

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

In the matter of

Docket No. 2002-558

Bureau of Commercial Services,
Petitioner

Agency No. 65-00-6773-00

v

Agency: Bureau of Commercial Services

George Apostle,
Respondent

Case Type: Sanction

_____ /

Issued and entered
this 10th day of November, 2002
by James L. Karpen
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

Appearances: Michael A. Lockman, Assistant Attorney General, appeared on behalf of Petitioner, Bureau of Commercial Services. Respondent, George Apostle, appeared *pro se*.

This case stems from a January 15, 2002 Formal Complaint which disclosed that Petitioner, doing business as Midwest Real Estate Exchange, is licensed as a real estate broker under the Occupational Code, 1980 PA 299, as amended, MCL 339.101 *et seq.* (Code). The Complaint alleges that on April 11, 2001 Respondent was convicted in Muskegon County Circuit Court, based upon his plea of *nolo contendere*, of "funeral contract conversion," contrary to Section 22(1) of the Prepaid Funeral Contract Funding Act, 1986 PA 255, MCL 328.211 *et seq.* (Act). The Complaint further asserts that Respondent's conviction

was based on his failure to retain or refund monies received from others for funeral goods and services. The Complaint avers that Respondent's conviction and underlying conduct demonstrate a lack of good moral character, contrary to Section 604(d) of the Code. In a conclusory fashion, the Complaint asserts that Respondent violated Section 604(c) of the Code (violation of a rule of conduct in practicing an occupation).

After two adjournments, the hearing was held as rescheduled on October 2, 2002.

ISSUES AND APPLICABLE LAW

Section 604(c), (d) provide as follows:

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 of the penalties prescribed in section 602:

* * *

(c) Violates a rule of conduct of an occupation.

(d) Demonstrates a lack of good moral character.

Good moral character is defined in MCL 338.41(1) as follows:

Sec. 1. (1) The phrase "good moral character", or words of similar import, when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in the Michigan Compiled Laws or administrative rules promulgated under those laws 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.

SUMMARY OF THE EVIDENCE

Respondent was the only witness to testify at the hearing. Respondent identified Exhibit 1, a September 18, 2001 Judgment of Sentence from Muskegon County Circuit Court which reflects Respondent's plea of *nolo contendere* to a violation of Section 22(1) of the Act. Section 22(1) of the Act provides that a person who converts funds paid pursuant to a prepaid funeral contract is guilty of a felony. Respondent was sentenced to 60 days in jail, two years probation and ordered to pay \$10.00 per month restitution. Respondent, who had a mortuary science license under the Code, testified he agreed to pay back \$22,000.00 to approximately ten persons to whom he had sold prepaid funeral contracts.

Before turning to the findings of fact, a couple of matters should be noted. First, the statutory definition of good moral character is the propensity of a person to serve the public in a fair, honest and open manner. Respondent's felony conviction for converting funds he received from prepaid funeral contracts establishes his inability to deal with the public in a fair, honest and open manner. As a real estate broker, Respondent is in a position to receive funds from his clients in connection with the sale and purchase of real estate. Respondent's felony conviction demonstrates he cannot be trusted with other people's money.

Second, Petitioner made no attempt to establish that Respondent had violated a rule of conduct in practicing an occupation.

FINDINGS OF FACT

Based upon the entire record, I make the following findings of fact.

1. Respondent, George Apostle, is licensed as a real estate broker under the Code.
2. On April 11, 2001 Respondent was convicted by plea of *nolo contendere* of “funeral contract conversion,” a felony violation of Section 22(1) of the Act.
3. As part of Respondent’s plea based conviction, he agreed to pay back \$22,000.00 to ten persons who had purchased prepaid funeral contracts from him.
4. Respondent’s criminal conviction and the facts underlying the conviction establish that Respondent lacks good moral character and that he is unable to deal with the public in a fair, honest and open manner.

CONCLUSIONS OF LAW

Based upon the findings of fact, Petitioner has proven by a preponderance of the evidence that Respondent violated Section 604(d) of the Code. Petitioner failed to prove Respondent violated a rule of conduct in practicing his occupation as a real estate broker, contrary to Section 604(c) of the Code.

RECOMMENDATIONS

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Counsel for Petitioner recommended that Respondent's real estate broker's license be revoked. I agree.

James L. Karpen
Administrative Law Judge