

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

FILED

OCT 12 2018

DEPARTMENT OF REAL ESTATE

By K. Knapp

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of
JOSHUA JAMES NEADEAU,
Respondent.

DRE No. H-6668 SAC

OAH No. 2018050528

STIPULATION AND WAIVER
AND DECISION AFTER REJECTION

This matter came on for hearing before Brendan White, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on July 25, 2018.

Kyle T. Jones, Counsel, represented the Complainant, Tricia Parkhurst, in her official capacity as a Supervising Special Investigator with the Department of Real Estate ("the Department"). Respondent, JOSHUA JAMES NEADEAU, appeared and represented himself. Evidence was received, the record was closed and submitted on July 25, 2018.

On August 03, 2018, the Administrative Law Judge rendered a Proposed Decision which the Real Estate Commissioner (hereinafter "the Commissioner") declined to adopt as his Decision herein. Pursuant to Section 11517 of the Government Code of the State of California, Respondent was served with notice of the Commissioner's determination not to adopt the Proposed Decision along with a copy of the Proposed Decision. Respondent was notified that the case would be decided by the Commissioner upon the record, the transcript of

1 proceedings, and upon written argument offered by Respondent and Complainant.

2 Written argument was not submitted by Respondent. Written argument was not
3 submitted on behalf of Complainant. The parties wish to settle this matter without further
4 proceedings.

5 The following shall constitute the Decision of the Commissioner in these
6 proceedings.

7 The Findings of Fact and Legal Conclusions in the Proposed Decision dated
8 August 03, 2018, and attached hereto as Exhibit A are hereby adopted in full as part of this
9 Decision.

10 Pursuant to Section 11517(c)(2)(B) of the California Government Code, the
11 Order in the Proposed Decision dated August 3, 2018, is hereby amended as follows:

12 ORDER

13 The application of Respondent JOSHUA JAMES NEADEAU, for a real
14 estate salesperson license is denied; provided, however, a restricted real estate salesperson
15 license shall be issued to Respondent pursuant to Section 10156.5 of the Business and
16 Professions Code ("the Code"). The restricted license issued to Respondent shall be
17 subject to all of the provisions of Section 10156.7 of the Code and to the following
18 limitations, conditions and restrictions imposed under authority of Section 10156.6 of the
19 Code:

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

23 (a) The conviction of Respondent (including a plea of nolo
24 contendere) of a crime that is substantially related to
25 Respondent's fitness or capacity as a real estate licensee; or

26 (b) The receipt of evidence that Respondent has violated
27 provisions of the California Real Estate Law, the subdivided

lands law, regulations of the 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 limitations, conditions, or restrictions of a
restricted license until two (2) years have elapsed from the date of the 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
broker on a form approved by the Department wherein the employing broker shall certify as
follows:

a. That broker has read the Stipulation and Waiver which is the basis
for the issuance of the restricted license; and

b. That 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.

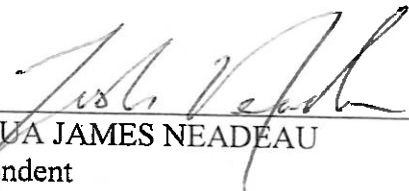
4. Respondent shall notify the Commissioner in writing within 72 hours of any
arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post
Office Box 137000, Sacramento, CA 95813-7000. The letter shall set forth the date of
Respondent's arrest, the crime for which Respondent 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.

* * *

1 I have read the Stipulation and Waiver and Decision After Rejection and its terms
2 are understood by me and are agreeable and acceptable to me. I understand that I am waiving
3 rights given to me by the Administrative Procedure Act, and I willingly, intelligently, and
4 voluntarily waive those rights.

5
6
7 DATED

Sept 9th 2018



JOSHUA JAMES NEADEAU
Respondent

8
9 * * *

10 The foregoing Stipulation and Waiver and Decision After Rejection is hereby
11 adopted as my Decision and Order in this matter and shall become effective at 12 o'clock noon
12 on NOV 02 2018

13
14 IT IS SO ORDERED October 8, 2018

15
16 DANIEL J. SANDRI
17 ACTING REAL ESTATE COMMISSIONER

18
19 
20
21
22
23
24
25
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JOSHUA JAMES NEADEAU,

Respondent.

Case No. H-6668 SAC

OAH No. 2018050528

PROPOSED DECISION

This matter was heard before Administrative Law Judge Brendan White, Office of Administrative Hearings, State of California, on July 25, 2018, in Sacramento, California.

Kyle T. Jones, Counsel, represented Tricia D. Parkhurst, Supervising Special Investigator (complainant), Department of Real Estate (Department), State of California.¹

Joshua James Neadeau (respondent) appeared on his own behalf.

Evidence was received, the record was thereafter closed, and the matter was submitted for decision on July 25, 2018.

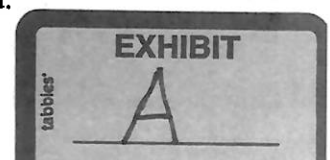
FACTUAL FINDINGS

1. On September 25, 2017, respondent applied to the Bureau for a real estate salesperson license. In signing the application, respondent certified under penalty of perjury that the information he supplied was true and correct. No license was issued.

2. On April 18, 2018, complainant made and filed the Statement of Issues in her official capacity. Complainant seeks to deny respondent's application based upon his conviction described below, and his failure to disclose his conviction on his application.

3. Respondent timely filed a Notice of Defense pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

¹ Effective July 1, 2018, the Bureau of Real Estate became the Department of Real Estate. All references to the Department also refer to actions taken by the Bureau.



Conviction

4. On March 22, 2005, in the Superior Court of the State of California, County of San Joaquin, respondent was convicted of violating Penal Code section 484, subdivision (a), petty theft, a misdemeanor. Respondent was placed on three years informal probation, fined \$140, and ordered to perform 16 hours of community service. He complied with all terms and conditions of his criminal sentence, and completed his probation in March 2008.

5. The circumstances underlying respondent's conviction occurred on or about the night of March 5, 2005. Respondent, who was 21 years old at the time, and his friends, attended a house party on the campus of University of the Pacific in Stockton. Respondent had several drinks and was intoxicated. As the party wore on, respondent and his friends got into an argument with other attendees and were told to leave by the host. On his way out the door, respondent grabbed a stack of DVDs "to get back at" the host for kicking him out. The party's host then called the campus police who located respondent nearby and arrested him for theft. Respondent was transported to jail where he was booked and released the next morning after sobering up. The stolen DVDs were returned to their owner.

Failure to Disclose

6. Question 28 on respondent's application for licensure asked:

HAVE YOU EVER BEEN CONVICTED (SEE PARAGRAPH ABOVE) OF ANY VIOLATION OF THE LAW AT THE MISDEAMEANOR OR FELONY LEVEL? IF YES, COMPLETE ITEM 28 WITH INFORMATION ON EACH CONVICTION. (Capitalization and bolding in original.)

Item 28 on respondent's application contained an empty table for an applicant with convictions to complete to describe the court of conviction, the arresting agency, the date of conviction, the type of conviction, the code section violated, the code violated, the disposition, and the case number.

7. On his application, respondent checked the "NO" box in response to Question 28. Respondent did not include any information in Item 27 on his application. By failing to disclose the conviction set forth in Finding 3, respondent made a material misstatement of fact in his application.

Respondent's Evidence

8. Respondent explained that at the time he completed the application, he had forgotten about his 2005 petty theft conviction. Since he had never before had to recall or reveal his conviction, respondent claims it escaped his attention and that he was not "consciously aware" of it at the time he completed his application. Respondent

acknowledged that he was required to disclose the conviction to the Department and he was apologetic for his failure to do so. On February 10, 2018, in response to a letter from the Department requesting more information, respondent completed a Conviction Detail Report and supplied the necessary disclosures.

9. Respondent attributes his past criminal behavior to his youth and excessive drinking. In 2014, respondent stopped drinking and began attending Alcoholics Anonymous (AA). He has been sober ever since. As part of his recovery, respondent volunteers to chair AA meetings and sponsor newer members. Respondent is now 34, married, and has a 12 year-old son.

10. Respondent is an off-site property manager for Garibaldi Company, a property management company in Stockton. He has worked for the company for more than 10 years and has been promoted several times. Respondent's responsibilities include managing over 350 apartments and 24 commercial spaces, a portfolio that generates more than \$500,000 in monthly rents. However, following a Department audit in 2016, Garibaldi advised respondent that he needed to obtain a real estate license to maintain his employment as an off-site property manager. Respondent therefore applied for his license to keep his job. Additionally, while studying to take his application exams, respondent became interested in helping others buy and sell homes, and if granted a license, he intends to pursue this interest.

11. Respondent furnished an e-mail message dated March 21, 2018, from Matt Errecart, Vice President of the Garibaldi Company, who praised respondent's character and referred to him as "a great asset to our company." Additionally, three witnesses testified on respondent's behalf to establish his good character and rehabilitation. Brittany Neadeau is respondent's wife and has known him for 13 years. She states that respondent has grown immensely since 2005, and especially since 2014, when he stopped drinking. Since that time, respondent has proven himself to be an honest and caring husband and father.

Ronald McKentry is respondent's AA sponsor and has known him since 2014. According to Mr. McKentry, respondent is committed to the 12-Step program and to maintaining rigorous honesty in all his affairs. Mr. McKentry also testified to respondent's service to the AA program, especially his willingness to help other alcoholics. Finally, Lance Hall, a licensed real estate broker and owner of Hillside Home Ownership, praised respondent as an honest family man whom he would hire without reservation if he were granted a license.

12. Respondent acknowledged that he made a terrible decision to steal the DVDs at the party in 2005. He had only vague recall of the events leading up to his arrest. He denied any purposeful intent to deceive the Department when he completed the application for licensure. Respondent considers himself a person of integrity, noting that his employer entrusts him with valuable property and confidential information about the business and tenants. He was remorseful at hearing and made it clear that he intends to live responsibly and respectfully.

Discussion

13. The Department has developed criteria for use in evaluating the rehabilitation of a licensee, which are set forth in California Code of Regulations, title 10, section 2911. Relevant criteria include: the passage of at least two years from the most recent substantially related conviction, which time period may be increased depending on the nature and severity of the crimes committed; payment of restitution, fines and fees; expungement of the conviction; completion of or early discharge from probation/parole; abstinence from use of controlled substances or alcohol; stability of family life and fulfillment of parental responsibilities post-conviction; enrollment in educational or training courses; significant and conscientious involvement in community programs, church, or privately-sponsored programs to benefit society; new and different social relationships; and any change in attitude from that which existed at the time of the conduct in question.

14. In consideration the Department's criteria, 13 years have passed since respondent's conviction. He paid all fines and fees and successfully completed probation. He has had no additional convictions. Respondent took responsibility for his past actions and credibly explained that his criminal conduct was due, in large part, to being young and irresponsible in his early twenties. Respondent has made significant rehabilitative efforts, especially through his participation in AA. He is married and a father. Respondent has also found stability and success in his property management career. Finally, he is supported by his family, friends, and coworkers.

15. Respondent has demonstrated a change in attitude from that at the time he applied for licensure. He accepted responsibility for his failure to disclose his petty theft conviction on his application. Moreover, he took responsibility for his actions in that criminal matter, and provided credible testimony that he learned from that experience and is very unlikely to reoffend. When all the evidence is considered in light of the criteria set forth in California Code of Regulations, title 10, section 2911, it would not be contrary to the public interest to issue respondent a restricted salesperson license on the terms and conditions set forth below.

LEGAL CONCLUSIONS

1. Respondent bears the burden of proving that he meets all prerequisites necessary for the requested license. (*Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 238 ["An applicant for a license bears the burden of proving that he should be granted a license"].) Rehabilitation is akin to an affirmative defense; therefore, the burden of proof of establishing an affirmative defense of rehabilitation is on the proponent of that defense. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.) Except as otherwise provided by law, the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

2. 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, or engaged in conduct constituting fraud or dishonest dealing. (Bus. & Prof. Code, §§ 480, subd. (a)(1), and 10177, subds. (b) and (j).) Respondent was convicted of petty theft, a crime involving the intentional taking of property from another for respondent's own benefit, and therefore substantially related to the duties, functions, and qualifications of a real estate licensee. (Finding 4; Cal. Code Regs., tit. 10, § 2910, subd. (a)(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"].)

