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FILED

JAN 27 2012

DEPARTMENT OF REAL ESTATE
By R. Max

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)	
)	CASE NO. H-5609 SAC
CRAIG ANDREW OFSTAD,)	
)	OAH NO. 2011060567
Respondent.)	
_____)		

DECISION

The Proposed Decision dated December 28, 2011, 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. 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.

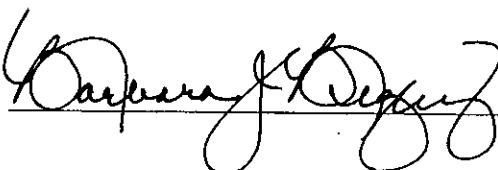
This Decision shall become effective at 12 o'clock noon on

FEB 17 2012

IT IS SO ORDERED

1/25/12

BARBARA J. BIGBY
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

CRAIG ANDREW OFSTAD,

Respondent.

Case No. H-5609 SAC

OAH No. 2011060567

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on October 27, 2011, in Sacramento, California.

Annette E. Ferrante, Real Estate Counsel, and Brooke Jensen, Certified Legal Intern, represented complainant Tricia D. Sommers, Deputy Real Estate Commissioner of the State of California.

Respondent Craig Andrew Ofstad represented himself.

Evidence was received and the record was left open for respondent to submit a letter from his current employer verifying certain information by the close of business on November 30, 2011.¹ Complainant was given until the close of business on December 9, 2011, to respond to the letter. A letter dated November 28, 2011, from Kathy R. Smith of Carmel Partners, Inc., was marked as Exhibit E for identification. Complainant's objection to Exhibit E as constituting hearsay was marked as Exhibit 6 for identification. The objection is sustained, and Exhibit E is admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d).

SUMMARY

¹ Specifically, respondent was asked to submit a letter verifying the dates of his employment, the date he informed them of his convictions, what specific information he told him about his crimes, and their continued willingness to employ him as a salesperson if he is issued a license.

Complainant seeks to deny respondent's application for a real estate salesperson license on the grounds that he was convicted of petty theft and trespassing. Cause exists to deny the application. Since respondent still maintains that he is innocent of the crimes for which he was convicted, he did not establish that he has been sufficiently rehabilitated since committing those crimes so as to justify issuing him a license, even on a restricted basis. Therefore, his application is denied.

FACTUAL FINDINGS

1. On October 22, 2010, respondent signed a Salesperson License Application (application). The Department of Real Estate (Department) received the application three days later.

2. On May 20, 2011, complainant, acting solely in her official capacity as a Deputy Real Estate Commissioner of the State of California, filed a Statement of Issues seeking to deny respondent's application on the grounds that he was convicted of petty theft and trespassing.

Prior Criminal Convictions

3. On August 20, 2008, in the Superior Court of the State of California, in and for the County of Los Angeles, Case No. 8BR03220, respondent pled nolo contendere to, and was convicted of, misdemeanor violations of Penal Code sections 484, subdivision (a), petty theft, and 602, trespassing. Imposition of sentence was suspended, and respondent was placed on three years informal probation. He was ordered to spend one day in the Los Angeles County Jail and pay fines, penalties, and assessments in the total sum of \$181. He was also ordered to pay restitution in the amount of \$7,045 to R.W. Selby & Company. On May 5, 2010, respondent's conviction was set aside, his nolo contendere plea was withdrawn and a new plea of not guilty entered, and all charges were dismissed pursuant to Penal Code section 1203.4, subdivision (a).

4. The factual basis for respondent's conviction for petty theft arose out of his selling passcards to laundry machines at less than face value in April 2008. The laundry machines at the apartment complex where he worked used to be coin-operated. However, the coin boxes were constantly being broken into, so management switched to a passcard system. This system required residents to purchase prepaid passcards from a machine using a credit or debit card. The passcard was then "swiped" through a card reader on the laundry machine to operate the machine. Additional funds could be added to a passcard using the same machine from which it was purchased.

Eventually, residents began complaining because they would run their credit or debit card through the machine to purchase or "reload" a passcard, but not receive

the proper credit on the passcard even though their credit card was charged or their bank account debited. The manufacturer of the passcard machine sent the complex a "master" card which allowed passcards to be loaded without anyone actually being charged. The master card was meant to be used in those instances where a resident was charged for a passcard, but did not receive the proper credit. However, respondent used the card to create passcards that he then sold at a discounted price. His crime of trespassing was committed to facilitate the petty theft.

Factors in Aggravation, Mitigation, and Rehabilitation

5. Respondent is 35 years old, married, and has a three-year-old son. At the time of the hearing, his wife was pregnant with their daughter. Respondent has been employed by Carmel Partners, Inc., as a community manager since May 2008. He was initially hired to manage the Lafayette Parc complex in West Covina, California. This past June, he was transferred to his current position managing The Arbors at Antelope complex in Antelope, California. He was instrumental in starting neighborhood watch programs at Lafayette Parc and The Arbors at Antelope. He remains active in the latter program.

6. Brian J. Smith, the designated officer for Carmel Partners, Inc.'s, corporate real estate license, signed the broker certification on respondent's application. While respondent testified that he disclosed his convictions and the details of the underlying crimes to the personnel department for Carmel Partners, Inc., the record was left open to allow him to submit a letter verifying the date he made such disclosures, the specific facts he disclosed, and Carmel Partners, Inc.'s, continued desire to employ him as a salesperson if he is issued a license.

On November 29, 2011, a letter signed by Kathy R. Smith, Senior Vice President, Human Resources, for Carmel Partners, Inc., was submitted. The letter states:

Please consider this letter certification that Craig A. Ofstad is an employee of Carmel Partners, Inc. and is currently working as a Community Manager at our The Arbors @ Antelope located at 3700b Navaho Drive in Antelope, California. Mr. Ofstad's current status with the company is active. Mr. Ofstad was hired by Carmel Partners on May 12, 2008 and worked as a Community Manager at Lafayette Parc located [sic] 624 S. Glendora Avenue in West Covina, California. On June, [sic] 21, 2011 Mr. Ofstad transferred to his current position.

Carmel Partners is aware of the details of Mr. Ofstad's prior records. The Company was initially informed by Mr. Ofstad in March, 2010 which was prior to him

taking his real estate license test. The Company was also notified by the Department of Real Estate on May 10, 2011 of the details of Mr. Ofstad's prior records when the request for a real estate license was in process. Please note that Carmel Partners performs background checks on all employees prior to an offer of employment. When Carmel Partners performed the per-employment [sic] background check on Mr. Ofstad his criminal record came back clean.

While Ms. Smith confirmed that Carmel Partners, Inc., was made aware of "the details of Mr. Ofstad's prior records" on two occasions, she did not identify which details were disclosed. Furthermore, she did not indicate whether Carmel Partners, Inc., is or is not still willing to employ respondent as a salesperson. Therefore, her letter was of no value in evaluating respondent's fitness for licensure. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.2d 933, 940 ["If the character witnesses were not aware of the extent and seriousness of petitioner's criminal activities, their evaluations of his character carry less weight."])

7. The Department has adopted criteria for consideration when determining whether an applicant has been sufficiently rehabilitated since committing the act for which denial is sought so as to justify issuing him a license. (Cal. Code of Regs., tit. 20, § 2911.) One such criterion which is relevant here is whether respondent has undergone a change in his attitude from that which existed when he committed his crimes. (Cal. Code of Regs., tit. 20, § 2911, subd. (n); see, *In re Andreani* (1939) 14 Cal.2d 736, 749 [existence of rehabilitation difficult to establish affirmatively, "but its nonexistence may be 'proved' by a single act."])

Respondent was convicted of petty theft and trespassing. (Factual Finding 3.) Such convictions constitute conclusive evidence that he committed the underlying crimes and cannot be impeached. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449 [a licentiate's conviction "stands as conclusive evidence of his guilt of the offense charged."]) But on the Confidential - Interview Information Statement he submitted to the Department, he wrote: "I did not commit the crimes I was accused and convicted of. I entered into a plea negotiation due to not having the amount of money that I was told would be required to build an adequate defense." He wrote the same on his Conviction Detail Report and testified consistently at the hearing. His improper attempts to impeach his convictions demonstrate that he has not had the requisite change in attitude to establish his rehabilitation. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["Fully acknowledging the wrongfulness of his actions is an essential step towards rehabilitation."])

8. As discussed below, cause exists to deny respondent's application for a real estate salesperson license based on his criminal convictions. The above evidence established that he has not been sufficiently rehabilitated since committing the underlying crimes so as to justify issuing him a license, even a restricted one. Therefore, his application should be denied.

LEGAL CONCLUSION

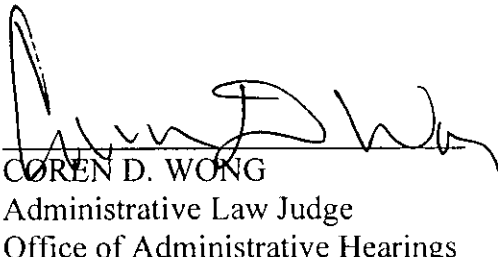
1. An application for a real estate salesperson license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 480, subd. (a); 10177, subd. (b).) Respondent was convicted of petty theft and trespassing. (Factual Finding 3.) The crime of petty theft is substantially related to the qualifications, functions, or duties of a real estate licensee as a matter of law. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(1) ["The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person."], (a)(4) ["The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end."], and (a)(8) ["Doing of any unlawful act with the intent . . . or threat of doing substantial injury to the person"]) And since his crime of trespassing was committed to facilitate the petty theft, it is also substantially related. (Factual Finding 4.) Therefore, cause exists to deny respondent's application pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), jointly and severally.

2. Cause exists to deny respondent's application for a real estate salesperson license for the reasons discussed in Legal Conclusion 1. For the reasons discussed in Factual Findings 6, 7, and 8, he did not establish sufficient rehabilitation so as to justify issuing him a license, even on a restricted basis. Therefore, respondent's application is denied.

ORDER

The application of respondent Craig Andrew Ofstad for a real estate salesperson license is DENIED pursuant to Legal Conclusion 1.

DATED: December 28, 2011


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

1 JOHN W. BARRON, Counsel (SBN 171246)
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4 Sacramento, CA 95818-7007

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FILED
MAY 20 2011

DEPARTMENT OF REAL ESTATE
By: R. Mar

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8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 ***

11 In the Matter of the Application of)
12) H-5609 SAC
13 CRAIG ANDREW OFSTAD,)
14) STATEMENT OF ISSUES
15 Respondent.)

16 The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner
17 of the State of California, for Statement of Issues against CRAIG ANDREW OFSTAD,
18 (hereafter "Respondent"), is informed and alleges as follows:

19 1

20 Complainant makes this Statement of Issues against Respondent in her official
21 capacity.

22 2

23 Respondent made application to the Department of Real Estate of the State of
24 California for a real estate salesperson license on or about October 25, 2010.

25 3

26 On or about August 20, 2008, in the Superior Court of the State of California,
27 County of Los Angeles, Case No. 8BR03220, Respondent was convicted of violating Sections

1 484(a) (petty theft) and 602 (trespassing) of the California Penal Code, misdemeanors and
2 crimes which bear a substantial relationship under Section 2910, Title 10, California Code of
3 Regulations (hereafter "the Code"), to the qualifications, functions or duties of a real estate
4 licensee.

5 4

6 Respondent's criminal convictions, described in Paragraph 3, above, constitute
7 cause for denial of Respondent's application for a real estate salesperson license pursuant to the
8 provisions of Section 480(a) (denial of license – conviction of crime) and 10177(b) (conviction
9 of crime substantially related to qualifications, functions or duties of real estate licensee) of the
10 Code.

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

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17 
18 TRICIA D. SOMMERS
19 Deputy Real Estate Commissioner

20 Dated at Sacramento, California,
21 this 18th day of May, 2011.
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