

NOV 17 2009

DEPARTMENT OF REAL ESTATE

By R. Henry

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)	
)	NO. H-5116 SAC
)	
AKRAM SABAR CHAUDHRY,)	OAH NO. 2009010478
)	
Respondent.)	

ORDER DENYING RECONSIDERATION

On September 9, 2009, a Decision was rendered in the above-entitled matter.
The Decision was to become effective at 12 o'clock noon on September 30, 2009.

On September 30, 2009, Respondent requested a stay to petition for
reconsideration of the Decision of September 30, 2009.

I have given due consideration to the petition of Respondent. I find no good
cause to reconsider the Decision of September 30, 2009, and reconsideration is hereby denied.

IT IS HEREBY ORDERED 11/16, 2009.

JEFF DAVI
Real Estate Commissioner

Barbara J. Bigby
BY: Barbara J. Bigby
Chief Deputy Commissioner

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FILED

SEP 30 2009

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)	
)	NO. H-5116 SAC
AKRAM SABAR CHAUDHRY,)	
)	OAH NO. 2009010478
Respondent.)	

ORDER STAYING EFFECTIVE DATE

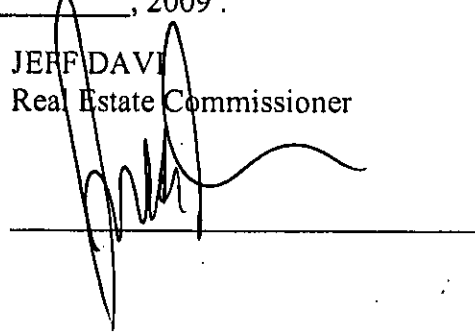
On September 9, 2009, a Decision was rendered in the above-entitled matter to become effective on September 30, 2009.

On September 30, 2009, Respondent requested a stay for the purpose of filing a petition for reconsideration of the Decision of September 30, 2009.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of thirty (30) days. The Decision of September 9, 2009, shall become effective at 12:00 o'clock, noon, on October 30, 2009.

DATED: September 30, 2009.

JERF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

SEP 10 2009

DEPARTMENT OF REAL ESTATE

By R. Henry

In the Matter of the Application of
AKRAM SABAR CHAUDHRY,
Respondent.

NO. H-5116 SAC

OAH NO. 2009010478

DECISION

The Proposed Decision dated August 10, 2009 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. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

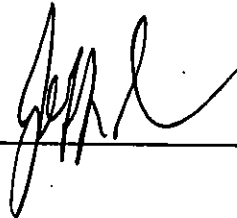
This Decision shall become effective at 12 o'clock noon on

SEP 30 2009

IT IS SO ORDERED

9-9-09

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

AKRAM SABAR CHAUDHRY,

Respondent.

Case No. H-5116 SAC

OAH No. 2009010478

PROPOSED DECISION

Judith A. Kopec, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 9, 2009, in Sacramento, California.

Kenneth C. Espell, Real Estate Counsel, Department of Real Estate (department), represented the complainant.

Frank M. Buda, Attorney at Law, represented respondent Akram Sabar Chaudhry.

Evidence was received, the record was closed, and the matter was submitted for decision on July 9, 2009.

FACTUAL FINDINGS

1. On December 13, 2007, the department received respondent's application for a real estate salesperson license. The application is pending.
2. On December 22, 2008, Joe M. Carrillo, Deputy Real Estate Commissioner of the State of California, made the statement of issues in his official capacity.

Criminal Convictions

3. On October 12, 2001, respondent was convicted after a plea of nolo contendere to violating Penal Code sections 271a, abandonment or failure to maintain child under 14, a misdemeanor, and 154, subdivision (a), debtor fraudulently removing, conveying, or concealing property, a misdemeanor. He served 13 days in jail and was placed on two years' probation. The court ordered that if respondent did not pay the arrearage in full, two felony counts would be reinstated.

4. The circumstances of these convictions are as follows: Respondent was ordered to pay \$300 per month to support his two children. At one point, the total arrearage of child support was about \$15,000. Respondent's only explanation was that he "fell behind" on paying child support. According to respondent, he paid the final \$9,000 of the arrearage at the time of his sentencing. Respondent is now current on his child support obligation of \$150 a month.

5. In connection with respondent's child support arrearage, the court ordered him to turn over his property. Respondent owned a 1996 Lexus. He claims that he was confused and, instead of turning the car over to the court, he returned the car to the bank that carried the loan on the car.

6. On September 29, 2006, respondent was convicted after a plea of guilty to violating title 18 United States Code section 1546(a), presenting an application for asylum and withholding of removal containing materially false statements, a felony. Respondent was sentenced to 11 and one-half months in prison, and supervised release for three years. On October 9, 2008, respondent's supervised release was terminated early after he served two years.

7. The circumstances of this conviction are as follows: Respondent worked for the Immigration Resource Center in Fresno during 2003 and 2004. He prepared immigration forms for customers. Respondent contends that he completed an application for his employer's brother and got caught in an undercover operation. In the conviction detail report dated May 20, 2008, that respondent submitted to the department, he stated he "took full responsibility of my role at the minimum for my misjudgement [sic] in this case." Respondent repeatedly testified that he accepted responsibility, yet his description of his conduct was minimal. In connection with his plea bargain, respondent admitted the following, which he also affirmed at the hearing:

I prepared between 6 and 24 materially false applications for immigration benefits including Applications for Asylum and Withholding of Deportation as well as petitions for Alien Relative. [¶] ... [¶] On December 13, 2003, I met with an individual who identified himself as Tariq Mehmood and agreed to prepare a false application for asylum on his behalf. On February 5, 2004[,] and on May 8, 2004, I accepted a fee from Mehmood in the aggregate amount of \$5,500. [¶] On several occasions during February and March 2004, I along with Mohammad Adil, met with Tariq Mehmood to advise him to respond falsely to questioning during his asylum interview. [¶] On April 24, 2004, I filed an Application for Asylum and Withholding of Deportation for Tariq Mehmood with the Bureau of Citizenship and Immigration Services that falsely stated Tariq Mehmood's address, date and place of entry in the United States, political affiliations in Pakistan as well as history

of persecution in Pakistan. This application was made under oath.

Respondent's Testimony and Evidence

8. Between October 2007 and July 2009, respondent successfully completed the following real estate courses: economics, escrow, real estate appraisal, finance, real estate principles, practice, and legal aspects of real estate. In 2009, the California Bureau of Security and Investigative Services issued respondent a security guard registration. He has applied for jobs using his registration, but has been unable to find work. Respondent received a master of laws in international legal studies from Golden Gate University in December 1999. He did not pass the California bar exam.

9. In August 2007 and June and August 2008, respondent donated a variety of items to the Sacramento Food Bank and Family Services. Respondent volunteers his time at his mosque by assisting older members by taking them shopping or other errands, working with children during Sunday school, and cleaning the mosque. He did not offer any details about how extensive his commitment is. Respondent testified that he attends the mosque every week. In contrast, his wife testified that while they pray regularly at home, they go to the mosque "on occasion." Respondent's involvement in community and church activities is neither significant nor conscientious.

10. Respondent has been married for the past five years. His wife described him as a caring husband and wonderful father. She is aware of his criminal record and believes that he is a changed person. Respondent has cared for and supported his wife during a recent battle with breast cancer.

11. Mohammad Nagin, a friend of respondent, testified that respondent is a trustworthy and honest person. Mr. Nagin has relied on respondent's advice concerning business decisions, and believes that respondent would be a good real estate agent. But Mr. Nagin did not have a good understanding of respondent's criminal convictions. Because of this, his testimony is given little weight.

12. Respondent submitted five letters of reference from individuals who did not testify. They each attested to his competence and professionalism. None of the authors indicate any knowledge of respondent's criminal history. Respondent claims that he told all of them about his convictions. He told them he needed the letters to send to the department for his real estate license. It is unclear if he told them his license had been denied because of his criminal record. These letters are given little weight because they are not corroborated by other evidence, and there is no evidence that the authors were aware of respondent's criminal record.

13. Respondent submitted two letters from Miguel Tovar, a real estate broker. In one letter, Mr. Tovar states that he is "fully aware of [respondent's] legal problem conviction [sic] ..." and has agreed to supervise respondent during his employment with Mr. Tovar. However, Mr. Tovar did not testify at the hearing. These letters are given little weight.

14. There is some evidence of rehabilitation. Almost three years have passed since respondent's most recent criminal conviction. He repaid the child support arrearage, successfully completed probation for the two misdemeanors, and was terminated a year early from supervision for his federal offense. Respondent has a stable family life and is paying his child support obligations. He has taken several real estate courses in addition to those required for licensure. He has disavowed any connection with the individuals with whom he was involved concerning his federal conviction. Respondent has shown that he is regularly involved in his mosque and has some involvement in other community activities. And finally, respondent expressed regret and accepted responsibility for his conduct.

15. The lack of substantial evidence from friends or associates who are aware of the details of respondent's criminal history who can corroborate his change in attitude from that which existed at the time of his criminal conduct is troubling. The two witnesses who were offered to corroborate this, respondent's wife and Mr. Nagin, did not provide satisfactory corroboration. The inconsistency between respondent and his wife about how frequently he attends services at the mosque undermines his credibility. Respondent's convictions are serious because they involve fraud and other conduct for which he benefited financially. A real estate salesperson faces opportunities on a daily basis to engage in comparable fraudulent activity. While respondent has taken important steps toward complete rehabilitation, weighing all of the evidence, he has not shown that the public can be adequately protected by the issuance of a restricted license.

LEGAL CONCLUSIONS

Applicable Law

1. The department may deny a license on the ground that the applicant has been convicted of a crime. (Bus. & Prof. Code, § 480, subd. (a).)

2. After January 1, 2008, the department may deny a license to an applicant who has been convicted of any felony or a crime substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, § 10177, subd. (b).) Prior to January 1, 2008, Business and Professions Code section 10177, subdivision (b) authorized the department to deny a license if the applicant had been convicted of a felony or a crime of moral turpitude. (Stats. 2006, ch. 199, § 2, ch. 578, § 2.5.) Complainant alleged in the accusation that respondent's 2001 misdemeanor convictions both involved moral turpitude. Since the convictions occurred in 2001 and respondent's application was submitted in December 2007, the department must show that respondent's misdemeanor convictions involved moral turpitude.

Moral Turpitude

3. A crime involves moral turpitude if the elements necessary for conviction show moral turpitude. (*Lorenz v. Medical Examiners* (1956) 46 Cal.2d 684, 687.) Moral turpitude has been defined as “an act of baseness, vileness or depravity” in a duty owed to others or society which is “contrary to the accepted and customary rule of right and duty” between persons. (*In re Higbie* (1972) 6 Cal.3d 562, 569, citing *In re Craig* (1938) 12 Cal.2d 93, 97.) Acts showing “bad character” and “the general readiness to do evil” involve moral turpitude. (*People v. Castro* (1985) 38 Cal.3d 301, 314.) Criminal conduct reveals moral turpitude for the purpose of professional licensure if it shows a deficiency in any character trait necessary for the practice of the profession, such as honesty, candor, and fidelity to fiduciary duties, involves a serious breach of a duty owed to another or society, or shows flagrant disrespect for the law or societal norms, so that knowledge of the conduct would undermine public confidence in, and respect for, the profession. (*In re Lesansky* (2001) 25 Cal.4th 11, 16.)

4. Respondent conceded at the hearing that his violations of Penal Code section 154, subdivision (a), and United States Code title 18 section 1546(a) were crimes involving moral turpitude. Respondent claims that a violation of Penal Code section 271a is not a crime involving moral turpitude.

5. Penal Code section 271a provides: “Every person who knowingly and willfully abandons, or who, having ability so to do, fails or refuses to maintain his or her minor child under the age of 14 years, ... is punishable by imprisonment in the state prison, or in the county jail not exceeding one year ...” Failure to support a child involves a serious breach of duty owed to one’s child and society and shows flagrant disrespect for the law and societal norms. As a result, respondent’s conviction for this offense involved moral turpitude.

Crime Substantially Related to the Qualifications, Functions or Duties of a Licensee

6. A crime has a substantial relationship to the qualifications, functions, or duties of a real estate licensee when it involves the fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another (Cal. Code Regs., tit. 10, § 2910, subd. (a)(1)), doing an unlawful act with the intent to confer a financial or economic benefit upon the perpetrator (*Id.* at subd. (a)(8)), willful failure to comply with a court order (*Id.* at subd. (a)(9)), or conduct which demonstrates a pattern of repeated and willful disregard of law (*Id.* at subd. (a)(10)).

7. Respondent conceded that his violations of Penal Code section 154, subdivision (a), and United States Code title 18 section 1546(a) were crimes substantially related to the qualifications, functions, or duties of a real estate licensee. Respondent claims that a violation of Penal Code section 271a is not such a crime.

8. By failing to pay child support, respondent retained the funds and had the financial benefit of \$15,000 that should have gone to support his children. Therefore, failure to pay child support involves the retaining of funds belonging to another, and is an unlawful act with the intent to confer a financial benefit upon the perpetrator. By accruing substantial arrearages, respondent willfully and repeatedly failed to comply with the court order imposing the child support obligation. As a result, the crime involved the willful failure to comply with a court order and demonstrated a pattern of repeated and willful disregard of the law. As a result, respondent's violation of Penal Code section 271a is substantially related to the qualifications, functions, or duties of a real estate licensee. In addition, respondent's violation of Penal Code section 271a, in conjunction with his other two violations, demonstrates a pattern of repeated and willful disregard of the law, which also establishes that it is substantially related to the qualifications, functions, or duties of a real estate licensee.

9. Clear and convincing evidence shows that respondent was convicted of three crimes involving moral turpitude and which are substantially related to the qualifications, functions, or duties of a real estate licensee. Therefore, grounds exist, individually and jointly, to deny his application for a license under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

Matters in Rehabilitation


10. Having found that grounds exist to deny respondent's application for a license, evidence of his rehabilitation must be evaluated. The following criteria must be considered when evaluating an applicant's rehabilitation: the passage of not less than two years since the most recent criminal conviction; restitution to any person who has suffered monetary losses; expungement of the conviction; expungement or discontinuance of the requirement to register under Penal Code section 290; successful completion or early discharge from probation or parole; abstinence from the use of controlled substances or alcohol for not less than two years if the conduct used to deny the application is attributable in part to the use of controlled substances or alcohol; payment of any fine imposed; stability of family life and fulfillment of parental and familial responsibilities; completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-development; discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others; correction of business practices that resulted in injury, or the potential for injury, to others; significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits; new and different social and business relationships from those which existed at the time of the conduct; and change of attitude from that which existed at the time of the conduct in question as shown by the applicant's testimony, evidence from family members or other persons familiar with the applicant's conduct and subsequent behavior, evidence from probation or parole officers or law enforcement, evidence from persons competent to testify about emotional disturbances, or absence of subsequent convictions. (Cal. Code Regs., tit. 10, § 2911.)

11. There is some evidence of rehabilitation as determined in Factual Finding 14. Almost three years have passed since respondent's most recent criminal conviction. He repaid the child support arrearage, successfully completed probation for the two misdemeanors, and was terminated a year early from supervision for the federal offense. Respondent has a stable family life and is paying his child support obligations. He has disavowed any connection with the individuals with whom he was involved concerning his federal conviction. And respondent expressed regret and accepted responsibility for his conduct. Yet, respondent has engaged in a pattern of criminal conduct involving fraud and other conduct that financially benefited him. While he has gone for almost three years without re-offending, his record of engaging in criminal conduct that is substantially related to the qualifications, functions, and duties of a real estate licensee requires a stronger showing of rehabilitation. Respondent went almost five years between his misdemeanor convictions in 2001 and his federal conviction in 2006. Weighing all of the evidence, respondent has not shown that the public can be adequately protected by issuing a restricted license to him at this time.

ORDER

The application of respondent Akram Sabar Chaudhry for a license as a real estate salesperson is denied.

Dated: August 10, 2009



JUDITH A. KOPEC
Administrative Law Judge
Office of Administrative Hearings

FILED

DEC 24 2008

DEPARTMENT OF REAL ESTATE

By *J. Henry*

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7

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Application of)	
12	AKRAM SABAR CHAUDHRY,)	H- 5116 SAC
13	Respondent.)	<u>STATEMENT OF ISSUES</u>
14)	

15 The Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of
16 the State of California, for Statement of Issues against AKRAM SABAR CHAUDHRY
17 (hereinafter "Respondent"), is informed and alleges as follows:

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19 Complainant, JOE M. CARRILLO, a Deputy Real Estate Commissioner of the
20 State of California, makes this Statement of Issues against Respondent in his official capacity.

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22 Respondent made application to the Department of Real Estate of the State of
23 California for a real estate salesperson license on or about December 13, 2007.

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25 On or about October 12, 2001, in the Santa Clara County Superior Court, State of
26 California, Respondent was convicted of violating Penal Code Section 271A (abandonment/non-
27 support of child) and Penal Code Section 154(a) (defrauding creditors), misdemeanors

1 and crimes involving moral turpitude which bear a substantial relationship under Section 2910,
2 Title 10, California Code of Regulations (hereinafter "Regulations"), to the qualifications,
3 functions, or duties of a real estate licensee.

4 4

5 On or about September 29, 2006, in the Santa Clara County Superior Court, State
6 of California, Respondent was convicted of violating Section 1546(a), Title 18, United States
7 Code, (presenting an application for asylum and withholding of removal containing materially
8 false statements), a felony and crime involving moral turpitude which bears a substantial
9 relationship under Section 2910 of the Regulations to the qualifications, functions, or duties of a
10 real estate licensee.

11 5

12 Respondent's criminal convictions, described in Paragraphs 4 and 5, above,
13 constitute cause for denial of Respondent's application for a real estate license under Sections
14 480(a) and 10177(b) of the Code.

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

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21 
22 JOE M. CARRILLO
23 Deputy Real Estate Commissioner

24 Dated at Sacramento, California

25 this 22 day of December, 2008.

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