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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

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* * *

In the Matter of the Application of)

STEWART MICHAEL CUTLER)

NO. H-2363 SD

N-1998010005

Respondent.)

DECISION

The Proposed Decision dated March 2, 1998, 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 broker license is denied, but the right to a restricted real estate broker 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 broker 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 April 9, 1998.

IT IS SO ORDERED 3/16 1998.

JIM ANTT, JR.
Real Estate Commissioner

Jim Antt, Jr.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of	)	
Issues Against:	)	No. H-2363 SD
	)	
STEWARD MICHAEL CUTLER	)	OAH No. L-1998010005
	)	
Respondent.	)	

PROPOSED DECISION

On February 24, 1998, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Deidre L. Johnson, Real Estate Counsel, represented the complainant.

Todd Kobernick, Attorney At Law, represented respondent.

Evidence was received, the record was closed, and the matter was submitted.

FINDINGS OF FACT

I

J. Chris Graves, Deputy Real Estate Commissioner of the State of California (hereafter, "Department"), filed Statement of Issues No. H-2363 SD on November 13, 1997, in his official capacity. Respondent filed a Notice of Defense dated December 13, 1997.

II

On April 12, 1997, respondent submitted a Broker License Application to the Department. The application was denied and respondent requested a hearing.

III

On April 28, 1989, in the Superior Court of California, County of Los Angeles, in the case of People v. Stewart Cutler, No. A970709, respondent was convicted upon his plea of guilty of one count of violating Penal Code section 220, assault to commit rape, with a Penal Code section 12022(b) enhancement for using a

deadly or dangerous weapon (a knife) in the commission of the crime, a felony. Respondent was sentenced to state prison for a term of three years (two years for the crime [the lower term] and one year for the enhancement). The crime is one of moral turpitude and substantially related to the qualifications, functions and duties of a real estate broker pursuant to Title 10, California Code of Regulations, section 2910(a)(5)

The facts and circumstances of the offense are as follows: On June 3, 1988, respondent willfully and unlawfully assaulted a woman with the intent to commit rape and while doing so, he used a knife.

IV

Respondent is 38 years of age and is presently engaged to be married. He graduated from Stanford University in 1981 and from UCLA Law School in 1988. Between graduating from college and starting law school, respondent held several jobs, including writing technical materials for Hughes and with Lanier, and was a summer intern for the Judge Advocate General at Fort Campbell, Kentucky. He took the bar exam after finishing law school but did not pass it. He was then working as a graduate legal assistant with Caltrans in Los Angeles.

Respondent was incarcerated at Atascadero in the psychiatric unit until 1993 and then was on parole for six months. He is presently a legal assistant with a law firm and is paid by the hour. He does legal research and writing, and meets with clients. The law firm handles general business litigation. Prior to that, respondent worked for his fiancée's parents real estate business development doing office work and completing credit applications.

Respondent has performed some volunteer work. He worked for the Legal Aid office in Oceanside for about 1½ days a week for six months giving advice to indigents. He worked at Quail Botanical Garden and in the library at Temple Solel. He volunteered to work with the elderly at Seacrest retirement home. It was while he worked at Seacrest that he met his fiancée.

In 1983, respondent was diagnosed as suffering from schizophrenia. He was treated with Haldol. Although the medication helped his illness, he experienced severe side effects, including agitation, involuntary movements of his lips and tongue, and extreme restlessness. Because of the side effects, he did not always take the medication. During his incarceration, his symptoms returned and he heard voices and experienced delusions.

While he was in Atascadero, respondent received individual and group psychotherapy. In 1992, he was switched from Haldol to Clozaril, at that time an experimental anti-psychotic medication. Clozaril is dramatically more effective in treating schizophrenia while at the same time having far fewer side effects. Respondent has been taking Clozaril since then.

Since September 6, 1996, respondent has been treated by Dr. Dennis Pavlinac, a psychiatrist and an associate clinical professor of psychiatry at UCSD. Dr. Pavlinac prescribes the Clozaril. He reports respondent is not currently experiencing acute symptoms relating to his disorder and has an excellent response to the medication. His side effects are minimal. The doctor believes respondent's prognosis is quite good, and he is extremely cooperative and compliant in keeping his appointments. He feels respondent has an outstanding character and is highly ethical. Respondent sees Dr. Pavlinac about every six weeks, and has his blood tested every week to prevent serious illness.

Respondent also sees Kenneth Germanow, Ph.D., a clinical psychologist, twice a month. They started together on October 6, 1996. He believes respondent does not need therapy but provides it because respondent is proactive. He believes respondent wants to do all he can to avoid having significant emotional disturbances. Their work together is preventive and is focused in part on how respondent can control his anger. Dr. Germanow has closely watched respondent's reaction to stress and has found nothing unusual. He believes respondent is reliable and trustworthy, extremely responsible and considerate, and determined to do all he can to have as many safeguards in place as possible. He cannot imagine respondent not taking his medication and concurs with respondent the Clozaril has changed respondent's life. In his view, respondent's thinking is never disorganized or delusional; rather, it is insightful and mature. He does not believe respondent poses any type of threat to others.

Respondent's application was supported by the testimony and declarations of others, including the testimony of his mother, who described respondent in similarly glowing terms. Respondent's appearance at the hearing mirrored their descriptions of him as thoughtful, serious, highly intelligent, caring, and honest. More importantly, they describe a person completely different from the one in 1988 who assaulted a woman with a knife. They all believe he is living a normal life and presents no threat to anyone.

At the time he committed the crime, respondent was experiencing a number of stresses which he apparently could not handle. In addition to his illness and the medication, his father had just passed away, and he had failed the bar exam. He went to parties and used and abused marijuana and alcohol.

Since his release from prison, respondent lives a stable, quiet life, centered upon his fiance' and his temple. He started attending Alcoholics Anonymous meetings while in prison and went to meetings for four years. He has not used an illegal drug or drank any alcohol since 1989.

Respondent readily admitted committing the crime and causing emotional harm to the victim.

V

The Department's Criteria of Rehabilitation are set forth in title 10, California Code of Regulations, section 2911. In applying those criteria, the following is considered:

The crime occurred nearly ten years ago, and was a single act. He readily admitted it. There is no history of other criminal activity. There is no evidence the conviction was expunged or respondent completed probation or parole early. Restitution to the victim is not an issue.

While the denial was not based on drug use, respondent recognized while in prison he had a drug and alcohol problem, and voluntarily addressed it. He continues in therapy to prevent further problems. He has remained sober for nine years.

There was substantial evidence of a stable home and family life. Respondent is close to his mother and is engaged to be married. He is close to and at one time worked for his fiance's parents. He works full time and is self-supporting. He participates in his temple and voluntarily performs community service. He is highly educated. His life is considerably different from the one he led in 1988. His attitude is likewise considerably different. He sincerely wants to avoid the problems which befell him a decade ago.

While respondent's rehabilitative efforts cover only a five year period since his release from prison, they are substantial. Respondent has met his burden of establishing rehabilitation, and is entitled to a broker's license, albeit a restricted one.

DETERMINATION OF ISSUES

I

Cause to deny respondent's application for a real estate broker's license was established for violation of Business and Professions Code sections 480 and 10177(b), by reason of Finding III.

II

Cause to grant respondent's application for a real estate broker's license was established by reason of Findings IV and V.

ORDER

Respondent's application for a real estate broker's license is denied; provided, however, a restricted real estate broker's license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code if respondent makes application therefor within 90 days from the effective date of the Decision herein. 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 and 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 one year has elapsed from the date of issuance of the restricted license to respondent.

Dated: March 2, 1998


ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
DEC 30 1997
DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

STEWART MICHAEL CUTLER,

Respondent

By Kathleen Contreras

Case No. H-2363 SD

OAH No. _____

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____

The Office of Administrative Hearings, 1350 Front Street,

Suite 6022, San Diego, California 92101

on Tuesday -- February 24, 1998, at the hour of 1:30 PM,
or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place
of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within
ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days
will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You
are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent
yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the
Department may take disciplinary action against you based upon any express admission or other evidence including
affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are
not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses
testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the
production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who
does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs.
The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: December 19, 1997

By Deidre L. Johnson
DEIDRE L. JOHNSON Counsel

1 DAVID B. SEALS, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
DEC 10 1997
DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of)
13 STEWART MICHAEL CUTLER,)
14 Respondent.)

NO. H-2363 SD

STATEMENT OF ISSUES

15
16 The Complainant, J. Chris Graves, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against STEWART MICHAEL CUTLER (hereinafter "Respondent"), alleges
19 as follows:

20 I

21 Respondent made application to the Department of Real
22 Estate of the State of California for a real estate broker license
23 on or about April 16, 1997.

24 II

25 Complainant, J. Chris Graves, a Deputy Real Estate
26 Commissioner of the State of California, makes this Statement of
27 Issues in his official capacity and not otherwise.

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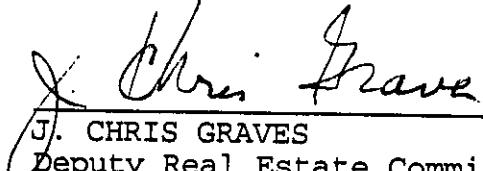
III

On or about April 28, 1989, in the Superior Court of California, County of Los Angeles, Respondent was convicted of violation of Section 220 of the California Penal Code (Assault to Commit Rape) with a California Penal Code Section 12022(b) enhancement, a felony and a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

IV

The crime of which Respondent was convicted, as alleged above, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

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


J. CHRIS GRAVES
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 13th day of November, 1997.