

flag

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

JUN 12 2014

BUREAU OF REAL ESTATE

By *J. Amoh*

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

DAVID CRAIG STONE,

Respondent.

No. H- 4514 SD

OAH No. 2013090777

NOTICE

TO: DAVID CRAIG STONE, Respondent, and FRANK M. BUDA, his Counsel.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated May 5, 2014, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated May 5, 2014, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on May 25, 2014, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of May 25, 2014, at the

1 Los Angeles office of the Bureau of Real Estate unless an extension of the time is granted for
2 good cause shown.

3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Los Angeles office of the
5 Bureau of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: JUNE 10, 2014

7 REAL ESTATE COMMISSIONER

8 
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

WAYNE S. BILL

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Application of

DAVID CRAIG STONE,

Respondent.

Case No. H-04514 SD

OAH No. 2013090777

PROPOSED DECISION

Administrative Law Judge Jerry Smilowitz, State of California, Office of Administrative Hearings, heard this matter on March 25, 2014, in Los Angeles, California.

James Peel, Staff Counsel, Bureau of Real Estate (Bureau), represented Complainant, Veronica Kilpatrick, Deputy Real Estate Commissioner (Complainant).

Respondent David Craig Stone was represented by his attorney, Frank Buda, and was present at the hearing.

Oral and documentary evidence was received, and the matter was submitted for decision on March 25, 2014.

FACTUAL FINDINGS

1. Complainant acted solely in an official capacity for the Bureau in bringing this Accusation.

2. On September 14, 2010, Respondent applied to the Department of Real Estate (Department) (now the Bureau of Estate) for a real estate salesperson license. In response to this application, the Department, through complainant Joseph Aiu, Deputy Real Estate Commissioner, filed a Statement of Issues on August 18, 2011, alleging that Respondent was convicted on June 20, 1986, of committing retail theft, in violation of Pennsylvania Crimes Code section CC3929, a misdemeanor, and that such conviction bore a substantial relationship to the qualifications, functions, or duties of a real estate licensee. The Statement of Issues further alleged that Respondent had concealed and failed to disclose the conviction in his application. (Exh. 5.)

3. On October 24, 2011, the Department and Respondent entered into a written Stipulation and Waiver wherein Respondent admitted that the allegations of the Statement of Issues filed against him were true and correct. Under this agreement, Respondent would be issued a restricted real estate salesperson license. (Exh. 4.) Respondent executed an acknowledgement that he had read the Stipulation and Waiver, understood its terms, and found them to be agreeable and acceptable. The Department adopted the Stipulation and Waiver as its Decision in the case and issued a restricted salesperson license to Respondent on November 3, 2011. (Exhs. 3 and 4.) The restricted license will expire on November 2, 2015. (Exh. 3.)

4. Paragraph 2 of the Stipulation and Waiver states; "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 (2) years have elapsed from the date of issuance of the restricted license to Respondent." (Exh. 4.)

5. Although two and one-half years have elapsed since the Department issued the restricted salesperson license, Respondent did not apply to terminate the license restrictions or modify or remove any of them, and the Department did not issue him an unrestricted salesperson license or modify any of the restrictions at any time after the two-year restricted period elapsed.

6. Six days after the Department issued the restricted salesperson license, on November 9, 2011, the Department received an application for a real estate broker license from Respondent. (Exh. 2.) Respondent, in answering questions in the application, fully disclosed that he had been issued a restricted salesperson license with an effective date of November 3, 2011, that the salesperson license would expire on November 2, 2015, and that he had been convicted of retail theft in 1986. Respondent attached to his application the Stipulation and Waiver pertaining to his restricted salesperson license, and an order of expungement issued by a Pennsylvania court on June 23, 2011. There was no indication on the face of the broker application that Respondent was applying for an unrestricted broker's license; nor did the application form itself ask whether the applicant was seeking a restricted or unrestricted license.

7. Except for the retail theft charge he incurred many years ago in 1986, Respondent has led a blameless life.

8. In response to Respondent's application for a broker license, the Bureau filed a First Amended Statement of Issues. It alleged that Respondent had violated the terms of the Stipulation and Waiver by applying for the issuance of an unrestricted real estate license before the two year period that prohibited him from doing so had elapsed.

9. Respondent explained at hearing that he considered the two year restriction set forth in the Stipulation and Waiver as applying only to the restricted salesperson license, and that it did not pertain to an application for any other real estate license. He had several phone

calls and one face-to-face meeting with Deputy Real Estate Commissioner Joseph Aiu, the complainant in the salesperson license Statement of Issues, whom Respondent believed was the head of the Bureau of Real Estate in San Diego. These conversations took place a month before Respondent took the broker examination, and while his salesperson license application was still pending. Deputy Commissioner Aiu told him that a restricted license ~~would not prevent Respondent from taking the broker examination.~~ Deputy Commissioner Aiu also told Respondent that a restricted broker license could be issued during the two year period.

10. Respondent and his wife co-founded Greater Good Realty in San Diego, handling numerous transactions with sellers, landlords, and lessors. He has worked on behalf of 200 buyers and 50 individuals on the leasing side. There have been no complaints about his work.

11. Respondent introduced a number of letters attesting to his good character, abilities as a realtor and honesty. All of the letters mentioned that Respondent had fully made them aware of his retail theft conviction and failure to disclose that conviction on his earlier application for a salesperson license, for which he expressed remorse. All of the letters are addressed to Real Estate Commissioner Wayne Bell.

12. Aran Fontaine, the broker of record for Greater Good Realty, has been an active licensee since 1998 in California and Arizona. In his letter, Mr. Fontaine states that he has known Respondent since 2008, and that Respondent "has demonstrated great business ethics and knowledge during all of the years that I have interacted with him. He is honest, forthright, and professional." Respondent and his wife, who also works for Greater Good Realty, have created an organization that "represents our clients with top-notch professional knowledge and skill, while maintaining a strong personal relationship with everyone that we work with. The office standards of organized record keeping for compliance that David and Monica have created is something all brokerages should strive to mirror. Mr. Fontaine regards Respondent as someone he completely trusts and respects, adding, "He has never acted unprofessionally or dishonestly in a business or working situation." Further, Respondent, through Greater Good Realty, donates 10 per cent of their commissions to local non-profit charities, and has donated tens of thousands of dollars to worthy organizations. Respondent also volunteers his time whenever possible to these organizations, which include non-profits that provide schooling for homeless kids, help to get homeless teenagers off the street, work with child cancer patients, and engage children to do volunteer work for others. (Exh. J.)

13. In his letter, Jeffrey Sitcov, the founder of Photocharity, a non-profit organization that works with San Diego's homeless youth, states, "David Stone has been a corporate sponsor for the past year with 2 large events. He has donated over \$4,700 over the past 12 months, met me for various meeting[s] (because of his interest to help more), and volunteered for our award winning 'Taking Music & Art to the Streets' program for 2 hours on a Sunday. In addition he facilitated a large article in the Downtown News (which interviewed David & myself) that focused on Photocharity and how Greater Giving Realty

donates 10% of their commissions to local charities.” As Mr. Sitcov continues, “These consistent actions that David demonstrated showed me that he not only cares about helping save San Diego Homeless Youth, but he followed through with his word, has integrity, and conducts himself in an honest and truthful way.” (Exh. D.)

14. John M. Poli, who has been a long-time friend of Respondent, writes, “As a Certified Public Accountant (inactive), prior owner of a school bus company with 300+ CDL/S certified drivers, and a real estate professional, as defined by the IRS, I understand the importance of the Real Estate Commission’s mission to ensure proper licensing, compliance, professionalism and ethics of its salespeople. I believe David to be an honest, hardworking person who will represent the Real Estate Commission professionally and ethically.” (Exh. I.)

15. Similarly, Francis Coleman, who has been a close family friend of Respondent, believes that Respondent “is an ethical and truthful person who should be approved for the broker license. He has always been the ultimate working professional in the period I have known him; one who would always put customers and friends first and do whatever he can to help. He is one of the hardest working people I know and I have also seen him transform into a wonderful family man and role model for his son.” (Exh. H.)

16. Respondent’s wife, Monica Stone, regards Respondent as being “the most honest, truthful, and professional individual that I know and exceeds the requirements and knowledge to become an amazing real estate broker.” She also mentions his commitment to “making a difference by dedicating time to local charitable groups who could be helped not only by our monetary contributions but also by supporting their cause and spreading the word to get involved.” (Exh. G.)

17. Bryan Treusch, who was helped by Respondent to find a condo and who still consults Respondent to evaluate potential real estate investments, states in his letter, “Mr. Stone made me aware of his previous shoplifting conviction in 1986. He is clearly regretful, and in all of my interactions with Mr. Stone, he has demonstrated impeccable ethics and interpersonal skills. In fact, the main reason that I continue to work and recommend Mr. Stone is that he repeatedly demonstrated a desire to act in his clients’ best interests. There were multiple times that I was interested in a property, and Mr. Stone said ‘That property is not a good investment, and this is why...’ Many agents would have encouraged the purchase, just too quickly close a deal. I gained much respect for Mr. Stone when he discouraged me and put my interests in front of his own.” (Exh. A.)

18. Finally, another long-time friend, Jeremy Deal, who is a Managing Partner of a hedge fund and registered investment advisor with the State of California, and who like all of the other letter writers knew about Respondent’s past, characterizes Respondent as “one of the most honest and trustworthy professionals in my universe,” and someone who is highly fit to have a real estate brokerage license. Like Bryan Treusch, he believes that Respondent puts being upfront and straightforward ahead of any benefit he would receive. (Exh. J.)

19. Respondent also presented several certificates. One is from the Centre City Development Corporation for his "Service and Sincere Commitment to the revitalization and redevelopment of downtown San Diego." A second is from a member of Congress for his contribution to the Downtown community. A third is from a council member for Respondent's dedication to the community as a member of the Centre City Advisory Committee. (Exh. E.)

LEGAL CONCLUSIONS

1. The Statement of Issues alleges three grounds for denying the issuance of a real estate broker license to Respondent, all of which arise from the timing of Respondent's application for a real estate broker license. The first is Business and Professions Code¹ section 10177, subdivision (f), which, in pertinent part, authorizes the denial of a real estate license to anyone who has 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. As another cause for denial of Respondent's broker application, Section 10177, subdivision (j), authorizes denial where the applicant has engaged in any conduct, that constitutes fraud or dishonest dealing. Finally, under section 10177, subdivision (k), denial may result where the applicant has violated any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license.

2. At issue here is the language of Respondent's restricted salesperson license as described in Factual Finding 3: "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 (2) years have elapsed from the date of issuance of the restricted license to Respondent." This language is virtually identical to the mandatory language required of restricted salesperson licenses by California Code of Regulations, title 10 (CCR), section 2930. The Bureau contends that Respondent's application for a broker license is subject to denial pursuant to sections 10177, subdivisions (f), (j) and (k), because he violated the restriction set forth above by applying for an unrestricted broker license before the initial two-year period during which he held his restricted salesperson license had elapsed. The Bureau asserts that the restriction by its terms prohibits an application for any unrestricted real estate license, whether salesperson or broker, during the two-year period.

3. It is not necessary at this time to decide whether the restriction prohibited Respondent from applying for an unrestricted broker license, because the evidence shows that Respondent initially took all steps necessary to apply for a "restricted" broker license if the Bureau chose to issue a restricted license to him. Respondent consulted with Deputy Commissioner Aiu three times before the restricted salesperson license was issued. Respondent asked him about the effect of a restricted salesperson license on his ability to take the broker exam and apply for a broker license. Deputy Commissioner Aiu told

¹ All further statutory citations refer to the Business and Professions Code.

Respondent that he could take the broker exam and apply for a restricted broker license during the two-year period. In filing his application for a broker license, Respondent fully disclosed that he had a restricted salesperson license and attached the Stipulation and Waiver that imposed the restrictions to the application. (Factual Findings 3 and 9.) The application form itself did not ask whether Respondent was applying for a restricted or unrestricted license. Respondent's actions in applying for a broker license do not show that he violated the provisions alleged in the Statement of Issues, rather he made sure the Department was aware of his existing restricted salesperson license.

4. Cause does not exist to deny Respondent's application for a broker license on the basis of 10177, subdivision (j), which requires a showing that he engaged in fraud or dishonest dealing during the application process. To the contrary, he fully disclosed that his salesperson license had been restricted, and included a copy of the Stipulation and Waiver with his application.

5. Cause does not exist to deny Respondent's application for a broker license on the basis of 10177, subdivision (f). He did not act or conduct himself in a manner that would have warranted denial of his application for a broker license. The record does not disclose any intent on his part to deceive the Department or violate his restricted salesperson license. He relied on what he was told by Deputy Commissioner Aiu, and sincerely believed that he was free to undertake the broker examination and apply for a restricted broker license. He took every required step to do so.

6. Cause does exist to deny Respondent's application for a broker license on the grounds that, pursuant to 10177, subdivision (k), he violated the term and condition of the Stipulation and Waiver that prohibited him from filing for any unrestricted license during a two year period. However, the application does not require a statement from the applicant on whether the license being sought is a restricted or unrestricted one. Respondent fully disclosed that he was under the two-year restriction. There is no evidence that he attempted to mislead the Department, or subvert the terms and conditions of the Stipulation and Waiver.

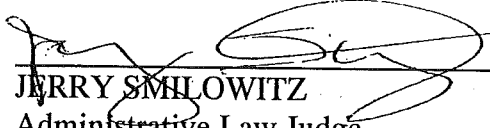
7. It has now been nearly two and one-half years since the issuance of his restricted salesperson license and the submission of his application for a broker license. Even if Respondent inadvertently violated his license restriction, based on this record, any violation was technical in nature. In viewing the totality of Respondent's background, at this point, Respondent has conducted his real estate business without complaint and in a professional manner. Although he was convicted of retail theft in 1986 and failed to disclose the conviction on his 2010 application for a salesperson license (Factual Finding 2), the conviction has now been expunged and occurred over 27 years ago. He is involved in significant charitable activities, is married and has a stable life. He and his wife are co-founders of a real estate business in San Diego. Respondent has met his burden of proving that his application for a broker license should be issued. It would not be contrary to the welfare and safety of the public were he to be issued an unrestricted real estate broker license.

ORDER

The application of Respondent David Craig Stone for a real estate broker license is granted without restriction.

*not
adopted*

Dated: May 5, 2014



JERRY SMILOWITZ
Administrative Law Judge
Office of Administrative Hearings