

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED

AUG 02 2012

DEPARTMENT OF REAL ESTATE

By *L. Frost*

In the Matter of the Accusation of

MARK ANTHONY LABELLA,

Respondent.

)
) NO. H-5696 SAC

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) OAH NO. 2011110574
)
)

DECISION

The Proposed Decision dated June 25, 2012, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on **AUG 22 2012**

IT IS SO ORDERED

July 26, 2012

Real Estate Commissioner

Wayne S. Bell

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARK ANTHONY LABELLA,

Respondent.

Case No. H-5696 SAC

OAH No. 2011110574

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on June 18, 2012, in Sacramento, California.

Jason D. Lazark, Real Estate Counsel, and Samira Shokrgozar, certified law student, represented complainant Tricia D. Sommers, Deputy Real Estate Commissioner of the State of California.

Respondent Mark Anthony Labella represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on June 18, 2012.

SUMMARY

Complainant seeks to discipline respondent's real estate license on the grounds that respondent has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. Cause exists for discipline. Respondent did not establish sufficient rehabilitation to demonstrate that he is capable of engaging in the duties of a real estate licensee in a manner that is consistent with public health, safety, and welfare, even on a restricted basis. Therefore, respondent's license is revoked.

FACTUAL FINDINGS

1. On December 29, 2009, the Department of Real Estate (Department) issued real estate broker license number B/01439904 (license) to respondent. The license expires December 28, 2013, unless renewed or revoked. There is no history of prior discipline of the license.

2. On October 25, 2011, complainant, acting solely in her official capacity as a Deputy Real Estate Commissioner of the State of California, filed an Accusation seeking to discipline respondent's license on the grounds that he has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee.

Prior Conviction

3. On July 13, 2010, in the Superior Court of the State of California, in and for the County of San Joaquin, Case No. LF011938A, respondent pled nolo contendere to, and was convicted of, a misdemeanor violation of Penal Code section 12020, subdivision (a), possession of a deadly weapon. Imposition of sentence was suspended, and respondent was placed on three years informal probation. He was ordered to spend 30 days in the San Joaquin County Jail and pay fines, penalties, and assessments in the total sum of \$390, \$100 of which was suspended pending revocation of probation.

4. The factual basis for respondent's conviction arose out of his arrest on April 13, 2010, for possession of a deadly weapon – a sawed off shotgun. He explained that he had, and still has, a curio and relic license that allows him to sell firearms even though he is not a licensed firearms dealer so long as the proceeds from the sale are used to increase his own supply of firearms. He made arrangements to sell a 1910 Gibraltar or Winchester single-shot shotgun to Anthony Singh. Unbeknownst to respondent, Mr. Singh was the subject of a six-month criminal investigation by the Department of Justice, Bureau of Firearms; Alcohol, Tobacco and Firearms; and the Lodi Police Department for illegal trafficking of assault weapons and various other firearms. Respondent was arrested after a confidential informant notified the Bureau of Firearms that Mr. Singh was conducting an illegal firearms transaction on April 13, 2010.

Factors in Mitigation, Aggravation, and Rehabilitation

5. Respondent is 26 years old, married, and expecting his first child. He completed two years of college at Sacramento City College, where he studied general business. His original goal was to transfer to the University of the Pacific and eventually McGeorge School of Law. It was unclear whether his plans have changed.

6. Respondent admitted that he intended to sell Mr. Singh a 1910 Gibraltar or Winchester single-shot shot gun on the night respondent was arrested. While respondent claimed he could not recall the amount Mr. Singh was supposed to pay for the shotgun, respondent's demeanor while testifying indicated that he was being less than truthful. Respondent's explanation that Mr. Singh "manipulated the barrel" of the shotgun without respondent's knowledge was also not believable, as he admitted that he knew what Mr. Singh had done for a short period of time before being arrested. In fact, respondent claimed that the only "crime" he was guilty of was exercising "poor judgment" by not immediately telling law enforcement what Mr. Singh had done to the shotgun. Respondent cannot impeach his conviction. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449 [proof of a conviction "stands as conclusive evidence of [his] guilt of the offense charged."]; see, Evidence Code section

452.5, subdivision (b) [a certified copy of an official record of the conviction is admissible to prove "the commission . . . of [the] criminal offense . . . recorded by the record"]; *People v. Duran* (2002) 97 Cal.App.4th 1448, 1460-1461 [Evid. Code, § 452.5, subd. (b) creates a hearsay exception which allows for admission of qualified court record to not only prove fact of conviction but also that the offense reflected in record actually occurred].) Respondent conceded he is still on probation.

7. The Department has adopted criteria for determining whether a licensee has been rehabilitated since committing the crimes for which discipline is sought. (Cal. Code of Regs., tit. 10, § 2912.) One such criterion which is relevant here is a change in attitude since the commission of the crime. (Cal. Code of Regs., tit. 10, § 2912, subd. (m); see, *In re Andreani* (1939) 14 Cal.2d 736, 749 [existence of rehabilitation is difficult to establish affirmatively, "but its nonexistence may be 'proved' by a single act."])

Respondent's testimony made it clear that he believes he is guilty of nothing but "bad judgment." His failure to accept responsibility for his actions that led to his conviction and improper attempt to impeach that conviction establishes a lack of 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."]) Additionally, he has more than one year remaining on his term of probation. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [determining one's rehabilitation necessarily requires an analysis of his behavior while no longer on probation or parole because good conduct is expected while under court supervision].)

8. For the reasons discussed below, cause exists to discipline respondent's real estate license. When all relevant evidence is considered, respondent did not establish that he has been sufficiently rehabilitated such that he can safely engage in the duties of a real estate licensee in a manner consistent with public health, safety, and welfare, even on a restricted basis. Therefore, his license should be revoked.

LEGAL CONCLUSION

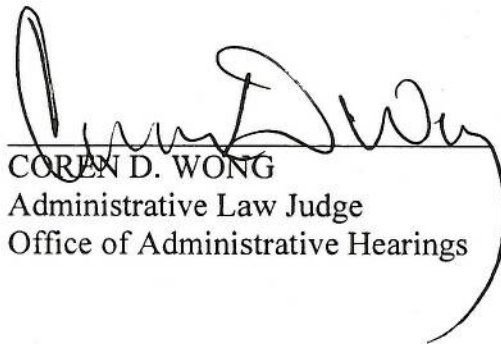
1. A real estate license may be disciplined if the holder has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a licensee. (Bus. & Prof. Code, §§ 490, subd. (a); 10177, subd. (b).) Respondent was convicted of possession of a deadly weapon. (Factual Finding 3.) Such crime is substantially related to the qualifications, functions, or duties of a real estate licensee because it constitutes the commission of a crime for the purposes of economic gain – respondent was in the process of selling the shotgun when he was arrested. (Cal. Code of Regs., tit. 10, § 2910, subd. (a)(8); see, Factual Findings 4 and 6.) The crime also involved an unlawful act that could inflict substantial injury to another person – respondent possessed a sawed-off shotgun. (Cal. Code of Regs., tit. 10, § 2910, subd. (a)(8); Factual Findings 4 and 6.) Therefore, cause exists to discipline respondent's real estate license pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), individually and collectively.

2. Cause exists to discipline respondent's real estate license for the reasons discussed in Legal Conclusion 1. When all relevant evidence is considered, respondent did not present sufficient evidence to justify allowing him to keep his license, even on a restricted basis, for the reasons discussed in Factual Findings 7 and 8. Therefore, his license is revoked.

ORDER

All licenses and licensing rights of respondent Mark Anthony Labella under the Real Estate Law are REVOKED.

DATED: June 25, 2012



COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings