

FILED

JUL 25 2012

DEPARTMENT OF REAL ESTATE

By *D. Jones*

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of	)	
	)	NO. H-4315 SD
JOHN PATRICK COLLINS,	)	
	)	OAH NO. 2012031225
Respondent.	)	
_____	)	

DECISION

The Proposed Decision dated July 9, 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.

This Decision shall become effective at 12 o'clock noon on AUG 14 2012.

IT IS SO ORDERED

7/20/2012

REAL ESTATE COMMISSIONER

Wayne S. Bell
By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JOHN PATRICK COLLINS

Respondent.

Case No. H-4315 SD

OAH No. 2012031225

PROPOSED DECISION

On June 15, 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.

David Pomeranz, Attorney at Law, represented respondent.

The matter was submitted on June 21, 2012.

FACTUAL FINDINGS

1. Veronica Kilpatrick, Deputy Real Estate Commissioner of the Department of Real Estate of the State of California (Department) filed Statement of Issues No. H-4315 SD in her official capacity on March 13, 2012. Respondent filed a timely Notice of Defense.

At the hearing, respondent was permitted to submit additional evidence. On June 21, 2012, respondent submitted a letter from Leland Mench dated June 18, 2012, which was marked Exhibit E and admitted into evidence as administrative hearsay.

2. On June 30, 2011, respondent signed a Salesperson Exam/License Application and submitted it to the Department.

3. On April 12, 2007, in the San Diego County Superior Court, respondent pleaded guilty and was convicted of violating Penal Code section 496, subdivision (a), receiving stolen property, a misdemeanor. The court suspended imposition of sentence and

placed respondent on probation for three years and ordered him to fines in the amount of \$619.00 and pay restitution in the amount of \$3,500.00.

According to the police report, on March 6, 2007, Officer Reed of the San Diego Sheriff's Department received a radio call regarding someone in possession of stolen property in Spring Valley. He arrived at the scene and found a Honda motorcycle leaning against the residence. He obtained information that the motorcycle was unconfirmed stolen in August 2006. He noticed the ignition was punched. Officer Reed and another officer contacted respondent and asked about the motorcycle. Respondent said he borrowed it from an acquaintance of his about two weeks earlier. Respondent said he used a screwdriver to start the motorcycle. Officer Reed then arrested respondent for possession of a stolen vehicle. Later, respondent said he borrowed the motorcycle because he needed some wheels, was allowed to borrow it until he decided he wanted to buy it, and he could buy it for around \$2,600.00. Respondent added that his friend told him a screwdriver was needed to start the bike because someone tried to steal it. To Officer Reed, respondent appeared surprised that the motorcycle was reported stolen.

4. In 2005, the Bureau of Security and Investigative Services (Bureau) issued a guard/patrolperson registration to respondent. Following his 2007 for receiving stolen property, the Bureau filed an accusation to revoke the registration. An administrative hearing which satisfied the provisions of the Administrative Procedure Act was held and on February 24, 2010, the Deputy Director of the Department of Consumer Affairs issued a Final Decision After Rejection of Proposed Decision and revoked respondent's registration after finding that respondent had violated the law. The following finding appears in that decision:

"The facts and circumstances underlying the conviction were that on March 6, 2007, respondent received possession of a motorcycle that had been stolen. Respondent testified that he purchased the motorcycle from his sister's then-boyfriend (boyfriend), the son of a car dealer. Respondent explained that the boyfriend and the boyfriend's father were aware that respondent was interested in purchasing and were helping him look for one. One day the boyfriend contacted respondent and told him he had a motorcycle to sell. The boyfriend explained that the motorcycle had been stolen and the insurance company had declared it a 'total loss' because it had been damaged. The boyfriend explained that he could sell it to respondent and that he was just awaiting the final insurance payment and DMN processing for the 'total loss.'"

"Respondent testified that he was aware that the motorcycle's ignition had been 'punched out,' which required him to start the motorcycle with a screwdriver, and that the boyfriend explained that was how the thieves had stolen the bike and was the reason the insurance company had declared the motorcycle a 'total loss.' Respondent explained that because the boyfriend's father was a car dealer and because they had been helping respondent look for a motorcycle, respondent never imagined that this motorcycle was stolen, honestly believing that the boyfriend's father had obtained it from an insurance company after it was stolen from its owner and declared a 'total loss.'"

5. On January 11, 2011, respondent pleaded guilty and was convicted of violating Penal Code section 242, battery, a misdemeanor. The court placed respondent on summary probation for three years, ordered him to pay fines and fees but stayed them pending the completion of a domestic violence program, required respondent to perform 10 days of public service, and ordered him to enroll in and complete a domestic violence recovery program.

On May 11, 2012, the court granted respondent's petition for dismissal of the conviction pursuant to Penal Code section 1203.4.

Respondent committed the offense on October 27, 2010. The victim was his girlfriend of 13 years.

6. Respondent's convictions are substantially related to the qualifications, functions, or duties of a real estate salesperson. Title 10, California Code of Regulations, section 2910, subdivision (a)(1), (8), and (10).

7. Respondent testified at the hearing that he completed probation early on the battery conviction, completed the domestic violence program, and had the conviction dismissed. He explained that he and his girlfriend got into an argument about a phone bill, she hit him, and he tried to restrain her by holding her shoulder. They had been together for many years, and remain together. He admitted that he had "screwed up."

Regarding his receiving stolen property conviction, respondent testified that at the time he purchased the motorcycle, he did not know it was stolen, but realizes now that he should have known, since the price he paid for it was about half of the typical cost of a motorcycle and the ignition had been punched out. He completed probation but has not completed paying restitution because following the conviction, he lost his job. Respondent paid about \$1,040.00 toward his \$3,500.00 restitution obligation, but with the additional fees, he still owes about \$3,000.00.

Respondent presently works for a building owner/broker as an officer manager and believes the broker will hire him if he receives a license.

Respondent had been working as a security guard to earn extra income in order to obtain a pilot's license. He had been a helicopter mechanic when he was in the Marines and loved flying. He also has worked at the airport in aviation refueling. He stopped working at both jobs after he obtained his pilot's license and applied for a real estate license. Respondent had filed an application for a real estate salespersons license in 2008 but the Department denied it and he did not appeal.

8. In December 2011, respondent completed a property management course offered by The Learning Source.

9. Galangny Phath wrote in a declaration that she was the victim of the battery, but since that time, she does not feel afraid of respondent and in fact supports him and

understands how important a real estate license is to him. She wrote that she intends to remain in a relationship with respondent and that through the domestic violence course and self-reflection, he has learned a great deal and is a thoughtful and caring person. She described the battery as "an aberration."

10. Leland E. Mench wrote in a letter that he is a real estate broker active in commercial leasing, ownership, and management, and intends to hire respondent and become his employing broker as soon as respondent receives a license. He wrote that respondent has worked for him for several years as a building manager, with duties including answering phones, coordinating calls, handling tenant complaints and issues, bookkeeping, banking, coordinating contractors and maintenance personnel and more. He indicated he had complete trust and confidence in respondent and believed his character was impeccable. He wrote that he had never had any qualms about leaving respondent to deal with the day-to-day management of the building, and he appreciates respondent's service and commitment to detail. In fact, he indicated that respondent is a signor on several of his bank accounts. Mr. Mench was aware of respondent's history, but did not feel this would have any impact on his ability as a real estate agent. He added that respondent has had extensive training and experience in managing an office building and will be able to offer these services to other building owners.

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.

[¶] . . .

“(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.”

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 . . .

“(a) Procured or attempted to procure, a real estate license or license renewal, for himself . . . by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

“(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 crimes substantially related to the qualifications, functions, and duties of a real estate licensee, by reason of Findings 3 through 6.

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 the Bureau of Security and Investigative Services revoked, by reason of Finding 4.

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 receiving stolen property five years ago and battery last year. He completed probation on the receiving stolen property conviction but has not finished paying restitution. He completed probation on the battery conviction early and had the conviction expunged. Both offenses are misdemeanors. The battery conviction is relevant to this proceeding only because it is a second offense, thereby pointing toward a pattern of misconduct, but by itself, has little to do with the licensed activities of a real estate salesperson.

Respondent presented little evidence of rehabilitation but did offer the letter of Mr. Mench who corroborated respondent's testimony that he has been employed for several years as a building manager. He has also obtained a pilot's license.

In sum, respondent made a mistake five years ago when he bought a motorcycle that he should have known was stolen. That cost him his job as a security guard, but he has been employed for the last few years and his employer, a real estate broker, trusts him and is willing to employ him to manage other buildings for his clients. Under these circumstances, it would not be against the public interest to issue a restricted real estate salesperson's license to respondent.

ORDER

Respondent John Patrick Collins' 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 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.

3. 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 9, 2012



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings