

**BEFORE THE BOARD OF REALTY REGULATION**

**STATE OF MONTANA**

_____ )	<b>Docket No. CC-01-0068-RRE</b>
<b>IN THE MATTER OF THE</b> )	<b>Hearings Bureau Case No. 2014-2002</b>
<b>APPLICATION FOR EQUIVALENCY</b> )	)
<b>MONTANA REAL ESTATE BROKER</b> )	<b>RECOMMENDED</b>
<b>LICENSE OF THOMAS S. MOSSER</b> )	<b>DECISION</b>
_____ )	)

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Thomas Mosser appeals the Board of Realty Regulation's (hereinafter BRR) denial of his application for equivalency determination for a real estate broker's license.

The hearing in this matter was held on February 20, 2002 before Hearing Examiner John Boothroyd. Prior to issuing a written decision, that hearing examiner became unavailable. The matter was then reassigned to Hearing Examiner Gregory L. Hanchett on May 22, 2002. Pursuant to written stipulation dated June 19, 2002, the parties agreed to waive compliance with § 2-4-621, MCA, and to permit the newly assigned hearing examiner to render a recommended decision based on review of the transcript generated during the February 20, 2002 hearing and the exhibits admitted at that hearing. Having reviewed the transcript as well as the exhibits, the following findings of fact, conclusions of law, and recommended decision are made.

**FINDINGS OF FACT**

1. In June 2001, Mosser applied to the BRR for an equivalency determination, seeking waiver of the real estate transaction requirements otherwise needed by a real estate salesperson to become a licensed broker under §37-51-302(c), MCA.

2. Mosser's application discloses that he attended the University of Texas and graduated in 1980, having majored in finance and having obtained a minor in real estate. Mosser held a Texas real estate salesperson's license from November 1979 to September 1980 and he was a licensed Texas real estate broker from September 1980 until June 1991. In 1991, Mosser allowed the license to expire. The application further discloses that Mosser worked for a large shopping center developer in Texas from 1983 to 1986 where he was responsible for the development of one Mervyn's Department Store anchored development, two Target Store anchored developments, and multiple grocery store anchored developments.

3. The application also reveals considerable gaps in real estate sales work, notably from the expiration of Mosser's broker's and salesperson's license in 1991 to November 1995, and again from June 1996 until August 2000. Further, even though he was licensed as both a salesperson and broker in Texas between 1987 and 1991, there is no indication in the application of any sales activity during that time period.

4. Mosser sought and obtained a real estate salesperson's license in the state of Montana in August 2000. There is no indication in the record that Mosser had any significant sales while he

held his salesperson's license in Montana. He then placed that license on inactive status in January 2001.

5. The BRR considered Mosser's application at its meeting on June 12, 2001. Mosser did not attend the meeting. The minutes of the meeting indicate that the BRR denied the license "for lack of licensed activity." (Exhibit 2, Minutes of the 6/12/01 meeting of the BRR)

6. A letter from the BRR to Mosser dated June 19, 2001 informed Mosser of the June 12, 2001 decision to deny his application. The letter stated:

The Board considers recent licensed activity as extremely important when evaluating an equivalency request. Listings and sales obtained in the recent past demonstrate an applicants (sic) knowledge of current laws relating to agency, environmental issues, financing, and many other aspects of an agents responsibility to their clients. They consider recent licensed experience as a vital part of determining if an applicant has demonstrated experience equivalent to that which a licensed real estate salesperson ordinarily would receive during the required 2 years of licensing."

7. Mosser requested that the BRR reconsider his application in a letter dated June 21, 2001 (Exhibit 5). In his letter, Mosser agreed that he did not meet the two year equivalency transaction requirement contained in §37-51-302(c), MCA. He argued, however, that he had "experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this two year period." He further contended that sufficient proof of the adequacy of his knowledge of current laws relating to agency, environmental issues, and financing would "no doubt be ensured by the requisite broker examination."

8. The BRR took up his request for reconsideration at its August 15, 2001 meeting. Mosser was in attendance at that meeting. According to the minutes of the meeting (admitted at the hearing in this matter as Exhibit 3), Mosser was asked to tell the BRR what he had been doing in the way of real estate during the past year. Mosser informed the BRR that he had been working on one project in Bozeman, the Imperial Motel. The BRR again voted to deny the license, citing the lack of transactions, the fact that it had been 10 years since Mosser had been licensed as a broker in Texas, and the fact that Mosser's Montana license had been placed on inactive status.

9. The BRR advised Mosser in writing of the August 15, 2001 denial in a letter dated August 17, 2001. The letter was simply a reiteration of the June 19, 2001 letter.

10. During the hearing in this appeal, Mosser argued, in essence, that under the language of §37-51-302(c), MCA, and its accompanying regulation, 8.58.406A(7), ARM, the BRR could find that his Texas education and experience met the equivalency requirement even though that experience was obtained before 1991. Mosser cited the disposition of Troylynn Ball's waiver request as "an example of the Board's approval of an equivalency determination despite the fact that she did not meet the transaction requirement which includes the recent activity requirement." (Record Transcript, page 45, lines 18-22, hereinafter, RT p. \_\_, ll. \_\_) Mosser later conceded that Ball's application was one for a waiver of the broker licensing requirements under §37-1-304(1), MCA, in distinction from his which was one for equivalency under §37-51-302(c), MCA. (RT p. 83, ll.13-21) Mosser argued, nonetheless, that granting Ball's application demonstrated that the BRR could apply the non-transaction "equivalent experience" portion of §37-51-302(c), MCA, in the manner in which Mosser contended it should be applied.

