

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

FILED

OCT - 7 2014

BUREAU OF REAL ESTATE

By *[Signature]*

* * * * *

In the Matter of the Application of)
)
EARL MATHEW LEWIS,)
)
Respondent.)
_____)

CalBRE No. H-39424 LA
OAH No. 2014050449

DECISION

The Proposed Decision dated September 3, 2014 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 corrections are made to the Proposed Decision.

Proposed Decision, Page 1, Paragraph 3, Line 1, "Sean Michael Clancy (respondent)" is amended to read "Earl Mathew Lewis (respondent)".

Order, Page, 6, Paragraph No. 3, Line 3, "Department" is amended to read "Bureau".

Order, Page 6, Paragraph No. 4, Line 2, "Department" is amended to read "Bureau".

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 of Section 11522 is enclosed hereto for the information of respondent.

If and when a petition for removal of restrictions is submitted, 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 enclosed for respondent's information.

~~OCT 27 2014~~ This Decision shall become effective at 12 o'clock noon on _____

IT IS SO ORDERED SEP 29 2014

REAL ESTATE COMMISSIONER

[Signature]

By: JEFFREY MASON
Chief Deputy Commissioner

**BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Application of:

EARL MATHEW LEWIS,

Respondent.

Case No. H-39424 LA

OAH No. 2014050449

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on July 31, 2014, in Los Angeles, California.

Complainant was represented by Diane Lee, Counsel for the Bureau of Real Estate, formerly known as the Department of Real Estate.

Sean Michael Clancy (respondent) appeared personally and represented himself.

Evidence was received and the record was left open to allow complainant to submit a copy of proposed language for a restricted real estate salesperson license. The document was received on August 4, 2014. The matter was deemed submitted on August 4, 2014. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. Complainant, Maria Suarez, made the Statement of Issues in her official capacity as a Deputy Real Estate Commissioner of the State of California.
2. On March 30, 2012, respondent submitted an application to the Bureau for a real estate salesperson license.
3. On November 16, 1983, in the Superior Court of California, County of Los Angeles, respondent entered pleas of guilty and was convicted of three felony counts charging violations Penal Code section 487.3, grand theft of automobile, and one felony count charging a violation of section 487.1, grand theft. These are crimes of moral turpitude that are substantially related to the duties, functions and qualifications of real estate salesperson. Respondent was sentenced to state prison for three years.

4. The fact and circumstances underlying the conviction were that respondent participated in a theft of three automobiles and was in the process of stripping the vehicles when police officers arrived at the scene. Respondent also stole an army jacket which was in one of the stolen vehicles.

5. On November 16, 1995, in the Superior Court of California, County of Los Angeles, respondent entered a plea of nolo contendere and was convicted of violating Penal Code section 12021, subdivision (a)(1), unlawful possession of a firearm, a felony that is substantially related to the duties, functions and qualifications of real estate salesperson. The court sentenced respondent to state prison for 16 months.

6. On December 13, 1995, in the Superior Court of California, County of Los Angeles, respondent entered a plea of nolo contendere and was convicted of violating Health and Safety Code section 11350, subdivision (a), possession of a controlled substance, a felony that is substantially related to the duties, functions and qualifications of real estate salesperson. The court sentenced respondent to state prison for two years.

7. On December 18, 1995, in the Superior Court of California, County of Los Angeles, respondent entered a plea of nolo contendere and was convicted of violating Health and Safety Code section 11350, subdivision (a), possession of a controlled substance, and Penal Code section 273.5, subdivision (a), infliction of corporal injury resulting in traumatic injury. Both crimes are felony offenses that are substantially related to the duties, functions and qualifications of real estate salesperson. The court sentenced respondent to state prison for 16 months. The fact and circumstances underlying the conviction were that respondent struck his female companion several times causing physical injury to the victim. At the time of his arrest, respondent was in possession of rock cocaine.

8. On August 2, 1999, in the Superior Court of California, County of Los Angeles, respondent entered a plea of nolo contendere and was convicted of two counts charging violations of Penal Code section 273, subdivision (a), unlawfully offering to pay or receiving money for adoption of a child, a misdemeanor that is substantially related to the duties, functions and qualifications of real estate salesperson. Imposition of sentence was suspended and respondent was placed on formal probation for two years on certain conditions including that he serve one year in the county jail with credit for time served.

9. On March 14, 2001, in the Superior Court of California, County of Los Angeles, respondent entered a plea of nolo contendere and was convicted of violating Health and Safety Code section 11350, subdivision (a), possession of a controlled substance, a felony that is substantially related to the duties, functions and qualifications of real estate salesperson. Imposition of sentence was suspended and respondent was placed on formal probation for three years on certain conditions including that he serve 186 days in the county jail, submit to anti-narcotic testing, and complete a one-year drug counseling program. On June 30, 2003, the court terminated respondent's probation and dismissed the case.

10. On September 7, 2006, in the Superior Court of California, County of Los Angeles, respondent entered a plea of nolo contendere and was convicted of violating Health and Safety Code section 11351, subdivision (a), possession of a controlled substance for sale, and Penal Code section 12316, subdivision (b)(1), unlawful possession of ammunition. Both crimes are felony offenses that are substantially related to the duties, functions and qualifications of real estate salesperson. Imposition of sentence was suspended and respondent was placed on formal probation for three years on certain conditions including that he complete a one-year residential drug counseling program. Respondent completed the residential drug counseling program in December 2007.

11. Respondent testified that during the period that he committed his crimes, his life was out of control because of his extensive drug use, which included rock cocaine. He expressed sincere remorse for his past misconduct, especially for his domestic violence against the mother of his children. Respondent completed a residential substance abuse program in 2000 but suffered a relapse in 2006, which resulted in the conviction set forth in Factual Finding 10. In October 2006, pursuant to a court order, respondent entered the Palm House, a rigorous one-year residential drug rehabilitation program. Respondent has maintained complete sobriety since entering the Palm House.

12. A major factor in respondent's decision to stop abusing drugs was his realization that he needed to change his life to be a better parent to his children. Respondent has four sons and two daughters. He is now a constant figure in his children's lives.

13. In late 2006, respondent was hired by Starbucks Coffee Company. At the time he applied for the position, respondent informed the manager of his criminal record and past drug abuse. Respondent has thrived in his employment with Starbuck's. He has been working there for eight years. Respondent stated that he loves his job but seeks licensure to better provide for his children, some of whom are college age.

14. In addition to his work schedule, respondent continues to attend weekly Narcotics Anonymous (NA) meetings. Respondent is also active and regularly attends Antioch Church in Long Beach. Through his church, respondent volunteers his time to a program that provides clothes and food for the homeless. He also donates to the Palm House in appreciation for the help he received there.

15. Respondent has been offered a job with as a real estate salesperson if he obtains a license. Lowell Anderson, a real estate broker, wrote in a letter that he is willing to sponsor and supervise respondent as his broker of record if the Bureau grants a restricted license.

//

//

LEGAL CONCLUSIONS

1. Cause exists to deny respondent's application for a real estate salesperson license under Business and Professions Code sections 475, subdivision (a)(2), 480, subdivision (a), and 10177, subdivision (b), and California Code of Regulations, title 10, section 2910, based on respondent's convictions that are substantially related to the duties, functions and qualifications of a real estate salesperson as set forth in Factual Findings 3 through 10.

2. California Code of Regulations, title 10, section 2911, sets forth criteria for rehabilitation. Respondent has met the relevant factors set forth in section 2911, as follows:

(a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department.

Respondent's last conviction occurred eight years ago.

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

This factor is not applicable in this case.

(c) Expungement of the conviction or convictions resulting from immoral or antisocial acts.

Respondent's convictions have not been expunged.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of section 290 of the Penal Code.

This factor is not applicable to this case.

(e) Successful completion or early discharge from probation or parole.

Respondent eventually completed his parole and the probation imposed for all of his convictions.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

Respondent no longer drinks alcohol or uses controlled substances. He has been clean and sober for eight years.

(g) Payment of any fine imposed in connection with the criminal conviction.

Respondent has paid all fines and fees imposed by the Superior Court.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial.

Respondent now has a stable family life and is providing support for his children.

(i) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

Respondent has completed real estate courses while working full-time for Starbuck's Coffee Company in order to better provide for his children.

(j) Discharge of, or bonifide efforts towards discharging, adjudicated debts or monetary obligations to others.

This factor is not applicable in this case.

(k) Correction of business practices resulting in injury to others or with the potential to cause such injury.

This factor is not applicable in this case.

(l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

Respondent presented evidence of community involvement through his church in a program to help clothe and feed the homeless. In addition, respondent donate money to the Palm House drug rehabilitation program.

(m) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.

For the past eight years, respondent has focused his attention on his sobriety, his children, and his work. He no longer associates with the

people who were part of his life when he committed his crimes and abused drugs.

(n) Change in attitude from that which existed at the time of the commission of the criminal act. . .

Respondent has changed his attitude since he committed the crimes set forth above. This is evidenced by his steady employment over the past eight years, his participation in NA, his community involvement, and his efforts to rebuild his relationship with his children.

3. Pursuant to regulation section 2911, respondent established rehabilitation to the extent that the public would be adequately protected if respondent is granted a restricted real estate salesperson.

ORDER

The application of Earl Mathew Lewis, for a real estate salesperson license is denied; provided however, that 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 restricted license issued to Respondent shall not confer any property right in the privileges to be exercised, and the 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) to 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 shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

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 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 of the Commissioner which was 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 real estate license is required.

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, California 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 suspension or revocation of that license.

DATED: September 3, 2014



HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings