

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

In the matter of

Docket No. 2000-599

Bureau of Commercial Services,
Petitioner

Agency No. 65-99-6580-00

v

Agency: Bureau of Commercial
Services

D. Samuel Goodell,
Respondent

Case Type: Sanction

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**Issued and entered
this 24th day of July, 2002
by C. David Jones
Administrative Law Judge**

HEARING REPORT

PROCEDURAL HISTORY

This matter commenced with the filing of a Formal Complaint against Respondent on January 27, 2000. At the time, Respondent was incarcerated at the Thumb Correctional Facility, Lapeer, Michigan. On February 25, 2000, a Notice of Hearing was mailed scheduling the hearing for May 8, 2000. On March 23, 2000, an Order for Hearing on Motion and Prehearing Conference was issued and entered adjourning the hearing to June 14, 2000, and scheduling a prehearing conference on May 8, 2000, in part, to hear Respondent's Motion for Discovery. On March 31, 2000, an Order Denying Respondent's Motion for a Temporary Restraining Order Against the Department of

Corrections was issued and entered. On April 10, 2000, Respondent's Motion for Writ of Habeas Corpus was denied.

On April 10, 2000, Respondent's Answer to the Complaint was received.

On May 8, 2000, an Order was issued and entered rescheduling the prehearing conference to June 7, 2000, at Respondent's request, denying Respondent's request that an Administrative Law Judge petition Circuit Court for a Writ of Habeas Corpus, and directing Respondent to suggest ways he could participate in the hearing although incarcerated.

On June 7, 2000, the prehearing conference was held. Respondent did not request an adjournment or appear at the prehearing conference. On June 13, 2000, a Statement of Prehearing Conference was issued and entered denying Respondent's Motion for Discovery.

On June 13, 2000, an Order Denying Respondent's Request for Marking Mail, Request for Subpoena, and Motion to Dismiss was issued and entered.

On June 23, 2000, an Order was issued and entered adjourning (after the fact) the June 14, 2000, hearing and rescheduling the hearing for July 27, 2000.

On July 27, 2000, an Order was issued rescheduling the hearing for October 4, 2000.

On July 28, 2000, a request for dismissal was received from Petitioner. On July 31, 2000, an Order for Dismissal without Prejudice was issued and entered.

On October 5, 2001, a request was received from Petitioner to place the case

back on the hearing docket. Respondent was no longer incarcerated. On October 16, 2001, a Notice of Hearing was mailed scheduling the hearing to commence on November 30, 2001.

On November 26, 2001, an Order was issued denying Respondent's request for adjournment.

On November 30, 2001, the hearing commenced as scheduled. Michael Homier, Attorney at Law, represented Petitioner. Respondent represented himself. G. Yvette Robinson, investigator for Petitioner, testified. The following exhibits offered by Petitioner were admitted: Petitioner's Exhibit 1, November 9, 1999, Case Synopsis; and Petitioner's Exhibit 2, Notice of Denial with Court Documents.

On December 4, 2001, an Order for Continuance was issued and entered scheduling the next hearing session for January 30, 2002. On January 4, 2002, an Order was issued denying Respondent's request for adjournment.

On January 17, 2002, an Order was issued and entered scheduling Respondent's Motion to Disqualify Administrative Law Judge to be heard at the January 30, 2002, session of the hearing.

On or about January 17, 2002, Respondent appeared at the Administrative Law Judge's office and orally requested the Judge sign several subpoenas including subpoenas for the Director of the Bureau of Hearings and the Director of the Department of Consumer and Industry Services. I told Respondent I had no authority to issue the subpoenas but referred him to the Bureau or Mr. Homier, the Attorney for the Bureau of Commercial Services.

On January 30, 2002, the hearing was held as scheduled. Michael D. Homier,

Attorney at Law, represented Petitioner. Respondent represented himself. Respondent's Motion to Disqualify the Administrative Law Judge was denied. The following witnesses testified on behalf of Petitioner: G. Yvette Robinson, investigator, and Ann Millben, licensing administrator, Bureau of Commercial Services, Licensing. The following exhibits offered by Petitioner were admitted: Petitioner's Exhibit 3, Verification of License; and Petitioner's Exhibit 4, Criminal Records Check Request. The following exhibit offered by Respondent was admitted: Respondent's Exhibit A, instructions on how to file appeal.

On February 4, 2002, an Order for Continuance was issued and entered rescheduling the hearing for April 17, 2002.

On or about March 8, 2002, Respondent filed a Brief with the Director of the Bureau of Hearings appealing my denial of his Motion to Disqualify the Administrative Law Judge. On or about March 15, 2002, the Director of the Bureau of Hearings declined to disqualify the undersigned Administrative Law Judge.

On April 8, 2002, I received a copy of Respondent's Application for Leave for Interlocutory Petition for Judicial Review in the Circuit Court in Bay County. Later, the Court denied Respondent's application.

On April 16, 2002, an Order Denying Respondent's Request to Present Telephone Testimony at the April 17, 2002, hearing was issued and entered.

On April 17, 2002, the hearing commenced as scheduled. Michael D. Homier, Attorney at Law, represented Petitioner. Respondent represented himself. No witnesses

testified. Respondent himself refused to testify. No exhibits were admitted.

ISSUE AND APPLICABLE LAW

The applicable law in this case is the Occupational Code, 1980 PA 299 as amended, MCL 101 *et seq.*; MSA 18.425(101) *et seq.*; and 1979 AC, R 338.1511-1553.

The issue in this case is as follows: Has Respondent demonstrated a lack of good moral character, contrary to Occupational Code Section 604(d), because of criminal convictions?

FINDINGS OF FACT

Respondent's Licensing and Personal History

1. Respondent claimed that before 1993 he was in the Army and held a Secret Service clearance. Respondent's first license was a real estate salesperson's license effective March 10, 1993. This is an entry-level license requiring only completion of a 40-hour course and passing an examination. A real estate salesperson has to be supervised by a licensed real estate broker. On the Application for Salesperson's License Respondent indicated he had convictions prior to 1979. The Department did a good moral character review and approved the license.

2. Respondent was licensed continuously as a real estate salesperson from March 10, 1993, to November 18, 1996, when his license became inactive. This license was reactivated December 10, 1996, and remained active until May 20, 1997.

3. No disciplinary action was taken against Respondent while he held a real

estate sales person's license.

4. Effective May 20, 1997, Respondent was issued a real estate associate broker license. He remained licensed as an associate broker until November 3, 1998. An associate broker's license is essentially the same level as an individual real estate broker, but the employing broker is a legal entity such as a corporation.

5. No disciplinary action was taken against Respondent while he held a real estate associate broker's license.

6. Effective November 3, 1998, Respondent was issued an individual real estate broker's license. The license authorized him to sell and lease real estate and engage in various other activities related to real estate including signing trust account checks and signing closing documents.

7. The individual real estate broker's license issued November 3, 1998, was scheduled to expire October 31, 1999. This license was renewed and scheduled to expire on October 31, 2000. It expired October 31, 2000, and has not been renewed.

8. Other than the application denial discussed below, no disciplinary action was taken against Respondent while he held an individual real estate broker's license.

9. On May 26, 1999, Respondent completed a License Application Form. He indicated that he was applying for an associate broker's license; his employing broker would be Dykes Realty, Inc. (for which he was not an officer but was currently employed); and that he had been convicted of a felony or misdemeanor (other than a traffic violation) for which he could have gone to jail. Katherine M. Dykes signed on behalf of Dykes Realty, Inc.

Respondent submitted the application and it was received May 28, 1999.

10. The Licensing Division received the application and requested Respondent provide a conviction history. Respondent provided the history, and the Licensing Division sent the case to the Enforcement Division for further investigation.

11. Respondent claimed in June 1999 that he had been accepted at law school and would begin his studies soon.

12. The Enforcement Division conducted an investigation and obtained additional information. On November 26, 1999, the Enforcement Division prepared a Case Synopsis recommending the application be denied because of the criminal history.

13. On December 1, 1999, the Director of the Enforcement Division sent Respondent notice of denial of the application because Respondent lacked good moral character. The notice informed Respondent that if he had relevant additional information, he could within 30 days of mailing of the notice submit a written petition, and the Department would reconsider.

14. Respondent did not file a written petition within 30 days.

15. As noted above, on January 27, 2000, Petitioner filed a Formal Complaint against Respondent in reference to his license as an individual real estate broker.

16. Respondent's individual real estate broker's license expired October 31, 2000, without Respondent's filing a re-application. However, on October 1, 2001, Respondent did reapply. This re-application was pending as of this proceeding.

Criminal Convictions

17. On November 28, 1979, a criminal complaint was filed against Respondent, and on November 29, 1979, Respondent pled guilty and was found guilty by the Court. Respondent was convicted of the following: willful trespassing by entering land of another with intent to injure, destroy, or carry away, a misdemeanor in violation of MCL 750.547; MSA 28.815; and failure to obey officer signal (law violated not cited on record). On February 25, 1980, the Court entered an Order of Probation and sentence including one year delayed sentence and \$35 cost and \$142 restitution. On February 23, 1981, an Order Discharging Probation was entered.

18. The willful trespassing conviction was related to Respondent's likelihood to serve the public in a fair, honest and open manner and is some evidence of lack of good moral character.

19. Respondent has not rebutted the evidence from the trespassing conviction by showing that at the current time he has the ability to and is likely to serve the public in a fair, honest and open manner; that he is rehabilitated; or that the substance of the former offense is not reasonably related to the occupation or profession for which he is licensed.

20. The full circumstances surrounding the conviction are not indicated on record. However, the substance of the offense is reasonably related to the occupation of real estate broker because the broker has access to others' real estate.

21. On March 29, 1997, a criminal complaint was filed against Respondent.

On March 25, 1997, Respondent was released on his own recognizance. On December 12, 1997, Respondent was found guilty in a jury trial of knowingly possessing child sexually abusive material, a misdemeanor in violation of MCL 750.145(c)(4); MSA 28.342(a)(4). On February 10, 1998, the Court entered a sentence of 75 days in jail, one month probation, a prohibition against possessing computers at his residence, a requirement that he attend counseling and assessment of \$2,550 in fines, costs and fees.

22. The conviction was based on an event that occurred on or about October 12, 1996. Respondent possessed computer files with photos of juveniles being sexually exploited.

23. Respondent served his jail time, complied with probation requirements, and was discharged from probation.

24. On September 3, 1998, the judge stayed payment of fines owed pending appeal. The appeal was still pending as of June 11, 1999. The outcome of the appeal is not shown on record.

25. The possession of child sexually abusive material is related to Respondent's likelihood to serve the public in a fair, honest and open manner and is evidence of lack of good moral character.

26. Respondent has not rebutted the evidence from the possession of the child sexually abusive material conviction by showing that at the current time he has the ability to, and is likely to, serve the public in a fair, honest and open manner; that he is rehabilitated; or that the substance of the former offense was not reasonably related to the occupation for

which he is licensed.

27. In June 1999 Respondent referred to the conviction of possession of child sexually abusive material as a “frame job” and claimed that the State Police sergeant perjured himself, and the prosecutor lied to the Court. Respondent indicated he would, “. . . Fight this Tooth and Nail until Vindication Is MINE.” At hearing in referring to this conviction, Respondent said, “No one likes to say the words because it touches that little part of us inside that nobody likes to be touched at.”

28. On October 14, 1996, a criminal complaint was filed against Respondent charging Respondent, in relevant part, with the felony of altering with fraudulent intent a registration plate issued by the Secretary of State, contrary to MCL 257.257(1)(a); MSA 9.1957(1)(a). A jury trial was begun on February 3, 1998, and completed on February 5, 1998. Respondent was found guilty, in relevant part, of altering the plate as charged.

29. This crime occurred on or about September 29, 1996. The full circumstances of the actions which amounted to the crime of altering the plate are not indicated on record.

30. On May 28, 1998, the Court sentenced Respondent. The Court placed him on probation for 36 months and ordered him to pay \$2,160 in fines, costs and fees. The Court signed the Order of Probation on June 1, 1998. It included the following conditions: participation and successful completion of evaluation and treatment for substance abuse; non-consumption or possession of alcohol and non-frequenting of establishments primarily

concerned with selling or serving alcohol; and submission to substance abuse testing at the request of a probation agent, substance abuse counselor or law enforcement officer.

31. On December 21, 1998, Respondent petitioned the Court to modify his probation in two ways. The Court ordered Respondent to provide more information to his probation agent about his request to go to Ohio over the Christmas holiday. The Court granted Respondent's request to go to a bar to interview for a job, and if hired, to work at a bar as a musician or to do karaoke.

32. Respondent claimed he attended a one-night seminar on drinking and driving and received an evaluation (and apparently treatment) for alcohol abuse. His expected date of discharge from probation was May 26, 2001. It is unclear on record whether he was discharged.

33. The alteration of the plate was related to Respondent's likelihood to serve the public in a fair, honest and open manner and is some evidence of lack of good moral character.

34. Respondent has not rebutted the evidence from the conviction of altering the plate by showing that at the current time he has the ability to, and is likely to, serve the public in a fair, honest and open manner, that he is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he seeks to be licensed. The substance of the offense is reasonably related to the occupation of real estate broker because a real estate broker deals extensively with contracts and other

documents.

35. Respondent referred to the conviction of altering the plate as “stupid” and indicated that because he was stupid he had to be tough.

36. On March 1, 1999, an Information was filed by the prosecuting attorney against Respondent charging that: 1) Respondent went armed with a firearm (rifle) with the intent to use it unlawfully against another, a felony, contrary to MCL 750.226; MSA 28.423; 2) Respondent did carry or have in his possession a firearm at the time he committed or attempted to commit the crime of going armed with unlawful intent, a felony, contrary to MCL 750.227(b); MSA 28.424(b); and 3) Respondent had previously been convicted of a felony and, as an habitual offender, was subject to enhanced sentencing under MCL 769.10; MSA 28.1082.

37. On June 23, 1999, Respondent was found guilty by jury of the two felonies of going armed with unlawful intent and carrying a firearm during the commission of a crime, as charged. How the “habitual offender” issue was dealt with is unclear on record.

38. The two felonies were committed on March 10, 1996. The firearm was a Winchester 30-30 rifle. With this rifle, Respondent had four rounds of ammunition. The rifle was in working order, and the ammunition was live and capable of being fired. The other circumstances of these felonies are not indicated on record.

39. On or about September 3, 1999, the Court sentenced Respondent to two years in prison, three years probation, and payment of \$1,120 fees and costs.

40. Respondent was incarcerated at a state correctional facility beginning between September 3, 1999, and January 27, 2000, and ending by October 5, 2001.

41. Respondent has not completed his probation.

42. The felonies of going armed with unlawful intent and carrying a firearm during the commission of a crime are related to Respondent's likelihood to serve the public in a fair, honest and open manner and are some evidence of lack of good moral character.

43. Respondent has not rebutted the evidence from these felony convictions by showing that at the current time he has the ability to, and is likely to, serve the public in a fair, honest and open manner; that he is rehabilitated; or that the substance of the former offense is not reasonably related to the occupation for which he is licensed.

CONCLUSIONS OF LAW

A. Subpoenas

Respondent objected to my refusal to sign subpoenas for him, claiming it was a violation of his rights under MCL 24.280(b); MSA 3.560(180)(b); Administrative Procedures Act Section 80(b), which indicates a presiding officer may sign and issue subpoenas in the name of the agency. However, an Administrative Law Judge may only issue subpoenas in the name of the agency when the agency itself is ". . . authorized by statute to issue subpoenas. . ." MCL 24.273; MSA 3.560(173); Administrative Procedures Act Section 73; Le Duc, Michigan Administrative Law, Section 3.25, pages 34-36.

A review of the law indicates that the Bureau of Commercial Services is only

authorized to petition Circuit Court to issue subpoenas for investigations, informal conferences and hearings. MCL 339.503 and 512; MSA 18.425(503 and 512); and Occupational Code Sections 503 and 512. No independent statutory authority to issue subpoenas is apparent.

Inote thatthe promulgated hearing rules do not even mention subpoenas. 1990 AACR, R 339.1701-1771.

Apparently the Bureau of Commercial Services, through the Attorney General, periodically petitions Circuit Court and receives Court authorization to issue subpoenas. I referred Respondent to the Bureau, and the Bureau's attorney to seek use of this Court-authorized subpoena power. Respondent, however, refused to seek subpoenas from them.

B. Testimony by Respondent

Respondent represented himself in this proceeding. In the course of his representation (not while testifying under oath subject to cross examination) he made several comments about the facts in this case. Such comments themselves are not evidence at all. I have considered them to the extent they are supported by evidence on record (testimony and exhibits).

Respondent also refused to testify under oath subject to cross examination in this proceeding, claiming he had a Fifth Amendment right against self-incrimination. Since this is a civil not a criminal proceeding, the claim is of no merit.

Respondent has been a defendant in several criminal proceedings discussed on this record. These proceedings have concluded with convictions. The only practical

problem raised by Respondent in testifying was that he did not testify in one of the criminal proceedings (altering a registration plate with fraudulent intent) and avenues of appeal were open to him. Respondent, however, did not claim he had actually appealed, and this alleged problem is speculative in nature only.

I warned Respondent that if he refused to testify I would apply an inference to that refusal. The inference is that if a person has relevant evidence and refuses to provide it, there is a reasonable inference that the evidence would be adverse to him. Respondent, nevertheless, refused to testify (April 17, 2002, Transcript, pages 10-13). As a practical matter, however, there is no need to draw that inference in this Hearing Report.

C. December 1, 1999, Denial

This hearing concerns the January 27, 2000, Formal Complaint and Respondent's individual real estate broker's license. A prior administrative action (December 1, 1999, denial of application for associate real estate broker's license) was discussed at length on this record. However, the purpose of this hearing is not to review that action. Whether the prior investigation was thorough or complete is irrelevant to this case. Evidence discovered about good moral character, however, is relevant to this case.

D. Criminal Convictions

Petitioner accused Respondent of the following violation:

A person who violates one or more of the provisions of an article which regulates an occupation or who commits one or more of the following shall be subject to the penalties prescribed in

section 602: . . .(d) Demonstrates a lack of good moral character. . .

MCL 339.604; MSA 18.425(604); Occupational Code Section 604(d)

1974 PA 381 as amended, defines good moral character and provides guidance for an agency in evaluating good moral character. MCL 338.41 *et seq.*; MSA 18.1208(1) *et seq.*

It provides in relevant part as follows:

The phrase good moral character, or words of similar import when used as a requirement for an occupational or professional license. . .shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest and open manner. Section 1(1)

A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, by a licensing board or agency as proof of a person's lack of good moral character. It may be used as evidence in the determination and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he or she has the ability to and is likely to serve the public in a fair, honest and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she seeks to be licensed. Section 2

The following criminal records shall not be used, examined or requested by a licensing board or agency in the determination of good moral character when used as a requirement to establish or operate an organization or facility regulated by this state or pursuant to occupational or professional licensure: a) Records of arrests not followed by a conviction. b) Records of a conviction which has been reversed or vacated including the arrest records relevant to that conviction. c) Records of an arrest or conviction of a misdemeanor or a felony unrelated to the person's likelihood to serve the public in a fair, honest or open manner. d) Records

of an arrest or conviction of a misdemeanor for the conviction of which a person may not be incarcerated in a jail or in prison. Section 3(1)

. . .Prior to the promulgation of the rules pertaining to a board or agency, all felonies shall be considered by the board or agency to be relevant to the ability or likelihood the person will serve the public in a fair, honest and open manner. Section 3(3)

Basically then the law provides a two-step procedure. First, the criminal records the Department may use as evidence of lack of good moral character must meet the criteria in Section 3(1). The crime must be related to the person's likelihood to serve the public in a fair, honest and open manner, etc. Second, the burden then shifts to the licensee to rebut the evidence by showing the criteria in Section 2.

It is up to Respondent not the Department to show that the substance of the former offense is not reasonably related to the occupation of real estate broker.

Below, the convictions are considered individually and then collectively.

E. 1979 Convictions for Trespassing and Not Obeying an Officer (Formal Complaint, paragraph 4)

1. Department's Prior Knowledge of 1979 Conviction

Respondent objected to consideration of the 1979 convictions because the Department was aware of these convictions before issuance of the real estate salesperson's license on March 10, 1993. Of course as pointed out by the Department, the circumstances have changed considerably now because of the subsequent convictions, and the Department's need to review the circumstances overall.

However, the Department's issuance of the license with the knowledge of the licensee's past conduct does not diminish its authority to later discipline the licensee for the same past conduct, as indicated by a Department rule. This provides as follows:

The issuance of a license by the Department does not diminish the authority of a Board or the Department to take disciplinary action based upon conduct which occurred before the issuance of the license without regard to whether the Department or Board had notice of the alleged grounds for discipline at the time the license was issued.

1990 AACRS, R 339.1705

2. Failure to Obey Officer's Signal

So little information is on record about this conviction that I am unable to say whether or not it meets the criteria of Section 3(1). No statutory citation is provided. It may be that it is a misdemeanor for the conviction of which the person may not be incarcerated per Section 3(1)(d). The Department has not established this is a conviction which may be used as evidence of lack of good moral character.

3. Trespassing

a. Criteria in 1974 PA 381 as amended, Section 3(1)

This conviction meets the criteria in Section 3(1) and may be used as evidence of lack of good moral character.

It meets the incarceration requirement of Section 3(1)(d). Respondent was found guilty of the misdemeanor of trespassing in violation of MCL 750.547; MSA 28.815. The penalty for misdemeanor trespassing clearly includes incarceration. MCL 750.504; MSA

28.772.

It also meets the requirement of Section 3(1)(c) that it be related to the person's likelihood to serve the public in a fair, honest and open manner. The intent to injure, destroy or carry away property, which is an element of this crime is certainly not "fair."

b. Relationship of Offense to Occupation

1974 PA 381 as amended, Section 2 provides in relevant part that Respondent may rebut the Department's evidence of lack of good moral character by showing that the substance of the former offense is not reasonably related to the occupation or profession for which he seeks to be licensed. Respondent has not rebutted

the Department's evidence. Respondent refused to testify and no other evidence favorable to Respondent is on record.

The Department, however, presented evidence that the offense was related to the occupation, and I find that evidence persuasive. The licensing administrator testified that one of the main functions of a real estate broker is access to the property and homes of others. Trespassing with intent to injure or destroy or take away is related to this function as a real estate broker.

c. Rehabilitation and Good Moral Character

As provided by 1974 PA 381 as amended, Section 2, Respondent may also rebut the Department's evidence of lack of good moral character by showing that at the current time he has the ability to, and is likely to, serve the public in a fair, honest and open manner

or that he is rehabilitated. These issues are dealt with in a later section of this Hearing Report.

F. 1997 Conviction for Possession of Child Sexually Abusive Material (Formal Complaint, paragraph 5)

1. Arrest Not Followed by Conviction

Respondent objected to the admission of part of Petitioner's Exhibit 2 concerning his 1997 conviction claiming it was not admissible under Section 3(1)(a) because it was a record of an arrest not followed by a conviction. Respondent objected to that portion of the police report which concerned an investigation of another alleged crime for which he was not convicted (found in that portion of Petitioner's Exhibit 2, which

is marked Exhibit 3). Petitioner argued that the whole police report was admissible under Section 3(1)(a) because an arrest was followed by a conviction, just for a different crime.

It is unnecessary to decide this disagreement over the interpretation of Section 3(1)(a). The disputed portion of the police report is inadmissible simply because it is irrelevant. Therefore, I have removed it from Petitioner's Exhibit 2 and do not consider it in this opinion. Only the last two pages of the police report are left on record, and they specifically deal with possession of child sexually abusive material.

2. Other Criteria in 1974 PA 381 as amended, Section 3(1)(b,c, and d)

The conviction meets the criteria of Section 3(1) and may be used as evidence of lack of good moral character. As noted above, it complies with Section 3(1)(a). It also clearly complies with Section 3(1)(b and d) so there is no need to discuss them in detail.

This conviction also meets the requirement of Section 3(1)(c) that it be related to the person's likelihood to serve the public in a fair, honest and open manner. Obtaining and possessing child sexually abusive material encourages and promotes the sexual abuse of children, which is, to put it mildly, unfair.

3. Relation of Offense to Occupation

1974 PA 381 as amended, Section 2 provides in part that Respondent may rebut the Department's evidence of lack of good moral character by showing that the substance of the former offense is not reasonably related to the occupation or profession for which he seeks to be licensed. Respondent has not rebutted the Department's evidence. Respondent refused to testify, and no other evidence favorable to Respondent is on record. The Department was concerned that as a realtor he would be allowed in private homes and have access to children.

4. Rehabilitation and Current Good Moral Character

These issues are dealt with in a later section of the Hearing Report.

G. 1998 Conviction for Altering with Fraudulent Intent a Registration Plate (Formal Complaint, paragraph 6)

1. Criteria in 1974 PA 381 as amended, Section 3(1)

This conviction meets the criteria of Section 3(1) and may be used as evidence of lack of good moral character. It clearly complies with Section 3(1)(a, b and d) so there is no need to discuss them in detail.

It also meets the requirement of Section 3(1)(c) that it be related to the person's

likelihood to serve the public in a fair, honest and open manner. All felonies are considered so related. Section 3(3). Also altering a plate with fraudulent intent is unfair, dishonest and not open.

2. Relation of Offense to Occupation

As noted above, 1974 PA 381 as amended, Section 2 provides for rebuttal by showing non-relationship of the crime to the occupation. Respondent has not rebutted the Department's evidence. Respondent refused to testify, and no other evidence favorable to Respondent is on record.

Also, the Department presented evidence that the offense was related to the occupation, and I find that evidence persuasive. A real estate broker deals extensively with contracts and other documents, which could be altered.

3. Rehabilitation and Current Good Moral

These issues are dealt with in a later section of this Hearing Report.

H. 1999 Conviction for Going Armed with Unlawful Intent and Carrying a Firearm During Commission of a Crime (Formal Complaint, paragraph 7)

1. Introduction

The statutes Respondent was convicted of violating state as follows:

CARRYING FIREARM OR DANGEROUS WEAPON WITH UNLAWFUL INTENT--any person who, with intent to use the same unlawfully against the person of another, goes armed with

a pistol or other firearm. . . shall be guilty of a felony punishable by imprisonment in the state prison for not more than five years or by a fine of not more than \$2,500.

MCL 750.226; MSA 28.423

A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony. . . is guilty of a felony and shall be imprisoned for two years. . .

MCL 750.227(b)(1); MSA 28.424(b)

The Information also contained an allegation that because Respondent previously had been convicted of a felony, as an “habitual offender,” he was subject to enhanced sentencing under MCL 769.10; MSA 28.1082. The term “habitual offender” is not found in the statute cited and apparently is only a short-hand method of dealing with the concept. At any rate, it is unclear on record whether the Court found Respondent subject to this statute.

2. Criteria in 1974 PA 381 as amended, Section 3(1)

These convictions meet the criteria in Section 3(1) and may be used as evidence of lack of good moral character. They clearly comply with Section 3(1)(a, b and d) so there is no need to discuss them in detail.

They also meet the requirements in Section 3(1)(c) that they be related to a person’s likelihood to serve the public in a fair, honest and open manner. All felonies are considered so related. Section 3(3). Also going armed with a firearm with the intent to use it unlawfully against a person is, to say the least, unfair.

3. Relation of Offense to Occupation

As noted above, 1974 PA 381 as amended, Section 2 provides for rebuttal by showing non-relationship of the crime to the occupation. Respondent has not rebutted the Department's evidence. Respondent refused to testify, and no other evidence favorable to Respondent is on record. Indeed the identification of Respondent's intended victim is not indicated on record, so we are left to guess. Was the intended victim someone Respondent dealt with in his capacity as a real estate salesperson (for instance, seller, buyer or other licensed real estate professional)?

4. Rehabilitation and Current Good Moral Character

These issues are dealt with in a later section of this Hearing Report.

I. Convictions Generally

As noted above, the criminal convictions individually may be used as evidence of lack of good moral character. Respondent's many criminal convictions considered collectively also raise grave concerns about Respondent's good moral character. Respondent has trespassed with the intent to injure or destroy or carry away property; possessed child sexually abusive material; fraudulently altered a registration plate; and carried a firearm with the intent to use it unlawfully against a person of another. The Agency has good reason to be concerned about the public's welfare. Respondent has not rebutted the evidence of lack of good moral character by showing the substances of the former offenses were not reasonably related to his profession. Below I discuss whether Respondent has rebutted the

evidence of lack of good moral character by showing he currently has good moral character or is rehabilitated.

J. Rehabilitation and Current Good Moral Character

1. Introduction

As provided by 1974 PA 381, Section 2, Respondent may rebut the Department's evidence of lack of good moral character by showing that at the current time he has the ability to and is likely to serve the public in a fair, honest and open manner; or that he is rehabilitated.

2. Evidence that Respondent is Rehabilitated and has Good Moral Character

The record provides some evidence of rehabilitation and current good moral character. Respondent has made the following arguments:

- a. The convictions are for crimes that occurred several years ago. Three of the convictions are for crimes that occurred about six years ago and one is for a crime that occurred about 23 years ago.
- b. Respondent has largely paid the penalties for his crimes. Evidence shows he has served his time in jail (for child pornography) in prison (for the firearm convictions) and completed probation for the trespassing

and child pornography (for which he complied with the probation requirements). Respondent has made some other claims, but they are not proven by a credible evidence on record.

- c. Since the crimes, Respondent has received additional educational training and further licenses. Evidence shows Respondent was issued a real estate associate broker's license effective May 20, 1997, and an individual real estate broker's license effective November 3, 1998. In 1999 Respondent claimed that he had been accepted to law school and would begin his studies soon. However, there is no evidence he actually began his studies. That is unlikely because of Respondent's incarceration.
- d. Since the crimes, Respondent has been employed in the real estate area. He worked for Dykes Realty.
- e. Since the first conviction, Respondent has held a position of public trust. In Petitioner's Exhibit 4 Respondent claimed that after the first conviction he received a secret security clearance from the US Army. Respondent, however, presented no documentation to prove this claim.
- f. Except for the denial of application, this is the first disciplinary action taken against his license. Evidence shows that no disciplinary action was taken against him when he held a salesperson's license, an associate broker's license, or before now an individual broker's license.

- g. The Courts have demonstrated some trust in him. Evidence shows that on the child pornography charge, the Court released Respondent on his own recognizance; on the altered plate charge, the Court modified his probation to allow Respondent to apply for and work in a bar.

3. Evaluation of Rehabilitation and Current Good Moral Character

For the following reasons I find that Respondent has not rebutted the Department's evidence of lack of good moral character.

a. Circumstances Surrounding Convictions

The essence of Respondent's rebuttal would be proof that he has changed. However, without knowing in more detail the circumstances surrounding the crimes, I cannot know what led to his crimes or how he would need to change. For instance, why did Respondent want to use a firearm against another person and was that person someone Respondent dealt with in his capacity as a real estate salesperson? Why did Respondent commit three crimes within seven months of each other in 1996? Respondent refused to testify and present any other evidence to explain the circumstances.

b. Dates and Crimes

One crime occurred about 23 years ago and three crimes occurred about six years ago. The mere passage of time, however, does not show rehabilitation or good moral character. It shows that Respondent had time to change, not that he did change.

c. Penalties

Respondent has served time in jail and prison and been through some probation. However, merely because Respondent has paid penalties for his crimes does not necessarily mean he is rehabilitated or currently has good moral character. The effect on Respondent is simply unknown. Respondent refused to testify and presented no other evidence to adequately explain it.

In the attachment to Respondent's Conviction History Form (Petitioner's Exhibit 4), Respondent called himself "stupid" in relationship to one of his crimes: apparently the altering of a registration plate. Without Respondent's explanation, however, the significance of this is unclear. Was he "stupid" because he committed the crime or because he was caught or for some other reason?

d. Other Evidence of Rehabilitation

Respondent's other evidence of rehabilitation and current good moral character (employment education, etc.) is also not sufficient to rebut the Department's evidence. Although the evidence is interesting, it does not tell us whether Respondent actually has changed. He could simply be in a period of remission with further crimes to come. Respondent refused to testify and provide insight into what is actually going on.

e. Possession of Child Sexually Abusive Material

For this conviction the evidence shows that Respondent is not rehabilitated. Respondent views himself as the victim of the perjury of a Michigan State Police sergeant and the lies of a prosecutor in an overall "frame job." Petitioner's Exhibit 4. Furthermore, he believes there is nothing wrong with what he did, and he did nothing out of the ordinary as

shown by the following statement he made at hearing:

We have a pornography charge. No one likes to say the words because it touches that little part of us inside that nobody likes to be touched at.

April 17, 2002, Transcript, page 21

See also a similar statement of Respondent at November 30, 2001, Transcript, pages 70-71.

f. Open Manner

Respondent's behavior at hearing shows that he does not currently have good moral character. As noted above, good moral character includes the propensity to serve the public in an open manner. Respondent refused to testify at hearing. He has chosen to conceal information. He is not "open."

k. Penalty

As noted above, Respondent violated Occupational Code Section 604(d). A person who violates the Occupational Code shall be assessed one or more specified penalties including revocation of a license. MCL 339.602; MSA 18.425(602); Occupational Code Section 602. Considering the overall circumstances, I believe the appropriate penalty here is license revocation as the Bureau of Commercial Services requested.

DECISION AND RECOMMENDED PENALTY

Based on the above Findings of Fact and Conclusions of Law, the undersigned

Administrative Law Judge decides Respondent demonstrated a lack of good moral character, contrary to Occupational Code Section 604(d).

The undersigned Administrative Law Judge recommends that Respondent's license be revoked.

C. David Jones
Administrative Law Judge

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BOARD OF REAL ESTATE BROKERS AND SALESPERSONS**

In the matter of :

D. SAMEUL GOODELL
Real Estate Broker
License No. 65-01-262856

Docket No. 2000-599
Complaint No. 65-99-6580-00

FINAL ORDER

WHEREAS, this matter having come before the Michigan Board of Real Estate Brokers and Salespersons, hereafter the "Board", on October 1, 2002; and

WHEREAS, the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of C. David Jones, Administrative Law Judge, dated July 24, 2002;

WHEREAS, the Board having received the Hearing Report under MCL 339.514, and D. Samuel Goodell, Licensed Real Estate Broker, License No. 65-01-262856, hereafter "Respondent", having been found in violation of Sections 604(d) of the Michigan Occupational Code, 1980 P.A. 299, *as amended*, hereafter the "Code", MCL 339.604(d) and

WHEREAS, the hearing report being hereby incorporated by reference; now, therefore,

IT IS HEREBY ORDERED, that the following penalties authorized by Section 602 of the Code are hereby imposed:

1. The Real Estate Broker License No. 65-01-262856 of Respondent shall be and hereby is **REVOKED** effective the date of mailing of this Final Order.

2. No application for licensure, renewal, registration or reinstatement shall be considered by the Department unless proper application and/or petition is filed for relicensure, reregistration or reinstatement under Article 4/Article 5 of the Occupational Code, 1980 P.A. 299, *as amended*.