

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
233 RICHMOND STREET  
PROVIDENCE, RHODE ISLAND 02903**

---

**IN THE MATTER OF:**

**BRIAN BEAUDOIN**

**RESPONDENT.**

---

:  
:  
:  
:  
:  
:  
:  
:

**DBR No. 07-L-0213**

**DECISION**

Hearing Officer: Elizabeth Kelleher Dwyer

Hearing Held: January 16, 2008  
March 3, 2008

Appearances: Brian Beaudoin Respondent

Neena Sinha Savage, Esq. Department prosecutor

**I. INTRODUCTION**

The above-entitled matter came before the Department of Business Regulation ("Department") as the result of an Order to Show Cause filed on or about August 10, 2007. The Order appointed the undersigned as Hearing Officer. A prehearing conference was held in this matter on September 13, 2008.

A hearing in this matter was held on January 16, 2008. After some testimony had been elicited, the parties requested a continuance of the hearing which was granted. The hearing was concluded on March 3, 2008. On both dates, the Department was represented by Neena Sinha Savage, Esq. and Brian Beaudoin ("Respondent") appeared *pro se*.

## II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 5-20.7-20, 42-14-1 *et seq.*, and § 42-35-1 *et seq.*

## III. ISSUES

1) Does the issuance of a trainee license to Respondent in 2005 prevent the Department from moving to revoke that licensing at this time?

2) Is Respondents criminal conviction a sufficient basis for denial of a real estate trainee license?

## IV. MATERIAL FACTS AND TESTIMONY

The Department called Valerie Voccio who indicated that she has been employed as the Real Estate Administrator overseeing Real Estate Appraisal Licensing since 1990 and has been employed in the real estate section of the Commercial Licensing Division for the last 27 years. Ms. Voccio provided background concerning five exhibits offered by the Department. Exhibit 1 is a partial criminal background on Respondent. Exhibit 2 is an application for a real estate appraisal trainee license from Respondent including various documents concerning his criminal convictions. Exhibit 3 is a second application from Respondent. Exhibit 4 is a "Trainee Appraiser" licensing issued to Respondent on July 7, 2005 and a certificate indicating that Respondent passed the real estate appraiser examination. Exhibit 5 is the minutes of the Real Estate Appraiser Board dated July 6, 2005 that indicates that Respondents Trainee License was "Approved." Each of these documents was submitted for admission as full exhibits. Respondent indicated he had no objection and the documents were admitted into evidence.

Ms. Voccio testified that in 2004 Respondent submitted an application for a real estate trainee license. That application was denied and an Order to Show Cause (DBR No. 04-L-0026) was issued. Respondent decided to withdraw that application and the file was closed. Ms. Voccio placed a note under Respondents name indicating that if a subsequent application was received, it should be referred to her. In 2005 such an application was made but was not referred to Ms. Voccio. The first time she was informed that a trainee license had been issued to Respondent was when he applied for renewal in 2007.

Ms. Voccio was out of the country at the time the license was issued to Respondent. Her investigation has not determined how the license was issued although she located minutes of the Real Estate Appraisal Board ("Board") "approving" licensure (Exhibit 5). During the time period she had turnover in her administrative staff and the license could have been issued by any one of three administrative personnel. Ms. Voccio indicated that Respondent had disclosed his criminal history on all of his applications.

The Department procedure which should have been followed was that Ms. Voccio would have referred Respondent's application to the legal division and an Order to Show Cause would have been issued to allow Respondent to present a case for licensure to a hearing officer. The standard procedure is that trainee applications do not go before the Board and Ms. Voccio does not know why this one did. The applications which are supposed to go before the Board are those for full licensure and the Boards charge is to review the applications for education and experience. The Department, however, processes the application and reviews criminal records. When the Board looks at an application, its position is a recommendation by the Department and the Department

retains the statutory authority over the license. She is not sure why Respondent's 2005 application went to the Board but she is not making an allegation that Respondent did anything incorrect in the submission of the application.

Gerald Roch, the owner of Roch Appraisal, testified and submitted a letter of recommendation which was accepted into evidence as Exhibit 1. Mr. Roch testified that he has been Respondent's employer since 2003 and was aware of his history before Respondent began work. He indicated that he was present at the Board meeting in 2005 when Respondent's license was addressed.

Mr. Roch presented Exhibit 1 as his recommendation to the Department that Respondent be granted a license. He testified that he was aware that Respondent had a drug problem and was convicted of embezzlement. He believed that the conviction was related to the drug problem. Mr. Roch's father and Respondent's mother had a relationship, although both are now deceased. He learned of the drug problem from his father although he is not sure of the specifics of Respondent's drug problem including the type of drugs involved.

In his letter of recommendation he indicated that at the time he hired Respondent he spoke at length with Respondent and "...felt comfortable that he had rehabilitated himself..." Mr. Roch indicated that since his hiring Respondent has been a "model employee" and "has conducted himself in the highest regard." Mr. Roch indicated that Respondent's appraisal work is "conscientious and meticulous" and that he believes that his license should not be revoked.

When presented as a witness at the continued hearing Mr. Roch indicated that he was actually a member of the investment club from which Respondent had embezzled. It

was his understanding that all of the money embezzled was paid back. He recommended Respondent be licensed based upon his employment of him over the past four years.

Paul Cunningham testified that he is a licensed real estate appraiser, who had served first on the temporary Board and later on the permanent Board from 1992 to 1996. He has been working as an appraiser since 1979 and with Roch Appraisals since 1985. When he was on the Board, the Department would review the applications for criminal background and the Board would only get involved in checking the education and experience credits for the permanent licenses.

While Mr. Cunningham was not acquainted with the Respondent before he began with Roch Appraisals, he has worked with him over the past four years, on occasion in a supervisory capacity. He has observed his work ethic and habits over the past four years and has seen no problems. He does not understand why the Department would move to take away the license at this point when Respondent has shown himself to be a good employee under the trainee license.

## V. DISCUSSION

The Department argued that Respondent's conviction for embezzlement in August of 2002 is a sufficient basis for revocation of his real estate appraiser licensure under R.I. Gen. Laws § 5-20.7-20(2), (4) and (5). The Department argued that Respondent has not provided any detailed explanation of the criminal charges, that the charges themselves are substantially related to the type of crimes which cause concern for real estate appraisal licensing and that the crimes constituted an act of dishonesty. While the Department mistakenly issued the real estate trainee license, the Department argued that this was just that – a mistake and does not vitiate the Respondent's disqualification under the statute.

Respondent argued that he has been licensed for the past two years as a real estate appraiser trainee without incident. In that time he has spent time and money on education and experience in an effort to eventually become a fully license real estate appraiser and has acted in a professional manner. He believes that his actions over the last two years have been in “detrimental reliance” on the Department’s issuance of the trainee license. While the Department is claiming that the issuance was a mistake, Respondent argues that the facts show that it was not a mistake.

The Department will address each of the issues in the order indicated above.

**A. Does the issuance of a trainee license to Respondent in 2005 prevent the Department from moving to revoke that licensing at this time?**

The evidence presented was that while this trainee application was apparently “approved” by the Board and the license issued, there was no conscious act on the part of the Administrator of Real Estate to excuse the felony conviction and issue the license. R.I. Gen. Laws § 5-20.7-5 sets forth the powers of the Board. Those powers are the ability to act in an advisory capacity to the Department. In essence, the Board provides the expertise in real estate appraisal that is critical to the Departments licensing function. However, the power to approve and disapprove license application is delegated to the Department under R.I. Gen. Laws § 5-20.7-6. The facts presented below show that the Board “approved” this license, however, there was no testimony on how the license was actually issued other than the fact that the license application was not considered by the Administrator of Real Estate as is the Departments protocol. The fact that the Department had previously denied an application from Respondent on the same felony conviction would evidence that the Department probably would have taken the same course had the application taken the proper course and

been referred to the Administrator of Real Estate. The question, therefore, becomes whether the issuance of the trainee license forestalls the Department from taking action at this time.

The Department is not a private contractual party upon which the concept of detrimental reliance would apply. Rather, the Department is charged with protection of the public interest in the issuance of licenses under R.I. Gen. Laws § 5-20.7-20. The argument made by Respondent, therefore, is that the public loses the protection of the licensing statute if the Department mistakenly issues a license. This is not the state of the law. Respondent has the right to due process on the consideration of the issue of whether he qualifies as a licensee. He does not have the right to retain the license itself if other facts show that it should be revoked.

It is well established that Respondent may not be deprived of the property interest in his license without due process. Due process requires a determination of the Respondent's property interest in the license; an evaluation of the risk that the procedures used to deprive Respondent of his property interest would do so erroneously; a determination of the government's interest in issuing the license on behalf of the public; and a balancing of these interests by determining if the property deprivation has been preceded by adequate notice and whether Respondent has been provided a hearing appropriate to the nature of his case. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985); *Mathews v. Eldridge*, 424 U.S. 319 (1976); *In re Cross*, 617 A.2d 97 (R.I. 1992).

Respondent is essentially arguing that the issuance of the license created a property interest that cannot be revoked. While the Hearing Officer agrees that the issuance created a property interest, the rights thereby created were not retention of the license but rather a full predeprivation hearing which affords Respondent adequate

opportunity to present evidence as to his qualifications for licensure after reasonable notice. Respondent was provided with such due process by the notice of the action by the Department to revoke the license as well as a full evidentiary hearing at which he was able to present evidence to support his position that his criminal conviction should not bar his licensure. Additionally, Respondent retained his license until a final decision was rendered by the Director in this matter. The requirements of due process have been satisfied and, the appropriateness of licensure will be judged on its merits.

**B. Is Respondents criminal conviction a sufficient basis for denial of a real estate trainee license?**

R.I. Gen. Laws § 5-20.7-20 provides in relevant part that the Department may suspend, revoke or refuse to issue a license for:

- (4) A conviction, including a conviction based upon a pleas of guilty or nolo contendere, of a crime, which is substantially related to the qualifications, functions, and duties of a person developing appraisals and communicating appraisals to others or convicted of any felony;
- (5) An act or omission involving dishonest, fraud, or misrepresentation with the intent to benefit the certificate holder or another person or with the intent to substantially injure another, mislead or defraud another person

The background documents submitted by Respondent (Exhibit 2) indicated that Respondent was charged with seven counts of embezzlement and obtaining money under false pretences for actions which occurred between January 1998 and June of 2000. On November 8, 2002 he was convicted of two counts (1) embezzlement over \$100 (a felony) and (2) obtaining money under false pretenses under \$500 (a misdemeanor). He was sentenced to three years with six months to serve and thirty months suspended.

As noted by the Department, Respondent did not present an explanation for how these offenses occurred. Although, Mr. Roch indicated that he believed that they were



related to a drug problem, Respondent did not provide information concerning that problem or any indicating or when or if he stopped using drugs. The only testimony was that he has performed well as an employee of Roch Appraisal for the past four years. While it appear that Respondent expects that from this testimony the Hearing Officer can imply a lack of drug use (if this was in fact the reason for the conviction), there is no direct evidence upon which the Hearing Officer may rely. This information is critical for the Department's evaluation that the public interest is served in licensing Respondent.

The evidence Respondent did present was of his good character and work habits over the past four years. Both his employer and another licensed real estate appraiser testified to his good work habits and both suggested licensure. However, these opinions, while valuable, cannot overcome a felony conviction for embezzlement that occurred less than six years ago. Embezzlement is a very serious crime which presents just the risk addressed by R.I. Gen. Laws § 5-20.7-20 (4) and (5). It involves dishonesty and self dealing which are the antithesis of an independent real estate appraiser. The honesty of a real estate appraiser is paramount to prevention of a host of financial transactions that can severely harm the public. Thus while the Department is impressed with the testimony of the two licensed real estate appraisers, sufficient evidence has not been presented to the Department that this type of activity will not be undertaken by Respondent in the future.

Balancing the evidence presented by Respondent against the Department's interest in protecting the public, the undersigned has determined that Respondent's continued licensure as a trainee real estate appraiser represents an unreasonable risk to the public and that Respondent has been provided adequate due process prior to the deprivation of the license and any protected property interest therein.

## **VI. FINDINGS OF FACT**

1. In 2005 the Department issued Respondent a real estate appraiser trainee license.

2. The license application was not referred to the Administrator of Real Estate prior to the issuance of the license, as was the Departments protocol for applications wherein the applicant had a felony conviction.

3. An Order to Show Cause was filed on or about August 10, 2007.

4. Two days of hearings were held in this matter on January 16, 2008 and March 3, 2008 at which time Respondent was given the opportunity to present witnesses and evidence of his choosing.

5. While Respondent provided documentation concerning his criminal convictions, he did not provide a factual explanation of the convictions or evidence sufficient to determine that similar conduct was unlikely to occur in the future.

6. In weighing the evidence of good character that Respondent did present with the potential harm to the public due to the serious nature of the criminal conviction and the lack of a significant passage of time since the convictions, the Hearing Officer concludes that revocation of the license is appropriate.

## **VII. CONCLUSIONS OF LAW**

Based on the testimony and facts presented I conclude as follows:

1. The Department has jurisdiction over this matter pursuant to R.I. Gen. § 5-20.7-20 *et seq.*, 42-14-1 *et seq.*, and 42-35-1 *et seq.*

2. The issuance of a trainee license in 2005 does not negate the Departments' statutory authority pursuant to R.I. Gen. Laws § 5-20.7-20 to consider crimes that occurred prior to 2005 in determining Respondent's fitness for a license.

3. By providing a full pre-deprivation hearing which afforded Respondent adequate opportunity to present evidence as to his qualifications for licensure after reasonable notice, the Department satisfied the requirements of due process.

4. Respondents conviction for embezzlement on November 8, 2002 is a sufficient basis for revocation of his real estate appraiser licensure under R.I. Gen. Laws § 5-20.7-20 (4) and (5).

#### VII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that

1. Respondent's real estate appraiser trainee license be non-renewed and/or revoked pursuant to R.I. Gen. Laws § 5-20.7-20 (4) and (5).

2. That if Respondent applies for a real estate appraiser license in the future that this Decision be taken into account in the evaluation of that application.

Dated: March 5, 2008



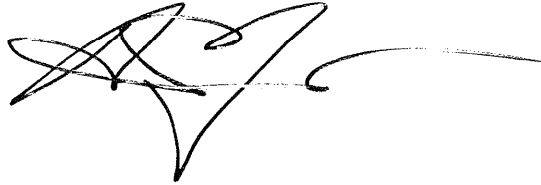
---

Elizabeth Kelleher Dwyer, Esq.  
Hearing Officer

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby

ADOPT  
 REJECT  
 MODIFY

the Decision and Recommendation.



Dated: March 5, 2008

---

A. Michael Marques  
Director

**NOTICE OF APPELLATE RIGHTS**

**THIS DECISION CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I.G.L. § 42-35-12. PURSUANT TO R.I.G.L. § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.**