

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

JAMES THOMAS SAFONOV,

Respondent.

Case No. H-4206 SAC

OAH No. N2005030033

PROPOSED DECISION

On June 3, 2005, in Sacramento, California, Jaime R. Román, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Michael B. Rich, Counsel, represented the complainant.

J. Anne Rawlins, Attorney at Law, represented respondent James Thomas Safonov.

Evidence was received, the record was closed and the matter submitted.

FACTUAL FINDINGS

1. Complainant Charles W. Koenig (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 or about March 10, 2004, respondent filed a Real Estate "Salesperson License Application" with the Department. The application is pending.

Respondent has not presented evidence to the Department regarding successful completion of the courses required by Business and Professions Code section 10153.4.

3. On March 20, 1995, in the Municipal Court, County of Sacramento, State of California, in the matter entitled *People v. Sergei James Safonov*, case number 95T01231, respondent, then age 21, was convicted, on his plea of nolo contendere, of a violation of Vehicle Code section 23152(a) (Driving Under the Influence of Alcohol), a crime involving moral turpitude and substantially related to the qualifications, functions and duties of the

licensed activity pursuant to the criteria enumerated in the California Code of Regulations, title 10, section 2910. Respondent was placed on probation for three years.

4. On February 6, 2001, in the Superior Court, County of Sacramento, State of California, in the matter entitled *People v. James Thomas Safonov*, case number 00T05181, respondent, then age 27, was convicted, on his plea of nolo contendere, of a violation of Vehicle Code section 23152(b) (Driving While Having a Blood Alcohol Level of .08 percent or more), with a prior conviction, a crime involving moral turpitude and substantially related to the qualifications, functions and duties of the licensed activity pursuant to the criteria enumerated in the California Code of Regulations, title 10, section 2910. Respondent was placed on probation for four years.

5. Respondent is now age 31. He readily acknowledges his prior convictions. Proffering no excuse for his misconduct, he views his prior convictions as puerile or poor judgment. Engaged, he is scheduled to marry his fiancée on July 9, 2005. With this marriage, he will acquire the additional responsibility of caring for a six-year-old stepdaughter. As a consequence of his last conviction, he was compelled to enter and complete an 18-month program. The insight gained from that program, combined with his father's alcoholism and subsequent death, re-focused respondent.

Circumstances in Aggravation

6. Respondent has suffered multiple convictions involving moral turpitude.
7. Respondent does not participate in Alcoholics Anonymous.
8. Respondent, in a prior proceeding before the Department of Real Estate, suffered a denial of his application.

Circumstances in Mitigation

9. Since November of 2002, respondent has worked as a property manager for HomePointe Property Management and would like a real estate salesperson's license so he can advance in the real estate business. He helps rent out single family homes and coordinates the repair work to be done on them. His broker, Robert Machado, is aware of respondent's convictions. He has observed respondent's restraint from drinking alcoholic beverages at office functions. Mr. Machado would employ respondent with a restricted license.

10. Respondent supplements his income by bartending approximately one evening a week. He does not imbibe in any alcoholic beverages when so engaged.

11. Respondent has a Bachelor of Arts from California State University, Sacramento. He has worked with the Stanford Home for Children, helping find low income

housing for those with children, and WEAVE. He acknowledges that with his forthcoming marriage and familial responsibilities, he enjoys spending more time at home with his family.

12. Respondent presented character reference letters and witnesses who observe his honesty, developed maturity, and professionalism.

13. Respondent has obtained Penal Code section 1203.4 relief for his 1995 DUI.

14. Respondent has completed his 2001 probation for his last driving under the influence conviction. He presented evidence that he has complied with the terms of his probation.

15. Respondent presented a witness, a former neighbor, Syma Reynolds Greene, who had observed respondent grow from a boy to his present adulthood. Ms. Greene, who had at one time employed respondent in her lobbying firm, competently and credibly attested to respondent's puerile conduct in 1995, and his subsequent reformation to a mature young adult.

16. Respondent was fully candid and cooperative in this proceeding.

LEGAL CONCLUSIONS

1. Cause exists to deny the application of respondent for licensure as a real estate salesperson for a conviction of a crime involving moral turpitude substantially related to the qualifications, functions or duties of a real estate professional pursuant to 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.

2. A fundamental objective of the Department is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in the Department's licensure process.¹

Respondent acknowledges that his history may not merit an unrestricted license. He seeks, by this action, a restricted license. Complainant cogently and perceptively notes the recency of respondent's last conviction. Complainant prays for denial of the license.

The law looks with favor on one who is reformed—not reforming. Respondent has clearly presented rehabilitation worthy of salutary consideration. That being said, the recency of his last conviction compels a continued scrutiny by the Department. Accordingly, mindful of the conduct underlying the Accusation (Legal Conclusion 1) and the circumstances in aggravation (Findings 6 through 8) and mitigation (Findings 9 through 16);²

¹ *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

² See California Code of Regulations, title 10, section 2911.

the public interest will not be adversely affected by the issuance of a properly conditioned real estate salesperson's license to respondent.

ORDER

Respondent James Thomas Safonov's application for a real estate salesperson license is denied; provided, however, upon payment of any applicable fees, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 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 or admission or determination of a violation of court probation) 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 four years have elapsed from the date of issuance of the restricted license.
3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by any 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.

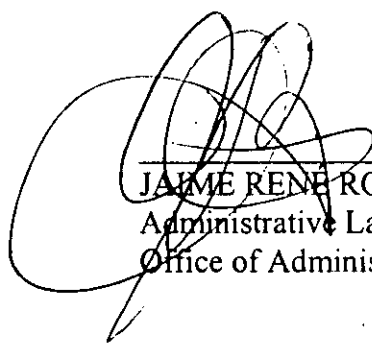
5. Respondent shall attend no less than two Alcoholics Anonymous meetings per week and maintain a log of such attendance. Respondent shall, at the request of the Real Estate Commissioner or his/her designee, provide a copy of such log. Failure to attend, participate, or provide proof of such attendance or participation is a violation of probation.

6. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order suspension of respondent's license until respondent passes the examination.

7. Respondent's restricted real estate salesperson license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Business and Professions Code section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension. Pursuant to Business and Professions Code section 10154, if respondent has not satisfied the requirements for an unqualified license under Section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

8. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his/her Decision herein or by separate written order issued while the restricted license is in effect such information concerning respondent's activities for which a real estate license is required as the Commissioner shall deem to be appropriate to protect the public interest. Such reports may include, but shall not be limited to, periodic independent accountings of trust funds in respondent's custody and control and periodic summaries of salient information concerning each real estate transaction in which he engaged during the period covered by the report.

Dated: 6/24/03



JAI ME RENE ROMAN
Administrative Law Judge
Office of Administrative Hearings

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FILED
JAN 26 2005

DEPARTMENT OF REAL ESTATE

By J. Rich

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA .

10 * * *

11 In the Matter of the Application of)
12 JAMES THOMAS SAFONOV) No. H-4206 SAC
13 Respondent.) STATEMENT OF ISSUES

14
15 The Complainant, CHARLES W. KOENIG, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against JAMES THOMAS SAFONOV (hereinafter "Respondent"),
18 is informed and alleges as follows:

19 I

20 FIRST CAUSE OF ACTION

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 March 10, 2004, 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.

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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 March 20, 1995, in the Consolidated Superior and Municipal Court, County of Sacramento, State of California, Respondent was convicted of a violation of Section 23152(a) of the California Vehicle Code (Unlawfully driving a vehicle while under the influence of alcohol), a crime involving moral turpitude and/or a crime 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 6, 2001, in the Superior Court, County of Sacramento, State of California Respondent was convicted of a violation of Section 23152(b) of the California Vehicle Code (Driving under the influence while having a blood alcohol level of .08% or more), a crime involving moral turpitude and/or a crime 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.

V

The crimes of which Respondent was convicted, as alleged in Paragraphs III and IV, constitute cause for denial of Respondent's application for a real estate license under Sections

1 480(a) and/or 10177(b) of the California Business and Professions
2 Code.

3 VI

4 SECOND CAUSE OF ACTION

5 Respondent made application to the Department of Real
6 Estate of the State of California for a real estate salesperson
7 license on or about April 22, 2002, with the knowledge and
8 understanding that any license issued as a result of said
9 application would be subject to the conditions of Section 10153.4
10 of the Business and Professions Code.

11 VII

12 In response to Question 25 of said application, to wit:
13 "Have you ever been convicted of any violation of law?",
14 Respondent answered "Yes" but failed to disclose the conviction
15 alleged in Paragraph III above.

16 VIII

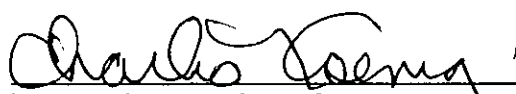
17 Respondent's failure to reveal the conviction set forth
18 in Paragraph III above in said application constitutes an attempt
19 to procure a real estate license by fraud, misrepresentation,
20 deceit, or by making a material misstatement of fact in said
21 application, which is cause for denial of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

24 PRIOR PROCEEDINGS

25 Effective August 7, 2003, in Case No. H-3776 SAC before
26 the Department of Real Estate of the State of California, the
27 application of Respondent for a conditional real estate

1 salesperson license was denied for violation of Sections 480(a),
2 480(c), 10177(a), and 10177(b) of the Code.

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

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10 
11 CHARLES W. KOENIG
12 Deputy Real Estate Commissioner

13 Dated at Sacramento, California,
14 this 6th day of January, 2005
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