

In the Matter of the Teaching License of:) **PROPOSED ORDER**
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DIANE CAROLINE THOMPSON) OAH Case No: 105140
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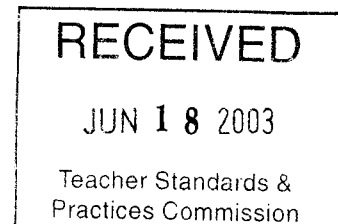
Diane Caroline Thompson (Respondent or Thompson) challenges the Teachers Standards and Practices Commission's (TSPC or the Commission) Notice of Proposed Action (Notice) which denied her application for reinstatement of her Oregon teaching license pursuant to ORS 342.143 through 342.190 and the Standards for Competent and Ethical Performance of Oregon Educators, OAR 584, Division 20 and 050. The Notice proposed to deny Respondent's application for reinstatement on the ground that she was convicted of the crime of forgery in first degree on November 18, 1996 in the Circuit Court of Columbia County, Oregon.

On December 17, 2002, the Commission referred this matter to the Office of Administrative Hearings¹ (OAH) for hearing. On March 27, 2003, Administrative Law Judge Ella D. Johnson conducted a hearing at TSPC's office in Salem, Oregon. Assistant Attorney General Joe Gordon McKeever represented the Commission. Respondent appeared *pro se*. The Commission called no witnesses. Respondent testified on her own behalf and called Percella Paprock and Cherrie Armstrong as character witnesses.

Following the hearing, the record remained open for 14 days to receive medical evidence from Respondent in support of her reinstatement. Respondent's submission was received on or about April 11, 2003. Respondent subsequently requested an extension to submit more current medical evidence concerning her fitness for re-licensure. Her request was granted and the record closed on April 29, 2003.

(1) Whether Respondent was convicted of forgery in the first degree on November 18, 1996. ORS 165.013.

¹ The Office of Administrative Hearings (OAH) was previously called the Hearing Officer Panel (the Panel). The Panel's name was changed to the Office of Administrative Hearings by House Bill 2526, which became effective with the Governor's signature on May 22, 2003.



(2) Whether Respondent has convincingly established that she is fit for reinstatement of her Oregon teaching license. OAR 584-050-0152(4).

EVIDENTIARY RULING

The record consists of the Commission's Exhibits A1 through A14 and Ms. Thompson's Exhibits R1 through R22,² which were admitted into the record without objection.

FINDINGS OF FACT

(1) Ms. Thompson holds an undergraduate degree in education, graduating from Oregon State University in 1980. She held a Basic Oregon Teaching License from 1980 through 1998 for grades K-9 or 5-9, which expired in 1998. (Ex. A8.) She also held a Washington State teaching certificate, which she let expire in 2001. In August 1995, she obtained her Masters Degree in Special Education from Western Oregon State College. (Exs. A7, A8, R7)

(2) On May 9, 1996, Ms. Thompson met with Dave Milbrandt, Finance Manager for the Bud Clary Chevrolet automobile dealership (dealership), to discuss purchasing a car. During the course of the meeting they talked about her financial problems³ and she told him that she had a problem with gambling, *i.e.* bingo. Mr. Milbrandt negotiated a loan for Ms. Thompson. She wrote a \$1,000 personal check as a down payment on the car. (Ex. A1 at page 1.)

(3) On May 24, 1996, Ms. Thompson came back into the dealership to pick up the license plates for her car. While Mr. Milbrandt looked for Ms. Thompson's license plates, she was left alone in the area of the dealership where the checks, contracts, and other documents were kept for signature by Mr. Clary. (Ex. A1 at page 2.)

(4) Mr. Milbrandt subsequently learned that Ms. Thompson's check had been returned for non-sufficient funds (NSF). He was also told that a dealer check had been altered and deposited in Ms. Thompson's bank account. Mr. Milbrandt thereafter contacted Ms. Thompson by telephone and notified her that she would need to replace the NSF check with a cashier's check or cash. During the telephone conversation, Ms. Thompson told Mr. Milbrandt that she had received a check for \$11, 141.76 from the dealership along with a letter on the dealership's letterhead dated May 26, 1996, a day the dealership was closed, stating that she was the

² Respondent's Exhibits R1 through R 20 were received at the March 27, 2003 hearing. Respondent submitted a packet of 16 documents, which were received on April 11, 2003, marked as Exhibit 21, and admitted into the record without objection. Thereafter, Respondent requested leave to submit additional exhibits, which were faxed on April 29, 2003 (24 pages), admitted into the record and marked as Exhibit R22. By letter dated May 19, 2002, Respondent provided a copy of a teaching evaluation, which my office received on May 20, 2003. Inasmuch as the record was closed on April 29, 2003, neither Respondent's letter nor the proffered evaluation were reviewed or admitted into the record.

³ Ms. Thompson attributed her financial problems to gambling, the cost of graduate school and her health problems. She was also being treated by a mental health counselor. The counseling addressed her problems at work and her gambling. (Test. of Thompson.)

dealership's contest winner.⁴ The dealership's check had been altered to make Ms. Thompson the payee. The original payee was GMAC. She told him that she did not "feel right" about the check and she alerted US Bank. (Exs. A1 at page 2, A2 at pages 1, 12.)

(5) Mr. Milbrandt and US Bank reported the matter to the Clatskanie Police Department. The police department investigated the theft and alteration of the check. (Ex. A2 at pages 2-15, A3.) On August 27, 1996, Ms. Thompson was indicted for forgery in the first degree. (Ex. A4.) On November 18, 1996, Ms. Thompson entered a plea of No Contest to the first-degree forgery charge under ORS 165.013 in the Circuit Court of the State of Oregon for the County of Columbia. The matter was treated as a misdemeanor at sentencing, *i.e.*, forgery in the second degree under ORS 165.007, and her sentence was suspended. She was fined \$1,000, placed on probation for 18 months, and required to perform 100 hours of community service work. (Ex. A5.) Her probation was terminated in nine months instead of 18 months on the recommendation of her probation officer. He based his recommendation on her completion of all requirements and her compliance with her responsibilities as a probationer. He characterized her as a "role model probationer." (Ex. A6.)

(6) At the time of her conviction, Ms. Thompson was teaching in the Longview School District No. 122. She was referred to the school district's employee assistance program because she became depressed due to problems she was having at work. She was in mental health counseling for over a year with Judith Bartholomew, MSW, and also saw a psychiatrist.⁵ She completed her contract with the school district by settlement agreement wherein the school district agreed to place her on paid leave for the remainder of the 1997-98 school year. (Ex. A7; test. of Thompson.)

(7) On December 11, 1998, Ms. Thompson applied for reinstatement of her Basic Teaching License with elementary endorsement. TSPC denied her application because the Commission concluded that she lacked fitness to serve as an educator. She did not appeal the denial but applied for reinstatement on October 2, 2002. On December 18, 2002, TSPC again denied her request for reinstatement on the same grounds. (Ex. A10.)

⁴ Ms. Thompson continued to deny at hearing that she had altered the dealership's check. She maintained that she received the letter from the dealership and the check in the mail but conceded that she did deposit the contest check and that she wrote the \$1,000 NSF check. She explained that she was having problems with balancing her checkbook because she was playing bingo twice a week, writing checks and getting money out of ATM machines, which was hard to keep track of. She thought that she would be able to cover the \$1,000 NSF check before it was cashed. She was also having problems paying her bills on time and ended up living with her parents. She admitted that from 1994 through 1996 she was overdrawn on her bank account and was not being very responsible. (Test. of Thompson.) However, I do not find Ms. Thompson's denial to be plausible or persuasive.

⁵ Ms. Thompson testified that the school's principal was sexually harassing her. She also testified that the mental health counseling helped her deal with the forgery charge, her gambling, and other problems she had experienced in her childhood. However, she offered no proof of this in the form of reports confirming these statements to be true.

(8) Beginning in October 2000, Ms. Thompson worked as an Adult Education Specialist for the Even Start Family Literacy Program of Clackamas County,⁶ teaching Adult Basic Education, General Education Development (GED) classes and high school curriculum classes for Community Action Team, Inc. Beginning in January 2000, Ms. Thompson taught courses in early childhood education at Portland State University and Clatsop Community College. She has taught individuals from birth to 80 years of age. (Exs. A8, A11; test. of Thompson.)

(9) Ms. Thompson has had no subsequent arrests or convictions since the forgery conviction. There is no indication that she continues to have a problem with gambling or that she requires treatment for gambling addiction. On February 21, 2003, she requested that the court expunge her forgery conviction. (Ex. R1 – R5; test. of Thompson.) On March 7, 2003, Ms. Thompson's conviction was expunged by the Circuit Court for the County of Columbia. (Ex. R21.)

(10) Since her conviction, Ms. Thompson has been nominated for and received several awards for her excellent teaching skills. (Ex. R8, R10.) She has earned the respect of her colleagues and employers. She is well liked and appreciated by the students in her Adult Education and GED classes. (Test. of Paprock.)

(11) On December 18, 2002, TSPC issued a Notice of Proposed Action, which stated:

The ground for denial of your license and alleged misconduct includes the conviction of a crime in violation of OAR 584-020-0040(5)(c), by the following acts:

On November 18, 1996, you were convicted of forgery in the first degree in the Circuit Court of Columbia County, Oregon.

CONCLUSIONS OF LAW

(1) Because Respondent's conviction for forgery has now been expunged, she no longer has a conviction under the law.

(2) Petitioner has not convincingly demonstrated that she is fit for reinstatement.

OPINION

Respondent challenges TSPC's denial of her application for reinstatement of her Oregon teaching license. Respondent bears the burden of proving her fitness for reinstatement by a

⁶ Even Start is a program for low-income people and teenagers, including teenage mothers and fathers. She teaches them early childhood parenting classes. (Test. of Thompson.)

preponderance of the evidence. OAR 584-050-0151(4);⁷ *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989). I find that Respondent has failed to meet her burden.

Expungement

Under OAR 584-020-0040(3)(a), the Commission may refuse to reinstate the license of a person convicted of a crime if the nature of the act or acts constituting the crime for which the person was convicted render the person unfit to hold a license. In the Notice, the Commission denied Respondent's application for reinstatement pursuant to ORS 342.143 through 324.190 and OAR 584, Divisions 020 and 050. The Commission also specifically cited to OAR 584-020-0040(5)(c), stating in relevant part:

The ground for denial of your license and alleged misconduct includes the conviction of a crime in violation of OAR 584-020-0040(5)(c), by the following acts:

On November 18, 1996, you were convicted of forgery in the first degree in the Circuit Court of Columbia County, Oregon.

At hearing, Respondent stated that she was in the process of expunging the conviction. She later provided proof of the expungement of her conviction for forgery. ORS 137.225 states in relevant part:

(1)(a) At any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court wherein that conviction was entered for entry of an order setting aside the conviction; or

* * * * *

⁷ OAR 584-050-0152(4) states in relevant part:

Application for reinstatement of a license or registration revoked for any reason other than those cited in ORS 342.143(3) may be submitted at any time more than one year after the license, registration or privilege to apply has been revoked. The application shall be supported by a personal affidavit, together with requisite and additional documentation, sufficient to establish convincingly that the educator possesses all of the qualifications required for renewal or reinstatement of a license or registration of that type. The burden shall be on the educator to establish fitness for reinstatement.

(3) Upon the entry of such an order, the applicant for purposes of the law shall be deemed not to have been previously convicted * * * and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest whether or not the arrest resulted in a further criminal proceeding.

* * * * *

(9) For purposes of any civil action in which truth is an element of a claim for relief or affirmative defense, the provisions of subsection (3) of this section providing that the conviction, arrest or other proceeding be deemed not to have occurred shall not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interest of justice.

After Respondent provided evidence that her conviction had been expunged, the Commission argued that the expungement of Respondent's conviction for forgery does not require it to withdraw its previous order, which denied her reinstatement, nor does it require the Commission to "pretend" that the conviction did not exist. In support of its argument, the Commission cites *Bahr v. Statesman Journal*, 51 Or App 177, 180 (1981). However, *Bahr* involved a civil suit for defamation where the defendant was using the truth, *i.e.* the fact that the plaintiff had been convicted of the later expunged crime of embezzlement as a defense, which is specifically permitted by subsection (9) above.

