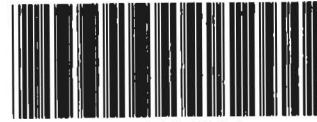


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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO



D112126024

MATTHEW DAVID SCHLOTMAN,	:	Case No. A1401777
Appellant,	:	Judge Robert C. Winkler
v.	:	
	:	
OHIO DEPARTMENT OF COMMERCE,	:	<u>MAGISTRATE'S DECISION</u>
Appellee.	:	

RENDERED THIS 24TH DAY OF SEPTEMBER, 2015.

This administrative appeal of the March 12, 2014 Adjudication Order (“Order”) adopted by the Ohio Real Estate Commission (“Commission”) which revoked the real estate sales license of Appellant Matthew David Schlotman (“Appellant”) was filed pursuant to R.C. § 119.12. The parties waived oral arguments. On April 3, 2014, the parties agreed to stay the Order until this appeal is resolved. The appeal was submitted on the briefs to the Common Pleas Magistrate September 15, 2014.

ORDER

That the Ohio Real Estate Commission adopt [sic] the findings of fact and conclusions of law of the hearing examiner as its opinion pursuant to Section 4735.051 of the Ohio Revised Code and modified the “nature of the case” and the “summary” of the hearing officer as provided in the attached Exhibit A. Further, **Matthew Schlotman** is found to have violated Revised Code 4735.18 as set forth in paragraphs 1, 2, 3, 4, and 5 in the modified Schedule A of the Notification of Formal Hearing (Exhibit A attached) and the penalty imposed is as follows:

- Count 1** Revocation
- Count 2** Revocation
- Count 3** Revocation
- Count 4** Revocation
- Count 5** Public Reprimand¹

ATTORNEY GENERAL'S OFFICE

¹ / Compl. Ex. A. (Order, Mar. 12, 2014).

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EXECUTIVE AGENCIES

This appeal was timely filed.

STANDARD OF REVIEW

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The court shall award compensation for fees in accordance with section 2335.39 of the Revised Code to a prevailing party, other than an agency, in an appeal filed pursuant to this section.²

A strict reading of this standard of review allows the trial court to weigh the evidence to determine whether it is reliable, probative and substantial. However, the trial court is required to give due deference to the administrative resolution of evidentiary conflicts.³ Consequently, an administrative factual finding should not be disturbed without legally sufficient reasons for doing so.

Section 119.12 of the Revised Code requires that evidence considered by the court on appeal be reliable, dependable, probative and substantial.⁴ Reliable evidence is dependable, confidently trusted, and there is reasonable probability that the evidence is true.⁵ Probative evidence is relevant and tends to prove the issue in question.⁶ Substantial evidence is evidence with some weight; it must have importance and value.⁷

² / Ohio Rev. Code § 119.12 (West 2007).

³ / *Star Cruises v. Department of Liquor Control*, No. C-950701, 1996 Ohio App. LEXIS 1013, at *4-5 (App. 1 Dist.), see *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, and *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619.

⁴ / *Our Place, Inc. v. Ohio Liquor Control Comm'n.* (1992), 63 Ohio St.3d 570, 571.

⁵ / *Id.*

⁶ / *Id.*

⁷ / *Id.*

DISCUSSION

R.C. 4735.18 states:

(A) Subject to section 4735.32 of the Revised Code, the superintendent of real estate, upon the superintendent's own motion, may investigate the conduct of any licensee. Subject to section 4735.32 of the Revised Code, the Ohio real estate commission shall impose disciplinary sanctions upon any licensee who, whether or not acting in the licensee's capacity as a real estate broker or salesperson, or in handling the licensee's own property, is found to have been convicted of a felony or a crime of moral turpitude and may impose disciplinary sanctions upon any licensee who, in the licensee's capacity as a real estate broker or salesperson, or in handling the licensee's own property, is found guilty of:

(6) Dishonest or illegal dealing, gross negligence, incompetency, or misconduct.⁸

In April of 2010, Appellant was convicted of four felony offenses of the fifth degree for Trafficking in Marihuana.⁹ As a result, the Department of Commerce, Division of Real Estate and Professional Licensing ("Division") instituted disciplinary proceedings against Appellant. Appellant was initially charged with eight (8) different violations of R.C. 4735. However, counts 6-8, which related to the reporting of the felony convictions, were voluntarily withdrawn. The hearing examiner found Appellant's conduct violated R.C. 4735.18 (A)(6). Appellant then appeared pro se at a hearing before the Commission. The Commission eventually issued the Order revoking Appellant's license for counts 1-4 and a public reprimand for count 5.

Appellant argues the Order must be reversed for two main reasons. First, Appellant argues the Commission relied upon inadmissible evidence and made improper inferences during the hearing. Specifically, Appellant argues the Commission improperly focused on the dismissed counts 6-8. The court disagrees. A review of the transcript

⁸ / R.C. 4735.18(A) (West 2015).

⁹ / B1000976-A.

shows the Commission did inquire into the basis of counts 6-8 and the reason why those counts were dismissed. However, the discussion of those counts was relatively brief and consisted primarily of the Division's counsel explaining why the counts were dismissed. The Commission made no mention of counts 6-8 when it deliberated Appellant's punishment.¹⁰ While there was some discussion during the hearing, there is no evidence the Commission relied upon or made any improper inferences based upon the dismissed counts.

Appellant also argues the Order must be reversed because the Commission violated his due process rights. Appellant argues the Commission incorrectly reprimanded him for not bringing signed copies of a recommendation letter. Appellant believes the Commission refused to accept his evidence and deprived him of a fair hearing. The court disagrees. The Commission did question Appellant about the letter of recommendation from Magistrate Valerie Zummo. Commissioner Froelich asked Appellant why the email was not signed and stated the letter must be signed.¹¹ Commissioner Froelich later corrected the record and stated the letter was not required to be signed.¹² Furthermore, the Commission accepted the letter of Magistrate Zummo into the record and considered it on behalf of Appellant.¹³ Therefore, Appellant was not prejudiced by the misunderstanding.

Unfortunately, Appellant only submitted two letters of recommendation and one of those was an email from Magistrate Zummo. Appellant chose not to present any witnesses on his behalf. The record shows the Appellant's presentation was lacking and

¹⁰ / Trans. 26-30.

¹¹ / *Id.* at 17.

¹² / *Id.* at 21-22.

¹³ / *Id.*, Ex. B.

the Commission was left unimpressed. As Commissioner Giller pointed out, it was incumbent upon the Appellant to “bring everything that you can possibly think of to make your point” in front of the Commission.¹⁴ The burden was on the Appellant to persuade the Commission to allow him to keep his real estate license and he simply failed to do so.

Finally, Appellant argues the Division failed to provide sufficient notice of the charges under R.C. 119.07. The hearing officer did apparently make an erroneous amendment to the Nature of the Case and the Summary. However, there was no confusion as to what Appellant was charged with and why he was before the Commission. Appellant knew he had felony convictions for trafficking in marijuana and those were the basis of charges 1-4. The Commission later modified the Order to clarify the specific sections of the Revised Code which Appellant violated.¹⁵ The court finds Appellant had sufficient notice of the charges under R.C. 119.07.

DECISION

The March 12, 2014 Adjudication Order adopted by the adopted by the Ohio Real Estate Commission (“Commission”) which revoked the real estate sales license of Appellant Matthew David Schlotman (“Appellant”) is AFFIRMED. The stay granted on April 3, 2014 shall remain in effect until this appeal in Hamilton County Court of Common of Pleas is resolved.



**MICHAEL L. BACHMAN
MAGISTRATE
COURT OF COMMON PLEAS**

¹⁴ / *Id.* at 23-24.

¹⁵ / *Id.*, Ex.A.

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

Copies sent by Clerk of Courts to:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 9-30 Deputy Clerk: 