

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

DEC 07 2010

DEPARTMENT OF REAL ESTATE

By *L. [Signature]*

In the Matter of the Application of)
)
 JOSHUE TEJEDA,)
)
 Respondent.)
)
 _____)

NO. H-10954 SF

OAH NO. 2010071186

DECISION

The Proposed Decision dated October 29, 2010, 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 to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson 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 appended hereto.

This Decision shall become effective at 12 o'clock noon on DEC 27 2010

IT IS SO ORDERED

12/7/2010

JEFF DAVIS
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JOSHUE TEJEDA,

Respondent.

Case No. H-10954 SF

OAH No. 2010071186

PROPOSED DECISION

This matter was heard before Diane Schneider, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California, on September 27, 2010.

Complainant E.J. Haberer II, Deputy Real Estate Commissioner, was represented by Jason D. Lazark, Counsel, Department of Real Estate.

Respondent Joshue Tejeda appeared and represented himself.

The matter was submitted for decision on September 27, 2010.

FACTUAL FINDINGS

1. On July 22, 2008, the Department of Real Estate received an application from respondent for a real estate salesperson license. The department denied respondent's application and he appealed.

Criminal Convictions

2. On May 21, 2002, in the Superior Court of the State of California, County of San Diego, respondent was convicted, upon his plea of no contest, of violating Vehicle Code section 23103.5, subdivision (a) (reckless driving involving consumption of alcohol), a misdemeanor. The court placed respondent on probation for three years, suspended a 90-day jail sentence, and placed him on probation for three years. As conditions of probation, respondent was ordered not to drive without a valid driver's license and to pay a \$750 fine.

Complainant did not offer any evidence regarding the facts and circumstances surrounding respondent's conviction. According to respondent, this offense occurred on December 1, 2001, after he went out drinking and dancing with friends. He had two drinks over the course of the evening. While driving home, he was stopped by the police and "blew

a .09.” At the time, he was a 24-year-old student. He paid a fine and completed probation. It was not established that this conviction, either on its face or on its facts, is substantially related to the qualifications, functions or duties of a real estate salesperson. (Cal. Code Regs., tit. 10, § 2910.)

3. On June 17, 2002, in the Superior Court of the State of California, County of Contra Costa, respondent was convicted, upon his plea of guilty, of violating Vehicle Code section 12500 (driving without a valid license), a misdemeanor. While sentencing details were not provided at hearing, it appears that respondent was placed on probation for three years and ordered to perform community service. Respondent performed community service and successfully completed probation.

This conviction occurred about one month after respondent’s conviction for reckless driving. While complainant did not offer any evidence regarding the facts and circumstances surrounding this conviction, respondent explained that at the time of the offense, his mother had recently suffered a stroke. Respondent drove his car from San Diego to the Bay Area see her because he could not afford to buy an airplane ticket. On his drive back to San Diego, he was pulled over by the police. At the time, he did not have a valid driver’s license. Insofar as respondent’s conduct violated the court’s order set forth in Factual Finding 2, this offense, on its facts, is substantially related to the qualifications, functions or duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10) [willful failure to comply with court order].)

Failure to Disclose Criminal Convictions

4. On the real estate salesperson license application, question number 23, under the section titled “BACKGROUND INFORMATION” states: “HAVE YOU EVER BEEN CONVICTED OF A MISDEMEANOR OR FELONY? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE. IF YES, COMPLETE ITEM 27.” Respondent checked “No” in response to this question.

5. Respondent’s answer to this question was false and misleading in that he failed to disclose his convictions for reckless driving and driving without a valid license, as set forth in Factual Findings 2 and 3. Respondent did not intend to mislead the department when he failed to include these convictions on his application for a salesperson license. He sincerely believed that his record was “clear” and that, therefore, he was not obliged to disclose his convictions.

6. Respondent lives with his partner and their two small children. From 2002 until 2007, he worked at Diablo Funding Group as a systems administrator. Thereafter, he started a mobile information technology business, where he worked until April 2009, when work ran out. He is currently employed on a part-time basis at ProTeam Realty, where he has worked for about one year, performing systems administration and office errands.

7. Respondent submitted three unsigned letters of reference from people who have worked with respondent in the past. Each of the letters describe respondent as an honest, reliable and hard-working individual. Respondent explained that the letters were not signed because they were sent to him by email.

8. Respondent's testimony was forthright and credible in all respects.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b), an application for a real estate license may be denied if the applicant has been convicted of a misdemeanor that is substantially related to the qualifications, functions or duties of a real estate salesperson. Based upon the matters set forth in Factual Finding 2, respondent's conviction for reckless driving is not substantially related to the qualifications, functions or duties of a real estate salesperson. (Cal. Code Regs., tit. 10, § 2910.) Accordingly, this conviction does not provide cause to deny respondent's license application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

2. As set forth in Factual Finding 3, respondent's conviction for driving without a valid driver's license, after he was ordered by the court not to do so, is substantially related to the qualifications, functions or duties of a real estate salesperson. (Cal. Code Regs., tit. 10, § 2910, subd. (9).) Accordingly, cause exists to deny respondent's application for licensure under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

3. Pursuant to Business and Professions Code sections 10177, subdivision (a), and 480, subdivision (c), the Real Estate Commissioner may deny an application for a real estate license if the applicant makes any material misstatement of fact in an application for licensure. Respondent's failure to include his convictions on his license application constitutes a material misstatement of fact. Accordingly, cause exists for denial of respondent's license application under these sections.

4. It is determined that it would not be against the public interest to issue respondent a real estate salesperson license on a restricted basis. Among the factors considered in making this determination are as follows: Respondent accepts full responsibility for his offense, which occurred over eight years ago. Respondent's violation of the law appears to be isolated instances in an otherwise law-abiding and productive life. It is, therefore, unlikely that respondent will engage in criminal activity in the future. Respondent's failure to include his convictions on his application for a salesperson license, while not excusable, does not appear to have been motivated by a desire to deceive the department. Respondent's testimony does not suggest that he is someone who is unwilling or unable to comply with department directives. Under these circumstances, it appears that

respondent can be trusted to discharge the duties of a real estate salesperson in a manner consistent with public safety.

ORDER

The application of respondent Joshue Tejada 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 the 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 that 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 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 two (2) years have elapsed from the date of issuance of the restricted license to respondent.
3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate, which shall certify as follows:
 - (a) That the employing broker has read the decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

DATED: 10-29-10

Melissa Crowell for

DIANE SCHNIEDER
Administrative Law Judge
Office of Administrative Hearings

FLAG

1 Jason D. Lazark, Counsel (SBN 263714)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 General: (916) 227-0789
6 Direct: (916) 227-0822

FILED

JUN 26 2010

DEPARTMENT OF REAL ESTATE

By L. Frost

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)

12 JOSHUE TEJEDA,)

13 Respondent.)

No. H-10954 SF

STATEMENT OF ISSUES

14
15 The Complainant, E.J. HABERER II, acting in his official capacity as a Deputy
16 Real Estate Commissioner of the State of California, for Statement of Issues against JOSHUE
17 TEJEDA (herein "Respondent"), alleges as follows:

18 1.

19 On or about July 22, 2008, Respondent made application to the Department of
20 Real Estate of the State of California for a real estate salesperson license.

21 2.

22 In response to Part D, Question 1 of said application, to wit: "Have you ever been
23 convicted of a misdemeanor or felony? Convictions expunged under Penal Code § 1203.4 must
24 be disclosed. However, you may omit minor traffic citations which do not constitute a
25 misdemeanor or felony." Respondent concealed and failed to disclose the convictions below
26 described in Paragraphs 3 and 4.

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

3.

On or about May 21, 2002, in the Superior Court of the State of California, County of San Diego, Case Number M850334, Respondent was convicted of Vehicle Code § 23103.5 (wet and reckless), a misdemeanor which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations") to the qualifications, functions or duties of a real estate licensee.

4.

On or about June 17, 2002, in the Superior Court of the State of California, County of Contra Costa, Case Number 130596-0, Respondent was convicted of Vehicle Code § 12500(a) (driving without a valid drivers license), a misdemeanor which bears a substantial relationship under Section 2910, Title 10, of the Regulations to the qualifications, functions or duties of a real estate licensee.

5.


In failing to reveal the convictions described above in Paragraphs 3 and 4, Respondent procured or attempted to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which constitutes grounds for denial of Respondent's application for a real estate license under Sections 480(c) and 10177(a) of the Business and Professions Code (herein "the Code").

6.

Respondent's criminal convictions, as described above in Paragraphs 3 and 4, constitutes grounds for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the Code.

///
///
///
///
///

1 WHEREFORE, Complainant prays that the above-entitled matter be set for
2 hearing and, upon proof of the charges contained herein, that the Commissioner refuse to
3 authorize the issuance of, and deny the issuance of a real estate salesperson license to
4 Respondent, and for such other and further relief as may be proper in the premises.

5
6 
7 _____
8 E.J. HABERER II
9 Deputy Real Estate Commissioner

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
Dated at Oakland, California,
this 17th day of June, 2010.