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New Jersey Office of the Attorney General

Division of Consumer Affairs
State Real Estate Appraisers Board
124 Halsey Street, 3rd Floor, Newark, NJ 07102

May 25, 2012



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CERTIFIED TRUE COPY

Ben Cohen
100 Vail Road F2
Parsippany, New Jersey 07054

Re: Denial of Application for Real Estate Trainee Permit
based on Criminal Conviction Disqualification pursuant
to N.J. S. 45:14F-10.1

Dear Mr. Cohen:

This letter is to advise you that the New Jersey State Real Estate Appraiser Board (the "Board") has concluded its review of your application for a real estate appraiser trainee permit, and its corollary review of information regarding your conviction, on July 21, 2009, on two counts of having possessed Controlled Dangerous Substances (marijuana) with the intent to distribute. Upon review of available information, the Board has concluded that your prior convictions were of disqualifying crimes that make you ineligible for licensure as a real estate appraiser in New Jersey. The Board further concluded that you failed to make a clear and convincing affirmative demonstration of rehabilitation to overcome the presumptive disqualification required by law. The Board therefore is denying your application for a trainee appraiser permit.

Most significantly, the Board found that you were neither forthright nor fully candid when you testified before the Board on November 22, 2011 regarding the criminal conduct in which you engaged. Specifically, the testimony you offered when appearing before the Board – to include your sworn statement that all of the almost five pounds of marijuana which was seized at the time of your arrest was for your own personal use alone, and your sworn statement that you were not involved in selling marijuana -- was entirely inconsistent with testimony you offered before the New Jersey Superior Court at the time you entered your guilty plea. Your lack of candor, in turn, militates against any finding of affirmative rehabilitation sufficient to overcome the presumption that you are ineligible to be licensed or certified as a real estate appraiser in

New Jersey. Set forth below is a summary of the background of this matter, and additional detail outlining the rationale for the Board's findings and conclusions.

Procedural History and Background

This matter was opened before the Board upon the Board's receipt of an application, dated September 8, 2011, from Ben Cohen for a real estate appraiser trainee permit (Mr. Cohen will herein be referred to directly by name, or as the "applicant"). A criminal background check was performed at that time, and that check revealed that Mr. Cohen had been arrested on February 23, 2009 by the Parsippany Troy Hills Police Department on charges of possession/use of controlled dangerous substance, and thereafter had been convicted (by way of guilty plea) on July 21, 2009 in Morris County Superior Court of possession of Controlled Dangerous Substances (marijuana) with the intent to distribute, a 3rd degree crime in violation of N.J.S. 2C:35-10(a)(3), and of possession of controlled dangerous substances (marijuana) with intent to distribute within 1000 feet of a school, a 3rd degree crime in violation of N.J.S. 2C:35-7. The background check additionally revealed that Mr. Cohen had been sentenced to 364 days incarceration and placed on probation for a period of 4 years, ordered to forfeit New Jersey driving privileges, ordered to forfeit the sum of \$96,190 which had been seized at the time of his arrest, and assessed fees and fines totaling over \$1200.00.¹

On October 17, 2011, Mr. Cohen was advised by letter of the results of the background check, and advised that he was subject to disqualification from licensure as a real estate appraiser as a result of the findings. Mr. Cohen was also advised that he could seek, within thirty days, to appeal the Board's decision by filing a petition based on grounds either of rehabilitation or mistake in the criminal record. Mr. Cohen requested an opportunity to appear for a hearing to demonstrate rehabilitation, and was scheduled for a hearing. Mr. Cohen appeared before the Board, represented by John Paul Velez, Esq., on November 22, 2011, and then offered testimony under oath regarding both the facts and circumstances which led to his

¹ The criminal background history also disclosed an arrest on October 23, 2009 by the Morris County Prosecutor's Office for violation of N.J.S. 2A:160-10, Fugitive from Justice, and that those charges were administratively dismissed on November 25, 2009. During the pendency of this matter, applicant's counsel has demonstrated that Mr. Cohen was not in fact arrested for or charged with being a fugitive from justice, and that instead another individual's information had been mistakenly entered into the database for Mr. Cohen (the other individual having had the same last name). Accordingly, that information was shown to be in error, and was not in any way considered by the Board in making its determination in this matter.

criminal conviction and regarding efforts at rehabilitation subsequent to the conviction. The record of this matter was held open at the conclusion of that appearance to allow for the submission of copies of transcripts of the plea allocution and sentencing from the criminal proceeding.²

Legal Standards for Review

Pursuant to N.J.S.A. 45:14F-10.1, an applicant for licensure or certification as a real estate appraiser³ is disqualified from licensure or certification if his or her criminal history record check reveals a record of conviction of any of several enumerated crimes and offenses. The conviction of any crime or disorderly persons offense “involving any controlled dangerous substances or controlled substance analog

² In addition to testimony, Mr. Cohen’s trainee appraiser permit application and accompanying documents, and documents obtained at the time that the criminal background check was performed (to include the Judgment of Conviction in the criminal action), the record in this matter has been supplemented with the following documents:

Reference letters submitted on Mr. Cohen’s behalf by John E. Grillo, Vice-President of On Point Appraisers, Inc. (dated August 8, 2011), Jed Golden, President of On Point Appraisers, Inc. (dated August 5, 2011) and Amiee Idan, Assistant Vice President – Lending Administration, IDB Bank (dated August 5, 2011).

Letter from Barbara Allen, from the Morris County Probation Services (dated August 11, 2011) attesting to Mr. Cohen’s full compliance with probation and negative drug testing results

Termination certificate from the State Parole Board dated June 24, 2010 attesting to the termination of parole supervision by reason of expiration of the maximum sentence.

December 20, 2011 Order authorizing the Morris County Prosecutor’s Office to destroy and/or transfer marijuana seized from Ben Cohen to the Morris County Sheriff’s Office to be utilized as a training aid for drug detection canines.

January 3, 2012 Order by the Honorable Stuart A. Minkowitz, J.S.C., Morris County Superior Court, for early discharge of probation.

Sentencing Transcript dated August 28, 2009 in State of New Jersey v. Ben Cohen, before Hon. Salem Vincent Ahto, J.S.C..

Plea Transcript dated July 21, 2009 in State of New Jersey v. Ben Cohen, before Hon. Thomas V. Manahan, J.S.C.

Letter dated February 22, 2012 letter from Robert B. High, M.S.W., COPE Center Inc., to the Appraisal Board, generally regarding Mr. Cohen’s participation and attendance at a comprehensive substance abuse assessment.

³ A “trainee” is defined in our regulations to be “an individual in the process of acquiring the hours of appraisal experience and qualifying education required for certification or licensure under the direct supervision of a certified appraiser.” See N.J.A.C. 13:40A-1.2, and see N.J.A.C. 13:40A-4.1, et seq. (establishing a voluntary real estate appraiser trainee program for individuals in the process of acquiring the appraisal experience required in order to be licensed or certified). While the criminal disqualification statute, N.J.S. 14F-10.1 technically applies only to applicants for licensure or certification as a real estate appraiser, the Board takes the position that it would be patently unfair and inconsistent with the manifest legislative intent to defer the statutorily required analysis (i.e., to determine whether or not an individual is to be deemed ineligible for licensure or certification as a result of his or her conviction of a disqualifying crime) from the time that one applies for a trainee permit to the time that one applies for licensure or certification.

as set forth in chapter 35 of Title 2C of the New Jersey Statutes except as set forth in paragraph (4) of subsection a. of N.J.S. 2C:35-10 is specifically designated to be a disqualifying offense.

Mr. Cohen was convicted, following his entering a guilty plea, of two third degree drug offenses – possession of CDS (marijuana) with intent to distribute [2C:35-5a(1)/5b(10)(b)] and possession of CDS (marijuana) with intent to distribute within 1000 feet of a school (2C:35-7). His sentence included a 364 day jail term and probation for a period of 4 years. It is clear, as a starting point, that he was convicted of a disqualifying offense.

Notwithstanding the conviction, N.J.S. 45:14F-10.1 provides an avenue for an individual who would otherwise be disqualified from eligibility for licensure to demonstrate rehabilitation; specifically, the statute provides that “no individual shall be disqualified from licensure or certification ... if the individual affirmatively demonstrates clear and convincing evidence of his rehabilitation.” The statute delineates eight factors to be considered in determining whether an individual affirmatively demonstrates rehabilitation:

In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

- () The nature and responsibility of the position which the convicted individual will hold;
- () The nature and seriousness of the offense;
- () The circumstances under which the offense occurred;
- () The date of the offense;
- () The age of the individual when the offense was committed;
- () Whether the offense was an isolated or repeated incident;
- () Any social conditions which may have contributed to the offense; and
- () Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received; acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have had the individual under their supervision.

