

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG 24 2011
DEPARTMENT OF REAL ESTATE
By *[Signature]*

In the Matter of the Accusation of

KENNETH DEE SKELTON,

Respondent.

)
) NO. H-4166 SD

)
) OAH NO. 2011031051
)
)
)

DECISION

The Proposed Decision dated July 29, 2011, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on

SEP 13 2011

IT IS SO ORDERED

8/23/11

BARBARA J. BIGBY
Acting Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KENNETH DEE SKELTON,

Respondent.

Case No. H-4166 SD

OAH No. 2011031051

PROPOSED DECISION

Carla Nasoff, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 11, 2011, in San Diego, California.

Jason D. Lazark, Counsel, represented complainant Joseph Aiu, a Deputy Real Estate Commissioner, Department of Real Estate, State of California.

Kenneth Dee Skelton represented himself and was present throughout the administrative hearing.

The matter was submitted on July 11, 2011.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 9, 2009 complainant Joseph Aiu, a Deputy Real Estate Commissioner, Department of Real Estate (the Department), State of California, signed the accusation in his official capacity. The accusation and other required jurisdictional documents were served on respondent Skelton.

Skelton timely filed a notice of defense.

On July 11, 2011, the administrative record was opened. Jurisdictional documents were presented. Sworn testimony and documentary evidence were received. The record was closed and the matter was submitted.

License History

2. Skelton was originally licensed as a real estate salesperson in 1978. On October 7, 1981, his Broker license was issued. From January 2001 to the present he has been in business as Camron Investments and Financial Services, performing real estate sales and transactions. From January 2004 to July 2005, Skelton was licensed as an officer of Don Perry and Associates. His broker license will expire on October 6, 2013.

Skelton is presently licensed as a real estate broker and has licensing rights under the Real Estate Law.

Convictions

3. On May 22, 2001, Skelton was convicted on his plea of guilty of violating Vehicle Code section 23152 subdivision (a), (driving while under the influence of alcohol), a misdemeanor, in the Superior Court of California, County of San Diego, in Case No. M827944.

Skelton was taken into custody, booked and released. He was placed on five (5) years of summary probation on condition he pay fines and fees totaling \$1,300, complete a first conviction program, MADD program, and have his drivers license restricted for 90 days.

4. On May 4, 2004, Skelton was convicted on his plea of no contest of violating Vehicle Code section 23152 subdivision (a), (driving while under the influence of alcohol), a misdemeanor, in the Superior Court of California, County of San Diego, in Case No. M 922073.

Skelton was taken into custody for 96 hours, placed on five (5) years summary probation on condition he pay fines and fees totaling \$1,735, complete a MADD program, and a multiple conviction program.

5. On August 25, 2009, Skelton was convicted on his plea of guilty of violating Vehicle Code section 23152 subdivision (a), (driving while under the influence of alcohol), a misdemeanor, and Vehicle Code section 23152 subdivision (b), (driving with a blood alcohol level of .08% or greater), a misdemeanor, in the Superior Court of California, County of San Diego, in Case No. S225610.

Skelton was taken into custody for one (1) day at the Central Detention Facility where he was booked and released. He was placed on five (5) years summary probation on condition he pay fines and fees totaling \$2,684, complete a short term work furlough, complete six (6) days of work project, complete a multiple conviction program educational course, abstain from alcohol use, not drive, provide evidence of non-ownership of any vehicle and obey all laws. Skelton testified he has not completed paying all the fines and fees but is current on his monthly payments. He still owes the courts three hundred (\$300) dollars in fines and fees.

Circumstances of the Offenses

6. In March 2001, Skelton drove home from a bar when he was stopped by the police and arrested for his first DUI. He does not recall how much he drank that night. No police reports were submitted into evidence for this conviction.

7. On February 10, 2004, Skelton attended a party in his office building and does not recall how much he drank before he attempted to drive to the airport. He was involved in a multiple vehicle accident and rear-ended the car in front of him. No police reports were submitted into evidence for this conviction.

8. On November 28, 2008, Skelton drove home from a bar and was stopped by police, after driving over a double yellow line to enter a fast food establishment. During the police interview, Skelton had balance difficulties and a blood test was performed. When asked by police why he drinks and drives, Skelton responded "Relax and go out." Skelton admitted to the officer he had prior DUI's.

Prior Disciplinary Action

9. On February 6, 2006, Skelton signed a Stipulation and Agreement with the Department of Real Estate, in the Matter of the Accusation of Don Perry and Associates, Donald Walter Perry and Kenneth Dee Skelton in DRE No. H-3231 SD. Skelton chose not to contest the allegation. The facts alleged in the accusation involved trust account violations and were grounds for suspension or revocation of Skelton's licenses. The Order included a term that Skelton's license would be suspended for one hundred and thirty (130) days, which was stayed upon the condition that he pay a monetary penalty of \$4,500, that no further cause for disciplinary action against the Real Estate license occur within two (2) years of the effective date, and that he obey all laws, rules and regulations governing the rights, duties and responsibility of a real estate licensee in the State of California, pass the Professional Responsibility examination, and take a continuing educational course on trust fund accounting and handling.

Skelton testified he complied with all the provisions in the Stipulation and Agreement.

Skelton's Background and Rehabilitation

10. Skelton was born in 1938. From 1958 to 1978 he was in the Navy with the highest ranking as Chief Petty Officer, E-7. From 1979 to 1980 he attended Southwestern College in Chula Vista and received his Associates Degree in Real Estate. From 1981 to 1983 he attended National University studying general educational courses. He did not graduate from National University.

11. From 2001 to the present, Skelton has been self employed as a real estate broker for Camron Investment. He is independent and does not employ any individuals. His business involves transactional work only and he does not participate in any loan negotiations.

12. Skelton acknowledged his three past DUI's. He readily admitted he violated probation by continuing to drink and drive. He further acknowledged he recently violated probation by drinking within the past few months even though his conditions of probation required that he abstain from alcohol use. He drank at a business social function in his office building.

Skelton is on a payment plan to pay his court fines and fees and still has a few months before those are paid in full. He estimated he has already paid \$18,000 in court fines, fees and educational programs as a result of his three DUI's. Skelton attends Alcohol Anonymous (AA) twice a week even though it is not court ordered. He does not know his sobriety date, nor does he follow the 12-step AA program. Skelton remains on probation until 2014. Skelton testified he wanted to keep his real estate license because he is good at his job, needs to support his family and has never had a client complaint.

13. As to the trust fund violation, Skelton admitted he was the designated broker officer of Don Perry and Associates, a California Corporation (DPA) licensed by the State of California Department of Real Estate (Department). As a designated officer-broker, Skelton was responsible for the supervision of the activities of the officers, agents, real estate licensees, and employees of DPA for which a license is required. DPA accepted the collections of rents on real property or improvement and from time to time made disbursements of the trust fund. DPA failed to properly maintain the trust funds in such manner that there became a shortage of trust funds amount in excess of \$18,000. Skelton testified he himself did not commit any of the trust fund violations, but because he took over the business, he was charged with the offenses. He knowingly and voluntarily entered into a stipulation with the Department in February 2006, wherein he was fined \$4,500, his license suspension was stayed for 6 months and he was placed on two (2) years probation.

Letters of Recommendations and AA attendance

14. Skelton provided letters of recommendations from a colleague who attested to Skelton's knowledge of the profession and willingness to offer advice. Timothy Aaron, President of Residential Law Center, wrote a letter of recommendation. Mr. Aaron has known respondent for over eight (8) years and never witnessed respondent consume an adult beverage of any kind.

A former client, Ms. Heidi Eiff, provided a letter of recommendation and described Skelton as very professional during their real estate sales transaction. Skelton maintained the empty property and personally paid the utility bills so that the property would present well to potential clients. Mr. Garrillo, an investor, has known Skelton for 20 years and calls on him for real estate advice. Ms. Kravetz, Skelton's neighbor, has known him for eleven (11) years. Skelton prepared a real estate trust for her and took the time to explain all the

paperwork. Ms. Kravetz wrote that Skelton was and is a good neighbor that is always willing to help without any expectation of repayment of any kind.

Skelton submitted his AA meeting attendance sheet from November 2009 to June 2011. Skelton attended four to seven meetings a month during this time period.

Evaluation

15. Slightly less than two years have passed since Skelton's last conviction. He remains on criminal probation until 2014. Skelton testified he has violated his criminal probation on several occasions, his last time in the past several months when he drank alcohol.

His testimony has not demonstrated a profound change in character. His real estate application remarks convey a sense of victimization instead of taking ownership of his alcohol issues. Skelton wrote:

"I don't not feel that I have done anything wrong to be considered (sic) any license action. I do not do a lot of transactions and are (sic) very good at what I do. I drink very little, but seem to be in the wrong place at the wrong time."

Skelton's application remarks, his testimony at the administrative hearing, coupled with three (3) DUI convictions and multiple criminal probation violations, presents a risk to the public. His conduct demonstrated a pattern of repeated and willful disregard of the law. None of his convictions have been expunged and he remains on criminal probation until 2014. Even though he provided letters of recommendation from neighbors, former clients and colleagues, his actions and comments do not suggest he has been rehabilitated to the extent that he would not pose a threat to the public even if he were to be granted a restricted real estate license. Cause exists to impose discipline and revoke Skelton's real estate broker's license under Business and Professions Code sections 490 and 10177, subdivision (b).

LEGAL CONCLUSIONS

Purpose of an Administrative Disciplinary Action

1. The object of an administrative proceeding aimed at revoking a license is to protect the public. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 457.)

Burden and Standard of Proof

2. In a disciplinary administrative proceeding, the burden of proof is upon the party asserting the affirmative. Guilt must be established to a reasonable certainty. Guilt cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or upon uncorroborated hearsay. (*Small v. Smith, supra*, 16 Cal.App.3d at 457.)

3. In an action seeking to impose discipline against the holder of a professional license, the burden of proof is on complainant to establish the charging allegations by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 857.)

Applicable Statutes

4. Business and Professions Code section 490 provides in part:

“[A] board may suspend or revoke a license 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.

...

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere . . .”

5. Business and Professions Code Section 10177 provides in part:

“The commissioner . . . may suspend or revoke the licence of a real estate licensee . . . who 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 substantially related to the qualifications, functions, or duties of a real estate licensee, 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. . . .”

Arneson v. Fox

6. *Arneson v. Fox* (1980) 28 Cal.3d 440 held that in an administrative disciplinary proceeding, an administrative agency may rely on a plea and the conviction based on that plea to establish a reasonable and substantial relationship to licensed activities. A licensee may introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation, but an inquiry into the circumstances surrounding the offense should not form the basis of impeaching a prior conviction. Regardless of the various motives which may have impelled a guilty or nolo contendere plea, the conviction which was based thereon stands as conclusive evidence of the individual's guilt of the offense charged.

Substantial Relationship

7. 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 of State of Cal.* (2005) 134 Cal.App.4th 948, 955-956.)

8. California Code of Regulations, title 10, section 2910 currently provides in part:

“(a) When considering whether a license should be . . . suspended or revoked on the basis of the conviction of a crime . . . 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.

...

(9) Contempt of court or willful failure to comply with a court order.

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

(11) 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.

Rehabilitation

9. Business and Professions Code section 482 provides:

“Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.”

10. California Code of Regulations, title 10, section 2912 sets forth the Department’s criteria of rehabilitation as required by Business and Professions Code section 482 as follows:

“The following criteria have been developed by the department pursuant to Section 482(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 from the most recent criminal conviction that is “substantially related” to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)

(c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.

(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) Abstinance from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.

(g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.

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

(m) Change in attitude from that which existed at the time of the commission of the criminal acts 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 the licensee's previous conduct and with 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, clinical psychologists, sociologists 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.”

11. The amount of evidence of rehabilitation varies according to the seriousness of the misconduct at issue. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) 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.) Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that an applicant for a professional license did not commit additional crimes while in prison or while on parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

Cause Exists to Revoke Skelton's License

12. Cause exists to impose discipline and revoke Skelton's real estate broker's license under Business and Professions Code sections 490 and 10177, subdivision (b). In 2001, 2004 and 2009, Skelton was convicted of driving under the influence of alcohol. In 2006, Skelton entered into a Stipulation and Agreement with the Board for improper handling of trust fund money. His multiple DUI convictions and his lack of rehabilitation warrant revocation at this time. His conduct demonstrated a pattern of repeated and willful disregard of the law and probation violations. It is less than two years from the most recent criminal conviction and he remains on criminal probation until 2014. His convictions have not been expunged. Skelton has not abstained from the use of alcohol and testified he drank recently. He did not know his number of sober days, and although he attends AA meeting, he has not followed the 12 steps of the AA program. The evidence did not show that he has significant and conscientious involvement in community or privately-sponsored programs designed to provide social benefits or to ameliorate social problems. Skelton was remorseful, but he neither his testimony nor his actions reflected or demonstrated a change in attitude. Skelton did not establish that he has rehabilitated himself and therefore, it would be contrary to the public interest to permit him to hold a Real Estate license, even on a restricted basis.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

All licenses and licensing rights of respondent Kenneth Dee Skelton under the Real Estate Law are revoked.

DATED: July 29, 2011



CARLA NASOFF
Administrative Law Judge
Office of Administrative Hearings

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FILED

FEB 11 2011

DEPARTMENT OF REAL ESTATE

By [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) H- 4166 SD
12)
13 KENNETH DEE SKELTON,) ACCUSATION
14)
15 Respondent.)
16 _____)

17 The Complainant, JOSEPH AIU, acting in his official capacity as a Deputy Real
18 Estate Commissioner of the State of California, for cause of Accusation against KENNETH
19 DEE SKELTON (herein "Respondent"), is informed and alleges as follows:

20 1.

21 Respondent is presently licensed and/or has license rights under the Real Estate
22 Law Part 1 of Division 4 of the Business and Professions Code (herein "the Code") as a real
23 estate broker.

24 ///

25 ///

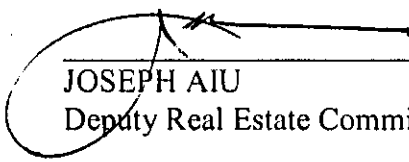
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1 California Vehicle Code section 23152(a) (driving while under the influence of alcohol), a
2 misdemeanor which bears a substantial relationship under section 2910, title 10 of the
3 Regulations to the qualifications, functions, or duties of a real estate licensee.

4 6.

5 On or about May 22, 2001, in the Superior Court of the State of California,
6 County of San Diego, Case Number M827944, Respondent was convicted of violating
7 California Vehicle Code section 23152(a) (driving while under the influence of alcohol), a
8 misdemeanor which bears a substantial relationship under section 2910, title 10 of the
9 Regulations to the qualifications, functions, or duties of a real estate licensee.

10 WHEREFORE, Complainant prays that a hearing be conducted on the
11 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
12 disciplinary action against all licenses and license rights of Respondent under the Real Estate
13 Law, and for such other and further relief as may be proper under the provisions of law.

14
15 
16 JOSEPH AIU
17 Deputy Real Estate Commissioner

18
19 Dated at San Diego, California,
20 this 9 day of February, 2011.