

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
NOV 13 2003
DEPARTMENT OF REAL ESTATE

Shelly Ely

* * *

In the Matter of the Application of)
JEFFEREY WAYNE CRAFTON,)
Respondent.)

NO. H-3829 SAC
OAH No. N2003070346

DECISION

The Proposed Decision dated October 10, 2003, 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 3, 2003.

IT IS SO ORDERED *Dr. Blee 28* 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JEFFEREY WAYNE CRAFTON,

Respondent.

Case No. H-3829SAC

OAH No. N2003070346

PROPOSED DECISION

On September 12, 2003, in Sacramento, California, Denny R. Davis, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Michael B. Rich, Counsel, represented the complainant.

Jefferey Wayne Crafton, respondent, was present and he represented himself.

Evidence was received; the record was closed and the matter was submitted on September 12, 2003.

FACTUAL FINDINGS

1. Complainant, Charles W. Koenig, Deputy Real Estate Commissioner of the State of California, filed the Statement of Issues against respondent in his official capacity only and not otherwise.

2. On August 21, 2002, respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license. At question 25, the applicant/respondent was asked: "Have you ever been convicted of any violation of law?" Respondent marked the "YES" box. He then completed questionnaire 27, listing 9 convictions on an attachment. He listed the following convictions: 1. May 1987, DUI, violation of Vehicle Code section 23152, a Misdemeanor. 2. September 1989, Assault, violation of Penal Code section 243(b). 3. December 1993, DUI, violation of Vehicle Code section 23152, a Misdemeanor. 4. July 1994, Hit and Run, violation of Vehicle Code section 20001, a Felony. 5. August 1994, Battery, violation of Penal Code section 242, a felony. 6. September 1995, Possession of Controlled Substance, violation of Health and Safety Code section 11378, a misdemeanor. 7. September 1997, Assault with a Deadly

Weapon, violation of Penal Code sections 245(a)(1) and 422.75, felonies. 8. June 2000, DUI, violating Vehicle Code section 23152(a). 9. July 2000, Driving on Suspended License, violating Vehicle Code section 14601.5, a misdemeanor.

3. Respondent did not list a December 2, 1997 conviction for violating Vehicle Code section 14601(a). At hearing he explained that the 1997 conviction was not included on the list because he forgot it had occurred. Because he listed all the other convictions and because several of the other convictions were far more serious than the offense of driving without a driver's license, (although it is serious) the inference is reached that he did overlook or forget the 1997 conviction. Respondent did not intend to mislead or conceal from the Department the fact that he had been convicted of driving without a driver's license in 1997.

4. On April 16, 1990, in the Fresno County Municipal Court respondent was convicted of violating California Penal Code section 243 (Battery Committed Upon a Police Officer). The imposition of a 3 year jail sentence was suspended and he was ordered to serve 90 days in jail and placed on 3 years informal probation.

5. On January 27, 1994, in the Sacramento County Municipal Court respondent was convicted of violating California Vehicle Code section 23152(a). Respondent was sentenced to serve 10 days in jail. He was given credit for 1 day served. He was placed on informal probation for 4 years.

6. On November 14, 1995, in the Sacramento County Superior Court respondent was convicted on a plea of nolo contendere of violating California Vehicle Code section 20001. He was also convicted of violating California Penal Code section 242. Respondent was sentenced to serve 270 days in jail. He was given credit for 47 days served. He was placed on formal probation for five years.

7. On November 14, 1995, in the Sacramento County Superior Court respondent was convicted on a plea of guilty of violating California Health and Safety Code section 11377. The imposition of sentence was suspended and he was ordered to register as a convicted drug offender. He was placed on formal probation for five years. He was ordered to participate in a drug rehabilitation program. Respondent was ordered to pay fines and restitution.

8. On December 2, 1997, in the San Diego County Municipal Court respondent was convicted of violating California Vehicle Code section 14601(a). The imposition of sentence was suspended and he was placed on summary probation for 3 years. Respondent was ordered to pay fines in the amount of \$811.00 and restitution in the amount of \$200.00.

9. On December 2, 1997, in the San Diego County Municipal Court respondent was convicted of violating California Penal Code section 245(a)(1), Battery with serious bodily injury. Respondent was sentenced to serve 365 days in jail. He was placed on formal probation for 3 years. Respondent was ordered to pay fines in the amount of \$425.00 and restitution in the amount of \$160.00.

10. Respondent regrets having been involved in criminal conduct. He is embarrassed and he apologized for having been involved. He is active in his community and he has become a contributing member of his community.

