

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN 08 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

* * *

In the Matter of the Application of)
IVAN DEXTER POINTER,) NO. H-3555 SAC
Respondent.) N-2001030173

DECISION

The Proposed Decision dated May 11, 2001, 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 June 28, 2001.

IT IS SO ORDERED May 29, 2001.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

IVAN DEXTER POINTER,

Respondent.

Case No. H-3555 SAC

OAH No. N2001030173

PROPOSED DECISION

Administrative Law Judge M. Amanda Behe, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California, on April 11, 2001.

David B. Seals, Counsel, represented the Department of Real Estate.

Richard Staff, Attorney at Law, represented respondent.

The matter was submitted on April 11, 2001.

FACTUAL FINDINGS

1. Charles W. Koenig, Deputy Real Estate Commissioner, Department of Real Estate, State of California (hereinafter "the Department") made and filed the Statement of Issues in his official capacity.
2. On March 22, 2000, Ivan Dexter Pointer (hereinafter "respondent") made application to the Department pursuant to section 10153.3 of the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code, for a real estate salesperson license.
3. Respondent filed an application with the Department for a real estate salesperson license on March 22, 2000, with the knowledge and understanding that any license issued as a result of said application would be subject to the conditions of section 10153.4 of the Business and Professions Code.

4. Business and Professions Code section 480 provides that:

“(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.”

5. Business and Professions Code section 10177(b) provides that:

“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:

“(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.”

6. On February 27, 1998, in the Superior and Municipal Courts of California, County of Sacramento, respondent was convicted of a violation of Penal Code section 261.5 [UNLAWFUL SEXUAL INTERCOURSE], a felony and a crime involving moral turpitude.

7. Respondent testified that he met the victim, a 17-year-old client, while he was employed at Diogenes Group Home. In the course of his work at the group home respondent drove the victim to her prior home to retrieve some belongings. On that occasion they hugged goodbye. Respondent testified that they did not kiss while he was employed at Diogenes. Respondent then secured employment at a second group home, and remained in contact with the victim.

On November 29, 1997, about a week after respondent left employment at Diogenes, the victim called him wanting a ride home from her job. He had just moved into an apartment that day and took her to his apartment where they played cards. Although he knew she was only 17 years old, respondent gave her a "mudslide," an alcoholic drink, and she became intoxicated. He testified that the victim kissed him, and they had intercourse. He claimed that "as God is my witness I did not give her drinks to get sex." He testified that as they left his apartment "it dawned on" him that he made "a big mistake." Respondent further stated that he "dropped her off around the corner" from Diogenes Group Home because he "did not want her to get into trouble." Despite that claimed concern, he did not trouble to learn if she was dismissed from Diogenes Group Home for the conduct. He testified that he does not remember her last name.

The victim was observed returning to Diogenes Group Home by her counselor and questioned. The victim admitted being at respondent's residence but denied any sexual activity. She was placed on restriction and not allowed telephone calls. Respondent made repeated attempts to contact the victim who reported the matter to police. On December 2, 1997, the victim advised her counselor of the sexual contact with respondent and the matter was reported to the police. The counselor advised police that on respondent's last day of work he and the victim left without authorization for approximately four hours.

Respondent was allowed to participate in electronic monitoring and work furlough rather than being incarcerated. He is on probation until April 2002. Respondent testified that he intends to have his conviction reduced to a misdemeanor and then expunged.

8. Respondent's testimony displayed a shocking effort to blame the juvenile victim for his acts. He characterized the event as "she called him, she kissed him," etc. Despite his degree in Psychology, he evinces no comprehension that as a 28-year old adult, who had come to know the victim in a position of trust, he had the responsibility to behave appropriately. He similarly shows no empathy for her circumstance as a child in a group home, or that he betrayed the trust of his employer and the victim. In addition, his conduct shows the judgment and impulse control of a foolish child. No evidence suggests that teenaged girls in homes to which he would access would be safe from his demonstrated irresponsibility and poor judgement.

9. The crime of which respondent was convicted is substantially related to the qualifications, functions and duties of the licensed activity. Title 10, California Code of

Regulations, section 2910, establishes the criteria for determining whether the actions of a respondent are substantially related to the licensed activity, as follows:

“(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

“(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

“(2) Counterfeiting, forging or altering on an instrument or the uttering of a false statement.

“(3) Willfully attempting to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by federal, state, or local government.

“(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

“(5) Sexually related conduct causing physical harm or emotional distress to a person who is an observer or non-consenting participant in the conduct.

“(6) Willfully violating or failing to comply with a provision of Division 4 of the Business and Professions Code of the State of California.

“(7) Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.

“(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.

“(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the department.

“(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.”

10. Respondent’s criminal conviction is substantially related to the qualifications, functions and duties of the licensed activity pursuant to section 2910(a)(5).

11. Katryna Anderson has known respondent for 2½ years, and was his supervisor for 1½ years at Pagenet. She testified that he had excellent work habits, was reliable, and worked on extra projects. Respondent advised her of his conviction during his employment. Ms. Anderson and respondent have been social friends since she left Pagenet.

12. Respondent plans to use his salesperson license to work from his home under broker Nick Greco. Respondent plans to handle refinances and purchases of homes. He worked at New Millenium Mortgage from July 1999 to February 2000.

13. The Department’s criteria for rehabilitation are found in Title 10, California Code of Regulations, section 2911, as follows:

“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) Successful completion or early discharge from probation or parole.

“(e) 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.

“(f) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

“(g) 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.

“(h) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

“(i) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

“(j) Correction of business practices resulting in injury to others or with the potential to cause such injury.

“(k) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

“(l) 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.

“(m) 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.”

14. Respondent failed to present persuasive evidence to establish rehabilitation pursuant to section 2911. Three years have passed since respondent's criminal conviction that is “substantially related” to the qualifications; functions or duties of a licensee of the Department. Respondent's conviction has not been expunged. Respondent has not successfully completed or been discharged from probation. He has married since the conviction. No evidence was presented that he has new and different social and business relationships from those which existed at the time of the crime, or completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-

improvement. He is unemployed, and presented no evidence of fulfillment of parental and familial responsibilities. No proof of involvement in community, a church or privately sponsored social program was offered.

Katryna Anderson did not display familiarity with respondent's previous conduct and with subsequent attitudes and behavioral patterns with respect to the nature of the crime. That she received no complaints from women in the workplace does not suggest that respondent has changed the attitude and behavior he displayed to a vulnerable under-age girl. No evidence was presented from his probation officer, and respondent testified to their infrequent contact. The letter of Ms. Raabe was not direct evidence, and did not establish respondent's social adjustment. The claim in her letter that respondent's probation officer agreed that no crime was committed was improbable. Moreover, no collateral attack on the conviction can be entertained.

Most importantly, respondent displayed no change in attitude as set forth in Finding 8, above.

LEGAL CONCLUSIONS

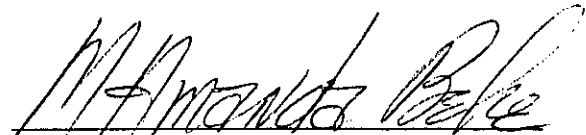
Clear and convincing evidence to a reasonable certainty established cause for denial of respondent's application for a real estate salesperson's license pursuant to Business and Professions Code sections 480(a) and 10177(b).

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

ORDER

Respondent Ivan Dexter Pointer's application for a real estate salesperson's license is denied.

Dated: May 11, 2001


M. AMANDA BEHE
Administrative Law Judge
Office of Administrative Hearings

FILED

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

DEPARTMENT OF REAL ESTATE

By Shelly Ely

In the Matter of the Application of

IVAN DEXTER POINTER

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Case No. H-3555 SAC

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, 560 J STREET, SUITES 340/360, SACRAMENTO, CALIFORNIA 95814 on WEDNESDAY--APRIL 11, 2001, at the hour of 10:30 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 Hearing 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.

Dated: MARCH 7, 2001

DEPARTMENT OF REAL ESTATE
By David B. Seals

Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
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DEPARTMENT OF REAL ESTATE

By Shelly Ely

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 IVAN DEXTER POINTER,)
13 Respondent.)

No. H-3555 SAC

STATEMENT OF ISSUES

14
15 The Complainant, Charles W. Koenig, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against IVAN DEXTER POINTER (hereinafter "Respondent")
18 alleges as 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 March 22, 2000, 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.

27 ///

1 II

2 Complainant, Charles W. Koenig, a Deputy Real Estate
3 Commissioner of the State of California, makes this Statement of
4 Issues in his official capacity.


5 III

6 On or about February 27, 1998, in Sacramento Superior
7 and Municipal Courts, Respondent was convicted of violation of
8 California Penal Code Section 261.5 (Unlawful Sexual
9 Intercourse), a felony and a crime involving moral turpitude
10 which is substantially related under Section 2910, Title 10,
11 California Code of Regulations to the qualifications, functions
12 or duties of a real estate licensee.

13 IV

14 The crime for which Respondent was convicted, as
15 alleged in Paragraph III above, constitutes cause for denial of
16 Respondent's application for a real estate license under Sections
17 480(a) and 10177(b) of the California Business and Professions
18 Code.

19 WHEREFORE, the Complainant prays that the above-
20 entitled matter be set for hearing and, upon proof of the charges
21 contained herein, that the Commissioner refuse to authorize the
22 issuance of, and deny the issuance of, a real estate salesperson
23 license to Respondent, and for such other and further relief as
24 may be proper under other provisions of law.

25 
CHARLES W. KOENIG
26 Deputy Real Estate Commissioner

27 Dated at Sacramento, California,
this 7th day of December, 2000.