11. The BRR presented the testimony of Grace Berger, the secretary of the BRR. Berger

stated that the BRR considered Ball's waiver application under §37-1-304(1), MCA, not under §37-51-302(c), MCA. Because of this, it was possible for the BRR to consider Balls' application without determining whether or not she met the minimum transaction requirements of §37-51-302(c), MCA. (RT p. 66, ll. 1-5)

12. Mosser resisted the notion that the BRR could have denied his application based on the fact that the BRR did not find his Texas experience to be sufficient to fulfill the equivalency requirements of §37-51-302(c), MCA. Nevertheless, he admitted that there was no discussion about his Texas experience at all during the August 15, 2001 meeting. Mosser interpreted this lack of conversation to be tantamount to a determination by the BRR that his Texas experience was sufficient for purposes of the equivalency application. (RT p. 105, p. 106, p. 107, ll. 1-7)

### CONCLUSIONS OF LAW

1. This matter involves the denial of Mosser's application for a broker's license. Accordingly, he bears the burden of proof in this matter to demonstrate by a preponderance of the evidence that BRR's determination was in error either as a matter of fact or law. *Culpepper v. Board of Nursing*, 187 Ariz. 431, 930 P.2d 508 (App. 1996), 2 Am Jur 2nd, *Administrative Law*, '360.

2. Section 37-51-302(c), MCA, provides:

**37-51-302. Broker or salesperson license -- qualifications of applicant.**

\* \* \*

(2) An applicant for a broker's license:

\* \* \*

(c) 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, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

3. 8.58.406A(7), ARM, states in pertinent part:

For the purpose of determining if a broker applicant has been "actively engaged as a licensed real estate salesperson" the applicant will be required to provide evidence acceptable to the board that the salesperson has performed functions as a licensee as follows:(a) 30 real estate property transactions in the last three years from the date of application for a residential applicant. With the 30 transactions, the applicant must have secured five listings and five of the transactions must include activities other than

listings such as sales, leases or exchanges; or(b) 10 transactions within the last three years for an agricultural, farm, ranch or commercial applicant. With the last 10 transactions, the applicant must have secured two listings and two of the transactions must include activities other than listings such as sales, leases or exchanges.

4. Mosser's contention that the BRR improperly denied his application by injecting a non-existent "recency of experience" requirement into §37-51-302(c), MCA, is incorrect. Mosser's argument ignores the plain language of the subsection and the applicable regulation. A statute should be construed so as to give meaning to every word or part if possible. ' 1-2-101, MCA. Section 37-51-302(c), MCA, requires either that an applicant be "actively engaged as a licensed real estate salesperson for two years" or that the salesperson have special education or experience "equivalent to that which a licensed real estate sales person ordinarily would receive during *this* two year period." (Emphasis added). 8.58.406A(7), ARM, defines the phrase "actively engaged as a licensed real estate salesperson" as having been involved in either 30 residential transactions or 10 commercial or farm transactions "*within the last three years . . .*" (Emphasis added). Section 37-51-302(c), MCA, goes on to permit the BRR to substitute education or experience for the transaction requirement, but only if the education or experience is garnered "during this two year period," the period in which the applicant has been actively engaged as a licensed real estate salesperson. This measuring period, however, must have occurred within the last three years as prescribed by 8.54.406 B(7), ARM. A review of Mosser's application does not support a finding that Mosser had any recent transaction experience or recent special education or training experience as required by the applicable statute and regulation. His last significant work in real estate occurred in 1991.

5. Moreover, to adopt Mosser's position that any real estate sales experience, regardless of whether it was garnered within two years of the broker's application or 20 years of the broker's application, would effectively write the word "actively" right out of the statute. To be "active" means to be "engaged in full time service" or "marked by present operation, transaction, movement or use." Websters Ninth New Collegiate Dictionary (1988). Mosser, concededly, was not and had not been "actively" engaged in real estate at the time BRR denied his application.

6. Mosser's argument ignores the fact that, aside from the recency requirement, the BRR could have found that Mosser's experience did not meet what the BRR deemed to be adequate education or training in real estate sales. Section 37-51-302(c), MCA, specifically states that the equivalency determination shall be "as determined by the board." Mosser, who bore the burden of proof in this matter, did nothing to demonstrate to the hearing examiner that the experience he presented to the BRR was the type of real estate experience that the BRR must necessarily accept as equivalent to the transaction requirement.

7. Mosser's reference to the application of Troyllynn Ball as proof that his interpretation of the statute and regulation was correct is similarly unpersuasive. First, Mosser conceded that he sought his broker's license under the equivalency requirements of §37-51-302(c), MCA, while Ball sought waiver of the requirements under §37-1-304(1), MCA. Section 37-1-304(1), MCA, has no recency of experience requirement as exists in §37-51-302(c), MCA. Second, unlike

Mosser, Ball would have met the recency of experience requirement as she was at the time of her application an active licensed broker in the state of Texas.

**PROPOSED ORDER**

For the reasons stated above, Mosser's application for broker equivalency should be denied.

DATED this 28th day of June, 2002.

DEPARTMENT OF LABOR &INDUSTRY  
HEARINGS BUREAU

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