3. An application for a real estate license may be denied if the applicant knowingly made a false statement of fact required to be revealed in his application. (Bus. & Prof. Code, § 480, subd. (d).) Respondent's nondisclosure of his 2005 conviction on his license application, as discussed in Findings 6 and 7, constitutes knowingly making a false statement of fact required to be revealed in the application. Therefore, cause for license denial was established pursuant to Business and Professions Code section 480, subdivision (d).

4. An application for a real estate license may be denied if the applicant attempted to procure a license by making a material misstatement of fact in the license application. (Bus. & Prof. Code, § 10177, subd. (a).) Respondent's nondisclosure of his 2005 conviction on his license application, as discussed in Findings 6 and 7, constitutes attempting to procure a real estate license by making a material misstatement of fact in the license application. Therefore, cause for license denial was established pursuant to Business and Professions Code section 10177, subdivision (a).

5. As set forth in Findings 8 through 15, when all the evidence is considered, respondent demonstrated sufficient rehabilitation such that it would not be contrary to the public interest, safety and welfare to issue a restricted license to him at this time, subject to the terms and conditions set forth below.

ORDER

Respondent Joshua James Neadeau'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 Business and Professions Code section 10156.5. The restricted license issued to the 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 authority of Business and Professions Code section 10156.6:

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 four 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.

DATED: August 3, 2018

DocuSigned by:
Brendan White
2F9D25DB530949F...

BRENDAN WHITE
Administrative Law Judge
Office of Administrative Hearings

Flag.

FILED

SEP 05 2018

DEPARTMENT OF REAL ESTATE
By B. Nicholas

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	CalDRE No. H-6668 SAC
JOSHUA JAMES NEADEAU,)	
Respondent.)	OAH No. 2018050528

NOTICE

TO: JOSHUA JAMES NEADEAU, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 3, 2018, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 3, 2018, is attached hereto 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 Wednesday, July 25, 2018, 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 Wednesday, July 25, 2018, at the Sacramento office of the Department of Real Estate unless an extension of the time is granted for

1 good cause shown.

2 Written argument of complainant to be considered by me must be submitted within
3 15 days after receipt of the argument of respondent at the Sacramento Office of the Department of
4 Real Estate unless an extension of the time is granted for good cause shown.

5 DATED: August 31, 2018.

6 DANIEL J. SANDRI
7 ACTING REAL ESTATE COMMISSIONER

8 
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JOSHUA JAMES NEADEAU,

Respondent.

Case No. H-6668 SAC

OAH No. 2018050528

PROPOSED DECISION

This matter was heard before Administrative Law Judge Brendan White, Office of Administrative Hearings, State of California, on July 25, 2018, in Sacramento, California.

Kyle T. Jones, Counsel, represented Tricia D. Parkhurst, Supervising Special Investigator (complainant), Department of Real Estate (Department), State of California.¹

Joshua James Neadeau (respondent) appeared on his own behalf.

Evidence was received, the record was thereafter closed, and the matter was submitted for decision on July 25, 2018.

FACTUAL FINDINGS

1. On September 25, 2017, respondent applied to the Bureau for a real estate salesperson license. In signing the application, respondent certified under penalty of perjury that the information he supplied was true and correct. No license was issued.

2. On April 18, 2018, complainant made and filed the Statement of Issues in her official capacity. Complainant seeks to deny respondent's application based upon his conviction described below, and his failure to disclose his conviction on his application.

3. Respondent timely filed a Notice of Defense pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

¹ Effective July 1, 2018, the Bureau of Real Estate became the Department of Real Estate. All references to the Department also refer to actions taken by the Bureau.

Conviction

4. On March 22, 2005, in the Superior Court of the State of California, County of San Joaquin, respondent was convicted of violating Penal Code section 484, subdivision (a), petty theft, a misdemeanor. Respondent was placed on three years informal probation, fined \$140, and ordered to perform 16 hours of community service. He complied with all terms and conditions of his criminal sentence, and completed his probation in March 2008.

5. The circumstances underlying respondent's conviction occurred on or about the night of March 5, 2005. Respondent, who was 21 years old at the time, and his friends, attended a house party on the campus of University of the Pacific in Stockton. Respondent had several drinks and was intoxicated. As the party wore on, respondent and his friends got into an argument with other attendees and were told to leave by the host. On his way out the door, respondent grabbed a stack of DVDs "to get back at" the host for kicking him out. The party's host then called the campus police who located respondent nearby and arrested him for theft. Respondent was transported to jail where he was booked and released the next morning after sobering up. The stolen DVDs were returned to their owner.

Failure to Disclose

6. Question 28 on respondent's application for licensure asked:

**HAVE YOU EVER BEEN CONVICTED (SEE
PARAGRAPH ABOVE) OF ANY VIOLATION OF THE
LAW AT THE MISDEAMEANOR OR FELONY LEVEL? IF
YES, COMPLETE ITEM 28 WITH INFORMATION ON
EACH CONVICTION.** (Capitalization and bolding in
original.)

Item 28 on respondent's application contained an empty table for an applicant with convictions to complete to describe the court of conviction, the arresting agency, the date of conviction, the type of conviction, the code section violated, the code violated, the disposition, and the case number.

7. On his application, respondent checked the "NO" box in response to Question 28. Respondent did not include any information in Item 27 on his application. By failing to disclose the conviction set forth in Finding 3, respondent made a material misstatement of fact in his application.

Respondent's Evidence

8. Respondent explained that at the time he completed the application, he had forgotten about his 2005 petty theft conviction. Since he had never before had to recall or reveal his conviction, respondent claims it escaped his attention and that he was not "consciously aware" of it at the time he completed his application. Respondent

acknowledged that he was required to disclose the conviction to the Department and he was apologetic for his failure to do so. On February 10, 2018, in response to a letter from the Department requesting more information, respondent completed a Conviction Detail Report and supplied the necessary disclosures.

9. Respondent attributes his past criminal behavior to his youth and excessive drinking. In 2014, respondent stopped drinking and began attending Alcoholics Anonymous (AA). He has been sober ever since. As part of his recovery, respondent volunteers to chair AA meetings and sponsor newer members. Respondent is now 34, married, and has a 12 year-old son.

10. Respondent is an off-site property manager for Garibaldi Company, a property management company in Stockton. He has worked for the company for more than 10 years and has been promoted several times. Respondent's responsibilities include managing over 350 apartments and 24 commercial spaces, a portfolio that generates more than \$500,000 in monthly rents. However, following a Department audit in 2016, Garibaldi advised respondent that he needed to obtain a real estate license to maintain his employment as an off-site property manager. Respondent therefore applied for his license to keep his job. Additionally, while studying to take his application exams, respondent became interested in helping others buy and sell homes, and if granted a license, he intends to pursue this interest.

11. Respondent furnished an e-mail message dated March 21, 2018, from Matt Errecart, Vice President of the Garibaldi Company, who praised respondent's character and referred to him as "a great asset to our company." Additionally, three witnesses testified on respondent's behalf to establish his good character and rehabilitation. Brittany Neadeau is respondent's wife and has known him for 13 years. She states that respondent has grown immensely since 2005, and especially since 2014, when he stopped drinking. Since that time, respondent has proven himself to be an honest and caring husband and father.

Ronald McKentry is respondent's AA sponsor and has known him since 2014. According to Mr. McKentry, respondent is committed to the 12-Step program and to maintaining rigorous honesty in all his affairs. Mr. McKentry also testified to respondent's service to the AA program, especially his willingness to help other alcoholics. Finally, Lance Hall, a licensed real estate broker and owner of Hillside Home Ownership, praised respondent as an honest family man whom he would hire without reservation if he were granted a license.

12. Respondent acknowledged that he made a terrible decision to steal the DVDs at the party in 2005. He had only vague recall of the events leading up to his arrest. He denied any purposeful intent to deceive the Department when he completed the application for licensure. Respondent considers himself a person of integrity, noting that his employer entrusts him with valuable property and confidential information about the business and tenants. He was remorseful at hearing and made it clear that he intends to live responsibly and respectfully.

Discussion

13. The Department has developed criteria for use in evaluating the rehabilitation of a licensee, which are set forth in California Code of Regulations, title 10, section 2911. Relevant criteria include: the passage of at least two years from the most recent substantially related conviction, which time period may be increased depending on the nature and severity of the crimes committed; payment of restitution, fines and fees; expungement of the conviction; completion of or early discharge from probation/parole; abstinence from use of controlled substances or alcohol; stability of family life and fulfillment of parental responsibilities post-conviction; enrollment in educational or training courses; significant and conscientious involvement in community programs, church, or privately-sponsored programs to benefit society; new and different social relationships; and any change in attitude from that which existed at the time of the conduct in question.

14. In consideration the Department's criteria, 13 years have passed since respondent's conviction. He paid all fines and fees and successfully completed probation. He has had no additional convictions. Respondent took responsibility for his past actions and credibly explained that his criminal conduct was due, in large part, to being young and irresponsible in his early twenties. Respondent has made significant rehabilitative efforts, especially through his participation in AA. He is married and a father. Respondent has also found stability and success in his property management career. Finally, he is supported by his family, friends, and coworkers.

15. Respondent has demonstrated a change in attitude from that at the time he applied for licensure. He accepted responsibility for his failure to disclose his petty theft conviction on his application. Moreover, he took responsibility for his actions in that criminal matter, and provided credible testimony that he learned from that experience and is very unlikely to reoffend. When all the evidence is considered in light of the criteria set forth in California Code of Regulations, title 10, section 2911, it would not be contrary to the public interest to issue respondent a restricted salesperson license on the terms and conditions set forth below.

LEGAL CONCLUSIONS

1. Respondent bears the burden of proving that he meets all prerequisites necessary for the requested license. (*Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 238 ["An applicant for a license bears the burden of proving that he should be granted a license"].) Rehabilitation is akin to an affirmative defense; therefore, the burden of proof of establishing an affirmative defense of rehabilitation is on the proponent of that defense. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.) Except as otherwise provided by law, the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

2. 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, or engaged in conduct constituting fraud or dishonest dealing. (Bus. & Prof. Code, §§ 480, subd. (a)(1), and 10177, subs. (b) and (j).) Respondent was convicted of petty theft, a crime involving the intentional taking of property from another for respondent's own benefit, and therefore substantially related to the duties, functions, and qualifications of a real estate licensee. (Finding 4; Cal. Code Regs., tit. 10, § 2910, subd. (a)(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"].)

3. An application for a real estate license may be denied if the applicant knowingly made a false statement of fact required to be revealed in his application. (Bus. & Prof. Code, § 480, subd. (d).) Respondent's nondisclosure of his 2005 conviction on his license application, as discussed in Findings 6 and 7, constitutes knowingly making a false statement of fact required to be revealed in the application. Therefore, cause for license denial was established pursuant to Business and Professions Code section 480, subdivision (d).

4. An application for a real estate license may be denied if the applicant attempted to procure a license by making a material misstatement of fact in the license application. (Bus. & Prof. Code, § 10177, subd. (a).) Respondent's nondisclosure of his 2005 conviction on his license application, as discussed in Findings 6 and 7, constitutes attempting to procure a real estate license by making a material misstatement of fact in the license application. Therefore, cause for license denial was established pursuant to Business and Professions Code section 10177, subdivision (a).

5. As set forth in Findings 8 through 15, when all the evidence is considered, respondent demonstrated sufficient rehabilitation such that it would not be contrary to the public interest, safety and welfare to issue a restricted license to him at this time, subject to the terms and conditions set forth below.

ORDER

Respondent Joshua James Neadeau'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 Business and Professions Code section 10156.5. The restricted license issued to the 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 authority of Business and Professions Code section 10156.6:

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 four 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.

DATED: August 3, 2018

DocuSigned by:
Brendan White
2F9D25DB5B0949F...

BRENDAN WHITE
Administrative Law Judge
Office of Administrative Hearings