

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUL 22 2005

DEPARTMENT OF REAL ESTATE

* * *

By *[Signature]*

In the Matter of the Application of)
STEVEN ARTHUR BAILEY,)
Respondent.)

NO. H-4248 SAC
OAH No. N-2005050056

DECISION

The Proposed Decision dated June 24, 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 11 2005.

IT IS SO ORDERED 7-13 2005.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

STEVEN ARTHUR BAILEY,

Respondent.

Case No. H-4248 SAC

OAH No. N2005050056

PROPOSED DECISION

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, in Sacramento, California, on June 3, 2005.

Michael B. Rich, Staff Counsel, Department of Real Estate, State of California, represented Complainant Charles W. Koenig, Deputy Real Estate Commissioner, State of California.

Matthew V. Brady, Esq., represented respondent Steven Arthur Bailey, who appeared.

Evidence was received and the matter submitted on June 3, 2005.

FACTUAL FINDINGS

1. On March 10, 2005, complainant Charles W. Koenig, Deputy Real Estate Commissioner, Department of Real Estate (Department), State of California, filed the Statement of Issues in his official capacity against Steven Arthur Bailey (respondent).
2. On September 29, 2004, respondent made application to the Department for the issuance of a real estate salesperson license. His application is pending.
3. On April 29, 2002, in the Superior Court of California, County of San Joaquin, respondent, then age 44, was convicted of a felony violation of Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon), a felony substantially related to the qualifications, functions or duties of a real estate licensee.¹ Respondent was placed on formal probation for five years and ordered, inter alia, to participate in a domestic violence program.

¹ California Code of Regulations, title 10, section 2910.

On June 17, 2005, respondent sought to supplement the record with a declaration from his former counsel. The letter, having been submitted, the declaration was not received.

4. Respondent, age 48, readily admits his conviction. Acknowledging some issues of marital discord, and a propensity between the couple to engage in exaggerated humor, respondent comprehends that he exercised a lapse in judgment in appearing to threaten his wife. Arrested, and seeking to get his conviction behind him as rapidly as possible, he threw himself into the court-directed rehabilitation.

Circumstances in Aggravation

5. Respondent has suffered a conviction within the past five years involving the threat of bodily harm.

Circumstances in Mitigation

6. Respondent successfully completed the terms and conditions of his probation.

7. Respondent and his wife remain married. Respondent's wife gave birth to a daughter.

8. Respondent's wife is a real estate licensee. Respondent, largely a mechanic, seeks licensure to assist his wife and jointly engage in licensed activities. He has obtained a broker who will employ him even with a restricted license.

9. Respondent's therapist testified to respondent's insight and success in the court ordered domestic violence program. Respondent presented further evidence in the form of letters referencing his character and reputation for self-awareness, honesty, and responsibility. He clearly possesses the support and love of friends and family.

10. Respondent was both candid and cooperative in this proceeding.

11. Respondent expressed and displayed sincere remorse.

12. What emerges in this proceeding is a middle-aged man, who does not seek to shift responsibility for his conviction to others or demonstrate any bitterness for the ignominy surrounding his arrest and conviction. Maintaining and demonstrating an equanimity and acceptance of the sequence of events leading to this proceeding; it is readily apparent from the focus of the Superior Court and this professional disciplinary action that respondent comprehends the import of his errant conduct on professional licensure.

LEGAL CONCLUSIONS

1. Cause exists to deny the application of respondent for licensure as a real estate salesperson for a criminal conviction substantially related to the qualifications, functions or duties of a Department licensee pursuant to the provisions of Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), and as set forth in Findings 2 through 4, inclusive.

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.²

Against this backdrop, the law looks with favor on one who is reformed. Respondent has clearly demonstrated rehabilitation worthy of salutary consideration. Accordingly, mindful of the conduct underlying the Accusation (Legal Conclusion 1) and the circumstances in aggravation (Finding 5) and mitigation (Findings 6 through 12); the public interest will not be adversely affected by the issuance of a properly conditioned real estate salesperson's license to respondent

ORDER

Respondent Steven Arthur Bailey'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

² *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

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.

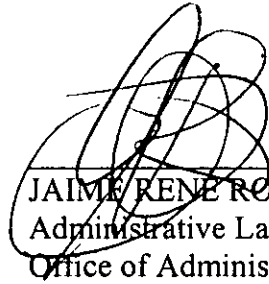
4. Respondent shall, within six months from the effective date of this Decision, take and pass the Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If respondent fails to satisfy this condition, the Commissioner may order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

5. 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.

6. Respondent shall report in writing to the Department of Real Estate as the Real Estate Commissioner shall direct by his 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: _____

6/24/05



JAIME RENE ROMAN
Administrative Law Judge
Office of Administrative Hearings

FILED
MAR 17 2005

DEPARTMENT OF REAL ESTATE

By S. E. [Signature]

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6
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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Application of)	
12	STEVEN ARTHUR BAILEY,)	No. H-4248 SAC
13	Respondent.)	<u>STATEMENT OF ISSUES</u>
14	_____)	


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16 The Complainant, CHARLES W. KOENIG, a Deputy Real
17 Estate Commissioner of the State of California, for Statement of
18 Issues against STEVEN ARTHUR BAILEY, (hereinafter "Respondent"),
19 is informed and alleges as follows:

20 I

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 September 29, 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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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.

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9 
10 CHARLES W. KOENIG
11 Deputy Real Estate Commissioner

12 Dated at Sacramento, California,
13 this 10th day of March, 2005.