

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

FILED  
DEC - 7 2000

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

\* \* \*

In the Matter of the Application of )  
HARMINDER SINGH, ) NO. H-3524 SAC  
Respondent. ) N-2000090347

DECISION

The Proposed Decision dated November 16, 2000, 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 December 27, 2000.

IT IS SO ORDERED December 6, 2000.

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Statement of  
Issues Against:

HARMINDER SINGH,

Respondent.

Case No. H-3524 SAC

OAH No. N-2000090347

**PROPOSED DECISION**

Administrative Law Judge Catherine B. Frink, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on October 25, 2000.

Deidre L. Johnson, Counsel, represented the complainant.

Respondent was present and was represented by Michael A. Peritore, Attorney at Law, 1028 2<sup>nd</sup> Street, 3<sup>rd</sup> Floor, Sacramento, California 95814.

Evidence was received, the hearing was closed, and the matter was submitted on October 25, 2000.

**FACTUAL FINDINGS**

1. The complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, filed the Statement of Issues in his official capacity and not otherwise.

2. Harminder Singh ("respondent") filed an application with the Department of Real Estate of the State of California ("the Department") for a real estate salesperson license on or about February 8, 2000.

3. On March 16, 1992, in the Municipal Court of California, County of Sutter, respondent was convicted of a violation of Penal Code section 484/490.5, Theft from a Merchant, a misdemeanor. The facts and circumstances underlying the conviction are that,

on November 30, 1991, respondent and two friends each stole a music CD (compact disc) from K-Mart. The three of them were apprehended as they attempted to leave the store. The value of each CD was less than \$15. Respondent and his friends were all seniors in high school. Respondent was 18 years of age at the time of his arrest; his friends were still minors.

4. The crime of which respondent was convicted involved moral turpitude and was substantially related to the qualifications, functions and duties of a real estate licensee as defined in Title 10, California Code of Regulations ("10 CCR") section 2910(a)(1), the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person; and (a)(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.

5. As a consequence of the conviction, imposition of sentence was suspended, and respondent was placed on summary probation for 24 months, subject to various terms and conditions of probation. Respondent was ordered to serve 48 hours of outside work release, pay a fine of \$211, and comply with other standard terms and conditions.

Respondent signed the form containing the terms and conditions of probation. The form stated as follows:

"I HAVE RECEIVED A COPY, READ AND UNDERSTAND THE CONDITIONS OF MY PROBATION.

"UPON SATISFACTORY COMPLETION OF PROBATION YOU MAY APPLY TO THE COURT TO HAVE YOUR CONVICTION SET ASIDE PURSUANT TO SECTION 1203.4 OF THE PENAL CODE."

Respondent paid the fine and completed the community service as ordered by the court. Respondent was not required to meet with a probation officer as a condition of probation. Respondent's criminal probation ended on March 16, 1994.

6. An attorney represented respondent during the criminal proceedings. That attorney was a family friend. Respondent was advised by the attorney to plead nolo contendere to the charge. The attorney advised respondent that his "file would be sealed" after he completed probation. After completing probation, respondent did not contact the attorney to see what further court proceedings might be necessary to remove the conviction from his record. Respondent testified that he believed the attorney would take care of it. Respondent did not apply to the court to have his conviction set aside pursuant to Penal Code section 1203.4. He did not contact the court at any time to ascertain the status of his case file.

7. On respondent's application for a real estate salesperson license, the following language appears on the printed form after Question 23, in a box with shaded edges for added emphasis:

- ❖ *Carefully read and provide detailed answers to questions #24-26. You must provide a yes or no response to all questions.*
- ❖ “Convicted” as used in Question 25 includes a verdict of guilty by judge or jury, a plea of guilty or of nolo contendere, or a forfeiture of bail in municipal, superior or federal court. All convictions must be disclosed whether or not the plea or verdict was set aside, the conviction against you was dismissed, or expunged or if you have been pardoned. Convictions occurring while you were a minor must be disclosed unless the record of conviction has been sealed under Section 1203.45 of the California Penal Code or Section 781 of the California Welfare and Institutions Code.

8. Question 25 on the application states as follows:

“25. HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? (YOU MAY OMIT CONVICTIONS FOR DRUNK DRIVING, RECKLESS DRIVING, AND MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE). IF YES, COMPLETE #27 BELOW.”

9. Question 27 on the application states as follows:

“27. DETAILED EXPLANATION OF ITEMS 24-26. COMPLETE ONE LINE FOR EACH VIOLATION AND PROVIDE EXPLANATION BELOW. IF YOU ARE UNABLE TO PROVIDE THIS INFORMATION, A DETAILED EXPLANATION MAY SUFFICE. INDICATE WHETHER EACH CONVICTION WAS A MISDEMEANOR OR FELONY AT THE TIME THE CONVICTION OCCURRED. IF THE CONVICTION STATUS HAS BEEN SUBSEQUENTLY CHANGED OR REDUCED, NOTE THAT FACT IN THE AREA PROVIDED FOR ADDITIONAL INFORMATION. \*CODE SECTION VIOLATED (i.e., 484) \*\*CODE VIOLATED (i.e., PENAL CODE) \*\*\*DISPOSITION (i.e., PROBATION, PAROLE, FINE, LENGTH OF TERM, ETC.)”

Included as part of Question 27 is a chart with columns to provide information concerning court of conviction, arresting agency, date of conviction, type of conviction (felony or misdemeanor), code section violated, code violated, disposition, and case number. The license application includes an example of how to complete the chart. There are blank lines below the chart for additional information.

10. In response to Question 25 of the license application, to wit: “Have you ever been convicted of any violation of law?” respondent answered “No.” Respondent signed the license application on January 18, 2000, thereby certifying under penalty of perjury under the laws of the State of California that the answers and statements on the license application were true and correct.

11. Respondent's failure to reveal the conviction set forth in Finding 3 in his license application constituted the procurement of a real estate license by misrepresentation, and by making a material misstatement of fact in said application. At hearing, respondent testified that he did not disclose the conviction because he believed his court record had been "sealed." However, this contention lacks credibility, in that the license application specifically states that all convictions must be disclosed, even if the plea or verdict has been set aside, the conviction has been dismissed or expunged, or a pardon has issued. Respondent further testified that his girlfriend filled out the application for him "because she has better handwriting," and he did not read the application carefully after she completed it. Respondent was obligated to insure the accuracy of the license application. His answer to question 25 was misleading, and his failure to ascertain the status of his conviction or to determine whether or not his prior criminal conviction needed to be disclosed was, at a minimum, grossly negligent.

12. Pursuant to Business and Professions Code section 482(a), the Department has developed criteria to evaluate the rehabilitation of a license applicant after a criminal conviction, which are set forth in Title 10, California Code of Regulations, section 2911. In this case, more than two years have passed since respondent's conviction, and he has completed his criminal probation as of the date of hearing, including the payment of fines and completion of community service. Respondent has not obtained expungement of his criminal conviction.

Respondent has a stable family life. He is not married and has no children. He provides some financial support for his younger sisters, and he assists his father with the family farm, providing bookkeeping and supervision at least 10 hours per week. Respondent obtained an Associate of Science degree at a community college in 1995 and thereafter enrolled in the University of California at Davis in 1996. Respondent must complete one more course in order to obtain his Bachelor of Science degree in psychology from UCD. Respondent is interested in ultimately pursuing a master's degree. Respondent has been employed full-time at the State of California Employment Development Department as a claims representative since March of 1999.

Nearly nine years have passed since respondent engaged in the conduct that led to his criminal conviction. Respondent believes he was fortunate to have been caught, because the experience changed his life. He became serious about his schooling and "stopped messing around." He worked for his father to pay back the money needed to pay his court-ordered fine and his attorney's fees. He became more active in church with his family.

13. Respondent did not provide any corroborating evidence, in the form of testimony, letters or other documents, from any character witnesses, and he did not provide testimony or other evidence from any prospective employing broker who would be willing to closely supervise him should he become licensed. The broker who signed his license application is a family friend who was unaware of respondent's criminal conviction at the time the application was signed.

## LEGAL CONCLUSIONS

1. Business and Professions Code section 480 states as follows:

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

“(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

“(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

“(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. 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.

“(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

“(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.”

2. Business and Professions Code section 10177 states in pertinent part as follows:

“The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning

or controlling 10 percent or more of the corporation's stock has done any of the following:

“(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

“(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.”

3. Cause for denial of respondent's application for a real estate salesperson license was established pursuant to Business and Professions Code sections 480(a) and 10177(b) by reason of Findings 3 and 4.

4. Cause for denial of respondent's application for a real estate salesperson license was established pursuant to Business and Professions Code sections 480(c) and 10177(a) by reason of Findings 3, 4, 7, 8, 9, 10 and 11.

5. Under all of the facts and circumstances, it would be contrary to the public interest to permit respondent to become licensed as a real estate salesperson at this time, with or without a restricted license. Honesty and trustworthiness are qualities of utmost importance in a real estate licensee, who must frequently act in a fiduciary capacity. "Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee." Harrington v. Department of Real Estate (1989) 214 C.A.3d 394, 402. "If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson." Harrington, supra, 214 C.A.3d at 402; Golde v. Fox, (1979) 98 Cal.App.3d 167, 176. "The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." Harrington, supra, 214 C.A.3d at 402; Ring v. Smith (1970) 5 C.A.3d 197, 205.

Although respondent's criminal conviction took place more than eight years ago, while respondent was still a high school student, it was nevertheless a crime of dishonesty. Respondent's subsequent failure to answer questions on his license application pertaining to that conviction in an honest and straightforward manner demonstrates a lack of complete rehabilitation. Respondent has not sustained his burden to prove that he can be licensed at this time without harm to the public.

6. For the reasons set forth above, it would be contrary to the public interest to grant a real estate salesperson license to respondent, with or without restrictions.

ORDER

The application of Harminder Singh for a real estate salesperson license is denied by reason of Legal Conclusions 3, 4, 5 and 6.

Dated: November 16, 2000

Catherine B. Frink  
CATHERINE B. FRINK  
Administrative Law Judge  
Office of Administrative Hearings



FILED  
SEP 26 2000

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Application of

HARMINDER SINGH,

}

Case No. H-3524 SAC

OAH No. N-2000090347

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, 560 J Street,

Suites 340/360, Sacramento, California 95814

on October 25, 2000, at the hour of 9:00 AM,

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: September 25, 2000

By Deidre L. Johnson  
DEIDRE L. JOHNSON Counsel

1 DEIDRE L. JOHNSON, Counsel  
2 State Bar No. 66322  
3 Department of Real Estate  
4 P. O. Box 187000  
5 Sacramento, CA 95818-7000  
6  
7 Telephone: (916) 227-0789

FILED  
JUL 28 2000

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 HARMINDER SINGH, ) NO. H-3524 SAC  
14 Respondent. ) STATEMENT OF ISSUES  
15

16 The Complainant, Charles W. Koenig, a Deputy Real  
17 Estate Commissioner of the State of California, for cause of  
18 Statement of Issues against HARMINDER SINGH, alleges as follows:

19 I

20 HARMINDER SINGH (hereafter Respondent) made  
21 application to the Department of Real Estate of the State of  
22 California for a real estate salesperson license on or about  
23 February 8, 2000.

24 II

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

1 III

2 In response to Question 25 of said application, to wit:  
3 "Have you ever been convicted of any violation of law?",  
4 Respondent answered "No," and failed to disclose the conviction  
5 alleged in Paragraph IV below.

6 IV

7 On or about March 16, 1992, in the Municipal Court of  
8 California, County of Sutter, Respondent was convicted of a  
9 violation of California Penal Code Section 484/490.5 (THEFT  
10 FROM A MERCHANT), a crime involving moral turpitude, and a  
11 crime which bears a substantial relationship under  
12 Section 2910, Title 10, California Code of Regulations, to  
13 the qualifications, functions or duties of a real estate  
14 licensee.

15 V

16 Respondent's failure in said application to reveal  
17 the conviction set forth above constitutes the attempt to  
18 procure a real estate license by fraud, misrepresentation, or  
19 deceit, or by making a material misstatement of fact in said  
20 application, which is cause for denial of Respondent's  
21 application for a real estate license under Sections 480(c)  
22 and 10177(a) of the Business and Professions Code.

23 VI

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

