

FILED

AUG 24 2012

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: R. McDonald

In the Matter of the Accusation of)	
)	NO. H-2628 FR
JASON STEPHEN MOYER,)	L-2011060901
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated July 16, 2012, 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 correction is made:

Conditions "5" and "6" of the Order are not adopted and shall not be a part of the Decision.

The Decision suspends or revokes one or more real estate licenses, but the right to a restricted license is granted to Respondent.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon on SEP 13 2012.

IT IS SO ORDERED 8/17/2012

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JASON STEPHEN MOYER,

Respondent.

Case No.: H-2628 FR

OAH No.: 2011060901

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on June 18, 2012.

Diane Lee, Staff Counsel, represented the Complainant.

Respondent appeared in person and was represented by Frank Buda, Attorney at Law.

Evidence was presented and the matter thereafter submitted.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. Complainant Luke Martin, a Deputy Real Estate Commissioner of the State of California, brought the Statement of Issues in his official capacity.

2. Jason Stephen Moyer, Respondent herein, is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code as a real estate salesperson.

Criminal Convictions

3. On or about August 13, 2008, during early morning hours Respondent drove his vehicle while he was drunk with a BAC¹ of .08% or greater resulting in the conviction set forth in Finding 4.

4. On November 7, 2008, in the Los Angeles County Superior Court, State of California, Case Number 8NW04049, Respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (DUI 1).

5. On or about September 13, 2009, during the early morning hours – less than a year after the DUI 1 conviction – Respondent drove his vehicle while drunk and hit a utility pole at approximately 55 mph. He suffered trauma to the head and other body parts. During the course of his hospitalization – while still alcohol impaired – he became violent and belligerent toward peace officers. While a peace officer acting within his lawful was attempting to fulfill his required duties, Respondent attempted to remove a firearm from the peace officer. Respondent's conduct set forth in this Finding resulted in the two misdemeanors set forth in Finding 6.

6. On April 27, 2010, in the Kern County Superior Court, State of California, Case Number BF129399A, Respondent was convicted of violating Vehicle Code section 23152, subdivision (b), a misdemeanor (DUI 2) with a Vehicle Code section 23540 enhancement (Multiple DUI convictions within 10 years) and violating Penal Code section 148, subdivision (d) (Attempted removal of a firearm from a peace officer), a misdemeanor (PC 148).

Substantial Relationship

7. DUI 1 and DUI 2 constitute two convictions involving the consumption or use of alcohol when both of the convictions involve driving and the use or consumption of alcohol. Accordingly, said misdemeanors bear a substantial relationship to the qualifications, functions, or duties of a real estate licensee pursuant to Chapter 6, California Code of Regulations, title 10, section 2910, subdivision (a) (11).

8. PC 148 constitutes doing of any unlawful act with the threat of doing substantial injury to the person or property of another. Accordingly, said misdemeanor bears a substantial relationship to the qualifications, functions or duties of a real estate licensee pursuant to chapter 6, California Code of Regulations, section 2910, subdivision (a) (8).

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¹ Blood Alcohol content (BAC), also called blood alcohol concentration, blood ethanol concentration, or blood alcohol level is expressed as a percentage of alcohol (generally in the sense of ethanol) in the blood.

9. DUI 1, DUI 2 and PC 148 when combined, constitute conduct which demonstrates a pattern of repeated and willful disregard of law. Accordingly, said misdemeanors bear a substantial relationship to the qualifications, functions or duties of a real estate licensee pursuant to chapter 6, California Code of Regulations, section 2910, subdivision (a) (10).

Aggravation

10. On April 22, 1996, in Kern County Superior Court, State of California, Case Number BM517130A, Respondent was convicted of violating Vehicle Code section 23103 of (Reckless driving), a misdemeanor.

11. DUI 2 occurred which Respondent was on probation for DUI 1.

Rehabilitation and Character

12. Respondent has timely fulfilled all court ordered sanctions with regard to the three misdemeanors including the completion of a work release program and the payment of all fines and assessments. Respondent received early discharge from a three year summary probation, imposed on April 27, 2010, when the court, pursuant to Respondent's motion terminated probation on June 13, 2012.

13. To restore his driving privilege and to regain sobriety Respondent enrolled into the STEPS Rosedale 18-Month Multiple Offender DUI Program on May 17, 2010. A notice of completion certificate, with a date of completion of November 17, 2011, was filed by the DMV on November 22, 2011. It was noted on the STEPS Report of June 14, 2011: "Participant is meeting requirements of DUI Program at this time. Excellent attendance and appears actively engaged in positive behavioral change at this time."

14. Prior to his career in real estate Respondent was an exemplary State employee for eighteen years performing the duties of Correction Officer for the California Department of Correction/Wasco State Prison. He was routinely promoted based on his performance, reaching the level of Correctional Counselor Supervisor. Over the years of State service he received numerous awards, certificates of commendation and like accolades.

15. Respondent is presently employed by Watson Realty in Bakersfield. Ken Carter, one of Watson's Brokers gave credible testimony as to Respondent's present good character in a writing which is incorporated into his oral testimony:

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As the Broker for Watson Realty ERA, I was made aware of Jason's 1996 misdemeanor reckless driving case, 2008 DUI, 2010 misdemeanor DUI, attempted removal of an officer's gun convictions and the current accusation filed against his real estate license upon notification by the Department of Real Estate in May, 2011.

Considering the foregoing, I find Jason to be honest, forthright and professional. I have never seen nor heard him of drinking alcohol, nor witnessed any unprofessional behavior at anytime. He is kind, friendly and warmly regarded among all of his peers. Every bit of feedback and correspondence that I have ever received regarding Jason Moyer from managers, peers, support staff and clients has been extremely positive.

Jason has personally expressed to me his extreme regret and remorse for his past actions. He has demonstrated the highest amount of integrity and responsibility while working at Watson Realty ERA.

Although Jason has only been with Watson Realty ERA full – time for the past year and eight months and is relatively new to the Real Estate profession, he has already excelled and surpassed many highly skilled and very experienced Realtors who have been in the industry for years. In January, Jason was recognized for being one of the top Realtors in our company. He was unanimously voted "Rookie of the Year" and is already regarded as one of the top up and coming Realtors in all of Bakersfield. He is currently on track this year to receive the coveted "Rising Star" award.

Jason acknowledges his past mistakes and has accepted responsibility for his actions and has not attempted to put the blame on anyone else for his current situation. I know that he had a very distinguished career in law enforcement for 18½ years and was highly regarded in his profession before he resigned. Jason is now not only attempting to move forward and put his past behind him, but he is actually moving forward and excelling in a very difficult industry at the absolute most difficult time for Realtors that I have ever experienced.

I would like to conclude that I find Jason Moyer to be an ethical person who is trustworthy, hardworking and professional. Jason has my absolute 100% full support and the full support of Watson Realty ERA. I cannot state enough how strongly I feel that Mr. Moyer should be allowed to retain his Real Estate license.

His licensed activities are closely supervised and will receive all the more supervision of his activities should he receive a restricted real estate license.

16. The credible testimony set forth in Finding 15 was corroborated by the credible testimony of William Redmond, another Broker of Record for Watson. Mr. Redmond testified in paraphrase that Respondent “. . . has the utmost integrity . . . cares about people . . . has a great heart.” Mr. Redmond, based on Respondent’s reputation in the community recruited Respondent and – as a hands on broker – coached Respondent.

17. Julie Camp, former General Manager of Watson gave credible testimony as to Respondent’s present good character in a writing which is incorporated into her oral testimony:

I have been Jason’s General Manager since he started his career here at Watson Realty, ERA. As the General Manager of Watson Realty ERA, I am aware of Jason’s 2008 DUI, 2010 misdemeanor DUI, attempted removal of an officer’s gun convictions and the current accusation filed against his real estate license by the DRE. I find him to be honest and professional. I am also aware of his older 1996 misdemeanor reckless driving case. I have never seen him intoxicated in a business or working situation, nor act aggressively.

I believe that Jason has personally expressed to me his regret for his actions. Jason has stated and I have witnessed that he does not drink alcohol and drive.

Jason is very quick thinking, has great organizational skills and a pleasant demeanor when working with people. He is one of the best salesperson I have ever met. He is skilled at sales, great at managing his time and incredibly organized. He is persistent without being annoying, and above all he generates results. In our company, Jason has set the bar high. Obviously, sales are a highly competitive field. Each time our company sets a sales target or held a contest, we knew Jason would be that agent to beat. Jason

has not allowed his success to go to his head. Instead, he has shared his good habits with other agents and is working towards the good of the entire company. He truly gets behind the project at hand, and is genuine and convincing.

Jason Moyer is efficient and effective in his professional role, but also takes the time to engage coworkers and clients with a genuine interest in how they were doing. I wish all our agents could be as kind and friendly as Jason.

It is always a pleasure to have Jason in the office. He is friendly, high-energy individual with a great sense of humor. We, at Watson Realty, ERA, are happy to have Jason on board.

Jason has exceeded our expectations when it comes to selling real estate and would agree that he is worthy of keeping his real estate license. His licensed activities would be closely supervised and would also agree to supervise his activities should he receive a restricted real estate license.

18. A number of persons familiar with Respondent's including friends and clients proffered credible letters attesting to Respondent's character traits of honesty, integrity and diligence.

19. Respondent's parents proffered a credible attestation, in writing, to Respondent's commitment to remain sober and – following his divorce – his commitment to his now girlfriend Shawna Lauderdale. Respondent remains close to his parents and to his three children Hunter aged 21, Carson aged 19 and Chloe aged 11. At present he has stability of family life and fulfills parental and familial responsibilities. Ms. Lauderdale, a Case Record Technician at Wasco State Prison gave credible testimony as to Respondent's parenting skills and as to his fealty to his family and to her children. Additionally, she testified “. . . he is the most truthful person I know.”

20. Respondent's testimony was open, candid and truthful. By his testimony and his demeanor he demonstrated contrition and remorse for his wrongful conduct and for the harm that conduct caused to his family, to others and to his career. The contrition and remorse persists. Respondent has changed and that change was demonstrated by his testimony and the testimony and attestation of others (Findings 15 through 19). Respondent is presently socially responsible.

LEGAL CONCLUSIONS

Applicable Authority

1. These proceedings are brought under the provisions of section 10100, Division 4 of the Business and Professions Code of the State of California and sections 11500 through 11528 of the Government Code of the State of California.

Violations

2. Cause exists for discipline of Respondent's real estate license pursuant to Business and Professions Code section 490 and 10177, subdivision (b) by reason of Findings 4 and 6 in combination with Findings 7, 8 and 9.

Disposition

3. As is reflected in the Findings Respondent has led a professionally responsible life but, while he has been a mature person in his forties, he has been socially irresponsible. Each of his misdemeanors involved conduct which placed others at risk of serious injury or death.

4. California Code of Regulations, title 10, section 2912 sets forth criteria for rehabilitation in assessing discipline, if any, resulting from criminal convictions. Notwithstanding Legal Conclusions 2 and 3 Respondent has met or is meeting most applicable criteria by reason of Findings 12 through 20. Accordingly, to date, Respondent has established, in the public interest, the necessary rehabilitation for licensure on a restricted status with the caveat set forth in Legal Conclusion 5.

5. Finding 13 documents efforts of rehabilitation from alcohol abuse which led to dangerous conduct. However, there is no evidence of recent negative testing and there is no evidence of sustained attendance at a 12-Step program. Accordingly, condition number 4 of the following order is necessary in the public interest.

ORDER

Respondent's real estate salesperson license is revoked; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10153.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subjected 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 be 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 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

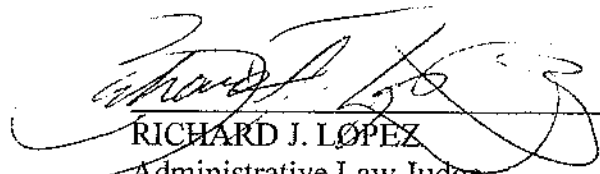
(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Six months after the issuance of the restricted license, and at six months intervals thereafter during the term of any restricted license issued pursuant to this Decision, Respondent shall provide proof acceptable to the Real Estate Commissioner that, during the preceding six months, Respondent has, each and every week, attended one or more sessions of Alcoholics Anonymous or similar 12 Step or substance abuse program, or that such attendance in any week was impractical due to travel for work, the illness of Respondent or a member of Respondent's family, vacation, incarceration, residential treatment for substance abuse, extreme personal hardship for Respondent or a member of Respondent's family, or family emergency. Respondent shall submit such proof to the Los Angeles Crisis Response Team Manager of the Department of Real Estate. The Commissioner may suspend the restricted license issued to Respondent pending a hearing held in accordance with section 11500, *et seq.*, of the Government Code, if such proof is not timely submitted as provided for herein or as provided or in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until such proof is submitted or until Respondent enters into an agreement satisfactory to the Commissioner to provide such proof, or until a decision providing otherwise is adopted following a hearing held pursuant to this condition.

5. Respondent's restricted real estate salesperson's 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 10153.5, 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 10153.5, 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 10153.5 until four years after the date of the issuance of the preceding restricted license.

Dated: July 16, 2012


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

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