In this case, for the reasons set forth below, I need not decide whether this licensing matter comes within the exception for civil actions carved out in subsection (9), because even if it does not, the Commission has grounds to deny Respondent's application based on her underlying conduct.

Subsequent to the hearing, following Respondent's submission of the expungement order, TSPC argued that, even if the conviction was expunged, the denial of her application for reinstatement was appropriate based upon the underlying conduct giving rise to her conviction. The Commission cited OAR 584-020-0040(5)(e) in support of its argument. OAR 573-020-0040 provides in relevant part:

(5) Gross unfitness is any conduct, which renders an educator unqualified to perform his or her professional responsibilities. Conduct constituting gross unfitness may include conduct occurring outside of school hours and off school premises when such conduct bears a demonstrable relationship to the educator's ability to fulfill professional responsibilities effectively. The following may be admissible as evidence of gross unfitness. Consideration may include but is not limited to:

* * * * *

(c) Conviction of violating any federal, state, or local law. A conviction includes any final judgment of conviction by a court whether as the result of guilty plea, no contest plea or any other means;

* * * * *

(e) Admission of or engaging in acts constituting criminal conduct, even in the absence of a conviction;

* * * * *

Based on this language, I find that the Commission has the authority to look behind the expunged conviction to examine the conduct involved to determine Respondent's fitness for reinstatement.

Fitness for reinstatement

ORS 342.175 gives TSPC the authority to deny the reinstatement of teachers whose licensure was previously denied due to gross unfitness. As set forth above, under OAR 584-050-0152(4), Respondent has the burden of proving her good moral character and fitness to teach.

In that regard, Respondent offered the testimony of Ms. Paprock and Ms. Armstrong who attested to Respondent's outstanding skills as a teacher. Respondent also offered numerous letters and a newspaper article, which spoke highly of Respondent both as a person and as a teacher. This evidence establishes that, since her conviction, Respondent has been nominated for, received several awards for her excellent teaching skills, and has earned the respect of her colleagues and employers. It is also abundantly clear from this evidence that her enthusiasm as a teacher and her willingness to go above and beyond her job duties has made her well liked and appreciated by her students in the Adult Education and GED classes. Additionally, I also note that, because of her exemplary behavior on probation following her conviction, her probation officer recommended that her probation be terminated eight months early and characterized her as a "role model probationer." However, this evidence by itself does not establish her good moral character and her fitness to teach.

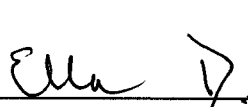
At hearing, Respondent continued to deny that she had stolen and altered the dealership's check. She maintained that she received the letter from the dealership and the check in the mail but conceded that she did deposit the dealership's check. She tried to paint herself as a victim of a cruel hoax or an attempt by a disgruntled employee of the dealership to injure his previous employer, but did not provide any evidence to support her position. As noted above, I do not find Respondent's denial to be plausible or persuasive. Consequently, because she has failed to take responsibility for her prior conduct that led to her conviction, I conclude that she has failed to meet her burden of proving her good moral character and fitness to teach.

PROPOSED ORDER

Accordingly, I propose that the Commission issue the following order:

The application for reinstatement of the teaching license of Diane Caroline Thompson is denied.

Dated this 16 day of June at Salem, Oregon.


Ella D. Johnson, Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE:

June 16, 2003

EXCEPTIONS

The proposed order is the hearing officer's recommendation to the Teacher Standards and Practices Commission. If you disagree with any part of this proposed order, you may file written objections, called "exceptions," to the proposed order and present written argument in support of your exceptions. Written argument and exceptions must be filed **within fourteen (14) days after mailing of the proposed order** with the:

Teacher Standards and Practices Commission
465 Commercial Street, NE
Salem, Oregon 97301

The Commission need not allow oral argument. The Executive Director may permit oral argument in those cases in which the Director believes oral argument may be appropriate or helpful to the Commissioners in making a final determination. If oral argument is allowed, the Commission will inform you of the time and place for presenting oral argument.