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DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

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By 

In the Matter of the Application of) No. H-31977 LA
)
) L-2005080429
)
JAMES STEPHEN BECKER,)
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)
)
Respondent.)
)

DECISION

The Proposed Decision dated March 9, 2006, 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 of Section 11522 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 attached hereto.

This Decision shall become effective at 12 o'clock noon on May 10, 2006.

IT IS SO ORDERED April 14, 2006.

JEFF DAVI
Real Estate Commissioner



BY: **John R. Liberator**
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JAMES STEPHEN BECKER,

Respondent.

Case No. H-31977 LA

OAH No. L2005080429

PROPOSED DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on February 9, 2006.

Janice A. Waddell (Complainant) was represented by James R. Peel, counsel for the Department of Real Estate (Department). James Stephen Becker (Respondent) was represented by Frank M. Buda, Attorney at Law.

At the beginning of the hearing, the administrative law judge denied Respondent's written motion dated December 22, 2005, to compel production of party witnesses and documents (Exhibit A), for the reasons as set forth on the record.

Oral and documentary evidence was received. The record was closed and the matter was submitted on February 9, 2006.

FACTUAL FINDINGS

1. The Statement of Issues, dated May 23, 2005, was made by Janice A. Waddell, a Deputy Real Estate Commissioner of the State of California, acting in her official capacity.

2a. On February 17, 2004, Respondent filed a written application with the Department for a real estate salesperson license, on the condition that any license issued as a result of that application would be subject to completion of certain educational requirements as set forth in Business and Professions Code section 10153.4. The application was denied and this matter ensued.

2b. In response to Question 25 of Respondent's application, which read, "Have you ever been convicted of any violation of law," Respondent answered "No" and failed to disclose the convictions set forth herein below.

3a. On November 20, 1985, in the Municipal Court of California, County of Los Angeles, in case no. M213379, Respondent was convicted, upon his plea of guilty, of violating Penal Code section 499b (taking a vehicle for temporary use without the owner's permission), a misdemeanor. The elements of this crime, by themselves, do not involve moral turpitude. Section 499b "defines a crime separate and distinct from and not necessarily related to theft." (*People v. Tellez* (1939) 32 Cal.App.2d 217, 219.) Further, the crime occurred more than 20 years ago, when Respondent was 18 years old. Under the circumstances, the administrative law judge concludes that this crime is not substantially related to the qualifications, functions and duties of a real estate salesperson.

3b. Imposition of sentence was suspended and Respondent was placed on summary probation for 24 months under various conditions including, incarceration for 60 days, which was suspended, and payment of a fine in the sum of \$255.

3c. The facts and circumstances underlying the conviction are as follows: In 1985, Respondent, along with a friend, took a car that did not belong to them for a ride.

4a. On January 8, 1986, in the Municipal Court of California, County of Los Angeles, in case no. M294245, Respondent was convicted, upon his plea of guilty, of violating Penal Code section 484, subdivision (a) (petty theft), a misdemeanor. This crime involves moral turpitude and is substantially related to the qualifications, functions and duties of a real estate salesperson. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

4b. Respondent was sentenced to one day of incarceration and payment of a fine in the sum of \$225.

4c. The facts and circumstances underlying the conviction are as follows: In 1985, Respondent was an employee of Mervyn's, a clothing store, and he stole a pair of shoes while he was at work. Respondent made restitution to Mervyn's.

5a. On July 14, 1987, in the Municipal Court of California, County of Los Angeles, in case no. 87M04539, Respondent was convicted, upon his plea of guilty, of violating Penal Code section 487.3 (grand theft: auto), a misdemeanor. This crime involves moral turpitude and is substantially related to the qualifications, functions and duties of a real estate salesperson (Cal. Code Regs., tit. 10, § 2910, subds. (a)(8)) and, in conjunction with Respondent's other crimes, demonstrates a pattern of repeated and willful disregard of law. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(10).)

5b. Imposition of sentence was suspended and Respondent was placed on probation for 24 months under various conditions, including incarceration for 60 days and payment of restitution. Respondent was on probation when he committed the offense.

5c. The facts and circumstances underlying the conviction are as follows: In June 1987, the police impounded Respondent's motorcycle. He was angry, so he took another person's motorcycle without the person's knowledge or permission.

6a. Respondent regrets he did not disclose his convictions. Many years ago, he asked his mother if these convictions would affect his chances for going to college or pursuing a career. His mother had told him that the convictions were expunged and "cleared" from his record. Respondent's mother wrote a letter of recommendation stating she told Respondent she "had his criminal records expunged," but "I never did the necessary footwork to have his records expunged, and feel bad that I made that statement so long ago."

6b. Before Respondent filed his application with the Department, he went to the Torrance courthouse to find records of his convictions, but he did not locate any records. This reinforced his belief that his mother's statement had been correct. When he filled out the application, he read the statement requiring the disclosure of expunged convictions, but he misunderstood it. Respondent was convinced his convictions were better than expunged because they were no longer on his record – they were "cleared."

7. Respondent was affiliated with the "wrong crowd" at the time of his convictions; after realizing he was going down the wrong path, he surrounded himself with positive people. He has had no arrests since 1987. He has received an Associates degree from a community college.

8. Respondent assists with handling real estate loan transactions for his employer, Dove Capital Corporation. Lawrence V. Jackson, President of Dove Capital, wrote a letter of recommendation stating that Respondent "mentioned the problems he had a long time ago, and has expressed remorse in those particular situations." Respondent has joint custody of his son with a 50-50 arrangement, alternating every week with his son's mother. He pays for his son's schooling and day care. He regularly attends church and leads a monthly gathering for new members. He is involved in a summer youth camp for teenagers in Big Bear Lake, and helps people at his church dealing with substance abuse. Respondent produced other letters of recommendation attesting to his honesty and truthfulness.

LEGAL CONCLUSIONS

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (b), for convictions of crimes involving moral turpitude. Respondent's two theft convictions involve moral turpitude, and are substantially related to the qualifications, functions and duties of a real estate salesperson, by reason of factual findings 4a and 5a.

2. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code section 480, subdivision (a), for convictions of crimes which are substantially related to the qualifications, functions and duties of a real estate salesperson, by reason of factual findings 4a and 5a.

3. When Respondent failed to disclose his convictions, he made a material misrepresentation of fact in the application. Cause exists to deny Respondent's application pursuant to Business and Professions Code section 10177, subdivision (a), by reason of factual findings 2b and 6. Respondent, however, has established that he had a good faith belief that he was not required to disclose the convictions, and there was no showing that he attempted to procure the license by fraud, misrepresentation or deceit.

4. When Respondent failed to disclose his convictions, he knowingly made a false statement of fact required to be revealed in the application. Cause exists to deny Respondent's application pursuant to Business and Professions Code section 480, subdivision (c). Respondent's omissions, however, were based on his good faith belief that he was not required to disclose the convictions. Findings 2b and 6.

5. Criteria have been developed by the Department pursuant to Business and Professions Code section 482, subdivision (a), for the purpose of evaluating the rehabilitation of a license applicant in considering whether to grant or deny a license on account of a crime committed by the applicant. (Cal. Code Regs., tit. 10, § 2911.) Respondent meets most of the applicable criteria: It has been almost 19 years since Respondent's most recent conviction (§ 2911, subd. (a)); he paid the court-ordered fines and restitution (§ 2911, subds. (b) & (g)); he was discharged from probation (§ 2911, subd. (e)); he is fulfilling parental and familial responsibilities (§ 2911, subd. (h)); he is involved in his church community (§ 2911, subd. (l)); and he has established new and different social and business relationships from those which existed at the time of the crimes (§ 2911, subd. (m)) Findings 7 and 8.

6. Respondent's crimes may well be the result of youthful mistakes. He has the support of his family, friends and employer, who are aware of his past and yet believe that Respondent possesses character traits of honesty and truthfulness. Under the circumstances, the public welfare, safety and interest can be adequately protected should Respondent be granted a restricted real estate salesperson license.

ORDER

Respondent'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 the 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 shall not be eligible to apply for the issuance of an unrestricted real estate license nor 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.

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's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within 18 months of the issuance of the restricted license under the provisions of section 10153.4, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective 18 months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

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5. Pursuant to section 10154, if Respondent has not satisfied the requirements for an unqualified license under section 10153.4, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: March 9, 2006.



MARK E. HARMAN

Administrative Law Judge

Office of Administrative Hearings

5/20/05
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FILED
MAY 31 2005
DEPARTMENT OF REAL ESTATE
[Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

11 In the Matter of the Application of) No. H-31977 LA
12 JAMES STEPHEN BECKER,)
13 Respondent.) STATEMENT OF ISSUES
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16 The Complainant, Janice A. Waddell, a Deputy Real
17 Estate Commissioner of the State of California, for Statement of
18 Issues against JAMES STEPHEN BECKER (Respondent) is informed and
19 alleges in her official capacity as follows:

I

20
21 On or about February 17, 2004, Respondent applied to
22 the Department of Real Estate of the State of California for a
23 real estate salesperson license with the knowledge and
24 understanding that any license issued as a result of that
25 application would be subject to the conditions of Section 10153.4
26 of the Business and Professions Code (hereinafter Code).
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II

In response to Question 25 of said application, to wit,
"Have you ever been convicted of any violation of law?",
Respondent answered "No".

III

On or about July 14, 1987, in the Municipal Court of
California, County of Los Angeles, Respondent was convicted of
violating Penal Code Section 487.3 (grand theft auto).

IV

On or about January 8, 1986, in the Municipal Court of
California, County of Los Angeles, Respondent was convicted of
violating Penal Code Section 484(a) (petty theft).

V

On or about November 20, 1985, in the Municipal Court
of California, County of Los Angeles, Respondent was convicted of
violating Vehicle Code Section 499(b) (take vehicle for temporary
use without owner's consent).

VI

The matters referred to in Paragraphs III, IV and V
involve moral turpitude and are substantially related to the
duties, functions and qualifications of a real estate licensee.

VII

The matters referred to in Paragraphs III, IV and V are
grounds to deny Respondent's application for a real estate
license under Section 480(a)(1) and 10177(b) of the Code.

VIII

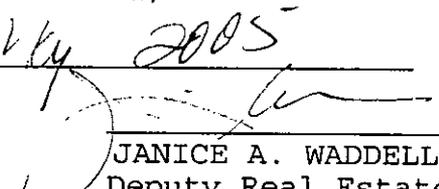
1 Respondent's failure to reveal the matters set forth in
2 Paragraphs III, IV and V in said application constitutes the
3 attempt to procure a real estate license by fraud,
4 misrepresentation or deceit, or by making a material misstatement
5 of fact or knowingly making a false statement of fact required to
6 be revealed in said application, which failure is cause for
7 denying Respondent's application for a real estate license under
8 Sections 480(c) and 10177(a) of the Code.
9

10 The Statement of Issues is brought under the provisions
11 of Section 10100, Division 4 of the Business and Professions Code
12 of the State of California and Sections 11500 through 11528 of
13 the Government Code.

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

20 Dated at Los Angeles, California,

21 this 23 day of July 2005

22 
23 JANICE A. WADDELL
Deputy Real Estate Commissioner

24 cc: James Stephen Becker
25 Dove Capital Corp.
26 Janice A. Waddell
27 Sacto.
CW