

FILED
NOV 04-2004

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)

TONY L. BRACY,

Respondent.)

NO. H-4026 SAC

OAH NO. N-2004070146

ORDER DENYING RECONSIDERATION

On September 27, 2004, a Decision was rendered in the above-entitled matter. The Decision is to become effective at 12 o'clock noon on November 8, 2004. On October 19, 2004, Respondent petitioned for reconsideration of the Decision of September 27, 2004.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision of September 27, 2004, and reconsideration is hereby denied.

IT IS HEREBY ORDERED November 3, 2004.

JEFF DAVI
Real Estate Commissioner

Jeff Davi

~~My Shell Ely~~

* * *

In the Matter of the Accusation of)
)
 TONY L. BRACY,) No. H-4026 SAC
)
 Respondent.)

DATED: 10-20, 2004.

JEFF DAVIS
Real Estate Commissioner

JEFF DAVIS
Real Estate Commission

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 06 2004

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Application of)
TONY L. BRACY,)
Respondent.)

By Shelly Ely
NO. H-4026 SAC
OAH No. N2004070146

DECISION

The Proposed Decision dated September 8, 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 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 28, 2004.

IT IS SO ORDERED Sept. 27, 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:

TONY L. BRACY,

Respondent.

Case No. H-4026 SAC

OAH No. N2004070146

PROPOSED DECISION

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on August 31, 2004.

Michael B. Rich, Counsel, Department of Real Estate, represented the complainant.

Tony L. Bracy (respondent) was represented by J. Anne Rawlins, Attorney at Law.

Evidence was received and the matter was submitted on August 31, 2004.

FACTUAL FINDINGS

1. Complainant Peter Saverien (complainant), a Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California, filed the Statement of Issues against respondent in complainant's official capacity.
2. On May 19, 2003, respondent filed an application for a real estate salesperson license with the Department. Respondent has not successfully completed the courses required by Business and Professions Code section 10153.4.
3. On or about June 9, 1994, in the Superior/Municipal Court, County of Yolo, respondent was convicted, upon his plea, of violating Penal Code section 12025, subdivision (a), carrying a concealed weapon in a vehicle, a misdemeanor. As a result of respondent's conviction, imposition of sentence was suspended and respondent was placed on summary probation for 12 months. The terms and conditions included two days in jail, with credit for two days served, and payment of a \$460 fine/restitution. The offense for which respondent

was convicted occurred on or about December 31, 1993, when respondent's vehicle was stopped by police because he matched the description of a robbery suspect. Although respondent was not involved in the robbery, one of the officers observed a loaded handgun in the front of the vehicle, which belonged to respondent's acquaintance. The offense is not a crime involving moral turpitude. However, respondent's conduct, when coupled with the offenses described in Factual Findings four and five, demonstrates a pattern of repeated and willful disregard of law and the offense is therefore substantially related to the qualifications, functions and duties of a real estate salesperson pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(10).

4. On or about February 7, 1997, in the Superior/Municipal Court, County of Yolo, respondent was convicted, upon his plea of nolo contendere, of violating Vehicle Code section 23103/23103.5, reckless driving with consumption or ingestion of alcohol or drugs¹, and Health and Safety Code section 11357, subdivision (c), possession of more than 28.5 grams of marijuana, both misdemeanors. As a result of the conviction, imposition of sentence was suspended and respondent was placed on summary probation for 24 months. The terms and conditions included payment of a \$776 fine, completion of an alcohol education class, and biological testing. The offenses involved a traffic stop after respondent was observed swerving. He failed a roadside sobriety test. The marijuana was found when his vehicle was searched, incident to his arrest. The offenses are not crimes involving moral turpitude. However, respondent's conduct, when coupled with the offenses described in Factual Findings three and five, demonstrates a pattern of repeated and willful disregard of law and the offenses are therefore substantially related to the qualifications, functions and duties of a real estate salesperson pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(10).

5. On or about July 18, 2000, in the Superior and Municipal Courts, County of Sacramento, respondent was convicted, upon his plea of nolo contendere, of four counts of violating Health and Safety Code section 11379, subdivision (a), unlawful transportation of a controlled substance: methamphetamine, and one count of violating Health and Safety Code section 11352, subdivision (a), unlawful possession, transport, furnishing, or selling a controlled substance: cocaine hydrochloride, both felonies. As a result of respondent's conviction, he was sentenced to an aggregate state prison term of four years for two of the counts, and three years for the other three, the latter to run concurrently with the four year prison term. These offenses are all crimes involving moral turpitude and because respondent did unlawful acts with the intent of conferring a financial and economic benefit upon himself, the offenses are substantially related to the qualifications, functions and duties of a real estate salesperson pursuant to California Code of Regulations, title 10, section 2910, subdivision (a) (8).

¹ This is a so called "wet reckless" conviction which may be used to enhance sanctions for future driving while drinking convictions.

6. Respondent will be 30 years old on September 16, 2004. Apart from three years and one month spent in prison, he has lived his whole life in West Sacramento, California. Respondent graduated from high school in 1992. He attended Sacramento City College and American River College for a total of approximately four years, beginning in 1992. He majored in business but lacks approximately ten units for an Associate of Arts degree. He was a gifted baseball player and played on the baseball team of both colleges. The conduct which led to his convictions began after he stopped playing baseball and began spending time with the part of his family prone to criminal behavior. He acknowledges the use of marijuana before the time spent in prison but he did not personally use methamphetamine or cocaine, although he admits selling those drugs.

7. Following his early release from prison for good behavior, respondent moved in with his grandmother and has accomplished a complete turnaround of his life. His parole officer testified and established that he has made an excellent adjustment to parole and requires minimal supervision. Drug testing has all been negative. He will complete his three year period on October 7, 2004. His parole agent, a veteran of 20 years' correctional work, firmly believes that respondent will be among the 20 percent of parolees who do not commit additional crimes. Respondent has been working for John Kane, a West Sacramento real estate broker, learning the real estate business, including lending practices and title company processes. Mr. Kane arranged to have respondent spend time in lender and title company offices to further his knowledge. Mr. Kane was the person who encouraged respondent to take the classes necessary to obtain his real estate salesperson license and the Sacramento Association of Realtors' Real Estate Training Institute program. He has known respondent since respondent was a young teenager and was well aware of his criminal record when he took respondent on as his protégé. Mr. Kane described respondent now as a tenacious person with a work ethic, good people skills, and task orientation. He would have no qualms having respondent work under his license and he is respondent's sponsoring broker.

8. Respondent called other very impressive character witnesses who have known him through the good and bad times of his life. One such witness is a West Sacramento police officer who has known respondent since they attended grammar school together. He was not surprised when respondent got into trouble because respondent was hanging around with the family members inclined toward such behavior. He confirmed that respondent has not associated with such persons and has maintained a law abiding life since his parole. He also observed that respondent has resumed his upbeat, energetic personality for which he was known before his troubled period. A West Sacramento firefighter testified and established that respondent has made a complete turnabout in respondent's life. Respondent's grandmother and aunt also testified. The grandmother was a school principal for almost 30 years and the aunt has been a teacher for that long. They established that respondent has been a tremendous help to his grandmother who suffered a stroke earlier this year. He slept in her hospital room and, after her release, he has cared for her and performed necessary household chores including grocery shopping. The aunt described respondent today as very focused, responsible, caring—an all around good guy. Respondent helps her son, a Sacramento City College student, with his baseball skills and they play together in a weekend league. Respondent has stressed to his nephew that the nephew must be patient and pay his dues to be successful, life's lessons learned

by respondent through his travails. The aunt observed that respondent is surrounded by people who support and encourage him, including Mr. Kane and his wife and respondent's fiancé.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a) (1) reads:

(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.

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.

2. California Business and Professions Code section 10177, subdivision (b) reads:

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.

3. Cause for denial of respondent's application for a real estate salesperson license was established for violation of Business and Professions Code sections 480, subdivision (a)(1), based on Factual Findings three through five.

4. Cause for denial of respondent's application for a real estate salesperson license was established for violation of Business and Professions Code 10177, subdivision (b), based on Factual Finding five.

5. The criteria for rehabilitation are found in California Code of Regulations, title 10, section 2911:

The following criteria have been developed by the department pursuant to Section 482, subdivision (b) of the Business and Professions Code for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated on account of a crime committed by the licensee.

- (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) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) 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.
- (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
- (h) 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.
- (i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.

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

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

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

(m) 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.

(n) 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.

(5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

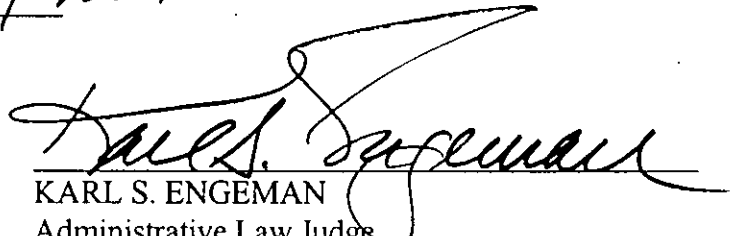
6. Applying the relevant criteria for rehabilitation, it has been over four years since respondent's most recent conviction; but that conviction was one of three convictions over a six year period and respondent remains on parole for approximately one more month. No restitution was owed any private citizen or entity. Respondent is not eligible for expungement. Respondent was released almost a year early from prison and he is within one month of successful completion of his three-year parole. Respondent did not abuse strong illicit substances and he has abstained from marijuana use for at least four years, as confirmed by drug testing. He has paid, or been relieved from, all fines and restitution owed governmental entities. Respondent enjoys a stable family life and he is engaged to be married. He more than fulfills his familial obligations to his grandmother for whom he provides needed care and support. Respondent has completed real estate educational courses beyond those taken to pass the examination. Respondent helps his nephew with baseball and

is considering talks to at-risk youth. Respondent has evidenced a complete alteration of his life as confirmed by his family, his parole officer, and law enforcement and fire safety officers who have known him many years. In summary, respondent has demonstrated an excellent beginning of the efforts which will establish his complete rehabilitation. However, the multiple offenses, along with a lengthy prison sentence and parole, warrant a longer period of exemplary behavior beyond parole supervision.

ORDER

The application of respondent Tony L. Bracy for a real estate salesperson license is denied.

Dated: September 8, 2004


KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings

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

FILED
JUL 23 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

TONY L. BRACY

Case No. H-4026 SAC

OAH No. N2004070146

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 **TUESDAY--AUGUST 31, 2004**, 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 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, 2004

By Michael B. Rich
MICHAEL B. RICH, Counsel (J.E.)

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0789
8

FILED
MAY 28 2004

DEPARTMENT OF REAL ESTATE

By Shelly Ely

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Application of)
12 TONY L. BRACY,)
13 Respondent.)
14

No. H- 4026 SAC

STATEMENT OF ISSUES

15 The Complainant, PETER SAVERIEN, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against TONY L. BRACY also known as TONY LEE BRACY (hereinafter
18 "Respondent"), is informed and 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 May 19, 2003, with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to the conditions of Section 10153.4
25 of the Business and Professions Code.

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II

Complainant, PETER SAVERIEN, 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 June 9, 1994, in the Municipal and Superior Court, County of Yolo, State of California, in case number 66663, Respondent was convicted of a violation of Section 12025(a)(1) of the California Penal Code (Carry concealed within any vehicle any pistol or firearm capable of concealment upon the person), 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.

IV

On or about February 7, 1997, in the Municipal and Superior Court, County of Yolo, State of California, in case number 96002438, Respondent was convicted of violating Section 23103 of the California Vehicle Code (Drive vehicle upon highway in willful and wanton disregard for safety) pursuant to Section 23103.5 of the California Vehicle Code (Substitute charge of Section 23103 in lieu of driving under the influence under Section 23152) and of violating Section 11357(c) of the California Health and Safety Code (Unlawful possession of more than 28.5 grams of marijuana), crimes involving moral turpitude which bear a substantial relationship under Section 2910, Title

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

3 V

4 On or about July 18, 2000, in the Superior Court,
5 County of Sacramento, State of California, in case number
6 98F08366, Respondent was convicted of four counts of violating
7 Section 11379(a) of the California Health and Safety Code
8 (Unlawful transportation of a controlled substance; to wit,
9 methamphetamine) and one count of violating Section 11352(a) of
10 the California Health and Safety Code (Unlawful possession,
11 transport, furnishing, or selling of a controlled substance; to
12 wit, cocaine hydrochloride), felonies involving moral turpitude
13 which bear a substantial relationship under Section 2910, Title
14 10, California Code of Regulations, to the qualifications,
15 functions, or duties of a real estate licensee.

16 VI

17 The crimes of which Respondent was convicted, as
18 alleged in Paragraphs III, IV and V, inclusive, individually,
19 and/or collectively, constitute cause for denial of Respondent's
20 application for a real estate license under Sections 480(a)
21 and/or 10177(b) of the California Business and Professions Code.

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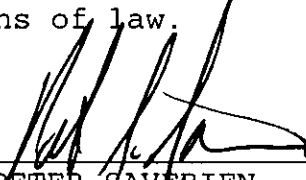
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1 WHEREFORE, the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the charges
3 contained herein, that the Commissioner refuse to authorize the
4 issuance of, and deny the issuance of, a real estate salesperson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

7
8 
9 PETER SAVERIEN
Managing Deputy Commissioner

10 Dated at Sacramento, California,
11 this 20TH day of MAY, 2004.