bureau of Hearings issued a Notice of Hearing dated October 6, 2000. The Notice of Hearing scheduled a contested case hearing to commence on November 8, 2000.

On October 30, 2000, the Bureau of Commercial Services (BCS) filed a request with the Presiding Judge to take testimony by telephone. On November 1, 2000, Respondent's Attorney objected to taking testimony by telephone. On November 2, 2000, the Judge denied the request for telephone testimony.

On November 8, 2000, Mr. Michael Homier, Attorney at Law, of Foster, Swift, Collins & Smith, P.C., filed an appearance on behalf of BCS. Mr. Ronald W. Bloomberg,

Attorney at Law, of Loomis, Ewert, Parsley, Davis & Gottig, P.C., filed an appearance on behalf of Ms. Deborah S. Brown (Respondent).

The contested case hearing commenced as scheduled on November 8, 2000. At the outset, Mr. Homier requested an amendment to the complaint. Mr. Bloomberg did not object. The complaint was amended to reflect that the Complainant in this case is Mrs. Joyce Fredrickson. See the transcript (TR) from the November 8, 2000, hearing at page (p) 4.

In addition to the stipulation amending the complaint, Mr. Bloomberg indicated that the Respondent would stipulate to the fact that there was a conviction for a violation of a Builder's Fraud Statute in connection with the construction company and the construction license. See the TR at p 5.

During the hearing, BCS offered the testimony of no witnesses. However, BCS offered two exhibits and both were admitted into the record. They are as follows:

1. Petitioner's Exhibit 1 is the Docket History from the 13th Judicial Circuit for the Circuit Court in the County of Grand Traverse, State of Michigan, in the matter of the People of the State of Michigan v Deborah S. Brown, File No. 97-7266-FH. These documents establish the Respondent's conviction in Circuit Court for a violation of MCL 570.152; MSA 26.332 Building Contract Fraud. This is a felony under Michigan law.

2. Petitioner's Exhibit 2 is a copy of the Honorable Thomas G. Power's Restitution Order in the Grand Traverse Circuit Court matter involving Respondent. This document indicates the Judge ordered Respondent to pay restitution of \$7,979.03 to Mrs. Joyce Fredrickson.

During the hearing on November 8, 2000, the Respondent called three witnesses to testify on her behalf: Dan Brown, Karen O'Connell; and Beryl L. Wheldon. In addition, the Respondent testified.

The Respondent offered seven exhibits, four of which were admitted into the record. Those four exhibits are as follows:

1. Respondent's Exhibit B is an affidavit of Judith Lindeman dated November 6, 2000.
2. Respondent's Exhibit C is an affidavit of Antoinette C. Markl dated November 7, 2000.
3. Respondent's Exhibit D is an affidavit of John Michael Senger dated November 7, 2000.
4. Respondent's Exhibit F is an affidavit of Wallace H. Tuttle dated November 7, 2000.

The hearing concluded on November 8, 2000. Following the hearing, a transcript was prepared in this matter. The transcript was received on January 29, 2001.

On March 1, 2001, Mr. Bloomberg filed the Respondent's Post-Hearing Brief. BCS also filed its Post-Hearing Brief on March 1, 2001.

ISSUES AND APPLICABLE LAW

The general issue in the matter is whether the Respondent violated the Occupational Code, 1980 PA 299, being MCL 339.101 *et seq.*; MSA 18.425(101) *et seq.* The specific issue in this case is whether the Respondent violated Sections 604(b) and (d) of the Code being MCL 339.604(b) and (d); MSA 18.425(604)(b) and (d). Those sections of the Code state:

Sec. 604. A person who violates 1 or more of the provisions of an article which regulates an occupation or who commits 1 or

more of the following shall be subject to the penalties prescribed in section 602:

- (b) Practices fraud, deceit, or dishonesty in practicing an occupation.
- (d) Demonstrates a lack of good moral character.

FINDINGS OF FACT

Based upon the entire record in this matter, including the testimony of the witnesses, the exhibits admitted into the record, the parties post-hearing briefs, and the pleadings in the matter, the following findings of fact were established:

1. Respondent testified that she has been a real estate broker or sales agent since 1972. See the TR at p 16.
2. Respondent indicated that she moved to Traverse City, Grand Traverse County, Michigan, in 1978. See the TR at p 13.
3. Respondent stated that she works for Home Port Network, Inc., a real estate brokerage firm in the Traverse City area. See the TR at p 13.
4. Respondent testified she is the principal broker for Home Port. She is also an officer of Home Port, the sole shareholder, and she founded the corporation in 1985. See the TR at p 13-14.
5. Respondent takes care of all the accounting, all the sales, and the closing folders for Home Port Network. There are four full-time realtors, as well as the Respondent being licensed. See the TR at p 14-15.

6. The Respondent testified that Home Port Network ranks eighth or ninth in the Traverse City area in dollar amount of sales. The corporation averages annually between \$20 and \$30 million in volume. See the TR at p 15.

7. Respondent testified that she was a real estate broker prior to finding Home Port Network. She held her license three years before founding the corporation. See the TR at p 15-16.

8. Respondent also indicated that she held several other jobs prior to becoming a real estate broker. She worked in a bank where she was a head teller and an assistant branch manager. See the TR at p 16.

9. Respondent was the President of the Traverse City Jaycees, President of the March of Dimes, and belonged to several professional organizations, such as the National Association of Realtors, Michigan Association of Realtors, and the Oral Cleft Pallet Group. See the TR at p 16-17.

10. It is undisputed on this record that there came a time when Home Port Network signed a contract with Mrs. Joyce Fredrickson to build a home, and that Mrs. Fredrickson made deposits to the corporate account. Finally, it is undisputed that Respondent withdrew money from the company's account, thus, creating a situation in which the account did not contain sufficient funds to cover the deposits by Mrs. Fredrickson for construction of her home. See the Respondent's post-hearing brief at p 1 and BCS's post-hearing brief at p 2.

11. On or about August 29, 1997, Respondent was found guilty in the 13th Circuit Court, Grand Traverse County, Traverse City, Michigan, in violation of MCL 570.151; MSA 26.331. See BCS Exhibit 1.

12. The record is undisputed that Respondent's conduct in violating the building contract fund provision was a result of her removing money from the corporate account, leaving insufficient funds to cover the expenses of the Fredrickson's project. See p 1 or Respondent's post-hearing brief, p 2 of BCS's post-hearing brief, and Attachment 1 to BCS's post-hearing brief.

13. BCS Exhibit 2 establishes that Mrs. Joyce Fredrickson is still owed \$7,979.03 by the Respondent.

14. Respondent's felony conviction in Grand Traverse Circuit Court was affirmed by the Michigan Court of Appeals on February 25, 2000. See 239 Mich App 735; 610 NW 2d 234 (2000), and Attachment A to BCS's post-hearing brief.

15. Dan Brown, the Respondent's husband, testified that he had been in the construction business for 25 years and held a license. He ran part of the business for his wife. See the TR at p 43-45.

16. Karen O'Connell indicated that she has lived in the Traverse City area for 24 years and is employed with the Glaxo-Welcomme Pharmeceutical Company as a sales representative. See the TR at p 51.

17. Ms. O'Connell is also involved in many civic groups in the Traverse City area. See the TR at p 51-52.

18. Ms. O'Connell indicated that she has known the Respondent, Deborah Brown, for about 10 years. She knows her both professionally and socially. See the TR at p 52.

19. Ms. O'Connell concluded that she was aware of Respondent's situation and the problems with her company, but she would still work with the Respondent as a real estate agent. See the TR at p 52-53.

20. On cross-examination, Ms. O'Connell conceded that all of her understanding about this case came from Respondent. See the TR at p 54.

21. Beryl Wheldon testified that she lived in the Traverse City area for 9 years and was employed by Recycled Paper Greetings as a sales rep. See the TR at p 54-55.

22. Witness Wheldon testified that she hasn't heard anything negative about Ms. Brown's reputation in the community. See the TR at p 55.

23. Ms. Wheldon indicated that she thought Respondent Brown was the most honest, forth-right, and basically honorable person she knew. See the TR at p 56.

24. Ms. Wheldon conceded on cross-examination that she had talked to Respondent about the misappropriation of funds but had never talked to Mrs. Fredrickson, the victim. All her knowledge about this case came from Ms. Brown. See the TR at p 57.

CONCLUSIONS OF LAW

The principals that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleadings and Practice, 2d ed, Section 60.48, page 230.

In this matter, the Petitioner has the burden of establishing, by a preponderance of the evidence, that the Respondent committed the acts as alleged in the complaint, and that those acts constitute a violation of the Code. Proof, by a preponderance of the evidence, requires that the Judge believe that the evidence supporting the existence of a contested fact outweighs the evidence supporting its nonexistence. See Martucci v Detroit Police Commissioner, 322 Mich 270; 33 NW 2d 789 (1948).

Therefore, BCS must establish in this matter, by a greater weight of the evidence, that the Petitioner was convicted in the 13th Judicial Circuit Court, Grand Traverse County, Traverse City, Michigan, and that such a conviction violates Sections 604(b) or (d) of the Code. See Krisner v Duff, 331 Mich 699; 50 NW 2d 332 (1951).

The credibility of a witness and the weight to be given to his or her testimony is determined by the Presiding Administrative Law Judge. Consumer Power v Public Service Commission, 78 Mich App 581; 261 NW 2d 10 (1977).

In evaluating the credibility and weight to be given the testimony of a witness, the Judge may consider the demeanor of the witness, the reasonableness of the witness's testimony, the interest, if any, the witness may have in the outcome of the matter. People v Way, 303 Mich 303; 6 NW 2d 523 (1942).

It is well established and a fundamental principle of administrative and agency law that a license may be denied or revoked because of bad moral character of the applicant or licensee based on misdeeds and misbehavior. See Pease v St. Clair Shores, 85 Mich App 371; 271 NW 2d 236 (1978).

The underlying principle that the regulation of licensing law will allow restrictions of licenses to individuals who do not possess “good moral character” is well settled in Michigan law. See Bundo v Walled Lake, 395 Mich 679; 238 NW 2d 154 (1976).

MCL 338.41; MSA 18.1208(1) defines “good moral character” as the ability of a licensed applicant to serve the public in the licensed area in a fair, honest, and open manner.

Based upon the above case law and the applicable sections of the Code involved herein, the record as a whole in this matter, including the above Findings of Fact, establish the following Conclusions of Law:

1. Respondent’s conduct in committing a violation of the Builder’s Trust Fund was derived from her taking monies entrusted to her for purposes other than for which they were given, i.e., to construct Mrs. Fredrickson’s home.

2. Respondent’s conduct in committing this violation of the Builder’s Trust Fund demonstrates her inability to serve the public in a fair, open, and honest manner; and her lack of good moral character violates Section 604(d) of the Code as alleged in the complaint.

3. Respondent’s conduct in utilizing monies entrusted to her for purposes other than for which they were given constitutes fraud, deceit, and dishonesty in the practice of an occupation in violation of Section 604(b) of the Code.

4. Respondent’s conduct in violating the above-listed two sections of the Code warrant the supervision of her license.

DECISION

Based upon the Findings of Fact and Conclusions of Law, the undersigned Administrative Law Judge, finds that the Respondent has violated Sections 604(b) and (d) of the Code.

RECOMMENDED PENALTIES

Based upon the Respondent's violations of Sections 604(b) and (d) of the Code, the following penalties are recommended:

1. The Respondent pay restitution to Mrs. Joyce Fredrickson in the amount of \$7,979.03.
2. The Respondent pay a civil fine of \$5,000 for its two violations of Section 604 of the Code.
3. The Respondent's license be suspended and remain suspended for one year beyond the payment of restitution to Mrs. Fredrickson and the payment of the civil fine to the State of Michigan.

Edward F. Rodgers
Administrative Law Judge