Findings and Determinations of Board

Applying the above framework, and upon review of all evidence and testimony presented, the Board has concluded that Mr. Cohen failed to make a clear and convincing demonstration of rehabilitation sufficient to overcome the presumptive disqualification from licensure that his conviction requires. Our decision rests primarily and squarely upon our finding that Mr. Cohen failed, when appearing before the Board, to be

honest and forthright concerning the conduct which he had engaged in prior to his arrest and conviction. While we are aware that our decision on rehabilitation is to include consideration of the eight "factors" delineated in the statute, we find it to be a logical and absolute predicate proposition that a finding of rehabilitation can only be made if the person seeking to demonstrate rehabilitation accepts responsibility for his prior criminal conduct and is able to testify forthrightly about that conduct.

We find that the testimony offered by Mr. Cohen when appearing before the Board on November 22, 2011 was entirely inconsistent with his testimony in Superior Court. When appearing before the Board, Mr. Cohen specifically denied that he engaged in any selling of marijuana, and instead testified that all of the marijuana that had been seized at the time of his arrest was intended for his personal use, as illustrated by the testimony set forth below:

Q. What were you doing – what was the basis for the charges against? You were you selling drugs?

A. No, I was not.

Q. Were you using drugs?

A. Yes, I was using at the time.

.....
Q. Okay. And what were you doing with four pounds of marijuana?

A. I was in possession of it.

Q. What did you intend to do with it? Did you intend to use it all?

A. Yes.

Q. For yourself?

A. Yeah.

Q. You weren't involved in any selling of it?

A. No.

[Transcript of Testimony before Board, 11/22/11, p. 11, l. 5 – p. 12, l. 12].

When appearing before the Board, Mr. Cohen further suggested that the \$96,000 in cash which had been seized at the time of his arrest was money that was not directly related to any illegal distribution of drugs:

Q. . . . [A]nother condition of your sentence was forfeiture of \$96,190 that was seized at the time of your arrest. Can you explain to the Board how that occurred? What was seized and where those proceeds came from?

A. Well, you know, I know that this stuff looks bad. But I've been living with my mother for years and I've held down a steady job and I have little to know [sic] expenses. And I don't believe in banks, quite frankly. So am I going to sit here and say that everything – you know, a lot of that money was perfectly legitimate. Can I prove that to you? Absolutely not.

[Transcript of Testimony before Board, 11/22/11, p. 26, l. 20 – p. 27, l. 7].

In stark contrast, the transcripts from the criminal case reveal that Mr. Cohen not only admitted that he had been selling drugs, but also that he then conceded that all or essentially all of the seized money was proceeds from drug sales. Focusing on the plea transcript, Mr. Cohen directly pled guilty to possession of marijuana with intent to distribute, and to possession with the intent to distribute within 1,000 feet of a school. [Plea Transcript, July 21, 2009, p. 15, l. 8 – p. 15, l. 12; p. 17, l. 21 – p. 18, l. 23]. During the course of the plea colloquy, he also admitted that he was “in the business of selling marijuana” and that the money that had been seized was proceeds from his criminal conduct:

Direct by Mr. Velez:

Q. Now, is it your testimony here today that the good portion of that \$96,190 was as a result of the distribution of marijuana; is that correct?

A. Yes.

Q. It was proceeds from marijuana sales; is that correct?

A. Yes.

...

Cross by Mr. Seabury

Q. It was all your money that was in the closet, correct, it didn't belong to anybody else, it was just yours, correct?

A. Yes.

Q. Okay. And you are in the business of selling marijuana, correct?

A. Yes.

Q. And proceeds from selling marijuana – the money that was found in the closet was proceeds from the selling of that marijuana, correct?

A. Yes.

Q. All right. But the majority of it was from selling the marijuana, correct?

A. Yes.

[Plea Transcript, July 21, 2009, p. 15, l. 14 – p. 17, l. 4].⁴

Based on the above analysis, the Board concludes that Mr. Cohen was not truthful in his testimony before the Board – in particular, he lied when he testified that all of the marijuana that had been seized was for his personal use and he lied when he testified that he did not sell any marijuana. His testimony before the Board necessarily demonstrates that he has not accepted responsibility for his prior criminal conduct, notwithstanding his having served some four months in jail, notwithstanding the passage of almost three years from his date of arrest, and notwithstanding any treatment that he may have received for his prior substance abuse. Mr. Cohen’s lack of acceptance of responsibility, in turn, compellingly dictates against any present finding of rehabilitation.⁵

The above findings and conclusion render moot the need to engage in further analysis of the enumerated statutory factors that we would otherwise consider in seeking to determine whether an individual

⁴ In a similar ilk, comments made by both the Prosecutor and the Judge at the time of sentencing suggest that Mr. Cohen’s criminal conviction and his sentencing were based on an underlying understanding that he had been a drug dealer and that he had sold substantial quantities of marijuana. Prosecuting Attorney Seabury commented at sentencing that Mr. Cohen was a “professional” drug dealer who sold marijuana to “hundreds and hundreds and hundreds of customers.” Mr. Seabury further discounted Mr. Cohen’s suggestion that the \$96,000 seized was anything but proceeds from selling drugs, pointing out that a complete “financial background of the defendant” had been performed. Finally, Mr. Seabury suggested that it was significant that Mr. Cohen was within 1000 feet of a school, because “drug users were coming within that area” and “some of those drug users are probably smoking as they leave.” [Sentencing Transcript, August 28, 2009, p. 19, l. 20 – p. 19, l. 23; p. 23, l. 7 – p. 27, l. 4]. Review of the comments made by Judge Ahto when imposing sentencing similarly demonstrate that the Court was aware that the monies which had been seized from Mr. Cohen were derived from drug dealing. [see Sentencing Transcript, August 28, 2009, p. 35, l. 18 – p. 35, l. 23; Judge Ahto noting that Mr. Cohen would not have accumulated \$96,190 which he was willing to forfeit if the drugs had been for his personal use].

⁵ We additionally note that Mr. Cohen’s lack of candor when testifying before the Board could be deemed to be evidential of a lack of “good moral character,” which is a prerequisite for licensure for all candidates who apply for licensure or certification as a real estate appraiser, regardless whether or not the applicant has any criminal history.

is able to demonstrate rehabilitation. We point out, however, that some of those factors would in fact weigh against any present finding of rehabilitation, to include those factors which require this Board to consider the nature and seriousness of the offense (factor 2), the circumstances under which the offense occurred (factor 3), and the age of the individual when the offense was committed (factor 5).⁶ Further, as an appraiser, Mr. Cohen would be expected to conduct himself at all times in an honest and independent fashion, and his record of dishonesty before this Board raises significant question whether he could be expected to act in that manner at all times.

We do note that respondent has demonstrated that he successfully completed his sentence, and secured early discharge from probation (the Order granting Mr. Cohen discharge from probation was entered after Mr. Cohen completed twenty-eight months of what was to have been a forty-eight month period of probation), and that he did agree to the entry of an Order allowing the marijuana that was seized from him to be used for training drug detection canines. That evidence, along with the evidence that suggests that this was Mr. Cohen's only arrest, is evidence that weighs in favor of a finding of rehabilitation. We conclude, however, that any such positive evidence of rehabilitation is outweighed by the findings above, and thus falls far short of the required clear and convincing demonstration of rehabilitation that is required by law.⁷

⁶ Mr. Cohen was twenty-five years old at the time of his arrest in 2009, having graduated college with a degree in marketing from Johnson and Wales in 2006. He has testified that the only job he held from the time of his college graduation to the time of his arrest was as a limousine driver for his father's business.

⁷ We also note for the record that Mr. Cohen failed to clearly and convincingly demonstrate to our satisfaction that he has in fact obtained treatment that we would otherwise conclude would be necessary to address his admitted prior daily drug use. When appearing before the Board, Mr. Cohen was vague when answering questions about the length and frequency of his prior drug use. Review of available information from the criminal action, however, supports a finding that Mr. Cohen previously engaged in frequent and prolonged marijuana use. While the record suggests that Mr. Cohen did receive drug treatment between the time of his arrest and the time that he entered jail in 2009, it does not appear that he has received any additional treatment or counseling since that time. When appearing before the Board, Mr. Cohen testified that he does not presently attend any counseling sessions nor attend any 12-step meetings to address his prior use and seek to prevent any possible relapse. Further, Mr. Robert High's February 22, 2012 letter to the Board concerning Mr. Cohen's prior "comprehensive substance abuse assessment" fails to address the significant issue whether or not Mr. High would presently recommend that Mr. Cohen engage in any form of treatment, counseling or monitoring.

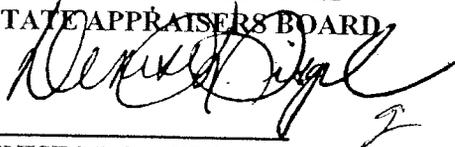
Conclusion

For the reasons set forth above, the Board concludes:

- (1) that Mr. Cohen has been convicted of a disqualifying crime pursuant to N.J.S. 45:14F-10.1; and
- (2) that Mr. Cohen has failed to make a clear and convincing demonstration of rehabilitation sufficient to set aside the presumptive disqualification from licensure.

Mr. Cohen is therefore deemed disqualified from eligibility for licensure or certification as a real estate appraiser in the State of New Jersey, and his application to work as an appraiser trainee is denied.

NEW JERSEY STATE REAL
ESTATE APPRAISERS BOARD



By:

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