

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
SEP 03 2004
DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Application of)
ANDREW GALMOS JOANNIDES,)
Respondent.)

NO. H-2982 SD
OAH No. L2004050221

by Shelly Ely

DECISION

The Proposed Decision dated August 4, 2004, 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.

This Decision shall become effective at 12 o'clock noon
on September 23, 2004.

IT IS SO ORDERED August 17, 2004.

JOHN R. LIBERATOR
Acting Real Estate Commissioner

John R. Liberator

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ANDREW GALMOS JOANNIDES,

Applicant/Respondent.

Case No. H-2982 SD

OAH No. L2004050221

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 29, 2004, in San Diego, California.

Michael B. Rich, Counsel, represented Complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Roger C. Christianson, Attorney at Law, represented Andrew Galmos Joannides, who was present throughout the administrative hearing.

The matter was submitted on July 29, 2004.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 29, 2004, Complainant J. Chris Graves, a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California, signed the Statement of Issues in his official capacity.

The Statement of Issues and other required jurisdictional documents were served Applicant/Respondent Andrew Galmos Joannides (Joannides or Respondent).

Joannides timely filed a Notice of Defense on Application.

On July 29, 2004, the record in the disciplinary hearing was opened. Jurisdictional documents were presented. Sworn testimony and documentary evidence was received. Closing arguments were given, the record was closed and the matter was submitted.

Joannides' Application for Licensure

2. On March 18, 2003, Joannides signed a Salesperson License Application that was filed with the Department the following day.

3. Question 25 of the application asked:

"HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE."

Joannides marked the "YES" box below that question.

4. In Question 27, which asked for detailed explanations related to any violation of law, Joannides indicated he suffered a felony conviction in the United States Federal District Court, Southern District of California, in 1987 and a felony conviction in the Superior Court of California, County of San Diego, in November 2001.

Joannides signed the application under penalty of perjury.

Joannides' Convictions

5. On June 9, 1986, Joannides was convicted on his plea of guilty of violating Title 21, United States Codes, sections 841(a)(1) and 846 (Conspiracy to Possess Cocaine with Intent to Distribute) in the United States District Court, Southern District of California, in Case No. 85-0689-B-Criminal entitled *United States of America v. Andreas Joannides*.

On February 17, 1987, Joannides was placed on five years formal probation. Conditions of probation required him to obey all laws, not possess narcotics or dangerous drugs, not associate with users or dealers of narcotics or dangerous drugs, cooperate with law enforcement and probation officers and pay a fine of \$50,000.

6. On January 23, 2001, Joannides was convicted on his plea of guilty of violating Penal Code section 11379(a) (Unlawful Sale of Methamphetamine) in the Superior Court of California, County of San Diego, in Case No. SDC 144753 entitled *People of the State of California, Plaintiff, v. Galmos Andrew Joannides, aka Galmos Joannides, and Ramundo Palos Garcia, aka Raymundo Palos Garcia, Defendant(s)*.

On May 5, 2001, Joannides' motion to withdraw his guilty plea was denied. Joannides was denied probation. He was committed to the Department of Corrections for a period of three years. The court recommended Joannides serve time in a hospital facility.

Following a series of court appearances, the sentence previously imposed on May 5, 2001, was set aside and a new sentence was imposed on November 29, 2001. Joannides was

granted three years formal probation. Conditions of his probation required him to serve one year in custody (which was satisfied by the Adult Electronic Surveillance Program, permitting Joannides to serve time outside of a correctional facility) and to satisfy other terms and conditions of probation.

Circumstances of the Offense

7. In 1982, Joannides underwent brain surgery to remove a tumor on his pituitary gland. According to Joannides, he was in considerable pain following surgery and suffered significant chemical imbalances. He was given Demerol and Percodan to manage his pain; but, Joannides quickly became addicted to these pain medications. To offset some of the unwanted side-effects of the pain medications, Joannides began using cocaine. He became addicted to cocaine.

Between January and August 1985, Joannides and Anastasios Kantas (Kantas) conspired to deliver large quantities of cocaine to a confidential informant working for the federal government, which gave rise to the federal charges of Conspiracy to Possess Cocaine with Intent to Distribute to which Joannides pled guilty in June 1986. According to Joannides, he sold cocaine to support his habit.

8. Joannides continued to have significant effects from the removal of his pituitary gland and the chemical imbalance occasioned thereby. Joannides began using methamphetamine in an effort to counteract these adverse effects. He became addicted to methamphetamine.

Joannides testified he and a colleague, Raymundo Garcia, were hoodwinked by Barry Peterson, whose street name was "Fish," into believing that Peterson was a drug agent working undercover for the police department in an undercover drug operation taking place in San Diego in March and April 1998. In testimony that was not particularly clear, Joannides said he and Garcia were involved in several sales of methamphetamine with "Fish." Joannides said he engaged in these transactions in the good faith belief he was working for the police, to earn "reward" money and to receive semi-lawful drugs. Joannides' participation in these transactions resulted in his January 23, 2001 conviction of Unlawful Sale of Methamphetamine.

Joannides' Testimony and Other Evidence

9. Joannides was born on August 26, 1952, in New York, New York. After moving to California, Joannides attended San Diego State University, where he was three units shy of obtaining a Bachelor of Arts degree by 1973. Joannides transferred to Western State University School of Law, where he received a Bachelor of Arts in Law in 1973 and a Juris Doctor degree in 1977.

Joannides has not taken the California Bar Examination, although he intends to do so.

10. Joannides was diagnosed with a tumor on the pituitary gland in the early 1980s. The tumor was removed in surgery taking place in 1982. While the surgery was successful insofar as the tumor was removed, there were a number of adverse side-effects. Joannides was in considerable pain. He suffered extraordinary growth of his hands, feet, ears and nose, some of which required surgery. Joannides developed addictions to cocaine and methamphetamine in the mid-1980s which resulted in dealing in drugs and his two criminal convictions. In addition to the brain surgery, Joannides has had to undergo more than half a dozen surgical procedures related to problems with his kidney function.

According to Joannides, his health problems are presently under control through the judicious administration of a variety of medications including a human growth hormone. He is no longer in pain and his emotional condition has stabilized. Joannides has never sought any psychological counseling, although he would not be adverse to it if it were indicated.

11. Joannides owned and operated a restaurant in San Diego. For a period of time, Joannides was a licensed vehicle dealer with the Department of Motor Vehicles and a registered automotive repair dealer with the Bureau of Automotive Repair. His occupational licenses were not subject to any administrative discipline.

12. Joannides paid the \$50,000 fine arising out of his federal conviction. The timing of the California criminal action established Joannides did not "obey all laws" while he was on federal probation. Joannides will remain on probation in the California conviction through November 2004.

13. Joannides testified he stopped using methamphetamine in May 1998. He testified he attends AA/NA meetings on a regular basis and is in the process of slowly working the steps. Joannides could not specifically identify the step he was working on, other than to say it was the third step of the 12 step program. He acknowledged that he is a recovering addict.

14. Joannides regularly attends church. He lives with his mother and father, who provide him with health insurance, and regularly sees his sister.

15. Gaylin Leth (Leth), a real estate licensee since 1978, has known Joannides for 23 years. Leth is affiliated with Real Estate Inside Track.com, where Joannides would work if he were to be licensed. According to Leth, Joannides fully disclosed his convictions to Lawrence R. Alessio, who owns Real Estate Inside Track.com.

Joannides has always been honest and forthright in his dealings with Leth. Leth confirmed that Joannides has a law degree, is computer literate and is hardworking.

16. Nannette List (List) is Joannides' sister. She is a real estate licensee and is employed at Real Estate Inside Track.com.

List confirmed generally the nature and extent of Joannides' physical and emotional problems following his brain surgery and believed Joannides used drugs to control his pain.

While Joannides is presently taking medications prescribed by his treating physician, he is not using illegal or dangerous drugs.

List would like to work with her brother as a team if he were to become licensed.

17. Eugene Sibbald (Sibbald) is a Mathematics professor at Grossmont Community College and the owner of Triangle System Associates (an import firm) who has known Joannides since 1989. Sibbald and Joannides have engaged in business together and "everything was done with integrity." Sibbald confirmed that Joannides is currently enrolled in computer science at Grossmont Community College.

18. Letters of reference were presented from numerous persons attesting to Joannides' rehabilitation and good moral character.

Joannides provided college transcripts and evidence that he is currently attending Grossmont Community College and AA/NA meetings.

Evidence was presented that established that Joannides is meeting the terms and conditions of the probation he is currently on.

Evaluation

19. Joannides' convictions occurred in June 1986 and January 2001. Each conviction involved the unlawful sale of drugs, a crime necessarily involving moral turpitude. Joannides failed to comply with the terms of federal probation by selling methamphetamine while he was on probation. Joannides remains on probation for his most recent conviction.

Joannides cited medical reasons for becoming addicted and testified he no longer has substantial, uncontrolled medical problems which might result in a relapse. No medical information, by way of a medical report or expert testimony, corroborated this testimony.

Joannides has not been convicted of a crime since January 2001. Evidently he attends AA/NA meetings. Joannides is enrolled in school. He has the support and love of his family. Joannides enjoys the respect of business associates and prospective employers.

On balance, it cannot be concluded that Joannides is sufficiently rehabilitated that it would be in the public interest to grant him a real estate salesperson's license at this time, even on a restricted basis.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence. See, *California Administrative Hearing Practice* (Second Edition), "The Hearing Process," sections 7.51-7.53, pp. 352-354, and the cases cited therein.

Applicable Statutes

2. Business and Professions Code section 480 provides in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

Been convicted of a crime. . .

...

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made . . ."

3. Business and Professions Code Section 10177 provides in pertinent part:

"The commissioner . . . may deny the issuance of a license to an applicant, who has done any of the following . . .

...

(b) Entered a plea of guilty [to] . . . a felony or a crime involving moral turpitude . . ."

Moral Turpitude

4. While simple possession of narcotics does not necessarily involve moral turpitude, possession for sale does pass the test. The trait involved is not dishonesty but rather the intent to corrupt others. Anything that is related to trafficking is more serious than possessing. *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1028.

Substantial Relationship

5. The Department must show a substantial relationship between a conviction(s) of a crime(s) and an applicant's fitness to hold a real estate license. This requirement was commented upon in *Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402, where the appellate court wrote:

"Conviction alone will not support a denial of a license unless the crime substantially relates to the qualifications, functions, or duties of the business or profession in question."

and

"Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson. [Citation.] The Legislature intended to ensure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear. [Citation.]"

6. Title 10, California Code of Regulations, section 2910 provides in part:

"(a) When considering whether a license should be denied . . . on the basis of the conviction of a crime . . . the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department . . . if it involves:

...

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator . . .

...

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

...

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee."

Rehabilitation

7. Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented by sustained conduct over an extended period of time. *In re Menna* (1995) 11 Cal. 4th 975, 991.

8. The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. *Kwasnik v. State Bar* (1990) Cal. 3d 1061, 1070.

9. Title 10, California Code of Regulations, section 2911 provides in part:

"The following criteria have been developed . . . for the purpose of evaluating the rehabilitation of an applicant . . . in considering whether or not to deny the issuance . . . 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 . . .

(c) Expungement of criminal convictions . . .

(d) Expungement or discontinuance of a requirement of registration . . .

(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 . . .

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction . . .

(i) Completion of, or sustained enrollment in, formal education 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 . . .

(n) Change in attitude from that which existed at the time of the conduct in question . . . ”

Cause Exists to Deny the Application

10. Cause exists to deny Joannides' application for a real estate salesperson license under Business and Professions Code sections 480 and 10177.

Joannides' convictions occurred in June 1986 and January 2001. Each conviction involved the unlawful sale of drugs, a felony involving moral turpitude. Joannides failed to comply with the terms of federal probation by selling methamphetamine while he was on probation. Joannides remains on probation for his most recent conviction.

Joannides has not been convicted of a crime since January 2001. He attends AA/NA meetings, is attending community college, has the support and love of his family and enjoys the respect of business associates and prospective employers.

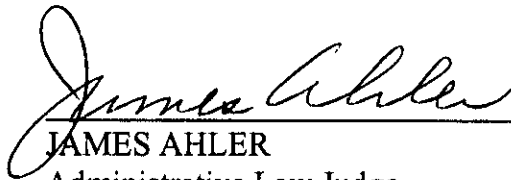
On balance, it cannot be concluded that Joannides is sufficiently rehabilitated that it would be in the public interest to grant him a real estate salesperson's license at this time, even on a restricted basis.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

The application for a Real Estate Salesperson License filed by Andrew Galmos Joannides with the Department of Real Estate is denied.

DATED: August 4, 2004.



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
MAY 18 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

ANDREW GALMOS JOANNIDES

By Shelly Ely

Case No. H-2982 SD

OAH No.

Respondent

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, ROOM 6022, SAN DIEGO, CALIFORNIA 92101** on **THURSDAY--JULY 29, 2004**, at the hour of **9:00 A.M.**, 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 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: MAY 18, 2004

By Michael B. Rich
MICHAEL B. RICH, Counsel S.E.

1 MICHAEL B. RICH, Counsel
2 Sate Bar No. 84257
3 Department of Real Estate
4 P.O. Box 187007
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7 (916) 227-1126

FILED
APR 22 2004

DEPARTMENT OF REAL ESTATE

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Application of)

No. H-2982 SD

12 ANDREW GALMOS JOANNIDES,)

STATEMENT OF ISSUES

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Respondent.

28 The Complainant, J. CHRIS GRAVES, a Deputy Real Estate
29 Commissioner of the State of California, for Statement of Issues
30 against ANDREW GALMOS JOANNIDES also known as GALMOS JOANNIDES
31 (hereinafter "Respondent"), is informed and alleges as follows:

32 I

33 Respondent made application to the Department of Real
34 Estate of the State of California for a real estate salesperson
35 license on or about March 19, 2003.

36 II

37 Complainant, J. CHRIS GRAVES, a Deputy Real Estate
38 Commissioner of the State of California, makes this Statement of
39 Issues in his official capacity and not otherwise.

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1 III

2 On or about February 17, 1987, in the United States
3 Court for the Southern District of California, Respondent was
4 convicted of violating Title 21, United States Code, Section
5 841(a)(1) (Possession of a controlled substance with intent to
6 distribute, to wit; cocaine) and of violating Title 21, United
7 States Code, Section 846 (Conspiracy to distribute cocaine in
8 violation of Title 21), felonies involving moral turpitude which
9 bears a substantial relationship under Section 2910, Title 10,
10 California code of Regulations, to the qualifications, functions,
11 or duties of a real estate licensee.

12 IV

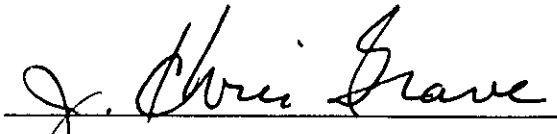
13 On or about November 29, 2001, in the Superior Court
14 for the County of San Diego, Respondent was convicted of
15 violating Section 11379(a) of the California Health and Safety
16 Code (Unlawful transportation of a controlled substance), a
17 felony involving moral turpitude which bears a substantial
18 relationship under Section 2910, Title 10, California code of
19 Regulations, to the qualifications, functions, or duties of a
20 real estate licensee.

21 V

22 The crimes of which Respondent was convicted, as
23 alleged in Paragraphs III and IV, collectively and/or
24 individually, constitutes cause for denial of Respondent's
25 application for a real estate license under Sections 480(a)
26 and/or 10177(b) of the California Business and Professions Code.

27 ///

1 WHEREFORE, the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the charges
3 contained herein, that the Commissioner refuse to authorize the
4 issuance of, and deny the issuance of, a real estate salesperson
5 license to Respondent, and for such other and further relief as
6 may be proper under other provisions of law.

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8 
9 J. CHRIS GRAVES
10 Deputy Real Estate Commissioner

11 Dated at San Diego, California,
12 this 29th day of March, 2004
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