

FILED
SEP 14 2004

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Laurie G. Ji

* * *

| | |
|---------------------------------------|----------------------|
| In the Matter of the Application of) | |
| MEHAR SINGH SAINI,) | NO. H-4015 SAC |
| Respondent.) | OAH NO. N-2004060164 |
|) | |

DECISION

The Proposed Decision dated August 19, 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 ^{broker} 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 OCTOBER 5, 2004.

IT IS SO ORDERED Sept. 9, 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 Statement of Issues
Against:

MEHARD SINGH SAINI,

Respondent.

CASE No. H-4015 SAC

OAH No. N2004060164

PROPOSED DECISION

This matter was heard by Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, in Sacramento, California, on July 29, 2004.

David B. Seals, Staff Counsel, Department of Real Estate, State of California, represented complainant Charles W. Koenig, Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Dwight M. Samuel, Esq., represented Mehard Singh Saini (respondent).

Evidence was received and the matter submitted on July 29, 2004.

FACTUAL FINDINGS

1. On April 22, 2004, Charles W. Koenig, Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California, filed the Statement of Issues against respondent in his official capacity.
2. On April 1, 2003, respondent submitted an executed Broker License Application to the Department. Said application for licensure is pending.
3. Question 20 of Respondent's application for licensure asks, "Have you ever been convicted of any violation of law?" Respondent answered, "No."
4. On January 21, 1999, in the United States District Court, Eastern District of California, respondent was convicted of a felony violation of U.S. Code title 18, section 1341 (mail fraud), a crime of moral turpitude substantially related to the functions, duties and qualifications of a Department licensee pursuant to California Code of Regulations, title 10,

section 2910. Respondent was placed on probation. The facts and circumstances underlying respondent's conviction were that respondent submitted a false insurance claim through the mail for claimed loss.

5. Respondent does not dispute his conviction. He claims that he and others, solicited by him as investors, lost their money to the operators of a Nigerian sting operation. In order to obtain the money to reimburse the investors and protect his family, he submitted a false claim for insurance reimbursement. With respect to his failure to report his conviction when asked by the Department in its application, respondent ascribes such failure to a misunderstanding. According to respondent he believed that upon completion of his federal probation his conviction was dismissed and non-reportable.

Circumstances in Mitigation

6. Respondent, 50, having successfully completed an undergraduate education and graduate education, and a U.S. naturalized citizen from India, seeks licensure whether as a real estate broker or real estate salesperson to expand his opportunities and provide for his community.

7. Respondent, having paid all fines and other obligations, successfully completed his probation.

8. Respondent's conviction occurred nearly more than five years ago.

9. Respondent, involved in church and community activities, has a broad range of church and community support who claim he is honest, trustworthy, dependable and dedicated to his church and community.

Circumstances in Aggravation

10. Respondent suffered a conviction of moral turpitude.

11. Respondent, notwithstanding the broad range of commendable support from church and community members, did not disclose his prior conviction.

12. Respondent, by his conduct relating to his application and Department submission, has engaged in repeated acts of moral turpitude.¹ While respondent attributes his failure to misunderstanding, the clarity with which the question is propounded, compounded with his repeated failure to disclose his conviction to members of his church and community who either testified or submitted letters of support, belies his misunderstanding. Rather, it becomes abundantly evident that in his desire to put his conviction behind him, respondent does not and, specifically, has not revealed his federal conviction.

¹ *People v. Forster* (1994) 29 Cal.App.4th 1746.

13. Respondent's probation terminated a little more than two years ago.

LEGAL CONCLUSIONS

1. Cause exists to deny the application of respondent for licensure as a real estate broker for a criminal conviction pursuant to the provisions of Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), in conjunction with California Code of Regulations, title 10, section 2910, and as set forth in Findings 2 through 5, inclusive.

2. Cause exists to deny the application of respondent for licensure as a real estate broker for failure to reveal convictions in an application submitted to the Department pursuant to the provisions of Business and Professions Code sections 480, subdivision (c), and 10177, subdivision (a), and as set forth in Findings 2 through 5, inclusive.

3. The objective of a disciplinary proceeding is to protect the public, the licensed occupation, maintain integrity, high standards, and preserve public confidence in Department licensure.² In particular, the statutes relating to Department licensure are designed to protect the public from any potential risk of harm.³

In the matter pending, it is respondent, not the Department, who bears the burden of establishing rehabilitation.

While respondent submits his successful completion of court probation evinces a rehabilitation that is complete, his recent failure to fully disclose his conviction compels scrutiny as to whether his rehabilitative efforts are permanent or, merely, situational.

Respondent, to that end, has failed to present sufficient evidence of sustained rehabilitation that addresses a recent history of discrete acts of dishonesty. While not ignoring the significant gains he has effected, such salutary gains diminish when balanced against the scope of his criminal misconduct, the recency of his rehabilitative efforts, and his more recent errant conduct.

Respondent has requested that the undersigned consider, in the event a real estate broker's license was not granted, the issuance of a real estate salesperson's license in lieu thereof. I have. That request for the issuance of a real estate salesperson's license, even a restricted license, is denied. Probation is warranted where rehabilitation compels the issuance of a Department license. Respondent has not presented sufficient evidence to warrant such salutary consideration.

² *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

³ See *Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.

Accordingly, giving due consideration to the facts and circumstances underlying the Statement of Issues (Legal Conclusions 1-2, and each of them) and the circumstances in mitigation (Findings 6 through 9, inclusive) and aggravation (Findings 10 through 13, inclusive), the public interest will be harmed by the issuance of a real estate license to respondent.

ORDER

Respondent Mehard Singh Saini's application for a real estate broker license from the Department of Real Estate is denied.

Dated: 8/19/04



JAIME RENÉ ROMÁN
Administrative Law Judge
Office of Administrative Hearings

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

FILED

JUN 17 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

MEHARD SINGH SAINI,

By *Laurel J. [Signature]*

Case No. H-4015 SAC

OAH No. N-2004060164

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 **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.

Dated: JUNE 17, 2004

DEPARTMENT OF REAL ESTATE
By *David B. Seals*
DAVID B. SEALS, Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
MAY - 7 2004

DEPARTMENT OF REAL ESTATE
By Lauriel P. [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Application of)
12 MEHAR SINGH SAINI,) No. H-4015 SAC
13 Respondent.) STATEMENT OF ISSUES

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

I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate broker
22 license on or about April 1, 2003.

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 20 of said application, to
3 wit: "Have you ever been convicted of any violation of law? If
4 yes, complete #22 below.", Respondent answered "NO".

5 IV

6 On or about January 21, 1999, in the United States
7 District Court, Eastern District of California, Respondent was
8 convicted of violation of 18 U.S.C. Section 1341 (Mail Fraud), a
9 felony and a crime involving moral turpitude which is
10 substantially related under Section 2910, Title 10, California
11 Code of Regulations, to the qualifications, functions or duties
12 of a real estate licensee.

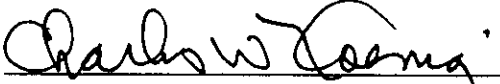
13 V

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

22 VI

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

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

7
8 
9 CHARLES W. KOENIG
Deputy Real Estate Commissioner

10 Dated at Sacramento, California,
11 this 22nd day of April, 2004.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27