

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

FERNANDO ANTHONY SANTOS,

Respondent.

Case No. H-4442 SAC

OAH No. N2006030349

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on May 26, 2006.

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

Respondent Fernando Anthony Santos represented himself.

The record was held open to allow Respondent to submit letters of reference. Three letters were received and admitted collectively as Exhibit A.

The record closed on June 8, 2006.

FACTUAL FINDINGS

1. Complainant Charles W. Koenig filed the Statement of Issues in his official capacity as a deputy real estate commissioner for the Department of Real Estate, State of California.

2. On December 31, 2004, Fernando Anthony Santos (Respondent) filed an application for a real estate salesperson license with the Department. The application was filed with the understanding that any license issued as a result would be subject to the conditions of Business and Professions Code section 10153.4.

3. The application form requires the disclosure of all criminal convictions. Respondent complied with the requirement by revealing a conviction for petty theft, including details such as the court, arresting agency, and other matters.

Criminal Conviction

4. On March 15, 2001, in the Sacramento County Superior Court, Respondent was convicted, by his plea of guilty, of a misdemeanor violation of Penal Code section 484, petty theft. As a result, Respondent was placed on probation for three years and ordered to serve ten days in county jail, to pay a \$100 fine and to stay away from the Tower Records store on 16th Street in Sacramento.

5. Respondent was arrested at Tower Records on January 14, 2001. The police report does not reveal the factual circumstances. Respondent reported in a conviction detail report and in his testimony that he became annoyed after waiting in line for a long time to purchase a CD. He walked out the door without paying and the store alarm sounded.

Respondent's Evidence

6. Respondent testified that he takes full responsibility for his actions the day of the theft. He describes himself as having been young and irresponsible (he was 24) but stresses that this was not an excuse. He served the jail time through a work release program and paid \$250 in fines.

7. Respondent reports that the conviction helped him to grow up. He is now the father of two children and supports them as well as his father-in-law, who is partially paralyzed. Respondent began working in the real estate field at Ameriquest. He also worked for Global One as a loan officer. His duties included building a clientele and gathering information. He now works for Kevin Cooper of Cooper and Associates.

8. Kevin Ramon Cooper testified on Respondent's behalf and also wrote a reference letter. Cooper has held a broker license since August 2002. His office is in Oak Grove and the company is mainly focused on sales, although he also has a loan company.

Cooper met Respondent when both were working at Global One. In March 2005 Respondent told him about his conviction. Cooper nonetheless holds Respondent in high regard. He describes him as very honest and forthcoming, with integrity and good character that is "beyond reproach." In addition, Respondent is a team player who is hard working and enthusiastic, someone who "just helps people with no expectation of gain for himself." Cooper is willing to supervise Respondent, should he receive a restricted sales license.

9. Respondent submitted two additional letters of reference.

a. Ernesto Jimenez is the President of Ernesto's Inc. and Zocalo Inc., which are restaurants. Respondent worked for Jimenez and they have known each other for several years. Jimenez describes Respondent as a very responsible person with high integrity.

b. Cary Williams-Nunez and Angelo Nunez have known Respondent for more than five years. They report that "he has been a positive role model for all of the youth who come through our training facility [Prime Time Boxing] and has even taken time out to be a part of their out of town competitions." The couple describes Respondent as an honest person.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be denied if the applicant has been convicted of a felony or a crime of moral turpitude. Theft is a crime of moral turpitude. Hence, Respondent's conviction gives cause to deny licensure pursuant to this section.

2. Business and Professions Code section 480, subdivision (a)(1), provides that a real estate license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the profession. Department regulations (Cal. Code Regs., tit. 10, § 2910) contain criteria that define "substantially related" in connection to the real estate profession. There is no question that theft is so related. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(1).) Hence, Respondent's conviction for petty theft gives cause to deny his application pursuant to this section.

3. Department regulations (Cal. Code Regs., tit. 10, § 2911) also contain criteria to assist in the difficult assessment of rehabilitation and consequent risk to the public safety presented by an applicant who has been convicted of a crime. These include passage of time, stability of family life, community involvement and change of attitude.

Measured against the criteria and other relevant considerations, evidence of rehabilitation was persuasive. It is therefore concluded that Respondent presented sufficient proof of good character and rehabilitation in order to support a restricted salesperson license.

ORDER

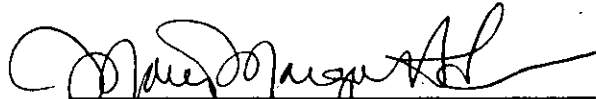
The application of Fernando Anthony Santos for a real estate salesperson license is denied; however, a restricted real estate salesperson license shall be issued to Respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to Respondent shall be subject 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 or 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 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.

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.

DATED: June 14, 2006


MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

FILED

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DEPARTMENT OF REAL ESTATE

By S. E. [Signature]

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Application of)
12 FERNANDO ANTHONY SANTOS,)
13 Respondent.)
14

No. H-4442 SAC

STATEMENT OF ISSUES

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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 FERNANDO ANTHONY SANTOS, (hereinafter
19 "Respondent"), is informed and alleges as follows:

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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 December 31, 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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WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, and for such other and further relief as may be proper under other provisions of law.



CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 13th day of December, 2005