FILED

NOV - 5 2010

DEPARTMENT OF REAL ESTATE

By [signature]

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of	)	
	)	NO. H-4114 SD
CHRISTOPHER BRIAN HILL,	)	
	)	OAH NO. 2010061022
Respondent.	)	

DECISION

The Proposed Decision dated October 11, 2010, 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, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon on NOV 29 2010.

IT IS SO ORDERED 11/1/2010.

JEFF DAVI
Real Estate Commissioner

[signature]

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of: CHRISTOPHER BRIAN HILL, Respondent.	Case No. H-4114 SD OAH No. 2010061022

PROPOSED DECISION

Agustin F. Lopez II, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 26, 2010, in San Diego, California.

Angela Cash, Counsel, represented complainant Joseph Aiu, a Deputy Real Estate Commissioner, Department of Real Estate, State of California (Department).

Respondent Christopher Brian Hill (respondent) represented himself and was present throughout the administrative hearing.

Oral and documentary evidence were received and the matter was submitted on August 26, 2010.

FACTUAL FINDINGS

1. On May 26, 2010, complainant Joseph Aiu, a Deputy Real Estate Commissioner for the Department, signed the statement of issues in his official capacity. The statement of issues sought the denial of the application of respondent for a real estate salesperson's license based upon multiple convictions for: (1) A 1994 assault with a deadly weapon on a government officer; (2) a 1999 writing worthless checks; and (3) a 2002 conviction for driving with a suspended license. All convictions took place in North Carolina.

2. The statement of issues and other required jurisdictional documents were served on respondent, who timely filed a notice of defense and request for hearing.

3. On July 23, 2009, respondent applied to the Department for the issuance of a real estate salesperson's license.

4. After successfully completing the salesperson exam, respondent was asked by the Department, "[h]ave you ever been convicted of a misdemeanor or felony?" Respondent responded, "Yes" and provided a State of North Carolina Criminal Record Search that revealed 5 misdemeanors. In addition to the convictions listed on the Record Search, respondent wrote a separate statement where he disclosed a further felony conviction that did not appear on the Record Search.

5. The 1999 misdemeanor convictions involved bad checks written on a partnership business account which had been closed. Respondent was one of the partners and it was his name on the account so when the account had been closed, he was unaware that additional checks on that account were outstanding. Respondent paid all outstanding debts related to the bad checks issued.

6. The 1994 felony conviction was for assault with a deadly weapon on a government officer. Specifically, respondent was involved in an automobile accident with a police officer who was directing traffic. As a result of the conviction, respondent spent 30 days in jail, 250 hours of community service, paid $5,000 in fines, had his driver's license revoked for one year, and was placed on both supervised and unsupervised probation. Respondent complied with all terms of his conviction and probation.

7. On cross-examination, respondent admitted to a 2002 charge for driving with an invalid license. Respondent explained that in North Carolina, a driver's license is automatically suspended if the corresponding auto insurance policy lapses.

8. Respondent provided no documentation relating to the completion of the terms of his probation with respect to the felony conviction, but he did provide proof that the misdemeanor claims were paid. None of the foregoing convictions have been expunged because respondent was unaware of the expungement option.

Rehabilitation Evidence

9. As discussed further below, sufficient grounds exist for the denial of respondent's application for a real estate salesperson license. Nonetheless, this case turns on respondent's level of rehabilitation and his fitness to be a licensee despite prior convictions.

10. Accordingly, respondent argued that the convictions occurred a long time ago and that he is a different person today. Specifically, he argued that he has turned his life around, and his focus is on responsibly providing for his family and the family business.

11. In support, respondent provided evidence that he is financially responsible and that he meets a majority of the Department's rehabilitation criteria. Specifically, he testified that:

1. His most recent infraction occurred over eight years ago;
2. He has paid all fines and restitution for his convictions;
3. He successfully completed probation/parole;
4. He has been married for four years;

5. He successfully completed the California Real Estate Salesperson exam;
6. He has been successfully employed as a property manager/handyman for approximately five years;
7. He owes no money;
8. He has corrected the practices that led to his convictions. Specifically, when his convictions occurred he was single and significantly younger and immature;
9. He currently is working in a position of responsibility and supervises at least 4 other individuals.

12. In addition, respondent called two character witnesses to support his arguments. The first, Roland Eugene Bowman, is the owner of the business and licensed broker for the property management firm for which respondent works. Mr. Bowman is also the grandfather of respondent's wife. Mr. Bowman indicated that he has known respondent for five years. Mr. Bowman testified that respondent is indeed a different person and has the moral character to be a licensee. Additionally, Mr. Bowman indicated that respondent did not hide his convictions from him but instead informed him from the beginning of their relationship. This is consistent with the documentation submitted to the Department because Mr. Bowman's signature appears on each page of respondent's disclosure of his convictions. Mr. Bowman further indicated that respondent is a responsible member of the community and participates informally in "children's groups and swimming parties." Mr. Bowman further testified that he would be willing to supervise respondent should he be issued a restricted salesperson's license.

13. The second witness was Kerry Bradshaw Hill, respondent's wife. Mrs. Hill testified that respondent is a responsible and conscientious father and husband. She testified that she has known respondent since high school and provided evidence that respondent is not the same person he was when he was convicted.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence. (*California Administrative Hearing Practice* (Cont.Ed.Bar 2d ed. 2009), The Hearing Process, §§ 7.51-7.53, pp. 376-378.)

Applicable Statutes

2. The Department may deny an applicant a license on the grounds that the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which application is made; or done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or

herself or another, or substantially injure another. (Bus. & Prof. Code, § 480, subd. (a); see also § 10177, subd. (b).)

Substantial Relationship

3. A board may impose license discipline on the ground that the licensee has been convicted of a crime if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Thus a determination that a licensee's conviction justifies discipline cannot rest on the moral reprehensibility of the underlying conduct, but requires a reasoned determination that the conduct was in fact substantially related to the licensee's fitness to engage in the profession. (*Gromis v. Medical Board* (1992) 8 Cal.App.4th 589, 598.)

4. Licensing authorities do not enjoy unfettered discretion to determine on a case-by-case basis whether a given conviction is substantially related to the relevant professional qualifications. Business and Professions Code section 481 requires each licensing agency to "develop criteria to aid it . . . to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates." In response to this directive the Department adopted section 2910 of Title 10 of the California Code of Regulations. (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 955-956.)

5. A conviction for a crime is substantially related to the qualifications, functions or duties of a licensee of the Department if it involves, among other things: (1) the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person, (2) the uttering of a false statement, (3) conduct which demonstrates a pattern of repeated and willful disregard of law, or (4) two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs. (Cal. Code Regs., tit. 10, § 2910.)

6. Specifically, honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. If appellant's offense reflects unfavorably on his honesty, it may be said to be substantially related to his qualifications. (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.)

Rehabilitation

7. The Department has developed the following criteria, among others, for the purpose of evaluating the rehabilitation of an applicant for issuance of a license in considering whether or not to deny the issuance 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. 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. (Cal. Code Regs., tit. 10, § 2911.)

8. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

9. Cases authorizing admission on the basis of rehabilitation commonly involve a *substantial* period of exemplary conduct following the applicant's misdeeds. (*In re Eben Gossage* (2000) 23 Cal.4th 1080, 1096 (emphasis added).) The more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be. (*Id.*) Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*Id.* at 1099.)

Respondent has demonstrated sufficient rehabilitation to be issued a restricted salesperson's license.

10. Good grounds exist to deny respondent a real estate salesperson's license by virtue of his convictions in North Carolina.

11. Nonetheless, as discussed further below, respondent has demonstrated sufficient rehabilitation to be issued a two-year restricted sales person license.

First, respondent's most recent conviction was over eight years ago; well over the two year time frame dictated by the department's rehabilitation criteria. Second, respondent complied with all restitution requirements. Third, he has successfully completed all probation requirements as well. Fourth, respondent's wife testified that he is a good husband and stable family man that fulfills his parental and family obligations. Fifth, he successfully completed the training and exams for this license. Sixth, respondent owes no money and therefore does not have any debts or money obligations that require discharge. Seventh, respondent proved that he has significant and conscientious involvement in his community through his participation in his child's school. Eighth, respondent has disassociated with those with whom he engaged in bad conduct with, in that his bad conduct occurred in North Carolina. Finally, respondent demonstrated a significant change in attitude for the better since relocating to San Diego and establishing a family.

12. Most significantly, the Department indicated during the hearing that it was not opposed to a two-year restricted license.

ORDER

1. Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

(a) The conviction of Respondent (including a plea of nolo contendere) of a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to Respondent.

3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

2. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: October 11, 2010

for

AGUSTIN F. LOPEZ II
Administrative Law Judge
Office of Administrative Hearings

ANGELA L. CASH, Counsel (SBN 230882)
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FILED

MAY 26 2010

DEPARTMENT OF REAL ESTATE

By

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of CHRISTOPHER BRIAN HILL, Respondent.	NO. H-4114 SD STATEMENT OF ISSUES

The Complainant, JOSEPH AIU, in his official capacity as a Deputy Real Estate Commissioner of the State of California (hereinafter "Complainant"), for this Statement of Issues against CHRISTOPHER BRIAN HILL, (hereinafter "Respondent"), is informed and alleges as follows:

1

On approximately July 23, 2009, Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license.

2

On approximately November 1, 1994, in Wayne County General Court of Justice-Superior Court Division, State of North Carolina, Respondent was convicted of violating Section 14-34.2 of the North Carolina General Statute (Assault with a Deadly Weapon on a Government Officer), a felony which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations ("Regulations") to the qualifications functions, or duties of a real estate licensee.

3

On approximately July 9, 1999, in Wayne County General Court of Justice-Superior Court Division, State of North Carolina, Respondent was convicted of violating Section 14-107 of the North Carolina General Statute (Worthless Checks), a crime which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions, or duties of a real estate licensee.

4

Respondent's criminal convictions, as described in Paragraphs 2 and 3, constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the Code.

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

JOSEPH AIU
Deputy Real Estate Commissioner

Dated at San Diego, California,
this 10 day of May, 2010.