

DIVISION OF REAL ESTATE  
DEPARTMENT OF COMMERCE  
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BEFORE THE DIVISION OF REAL ESTATE OF  
THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

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In the Matter of the Application of  
**DOUGLAS E. SCHWARTZ** to Act as a  
Sales Agent

ORDER ON APPLICATION  
Case No. RE-10-50678

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On July 13, 2010, the Utah Division of Real Estate (Division) sent a notice of informal proceeding by certified mail to Douglas E. Schwartz (Applicant). The notice informed Applicant that an informal adjudicative proceeding would be held before the Utah Real Estate Commission (Commission) and the Director of the Division (Director) on August 18, 2010 at 2:30 P.M. Mountain Daylight Time to determine whether he meets the statutory requirements to practice as a sales agent. The hearing took place as scheduled. The Division was represented at the proceeding by Assistant Attorney General Traci Gunderson. Applicant appeared and represented himself. The Director, pursuant to a grant of authority from the Commission and on its behalf, now enters the following findings of fact, conclusions of law, and order.

**FINDINGS OF FACT**

In submitting his application for licensure, Applicant disclosed criminal history regarding incidents in 2000 and 2003 of driving under the influence. However, he failed to disclose two earlier criminal proceedings as follows:

1. On November 28, 1998, Applicant was charged in case number 981800691 with unlawful purchase/possession/consumption of alcohol by a minor, a class B misdemeanor. Applicant entered a plea in abeyance in the case.
2. On February 1, 1999, Applicant was charged in case number 991700178 with illegal possession/use of a controlled substance, a third degree felony. Applicant entered a plea in abeyance in the case.

On June 24, 2010, upon consideration of this criminal history and being particularly concerned with Applicant's failure to accurately disclose the full extent of his criminal history in response to the licensing questionnaire, the Division hearing officer granted Applicant a license on probationary status. Applicant's appeal of that decision came before the Commission and the Director in this hearing.

Applicant testified that his failure to disclose the 1998 and 1999 incidents was unintentional. Given the age of the offenses, he assumed that they were no longer part of his criminal record. He acknowledged that he should have investigated his record to ensure he was answering accurately before he submitted his application. However, he emphasized that his failure to be accurate was not an intentional attempt to hide his past. Rather it was an oversight on his part.

#### **CONCLUSIONS OF LAW**

Utah Code Ann. § 61-2f-203(1) (2010) requires that the Division and Commission determine whether an applicant demonstrates honesty, integrity, truthfulness, reputation, and competency. Utah Administrative Code § R162-2-2.11 requires the Division and the Commission to consider an applicant's past, particularly his criminal history, in making this determination.

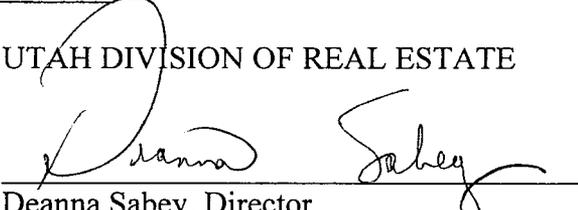
Applicant's criminal history involving the illegal use of alcohol and other controlled substances demonstrates a lack of respect for the law, which reflects negatively on his reputation and integrity. As to Applicant's failure to disclose the full extent of his criminal history, the Commission and Director accept it as being an oversight. However, they cannot excuse it on those grounds. Applicant responded to the licensing questionnaire without taking care to verify the information. A sales agent must guide clients in completing and attesting to legally binding documents such as seller disclosures. Applicant's oversight in completing his application, which is a sworn document, raises concerns as to whether he is competent to represent clients in similar situations. Therefore, the Commission and Director find that Applicant does not meet the requirements of Section 61-2f-203(1) (2010) for unrestricted licensure.

**ORDER**

Based on the above findings of fact and conclusions of law, Douglas E Schwartz's application for licensure as a sales agent is granted with restriction. The license is placed on probation until Mr. Schwartz successfully completes three hours of core continuing education in Utah laws and regulations. Upon his providing the Division with completion certificate(s) for course(s) as herein ordered, the Division may lift the probationary status. Mr. Schwartz may use the hours to satisfy his continuing education requirement for renewal. During the probationary period, Mr. Schwartz shall comply with all laws and with the rules regulating his profession, and shall conduct himself in a way that demonstrates his qualification and fitness for continuing licensure as a sales agent. This order shall be effective on the signature date below.

DATED this 24th day of August, 2010.

UTAH DIVISION OF REAL ESTATE

  
Deanna Sabey, Director  
Division of Real Estate

Notice of Right to Administrative Review:

Review of this order may be sought by filing a written request for administrative review with the Executive Director of the Department of Commerce within thirty (30) days after the issuance of this order. Any such request must comply with the requirements of Utah Code Ann. § 63G-4-301 and R151-46b-12 of the departmental rules.

CERTIFICATE OF MAILING

I hereby certify that on the 24 day of August, 2010, a true and correct copy of the foregoing document was sent first class mail, postage prepaid, to the following:

Douglas E. Schwartz  
1208 E. Cutler Rd.  
Salt Lake City, UT 84106

Renda Christensen