

FILED

SEP 18 2002

DEPARTMENT OF REAL ESTATE

By Lauriel J. Z...

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)

No. H-3656 SAC

CRAIG CLAYTON GILMORE,)

OAH No. N-2002040241

Respondent.)

ORDER DENYING RECONSIDERATION

On July 24, 2002, a Decision was rendered in the above-entitled matter. The Decision is to become effective September 18, 2002.

On August 13, 2002, Respondent petitioned for reconsideration of the Decision of July 24, 2002.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of July 24, 2002, and reconsideration is hereby denied.

IT IS HEREBY ORDERED September 17, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

FILED

AUG 15 2002

DEPARTMENT OF REAL ESTATE

Paula Reddish Zinnemann

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of) No. H-3656 SAC
CRAIG CLAYTON GILMORE,)
Respondent.)

ORDER STAYING EFFECTIVE DATE

On July 24, 2002, a Decision was rendered in the above-entitled matter to become effective August 19, 2002.

IT IS HEREBY ORDERED that the effective date of the Decision of the Real Estate Commissioner of July 24, 2002, is stayed for a period of thirty (30) days.

The Decision of the Real Estate Commissioner of July 24, 2002, shall become effective at 12 o'clock noon on September 18, 2002.

DATED: August 15, 2002

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

FILED
AUG - 5 2002

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Application of)
CRAIG CLAYTON GILMORE,)
Respondent.)

NO. H-3656 SAC
OAH NO. N-2002040241

DECISION

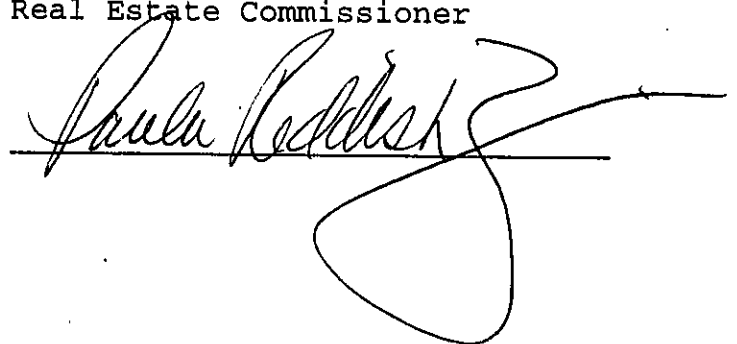
The Proposed Decision dated July 5, 2002, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

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 AUGUST 19, 2002.

IT IS SO ORDERED July 27, 2002.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

CRAIG CLAYTON GILMORE,

Respondent.

No. H- 3656 SAC

OAH No. N2002040241

PROPOSED DECISION

William O. Hoover, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 7, 2002 in Sacramento, California.

David A. Peters, in his official capacity as Staff Counsel, Deputy Real Estate Commissioner, Department of Real Estate ("Department"), State of California, represented Charles W. Koenig ("complainant").

Craig Clayton Gilmore ("respondent") appeared and represented himself.

The matter was submitted on June 7, 2002.

FACTUAL FINDINGS

1. Complainant made and filed this Statement of Issues in his official capacity. The filing was based on an investigation of respondent's application and evaluation of the results of a subsequent confidential interview with him.

2. Respondent submitted to the Department an application for a real estate salesperson's license, dated June 21, 2001, subject to Business and Professions Code section 10153.4. Respondent failed to disclose in his application that he had suffered criminal convictions in 1983 and 1993. Respondent had the burden at hearing of establishing by a preponderance of the evidence that he is entitled to issuance of a license.

3. On April 12, 1983, before the San Joaquin County Superior Court in Case No. 33440, respondent was convicted, on his plea of guilty, of violation of Penal Code section 664/496 (attempted receiving of stolen property), a misdemeanor. He was placed on informal probation for three years and ordered to obey all laws serve six months in county jail (suspended for three years). The offense involves moral turpitude and is substantially related to the qualifications, functions, and duties the licensed activity. On May 5, 1988 the court granted respondent's petition pursuant to Penal Code section 1203.4 setting aside and dismissing the conviction.

4. The facts and circumstances of the offense are that respondent, who was a coin dealer at the time, was the subject of a "sting" operation conducted by local law enforcement. Respondent purchased items from undercover police officers that he believed were stolen.

5. On October 15, 1993, before the San Joaquin County Municipal Court, Case No. SM 174284A, respondent was convicted, on his plea of no contest, of a violation of Penal Code section 415.1 (disturbing the peace—fighting), a misdemeanor. The court suspended the imposition of sentence and granted a three year conditional sentence that included serving two days in county jail and payment of certain fines and fees.

6. The facts and circumstances of the offense are that on October 3, 1993, respondent and his then girlfriend went to her ex-husband's house to pick up her children. A verbal argument developed between the girlfriend and the ex-husband and respondent became involved. The argument developed into a fistfight between respondent and the ex-husband and both were subsequently cited for fighting in public. The offense does not involve moral turpitude and it was not established that it is substantially related to the qualifications, functions, and duties of the licensed activity.

7. Respondent did not disclose either of these convictions on his application. On January 7, 2002, a Department representative conducted a confidential interview with respondent. The interview required respondent to fill out interview questionnaire (RE515) and then to be orally interviewed. Respondent disclosed on the questionnaire that he had been convicted of "496" in the "early 80's" but stated that he did not know he was buying stolen property. He also revealed a conviction in the "mid 70's" that he described as "maybe disturbing the peace". His explanation was that he was around a group of people and all were arrested. This purported conviction was alleged in the Statement of Issues and was not considered. Although respondent disclosed a conviction in the "early 90's", his description of the offense "2432PC" was unclear and he provided no further explanation about the event.

8. Respondent also revealed that he had previously held state issued licenses that were the subject of disciplinary action even though he stated in his application that he never had a business or professional license disciplined. The Statement of Issues does not allege any prior discipline by a state agency and the revelations, therefore, cannot be considered as a basis for denial of licensure. Respondent's answers on the questionnaire were detailed in many respects, vague and confusing in others. In many instances he provided information that was not called for and was, in fact, inappropriate. For example, the information about

licenses specifically referred to business (occupational) or professional licenses and excluded drivers licenses, yet respondent listed such items as hunting and fishing licenses and described actions against his driver's license. In response to a question regarding the existence of a drinking and/or drug problem respondent circled both "yes" and "no". His written response was that "I need water, sometimes I savor more orange juice than water." He went on to state that he eats too much and "would like to lose 15 lbs. ASAP". These and other responses raise serious questions about respondent's ability to interpret complex real estate documents in a common sense manner.

9. Respondent's parsing of words was evident in his testimony at hearing. He seemed unable, or unwilling, to directly answer questions posed to him. Often questions were answered with questions. His testimony was unfocused and seemed evasive. Respondent claimed that he did not fully read the application when he "probably" filled it out and did not remember checking the "no" box regarding convictions. He then attempted to explain his failure to disclose the convictions by attributing it to "forgetfulness" and confusion that may have been caused by medication. Respondent suffered a back injury from a fall that occurred on April 14, 2001. He was placed in a brace and discharged April 18, 2001 and prescribed Tylenol #3 for pain. However, respondent took and passed the real estate examination during the period of recovery. Overall, respondent's testimony was severely lacking in credibility.

10. Although advised by the Administrative Law Judge that he would not be permitted to impeach his conviction for attempting to receive stolen property, respondent continued to maintain that he did not believe the items were stolen. He attempted to portray himself as a victim of circumstance and aggressive police activity. Respondent's ongoing denial 19 years after conviction demonstrate an inability or unwillingness to accept responsibility for his actions. Some evidence of rehabilitation is found in respondent's expungement of his conviction pursuant to Penal Code section 1203.4 and the fact that he has been free of criminal behavior since 1993.

11. Respondent did not present any character evidence on his behalf. Although he lists a potential employer (a broker) on his application, there was no testimonial or documentary evidence in support of respondent from that individual. Respondent lists himself as single with one child (eight and one-half years old), but provided no further information. Respondent claims a high school diploma and attendance for approximately six years to the present time at a local junior college taking general education courses. He did not submit any transcripts or other evidence of course completion. His current employment status is unknown.

12. In evaluating the extent of rehabilitation, the provisions of California Code of Regulations section 2910 are instructive and were considered. Respondent had the burden of establishing that he is entitled to licensure by the Department. He has not met that burden. While respondent's conviction for attempted receiving of stolen property would not in and of itself bar licensure, it is respondent's lack of candor and forthrightness that is disturbing. Respondent has engaged in selective disclosure revealing only that information that he felt

compelled to reveal. In a similar vein there is a reluctance to accept full responsibility for his conduct. It is, therefore, too soon to conclude that respondent is entitled to licensure, even in a restricted status, in a profession that expects and requires candor and full disclosure.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 480(a)(1) and 10177(b) provide that the Department may deny issuance of a real estate license to anyone convicted of any felony or a crime of moral turpitude, if the crime or act is substantially related to the qualifications, functions or duties of a licensee of the Department (See California Code of Regulations section 2910).

2. Cause for denial of respondent's application pursuant to Business and Professions Code sections 480(a)(1) and 10177(b) and California Code of Regulations section 2910, exists by reason of Factual Findings 1 through 10.

3. Business and Professions Code sections 480(c) and 10177(a) provide that the Department may deny issuance of a real estate license where an applicant attempted to procure a license by fraud, misrepresentation, deceit or by knowingly making a false statement of fact on an application.

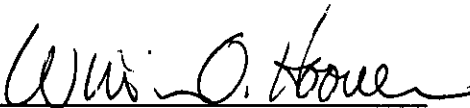
4. Cause for denial of respondent's application, pursuant to Business and Professions Code sections 480(c) and 10177(a) and California Code of Regulations section 2910, exists by reason of Factual Findings 1 through 10.

5. Cause for issuance of a restricted (conditional) license based on a substantial showing of rehabilitation, pursuant to California Code of Regulations §2910, has not been established by reason of Factual Findings 1 through 12.

ORDER

Respondent's application for a conditional real estate salesperson's license is
DENIED.

Dated: 7/5/02


WILLIAM O. HOOVER
Administrative Law Judge
Office of Administrative Hearings

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

FILED
APR 19 2002

DEPARTMENT OF REAL ESTATE

By *Laurie L. Zain*

In the Matter of the Application of

CRAIG CLAYTON GILMORE,

} Case No. H-3656 SAC

} OAH No. N-2002040241

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, SUITE 340/360, SACRAMENTO, CA 95814** on **FRIDAY, JUNE 7, 2002**, at the hour of **10:30 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 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.

Dated: APRIL 19, 2002

DEPARTMENT OF REAL ESTATE

By *David A. Peters*
DAVID A. PETERS, Counsel

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)
7

FILED

MAR 11 2002

DEPARTMENT OF REAL ESTATE

By *Quirrell*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)

No. H-3656 SAC

12 CRAIG CLAYTON GILMORE,)

STATEMENT OF ISSUES

13 Respondent.)
14

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

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate salesperson
22 license on or about July 24, 2001.

23 II

24 Complainant, Charles W. Koenig, a Deputy Real Estate
25 Commissioner of the State of California, makes this Statement of
26 Issues in his official capacity.

27 ///

1 III

2 In response to Question 25 of said application, to
3 wit: "Have you ever been convicted of any violation of law?",
4 Respondent answered "No".

5 IV

6 On or about April 12, 1983, in the Superior Court of
7 California, County of San Joaquin, State of California,
8 Respondent was convicted of a violation of Section 496 of the
9 California Penal Code (Receiving Stolen Property), a crime
10 involving moral turpitude which bears a substantial relationship
11 under Section 2910, Title 10, California Code of Regulations, to
12 the qualifications, functions or duties of a real estate
13 licensee.

14 V

15 On or about October 15, 1993, in the Superior Court of
16 California, County of San Joaquin, State of California,
17 Respondent was convicted of a violation of Section 415(1) of the
18 California Penal Code (Disturbing the Peace), a crime involving
19 moral turpitude which bears a substantial relationship under
20 Section 2910, Title 10, California Code of Regulations, to the
21 qualifications, functions or duties of a real estate licensee.

22 VI

23 Respondent's failure to reveal the convictions set
24 forth in Paragraphs IV and V above, in said application
25 constitutes the attempted procurement of a real estate license
26 by fraud, misrepresentation, or deceit, or by making a material
27 misstatement of fact in said application, which failure is cause

1 for denial or Respondent's application for a real estate license
2 under Section 10177(a) and 480(c) of the Business and
3 Professions Code.

4 VII

5 The crimes of which Respondent was convicted as
6 described in Paragraphs IV and V above, constitute cause for
7 denial of Respondent's application for a real estate license
8 under Sections 480(a) and 10177(b) of the California Business
9 and Professions Code.

10 WHEREFORE, the Complainant prays that the above-
11 entitled matter be set for hearing and, upon proof of the
12 charges contained herein, that the Commissioner refuse to
13 authorize the issuance of, and deny the issuance of a real
14 estate salesperson license to Respondent, and for such other and
15 further relief as may be proper in the premises.

16
17 
18 CHARLES W. KOENIG
19 Deputy Real Estate Commissioner

20 Dated at Sacramento, California,
21 this 5th day of March, 2002.
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26
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