

FILED

NOV -3 2008

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

*L. Zin*

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In the Matter of the Application of)  
LEON BORUNDA, )  
Respondent. )

No. H-2270 FRESNO  
N-2008070088

DECISION

The Proposed Decision dated September 25, 2008, 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 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

**NOV 24 2008**

on

IT IS SO ORDERED

*10/31/08*

JEFF DAVI  
Real Estate Commissioner

*Barbara J. Davis*

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

LEON BORUNDA,

Respondent.

Case No. H-2270 FR

OAH No. 2008070088

**PROPOSED DECISION**

On July 24, 2008, in Sacramento, California, Patricia Lee Connors, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Angela L. Cash, Counsel, represented complainant.

Leon Borunda represented himself.

Evidence was received, the matter was submitted, and the record closed on August 4, 2008.

**PROCEDURAL FINDINGS**

1. On July 24, 2007, Leon Borunda (respondent) applied for a real estate salesperson license.

2. On June 17, 2008, complainant John W. Sweeney, in his official capacity as a Deputy Real Estate Commissioner of the State of California, Department of Real Estate (department) made and filed a Statement of Issues, praying that the Commissioner refuse to authorize the issuance of a real estate salesperson license to respondent. Complainant filed the Statement of Issues based upon respondent's prior criminal conviction for petty theft.

## FACTUAL FINDINGS

1. On February 20, 2004, respondent was convicted in the Superior Court, County of San Luis Obispo, State of California, on a plea of *nolo contendere* to a violation of California Penal Code section 488 (petty theft), a misdemeanor. Respondent was sentenced to two days in county jail and 36 months probation.

2. Respondent was 20 at the time of this incident. Respondent attributed the 2004 conviction to his friendship with Brandon Vogt. Respondent testified that he, Vogt and several other friends had gone to Pismo Beach on January 3, 2004. According to respondent's testimony, Vogt had not stayed in the hotel with respondent. At the time they left for home, Vogt asked him if he would take a bicycle back in his truck and respondent agreed. According to respondent, after they were on the road for some time, Vogt told him the bicycle had been taken from the hotel. Respondent did not turn back to return the bicycle.

3. Respondent was contacted by Officer Rydberg of the Pismo Beach Police the following day. That police report indicates that respondent told the officer that Vogt had stayed at the hotel with him and then admitted the bicycle was stolen. Respondent told the officer that taking the bicycle was Vogt's idea. Respondent did not tell the officer that he did not know the bicycle was stolen until after they left Pismo Beach. The Officer also contacted Vogt, who stated that taking the bicycle was both his and respondent's idea. Respondent and Vogt returned the bicycle on January 5, 2007.

4. Respondent successfully completed his probation in January 2005 and has paid his fines. On July 10, 2008 this conviction was dismissed.

5. Respondent stated that he continued to socialize with Vogt for some time after the second incident, until his fiancée gave him an ultimatum due to the friends and paraphernalia Vogt brought with him. Respondent stated it was not easy to discontinue this relationship with Vogt, but ultimately changed his cell number and refused his calls. Respondent stated that for the past three years he has had a new group of friends.

6. Respondent is currently in a stable family situation; he is married and owns a home. He works for his family business, Fresno Moving and Storage Company as a resident sales manager. He testified that in his work he has access to homes and the valuables of his customers. Respondent has had no further arrests.

7. Respondent has been active in his community by refereeing and coaching boys soccer.

8. In 2007, respondent graduated from Heald College with an Associate of Science Degree in Business.

9. No witnesses testified on respondent's behalf. Respondent submitted a letter from Patrick Conner, Broker for London Properties. The letter indicates that respondent was interviewed in June 2007 and that London intends to hire him as a full time realtor when he receives his license. The letter continued that respondent had informed Mr. Conner of his petty theft conviction.

## LEGAL CONCLUSIONS

1. An applicant for a real estate salesperson license can be denied pursuant to Business and Professions Code section 480, subdivision (a), as that section interacts with Business and Professions Code section 10177, subdivision (b), by reason of a criminal offense which constitutes a crime of moral turpitude and is substantially related to the qualifications, functions or duties of a licensee of the Department. (Cal. Code Regs., tit. 10, §2910, subd. (a)(2).).

2. Respondent's petty theft conviction in this case constitutes a crime of moral turpitude. "The concept of 'moral turpitude' is an elusive one. However, there is widespread agreement that convictions of crimes involving fraudulent intent and intentional dishonesty for personal gain establish moral turpitude as a matter of law." (*Harrington v. Department of Real Estate* (1989) 214 Cal. App. 3d 394, 400, citing *In re Hallinan* (1957) 48 Cal.2d 52; *Yakov v. Board of Medical Examiners, supra*, 68 Cal.2d 67, 73; *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 ; *Golden v. Fox* (1979) 98 Cal.App.3d 167, 185.) Respondent's theft of the bicycle was done with the intent to obtain the item for his friend.

3. Respondent's theft crime is substantially related to the qualifications and duties of a real estate salesperson. California Code of Regulations, title 10, section 2910, subdivision (a), provides:

When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime ... the crime ... shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of section 480 and section 490 of the Code if it involves... (8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator.....

4. The determination whether a person is presently fit for a license should be made only after consideration of the conduct of the licensee and consideration of any factors introduced in justification, aggravation or mitigation. "The licensee, of course, should be permitted to introduce evidence of extenuative circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation" (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747).

5. In California Code of Regulations, title 10, section 2911, the department has set forth criteria for evaluating an applicant's rehabilitation.<sup>1</sup> Reviewing these criteria, respondent has demonstrated significant progress in his rehabilitation, terminating his friendship with Vogt and changing his circle of acquaintances. He has impressed his potential employer with his ability and appears to be in a stable life situation.

7. While respondent has made positive changes since his conviction, some of respondent's testimony raises the question whether he has actually taken responsibility for his prior behavior. In his response to the theft incident respondent places the blame entirely on Vogt, rather than admit his failure to avoid or to correct the situation immediately. There were also significant inconsistencies between his testimony at hearing and his prior statements to the department and to the police concerning the circumstances of the theft.

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<sup>1</sup> 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) Abstinence 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 quasicriminal 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 educational or vocational training courses for economic self improvement.
- (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
- (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.

8. For this reason, it would be in the public interest to grant respondent only a restricted license at this time.

### ORDER

Respondent Leon Borunda's application for a real estate salesperson's 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 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.

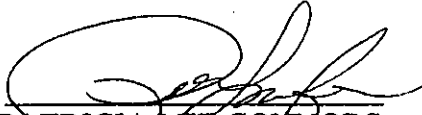
4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit:

(a) 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.

(b) 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.

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: September 25, 2008

  
PATRICIA LEE CONNORS  
Administrative Law Judge  
Office of Administrative Hearings

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FILED

JUN 17 2008

DEPARTMENT OF REAL ESTATE

By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Application of )  
12 LEON BORUNDA, )  
13 Respondent. )

No. H- 2270 FRESNO

STATEMENT OF ISSUES

15 The Complainant, John Sweeney, a Deputy Real Estate  
16 Commissioner of the State of California; for Statement of Issues  
17 against LEON BORUNDA (herein "Respondent"), alleges as follows:

18 I

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

22 II

23 On or about July 24, 2007, Respondent made application  
24 to the Department of Real Estate of the State of California  
25 (herein "the Department") for a real estate salesperson license  
26 with the knowledge and understanding that, pursuant to the  
27 provisions of Section 10153.3 of the Business and Professions



1 Code, any license issued as a result of said application would  
2 be subject to the conditions of Section 10153.4 of the  
3 California Business and Professions Code (herein "the Code").


4 III

5 On or about February 20, 2004, in the Superior Court  
6 of the State of California, County of San Luis Obispo, Case  
7 Number M000352392 Respondent was convicted of the crime of Theft  
8 in violation of Penal Code Section 484(a), 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, to the qualifications, functions or duties of a  
12 real estate licensee.

13 IV

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

25 Deputy Real Estate Commissioner

26 Dated at Fresno, California,  
27 this 13<sup>th</sup> day of June, 2008.