

FILED
OCT 24 2012

DEPARTMENT OF REAL ESTATE
By R. Mat

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
)	NO. H-2768 FR
LUIS FILIPE ARAUJO,)	
)	OAH NO. 2012070364
Respondent.)	
_____)	

DECISION

The Proposed Decision dated September 12, 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)(C) of the Government Code, the following correction is made to Proposed Decision:


Page 4, item 16(a), "...Respondent has been a "pleasure to work with on a personal level;...".

This Decision shall become effective immediately.

IT IS SO ORDERED

10/23/2012

REAL ESTATE COMMISSIONER



By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

LUIS FILIPE ARAUJO,

Respondent.

Case No. H-2768 FR

OAH No. 2012070364

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 31, 2012, in Sacramento, California.

John Van Driel, Assistant Chief Counsel, represented Brenda A. Smith, a Deputy Real Estate Commissioner (complainant), Department of Real Estate (Department), State of California.

Luis Filipe Araujo (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted on August 31, 2012.

FACTUAL FINDINGS

1. Complainant made and filed the Statement of Issues in her official capacity.
2. On April 8, 2010, respondent made application to the Department for a real estate salesperson license. Complainant seeks to deny respondent's application based upon his convictions described below.

Convictions

3. On October 15, 1996, in the Stanislaus County Superior Court, respondent, on a plea of guilty, was convicted of violating Penal Code section 273.5, battery on spouse with great bodily injury. Respondent was placed on probation for three years. He was ordered to

serve 180 days in jail, but was given credit for 18 days. He was also ordered to: (1) pay fines and fees; (2) totally abstain from the use of intoxicating beverages; (3) participate in an alcohol detection program; (4) participate in domestic violence/batterers counseling and Alcoholics Anonymous (AA); (5) participate in an alcohol residential treatment program; and (6) not annoy, harass or assault his wife.

4. The incident underlying respondent's conviction occurred on October 4, 1996. Respondent came home that day "drunk and belligerent." He and his wife got into an argument. Respondent's wife reported to the police that respondent punched her in the face twice, knocking out her two front teeth.

5. Respondent's testimony about the incident was different from the information that his wife gave to the police. According to respondent, when he came home drunk, he and his wife struggled over his paychecks. He pulled his checks out of his wife's hands, causing her to fall face forward onto the arm of the couch. He stated that he left the house before he learned how badly injured his wife was. Respondent testified that his wife later admitted to him that she had lied to police about how her teeth were knocked out. Respondent was born in 1971. He was 25 years old at the time of this incident. He and his wife had three young children.

6. Respondent spent his 180-day jail term sleeping in jail at night, but going to work during the day, wearing an ankle bracelet. During his three years of probation, he reported to a probation officer on a regular basis for drug and alcohol testing. He testified that he only failed the alcohol testing one time during his probation. On December 9, 1999, respondent's 1996 felony conviction was reduced to a misdemeanor under Penal Code section 17, subdivision (b), and dismissed under Penal Code section 1204.3.

7. On May 20, 2002, in the Stanislaus County Superior Court, respondent, on a plea of nolo contendere, was convicted of violating Penal Code section sections 537e, buying property with its identification removed, and 12021, subdivision (c), felon in possession of a firearm, both misdemeanors. Respondent was placed on informal probation for three years. He was ordered to: (1) pay fines and fees; (2) serve 67 days in jail, but received credit for two days served; (3) participate in mental health and/or church counseling; and (4) not own or possess a firearm or ammunition for 10 years.

8. The incident underlying respondent's 2002 convictions occurred on September 1, 2001. Respondent threatened to commit suicide. Respondent duct-taped a gun to his hand, but his family was able to get the gun away from him and lock it inside a vehicle. The police asked respondent if he wanted to go the Stanislaus Behavioral Center to talk to a counselor, but respondent refused, saying it was "against his beliefs." When the police found respondent's gun, it was not loaded. The police noted that its serial number had been scratched off.

9. At the hearing, respondent testified that at the time of this incident, he was drinking heavily and taking prescription pain medications. He had felt suicidal for some time. He called family and church members and told them he wanted to commit suicide. He bought the firearm from his cousin. He testified that that he was not aware that the serial number had been scratched off. He only spent a "couple of days" in jail, and participated in an Alternative Work Program in lieu of the remainder of his jail time. He testified that he successfully completed his probation. He participated in church counseling, instead of mental health counseling. He described his church counseling as more in the nature of service and testimony, than counseling.

10. On December 8, 2006, respondent was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol (DUI), a misdemeanor. Respondent's blood alcohol content was measured at .11 percent. Respondent was placed on informal probation for 36 months. He was ordered to: (1) serve 48 hours in jail, but was given credit for five hours; (2) pay fines and fees; and (3) complete a Level I Drinking Drivers Program. His driver's license was suspended for six months. Respondent successfully completed the terms and conditions of his probation.

Rehabilitation

11. Respondent testified that, after his 2002 conviction, he "never really got" the treatment he needed. His only treatment was through the fellowship in his church. He completed the court-mandated terms and conditions of his convictions. On his own, he decided to make changes in his life to improve his health and career opportunities, and because he now has a grandchild to consider.

12. Respondent did not graduate from high school. After he was married with children, he went back to school and got his GED. He then went to Heald College.

13. At the time of his 1996 conviction, respondent was working in a warehouse. He has also worked for staffing companies and in a bank. He is currently working as an assistant to Todd Priest, a licensed real estate broker. He considers Mr. Priest to be his mentor. If respondent gets a real estate salesperson license, Mr. Priest will be his employing broker.

14. At the hearing, respondent readily admitted his past difficulties with alcohol. According to respondent, alcohol gave him "false courage." When he was 16 years old, respondent watched his father die of cirrhosis of the liver. His father was 38 years old at the time. Respondent recognized the problem that he himself had with alcohol. He began "feeling old" and had a lot of injuries and pain. He did not want to end up the same way as his father. He decided that he needed to take care of himself, eat healthy foods, and see doctors to treat his injuries, instead of drowning his pain with alcohol. He stated that with the birth of his grandson two years ago, he made a fresh start. He has not had any alcohol to

drink for one and a half years. He now exercises twice a day, has lost 60 pounds, and is eating a healthy diet. He stated that he now lives a "very disciplined life." He is still married to his wife.

15. He has been a member of the Stockton Chamber of Commerce for four years. While he was at Heald College, he raised money to support research into spina bifida and the March of Dimes. He went to companies and asked for donations. He solicited radio air time for support. He raised a total of about \$9,000.

16. Respondent submitted two letter in support, which were admitted as administrative hearsay, and have been considered to the extent permitted under Government Code section 11513, subdivision (d):¹

(a) Todd Priest is a broker with Home Smart PV and Associates. Respondent has been working as a support person for Mr. Priest for over a year, while he studied for his real estate license. Respondent's responsibilities have included file setup, verification of contracts and disclosures, escrow coordination, and file closings. According to Mr. Priest, respondent has "conducted himself professionally and has demonstrat[ed] a high level of competence, in regards to required documentation, and understanding of the real estate industry." Mr. Priest believes that respondent would be an "excellent Realtor" and would make "every effort to fulfill his fiduciary obligations" to his clients. Respondent has been a "pleasure to ^{work} with on a personal level; he is respectful and has had a good working relationship with everyone in the office." He is "eager to learn, has a wonderful work ethic and is careful to do things accurately."

(b) Darlene Henson was a Branch Manager at StaffMark. She worked with respondent in 2004 and 2005, when he was employed by StaffMark. Ms. Henson described respondent as an "excellent sales consultant" who always took the time to "understand client and employee needs." She described him as "diligent and hard working."

¹ Government Code section 11513, subdivision (d), in relevant part, provides:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

Discussion

17. In California Code of Regulations, title 10, section 2911, the Department has set forth the criteria to be considered when assessing the rehabilitation of a license applicant who has been convicted of crimes. These criteria include: (1) the passage of not less than two years since the most recent criminal conviction; (2) expungement of criminal convictions; (3) successful completion or early discharge from probation; (4) abstinence from the use of alcohol for not less than two years; (5) stability of family life and fulfillment of parental and familial responsibilities; (6) completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement; (7) significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems; and (8) change in attitude from that which existed at the time of the conduct in question

18. Over a 10-year period from 1996 and 2006, respondent suffered three convictions, one of which was a violent felony. It has been almost six years since his most recent conviction. His violent felony has been expunged under Penal Code section 1203.4. He has successfully completed the terms of probation for all his convictions. Alcohol was involved in all his criminal activity. He currently completely abstains from the use of alcohol. He has a stable family life and is fulfilling his parental and familial responsibilities. He obtained his GED and graduated from Heald College. He has participated in volunteer activities. Most significantly, he has had a change in attitude from that which existed at the time of his convictions. At the hearing, respondent's testimony about his alcohol addiction was candid and forthcoming. He demonstrated a sincere commitment to maintaining his sobriety and healthy life style. Respondent submitted sufficient evidence to establish that he has successfully turned his life around. When all the evidence is considered in light of the criteria set forth in California Code of Regulations, title 10, section 2911, it would be consistent with the public interest to issue respondent a restricted salesperson license on the terms and conditions set forth below.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 480, subdivision (a), a license application may be denied when the applicant has been "convicted of a crime" that is substantially related to the qualifications, functions or duties of the business or profession for which application was made.

2. Pursuant to Business and Professions Code section 10177, subdivision (b), the Department may deny a real estate application when the applicant has "[e]ntered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee."

3. California Code of Regulations, title 10, section 2910, subdivision (a), in relevant part, provides that a crime or act will be deemed to be substantially related to the qualifications, functions or duties of a licensee if it involves:

(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.

[¶] ... [¶]

(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.

4. Respondent's 1996 battery conviction (Finding 3) is substantially related to the qualifications, functions, and duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivision (a)(8). His three convictions (Findings 3 through 10) are substantially related to the qualifications, functions, and duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivisions (a)(10) and (a)(11). Respondent's convictions therefore constitute cause to deny his license application under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

5. As set forth in Finding 18, respondent established that he has engaged in significant rehabilitation and has successfully turned his life around such that it would be consistent with the public interest to grant him a restricted salesperson license under the terms and conditions set forth below.

ORDER

The application of respondent Luis Filipe Araujo for a real estate salesperson 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: 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.

5. Pursuant to Business and Professions Code 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.

6. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: September 12, 2012



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

CRITERIA OF REHABILITATION (*Denial*)

RE 573 (Rev. 10/03)

Your application for a real estate license or your petition to reinstate your real estate license has been denied. The reason(s) for denial is on the grounds set forth in the attached Decision or Order Denying Reinstatement. Set forth below is the Criteria of Rehabilitation. These criteria have been developed by the Department of Real Estate as guidelines to assist an applicant or former licensee to establish a rehabilitation program and in the presentation of his or her case should application again be made for licensure or a petition filed for either reinstatement of a license or removal of restrictions from a restricted license.

Not all of the factors listed in the criteria will be applicable in the case of every person who has had a license application or petition for reinstatement or removal of restrictions denied. Nor will each factor necessarily be given equal weight in evaluating the person's rehabilitation. Each person must decide which of these factors are applicable to his or her case and should then take appropriate steps toward rehabilitation to the end of satisfying the Real Estate Commissioner that it would not be against the public interest to grant the license in question.

2911. Criteria of Rehabilitation (*Denial*). 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 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 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.

Section 11522 of the Government Code of the State of California:

11522. Reinstatement of License or Reduction of Penalty. A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty. (Added by Stats. 1945, Ch. 867; amended by Stats. 1985, Ch. 587.)