

FILED

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

NOV 20 2015

BUREAU OF REAL ESTATE

By R dew

In the Matter of the Application of)
)
SHAUN DAVID EVANS,)
)
Respondent.)

Case No. H-6285 SAC

OAH No. 2015080020

DECISION

The Proposed Decision dated October 21, 2015, 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.

Pursuant to Section 11517(c)(2)(c) of the Government Code, the following correction is made to the Proposed Decision:

Under FACTUAL FINDINGS on Page 2, Paragraph 2, July 16, 2013, shall be changed to "July 16, 2015"; and,

Under FACTUAL FINDINGS on Page 3, Paragraph 5, the last sentence shall be read "Respondent was 19 years old".

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. A 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 a petition for removal of restrictions is filed, 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 DEC 11 2015.

IT IS SO ORDERED 11/19/2015.

WAYNE S. BELL
REAL ESTATE COMMISSIONER



BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

SHAUN DAVID EVANS,

Respondent.

Case No. H-6285 SAC

OAH No. 2015080020

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on October 1, 2015, in Sacramento, California.

John W. Barron, Counsel, represented complainant Heather Nishimura, a Supervising Special Investigator for the Bureau of Real Estate (Bureau), State of California.

Respondent Shaun David Evans represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on October 1, 2015.

SUMMARY

Complainant seeks to deny respondent's application for a real estate salesperson license on the grounds that he suffered two criminal convictions and the underlying criminal conduct for one of them constitutes fraudulent or dishonest dealing. Cause exists to deny the application. When all the evidence is considered, respondent introduced sufficient evidence of rehabilitation such that he demonstrated his ability to perform the duties of a licensed real estate salesperson in a manner consistent with public health, safety, and welfare, on a restricted basis. Therefore, respondent's application for an unrestricted real estate salesperson license should be denied, but he should be issued a restricted license as specified in the Order below.

FACTUAL FINDINGS

Procedural Background

1. On April 18, 2014, respondent signed a Salesperson Exam/License Application and submitted it to the Bureau. Complainant, acting solely in her official capacity, caused the Statement of Issues to be filed on July 16, 2013.

Criminal Convictions

2. On November 15, 1999, in the Superior Court of the State of California, in and for the County of Sacramento, Case No. 99F03831, respondent pled no contest to, and was convicted of, a felony violation of Penal Code section 487, subdivision (b)(3), grand theft by a servant or employee. Imposition of judgment and sentence was suspended, and respondent was placed on formal probation for three years. Respondent was ordered to serve 180 days in the Sacramento County Jail, and to pay fines, penalties, and assessments. He was further ordered to make restitution to Copeland's Sports in an amount to be determined.

Respondent successfully fulfilled all terms and conditions of probation, and on May 28, 2013, the crime of which he was convicted was reduced to a misdemeanor pursuant to Penal Code, section 17. Furthermore, his no contest plea was withdrawn, a not guilty plea was entered on his behalf, the verdict of guilty was set aside, and the accusatory pleading was dismissed pursuant to Penal Code section 1203.4.

3. The factual basis for respondent's conviction arose out of his May 9, 1999 arrest by the Sacramento Police Department for embezzlement. That morning, an officer responded to Copeland's Sports in Downtown Plaza in response to a telephone call from the store explaining that loss prevention had a suspect in custody. Respondent was arrested and booked into the Sacramento County Jail without incident. He was 21 years old, and on informal probation for the conviction discussed in Factual Finding 4.

4. On April 6, 1998, in the Superior Court of the State of California, in and for the County of Sacramento, Case No. 97F10894, respondent pled no contest to, and was convicted of, a misdemeanor violation of Penal Code, section 243, subdivision (d), battery causing serious bodily injury. Imposition of judgment and sentence was suspended, and respondent was placed on informal probation for three years. Respondent was ordered to serve 90 days in the Sacramento County Jail, and to pay fines, penalties, and assessments. He was further ordered to pay restitution to the victim in an amount to be determined.

Respondent successfully fulfilled all terms and conditions of his probation, and on May 28, 2013, his no contest plea was withdrawn, a not guilty plea was entered on his behalf, the verdict of guilty was set aside, and the accusatory pleading was dismissed pursuant to Penal Code section 1203.4.

