

BEFORE THE BOARD OF REALTY REGULATION
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-10-0355-RRE REGARDING:

THE PROPOSED DENIAL OF THE)	Case No. 1971-2010
LICENSE APPLICATION OF)	
LOUISE NORMA JOHNSTON)	
)	
)	

**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

Louise Johnston appeals from the Montana Board of Real Regulation’s denial of her request to be licensed as a sales broker. Hearing Examiner Gregory L. Hanchett convened a contested case hearing in this matter on August 31, 2010. Gene Allison, agency legal counsel, represented the Department of Labor and Industry (Department). Louise Johnston appeared on her own behalf. Johnston and Grace Berger testified under oath. The parties stipulated to the admission of Department’s Exhibits 1 through 9 and the Applicant’s Exhibits A, B1 through B16, C and D. Based on the evidence and arguments adduced at hearing, the hearing examiner makes the following findings of fact, conclusions of law, and recommended decision.

II. FINDINGS OF FACT

1. Johnston has been a licensed Montana real estate salesperson since 2002. Johnston and her husband, Roger Johnston, own Billings Real Estate Professionals, a Billings area realty company.

2. On March 12, 2010, Johnston submitted her license application to obtain her Montana broker’s license. Exhibit 3. In that application, she presented proof that she had passed the required examination.

3. In that application, she also presented her list of residential transactions from which she claimed that she had met her point requirements to demonstrate the requisite transactional history necessary for a real estate salesperson to qualify for a

broker's license. Exhibit 3, pages DLI 4 - DLI 10. That list shows several transactions for which she claimed she was due points pursuant to the administrative rules.

4. Only six of those transactions, however, involved her as the named real estate salesperson in the transaction. None of the other transactions show that she was listed as an agent or member of a team of agents involved in the transaction. At hearing, Johnston conceded that she was not a listing agent nor was her name listed on any transactions other than the six in the list which show her as a listing or co-listing salesperson.

5. No other information was submitted with the application to explain the nature of the transactions identified in the list. There was no other evidence presented to the Board to show that Johnston was actively engaged during the 36 months preceding the application in conducting the transactions for which she claimed credit.

6. Johnston has previously been involved in several transactions as the listing agent. Except for the six transactions listed in her list, however, these previous transactions all occurred more than 36 months prior to the date she applied for her broker's license.

7. Johnston is not relying on supervisory points as part of the total points she claims she is due. She understands that she would not be capable of earning points for supervisory work because those types of points, per administrative rule, are available only for out of state brokers applying for broker licensure in Montana. Admin. R. Mont. 24.210.611.

8. Upon receipt of Johnston's application, the application was flagged as an irregular application because the transaction list failed to demonstrate that Johnston had been actively engaged in more than six of the transactions, which resulted in her only receiving six points toward the experience requirement. As a result, the Board contacted Johnston and invited her to attend a Board meeting.

9. Johnston provided the Board with a letter explaining why she felt that she could take part credit for other salesperson's transactions in which she was not a named agent. In doing so, she indicated "it would be very difficult for me to do thirty transactions when I also do all of the training for the office, handle the trust account, and I am available 24/7 for questions."

10. Because Johnston failed to present information from which the Board could ascertain that she had been actively engaged in the sales for which she claimed

credit, it could do no more than give her credit for the six transactions for which she was named as a participating salesperson. This amounted to six points, 24 points short of the required 30 points.

11. At hearing, Johnston testified that she had been involved in various things with respect to the transactions she listed such as completing “walk-throughs,” preparing buy-sell agreements, and even following up on repairs. None of this information was shared with the Board at the time she sought to be licensed as a broker. That information was not revealed until after the application had been denied and the denial appealed to this tribunal. Moreover, the information provided at hearing does not demonstrate that she was actively engaged in enough transactions during the 36 month period preceding her application such that she should be awarded an additional 24 points of credit.

III. CONCLUSIONS OF LAW¹

1. Johnston seeks to have the denial of her application for licensure overturned. As such, she bears the burden of proof to demonstrate that she was entitled to licensure. Admin. R. Mont. 24.210.611 (which requires an applicant for a sales broker license to submit evidence acceptable to the Board that the salesperson has obtained a total of 30 points).

2. A professional licensing board may grant or deny a license. Mont. Code Ann. § 39-1-307(1)(e). Mont. Code Ann. § 39-51-202 authorizes the Board of Realty Regulation to regulate the issuance of licenses. In addition, the Board of Realty Regulation is authorized to adopt rules to carry out the statutory provisions of Title 37, Chapter 51.

3. Mont. Code Ann. § 39-51-302 requires that a person applying for a sales broker’s license in Montana must “have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2 year period as determined by the board, . . .”

4. Admin. R. Mont. 24.210.611 articulates the experience that the Board of Realty Regulation requires in order for a person to qualify for a sales broker license. The portions of the rule pertinent to the issues in this case require that a person seeking a broker’s license must:

¹Statements of fact in the conclusions of law are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

(9)

(b) submit for the purpose of determining if a broker applicant has been ‘actively engaged as a licensed real estate salesperson,’ evidence acceptable to the board that the salesperson has obtained a total of 30 points in any combination of point types within the past 36 months prior to the date of application. Point types and value are as follows:

(I) transaction points:

(A) one point for each closed residential real estate transaction no more than five leases;

(B) three points for each closed farm, ranch agricultural, or commercial transaction, no more than five leases; or

(C) upon furnishing evidence satisfactory to the board, an applicant may receive credit for both sides of a transaction.

. . . .

(c) The experience required by (9)(b) must be legally obtained while licensed as a real estate licensee in this state, or another jurisdiction.

5. The Board of Realty Regulation also gives $\frac{1}{2}$ of one point for a salesperson who has been actively engaged with a closed residential sales transaction when that salesperson is part of a real estate sales team.

6. Johnston’s application fails to demonstrate that she was actively engaged in sufficient transactions that would show that she was actively engaged in the requisite transactions that would provide her with 30 experience points as required by Admin. R. Mont. 24.210.611. Under these circumstances, the Board of Realty Regulation had no choice but to deny the application.

7. Johnston contends that she was part of a team in that she managed a real estate office, she engaged in “walk-throughs” with clients, she assisted in writing sales contracts, she attended closings with buyers, and she reviewed transactions with real estate salespersons in her office to ensure that the transactions were complete. She has conceded that she has not engaged in 30 transactions, however. Moreover, except for the six transactions which she co-listed (and for which she received six points), she did not present to the Board any evidence regarding the other transactions she listed. Her application, when presented to the Board, was

incomplete and failed to demonstrate the requisite evidence for transactions that would have permitted the Board to grant her broker's license. At hearing, the scant evidence she presented regarding some (not all) of the other 48 transactions for which she claimed to be due credit was not adequate to prove that she had earned an additional 24 points for being actively engaged in real estate transactions as the rule requires. Under these circumstances, the hearing examiner cannot find a basis from which he can determine that the license should be granted.

8. The hearing examiner is aware that Johnston's motivation for seeking her broker's license is to be able to step into the role of broker at Billings Real Estate Professionals in the event that her husband, who is the present and only broker at Billings Real Estate, must retire due to pending health problems. To this end, the hearing examiner would encourage Johnston to reapply for her broker's license setting forth all pertinent information about the additional 48 transactions for which she seeks credit so that the Board can determine whether there is sufficient evidence in those transactions to show that Johnston has actively engaged in those transactions.

9. Finally, the hearing examiner notes that after the conclusion of the hearing, the applicant sent an unsolicited e-mail to both the hearing examiner and the Department's counsel which describes a particular real estate team in the Billings area. As the applicant herself correctly recognized in the e-mail, the evidence cannot be admitted into evidence for the hearing examiner's consideration because it was not submitted at the time of the hearing and it is hearsay and not admissible under the Rules of Evidence which apply to this proceeding.

IV. ORDER

Based on the foregoing, it is recommended that the Board of Realty Regulation uphold the denial of Johnston's application for broker licensure.

DATED this 15th day of October, 2010.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.