11. Real estate salespersons occupy a unique position of trust and responsibility toward the property of others. Licensees enjoy having access to the homes of others within and out of the presence of the homeowners. They function with little supervision and their trustworthiness must be unassailable. Respondent's evidence of mitigation and rehabilitation was weighed and considered. Respondent has made praiseworthy changes in his life. He has improved himself personally and professionally. He has undertaken education and he has conducted himself as a productive member of his community. He has earned the trust, praise and support of persons within his family and outside his family. The conduct that resulted in his criminal convictions however was serious and a very short time has lapsed since the latest conviction, to wit 2001. The consuming public is entitled to expect that real estate salespersons conduct themselves in a civil and professional manner. Insufficient time has passed to show sufficient rehabilitation.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177 (a) and (b) provide:

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.

2. Cause exists to deny the issuance of a real estate salesperson's license to respondent exists under Business and Professions Code section 10177(a) and (b).

3. Business and Professions Code section 480(a) (1) provides:

(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.

4. The offenses respondent committed involved moral turpitude. For that reason and because they were substantially related to the duties of a real estate salesperson, cause exists under section 480 (a) (1) of the Business and Professions Code to deny respondent's application for a real estate salesperson's license.

5. Title 10, California Code of Regulations section 2910(a) (1) (10) and (b) provides:

(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.

...

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

...

(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.

...

6. Based on respondent's pattern of repeated and willful disregard of law, cause exists to deny the issuance of a real estate salesperson's license to respondent under CCR Title 10, section 2910.

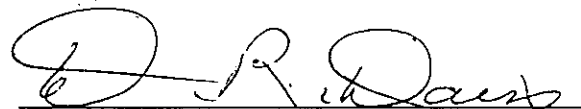
7. Respondent has made significant and positive changes in his life. He has improved himself personally and professionally. He has obtained education and he is a productive member of his community. He has earned the love, trust, praise and support of persons within his family and outside his family.

ORDER

1. The Department's refusal to issue a real estate salespersons license to respondent is sustained.

2. The application of Jefferey Wayne Crafton for the issuance of a real estate salespersons license is denied

Dated: October 10, 2003



DENNY R. DAVIS
Administrative Law Judge
Office of Administrative Hearings

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6 Telephone: (916) 227-0789

FILED
JUL 08 2003

DEPARTMENT OF REAL ESTATE

Shelly Co.

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 JEFFEREY WAYNE CRAFTON,)
13 Respondent.)

No. H-3829 SAC

FIRST AMENDED
STATEMENT OF ISSUES

15
16 The Complainant, CHARLES W. KOENIG, a Deputy Real
17 Estate Commissioner of the State of California, for Statement of
18 Issues against JEFFEREY WAYNE CRAFTON (hereinafter "Respondent"),
19 is informed and alleges as follows:

20 I

21 Respondent made application to the Department of Real
22 Estate of the State of California for a real estate salesperson
23 license on or about August 21, 2002, with the knowledge and
24 understanding that any license issued as a result of said
25 application would be subject to the conditions of Section 10153.4
26 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 and not otherwise.

5 III

6 On or about April 16, 1990, in the Municipal Court,
7 County of Fresno, Respondent was convicted of a violation of
8 Section 243(b) of the California Penal Code (Batter committed
9 against a police officer in performance of duty), 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 IV

15 On or about January 27, 1994, in the Municipal Court,
16 County of Sacramento, Respondent was convicted of violating
17 California Vehicle Code Section 23152(a) (Driving under the
18 influence of alcohol and a drug), a crime involving moral
19 turpitude which bear a substantial relationship under Section
20 2910, Title 10, California Code of Regulations, to the
21 qualifications, functions, or duties of a real estate licensee.

22 V

23 On or about November 14, 1995, in the Superior and
24 Municipal Court, County of Sacramento, in Case No. 94F10118,
25 Respondent was convicted of violating California Vehicle Code
26 Section 20001 (Leave scene of collision resulting in injury), a
27 crime involving moral turpitude which bears a substantial

1 relationship under Section 2910, Title 10, California Code of
2 Regulations, to the qualifications, functions, or duties of a
3 real estate licensee.

4 VI

5 On or about November 14, 1995, in the Superior and
6 Municipal Court, County of Sacramento, in Case No. 94M11346,
7 Respondent was convicted of violating California Penal Code
8 Section 242 (Battery), a crime 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 VII

13 On or about November 14, 1995, in the Superior and
14 Municipal Court, County of Sacramento, in Case No. 95F08446,
15 Respondent was convicted of violating California Health & Safety
16 Code Section 11377 (Unlawful possession of a controlled
17 substance, to wit: methamphetamine), a crime involving moral
18 turpitude which bears a substantial relationship under Section
19 2910, Title 10, California Code of Regulations, to the
20 qualifications, functions, or duties of a real estate licensee.

21 VIII

22 On or about December 2, 1997, in the Municipal Court,
23 County of San Diego, in Case No. T185594, Respondent was
24 convicted of violating California Vehicle Code Section 14601(a)
25 (Knowingly driving while license suspended), a crime involving
26 moral turpitude which bears a substantial relationship under

27 ///

1 Section 2910, Title 10, California Code of Regulations, to the
2 qualifications, functions, or duties of a real estate licensee.

3 IX

4 On or about December 2, 1997, in the Superior Court,
5 County of San Diego, in Case No. SCD130226, Respondent was
6 convicted of violating California Penal Code Section 245(a)(1)
7 (Assault upon the person with a deadly weapon other than a
8 firearm), a crime involving moral turpitude which bears a
9 substantial relationship under Section 2910, Title 10, California
10 Code of Regulations, to the qualifications, functions, or duties
11 of a real estate licensee.

12 X

13 On or about August 30, 2000, in the Superior Court,
14 County of Yolo, Respondent was convicted of violating California
15 Vehicle Code Section 23152(b) (Driving under the influence while
16 having a blood alcohol level of .08% or more), a crime involving
17 moral turpitude which bears a substantial relationship under
18 Section 2910, Title 10, California Code of Regulations, to the
19 qualifications, functions, or duties of a real estate licensee.

20 XI

21 On or about January 8, 2001, in the Superior Court,
22 County of Madera, Respondent was convicted of violating
23 California Vehicle Code Section 14601.5(a) (Knowingly driving
24 while license suspended for driving under the influence), a crime
25 involving moral turpitude which bears a substantial relationship
26 under Section 2910, Title 10, California Code of Regulations, to

27 ///

1 the qualifications, functions, or duties of a real estate
2 licensee.

3 XII

4 In responses to Questions 25 and 27 of the license
5 application, requiring Respondent to reveal the court conviction,
6 arresting agency, date of conviction, type of conviction, code
7 name and section number violated, disposition and case number,
8 for each conviction of any violation of law (other than for
9 convictions of drunk driving, reckless driving, and minor traffic
10 citations not constituting a misdemeanor or felony offense),
11 Respondent concealed and failed to reveal the conviction
12 described in Paragraph VIII, as set forth herein above.

13 XIII

14 Respondent's failure to reveal in the Application the
15 conviction described in Paragraph VIII, as set forth herein
16 above, constitute an attempt to procure a real estate license by
17 fraud, misrepresentation, or deceit, or by making a material
18 misstatement of fact in the application, which failure is cause
19 for denial of Respondent's license application under Sections
20 480(c) and 10177(a) of the California Business and Professions
21 Code.

22 XIV

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

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.

7
8 
9 CHARLES W. KOENIG
10 Deputy Real Estate Commissioner

11 Dated at Sacramento, California,
12 this 23rd day of June, 2003.
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUL 23 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

JEFFEREY WAYNE CRAFTON,

Case No. H-3829 SAC

OAH No. N2003070346

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 FRIDAY--SEPTEMBER 12, 2003, at the hour of 2:30 PM, 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.

DEPARTMENT OF REAL ESTATE

Dated: JULY 23, 2003

By Michael B. Rich
MICHAEL B. RICH, Counsel

flag

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6
7 Telephone: (916) 227-0789

FILED
MAY 30 2003

DEPARTMENT OF REAL ESTATE

By *Jean Aunoh*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

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II

Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

III

On or about April 16, 1990, in the Municipal Court, County of Fresno, Respondent was convicted of a violation of Section 243(b) of the California Penal Code (Batter committed against a police officer in performance of duty), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

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On or about January 27, 1994, in the Municipal Court, County of Sacramento, Respondent was convicted of violating California Vehicle Code Section 23152(a) (Driving under the influence of alcohol and a drug), a crime involving moral turpitude which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

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On or about November 14, 1995, in the Superior and Municipal Court, County of Sacramento, in Case No. 94F10118, Respondent was convicted of violating California Vehicle Code Section 20001 (Leave scene of collision resulting in injury), a crime involving moral turpitude which bears a substantial

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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.

7
8 
9 CHARLES W. KOENIG
10 Deputy Real Estate Commissioner

11 Dated at Sacramento, California,
12 this 28th day of May, 2003.