

Before the  
Administrative Hearing Commission  
State of Missouri



CHELSEA SPENCE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 13-1652 RE
	)	
MISSOURI REAL ESTATE COMMISSION,	)	
	)	
Respondent.	)	

**DECISION**

We deny Chelsea Spence’s application for a real estate salesperson’s license.

**Procedure**

On April 18, 2013, Spence filed an application for a real estate salesperson license. The Missouri Real Estate Commission (“MREC”) denied that application by letter on August 15, 2013. On September 17, 2013, Spence filed a complaint alleging that she is entitled to a real estate salesperson license. MREC filed an answer on October 18, 2013. We held a hearing on December 16, 2013. Spence appeared *pro se*. Assistant Attorney General Todd Lucas appeared for MREC. The matter became ready for our decision on April 14, 2014, the date the last written argument was due.

**Findings of Fact**

1. On October 26, 2009, in the Municipal Court of Kansas City, Missouri, Spence pled guilty to the criminal offense of operating a motor vehicle under the influence of liquor or drugs.

She received a suspended imposition of sentence and was placed on two years' probation. The date of the offense was July 27, 2009.

2. On December 8, 2009, in the Circuit Court of Cass County, Missouri, Spence pled guilty to driving while intoxicated, driving without a valid license, possession of up to 35 grams of marijuana, and possession of drug paraphernalia. She received a suspended imposition of sentence and was placed on two years' probation. On October 11, 2011, the probation was revoked, and Spence was jailed for 21 days. The date of the offense was June 17, 2009.

3. On November 3, 2011, Spence pled guilty, in the Circuit Court of Clay County, to driving while intoxicated – persistent offender. She was sentenced to four years in prison and was ordered to complete the 120-day institutional treatment program. Although she only pled guilty to one charge, the information lists two separate offenses of driving while intoxicated on October 28, 2010 and November 23, 2010.

4. On August 24, 2012, in the Circuit Court of Johnson County, Kansas, Spence pled guilty and was thereafter sentenced to 15 months in jail, followed by 12 months' probation with special terms, for the criminal offenses of felony possession of a controlled substance (cocaine), misdemeanor possession of a controlled substance (marijuana), and stealing. The date of the three offenses was October 7, 2011.

5. On October 18, 2013, Spence submitted her application for a license as a real estate salesperson, attesting that “the information provided in this application is true and correct to the best of my knowledge and belief, and I understand that if this information is not true and correct I am subject to the penalties of making a false affidavit.”

6. On her application, Spence listed only the offenses disposed of in Clay and Johnson Counties.

7. In that application, MREC asked the following question:

Have you been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution in this state, or any other state, or of the United States, or any other jurisdiction whether or not sentence was imposed? **NOTE: This includes Suspended Imposition of Sentence, Suspended Execution of Sentence, and alcohol related offenses (i.e. DWI and BAC)? If yes, complete information below.** Attach additional sheet if needed.[<sup>1</sup>]

8. Spence committed the offenses to which she pled guilty.
9. MREC denied Spence's application.

### Conclusions of Law

Section 621.120<sup>2</sup> provides us jurisdiction to decide this appeal and requires that Spence prove her qualifications to be licensed as a real estate salesperson in order to prevail here. We decide the issue that was before MREC<sup>3</sup>, and we exercise the same authority that has been granted to MREC.<sup>4</sup> Therefore, we simply decide Spence's application *de novo*.<sup>5</sup> When an applicant for licensure files a complaint, the agency's answer provides notice of the grounds for denial of the application.<sup>6</sup> The appeal vests in this Commission the same degree of discretion as the legislature has vested in MREC, but we need not exercise it in the same way.<sup>7</sup>

Section 339.040 sets forth the qualifications of a person to be licensed as a real estate salesperson. Spence meets the basic qualifications of being at least 18 years old (subsection 3), having satisfactorily completed the salesperson examination (subsection 4), and having provided

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<sup>1</sup> Ex. 1A.

<sup>2</sup> Statutory references are to the 2013 Cumulative Supplement to the Missouri Revised Statutes unless otherwise noted. The reference to § 621.120 is to the 2000 version of the Missouri Revised Statutes.

<sup>3</sup> *Department of Soc. Services v. Mellas*, 220 S.W.3d 778 (Mo.App. W.D. 2007).

<sup>4</sup> *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20 (Mo. 1990).

<sup>5</sup> *State Bd. of Regis'n for the Healing Arts v. Trueblood*, 368 S.W.3d 259, 264-267 (Mo.App. W.D. 2012); *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App. K.C.D. 1974).

<sup>6</sup> *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App. E.D. 1984).

<sup>7</sup> *Finch*, 514 S.W.2d at 614.

a certificate with her application showing the successful completion of a salesperson curriculum from an accredited school within six months before the date of application (subsection 6).

However, certain of the qualifications provide a more subjective measure of fitness to hold the license. For example, § 339.040.1 provides:<sup>8</sup>

1. Licenses shall be granted only to persons who present . . . satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing; and

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

Besides assessing whether an applicant possesses the requisite character and reputation to hold a license, MREC may also exercise discretion by refusing a license to an applicant based on conduct for which the law permits disciplinary action against the holder or a salesperson's license. Section 339.080 provides:

1. The commission may refuse to examine or issue a license to any person known by it to be guilty of any of the acts or practices specified in subsection 2 of section 339.100[.]

Section 339.100.2 provides the following conduct as cause for discipline:

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

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(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any

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<sup>8</sup> MREC also relies on 20 CSR 2250-3.010. That regulation is substantially similar to §339.040.1. Our discussion of § 339.040.1 will also encompass 20 CSR 2250-3.010.

offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

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(25) Making any material misstatement, misrepresentation, or omission with regard to any application for licensure or license renewal. As used in this section, “**material**” means important information about which the commission should be informed and which may influence a licensing decision[.]

MREC contends that Spence did not meet the qualifications for licensure as set out in § 339.040 and that it properly denied Spence a license under § 339.080 and § 339.100.2(16), (18), (19), and (25).

**A. Spence does not satisfy the requirements for licensure under § 339.040**

Section 339.040.1 requires proof of good moral character, a good reputation, and competence to transact the business of a broker or salesperson. Good moral character is honesty, fairness, and respect for the law and the rights of others.<sup>9</sup> “Reputation” means “the estimation in which one is generally held: the character commonly imputed to one as distinct from real or inherent character[.]”<sup>10</sup> “The requirements of good moral character, good reputation, and competence are closely related, and the same proof may satisfy all of them.”<sup>11</sup>

Spence’s testimony has not demonstrated that she has the requisite good moral character to possess a license to sell real estate, and her lack of full disclosure of her criminal history on her application demonstrates a lack of honesty. If MREC intended to rely upon background

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<sup>9</sup> *Hernandez v. State Bd. of Regis’n for the Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo.App. W.D. 1997).

<sup>10</sup> Webster’s Third New International Dictionary 1929 (unabr. 1986).

<sup>11</sup> *Ringo v. Mo. Real Estate Comm’n*, No. 01-1833 RE at 5 (Mo. Admin. Hrg Comm’n June 3, 2002).

checks alone for determining an applicant's fitness, there would be no need to include a section of questions related to the details of each applicant's personal history. Thus, we are not persuaded that we should overlook the lack of information Spence provided on the application. She had a duty to honestly disclose her criminal history, and she failed to do so.

After MREC denied her a license, Spence was forced to admit that she has pled guilty to five crimes: two offenses of driving while intoxicated, possession of less than 35 grams of marijuana, illegal use of drug paraphernalia, possession of cocaine, and stealing. Although it would be precipitous to conclude that Spence lacks good moral character based solely on these pleas of guilty, we may "consider the conviction as some evidence of an absence of good moral character," but we must also consider "the nature of the crime committed in relation to the license which the applicant seeks, the date of the conviction, the conduct of the applicant since the date of the conviction and other evidence as to the applicant's character." Section 314.200.<sup>12</sup>

Standing alone, the depth of Spence's criminal history does not necessarily indicate a lack of good moral character. But we cannot overlook the relatively rapid succession of her arrests and prosecutions over just the last five years. Her legal troubles began in June and July 2009 with drunk driving and marijuana offenses. Her first pleas of guilty resulted in probation, which was revoked, and she went to jail. The next round of offenses occurred in October of 2010, and before she could enter a plea of guilty or otherwise dispose of them, she was arrested again for cocaine possession and stealing. This troubling trend is evident in this brief history in that as Spence was awaiting disposition for one serious crime, she was arrested for two more serious crimes that seem to signal an escalation in high risk behavior. At the time she submitted

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<sup>12</sup> RSMo 2000.

her license application and continuing through the date of our hearing, Spence was on probation and lost her license to drive.

MREC relies on the convictions and Spence's lack of full disclosure of them on her application to show that she lacks a good reputation for honesty, integrity, and fair dealing and that she is incompetent to transact the business of a broker or salesperson. Although Spence provided her own testimony and the testimony of her mother in her defense, we cannot accept this as sufficient evidence of a general reputation for integrity. Spence has failed to demonstrate that she has a good reputation for honesty, integrity, and fair dealing or that she is competent to conduct the business of a real estate salesperson, and she has not demonstrated herself to be of good moral character. Thus, we find that she does not possess the qualifications to hold a license to sell real estate.

**B. We deny Spence a license under § 339.080.**

Having found that Spence lacks the qualifications for licensure, no further analysis is necessary. For the sake of a thorough analysis, however, we consider the discretionary causes for denial as well.

**1. Section 339.100.2(18)**

Section 339.100.2(18) allows us to deny a license if Spence has pled guilty to a state or federal criminal offense when that offense: (1) is "reasonably related to the qualifications, functions or duties" of a real estate salesperson; (2) has an essential element of "fraud, dishonesty or an act of violence;" or (3) involves moral turpitude.<sup>13</sup>

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<sup>13</sup> The moral turpitude subsection explicitly states that sentence need not be imposed. Section 339.100.2(18). Thus, the fact that the state courts suspended the imposition of sentence and that the federal court placed Spence on probation does not bar us from considering this subsection.

**a. Qualifications, functions, or duties**

MREC argues that Spence’s plea of guilty to stealing is reasonably related to the functions or duties of a real estate salesperson. We agree. A real estate salesperson is involved in the sale, purchase, or rent of real estate.<sup>14</sup> A real estate salesperson also handles client fees, negotiates real estate transactions, and buys and sells real estate.<sup>15</sup> Thus, a real estate salesperson has responsibility for ensuring that real estate and cash transactions are performed correctly and that correct records of those transactions are kept. Because of the gravity of these responsibilities, Spence’s record of fairly recent guilty pleas to stealing and cocaine possession is troubling. Spence’s criminal history demonstrates a history of alcohol abuse followed shortly by involvement with cocaine and stealing. This demonstrates that relatively recently she lacked control over her integrity and behavior. The series of guilty pleas and the escalating behavior give us reason to deny Spence’s application because the underlying behavior is reasonably related to the functions or duties of a real estate salesperson.

**b. Fraud as an essential element**

MREC also argues that dishonesty or fraud is an essential element of stealing. An essential element is one that must be proved for a conviction in every case.<sup>16</sup> Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.<sup>17</sup> It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.<sup>18</sup> The crimes that Spence committed are:

195.202. 1. Except as authorized by sections 195.005 to 195.425\*, it is unlawful for any person to possess or have under his control a controlled substance.

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<sup>14</sup> Section 339.010.

<sup>15</sup> *Id.*

<sup>16</sup> *State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961).

<sup>17</sup> *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

<sup>18</sup> MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 359 (11<sup>th</sup> ed. 2004).

2. Any person who violates this section with respect to any controlled substance except thirty-five grams or less of marijuana or any synthetic cannabinoid is guilty of a class C felony.

3. Any person who violates this section with respect to not more than thirty-five grams of marijuana or any synthetic cannabinoid is guilty of a class A misdemeanor.

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577.010. 1. A person commits the crime of "driving while intoxicated" if he operates a motor vehicle while in an intoxicated or drugged condition.

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577.023.1(5) A "**persistent offender**" is one of the following:

(a) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses;

(b) A person who has pleaded guilty to or has been found guilty of involuntary manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, assault in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, assault of a law enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of section 565.082[.]

None of the crimes Spence committed require an intention perversion of the truth or a disposition to defraud or deceive. Consequently, we find that the crimes Spence committed do not contain the essential elements of fraud or dishonesty.

### c. Moral turpitude

The statute does not define "moral turpitude," but the concept exists in other disciplinary contexts and has been examined by Missouri courts. For example, in attorney disciplinary cases, the Supreme Court has "long defined moral turpitude as 'baseness, vileness, or depravity' or acts 'contrary to justice, honesty, modesty or good morals.'"<sup>19</sup> Not all criminal acts are acts of moral

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<sup>19</sup> *In re Duncan*, 844 S.W.3d 443, 444 (Mo. 1993)(internal citations and quotations omitted). *See also Brehe v. Mo. Dep't of Elem. and Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. W.D. 2007) (same definition used in discipline of teaching certificate).

turpitude.<sup>20</sup> Missouri courts have examined several types of criminal acts in license discipline cases and held that certain ones always constitute acts of moral turpitude, others may, and some never do. In *Brehe*, the court explained there are three categories of crimes:<sup>21</sup>

1. crimes that necessarily involve moral turpitude, such as fraud (so-called “Category 1” crimes);
2. crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (“Category 2” crimes); and
3. crimes that “may be saturated with moral turpitude,” yet do not necessarily involve it, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (“Category 3” crimes).

While Category 3 crimes require inquiry into the circumstances, crimes such as murder, rape, and fraud fall into Category 1 because they are invariably regarded as crimes of moral turpitude.<sup>22</sup> “Courts invariably find moral turpitude in the violation of narcotic laws.”<sup>23</sup>

We find driving while intoxicated, which endangers the lives of innocent people, to be a Category 1 crime. Also, we follow the Supreme Court when it deemed a felony possession of cocaine to be a crime involving moral turpitude<sup>24</sup> and find Spence’s possession of cocaine is a crime involving moral turpitude. However, we find the misdemeanor possession of marijuana and the use of drug paraphernalia to be no more than Category 3 crimes, if not Category 2. Without the details surrounding these crimes, we find Spence’s misdemeanor possession of marijuana and drug paraphernalia to be crimes not involving moral turpitude.

## 2. Section 339.100.2(16)

Subdivision (16) looks to “committing any act which would otherwise be grounds for the [MREC] to refuse to issue a license under section 339.040.” MREC primarily argues that

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<sup>20</sup> *Brehe*, 213 S.W.3d at 725.

<sup>21</sup> *Id.* at 725 (quoting *Twentieth Century Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9<sup>th</sup> Cir. 1954)).

<sup>22</sup> *Id.*

<sup>23</sup> *In re Frick*, 694 S.W.2d 473, 479 (Mo. 1985). Compare *In re Shunk*, 874 S.W.2d 789, 791-792 (Mo. banc 1993) (possession of narcotics is crime of moral turpitude justifying attorney disbarment or other discipline).

<sup>24</sup> *In re Shunk*, 847 S.W.2d 789 (Mo. banc 1993).

Spence’s prior illegal acts render her unfit for a license under § 339.040. We have already analyzed those transgressions under § 339.040. We find that this statute applies only to the discipline of a real estate salesperson license—not to the granting of a real estate salesperson license. To conclude otherwise would essentially render either § 339.040 or § 339.100.2(16) superfluous when granting a new license. We therefore find that § 339.100.2(16) does not provide a basis to deny Spence a license.<sup>25</sup>

### **3. Section 339.100.2(25)**

This subdivision prohibits an applicant from “making any material misstatement, misrepresentation, or omission with regard to any application for licensure[.]” “Material” means “important information about which MREC should be informed and which may influence a licensing decision[.]”<sup>26</sup> In listing only her Johnson County, Kansas and Clay County, Missouri cases, we find that Spence failed to disclose the full extent of her criminal history and that the omission of the remainder of her legal problems was material to the application process and to MREC’s ability to assess her qualifications for licensure. We find Spence is subject to denial under § 339.100.2(25).

### **4. Section 339.100.2(19)**

MREC argues that Spence is subject to discipline under § 339.100.2(19) for “any other conduct which constitutes untrustworthy, improper or fraudulent business dealings or demonstrates bad faith or gross incompetence[.]” The adjective “other” means “not the same : DIFFERENT, any [other] man would have done better[.]”<sup>27</sup> Therefore, subdivision (19) refers to conduct different than referred to in the remaining subdivisions of the statute. We have found that

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<sup>25</sup> Alternatively, even assuming that § 339.100.2(16) applies to the grant of a license, its standards are equivalent to those in § 339.040. As we have already decided that Spence is not entitled to a license under § 339.040, so we would also find that § 339.100.2(16) does not establish supplemental cause to deny the license.

<sup>26</sup> Section 339.100.2(25).

<sup>27</sup> WEBSTER’S THIRD INTERNATIONAL DICTIONARY 1598 (unabr. 1986).

the conduct at issue is cause for discipline under (18) and (25). There is no “other” conduct. Therefore, we find no cause for discipline under § 339.100.2(19).

**Summary**

Spence is not qualified to receive a license under § 339.040. Further, we deny her a license because she would be subject to discipline under § 339.100.2(18) and (25).

We therefore deny Spence a license.

SO ORDERED on August 11, 2014.

*\s\ Sreenivasa Rao Dandamudi*  
SREENIVASA RAO DANDAMUDI  
Commissioner