

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
DEC 10 2010
DEPARTMENT OF REAL ESTATE
By L. Amst

* * *

In the Matter of the Application of)
) NO. H-10959 SF
JAMES LOUIS VANOLI,)
) OAH NO. 2010071187
Respondent.)
_____)

DECISION

The Proposed Decision dated November 8, 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 with the following corrections.

Pursuant to Section 11517(c)(2)(c) of the Government Code, the following corrections are made to the Proposed Decision:

On page 2 of the Proposed Decision, under Factual Findings, *Respondent's Criminal History*, paragraph 8 is revised and corrected to read in part:

"8. ... This conviction is substantially related to the duties, qualifications and functions of a real estate licensee."

On page 4 of the Proposed Decision, under Legal Conclusions, paragraph 3 is revised and corrected to read in part:

"12. ... Respondent's 1987 conviction for driving under the influence of alcohol is also substantially related to the qualifications, functions or duties of a real estate licensee because in driving under the influence and getting into an accident, respondent acted unlawfully with the threat of doing substantial injury to the person or property of another. ..."

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 30 2010

IT IS SO ORDERED _____

12/31/2010

JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JAMES LOUIS VANOLI,

Respondent.

Case No. H-10959 SF

OAH No. 2010071187

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on September 27, 2010.

Jason D. Lazark, Counsel, represented complainant, Tricia D. Sommers, a Deputy Real Estate Commissioner of the State of California.

W. G. Hesseltine and Gerald Vanoli, Attorneys-at-Law, represented respondent James Louis Vanoli, who was present.

Submission of the matter was deferred to October 28, 2010, for receipt of a court ruling on respondent's motion pursuant to Penal Code section 1203.4 to expunge his 1985 criminal conviction for burglary. The certified court record was received on October 20, 2010. Complainant did not object to the receipt of the court order, which was marked and admitted into evidence. The record closed on October 20, 2010.

FACTUAL FINDINGS

1. Tricia D. Sommers made the statement of issues in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent moved at hearing to continue the matter in order to submit evidence of an expungement of a conviction pursuant to section 1203.4 of the Penal Code. The hearing for respondent's motion to expunge was set for October 14, 2010. Good cause was not shown and the motion was denied, however, the record was left open for respondent to submit a certified copy of the court order following the hearing on respondent's motion.

3. Complainant moved at hearing to amend the statement of issues to omit paragraph four of the pleading and to renumber the following paragraphs. Respondent objected to the amendment. The amendment was granted pursuant to Government Code section 11507.

4. Respondent James Louis Vanoli applied to the Department of Real Estate (Department) for a real estate salesperson license on January 13, 2010.

5. Question 1 of Part D of the application asks: "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." In response, respondent listed two driving under the influence offenses. Respondent failed to list a 1985 felony burglary conviction. Respondent's application was denied.

Respondent's Criminal History

6. On March 25, 1985, in the Superior Court of the State of California, County of Santa Clara, respondent was convicted of violating Penal Code sections 459-460.1, (burglary), a felony. The imposition of sentence was suspended and respondent was placed on formal probation for a period of three years on conditions that included serving 90 days of work furlough and paying restitution. Respondent successfully completed probation. On October 14, 2010 the conviction was reduced to a misdemeanor pursuant to Penal Code section 17, subdivision (b) and then dismissed pursuant to section 1203.4 of the Penal Code. This conviction is substantially related to the duties, qualifications and functions of a real estate licensee.

7. The facts and circumstances underlying the conviction are that on November 22, 1984, when respondent was 18 years old, he entered the home of a friend's next door neighbor and removed a coin collection without permission of the owner. Respondent sold part of the coin collection to a pawnbroker for \$105. When confronted by police, he admitted taking the coins. The victim also reported two \$100 bills as missing from the home.

8. In 1987, in the Superior Court of the State of California, County of Santa Clara, respondent was convicted of violating section 23152 of the Vehicle Code (driving under the influence). Imposition of sentence was suspended and respondent was placed on three years summary probation. Respondent completed probation successfully. This conviction is ~~not~~ substantially related to the duties, qualifications and functions of a real estate licensee.

9. The facts and circumstances underlying the conviction are that respondent ran a yellow light, was involved in a vehicular accident, and was found to be at fault and to be under the influence. There was no injury to the other party, however respondent was injured and required 20 stitches to the ear.

Respondent's Evidence

10. Following his conviction for driving under the influence, respondent decided to turn his life around. He moved to Napa to live near his father, Gerald Vanoli. He stopped

associating with former friends and went to college. He graduated from college in 2000. Respondent then worked for Beringer Vineyards for 10 years before being laid off when much of the information technology operations were outsourced to India in February 2010. When respondent was told he would be laid off, he began to take real estate classes in order to transition into a new career.

11. Respondent was married in 2007. His wife gave birth to a daughter with brain abnormalities on May 25, 2007. His daughter died in September 2009. Respondent's marriage failed and he was divorced on December 18, 2009. He and his ex-wife lost their home to a short sale on December 23, 2009. Respondent filled out the application for his real estate license in January 2010 during a stressful period of his life. Respondent owns another home, in which he now lives. He has no other children.

12. On respondent's license application, he listed two driving under the influence convictions,¹ but did not list the 1985 burglary conviction. Respondent believed that the offense was either reduced or dismissed by his lawyer. He did an online search to see if the burglary conviction remained on his record, and nothing surfaced. He also did a record search at the Napa Superior Court, and was advised that all records during the requested time frame had been destroyed.

13. Respondent then spoke with his father, who is a lawyer, about whether he was required to list the 1985 conviction. The former law partner of respondent's father, who is now deceased, represented respondent in the burglary case. Respondent's father, Gerald Vanoli, who testified at the hearing, told his son that it was his understanding that the burglary charge had been dismissed and that he was therefore not required to list it on the application.

14. Respondent was granted a Department of Insurance license in 1997. He did not list the burglary conviction on that application and a license was issued to him, which reinforced respondent's understanding that the matter had been dismissed.

15. Respondent does not consider himself an alcoholic. Following his driving under the influence conviction, he attended the alcohol treatment program, but he has not continued to attend substance abuse programs. Respondent drinks infrequently, mostly a glass of wine on social occasions. His athletic pursuits have helped him live a healthy lifestyle. Respondent feels that clean living, health and exercise, and family have helped him turn his life around.

16. In addition, to the real estate courses, respondent has completed courses in accounting, economics, computer programming, electronics, marketing, website creation, and real estate appraisal. He has taken these courses in an effort to better himself.

¹ Respondent admitted suffering a second conviction for driving under the influence in 1988, however, no records of this conviction were offered in evidence and complainant amended the statement of issues to remove this allegation.

17. Respondent has been a member of the Rotary Club and helped the organization install a children's playground last July. He often assists an elderly former neighbor whose son lives out of town.

18. Respondent apologized for his criminal history and his failure to acknowledge his burglary conviction on the application.

19. Respondent's burglary conviction is 25 years old. His most recent criminal conviction is 22 years old. Respondent has lived a law-abiding life since that time.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), authorizes the denial of a license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licenses, authorizes the denial of a license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions and duties of a licensee of the Department of Real Estate.

2. California Code of Regulations, title 10, section 2910, sets forth criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves "the [d]oing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another" (subd. (a)(8)).

3. Respondent's burglary conviction is substantially related to the qualifications, functions or duties of a real estate licensee. Respondent's ~~2007~~¹⁹⁸⁷ conviction for driving under the influence of alcohol is also substantially related to the qualifications, functions or duties of a real estate licensee because in driving under the influence and getting into an accident, respondent acted unlawfully with the threat of doing substantial injury to the person or property of another. By reason of the matters set forth in Findings 6 through 9, respondent's criminal convictions constitute cause to deny respondent's application for a real estate salesperson license pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

4. Attempting to procure a real estate license by fraud, misrepresentation, deceit or by making a material misstatement of fact in the application constitutes grounds for denial of the application pursuant to Business and Professions Code section 480, subdivision (c) and 10177, subdivision (a). Respondent's failure to disclose the burglary conviction on his application also constitutes cause to deny respondent's application for a license. (Factual Findings 4 and 5.)

5. California Code of Regulations, title 10, section 2912, sets forth criteria for evaluating the rehabilitation of a licensee in a disciplinary proceeding. Factors to be considered in evaluating rehabilitation include the following: the passage of two years since the date of the most recent criminal conviction (subd. (a)); the payment of restitution to the victim of the offense (subd. (b)); the expungement of the conviction (subd. (c)); the successful completion of probation (subd. (e)); the payment of fines imposed in connection with the criminal conviction (subd. (g)); a stable home life and fulfillment of parental and familial responsibilities (subd. (h)); the completion or sustained enrollment in formal education or vocational training courses for economic self-improvement (subd. (i)); significant or conscientious involvement in community or church (subd. (l)); new and different social relationships (subd. (m)); and a change in attitude from that which existed at the time of the conviction (subd. n).

6. Respondent has met many of the rehabilitation criteria. More than 25 years has passed since the burglary conviction, and more than 22 years have passed since the driving under the influence convictions. Respondent has paid restitution, successfully completed probation and had the burglary conviction expunged. While respondent is recently divorced, he appears to have a strong relationship with his father. Respondent has continued his education for economic self-improvement and has been involved in the community. He formed new friendships after relocating himself to Napa in 1988 and there is no evidence of criminal behavior since that time. Respondent has exhibited a change in attitude since the time of his criminal convictions and has apologized for his past behavior. (Factual Findings 10 to 19.)

7. The most troubling part of respondent's conduct was failing to report the 1985 burglary conviction on his license application. Respondent was advised by his father, who is an attorney, that the conviction had been dismissed and he was not required to list it on the application. He attempted to find out if the conviction existed on his record before submitting the application and found no evidence of it. Under these circumstances, and considering the length of time since the conviction, it would not be contrary to the public interest to grant respondent a restricted real estate license.

ORDER

The application of respondent James Louis Vanoli for a real estate salesperson license is denied; provided however, a restricted real estate salesperson license shall be issued to him pursuant to Business and Professions Code section 10156.5 if respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days for the effective date of this Decision. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under the authority of section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner in the event of respondent's

conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for removal of any of the conditions, limitations or restrictions of a restricted license until three years have elapsed from the effective date of this Decision.

4. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a 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 performance by the restricted licensee relating to activities for which a real estate license is required.

DATED: _____

11/8/10



JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

PLG

1 Jason D. Lazark, Counsel (SBN 263714)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0822 (Direct)

FILED

JUL 12 2010

DEPARTMENT OF REAL ESTATE

By *[Signature]*

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of

13 JAMES LOUIS VANOLI,

14 Respondent.

15) No. H-10959 SF

16) STATEMENT OF ISSUES

17 The Complainant, TRICIA D. SOMMERS, acting in her official capacity as a
18 Deputy Real Estate Commissioner of the State of California, for Statement of Issues against
19 JAMES LOUIS VANOLI (herein "Respondent"), alleges as follows:

20 1.

21 On or about January 13, 2010, Respondent made application to the Department
22 of Real Estate of the State of California (herein "the Department") for a real estate salesperson
23 license.

24 2.

25 In response to Part D, Question 1 of said application, to wit: "Have you ever been
26 convicted of a misdemeanor or felony? Convictions expunged under Penal Code § 1203.4 must
27 be disclosed. However, you may omit minor traffic citations which do not constitute a

1 misdemeanor or felony”, Respondent concealed and failed to disclose the conviction described
2 in Paragraph 5 below.

3 3.

4 On or about 1987, in the Superior Court of the State of California, County of
5 Santa Clara, Case Number CR11311, Respondent was convicted of violating Vehicle Code §
6 23152 (driving under the influence of alcohol), a misdemeanor which bears a substantial
7 relationship under Section 2910, Title 10, California Code of the Regulations (herein “the
8 Regulations”), to the qualifications, functions or duties of a real estate licensee.

9 4.

10 On or about 1988, in the Superior Court of the State of California, County of
11 Santa Clara, Case Number CR11312, Respondent was convicted of violating Vehicle Code §
12 23152 (driving under the influence of alcohol), a misdemeanor which bears a substantial
13 relationship under Section 2910 of the Regulations, to the qualifications, functions or duties of a
14 real estate licensee.

15 5.

16 On or about March 25, 1985, in the Superior Court of the State of California,
17 County of Santa Clara, Case Number 98322, Respondent was convicted of violating Penal Code
18 § 459-460.1 (burglary), a felony which bears a substantial relationship under Section 2910 of the
19 Regulations, to the qualifications, functions or duties of a real estate licensee.

20 6.

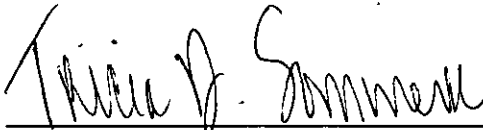
21 In failing to reveal the conviction described in Paragraph 5 above, Respondent
22 procured or attempted to procure a real estate license by fraud, misrepresentation, or deceit, or
23 by making a material misstatement of fact in said application, which constitutes grounds for
24 denial of Respondent’s application for a real estate license under Business and Professions Code
25 Sections 480(c) and 10177(a).

26 ///

27 ///

Respondent's criminal convictions, as described in Paragraphs 3 through 5 above, constitute grounds for denial of Respondent's application for a real estate license under Business and Professions Code §§ 480(a) and 10177(b).

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


TRICIA D. SOMMERS
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 7th day of July, 2010.