

FILED

JAN 30 2013

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By 

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In the Matter of the Application of)	DRE No. H-5707 SAC
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GREGORY DANIEL BEHRMANN,) OAH No. 2011110525
))
))
Respondent.)
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DECISION

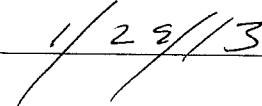
The Proposed Decision dated January 7, 2013, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is attached hereto for the information of Respondent.

If and when application is made for a real estate license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock noon on FEB 20 2013.

IT IS SO ORDERED



Real Estate Commissioner


By AWET P. KIDANE
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

GREGORY DANIEL BEHRMANN,

Respondent.

Case No. H-5707 SAC

OAH No. 2011110525

PROPOSED DECISION

Administrative Law Judge Wilbert E. Bennett, State of California, Office of Administrative Hearings, heard this matter on December 4, 2012, in Sacramento, California.

Richard K. Uno, Counsel, Department of Real Estate (Department), represented complainant Tricia D. Sommers, Deputy Real Estate Commissioner.

Respondent Gregory Daniel Behrmann represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on December 4, 2012.

FACTUAL FINDINGS

1. On November 1, 2011, complainant filed the Statement of Issues in her official capacity.
2. On January 4, 2011, respondent submitted an application to the Department for the issuance of a real estate salesperson license. This license application is pending and no license has been issued. In a prior proceeding before the Department, in Case No. H-8235 SF, the Real Estate Commissioner denied respondent's application for a real estate salesperson license, effective April 19, 2004.

Criminal Convictions

3. On June 9, 1995, in the United States District Court, Southern District of Illinois, Case No. 94-CR-30091-WDS, respondent was convicted, by guilty plea, of violating Title 21, United States Code, section 841 (a)(1) (possession of cocaine, a Schedule II narcotic controlled substance, with intent to distribute.) Pursuant to said conviction, respondent was sentenced to a prison term of 121 months and a supervised release probation term of five years thereafter, and ordered to pay a \$2,000 fine.

4. The facts and circumstances underlying this conviction involved respondent's transporting approximately 30 kilograms of cocaine, by automobile, from California to Ohio in 1994. Respondent was to be compensated in the amount of \$100,000 upon completion of the trip. On or about August 29, 1994, in the State of Illinois, the transported cocaine was discovered by the Illinois State Police after a stop for speeding and a consensual search of respondent's vehicle.

5. On February 17, 2006, in the Calaveras County Superior Court, Case No. C11701, respondent was convicted, by nolo contendere plea, of violating Penal Code section 148, subdivision (a) (resisting, delaying and obstructing a peace officer), a misdemeanor. Pursuant to said conviction, respondent was placed on unsupervised probation for a period of three years on certain terms and conditions, including service of 20 days in county jail, payment of a fine in the amount of \$1,500, and completion of a county alcohol program.

6. The facts and circumstances underlying this conviction, according to respondent, involved his failure to provide identifying information to a police officer regarding the driver of a vehicle, in which he was a passenger, that had been involved in a single car automobile accident. (Complainant introduced no evidence regarding the underlying facts and circumstances.) Respondent acknowledged that the initial criminal charges against him included a public intoxication charge, but that charge was dismissed. He admitted that, at the time of his arrest, he had consumed a beer after a round of golf and two glasses of wine during dinner. Respondent, in his Conviction Detail Report provided to the Department, stated his belief that he was criminally charged because "the officer felt that I was lying to him" regarding his lack of knowledge of the identity of the driver. He was asleep in the backseat when the vehicle was driven off the road.

Factors in Aggravation, Mitigation, or Rehabilitation

7. Respondent served seven and a half years of his 121-month prison sentence for the cocaine offense, earning an early release for good conduct in 2002. While incarcerated, respondent received an Associate of Science degree in Business Administration from Taft Community College. Also while in prison custody, respondent completed a nine-month alcohol and drug rehabilitation program, which helped him to identify that a family history of alcohol and drug abuse had predisposed him in that direction. Respondent testified that he has learned that alcohol and drug abuse are not productive and that he has not used cocaine or any illegal drugs since his federal conviction. He now consumes alcohol only two

or three times a year. Respondent received an early termination from his five-year supervised release probation, in January, 2005, after approximately two and a half years.

8. Respondent regrets his involvement in the resisting peace officer offense, which resulted in his 2006 conviction. He acknowledged that, "It was a big mistake not telling the police officer who was driving the vehicle." He took full responsibility for his imprudent actions in relating to the police officer on the occasion in question. The 2006 conviction had the collateral consequence of "putting things on hold" in terms of respondent's reacquiring his real estate license, which he had held prior to his federal incarceration. At that time, respondent had received an early termination of his supervised release (federal) probation, which would have facilitated his relicensure efforts, but for the new conviction. In a prior decision of the Department, effective April 19, 2004, Administrative Law Judge Ruth Astle had noted that respondent was "making a sincere effort toward rehabilitation" but "while he is still on supervised release it would not be in the public interest to allow respondent to be licensed."

9. Respondent testified that he has learned from his two convictions and will not repeat his past criminal behaviors. He mentioned that his wife made him promise that he would never again jeopardize himself by engaging in criminal behaviors and that, in the future, "[he] wouldn't lie to protect a friend." Respondent, who has two children and four stepchildren, appears to maintain both a stable family life and a significant involvement in community service programs. He currently serves as an Executive Board member of Tracy Friends for Parks, Recreation and Community Services Foundation, a non-profit foundation designed to benefit underserved seniors and youth. Additionally, he currently serves as a Babe Ruth Youth Baseball League team manager in Tracy, and as a team head coach and manager for the Tracy Panthers' Youth Football Program.

10. Respondent is amenable to the issuance of a restricted license and has two real estate brokers, Amir Safaie and Jason Bellevue, who are willing to sponsor him as employing brokers. Each of these persons submitted supporting letters indicating complete awareness of respondent's criminal history and attesting to his professionalism in providing client services not requiring licensure. Mr. Safaie, broker/owner of Bridge Realty Group in Tracy, California, has employed respondent since 2009 and "would be happy to hire [him] as a real estate agent or loan originator" once he acquires his real estate license. He expressed the belief that respondent "is improved in all aspects of his life since his felony and misdemeanor offenses." Mr. Bellevue, broker/owner of RAF Investment Services, Inc., in Pinole, California, worked with respondent from 2010 through the beginning of 2012 and expressed the view that respondent "has learned from his past mistakes and is now a better person."

11. The Department has developed criteria for evaluating whether an applicant has been rehabilitated since he committed the act(s) or suffered the conviction(s) constituting grounds for denying the application. (Cal. Code Regs., tit. 10, § 2911.) The criteria relevant here are: (1) the passage of at least two years since the applicant's most recent conviction; (2) successful completion of or early discharge from probation; (3) stability of family life and

fulfillment of parental and familial responsibilities subsequent to the conviction; (4) significant or conscientious involvement in community programs designed to provide social benefits or to ameliorate social problems, and (5) change in attitude from that which existed at the time of the commission of the criminal acts in question. (Cal. Code Reg., tit. 10, § 2911, subs. (a), (e), (h), (1),(n).)

12. The application of each of these criteria indicates respondent's full rehabilitation from past criminal behaviors. Respondent's most recent conviction occurred almost seven years ago. He successfully completed probation for that conviction and received early discharge from his federal probation in 2005. He has demonstrated a stable family life and significant and conscientious involvement in community programs designed to provide social benefits. The sum total of respondent's efforts reflects attitudinal change since the commission of the criminal acts in question.

13. As discussed below, cause exists to deny respondent's application based on his criminal convictions. However, upon consideration of all of the above factors, including the remoteness in time of the convictions and the overall showing of compelling rehabilitation, respondent has established that it would not be contrary to the public interest to issue him a restricted license, under appropriate terms and conditions. Therefore, his application for a real estate salesperson license should be denied; provided, however, that he is issued a restricted license subject to the terms and conditions specified in the Order below.

LEGAL CONCLUSIONS

1. An application for a real estate license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, function, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 480, subd. (a)(1); 10177, subd. (b).) Respondent was convicted of possession of cocaine with intent to distribute, under circumstances involving expected financial compensation in the amount of \$100,000. (Factual Findings 3 and 4.) Such a crime is deemed to be substantially related to the qualifications, functions, or duties of a real estate licensee. (See, Cal. Code of Regs., tit. 10, § 2910, subs. (a)(4) ["The employment of... fraud, deceit, falsehood or misrepresentation to achieve an end."], and (a)(8) ["Doing of an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator..."].) Respondent was also convicted of resisting, delaying, and obstructing a peace officer under circumstances involving providing dishonest responses to an investigating police officer. (Factual Findings 5 and 6.) Such a crime is also deemed to be substantially related to the qualifications, functions, or duties of a real estate licensee. (See, Cal. Code of Regs., tit. 10, § 2910, subd. (a)(4) ["The employment of... fraud, deceit, falsehood or misrepresentation to achieve an end."].) When respondent's two crimes are considered together, they are deemed to meet the "substantial relationship" requirement for license denial because they reflect "a pattern of repeated and willful disregard of law." (Cal. Code Regs., tit. 10 § 2910, subd. (a)(10).) Therefore, each of respondent's convictions constitutes separate cause for license denial pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), individually and collectively.

2. As set forth in Factual Findings 7 through 13, respondent established that he has been sufficiently rehabilitated since engaging in the conduct constituting cause for license denial so that he may be issued a restricted license, under appropriate terms and conditions.

ORDER

Respondent Gregory Daniel Behrmann's application for a real estate salesperson license is DENIED; provided, however, a restricted real estate salesperson license shall be ISSUED to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of Section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner, or conditions attaching to this restricted license.

2. Respondent's employment as a real estate salesperson shall be limited to his employment by licensed real estate broker Amir Safaie, Real Estate Broker License No. 01403498.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three years have elapsed from the date of issuance of the restricted license to respondent.

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4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

Dated: January 7, 2013

Wilbert E. Bennett
WILBERT E. BENNETT
Administrative Law Judge
Office of Administrative Hearings

CRITERIA OF REHABILITATION (*Denial*)

RE 573 (Rev. 10/03)

Your application for a real estate license or your petition to reinstate your real estate license has been denied. The reason(s) for denial is on the grounds set forth in the attached Decision or Order Denying Reinstatement. Set forth below is the Criteria of Rehabilitation. These criteria have been developed by the Department of Real Estate as guidelines to assist an applicant or former licensee to establish a rehabilitation program and in the presentation of his or her case should application again be made for licensure or a petition filed for either reinstatement of a license or removal of restrictions from a restricted license.

Not all of the factors listed in the criteria will be applicable in the case of every person who has had a license application or petition for reinstatement or removal of restrictions denied. Nor will each factor necessarily be given equal weight in evaluating the person's rehabilitation. Each person must decide which of these factors are applicable to his or her case and should then take appropriate steps toward rehabilitation to the end of satisfying the Real Estate Commissioner that it would not be against the public interest to grant the license in question.

2911. Criteria of Rehabilitation (*Denial*). The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

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| <ul style="list-style-type: none"> (a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.) (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant. (c) Expungement of criminal convictions resulting from immoral or antisocial acts. (d) Expungement or discontinuance of a requirement of registration pursuant to provisions of Section 290 of the Penal Code. (e) Successful completion or early discharge from probation or parole. (f) Abstinance from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol. (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment. (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought. | <ul style="list-style-type: none"> (i) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement. (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others. (k) Correction of business practices resulting in injury to others or with the potential to cause such injury. (l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. (m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought. (n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following: <ul style="list-style-type: none"> (1) Testimony of applicant. (2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns. (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments. (4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances. (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question. |
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11522. Reinstatement of License or Reduction of Penalty - A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty. (Added by Stats. 1945, Ch. 867; amended by Stats. 1985, Ch. 587.)