

FILED

MAY 09 2012

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Application of)
)
 ELIAS ORDAZ,)
)
 Respondent.)
)
 _____)

NO. H-11286 SF

OAH NO. 2012010658

DECISION

The Proposed Decision dated April 6, 2012, 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.

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

Condition "4" of the Order of the Proposed Decision is not adopted and shall not be part of the Decision.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. 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 MAY 29 2012

IT IS SO ORDERED May 9, 2012

REAL ESTATE COMMISSIONER



By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ELIAS ORDAZ,

Respondent.

Case No: H-11286 SF

OAH No: 2012010658

PROPOSED DECISION

This matter was heard before Kirk E. Miller, Administrative Law Judge, State of California, Office of Administrative Hearings, on March 6, 2012, in Oakland, California.

Complainant E. J. Haberer, Deputy Real Estate Commissioner, was represented by Kenneth Espell, Counsel.

Respondent Elias Ordaz represented himself.

The record was closed and the matter was submitted for decision on March 6, 2012.

FACTUAL FINDINGS

1. Respondent Elias Ordaz first applied for a real estate salesperson license on August 17, 2009. The Department of Real Estate (department) denied respondent's application because of his prior criminal convictions and a failure to disclose one of those convictions.
2. Respondent requested a hearing on the department's denial of that application. The Commissioner rendered a decision in Case No. H-10911SF effective July 27, 2010, finding: (1) respondent's convictions bear a substantial relationship to the qualifications, functions and duties of the licensed activity and (2) respondent's failure to disclose the convictions constituted a material misstatement of fact in the application. The license was accordingly denied.
3. Respondent reapplied for a salesperson license on July 10, 2011. The department denied the application based on the following convictions:

a. On August 15, 2006, respondent was convicted in Santa Clara County, on his pleas of guilty, of misdemeanor violations of Health and Safety Code sections 11550, subdivision (a) (under the influence of a controlled substance), and 11377, subdivision (a) (possession of a controlled substance);

b. On August 1, 2006, respondent was convicted in Santa Clara County, on his plea of no contest, of a felony violation of Health and Safety Code section 11378 (possession for sale of a controlled substance); and,

c. On March 20, 2008, respondent was convicted in Santa Clara County, on his pleas of nolo contendere, of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 or more).

A Statement of Issues issued on December 16, 2011, and respondent requested a hearing before the Office of Administrative Hearings on January 4, 2012.

4. Respondent testified that he began using drugs and alcohol at age 15 when his parents separated, and in his early 20's he was convicted of two misdemeanors and a felony in connection with drug and alcohol abuse. This final conviction, on March 20, 2008, was pivotal in causing him to re-evaluate his life and to take the necessary steps to lead a sober life and abide by all laws.

5. Following this conviction he began attending Alcoholics Anonymous and has completed the 12 steps. He also completed a court ordered drug treatment program and received a certificate of commencement on December 17, 2008. He has been sober for the past three and one-half half years.

6. On September 17, 2010, the California Superior Court, County of Santa Clara approved early termination from supervised probation.

7. On January 18, 2012, the California Superior Court, County of Santa Clara granted record clearance pursuant to Penal Code section 1203.4.

8. Respondent is presently enrolled as a student at San Jose City College and is on track to graduate with an Associate of Science General Degree in May 2012.

9. Respondent expressed a very strong interest in working as a real estate professional. In addition to having passed the test to become a licensed salesperson, he has also taken and passed the test to work as a real estate appraiser, and has been issued a Real Estate Appraiser Trainee License.

10. Respondent has worked since 2004 for Nathaniel Rutkoski, a licensed real estate broker and appraiser. He works in an administrative capacity, answering phones and email, opens files, does data entry and scheduling. Rutkoski has known respondent since

they were middle school students, and in a letter of support stated that respondent has made fundamental changes in his life since his last conviction, that respondent is sober and committed to becoming a real estate salesman, and that he will supervise respondent in the event his salesperson license is granted.

11. Respondent has also made changes in his personal life:

a. He attends church on a regular basis at Our Lady of Guadalupe. He has also coached 12-13 year old boys in the Alum Rock Little League, and has been invited to coach again in the spring of this year.

b. He is proud to be the godfather to his niece who is an important part of his life and someone he sees frequently; and,

c. He has become engaged to Vanessa Pinon, a nursing student, who also provided a letter of support. She writes: "He has a strong sense of duty, which applies in his job, family and community. He also possesses a great deal of integrity, and constantly strives to make sure he is doing the right thing."

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that an application for a real estate license may be denied if the applicant has been convicted of a felony or a crime that is substantially related to the qualifications, functions or duties of a real estate licensee. Business and Professions Code section 10177 subdivision (b), permits the board to deny a license on the grounds that the applicant has been convicted of a crime substantially related to the qualifications or duties of a real estate licensee, even if the conviction has been dismissed under Penal Code Section 1203.4.

2. As previously determined by the commissioner in case H-10911 SF, respondent's convictions are substantially related to the duties of a real estate licensee and cause for denial of respondent's current application under the above referenced sections therefore exists.

3. Given the commissioner's prior finding, in determining whether to now grant or deny respondent's application for licensure, the central question is whether or not respondent is substantially rehabilitated from his offenses. It is respondent's burden to demonstrate his rehabilitation. The criteria used by the department in evaluating an applicant's rehabilitation are set forth in Title 10, California Code of Regulations, section 2911. The paramount concern is not whether an applicant has satisfied every criterion, but whether an applicant is rehabilitated to the extent that he can be trusted to discharge his duties as a real estate salesperson in a manner consistent with public safety. For this reason, an applicant need not satisfy every criterion found in Title 10, California Code of Regulations, section 2911 in order to demonstrate convincing evidence of rehabilitation.

4. Based upon the matters set forth in Factual Findings 4 - 11 it is determined respondent has established sufficient evidence of rehabilitation to justify issuing him a salesperson license on a restricted basis. Among the factors considered were the following: Respondent takes full responsibility for his convictions and has subsequently completed all terms and conditions of his probation. Moreover, he has undertaken new activities and presented new evidence of rehabilitation that were not available at the time of his last administrative hearing. These include significant progress toward his degree at San Jose City College; earning a trainee real estate appraiser license; continued sobriety; community service; expanded family commitments; and a strong letter of support from a broker who has worked with him for many years and will serve as his supervisor once a license is granted. Respondent recognizes the value the privilege of holding a real estate salesperson license offers, and its importance to him and his career now and in the future. Under these circumstances, it is unlikely that respondent will engage in criminal activities in the future, and has learned from the errors he made in the application process the critical importance of diligence and completeness in preparing important documents. Accordingly, it is determined that it will not be contrary to the public interest to issue respondent a conditional real estate salesperson license.

5. The department has correctly argued that under Business and Professions Code section 489 when an application has been denied, an applicant should generally wait at least a year before seeking to reapply. There is merit in the proposition that a longer period of time is of value to permit the individual to convincingly demonstrate substantial and sustained positive change. Here, respondent reapplied just a few days short of a year, but during that time was industrious in his efforts at rehabilitation.

ORDER

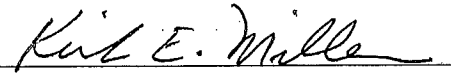
The application of respondent Elias Ordaz for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to respondent shall 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 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 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.
4. Respondent shall, within six months from the effective date of this Decision, complete an ethics or professional responsibility course satisfactory to the department. In addition, Respondent shall, within six months from the effective date of this Decision take and pass the Professional Responsibility Examination administered by the department including the payment of the appropriate examination fee. If the Respondent fails to timely complete either the ethics course or take and pass the Professional Responsibility Examination within the designated time, the Commissioner may order suspension of Respondent's license until such time as both are completed.

Not adopted

DATED: April 6, 2012


KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings