

FILED

FEB 28 2012

Department of Real Estate
BY: 

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)	
)	NO. H-5705 SAC
VINCENT MAURICE SAPP,)	
)	OAH NO. 21110498
Respondent.)	
_____)	

DECISION

The Proposed Decision dated January 23, 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 application for a real estate license is denied, but the right to a restricted real estate license is granted to Respondent. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

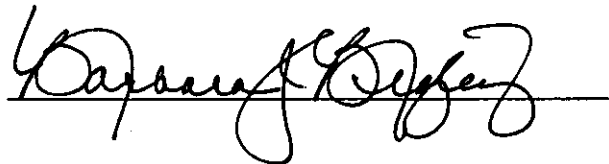
If and when application is made for a real estate license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon on MAR 20 2012

IT IS SO ORDERED

2/27/12

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:

VINCENT MAURICE SAPP,

Respondent.

Case No. H-5705 SAC

OAH No. 2011110498

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings, on January 10, 2012, in Sacramento, California.

Richard K. Uno, Counsel, Department of Real Estate, represented complainant.

Vincent Maurice Sapp (respondent) represented himself.

The case was submitted for decision on January 10, 2012.

FACTUAL FINDINGS

1. Complainant, Tricia Sommers, a Deputy Real Estate Commissioner of the State of California, filed the Statement of Issues in her official capacity on November 1, 2011.

2. Respondent made application to the Department of Real Estate of the State of California (Department) for a real estate salesperson license on February 16, 2011. The application is subject to the provisions of Business and Professions Code section 10153.4.

Criminal Conviction History

3. On November 28, 2000, respondent was convicted in the United States District Court, Northern District of California, in Case Number CR 95-40068, on his plea of guilty to violating Title 18, United States Code, Section 371 (conspiracy to commit bank robbery), a felony. The indictment stated that on April 9 and 10, 1995, respondent and two co-defendants conspired to commit armed bank robbery, the deposits of such bank being insured

by the Federal Deposit Insurance Corporation. Respondent admitted to reconnaissance activity inside the bank and driving the car. He was caught after abandoning the car on a freeway and fleeing on foot. At no time did respondent possess a weapon.

4. The court sentenced respondent to five years probation, six months of confinement in a halfway house, 200 hours of community service, and restitution of \$3,894, payable jointly and severally with his two co-defendants. The probation report stated that respondent readily admitted his responsibility for the crime, cooperated with investigators, and had no prior offenses, other than a traffic violation. Further, respondent testified truthfully and fully for the prosecution at the trial of a co-defendant. It was also determined that respondent had been threatened with physical harm or death, by a co-defendant, if he did not assist in the plan. At the time of sentencing, respondent was working, attending college, and supporting his child financially.

5. On February 14, 2011, respondent signed his Salesperson Exam/License Application (Application). Respondent disclosed his prior criminal convictions including the felony bank robbery offense and a 1991/1992 misdemeanor offense for which he could not recall a code section. Upon further inquiry by the Department regarding the misdemeanor charge, respondent submitted information that he was detained for possession of marijuana, a misdemeanor, and the court placed him in a drug diversion program, ordered two years probation, and community service. A letter from the Alameda County Probation Department established that respondent successfully completed drug diversion. As such, the marijuana charge was dismissed pursuant to Penal Code sections 1000 and 1000.5. With respect to the impact of successful drug diversion, the letter advised the following:

"...The arrest shall be deemed to have never occurred." Further, "The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for such offense." Also, "A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way which could result in the denial of any employment, benefit, license, or certificate."

Because respondent was not, in fact, "convicted" of the crime of possession of marijuana, he was not required to disclose it in the background section, and it is not considered for purposes of this licensing analysis.

6. On or about August 2, 2011, respondent completed a Confidential Interview Information Statement including a Conviction Detail Report. He again disclosed his felony conviction and his marijuana arrest. Respondent wrote that he had not smoked pot since the arrest, approximately 20 years ago. Regarding the 1995 bank robbery offense, respondent stated the following: "I have no excuse. I should have made better choices at that point in my life. I was not a leader, more of a follower. I can really say I've lived an [sic] learned not only about life but about the choices you make in life."

7. Respondent attached a personal statement to the Conviction Detail Report. Apparently, a co-defendant admitted at trial that he had threatened respondent to get respondent to participate in the crime. This is corroborated in the probation report. Respondent submitted a transcript from a hearing in the United States District Court, for expungement of his record. Mitigating evidence was presented at this hearing including the fact that respondent had maintained employment, obtained his Associates degree, purchased a home in Sacramento, and raised two children. The judge informed respondent that the district court did not have authority to expunge the charge. However, the court stated that "If I had the authority to expunge your record . . . as would be the case in other jurisdictions, I would certainly be inclined to do so." In light of respondent's rehabilitation and change of attitude, the court's position was reasonably supported.

Mitigation / Rehabilitation

8. Respondent is 41 years of age. His resume indicates consistent employment for the last 15 years as a supervisor, truck driver, and cable/computer hardware technician. He currently works for Chehal Trucking as a driver. He owns his home and raises and supports two children, a son (age 8), and a daughter (age 16). He volunteers as a basketball coach. His last criminal offense occurred over 16 years ago, in 1995. There is no evidence of any other criminal conduct. To the contrary, the evidence supports a finding that respondent quickly learned from his mistaken associations and determined to turn his life toward positive and stable endeavors. He is to be commended.

9. James Matthew Davis, of Davis and Davis Associates in Roseville, is respondent's sponsoring broker. He signed respondent's Application and is aware of respondent's background. Respondent stated that he disclosed everything to Mr. Davis. Respondent passed his real estate examination in February 2011.

10. Respondent testified at hearing. He shared that he had earned his Associate of Arts (AA) degree from Merritt College in Oakland and is currently working on his Bachelor of Arts (BA) degree at American River College in Sacramento. His ultimate goal is to become a real estate broker. He described his prior misconduct as having "made an awful mistake. I wish I could take it back, but there's nothing I can do about it." Since his conviction in 1995, he has not received so much as a parking ticket. Respondent grew up in Oakland. He met his father for the first time at age 37. It is noted that the paternity section of his birth certificate is blank.

11. Respondent invests much time in volunteering for a junior basketball program. The age groups include five to nine years, nine to thirteen years, and high school students. He was proud to discuss the educational component of the program where participants visit college games and tutors are provided to ensure students keep up with their studies. The students cannot play if their grades are not maintained. Respondent does not associate with any individuals from his criminal past. He set a goal to own a home and saved for nine years to amass the down payment. He aspires to be an example for his own and other children and

explains to them the consequences of making bad choices and associating with unproductive individuals.

12. All of the facts of this case have been considered. Respondent has met his burden to establish that he is responsible and trustworthy, in spite of his past, such that it would be appropriate to grant him a real estate salesperson license.

LEGAL CONCLUSIONS

Applicable Laws

1. Business and Professions Code section 480, subdivision (a)(1), authorizes a board to deny a license on the grounds that the applicant has been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

2. Business and Professions Code section 10177, subdivision (b), authorizes a board to deny the issuance of a license to an applicant, who has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee.

3. California Code of Regulations, title 10, section 2910, subdivision (a) states that "the crime or act shall be deemed to be substantially related to the qualifications, functions, or duties of a licensee of the Department within the meaning of Business and Professions Code sections 480 and 490, if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

[¶] ... [¶]

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

Cause for Discipline

4. The crime of conspiring to commit robbery for which respondent was convicted, as set forth in Factual Findings 3 and 4, is substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(1) and (8).

5. Cause for denial of respondent's application for a real estate salesperson license exists pursuant to Business and Professions Code sections 480 and 10177, subdivision (b), in conjunction with California Code of Regulations, title 10, section 2910, subdivisions (a)(1) and (8), by reason of Legal Conclusion 4, in that respondent was convicted of conspiracy to commit bank robbery in 1995.

Licensing Analysis

6. The department has developed guidelines for use in evaluating the rehabilitation of an applicant for issuance of a license, which are set forth in California Code of Regulations, title 10, section 2911. (Cal. Code Regs., tit. 10, § 2911, subds. (a)-(n).) Additionally, the context in which qualifying crimes or acts were committed goes to the question of the weight to be accorded the offending conduct in considering the disciplinary action to be taken. (Cal. Code Regs., tit. 10, § 2910, subd. (c).)

7. In consideration of these guidelines, over 16 years have passed since respondent's conviction in 1995. He was coerced into cooperating with a plan to violate the law. He has no other criminal convictions. He made restitution to the court. He complied with the terms of probation which is complete. He attempted to obtain an expungement of the violation but dismissal is not a legal option. He does not use illegal drugs or abuse alcohol. He is pursuing an advanced educational degree and has passed his real estate examination. Respondent is involved in volunteer youth activities and services as a role model to his own and other children. He has maintained gainful employment, purchased and maintained a home, and raised a family. Respondent has a sponsoring broker. His lifestyle demonstrates strength of character, maturity, and a conviction for achieving positive milestones, including obtaining a real estate license.

Conclusion

8. Considering all of the facts presented, respondent has sustained his burden to establish that he can be licensed at this time without harm to the public, with appropriate restrictions and conditions.

ORDER

The application of Vincent Maurice Sapp, for a real estate salesperson license is denied by reason of Legal Conclusions 4 and 5; provided, however, that pursuant to Legal Conclusions 6, 7, and 8, a conditional restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7, and to the following limitations, conditions and restrictions imposed under the 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 nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three (3) 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 RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

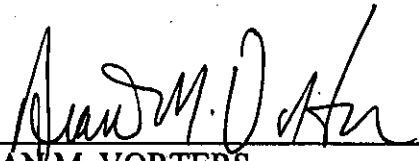
(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(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 Business and Professions Code section 10153.4, 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.

5. Pursuant to Business and Professions Code 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 three years after the date of the issuance of the preceding restricted license.

Dated: January 23, 2012


DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

FILED

November 1, 2011

RICHARD K. UNO, Counsel (SBN 98275)
Department of Real Estate
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DEPARTMENT OF REAL ESTATE

By 

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of
VINCENT MAURICE SAPP,
Respondent.

No. H-5705 SAC

STATEMENT OF ISSUES

The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against VINCENT MAURICE SAPP, (Respondent), alleges as follows:

1

Complainant makes this Statement of Issues in her official capacity.

2

On or about June 16, 2011, Respondent made application to the Department of Real Estate of the State of California (herein "the Department") for a real estate salesperson license.

3

On or about September 26, 1995, in the United States District Court, Northern District of California, Case No. CR 9540068 SBA, Respondent was convicted of violating

1 18 USC 371 (Conspiracy to Commit Bank Robbery), a felony and a crime which bears a
2 substantial relationship under Section 2910, Title 10, California Code of Regulations, to the
3 qualifications, functions or duties of a real estate licensee.

4 4

5 Respondent's criminal conviction, as described in Paragraph 3, above, constitutes
6 cause for denial of his application for a real estate license under Sections 480(a) (Conviction of
7 Crime) and 10177(b) (Further Grounds for Disciplinary Action-Conviction of Crime) of the
8 Code.

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

13
14 
15 TRICIA D. SOMMERS
16 Deputy Real Estate Commissioner

16 Dated at Sacramento, California,
17 this 26th day of October, 2011.