

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
JUN -8 2006

DEPARTMENT OF REAL ESTATE

[Signature]

In the Matter of the Application of)
DUSTIN WADE TAUNTON,) NO. H-4413 SAC
Respondent.) OAH NO. N-2006020300

DECISION

The Proposed Decision dated May 9, 2006, 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 JUN 29 2006.

IT IS SO ORDERED

6-7-06

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

DUSTIN WADE TAUNTON,

Respondent.

Case No. H-4413 SAC

OAH No. N2006020300

PROPOSED DECISION

On April 5, 2006, at Sacramento, California, this matter was heard by David A. Peters, Administrative Law Judge, Office of Administrative Hearings, State of California.

James L. Beaver, Assistant Chief Counsel, Department of Real Estate, State of California, represented complainant.

Dustin Wade Taunton (respondent) appeared and was represented by Joseph T. Rishwain, Jr., Attorney at Law.

Evidence was received and the matter was submitted for decision on April 5, 2006.

FACTUAL FINDINGS

1. On January 5, 2006, complainant Charles W. Koenig, a Deputy Real Estate Commissioner, Department of Real Estate, (Department), State of California, made the Statement of Issues against respondent in his official capacity.
2. On September 23, 2004, respondent applied to the Department for the issuance of a real estate salesperson license subject to the conditions of Business and Professions Code section 10153.4.
3. On November 28, 1988, in the Municipal Court of California, County of San Joaquin, respondent was convicted, on his plea of guilty, of a violation of Penal Code section 653k (possession of a switchblade knife), a misdemeanor; and of a violation of Penal Code section 12031 (carrying a loaded firearm), a misdemeanor.

4. As a result of respondent's convictions, imposition of sentence was suspended and respondent was placed on three years summary probation. The terms and conditions of respondent's probation included among other things: fines and assessments of \$350 and the confiscation and destruction of the weapons. Respondent paid his fines and assessments and successfully completed his probation.

5. The facts and circumstances giving rise to respondent's convictions are that respondent was in a traffic collision while driving with a suspended driver's license. The police officer investigating the collision searched the respondent and found a loaded .25 caliber semi-automatic pistol and a switchblade knife with a three inch blade. Respondent was arrested and taken to the police station where he was cited and released.

6. Respondent's convictions are for crimes within the definition of moral turpitude considered by the court in *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027. The court stated:

"... Moral turpitude has been described as any crime or misconduct committed without excuse, or any 'dishonest or immoral' act not necessarily a crime. (*In re Higbe* (1972) 6 Cal.3d 562, 569 [99 Cal.Rptr. 865, 493 P.2d 97].) The definition depends on the state of public morals and may vary according to the community or the times, as well as on the degree of public harm produced by the act in question. (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 181 [159 Cal.Rptr. 864].) Its purpose is not punishment but protection of the public. (*Rice v. Alcoholic Beverage etc. Appeals Board* (1979) 89 Cal.App.3d 30, 36 [152 Cal.Rptr. 285].)"

The possession of certain dangerous objects, such as a loaded gun and a switchblade knife, have been determined by the legislature to be instrumentalities that in and of themselves pose a potential threat to the community. (See *People v. Grubb* (1965) 63 Cal.2d 614).

7. Respondent's criminal convictions are for crimes bearing a substantial relationship to the qualifications, functions, or duties of a real estate licensee. Real estate licensees deal with the public in a variety of settings including in homes and in vehicles. The possession of dangerous weapons such as a switchblade knife or a loaded handgun creates a serious risk to potential clients or bystanders. Respondent's conviction for carrying a loaded firearm also bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee based on the Department's Criteria of Substantial Relationship, California Code of Regulations, title 10, section 2910, subdivision (a)(7) (Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct). Respondent failed to obtain a permit to carry the loaded handgun.

8. On March 20, 1996, in the Municipal Court of California, County of San Joaquin, Lodi Judicial District, respondent was convicted, on his plea of nolo contendere, of a violation of Penal Code section 273.5, subdivision (a) (corporal injury to spouse/cohabitant), a misdemeanor.

9. As a result of respondent's conviction he was placed on three years probation. The terms and conditions of his probation included 20 days in jail, enrollment in a counseling program, payment of a \$250 fine, payment of \$250 to a Women's Center, and an order not to annoy, harass, threaten or strike the victim, his wife.

10. The facts and circumstances giving rise to respondent's conviction are that on September 22, 1995 respondent slapped his wife during the course of an argument. His wife ran to the neighbors and called the police.

11. On July 23, 1996, in the Municipal Court of California, County of San Joaquin, Lodi Judicial District, respondent was convicted, on his plea of nolo contendere, of a violation of Penal Code section 273.5, subdivision (a) (corporal injury to spouse/cohabitant), a misdemeanor.

12. As a result of respondent's conviction, imposition of sentence was suspended and respondent was placed on three years formal probation. The terms and conditions of his probation included 30 days in jail, payment of a \$1,000 fine and an order to have no contact with the victim, his estranged wife. Respondent's sentence was concurrent with his sentence for his criminal conviction described in Factual Finding 14.

13. The facts and circumstances giving rise to respondent's conviction are that on March 8, 1996, respondent slapped his wife during an argument. Respondent was already on probation for the criminal conviction described in Factual Finding 8. Respondent's criminal act violated the terms of his probation.

14. On July 23, 1996, in the Municipal Court of California, County of San Joaquin, Lodi Judicial District, respondent was convicted, on his plea of nolo contendere, of a violation of Penal Code section 273.5, subdivision (a) (corporal injury to spouse/cohabitant), a misdemeanor.

15. As a result of respondent's conviction, imposition of sentence was suspended and respondent was placed on three years formal probation. The terms and conditions of respondent's probation included 30 days in jail, payment of \$1,000 fine, and an order to have no contact with the victim, his estranged wife. Respondent's sentence was concurrent with his sentence for his criminal conviction described in Factual Finding 11.

16. The facts and circumstances giving rise to respondent's conviction are that on September 22, 1996, respondent again hit his wife during an argument. Respondent was already on probation for his conviction described in Factual Finding 8. Respondent's criminal acts violated the terms of his probation.

17. Respondent's three misdemeanor criminal convictions of corporal injury to spouse/cohabitant are for crimes involving moral turpitude. Respondent's criminal acts included willfully inflicting corporal injury resulting in trauma upon his wife. (*Clerici v. Department of Motor Vehicles, supra*, 224 Cal.App.3d 1016, 1027).

18. Respondent's three misdemeanor criminal convictions of corporal injury to spouse/cohabitant are for crimes, which bear a substantial relationship to the qualifications,

functions, or duties of a real estate licensee based on the Department's Criteria of Substantial Relationship, California Code of Regulations, title 10, section 2910, subdivision (a)(8) (Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another), and subdivision (a)(10) (Conduct which demonstrates a pattern of repeated and willful disregard of law). In addition, respondent's convictions, described in Factual Findings 11 and 14, are substantially related under section 2910, subdivision (a)(9) (Contempt of court or willful failure to comply with a court order).

19. On July 16, 1998, in the Municipal Court of California, County of San Joaquin, Lodi Judicial District, respondent was convicted, on his plea of nolo contendere, of a violation of Penal Code section 653k (possession of a switchblade knife), a misdemeanor.

20. As a result of respondent's conviction, he was placed on three years probation. The terms and conditions of respondent's conviction included 20 days of jail time to be served through home detention and fines and fees totaling \$220.

21. The facts and circumstances giving rise to respondent's conviction are that respondent was fishing at night and was approached by a police patrol officer. The officer determined that respondent was on probation and searchable. During the search Respondent volunteered that he had a butterfly/switchblade knife in his tackle box. Respondent was arrested, booked and released for possession of a switchblade knife.

22. Respondent's conviction is for a crime involving moral turpitude. Respondent was in possession of an instrumentality prohibited by the legislature in the interest of protecting of the public. In addition, respondent violated a condition of his probation.

23. Respondent's conviction is for a crime which bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee based on the Department's Criteria of Substantial Relationship, California Code of Regulations, title 10, section 2910, subdivision (a)(9) (Contempt of court or willful failure to comply with a court order), and subdivision (a)(10) (Conduct which demonstrates a pattern of repeated and willful disregard of law).

24. On January 13, 2000, in the Municipal Court of California, County of San Joaquin, Lodi Judicial District, respondent was convicted, on his plea of guilty, of a violation of Health and Safety Code section 11364 (possession of controlled paraphernalia - a smoking device), a misdemeanor.

25. As a result of respondent's conviction, for imposition of sentence was suspended and respondent was placed on three years conditional probation. The terms and conditions of respondent's probation included 30 days in jail with 15 days suspended upon completion of a drug counseling program, the remaining 15 days were to be served through home detention; payment of fines, fees and assessments totaling approximately \$350. Respondent was on probation for his previous criminal convictions at the time of this conviction. Respondent successfully completed his probation in January of 2003.

26. The facts and circumstances giving rise to respondent's conviction device are that police officers came to respondent's house and in the course of a probation search found a smoking pipe used for smoking drugs in respondent's pocket. Respondent was arrested and spent the weekend in the county jail.

27. Respondent's conviction is not for a crime involving moral turpitude. Simple possession of the smoking device is not a serious enough breach of respondent's duty to society to constitute a crime of moral turpitude.

28. Respondent's criminal conviction is for a crime which bears a substantial relationship to the qualifications, functions, or duties of a real estate licensee based on the Department's Criteria of Substantial Relationship, California Code of Regulations, title 10, section 2910, subdivision (a)(9) (Contempt of court or willful failure to comply with a court order), and subdivision (a)(10) (Conduct which demonstrates a pattern of repeated and willful disregard of law).

29. On May 5, 2005, in the Superior Court of California, County of San Joaquin, respondent's criminal conviction described in Factual Finding 24, was dismissed under the provisions of Penal Code section 1203.4. On February 15, 2006 the remaining convictions described in Factual Findings 3, 8, 11, 14 and 19 were dismissed by the court under the provisions of Penal Code section 1203.4.

30. Respondent is 40 years of age. Respondent has been together with his current wife for seven years. They have been married for three years and are raising respondent's 13-year-old stepdaughter and respondent's 12-year-old son. Respondent is a high school graduate and attended San Joaquin Delta College from 1985 to 1987. Respondent has worked for his mother for the past 19 years. Respondent's mother is a real estate broker who specializes in property management primarily of family owned properties. Respondent assists his mother with coordinating maintenance on properties and assists with all phases of running her property management office.

31. Respondent presented evidence showing his progress towards rehabilitation. He testified in his own behalf and admits to being addicted to cocaine and alcohol at an early age. He attributes his criminal convictions for corporal injury to his former wife to his addictions and anger management problems in the face of a bad marriage. Respondent is remorseful and takes responsibility for his conduct. He and his wife are active members of the Bethel Church, Lodi, California. Respondent introduced into evidence a letter from Caleb Hardy, Worship Arts Pastor for the Bethel Church. Pastor Hardy describes respondent's effective participation in the church ministry and believes respondent has learned important lessons from his mistakes. Respondent also introduced into evidence a letter from his former mother-in-law Patricia Robertson. Ms. Robertson states that she has seen positive changes in respondent. She sees him as having become a responsible and caring adult. She describes respondent working closely with his son at Moore's Karate where respondent teaches martial arts. Ms. Robertson strongly supports respondent obtaining a real estate salesperson license. Also introduced into evidence was a letter from Corey H. Brink, M.D., Diplomate of the American Board of Psychiatry and Neurology. Respondent has been under Dr. Brink's care for the past two years. According to Dr. Brink

respondent has been compliant with the Dr.'s recommendations and is motivated to improve his life and family. Respondent introduced into evidence a letter from Scott Reiswig, owner of Moore's Karate, Lodi, California. Mr. Reiswig explains that respondent has been one of his students for five years and has shown himself to be an honest and dependable person. Also introduced into evidence was a letter from Charles Weber who has been involved with respondent in 12-step recovery programs (Alcoholics Anonymous and Narcotics Anonymous). Mr. Weber has known respondent for 30 years and is impressed with the changes respondent has made in his life. Respondent submitted into evidence three additional letters of support. Respondent called his mother, Ione Taunton, as a witness. Ms. Taunton testified that respondent is effectively assisting her in the property management business and is actively involved in his son's equestrian activities. Ms. Taunton encouraged her son to apply for the real estate salesperson license and would like respondent to someday take over the property management business.

32. Respondent successfully completed probation on his most recent conviction in 1993. It has been more than six years since respondent's last criminal conviction. All of his criminal convictions have been dismissed under Penal Code section 1203.4. He is employed, active in his church and has a stable family life. Respondent has, for the past three years, been involved in Alcoholics Anonymous and Narcotics Anonymous. He no longer uses drugs. He has studied marshal arts for the past 5 years and is doing some marshal arts teaching at Moore's Karate. Respondent is supportive of his son's equestrian activities and acts as a horseshow judge on a regular basis. Despite his criminal convictions, which bear a substantial relationship to the qualifications, functions, or duties of a real estate licensee, respondent presented sufficient evidence of rehabilitation to be allowed to obtain a real estate license on a restricted basis.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a) provides that the Department may deny a license on the ground that the applicant has "been convicted of a crime . . . (that) . . . is substantially related to the qualifications, functions or duties of the business . . . for which (an) application is made."

2. Cause exists for denial of licensure to respondent as a real estate salesperson under Business and Professions Code section 480, subdivision (a), by reason of the matters set forth in Factual Findings 3, 8, 11, 14, 19 and 24.

3. Business and Professions Code section 10177, subdivision (b) establishes that the Department may deny a license on the grounds that the applicant has "been convicted of, a felony or a crime involving moral turpitude".

4. Cause exists for denial of licensure to respondent as a real estate salesperson under Business and Professions Code section 10177, subdivision (b), by reason of the matters set forth in Factual Findings 3, 8, 11, 14 and 19.

5. Cause does not exist for denial of licensure to respondent as a real estate salesperson under Business and Professions Code section 10177, subdivision (b), by reason of the matters set forth in Factual Findings 24 and 27. Respondent's misdemeanor criminal conviction for possession of controlled paraphernalia is not a crime involving moral turpitude.

6. California Code of Regulations, title 10, section 2911, sets forth criteria for the evaluation of an applicant for licensure when such a person has committed a crime. In accordance with the Department's regulations section 2911, the matters set forth in Factual Findings 3 through 32 were weighed against the offenses in making the Order below.

7. Respondent presented sufficient evidence of rehabilitation to establish that it would not be against the public interest to issue a real estate license to respondent on a restricted basis.

ORDER

Respondent Dustin Wade Taunton'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 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 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.

4. 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.

5. 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 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.

Dated: May 9, 2006



DAVID A. PETERS
Administrative Law Judge
Office of Administrative Hearings

1 NAOMI DE LA MORA, Counsel (SBN 222048)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0780 (Direct)

FILED
JAN 17 2006

DEPARTMENT OF REAL ESTATE

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)

No. H-4413 SAC

12 DUSTIN WADE TAUNTON,)

STATEMENT OF ISSUES

13 Respondent.)
14)

15 The Complainant, Charles W. Koenig, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against DUSTIN WADE TAUNTON ("Respondent"), alleges:

18 I

19 Complainant, Charles W. Koenig, a Deputy Real Estate
20 Commissioner of the State of California, makes this Statement of
21 Issues in his official capacity.

22 II

23 Respondent made application to the Department of Real
24 Estate of the State of California for a real estate salesperson
25 license on or about September 23, 2004 with the knowledge and
26 understanding that any license issued as a result of the
27 application of would be subject to the conditions of Section

1 10153.4 of the California Business and Professions Code ("the
2 Code").

3 III

4 On or about November 28, 1988, in Superior Court of
5 the State of California, San Joaquin County, Case No. M-143289,
6 Respondent was convicted of the crime of Possession of a
7 Switchblade Knife in violation of Penal Code Section 653k, and
8 of the crime of Carrying a Loaded Firearm in violation of Penal
9 Code Section 12031, each a misdemeanor and a crime involving
10 moral turpitude which bears a substantial relationship under
11 Section 2910, Title 10, California Code of Regulations ("the
12 Regulations"), to the qualifications, functions or duties of a
13 real estate licensee.

14 IV

15 On or about March 20, 1996, in Superior Court of the
16 State of California, San Joaquin County, Case No. LM013244,
17 Respondent was convicted of the crime of Corporal Injury to
18 Spouse/Co-Inhabitant in violation of Penal Code Section
19 273.5(a), a misdemeanor and a crime involving moral turpitude
20 which bears a substantial relationship under Section 2910 of the
21 Regulations, to the qualifications, functions or duties of a
22 real estate licensee.

23 V

24 On or about July 23, 1996, in Superior Court of the
25 State of California, San Joaquin County, Case No. 013834,
26 Respondent was convicted of the crime of Corporal Injury to
27 Spouse/Co-Inhabitant in violation of Penal Code Section

1 273.5(a), a misdemeanor and a crime involving moral turpitude
2 which bears a substantial relationship under Section 2910 of the
3 Regulations, to the qualifications, functions or duties of a
4 real estate licensee.

5 VI

6 On or about July 23, 1996, in Superior Court of the
7 State of California, San Joaquin County, Case No. LM012433,
8 Respondent was convicted of the crime of Corporal Injury to
9 Spouse/Co-Inhabitant in violation of Penal Code Section
10 273.5(a), a misdemeanor and a crime involving moral turpitude
11 which bears a substantial relationship under Section 2910 of the
12 Regulations, to the qualifications, functions or duties of a
13 real estate licensee.

14 VII

15 On or about July 16, 1998, in Superior Court of the
16 State of California, San Joaquin County, Case No. LM018358,
17 Respondent was convicted of the crime of Possession of a
18 Switchblade Knife in violation of Penal Code Section 653k, a
19 misdemeanor and a crime involving moral turpitude which bears a
20 substantial relationship under Section 2910 of the Regulations,
21 to the qualifications, functions or duties of a real estate
22 licensee.

23 VIII

24 On or about January 13, 2000, in Superior Court of the
25 State of California, San Joaquin County, Case No. LM019902,
26 Respondent was convicted of the crime of Possession of Smoking
27 Device in violation of Health and Safety Code Section 11364, a

1 misdemeanor and a crime involving moral turpitude which bears a
2 substantial relationship under Section 2910, Title 10 of the
3 Regulations, to the qualifications, functions or duties of a
4 real estate licensee.

5 IX

6 Respondent's criminal convictions described in
7 Paragraphs III through VIII constitute cause for denial of
8 Respondent's application for a real estate license under
9 Sections 480(a) and 10177(b) of the Code.

10 WHEREFORE, Complainant asks that the above-entitled
11 matter be set for hearing and, upon proof of the charges
12 contained herein, that the Commissioner refuse to authorize the
13 issuance of, and deny the issuance of a real estate salesperson
14 license to Respondent, and for such other and further relief as
15 may be proper in the premises.

16
17 
18 CHARLES W. KOENIG
Deputy Real Estate Commissioner

19 Dated at Sacramento, California,
20 this 5th day of January, 2006.