

**IN THE COURT OF COMMON PLEAS
COUNTY OF WARREN, STATE OF OHIO**

**OHIO DIVISION OF REAL)
ESTATE AND PROFESSIONAL)
LICENSING,)**

Appellee,)

CASE NO. 15CV87999

-vs-)

EARL PAELTZ,)

Appellant.)

**ENTRY GRANTING
PERMANENT JUDGMENT ON
MAGISTRATE'S DECISION**

A Magistrate's Decision having been filed herein on **December 2, 2016** and no objections to the Decision having been filed within fourteen (14) days from that date, the Court **ORDERS** the Decision adopted as a permanent judgment of this Court.



01/19/2017

JUDGE DONALD E. ODA, II

C: Zachary Schaengold, Esq.
Earl Paeltz, pro se

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IN THE COURT OF COMMON PLEAS
COUNTY OF WARREN, STATE OF OHIO

OHIO DIVISION OF REAL ESTATE)
AND PROFESSIONAL LICENSING,)

Appellee,)

vs.)

EARL PAELTZ,)

Appellant.¹)

CASE NO. 15CV87999

MAGISTRATE'S DECISION

Earl Paeltz brings the above-referenced administrative appeal of an adjudicatory order of the Ohio Real Estate Commission dated November 10, 2015, which affirmed a decision of the Superintendent of Real Estate denying Appellant's application to sit for the real estate salesperson licensing examination. For the reasons which follow, the order is *affirmed*.

The undersigned Magistrate notes that Appellant failed to file an assignment of error brief in this administrative appeal, and did not appear for oral argument. Nevertheless, this Magistrate has carefully reviewed the record, which reflects the following facts.

Appellant obtained a loan officer license from the Division of Financial Institutions in 2001, and in 2009 entered into a settlement and consent order and was assessed a \$1,400.00 fine which he never paid. Appellant's loan officer license was subsequently revoked. Appellant obtained a real estate salesperson license from the Ohio Division of Real Estate and Professional Licensing in 2008, which was suspended, and later revoked, for his failure to register in 2011.

On July 29, 2011, Appellant pled guilty to one count of aiding and abetting the making of false statements in violation of 18 U.S.C. §1001(A)(2), in the United States District Court for the Eastern District of Kentucky. *United States v. Paeltz*, Case No. 2:11CR00025. Appellant was placed on five years probation and ordered to pay restitution of approximately \$35,000.00.

¹ So captioned by Appellant.

Appellant's probation was terminated early on July 29, 2013. Appellant is paying the restitution at the rate of \$100.00 per month.

On July 8, 2015, Appellant applied to take the real estate salesperson license exam. His updated application indicated that he had \$15,000.00 in unsatisfied judgments against him. Appellant's application was denied on August 13, 2015, and Appellant appealed to the Ohio Real Estate Commission on August 28, 2015.

On November 4, 2015, Appellant appeared before four members of the Commission for a hearing at which Appellant and his witnesses testified. Appellant also presented to the Commission letters from some 32 individuals attesting to Appellant's good character.² The Commission voted 3 to 1 to affirm the denial of Appellant's application.

R.C.4735.09 states, in pertinent part,

(F) No applicant for a salesperson's license shall take the salesperson's examination who has not established to the satisfaction of the superintendent that the applicant:

(1) Is honest, truthful, and of good reputation;

(2)(a) Has not been convicted of a felony or crime of moral turpitude or, if the applicant has been so convicted, the superintendent has disregarded the conviction because the applicant has proven to the superintendent, by a preponderance of the evidence, that the applicant's activities and employment record since the conviction show that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant again will violate the laws involved;

(b) Has not been finally adjudged by a court to have violated any municipal, state, or federal civil rights laws relevant to the protection of purchasers or sellers of real estate or, if the

² Most of these letters, 27 approximately, had actually been written to the federal district court with reference to the disposition of Appellant's criminal case.

applicant has been so adjudged, at least two years have passed since the court decision and the superintendent has disregarded the adjudication because the applicant has proven, by a preponderance of the evidence, that the applicant is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant again will violate the laws involved;

(3) Has not, during any period in which the applicant was licensed under this chapter, violated any provision of, or any rule adopted pursuant to this chapter, or, if the applicant has violated such provision or rule, has established to the satisfaction of the superintendent that the applicant will not again violate such provision or rule;

Appellant's appeal in this case is governed by R.C.119.12 (M), which states:

(M) The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence 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 this 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.

While Appellant presented a substantial amount of testimonials to his good character, as recognized by the members of the Commission, this Court will not substitute its judgment for the administrative agency if some evidence supports the agency's order. *Moran v. Ohio Dep't. of Commerce, Div. of Real Estate*, 109 Ohio App.3d 494, 497, 672 N.E.2d 699 (9th Dist. 1996). Upon a complete review of the record, the undersigned Magistrate finds that the adjudicatory order of the Ohio Real Estate Commission is supported by reliable, probative and substantial evidence, and is not unreasonable, arbitrary or unconscionable.

Accordingly, the adjudicatory order of the Commission is *affirmed*.



MAGISTRATE ANDREW HASSELBACH

NOTICE TO PARTIES

The parties shall take notice that this decision may be adopted by the Court unless objections are filed within fourteen (14) days of the filing hereof in accordance with Civil Rule 53 (D)(3)(b).

A party shall not assign as error on appeal the court's adoption of any factual findings or legal conclusions, 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).

**INSTRUCTIONS TO THE CLERK FOR SERVICE OF MAGISTRATE'S DECISION
PURSUANT TO CIVIL RULE 5**

PLEASE SERVE THE FOLLOWING ATTORNEY: ZACHARY SCHAENGOLD

PLEASE SERVE: EARL PAELTZ

copies mailed 12/5/16 st



MAGISTRATE ANDREW HASSELBACH