5. The factual basis for respondent's conviction arose out of his December 26, 1997 arrest by the Sacramento County Sheriff's Department after he voluntarily surrendered himself in connection with an investigation into his involvement in the battery of a 15-year-old boy on September 27, 1997. Respondent was 21 years old.

Substantial Relationship

6. The crime underlying the criminal conviction discussed in Factual Finding 2 is substantially related to the qualifications, functions, or duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(1), (4), and (8). The crime underlying the criminal conviction discussed in Factual Finding 4 is substantially related pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(8). And both crimes considered together are substantially related pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(10).

Factors in Aggravation, Mitigation, and Rehabilitation

7. As of the date of hearing, respondent was 37 years old. He has been married for seven years, is the father of two young daughters, and owns his own home. He has owned his own business for "just over 10 years," and delivers auto parts for various car dealers.

8. Respondent testified openly and candidly about both his convictions at hearing, and explained he has not been arrested or convicted of any other crimes. Regarding the battery conviction, he explained that he had just returned from barber's college and was in the process of walking inside his parents' home when his father arrived home from work and called respondent over to address five teenagers who appeared to be bothering two younger children in front of respondent's parents' home. One of the five teenagers began yelling racial epithets at respondent and his father in response to the latter's instructions to leave the younger children alone. Respondent "just lost it" in response to the racial epithets, and punched the teenager several times in the head with a closed fist. The teenager lost consciousness for a period of time, and suffered redness and swelling to the left temple area and on the back of his head.

Respondent also discussed his grand theft conviction. He had been working for Copeland's Sports for about one year when he started taking shoes from the back stock area and storing them in a "stash spot" for him to retrieve after work. He had been stealing shoes for about a month before he was caught. When asked at hearing the total number of shoes he had taken, he responded "to be honest with you, it was too many shoes." Respondent also explained "it was overboard," and estimated he took 40 pairs of shoes.

9. Copeland's Sports immediately terminated respondent's employment once it learned of his embezzlement. Shortly thereafter, he began working for Elk Grove Ford, initially as a lot porter, but eventually in billing. After working for Elk Grove Ford for a few

years, respondent began a series of jobs delivering auto parts for various companies, including Mercedes-Benz of Rocklin, which ultimately led to him opening his own auto parts delivery business.

10. While respondent enjoys having his own business, he testified about a conversation he had one day with a cousin who is licensed by the Department of Insurance and the Bureau. He explained to his cousin he felt "something was missing" from his life, and his cousin recommended he try something "vocational." At the time, respondent was renting a home and had a similar conversation with the property manager, who was licensed by the Bureau. Respondent decided to obtain his real estate salesperson license, and he enrolled in the necessary coursework at Accredited Real Estate Schools Inc. He completed the coursework, studied for the licensing exam, and successfully passed the exam on June 24, 2014. While respondent has never won the lottery, he analogized passing the real estate licensing exam to winning the lottery because so many people had told him they had to take it several times before finally passing. He took it only once.

11. Respondent demonstrated substantial insight into his criminal history at hearing, and explained his understanding why the Bureau would be concerned over his history. He repeatedly stated it has taken him "a long time" to rebuild his life after his convictions, but he has learned valuable lessons about how poor decisions can have lifelong effects. Respondent constantly shares the lessons he learned with his nephews to help dissuade them from making similar mistakes.

12. Respondent has a large family presence in the Sacramento Area, and seeing family is "pretty much an every other weekend thing" for him. Additionally, one of his brothers-in-law is the pastor of Bible Gateway Church in North Highlands, California. The church holds a pancake breakfast for the homeless every Friday morning, and respondent assists with that breakfast on a regular basis. Furthermore, he saves his plastic water bottles for the church to recycle and recover the California Refund Value. Respondent also enjoys spending time with his wife and their two young daughters, explaining "they mean the world to me" and he is committed to not being "one of those fathers who allows his wife to do it all."

13. Respondent and his family have been attending Bayside Church for about four years. Therefore, he met a parishioner named Shalawn Garcia, who is a licensed real estate broker. After learning about respondent's background and the status of his application for licensure, Ms. Garcia agreed to be his supervising broker.

14. Respondent submitted several character reference letters at hearing, including letters from the Parts Department Manager at Mercedes-Benz of Rocklin and the chief executive officer of Advant Works, Inc. Phil Cespedes confirmed that Mercedes-Benz of Rocklin has been relying "heavily" on the courier service respondent provides for four years. He described respondent as having "a strong sense of duty and responsibility which is reflected in the way he handles the transporting of our products. He is both timely and reliable and I can't think of a more trustworthy person." Andrew Sanders spoke of

respondent in similar laudatory terms when describing the services respondent has provided to Avant Werks, Inc. for 10 years.

While the remaining letters were written by family members and were not entitled to as much weight as the other two, those letters nonetheless provided credible evidence of the strong family ties respondent maintains and the strong family support he enjoys.

15. The Bureau has adopted criteria for consideration when evaluating an applicant's rehabilitation for purposes of determining whether he has sufficiently demonstrated his ability to perform the duties of a real estate licensee in a manner consistent with public health, safety, and welfare. California Code of Regulations, title 10, section 2911 provides, in relevant part:

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.

[¶] ... [¶]

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

[¶] ... [¶]

(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.

[¶] ... [¶]

(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. ...

While respondent introduced evidence in support of each of the rehabilitation criteria outlined above, his evidence was most compelling with regard to the amount of time that has elapsed since he last engaged in criminal conduct, his strong family ties and fulfillment of his familial responsibilities, and a change in his attitude from that which existed when he was engaging in criminal conduct. More than 16 years have elapsed since his last arrest. During that time, he has lived a crime-free life, married, had two children, started his own business, and completed the necessary education and passed the examination for obtaining a real estate

license. Respondent has also obtained significant insight into his criminal conduct since his last arrest, and he demonstrated at hearing a strong commitment to ensuring his nephews do not follow a similar path. He also demonstrated a strong sense of obligation to ensure he is able to provide for his family, explaining he wants his real estate license so he can better provide for them.

In sum, respondent introduced sufficient evidence of rehabilitation such that the Bureau can have confidence that his past criminal conduct can be attributed to youthful indiscretion and immaturity.

Summary

16. Cause exists to deny respondent's application for a real estate salesperson license based on his two criminal conducts and the conduct underlying one of those convictions constituting fraudulent or dishonest dealing as discussed in the Legal Conclusions. When all the evidence is considered, he established sufficient rehabilitation to demonstrate his ability to perform the duties of a real estate licensee in a manner consistent with public health, safety, and welfare, on a restricted basis. Therefore, his application for an unrestricted real estate salesperson license should be denied, provided he is issued a restricted license.

LEGAL CONCLUSIONS

Applicable Law

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).) Notwithstanding the aforementioned, an application may not be denied based solely on a criminal conviction that has been dismissed pursuant to Penal Code section 1203.4. (Bus. & Prof. Code, § 480, subd. (c).)

2. An application for a real estate license may be denied if the applicant has engaged in any conduct which constitutes fraudulent or dishonest dealing. (Bus. & Prof. Code, §§ 480, subd. (a)(2); 10177, subd. (j).)

Cause for Denial

3. Respondent has suffered two criminal convictions for crimes which are substantially related to the qualifications, functions, or duties of a real estate licensee as discussed in Factual Findings 2, 4, and 6. While both of those convictions were ultimately dismissed pursuant to Penal Code section 1203.4, his underlying criminal conduct for the conviction discussed in Factual Finding 2 constituted fraudulent or dishonest dealing. Therefore, cause exists to deny respondent's application pursuant to Business and

Professions Code sections 480, subdivisions (a)(1) and (2), and 10177, subdivisions (b) and (j). When all the evidence is considered, respondent established sufficient rehabilitation to demonstrate his ability to perform the duties of a real estate licensee in a manner consistent with public health, safety, and welfare, on a restricted basis, as explained in Factual Findings 15 and 16. Therefore, his application for an unrestricted real estate salesperson license should be denied, provided he is issued a restricted license.

ORDER

Respondent Shaun David Evans'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 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.

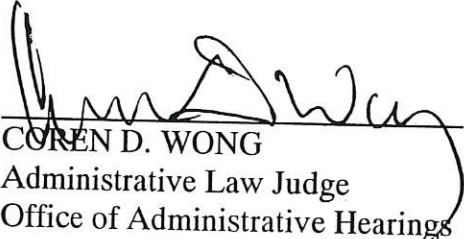
3. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent 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.

4. With the application for license or application to 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 Bureau 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.

DATED: October 21, 2015


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings