

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

GEORGE S. SAYAKHAMMY,

Respondent.

Case No. H-2215 FR

OAH No. 2008010708

PROPOSED DECISION

Gary A. Geren, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March 10, 2008, in Fresno, California.

James L. Beaver, Counsel, Department of Real Estate (Department), represented the complainant.

George S. Sayakhammy, respondent, represented himself.

The matter was held open to allow respondent to file a letter of recommendation from a real estate broker for whom respondent works. The letter was served on the Department on March 17, 2008. That same day the Department forwarded a copy of the letter to OAH, without lodging any objection about its admissibility or making a comment about its content. The letter was added to the record; the matter submitted on March 17, 2008.

FACTUAL FINDINGS

1. Complainant, John Sweeney, Deputy Real Estate Commissioner, State of California, made the Statement of Issues, while acting in his official capacity.
2. On June 25, 2007, respondent applied for a real estate salesperson's license. The Department denied respondent's application because he suffered a criminal conviction.

Respondent's conviction

3. On July 1, 2004, in the Superior Court of the State California, County of Fresno, respondent was convicted of violating Penal Code section 136.1, subdivision (c)(1), dissuading a witness from testifying by the threat of force or violence, a misdemeanor.

Respondent was sentenced to serve 180 days in the County jail. All but 10 of these days were stayed. Respondent served two of those days in County jail and he performed community service for one month. Respondent was ordered to pay fines and fees; he was placed on formal probation for two years.

The facts and circumstances that led to respondent's conviction are as follows: On March 2, 2004, respondent appeared at a courthouse to act as an informal interpreter for the mother of one of respondent's friends who had been charged with a crime. Gathered outside the courtroom that day were various witnesses and/or victims of the friend's alleged crime. Respondent intimidated those witnesses/victims by directing threatening looks and gestures towards them.

Matters in aggravation

4. The information charging respondent with his crime alleges that he committed his crime in the furtherance of criminal street gang activity. Respondent's probation was also conditioned upon his not having any contact with gang members. Respondent admitted at hearing that at the time of his arrest and conviction that he associated with gang members.

Matters in mitigation

5. Respondent's intimidation was limited to using "mean looks." No verbal threats or physical intimidation was committed by respondent.

Rehabilitation

6. Respondent completed his probation without committing any violations. He paid the fines and penalties imposed by the criminal court.

Respondent is now 22 years old and no longer associates with the same "crowd" that he associated with the time of his arrest. Respondent testified that he does not "drink, party or fight." Now, respondent uses his time to socialize by "networking" among real estate professionals.

Respondent's conviction has not been expunged; however, he intends to initiate proceedings to have that accomplished.

Respondent resides with his fiancée, who he has been in a relationship with for four years.

Respondent graduated from high school in 2003. He completed one year of training at Fresno City College to work as an automotive technician. However, respondent quit college to help support his father who had fallen on difficult financial times.

Respondent's parents are divorced; respondent shares a close relationship with both of them.

Respondent serves as a volunteer at the Boys' and Girls' Club, "playing with the kids." On two occasions, respondent also worked with a volunteer group to pick up trash at community parks.

Since September 2007, respondent has worked as a broker's assistant for Jason E. Johnson, in Fresno, California. Respondent has "never had a problem" working as a broker's assistant; he follows the office's policies and performs good work for his employer.

Mr. Johnson thinks highly of respondent's character and work ethic. Mr. Johnson submitted a letter of recommendation on respondent's behalf, noting that respondent has been "truly eager to learn this industry," and that he has "always displayed a true concern for the clients' financial welfare."

Respondent's testimony that he "learned a lesson" from his conviction appeared to be a genuine statement of his sentiment. His law-abiding conduct before and after his conviction is further indicia of his commitment to conduct his activities within the confines of the real estate law.

LEGAL CONCLUSIONS

Department's authority to discipline respondent

1. When an applicant has been convicted of a crime, the Department has the authority to deny the issuance of a license by virtue of Business and Professions Code section 10177, subdivision (b)¹. If the applicant suffered a misdemeanor conviction, the

¹ Business and Professions Code, section 10177 states:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

[1...1]

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw

Department must show that the conviction involved "moral turpitude." *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554.

2. Business and Professions Code, section 493, provides that the Department may consider the circumstances surrounding the commission of the applicant's crime to determine whether he or she should receive a license.²

Substantial relationship requirement

3. In order for the Department to deny issuing an applicant a license, it must establish that the applicant's conviction has a substantial relationship to the qualifications, functions and duties required of a license holder. California Code of Regulations, title 10, section 2910, subdivision (a), sets forth a non-exclusive list of guidelines for determining whether a criminal conviction is considered by the Department to be "substantially related."³

his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

² Business and Professions Code section 493 states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

³ California Code of Regulations, title 10, section 2910 states:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

- (1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.
- (2) Counterfeiting, forging or altering on of an instrument or the uttering of a false statement.
- (3) Willfully attempting to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by federal, state or local government.
- (4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

Cause for denial of applicant's license

4. Respondent was convicted of attempting to dissuade a witness from testifying, conduct directly intended to frustrate the administration of justice. It may be fairly stated, that respondent committed a crime involving moral turpitude. (*People v. McGee* (1914) 24 Cal.App.563, 572; *In re Disbarment of Craig* (1938) 12 Cal. 2d 93, 97; and see also *People v. McElroy* (2005) 126 Cal. App. 4th 474.)

Respondent's conviction stems from a crime deemed by the Department to be substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8), doing an unlawful act, threatening substantial harm to another.

5. Real estate agents are expected to respect the rule of law, and to conduct their affairs accordingly. Respondent's conviction stands inapposite to that expectation. As set forth in Factual Findings 1 through 4, and Legal Conclusions 1 through 4, cause exists for the Department to deny issuing respondent a salesperson's license.

(5) Sexually related conduct affecting a person who is an observer or non-consenting participant in the conduct or convictions which require registration pursuant to the provisions of Section 290 of the Penal Code.

(6) Willfully violating or failing to comply with a provision of Division 4 of the Business and Professions Code of the State of California.

(7) Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.

(8) Doing 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.

(9) Contempt of court or willful failure to comply with a court order.

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

(11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the department.

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or act were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

Mitigation and Rehabilitation

6. The Department may issue a conditional or restricted license to an applicant who shows persuasive evidence of his or her mitigation or rehabilitation. An applicant's conviction cannot be judged "in the abstract," rather an inquiry into the circumstances regarding the crime may be made to assess an applicant's fitness to hold a license.

The Department has enacted a non-exhaustive list of criteria against which to weigh and evaluate respondent's evidence of rehabilitation. California Code of Regulations, title 10, section 2911.⁴

⁴ California Code of Regulations, title 10, section 2911, states:

The following criteria have been developed by the department pursuant to section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

- (a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)
- (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.
- (c) Expungement of criminal convictions resulting from immoral or antisocial acts.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinance from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.
- (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
- (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.
- (i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.
- (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

7. In addition to these regulations, case law provides guidance in assessing the weight to be given evidence of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058) and fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940). Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is demonstrated by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991). The significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070).

8. Respondent's sole conviction stemmed from the commission of a crime he committed approximately four years ago. In the years that followed, respondent has changed his attitude as reflected by his choice to associate with different people than with whom he previously associated. He has been involved in a stable relationship with his fiancé, and he has helped his father. He is a valued employee of a real estate broker. While his civic activities have been meager, he has nonetheless made some contribution towards social benefit.

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

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

(m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.

(n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:

(1) Testimony of applicant.

(2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.

(3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.

(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

Respondent satisfied the terms of his criminal sentence. He has not re-offended. He completed his probation without violation. He has taken meaningful steps towards self-improvement by advancing his education, including his study of real estate.

As set forth in Factual Findings 5 through 7, and Legal Conclusions 6 and 7, respondent established evidence in mitigation of his conviction, as well as of his rehabilitation, such that it would not be contrary to public safety for the Department to issue him a restricted license.

ORDER

1. Respondent, George S. Sayakhammy's, application for a real estate salesperson license is denied, however, a restricted real estate salesperson license shall be issued to him 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:

2. 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.

3. 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 two (2) years have elapsed from the date of issuance of the restricted license to respondent.

4. 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

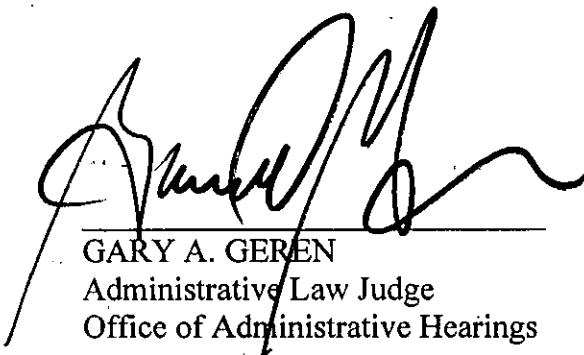
(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

5. 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 eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one 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 eighteen (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.

6. 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 (4) years after the date of the issuance of the preceding restricted license.

DATED: April 7, 2008



GARY A. GEREN
Administrative Law Judge
Office of Administrative Hearings

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FILED

DEC 17 2007

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) H-2215 FR
12 GEORGE SOPATHONE SAYAKHAMMY,)
13 Respondent.) STATEMENT OF ISSUES

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15 The Complainant, John Sweeney, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against GEORGE SOPATHONE SAYAKHAMMY (hereinafter "Respondent"),
18 alleges as follows:

19 I

20 Complainant, John Sweeney, a Deputy Real Estate
21 Commissioner of the State of California, makes this Statement of
22 Issues in his official capacity.

23 II

24 Respondent made application to the Department of Real
25 Estate of the State of California for a real estate salesperson
26 license on or about June 25, 2007 with the knowledge and
27 understanding that any license issued as a result of said

1 application would be subject to the conditions of Section 10153.4
2 of the California Business and Professions Code (hereinafter "the
3 Code").


4 III

5 On or about July 1, 2004, in the Superior Court of the
6 State of California, County of Fresno, Respondent was convicted
7 of the crime of Dissuading A Witness By Force Or Threat in
8 violation of Penal Code Section 136.1(c)(1), a misdemeanor and a
9 crime involving moral turpitude which bears a substantial
10 relationship under Section 2910, Title 10, California Code of
11 Regulations (herein "the Regulations"), to the qualifications,
12 functions or duties of a real estate licensee.

13 IV

14 Respondent's criminal conviction described in Paragraph
15 III, above, constitutes cause for denial of Respondent's
16 application for a real estate license under Sections 480(a) and
17 10177(b) of the California Business and Professions Code.

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

24 
25 John Sweeney
26 Deputy Real Estate Commissioner

27 Dated at Fresno, California
this 12th day of December, 2007.