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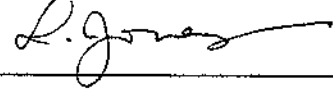
DEPARTMENT OF REAL ESTATE
P. O. Box 187000
Sacramento, CA 95818-7000

September 12, 2012

Telephone: (916) 227-0789

DEPARTMENT OF REAL ESTATE

By



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of
DAVID CRAIG,
Respondent.

DRE No. H-5799 SAC
OAH No. 2012040642

STIPULATION AND AGREEMENT

AND

DECISION AFTER REJECTION

The California Department of Real Estate (Department or Complainant) filed a Statement of Issues against Respondent DAVID CRAIG's (Respondent) application for a real estate salesperson license on March 29, 2012. On July 2, 2012, a hearing was held wherein Respondent appeared in pro per, the Department was represented by counsel Truly Sughrue and intern Katherine Pankow, and evidence was received, the record was closed, and the matter was submitted.

On July 17, 2012, the Proposed Decision of the Administrative Law Judge was issued denying Respondent's application for a real estate salesperson license, provided however, that a restricted real estate salesperson license shall be issued to Respondent, subject to terms and conditions.

H-5799 SAC

DAVID CRAIG

1 On August 17, 2012, the Real Estate Commissioner (Commissioner) rejected the
2 Proposed Decision of July 17, 2012.

3 The parties wish to settle this matter without further proceedings.

4 IT IS HEREBY STIPULATED by and between Respondent and the
5 Complainant, acting by and through Truly Sughrue, Counsel for the Department, as follows, for
6 the purpose of settling and disposing of the Statement of Issues filed by Complainant.

7 1. It is understood by the parties that the Commissioner may adopt the
8 Stipulation and Agreement as his Decision in this matter, thereby imposing the penalty and
9 sanctions on Respondent's application for a real estate license as set forth below in the
10 "Decision and Order." In the event the Commissioner in his discretion does not adopt the
11 Stipulation and Agreement, the Stipulation shall be void and of no effect; the Commissioner
12 will review the transcript and the evidence in the case, and will then issue his Decision after
13 Rejection as his Decision in this matter.

14 2. By reason of the foregoing and solely for the purpose of settlement of the
15 Stipulation and Agreement without further administrative proceedings, it is stipulated and
16 agreed that the following shall be adopted as the Commissioner's Decision and Order:

17 FACTUAL FINDINGS

18 1. On August 11, 2011, Respondent signed his application for a real estate
19 salesperson license. The Department received the application on September 2, 2011.

20 2. On March 29, 2012, Complainant, acting solely in her official capacity as a
21 Deputy Real Estate Commissioner of the State of California, filed a Statement of Issues seeking
22 to deny Respondent's application based on the criminal convictions discussed in Factual
23 Findings 3 and 5.

24 *Criminal Convictions*

25 3. On March 29, 2004, in the Superior Court of the State of California, in and for
26 the County of Placer, Respondent was convicted of two felony violations of Penal Code section
27 484, subdivision (f), fraudulent use of another's access card; a misdemeanor violation of Penal

1 Code section 488, petty theft; and a misdemeanor violation of Vehicle Code section 14601.5,
2 driving with a revoked or suspended driver's license.¹ Imposition of sentence for the two felony
3 convictions was suspended, and Respondent was placed on formal probation for four years. He
4 was ordered to spend 150 days in the Placer County Jail. Imposition of sentence for the
5 misdemeanor convictions was suspended, and Respondent was placed on informal probation for
6 three years. He was ordered to spend 15 days in the Placer County Jail for each conviction. The
7 time Respondent was ordered to spend in the Placer County Jail ran consecutively for each
8 conviction. For all four convictions, he was ordered to pay fines, penalties, and interest in the
9 total amount of \$1,670.

10 4. The factual basis for Respondent's felony convictions arose out of his being one
11 of three participants in a string of thefts and burglaries involving the trio's unauthorized use of
12 third parties' bank debit cards. Respondent was arrested after he voluntarily appeared and
13 provided an incriminating statement to the Placer County Sheriffs Department on January 10,
14 2004.

15 The factual basis for Respondent's petty theft conviction arose out of his arrest on
16 January 28, 2004, by the Placer County Sheriffs Department for committing petty theft at
17 WinCo Foods.

18 The factual basis for Respondent's conviction for driving while his driver's license was
19 revoked or suspended arose out of a traffic stop by the Placer County Sheriffs Department on
20 February 17, 2004. During the traffic stop, the deputy determined that Respondent's driver's
21 license was revoked or suspended.

22 5. On August 23, 2004, in the Superior Court of the State of California, in and
23 for the County of Placer, Case No. 62-43949, Respondent pled guilty to, and was convicted of,
24 a misdemeanor violation of Health and Safety Code section 11550, subdivision (a), being
25 under the influence of a controlled substance. He also admitted that he violated his

26 _____
27 ¹ The two felony convictions were in Case No. 62-40860, while the misdemeanor convictions were in
Case Nos. 62-42208 and 62-41461.

1 probation in Case Nos. 62-40860, 62-42208, and 62-41461. For his conviction, Respondent
2 was ordered to spend 90 days in the Placer County Jail. For his probation violations, probation
3 was ordered reinstated in each matter on its original terms and conditions.

4 6. Respondent's conviction arose out of his encounter with the Placer County
5 Sheriff's Department on April 23, 2004. During that encounter, a sheriff's deputy determined
6 that respondent was under the influence of a controlled substance — methamphetamine.

7 7. On June 21, 2012, all of Respondent's convictions were vacated, each of his
8 original pleas was withdrawn and a new plea of not guilty entered, and all charges were
9 dismissed pursuant to Penal Code section 1203.4, subdivision (a).

10 *Factors in Aggravation, Mitigation, and Rehabilitation*

11 8. Respondent is 26 years old and is engaged to be married September 30, 2012.
12 He has been working for S&S Property Management since August 22, 2011, performing work
13 related to property management. He intends to continue working for S&S Property
14 Management in a licensed capacity if issued a real estate salesperson license.

15 9. Respondent testified openly and candidly about his past use of drugs and
16 alcohol and readily admitted that he is a "recovering addict and alcoholic." His testimony was
17 credible. He explained that he began experimenting with drugs and alcohol when he was 13
18 years old, although he first tried alcohol when he was in the fourth grade. He also explained
19 that he has always felt "uncomfortable in [his] own skin," and drugs and alcohol gave him the
20 feeling of being "level" with the rest of society. Consuming drugs and alcohol started off as
21 being an activity he engaged in at parties because it was fun, but quickly changed to something
22 that became a "necessity" even though it was "no longer fun."

23 10. On July 19, 2005, Respondent started an alcohol and chemical dependency
24 recovery program at Sacramento Recovery House, Inc. The program was a 90-day in-patient
25 treatment program that consisted of educational classes each week and daily 12-step meetings.
26 By the time he successfully completed the program on October 19, 2005, he had completed
27 well over 410 hours of educational classes and group meetings. He also attended 12-step

1 meetings each evening. Upon Respondent's completion of the program, the program manager
2 wrote the following:

3 In all that he has learned [sic] Mr. Craig has come to the
4 conclusion that entering into a clean and sober living
5 environment is the next crucial step in his recovery. He has
6 taken the time to contact clean and sober living houses in the
community. It is to my understanding that Mr. Craig will be
entering the Nor Cal clean and sober house upon his exit.

7 It is [sic] been a pleasure to have Mr. Craig here at Sacramento
8 Recovery House. He has been a role model to the other
9 participants and will continue to give back to the house as
10 honorary alumni member. It is in my personal opinion that if
11 Mr. Craig continues to show the willingness and determination
he has demonstrated while at Sacramento Recovery House, that
he will then continue his success in overcoming the disease of
alcoholism and substance abuse.

12 11. After completing the program at Sacramento Recovery House, Inc., Respondent
13 continued his treatment at NorCal Transitional Living for six months. After completing that
14 program, he began attending Alcoholics Anonymous (AA) meetings three to four times a week.
15 He continues attending AA meetings on a regular basis, conceding that his "recovery hasn't
16 stopped in the last seven years" and has become a part of his life. He has completed AA's 12
17 steps three times, but continues to repeat each of the steps; he stated he is always working on
18 "step 10." Respondent admitted that his treatment will be a "lifelong process that never stops."
19 He has a sponsor, with whom he meets on a weekly basis, and sponsors others. His sobriety
20 date is February 22, 2005.

21 12. William Shower, the owner of S&S Property Management and the broker
22 responsible for its real estate activities, wrote the following about Respondent:

23 I have owned and operated S&S Property Management for over
24 20 years. My broker's license and business means everything to
25 me and [sic] would never allow anyone or anything to jeopardize
26 it.

27 I interviewed David Craig for an administrative assistant

1 position in April, 2011. I really liked his positive attitude and
2 ambition. I did not hire him for the position because of exactly
3 that. I told him to give me a call when he passed his real estate
4 exam because I was going to be hiring another property
5 manager. I remember telling my office staff after the interview
6 how much I really liked this guy, but we'd have to see if he gets
7 his license.

8 In July, 2011, David called me and said he had passed his test. I
9 immediately set up another interview with him. He was up front
10 about his past as an addict and that he had been clean and sober
11 for 6 years. He showed me all of his conviction paperwork and
12 what he was doing to remain clean and sober. Obviously [sic] I
13 had concerns because I have a daughter that is a recovering addict
14 and I know what a struggle it is for her.

15 Mr. Craig is a different story! I did hire him as an assistant
16 performing non-license duties. He has been working for me for
17 over 4 months now. I am very impressed with his attitude and
18 work ethic. He listens, learns and is at work each and every day.

19 He will only be doing property management at this time. Once
20 he is licensed, I will be training him out in the field myself. I
21 truly see David as an asset to my company. If there is anyone
22 who deserves a chance, it's David Craig.

23 Mr. Shower testified at hearing in a manner consistent with his letter. He expressed his
24 willingness to continue employing respondent, even if Respondent is issued a restricted real
25 estate license.

26 13. Respondent's sponsor testified and expressed his confidence that Respondent
27 will remain sober because of his (Respondent's) commitment to his treatment. Another person
28 who met Respondent through AA wrote:

29 Everyday since I met David [six years ago] he has demonstrated
30 his willingness, courage and integrity in following suggestions
31 and doing what is asked of him. He has been through [sic] from
32 the very start and continues to remain sober and live life on life's
33 terms. David remains honest to himself and others as well as
34 working with many men in the program. He assumes the
35 responsibility for being a good member of our fellowship and the
36 community as a whole. David is more than willing to go to any

length to stay sober and help others. I am proud to know this man and have him as a friend.

Both witnesses' willingness to break the anonymity of AA-a core tenet to the program-lends credibility to their assessment of Respondent's commitment to his sobriety, as well as the positive impact he has had on each of their recovery.

14. The Department has adopted criteria for evaluating an applicant's rehabilitation since committing the crimes underlying the convictions for which the Department seeks to deny an application for a real estate license. California Code of Regulations, Title 10, Section 2911, provides:

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the

1 use of controlled substances or alcohol.

2 (g) Payment of the fine or other monetary penalty imposed in
3 connection with a criminal conviction or quasi-criminal
4 judgment.

5 (h) Stability of family life and fulfillment of parental and
6 familial responsibilities subsequent to the conviction or conduct
7 that is the basis for denial of the agency action sought.

8 (i) Completion of, or sustained enrollment in, formal education
9 or vocational training courses for economic self-improvement.

10 (j) Discharge of, or bona fide efforts toward discharging,
11 adjudicated debts or monetary obligations to others.

12 (k) Correction of business practices resulting in injury to others
13 or with the potential to cause such injury.

14 (l) Significant or conscientious involvement in community,
15 church or privately-sponsored programs designed to provide
16 social benefits or to ameliorate social problems.

17 (m) New and different social and business relationships from
18 those which existed at the time of the conduct that is the basis
19 for denial of the departmental action sought.

20 (n) Change in attitude from that which existed at the time of
21 the conduct in question as evidenced by any or all of the
22 following:

23 (1) Testimony of applicant.

24 (2) Evidence from family members, friends or other persons
25 familiar with applicant's previous conduct and with his
26 subsequent attitudes and behavioral patterns.

27 (3) Evidence from probation or parole officers or law
enforcement officials competent to testify as to applicant's social
adjustments.

(4) Evidence from psychiatrists or other persons competent to
testify with regard to neuropsychiatric or emotional
disturbances.

1 (5) Absence of subsequent felony or misdemeanor convictions
2 that are reflective of an inability to conform to societal rules
3 when considered in light of the conduct in question.

4 (o) Each of the above criteria notwithstanding, no mortgage
5 loan originator license endorsement shall be issued to an
6 applicant for such license endorsement where the applicant has
7 been convicted of any felony within seven (7) years from the
8 date of his or her application for a license endorsement. This
9 ban is not subject to mitigation or rehabilitation.

10 (p) Each of the above criteria notwithstanding, no mortgage
11 loan originator license endorsement shall be issued to an
12 applicant for such license endorsement where the applicant
13 has ever been convicted of a felony where such felony
14 involved an act of fraud, dishonesty, a breach of trust, or
15 money laundering. This ban is not subject to mitigation or
16 rehabilitation.

17 It has been more than eight years since Respondent committed his last crime; he has
18 paid all fines, penalties, and interest he was ordered to pay as a result of his convictions;
19 and he has completed the terms of probation imposed for each of his convictions. In fact,
20 each conviction has been vacated and all charges have been dismissed.

21 Respondent has made substantial progress in the treatment of his drug and alcohol
22 addiction and has repeatedly re-affirmed his commitment to maintaining his sobriety. He
23 keeps his commitment, in part, by visiting Sacramento Recovery House, Inc., each week and
24 mentoring other recovering addicts and alcoholics who are currently undergoing treatment.
25 Respondent no longer associates with the people he surrounded himself with while taking
26 drugs, consuming alcohol, and engaging in criminal conduct. He is about to start a family,
27 and has found a career he loves.

15. For the reasons discussed below, cause exists to deny Respondent's
application based on his multiple criminal convictions. But when all of the evidence is
considered, Respondent sustained his burden of establishing sufficient rehabilitation since
engaging in the criminal conduct underlying the convictions for which the Department

1 seeks to deny his application such that the Department can be confident that he is capable
2 of performing the duties of a real estate licensee, on a restricted basis, in a manner that is
3 consistent with public health, safety, and welfare. While Respondent's theft-related
4 convictions are of concern to the Department, he explained that each of his convictions
5 involved conduct that he engaged in to facilitate his drug use or as a direct result of his drug
6 use. He produced compelling evidence that he has taken significant steps towards obtaining
7 his sobriety and is committed to maintaining that sobriety such that a restricted license is
8 appropriate. Therefore, his application for a real estate salesperson license should be denied;
9 provided, however, that he is issued a restricted license subject to the terms and conditions
10 specified in the Order below.

11 LEGAL CONCLUSIONS

12 1. An application for a real estate license may be denied if the applicant has
13 been convicted of a crime that is substantially related to the qualifications, functions, or
14 duties of a real estate licensee. (Bus. & Prof. Code, §§ 480, subd. (a)(1); 10177, subd.
15 (b).) Respondent has been convicted of five separate crimes as discussed in Factual
16 Findings 3 and 5. His theft-related crimes are substantially related to the qualifications,
17 functions, or duties of a real estate licensee. (Factual Finding 3; see, Cal. Code of Regs., tit.
18 10, § 2910, subds. (a)(1) ["The fraudulent taking, obtaining, appropriating or retaining of
19 funds or property belonging to another person."], (a)(4) ["The employment of bribery,
20 fraud, deceit, falsehood or misrepresentation to achieve an end."], and (a)(8) ["Doing of an
21 unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator
22"]) His crimes of driving while his driver's license was revoked or suspended (Factual
23 Finding 3) and being under the influence of a controlled substance (Factual Finding 5) are also
24 substantially related. (Cal. Code of Regs., tit. 10, § 2910, subds. (a)(7) ["Willfully violating or
25 failing to comply with a statutory requirement that a license, permit or other entitlement be
26 obtained from a duly constituted public authority before engaging in a business or course of
27 conduct."] and (a)(8) ["Doing of an unlawful act with the intent ... or threat of doing

1 substantial injury to the person or property of another."]) All of his crimes when considered
2 together are substantially related. (Cal. Code of Regs., tit. 10, § 2910, subd. (a)(10) ["Conduct
3 which demonstrates a pattern of repeated and willful disregard of law."]) Therefore, each of
4 Respondent's convictions constitutes separate cause for discipline pursuant to Business and
5 Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), individually and
6 collectively.

7 2. For the reasons discussed in Factual Findings 14 and 15, Respondent sustained
8 his burden of establishing sufficient rehabilitation since engaging in the criminal conduct
9 underlying the convictions for which the Department seeks to deny his application such that
10 the Department can be confident that he is capable of performing the duties of a real estate
11 licensee, on a restricted basis, in a manner that is consistent with public health, safety, and
12 welfare. Therefore, his application for a real estate salesperson license is denied; provided,
13 however, that he is issued a restricted license subject to the terms and conditions specified in
14 the Order below.

15 ORDER

16 Respondent David Craig's application for a real estate salesperson license is DENIED;
17 provided, however, a restricted real estate salesperson license shall be ISSUED to Respondent
18 pursuant to Section 10156.5 of the Business and Professions Code. The restricted license
19 issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the
20 Business and Professions Code and to the following limitations, conditions, and restrictions
21 imposed under authority of Section 10156.6 of said Code:

22 1. The license shall not confer any property right in the privileges to be exercised,
23 and the Commissioner may by appropriate order suspend the right to exercise any privileges
24 granted under this restricted license in the event of:

25 (a) The conviction of respondent (including a plea of nolo contendere) of a crime
26 which is substantially related to respondent's fitness or capacity as a real estate licensee; or

27 (b) The receipt of evidence that respondent has violated provisions of the

1 California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate
2 Commissioner or conditions attaching to this restricted license.

3 2. With the application for license, or with the application for transfer to a new
4 employing broker, Respondent shall submit a statement signed by the prospective employing
5 broker that shall certify as follows:


6 (a) That the broker has read the Statement of Issues which is the basis for the issuance
7 of the restricted license; and

8 (b) That the broker will carefully review all transaction documents prepared by the
9 restricted licensee and otherwise exercise close supervision over the licensee's performance of
10 acts for which a real estate license is required.

11 3. Respondent shall not be eligible to apply for the issuance of an unrestricted real
12 estate license nor the removal of any of the conditions, limitations or restrictions attaching to
13 the restricted license until three years have elapsed from the date of issuance of the restricted
14 license to respondent.

15 4. Respondent shall notify the Commissioner in writing within 72 hours of any
16 arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post
17 Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of
18 respondent's arrest, the crime for which respondent was arrested and the name and address of
19 the arresting law enforcement agency. Respondent's failure to timely file written notice shall
20 constitute an independent violation of the terms of the restricted license and shall be grounds
21 for the suspension or revocation of that license.


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23
24 DATED 22-Aug-12


TRULY SUGHRUE, Counsel
DEPARTMENT OF REAL ESTATE

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26 ***
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1 I have read the Stipulation and Agreement and Decision after Rejection, and its
2 terms are understood by me and are agreeable and acceptable to me. I willingly and voluntarily
3 agree to enter into this Stipulation.

4 6-22-12
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6 DATED


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8 DAVID CRAIG
9 Respondent

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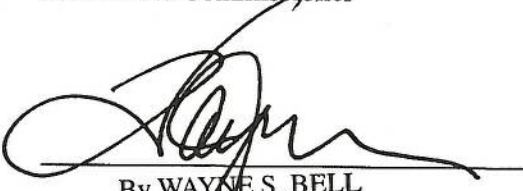
11 DECISION AND ORDER

12 The foregoing Stipulation and Agreement and Decision after Rejection is hereby adopted
13 by the Real Estate Commissioner as his Decision and Order.

14 This Decision and Order shall become effective at 12 o'clock noon on
15 OCT 02 2012

16 IT IS SO ORDERED

17 Real Estate Commissioner

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19
20 By WAYNE S. BELL
21 Chief Counsel

FILED

AUG 21 2012

DEPARTMENT OF REAL ESTATE

By *D. Jove*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

DAVID CRAIG,

Respondent.

)
) DRE No. H-5799 SAC
)
) OAH No. 2012040642
)
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NOTICE

TO: DAVID CRAIG.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated July 17, 2012, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated July 17, 2012, 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 July 2, 2012, and 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 July 2, 2012, at the

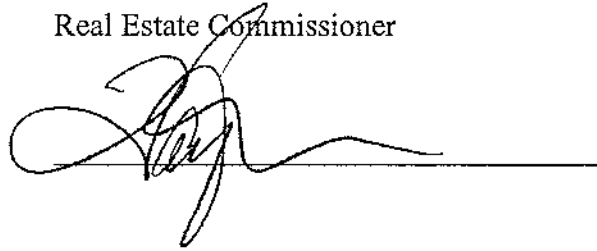
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1 Sacramento office of the Department of Real Estate unless an extension of the time is granted for
2 good cause shown.

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 Sacramento office of the
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: 8/17/2012

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8 Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

DAVID CRAIG,

Respondent.

Case No. H-5799 SAC

OAH No. 2012040642

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on July 2, 2012, in Sacramento, California.

Truly Sughrue, Real Estate Counsel, and Katherine Pankow, certified legal intern, represented complainant Tricia Sommers, Deputy Real Estate Commissioner of the State of California.

Respondent David Craig represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on July 2, 2012.

SUMMARY

Complainant seeks to deny respondent's application for a real estate salesperson license on the grounds that respondent has multiple criminal convictions. Cause exists to deny the application. But respondent proved that he has been sufficiently rehabilitated since he committed the criminal acts underlying the convictions for which the Department seeks to deny his application such that the Department can be confident that he can perform the duties of a real estate licensee, on a restricted basis, in a manner that is consistent with public health, safety, and welfare. Therefore, respondent's application for a license is denied, provided that he is issued a restricted license as specified in the Order below.

FACTUAL FINDINGS

1. On August 11, 2011, respondent signed his application for a real estate salesperson license. The Department of Real Estate (Department) received the application on September 2, 2011.

2. On March 29, 2012, 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 based on the criminal convictions discussed in Factual Findings 3 and 5.

Criminal Convictions

3. On March 29, 2004, in the Superior Court of the State of California, in and for the County of Placer, respondent was convicted of two felony violations of Penal Code section 484, subdivision (f), fraudulent use of another's access card; a misdemeanor violation of Penal Code section 488, petty theft; and a misdemeanor violation of Vehicle Code section 14601.5, driving with a revoked or suspended driver's license.¹ Imposition of sentence for the two felony convictions was suspended, and respondent was placed on formal probation for four years. He was ordered to spend 150 days in the Placer County Jail. Imposition of sentence for the misdemeanor convictions was suspended, and respondent was placed on informal probation for three years. He was ordered to spend 15 days in the Placer County Jail for each conviction. The time respondent was ordered to spend in the Placer County Jail ran consecutively for each conviction. For all four convictions, he was ordered to pay fines, penalties, and interest in the total amount of \$1,670.

4. The factual basis for respondent's felony convictions arose out of his being one of three participants in a string of thefts and burglaries involving the trio's unauthorized use of third parties' bank debit cards. Respondent was arrested after he voluntarily appeared and provided an incriminating statement to the Placer County Sheriff's Department on January 10, 2004.

The factual basis for respondent's petty theft conviction arose out of his arrest on January 28, 2004, by the Placer County Sheriff's Department for committing petty theft at WinCo Foods.

The factual basis for respondent's conviction for driving while his driver's license was revoked or suspended arose out of a traffic stop by the Placer County Sheriff's Department on February 17, 2004. During the traffic stop, the deputy determined that respondent's driver's license was revoked or suspended.

¹ The two felony convictions were in Case No. 62-40860, while the misdemeanor convictions were in Case Nos. 62-42208 and 62-41461.

5. On August 23, 2004, in the Superior Court of the State of California, in and for the County of Placer, Case No. 62-43949, respondent pled guilty to, and was convicted of, a misdemeanor violation of Health and Safety Code section 11550, subdivision (a), being under the influence of a controlled substance.² He also admitted that he violated his probation in Case Nos. 62-40860, 62-42208, and 62-41461. For his conviction, respondent was ordered to spend 90 days in the Placer County Jail. For his probation violations, probation was ordered reinstated in each matter on its original terms and conditions.

6. Respondent's conviction arose out of his encounter with the Placer County Sheriff's Department on April 23, 2004. During that encounter, a sheriff's deputy determined that respondent was under the influence of a controlled substance – methamphetamine.

7. On June 21, 2012, all of respondent's convictions were vacated, each of his original pleas was withdrawn and a new plea of not guilty entered, and all charges were dismissed pursuant to Penal Code section 1203.4, subdivision (a).

Factors in Aggravation, Mitigation, and Rehabilitation

8. Respondent is 26 years old and is engaged to be married September 30, 2012. He has been working for S&S Property Management since August 22, 2011, performing work related to property management. He intends to continue working for S&S Property Management in a licensed capacity if issued a real estate salesperson license.

9. Respondent testified openly and candidly about his past use of drugs and alcohol and readily admitted that he is a "recovering addict and alcoholic." His testimony was credible. He explained that he began experimenting with drugs and alcohol when he was 13 years old, although he first tried alcohol when he was in the fourth grade. He also explained that he has always felt "uncomfortable in [his] own skin," and drugs and alcohol gave him the feeling of being "level" with the rest of society. Consuming drugs and alcohol started off as being an activity he engaged in at parties because it was fun, but quickly changed to something that became a "necessity" even though it was "no longer fun."

10. On July 19, 2005, respondent started an alcohol and chemical dependency recovery program at Sacramento Recovery House, Inc. The program was a 90-day in-patient treatment program that consisted of educational classes each week and daily 12-step meetings. By the time he successfully completed the program on October 19, 2005, he had

² He also pled guilty to, and was convicted of, a misdemeanor violation of Vehicle Code section 14601.5, driving with a revoked or suspended driver's license. However, that conviction was not alleged as a basis for denying respondent's application in the Statement of Issues, and was not considered. (*Wheeler v. State Board of Forestry* (1983) 144 Cal.App.3d 522, 527 [an order of discipline must be based on the facts and law alleged in the accusation].)

completed well over 410 hours of educational classes and group meetings. He also attended 12-step meetings each evening. Upon respondent's completion of the program, the program manager wrote the following:

In all that he has learned [*sic*] Mr. Craig has come to the conclusion that entering into a clean and sober living environment is the next crucial step in his recovery. He has taken the time to contact clean and sober living houses in the community. It is to my understanding that Mr. Craig will be entering the Nor Cal clean and sober house upon his exit.

It is [*sic*] been a pleasure to have Mr. Craig here at Sacramento Recovery House. He has been a role model to the other participants and will continue to give back to the house as an honorary alumni member. It is in my personal opinion that if Mr. Craig continues to show the willingness and determination he has demonstrated while at Sacramento Recovery House, that he will then continue his success in overcoming the disease of alcoholism and substance abuse.

11. After completing the program at Sacramento Recovery House, Inc., respondent continued his treatment at NorCal Transitional Living for six months. After completing that program, he began attending Alcoholics Anonymous (AA) meetings three to four times a week. He continues attending AA meetings on a regular basis, conceding that his "recovery hasn't stopped in the last seven years" and has become a part of his life. He has completed AA's 12 steps three times, but continues to repeat each of the steps; he stated he is always working on "step 10." Respondent admitted that his treatment will be a "lifelong process that never stops." He has a sponsor, with whom he meets on a weekly basis, and sponsors others. His sobriety date is February 22, 2005.

12. William Shower, the owner of S&S Property Management and the broker responsible for its real estate activities, wrote the following about respondent:

I have owned and operated S&S Property Management for over 20 years. My broker's license and business means everything to me and [*sic*] would never allow anyone or anything to jeopardize it.

I interviewed David Craig for an administrative assistant position in April, 2011. I really liked his positive attitude and ambition. I did not hire him for the position because of exactly that. I told him to give me a call when he passed his real estate exam because I was going to be hiring another property manager. I remember telling my office staff after the interview

how much I really liked this guy, but we'd have to see if he gets his license.

In July, 2011, David called me and said he had passed his test. I immediately set up another interview with him. He was up front about his past as an addict and that he had been clean and sober for 6 years. He showed me all of his conviction paperwork and what he was doing to remain clean and sober. Obviously [sic] I had concerns because I have a daughter that is a recovering addict and I know what a struggle it is for her.

Mr. Craig is a different story! I did hire him as an assistant performing non-license duties. He has been working for me for over 4 months now. I am very impressed with his attitude and work ethic. He listens, learns and is at work each and every day.

He will only be doing property management at this time. Once he is licensed, I will be training him out in the field myself. I truly see David as an asset to my company. If there is anyone who deserves a chance, it's David Craig.

Mr. Shower testified at hearing in a manner consistent with his letter. He expressed his willingness to continue employing respondent, even if respondent is issued a restricted real estate license.

13. Respondent's sponsor testified and expressed his confidence that respondent will remain sober because of his (respondent's) commitment to his treatment. Another person who met respondent through AA wrote:

Everyday since I met David [six years ago] he has demonstrated his willingness, courage and integrity in following suggestions and doing what is asked of him. He has been through [sic] from the very start and continues to remain sober and live life on life's terms. David remains honest to himself and others as well as working with many men in the program. He assumes the responsibility for being a good member of our fellowship and the community as a whole. David is more than willing to go to any length to stay sober and help others. I am proud to know this man and have him as a friend.

Both witnesses' willingness to break the anonymity of AA – a core tenet to the program – lends credibility to their assessment of respondent's commitment to his sobriety, as well as the positive impact he has had on each of their recovery.

14. The Department has adopted criteria for evaluating an applicant's rehabilitation since committing the crimes underlying the convictions for which the Department seeks to deny an application for a real estate license. California Code of Regulations, title 10, section 2911, provides:

The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

(a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)

(b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.

(c) Expungement of criminal convictions resulting from immoral or antisocial acts.

(d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.

(e) Successful completion or early discharge from probation or parole.

(f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.

(g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.

(h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.

- (i) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.
- (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
- (k) Correction of business practices resulting in injury to others or with the potential to cause such injury.
- (l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.
- (n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:
 - (1) Testimony of applicant.
 - (2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.
 - (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
 - (4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
 - (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.
- (o) Each of the above criteria notwithstanding, no mortgage loan originator license endorsement shall be issued to an applicant for such license endorsement where the applicant has been convicted of any felony within seven (7) years from the date of his or her application for a license endorsement. This ban is not subject to mitigation or rehabilitation.

(p) Each of the above criteria notwithstanding, no mortgage loan originator license endorsement shall be issued to an applicant for such license endorsement where the applicant has ever been convicted of a felony where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. This ban is not subject to mitigation or rehabilitation.

It has been more than eight years since respondent committed his last crime; he has paid all fines, penalties, and interest he was ordered to pay as a result of his convictions; and he has completed the terms of probation imposed for each of his convictions. In fact, each conviction has been vacated, and all charges have been dismissed.

Respondent has made substantial progress in the treatment of his drug and alcohol addiction and has repeatedly re-affirmed his commitment to maintaining his sobriety. He keeps his commitment, in part, by visiting Sacramento Recovery House, Inc., each week and mentoring other recovering addicts and alcoholics who are currently undergoing treatment. Respondent no longer associates with the people he surrounded himself with while taking drugs, consuming alcohol, and engaging in criminal conduct. He is about to start a family, and has found a career he loves.

15. For the reasons discussed below, cause exists to deny respondent's application based on his multiple criminal convictions. But when all of the evidence is considered, respondent sustained his burden of establishing sufficient rehabilitation since engaging in the criminal conduct underlying the convictions for which the Department seeks to deny his application such that the Department can be confident that he is capable of performing the duties of a real estate licensee, on a restricted basis, in a manner that is consistent with public health, safety, and welfare. While respondent's theft-related convictions are of concern to the Department, he explained that each of his convictions involved conduct that he engaged in to facilitate his drug use or as a direct result of his drug use. He produced compelling evidence that he has taken significant steps towards obtaining his sobriety and it committed to maintaining that sobriety such that a restricted license is appropriate. Therefore, his application for a real estate salesperson license should be denied; provided, however, that he is issued a restricted license subject to the terms and conditions specified in the Order below.

LEGAL CONCLUSIONS

1. An application for a real estate 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)(1); 10177, subd. (b).) Respondent has been convicted of five separate crimes as discussed in Factual Findings 3 and 5. His theft-related crimes are substantially related to the qualifications, functions, or duties of a real estate license. (Factual Finding 3; see, Cal. Code of 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 an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator”] His crimes of driving while his driver’s license was revoked or suspended (Factual Finding 3) and being under the influence of a controlled substance (Factual Finding 5) are also substantially related. (Cal. Code of Regs., tit. 10, § 2910, subds. (a)(7) [“Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.”] and (a)(8) [“Doing of an unlawful act with the intent ... or threat of doing substantial injury to the person or property of another.”]) All of his crimes when considered together are substantially related. (Cal. Code of Regs., tit. 10, § 2910, subd. (a)(10) [“Conduct which demonstrates a pattern of repeated and willful disregard of law.”]) Therefore, each of respondent’s convictions constitutes separate cause for discipline pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), individually and collectively.

2. For the reasons discussed in Factual Findings 14 and 15, respondent sustained his burden of establishing sufficient rehabilitation since engaging in the criminal conduct underlying the convictions for which the Department seeks to deny his application such that the Department can be confident that he is capable of performing the duties of a real estate licensee, on a restricted basis, in a manner that is consistent with public health, safety, and welfare. Therefore, his application for a real estate salesperson license is denied; provided, however, that he is issued a restricted license subject to the terms and conditions specified in the Order below.

ORDER

Respondent David Craig’s application for a real estate salesperson license is DENIED; provided, however, a restricted real estate salesperson license shall be ISSUED to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under 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

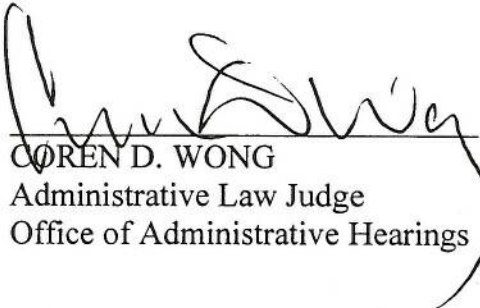
(b) The receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent's employment as a real estate salesperson shall be limited to his employment by licensed real estate broker William Shower, Real Estate Broker License No. B01145984

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 three years have elapsed from the date of issuance of the restricted license to respondent.

4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: July 17, 2012


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings