

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
AUG - 4 2005

DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Application of)
IVAN DEXTER POINTER,)
Respondent.)

NO. H-4242 SAC
OAH NO. N-2005030710

DECISION

The Proposed Decision dated July 18, 2005, 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 AUG 25 2005.

IT IS SO ORDERED

8-1-05

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

IVAN DEXTER POINTER,

Respondent.

Case No. H – 4242 SAC

OAH No. N2005030710

PROPOSED DECISION

Administrative Law Judge Muriel Evens, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on June 13, 2005.

David Seals, Counsel, represented complainant Charles W. Koenig.

Danny D. Brace, Jr., Attorney at Law, represented respondent Ivan Dexter Pointer.

The matter was submitted on June 13, 2005.

FACTUAL FINDINGS

1. Charles W. Koenig, a Deputy Real Estate Commissioner, made the Statement of Issues in his official capacity.

2. On or about October 15, 2004, respondent filed an application with the Department for a license as a real estate salesperson. The application was denied and respondent appealed.

3. On or about July 18, 2001, respondent was convicted in the Superior Court, County of Sacramento, on his plea of nolo contendere to violation of Vehicle Code section 23152, subdivision (a) (driving under the influence), a misdemeanor. Judgment and sentence were suspended for 60 days and respondent placed on probation for a period of three years, with terms and conditions including two days in jail, a restricted driver's license for 90 days, fines and a first offender drinking driver program. He is no longer on probation for this offense.

4. On or about April 10, 1998, respondent was convicted in the Superior Court, County of Sacramento, on his plea of nolo contendere to violation of Penal Code section 261.5 (unlawful sexual intercourse), a felony and crime of moral turpitude substantially related to the qualifications, functions or duties of a real estate licensee. Imposition of judgment and sentence was suspended and respondent was placed on probation for a period of four years with terms and conditions including 180 days in jail, with work furlough recommended, counseling as determined by the probation officer and no contact with minors (except children living with him). The felony was reduced to a misdemeanor on July 11, 2001, and on October 5, 2004, pursuant to Penal Code section 1203.4, the plea was withdrawn and the charge dismissed.

The facts and circumstances were that in 1997, while at a mall, respondent ran into a 17-year-old girl who was a resident of a group home where respondent had previously worked as a resident caretaker. The girl accompanied respondent to see his new apartment. They played cards; she drank a small amount from his alcoholic drink, and they had sexual intercourse. There was no force involved. Respondent then drove the girl to her residence.

5. Effective June 28, 2001, the Commissioner denied a previous application by respondent for a real estate salesperson license. The denial followed a hearing and was based on the conviction set forth in Finding 4. At that time respondent was still on probation for that offense and had not shown sufficient rehabilitation to justify a license.

6. Respondent was 28 years old at the time of the offense in Finding 4 above. He was a college graduate with a major in psychology. He knew he had had position of trust with the girl and he knew that she was still a minor. At hearing he appeared quite remorseful, testifying that he "feels horrible about what happened", taking responsibility for his conduct and noting that "she didn't make me do it."

Respondent has been married for six years. He and his wife have one son, age four, and a baby due in August. They are also raising her 14-year-old son, with joint custody from a previous relationship. They are buying a home and are active in their church. Respondent contributes to United Way through his employment. Since 1997, respondent has changed his lifestyle by changing his social contacts, settling into married life, participating at church, volunteering at fundraising walks and holding steady employment with Bank of America.

Respondent was employed with the bank three years ago, first in the consumer real estate division processing lines of credit for home loans. He has since been promoted to the small business lending department processing lines of credit. The real estate license would allow respondent the opportunity to increase his earnings.

Respondent offered several letters and awards from his employer attesting to his good character and professional and ethical attitude at work.

LEGAL CONCLUSIONS

1. The evidence does not establish that the conviction in Finding 3 is substantially related to the qualifications, functions or duties of a real estate licensee.
2. Grounds exist for denial of respondent's application for licensure pursuant to Business and Professions Code sections 480, subdivision (a) (conviction of a crime) and 10177, subdivision (b) (conviction of a crime), by reason of Finding 4.
3. At this time respondent has shown sufficient rehabilitation to warrant the issuance of a restricted salesperson's license.

ORDER

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's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, 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 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.

3. Pursuant to 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.


4. 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.

5. 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.

DATED: July 18, 2005


MURIEL EVENS
Administrative Law Judge
Office of Administrative Hearings

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

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6 -or- (916) 227-0792 (Direct)

FILED
MAR 10 2005

DEPARTMENT OF REAL ESTATE

By *Sean J. Hunt*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 IVAN DEXTER POINTER,)
13 Respondent.)

No. H- 4242 SAC

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 IVAN DEXTER POINTER (hereinafter "Respondent")
18 alleges as follows:

19 I

20 Respondent, pursuant to the provisions of Section
21 10153.3 of the Business and Professions Code, made application
22 to the Department of Real Estate of the State of California for
23 a real estate salesperson license on or about October 15, 2004,
24 with the knowledge and understanding that any license issued as
25 a result of said application would be subject to the conditions
26 of Section 10153.4 of the Business and Professions Code.

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1 II

2 Complainant, Charles W. Koenig, a Deputy Real Estate
3 Commissioner of the State of California, makes this Statement of
4 Issues in his official capacity.

5 III

6 On or about February 27, 1998, in Sacramento Superior
7 and Municipal Courts, Respondent was convicted of violation of
8 California Penal Code Section 261.5 (Unlawful Sexual
9 Intercourse), a felony and a crime involving moral turpitude
10 which is substantially related under Section 2910, Title 10,
11 California Code of Regulations (hereinafter the "Regulations")
12 to the qualifications, functions or duties of a real estate
13 licensee.

14 IV

15 On or about July 18, 2001, in Superior Court of
16 California, County of Sacramento, Respondent was convicted of
17 violation of California Vehicle Code Section 23152(a) (Driving
18 Under the Influence of Alcohol or Drugs), a crime involving
19 moral turpitude and/or which is substantially related under
20 Section 2910 of the Regulations to the qualifications, functions
21 or duties of a real estate licensee.

22 V

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

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