


FILED

June 9, 2012

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
By 

* * *

In the Matter of the Application of)
JAMAR LEE FOSTER,) NO. H-4279 SD
Respondent.) OAH NO. 2012030254
_____)

DECISION

The Proposed Decision dated May 23, 2012, 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 license is denied, but the right to a restricted real estate license is granted to Respondent. 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 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 JUL 02 2012.

IT IS SO ORDERED

6/6/2012

Real Estate Commissioner


By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JAMAR LEE FOSTER

Respondent.

Case No. H-4279 SD

OAH No. 2012030254

PROPOSED DECISION

On May 17, 2012, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

John Van Driel, Real Estate Counsel, represented complainant.

Respondent represented himself.

The matter was submitted on May 17, 2012.

FACTUAL FINDINGS

1. Dolores Weeks, Deputy Real Estate Commissioner of the Department of Real Estate of the State of California (Department) filed Statement of Issues No. H-4279 SD in her official capacity on February 11, 2012. Respondent filed a timely Notice of Defense.
2. On September 28, 2010, respondent signed a Salesperson Exam/License Application and submitted it to the Department.
3. On March 11, 2004, in the San Diego County Superior Court, respondent pleaded guilty and was convicted of one count of violating Health and Safety Code section 11351.5, possession for sale and purchase for purposes of sale of cocaine base, a felony. On June 18, 2004, the court sentenced respondent to state prison for the upper term of five years, with credit for six days served, suspended execution of sentence, and placed respondent on probation for five years, on condition that he serve 120 days in custody.

On August 19, 2005, respondent admitted he violated probation. The court committed him to work furlough for 365 days. Based upon a report from the probation department stating that respondent had escaped from county work furlough on October 6, 2005, the court on October 12, 2005 ordered issuance of a bench warrant and summarily revoked probation. Respondent admitted the violation of probation on January 20, 2006. The court reinstated the previous sentence but admonished respondent that this was his last chance on probation. The court also noted that respondent was in an accident and required medication for injuries sustained.

On March 24, 2010, the court granted respondent's petition for dismissal of the case.

Respondent committed the offense on December 9, 2003. According to the change of plea form, respondent possesses approximately one ounce of cocaine base.

4. Respondent's conviction is substantially related to the qualifications, functions, or duties of a real estate salesperson. Title 10, California Code of Regulations, section 2910, subdivision (a). *Clerici v. Department of Motor Vehicles* (1990) 224 Cal. App. 3d 1016, 1024-33.

5. On June 25, 2003, the Department of Social Services of the State of California issued a license to respondent to operate a child day center in San Diego. Based upon respondent's conviction, the Department of Social Services filed an accusation against respondent's child day care center license on January 20, 2004 and also issued an order for temporary suspension of license prior to hearing. Respondent filed a Notice of Defense and then withdrew it. The Department of Social Services determined respondent waived his right to a hearing, and issued a Decision and Order in which respondent's license to operate a child day care center was revoked. The Department of Social Services based upon evidence it had obtained found that on December 9, 2003, respondent possessed approximately 50.9 grams of rock cocaine which was located by arresting officers in his vehicle, and during the six months prior to December 9, 2003, respondent participated in drug-related transactions every few days.

6. Respondent testified that he committed his offense nine years ago and has paid his debt to society. He feels he is still being punished for it as a form of double jeopardy. Respondent testified that he was on work furlough and was involved in a motorcycle accident on October 6, 2005, and that is the reason he did not show up for work. He denied that he escaped. He testified he was in a coma for three weeks and was in critical condition.

Respondent is a single parent and has full custody of one of his children and 40 percent custody of the other child, for whom he provides child support. He has worked for General Dynamics for five years, beginning first as a trainee and eventually becoming a full journeyman marine electrician. He helps coach his nephew's football team and is involved with other charities, as well as a motorcycle club.

Respondent explained that in 2004, he was immature, but since then he has had no trouble with the law. He testified he wants to provide a positive role model for his children

and wants a better life for them. He has always wanted to do real estate but has not contacted a broker yet and has no employment prospects.

Regarding his conviction, respondent testified he was a runner in the cocaine transactions and was paid for it. He denied he used drugs at that time but admitted he used drugs in 1999 when he graduated from high school. He testified he had served about 72 days of work furlough when he had his accident and was working for General Dynamics.

Respondent testified he loves children and that was why he obtained a day care center license. He indicated his grandmother helped him operate it while he worked part-time for the California Conservation Corps fighting fires.

7. Respondent submitted five letters in support of his application. Anthony Jemison is a manager at General Dynamics and wrote that respondent was hired on November 20, 2006 and is presently a journeyman. He wrote that there are no open instances of cases of an employee relations matter of which he was aware at this time. The other letters were from family and friends.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480 provides in part:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

“(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

“[¶]. . .

“The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.”

2. Business and Professions Code section 10177 provides in pertinent part:

“The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, 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 not guilty, or dismissing the accusation or information.

“[¶]. . .

“(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.”

3. Cause was established to deny respondent's real estate salesperson license application pursuant to Business and Professions Code sections 480, subdivision (a)(1) and 10177, subdivision (b), conviction of a crime substantially related to the qualifications, functions, and duties of a real estate licensee, by reason of Findings 3 and 4.

4. Cause was established to deny respondent's real estate salesperson license application pursuant to Business and Professions Code section 10177, subdivision (f), having a license issued by another state agency revoked, by reason of Finding 5. *Berg v. Davi* (2005) 130 Cal. App. 4th 223.

5. Title 10, California Code of Regulations, section 2911 provides in part:

“The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement 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."

6. The evidence in light of those criteria shows that respondent was convicted of one felony offense in 2004, he was placed on probation for five years, he completed probation in approximately 2009, and his conviction was expunged in 2010. Respondent admitted he was a runner in a series of drug transactions. The Department of Social Services decision indicates respondent participated in frequent drug transactions over the course of the six months prior to his arrest. The decision also revoked respondent's license to operate a child day care center.

Respondent's performance on probation was not satisfactory at first. A year after he was initially placed on probation and ordered to serve 120 days in custody, the court revoked probation and required him to perform work furlough for a year. About a month later, a report indicated that respondent escaped from work furlough, but it appears his escape was in reality a motorcycle accident that hospitalized him for several weeks. Nevertheless, when the court reinstated his probation on January 20, 2006, the court admonished respondent that this was his last chance on probation. No further court records were introduced into evidence and it thus may be concluded that respondent completed probation as scheduled and there were not further problems.

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.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 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 individual did not commit additional crimes while on probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

In terms of rehabilitation, more than two years have passed since respondent's conviction and his completion of probation, he had the conviction expunged, there was no

evidence presented that respondent abused drugs or alcohol, he has a stable family life in that he is raising one of his children on his own and assisting and providing child support for his other child, and he completed training as a marine electrician and has since become employed as a journeyman for General Dynamics for the last six years. Based upon his employment record and the absence of any further criminal activities related to drugs, it is apparent respondent's social and business relationships are different than they were in 2003. Further, respondent's testimony at the hearing demonstrated he is no longer the person he was in 2003 and that his attitude has improved significantly.

On balance, respondent's evidence of rehabilitation, and in particular the passage of more than eight years since respondent committed the offense and his sustained employment for the last six years, is sufficient to establish that he no longer represents a threat to the public and he may be entrusted with a real estate salesperson license. However, respondent's evidence did not establish that the license should not be issued without restrictions.

ORDER

Respondent Jamar Lee Foster's application for a real estate salesperson's license is denied; provided, however, a restricted real estate salesperson's 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. 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 a course in real estate practices and one 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.

2. 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.

3. 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.

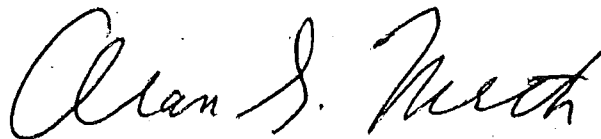
4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

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: May 23, 2012



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings