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BEFORE THE DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

By Laurie A. Zier

In the Matter of the Application of)
)
)
 ROBERT CAMERON,)
)
)
 Respondent.)
_____)

NO. H-2744 SAC

N-40425

DECISION

The Proposed Decision dated June 12, 1992
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. There is no statutory restriction on when
application may again be made for this license. If and when
application is again made for this license, all competent evidence
of rehabilitation presented by Respondent will be considered by
the Real Estate Commissioner. A copy of the Commissioner's
Criteria of Rehabilitation is appended hereto for the information
of Respondent.

The Decision shall become effective at 12 o'clock noon on
July 27, 1992,

IT IS SO ORDERED June 25, 1992.

CLARK WALLACE
Real Estate Commissioner

John R. Liberator
By: JOHN R. LIBERATOR
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement)	
of Issues Against:)	No. H-2744 SAC
)	
ROBERT CAMERON,)	OAH No. N-40425
)	
)	
Respondent.)	
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PROPOSED DECISION

On May 26, 1992, in Sacramento, California, M. Amanda Behe, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

David Peters, Staff Counsel, represented complainant Department of Real Estate.

Respondent Robert Cameron represented himself.

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

FINDINGS OF FACT

I

Charles W. Koenig is a Deputy Real Estate Commissioner of the Department of Real Estate (hereinafter "the Department"), State of California, and filed the Statement of Issues in his official capacity.

II

Robert Cameron (hereinafter "respondent") filed an application with the Department for a real estate salesperson license on August 8, 1991, pursuant to the provisions of section 10153.3 of the Business and Professions Code.

As of the date of this hearing respondent has not successfully completed all of the courses required pursuant to Business and Professions Code section 10153.4.

III

On that application, which was filed under penalty of perjury, respondent was directed to list any convictions other than traffic violations where the disposition was a fine and the amount was \$100 or less. Respondent noted that he was convicted of violation of section 2101 of the Unemployment Insurance Code and that the disposition of that offense was "Repayment of Benefit".

Respondent filed with his application a letter dated August 6, 1991, which stated the following:

"While I was working on my undergraduate degree, I was on unemployment due to my employer going out of business. I did some weekend work for a friend of mine which I failed to report to the Unemployment Office. I was subsequently asked to pay back the Unemployment Benefit, I did so and the matter was closed. I have filed a petition to have this removed from any existing record that I may have. Enclosed is a copy of the petition filed August 7th."

At hearing respondent admitted that, contrary to his representation to the Department, the illegally obtained unemployment benefits have not been repaid as ordered by the court.

IV

Respondent was convicted on October 4, 1988, in the Municipal Court, Sacramento Municipal Court District, County of Sacramento, State of California, of violation of Section 2101 of the Unemployment Insurance Code (False Statement, Representation or Concealment to Obtain, Increase, Reduce or Defeat Benefit or Payment). On that date the court ordered respondent to appear on November 2, 1988 to show proof of restitution. Respondent failed to appear as ordered. He was arrested pursuant to a Sacramento County warrant on August 2, 1989.

Respondent next appeared in the Sacramento Municipal Court on August 31, 1989, and was ordered to repay the illegally obtained unemployment benefits, a sum of \$1330, at the rate of \$37.00 per month. Respondent has not yet repaid the illegally obtained benefits. In addition, there is an outstanding judgment of approximately \$6000 against respondent for a traffic accident; respondent was paying that judgment at the rate of \$120 per month and then had that payment reduced to \$50 when he commenced vocational rehabilitation.

V

Respondent testified that the circumstances of the crime are that, while working on his undergraduate degree, he was laid off and therefore obtained unemployment benefits. While receiving those benefits he worked "for a friend" and was paid "under the table" "in cash". Respondent acknowledged at hearing that he knew the income would not be reported.

Respondent testified that he was not even aware of his conviction until he was fingerprinted, pursuant to the regulations of the State Department of Social Services, in connection with his volunteer work in a group home. His community service has been considered in the Determination of Issues and Order herein.

Respondent was employed by the State of California as a Correctional Officer at the California Medical Facility-South. He testified that he is now "going through vocational rehabilitation through worker's comp" as well as "going to school and law school". He further stated "if it was up to me I would not work".

Respondent is an investor in an entity to which he referred to as "the Bolden Financial Services Group", which apparently provides income tax services to individuals. The record does not disclose that he has any education or training to perform the income tax preparation services he provides.

VI

Respondent argues that the license should issue because he has never harmed anyone and because the crime of which he was convicted was not significant. The issues at hearing are not whether he is a dangerous person, but whether he displays the truthfulness and integrity required of a real estate licensee who is entrusted with the client's welfare.

A real estate licensee has a fiduciary duty to his/her principal and is obligated to disclose material facts and to act in good faith. Ward v. Taggart (1959) 51 Cal.2d 736, 741; Montoya v. McLeod (1985) 176 Cal.App.3d 57, 64, 221 Cal.Rptr. 353. Throughout the transaction and in all communications and actions the licensee is obliged to act in the highest good faith, and to take necessary steps to insure the safety and further the interests of his/her client. That the amount of benefits respondent illegally obtained was only slightly over \$1000 is not dispositive of his fitness for licensure. Rather, the crucial point is that he engaged in a pattern of dishonesty in obtaining those benefits, and in working for money which he knew would not be reported as income. In light of his attitude, and that he has failed to yet repay the sum ordered by the court despite having

been employed since, the record does not establish that even a restricted license should issue.

DETERMINATION OF ISSUES

I

The crime of which respondent was convicted is an offense involving moral turpitude which bears a substantial relationship under 10 California Code of Regulations section 2910 to the qualifications, functions, or duties of a real estate licensee.

The crime set forth in Finding IV is an offense which demonstrates dishonesty irrespective of his personal financial difficulties.

The acts in which respondent engaged are well within the definition of moral turpitude recently considered by the Fifth District Court of Appeals in Clerici v. Department of Motor Vehicles (1990) 224 Cal.App.3d 1016, 274 Cal.Rptr. 230. The Court stated:

"...Moral turpitude has also been described as any crime or misconduct committed without excuse, or any 'dishonest or immoral' act not necessarily a crime. (In re Higbie (1972) 6 Cal.3d 562, 569 [99 Cal.Rptr. 865, 493 P.2d 97].) The definition depends on the state of public morals and may vary according to the community or the times, as well as on the degree of public harm produced by the act in question. (Golde v. Fox (1979) 98 Cal.App.3d 167, 181 [159 Cal.Rptr.864].) Its purpose as a legislated standard is not punishment but protection of the public. (Rice v. Alcoholic Beverage etc. Appeals Board (1979) 89 Cal.App.3d 30, 36 [152 Cal. Rptr. 285].)

"Moral turpitude has also been defined in criminal cases involving the use of prior convictions for impeachment purposes. Crimes which reveal a defendant's dishonesty, general 'readiness to do evil,' bad character or moral depravity involve moral turpitude. (People v. Castro (1985) 38 Cal.3d 301, 315 [211 Cal.Rptr. 719, 696 P.2d 111]; People v. Hunt (1985) 169 Cal.App.3d 668, 674 [215 Cal.Rptr. 429].) "[W]hen it is proved that a witness has been convicted of a crime, the only ground for disbelieving him which such proof affords is the general readiness to do evil which the conviction may be supposed to show. It is from the general disposition alone that the jury is asked to infer a readiness to lie in a particular case and thence that he has lied in fact. The evidence has

no tendency to prove that he was mistaken, but only that he has perjured himself, and it reaches that conclusion solely through the general proposition that he is of bad character and unworthy of credit." ' (People v. Castro, supra, 38 Cal.3d 301, 314, quoting Gertz v. Finchburg Railroad (1884) 137 Mass. 77, 78)."

224 Cal.App.3d 1016, 1027-1028

II

The preponderance of the evidence establishes cause for denial of respondent's application for a license pursuant to Business and Professions Code sections 480 and 10177(b).

III

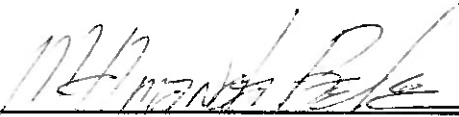
The criteria of rehabilitation set forth in 10 California Code of Regulations section 2912 have been considered in the Determination of Issues and Order herein. Respondent does not display genuine remorse for the crime, other than his view that it is "embarrassing" to have "a rap sheet". Restitution has not been paid despite the court's order. Even more importantly, respondent misrepresented to the Department in his letter appended to his application that he did pay back the illegally obtained unemployment benefits. The conviction has not been expunged, apparently because respondent has not yet paid back those sums as ordered.

The public interest would not be protected if respondent were permitted to practice as a real estate salesperson. The nature of the salesperson's relationship with clients, the responsibility he may exercise, and the paramount need for fiscal honesty is considered in this regard.

ORDER

The application is denied.

Dated: June 13, 1992


M. AMANDA BEHE
Administrative Law Judge
Office of Administrative Hearings

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

FILED
FEB 18 1992
DEPARTMENT OF REAL ESTATE

5 Telephone: (916) 739-3607

6 By *Laurie A. Zorn*

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 ROBERT CAMERON,) No. H-2744 SAC
13 Respondent.) STATEMENT OF ISSUES
14 _____)

15 The Complainant, Charles W. Koenig, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against ROBERT CAMERON (hereinafter "Respondent"), alleges as
18 follows:

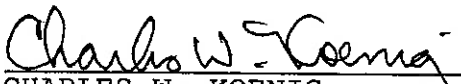
19 I

20 Respondent, pursuant to the provisions of Section
21 10153.3 of the Business and Professions Code, made application to
22 the Department of Real Estate of the State of California for a
23 real estate salesperson license on or about August 8, 1991 with
24 the knowledge and understanding that any license issued as a
25 result of said application would be subject to the conditions of
26 Section 10153.4 of the Business and Professions Code.

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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 salesperson license to Respondent, and for such other and further relief as may be proper in the premises.


CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 14th day of February, 1992.