

Before the
Administrative Hearing Commission
State of Missouri



MATTHEW R. ROGERS,)	
)	
Petitioner,)	
)	
vs.)	No. 14-0084 RE
)	
MISSOURI REAL ESTATE COMMISSION,)	
)	
Respondent.)	

DECISION

We deny Matthew R. Rogers’ application for licensure because he pled guilty to a criminal offense that mandates refusal of his application.

Procedure

On January 17, 2014, Rogers filed a complaint appealing a decision by the Missouri Real Estate Commission (“MREC”) denying his application for licensure as a real estate salesperson. On February 6, 2014, the MREC filed an answer. On March 31, 2014, the MREC filed a motion for summary decision. Regulation 1 CSR 15-3.446(6)¹ provides that we may decide this case without a hearing if the MREC establishes facts that Rogers does not dispute and entitle the MREC to a favorable decision.

¹ All references to “CSR” are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

We gave Rogers until April 17, 2014, to respond to the motion, but he did not respond.

Therefore, the following facts are undisputed.

Findings of Fact

1. On February 1, 2013, in the Franklin County Circuit Court, Rogers pled guilty to felony conspiracy-sexual assault.

2. The Substitute Information in that case states the following:

The defendant, in violation of Section 564.016, RSMo, committed the class D felony of conspiracy, punishable upon conviction under Section 558.011, RSMo, in that on or about April 24, 2011, in the County of Franklin, State of Missouri, the defendant, with the purpose of promoting or facilitating the offense of Sexual Assault agreed with Brad Julius that they would have sexual intercourse with S.M.W. and that in furtherance of the conspiracy they completed the act of sexual intercourse with S.M.W.

3. The court suspended imposition of sentence and placed Rogers on five years' supervised probation.

Conclusions of Law

We have jurisdiction to hear this complaint.² The MREC has the burden of proving that Rogers has committed an act for which the law allows discipline.³

Section 339.100.5, regarding offenses for which denial of a license application is mandated, states:

Notwithstanding other provisions of this section, a broker or salesperson's license shall be revoked, or in the case of an applicant, shall not be issued, if the licensee or applicant has pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of any of the following offenses **or offenses of a similar nature** established under the laws of this, any other state, the United States, or any other country, notwithstanding whether sentence is imposed:

² Section 621.045. Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

³ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

(2) Any of the following sexual offenses: rape in the first degree, forcible rape, rape, statutory rape in the first degree, statutory rape in the second degree, rape in the second degree, **sexual assault**, sodomy in the first degree, forcible sodomy, statutory sodomy in the first degree, statutory sodomy in the second degree, child molestation in the first degree, child molestation in the second degree, sodomy in the second degree, deviate sexual assault, sexual misconduct involving a child, sexual misconduct in the first degree under section 566.090 as it existed prior to August 28, 2013, sexual abuse under section 566.100 as it existed prior to August 28, 2013, sexual abuse in the first or second degree, enticement of a child, or attempting to entice a child[.]

(Emphasis added.)

Section 564.016⁴ states the following:

1. A person is guilty of conspiracy with another person or persons to commit an offense if, with the purpose of promoting or facilitating its commission he agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such offense.

8. Unless otherwise provided, a conspiracy to commit an offense is a:

(1) Class B felony if the object of the conspiracy is a class A felony.

(2) Class C felony if the object of the conspiracy is a class B felony.

(3) Class D felony if the object of the conspiracy is a class C felony.

(4) Class A misdemeanor if the object of the conspiracy is a class D felony.

(5) Class C misdemeanor if the object of the conspiracy is a misdemeanor of any degree or an infraction.

⁴ RSMo 2000.

Section 566.040, as it existed when Rogers pled guilty,⁵ provided:

1. A person commits the crime of sexual assault if he has sexual intercourse with another person knowing that he does so without that person's consent.

“Similar” means “having characteristics in common . . . alike in substance or essentials.”⁶ The MREC argues that conspiracy to commit sexual assault is an offense of a similar nature to sexual assault. Based on our review of cases analyzing the relationship between “conspiracy to commit” a crime and the underlying criminal offense, we agree.

In several attorney discipline cases, the “conspiracy” crime is one of moral turpitude if the underlying crime is a crime of moral turpitude. In *In re Brown*,⁷ the court found that “conviction of conspiracy to commit a crime of moral turpitude is itself a crime of moral turpitude.”⁸ In *State ex rel. Nebraska State Bar Ass’n*,⁹ the court found conspiracy to commit bankruptcy fraud was a crime involving moral turpitude.

In *Luzerne County Retirement Board v. Seacrist*,¹⁰ the court found that a former county employee's convictions for (1) attempting to commit tampering with public records or information, and (2) attempting and conspiring to commit obstructing administration of law or other governmental function disqualified her from receiving a pension because they were crimes related to public office or public employment. Even though the “attempting” and “conspiring” crimes were not listed in the crimes related to public office or public employment, the underlying criminal offenses were listed. The Court found:

Attempt and conspiracy both require the same *mens rea* as the underlying substantive crimes. Attempt and conspiracy are treated as crimes of the same grade and degree of the most serious offense

⁵ RSMo Supp. 2012. Transferred in 2013 to § 566.031.

⁶ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1161 (11th ed. 2004).

⁷ 80 A.3d 1043 (D.C. 2013),

⁸ *Id.* at 1044 (citation omitted).

⁹ 581 N.W.2d 892 (Neb. 1998).

¹⁰ 988 A.2d 785 (Pa. Commw. Ct. 2010).

which is attempted or is an object of the conspiracy. Both carry the same maximum sentences as the underlying crimes to which they relate. Since the crimes of attempt and conspiracy are subject to the same criminal sentences as the underlying substantive crimes, it logically follows they would also be subject to the same civil consequences. To conclude otherwise would defeat the very purpose of the Pension Act. Hence, any public official or public employee who is convicted of attempting or conspiring to commit any of the criminal offenses enumerated in the Pension Act is subject to pension forfeiture under the Pension Act.^[11]

Although Missouri downgrades the “conspiracy crime” as noted above (the conspiracy crime is a Class B felony if the object of the conspiracy is a Class A felony), we still find the conspiracy crime similar to the underlying crime. Rogers pled guilty to a sexual offense of a similar nature to sexual assault. Therefore, § 339.100.5 precludes granting a license to Rogers.

Summary

We grant the motion for summary decision and cancel the hearing.

SO ORDERED on May 21, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹¹ *Id.* at 788-89 (citations omitted).