

FILED

AUG 14 2023

DEPARTMENT OF REAL ESTATE
By g dw

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of:) DRE No. H-7124 SAC
)
)
CLAUDIUS RICHARD JOHNSON,) OAH No. 2023030171
)
)
Respondent.)
_____)

DECISION

The Proposed Decision dated May 31, 2023, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a mortgage loan originator license endorsement is denied. The earliest date on which the applicant may reapply for a license is one year from the effective date of this Decision. If and when application is again made for this license, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of

///

///

///

Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on SEP 05 2023.

IT IS SO ORDERED 8.11.23.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

A black rectangular redaction box covers the signature of Douglas R. McCauley. Below the box, there are faint blue ink marks that appear to be the start of a signature or initials.

**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Application of:

CLAUDIUS RICHARD JOHNSON, Respondent

Agency Case No. H-7124 SAC

OAH No. 2023030171

PROPOSED DECISION

Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 10, 2023, from Sacramento, California.

Adriana Z. Badilas, Counsel, represented Ruth Corral (complainant), Supervising Special Investigator, Department of Real Estate (Department).

Claudius Richard Johnson (respondent) appeared on his own behalf.

Evidence was received, the record closed, and the matter submitted for decision on May 10, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 19, 2000, the Department issued respondent broker license number 01185474. The license is active, in full force, and scheduled to expire on October 7, 2026, unless renewed or revoked.

2. On June 21, 2021, respondent applied to the Department through the Nationwide Mortgage Licensing System and Registry (NMLSR) for an individual mortgage loan originator (MLO) license endorsement. The Department did not issue the endorsement. On May 27, 2022, complainant, in her official capacity, signed and later filed the Statement of Issues seeking to deny respondent's application based on his felony robbery convictions. Respondent filed a Notice of Défense and requested a hearing. This hearing followed.

3. At hearing, complainant sought to amend paragraph four, line eight in the Statement of Issues, changing the date of November 17, 1975, to July 18, 1975. Respondent did not object, and the Statement of Issues was amended accordingly.

Criminal Convictions

4. On July 18, 1975, in the Superior Court of California, County of Alameda, Case No. 59620, respondent was convicted on a guilty plea of violating Penal Code section 211 (robbery), a felony. The court suspended imposition of sentence for six months and placed respondent on six months' formal probation. The circumstances are that on April 20, 1975, respondent used force and/or fear to take money from his victim.

5. On November 17, 1975, in the Municipal Court for the Berkeley-Albany Judicial District, County of Alameda, Case No. 2-059286-2, respondent was convicted on a guilty plea of violating Penal Code section 211 (robbery), a felony. The court suspended imposition of sentence for six months and placed respondent on six months' formal probation. The circumstances are that on September 16, 1975, respondent used force and/or fear to take money from his victim.

6. On May 1, 1981, in the Superior Court of California, County of Alameda, Case No. H-3089, respondent was convicted on a guilty plea of violating Penal Code section 211 (robbery), a felony. The court sentenced respondent to five years in state prison. The circumstances are that on October 26, 1980, respondent used force and/or fear to take money from his victim.

7. On November 26, 1984, in the Superior Court of California, County of Alameda, Case No. H-6611, respondent was convicted on a guilty plea of violating Penal Code sections 484/666 (petty theft with three priors), a felony. The circumstances are that on September 25, 1984, respondent unlawfully took property of value less than \$400 from Safeway Stores, Inc.

Respondent's Testimony

8. Respondent did not dispute his felony convictions, most of which are over 40 years old. The convictions were a result of his "substance abuse problem." He entered a long-term drug treatment program, and on November 30 of this year he will celebrate 40 years of sobriety. He has actively participated in therapy and support groups for the past 40 years.

9. Respondent received his real estate salesperson license in 1995 and became licensed as a real estate broker in 2000. He testified that he transacted

mortgages for 20 years, but it was during a time when real estate licensees were allowed to transact both real estate and mortgages. Respondent has not been involved in mortgage transactions since 2010.

10. In 1995, respondent received his master's degree in social work from San Francisco State University. He has worked as a licensed clinical social worker (LCSW) since that time. For the past 15 years, he has owned and operated a group practice called Sankofa Holistic Counseling Services, Inc. The group practice performs individual, couples, and family counseling by LCSWs, marriage and family therapists, and psychologists.

11. Respondent is married with two adult children. His wife is a mindfulness coach. He performs 20 to 25 hours per month of community service for several organizations, including youth radio and churches.

12. Respondent wants an MLO license endorsement because he will be turning 70 this year and plans to retire after 30 years of counseling. He hopes to transact mortgage loans to supplement his retirement income.

Analysis

13. Petitioner's criminal behavior is well in his past. He has demonstrated, through more than four decades of lawful behavior, that he can follow the law. He is a licensed real estate broker with no license discipline. He proved his rehabilitation through "sustained conduct, over an extended period of time, that demonstrates he is rehabilitated and fit to practice." (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

14. However, one of the statutes on which complainant relies to deny respondent's application is Business and Professions Code section 10166.05, subdivision (b)(1), which provides:

Notwithstanding any other provision of law, the commissioner shall not issue a license endorsement to act as a mortgage loan originator to an applicant unless the commissioner makes all of the following findings:

[¶] . . . [¶]

The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court . . . at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

15. As a result, despite petitioner's rehabilitation from his prior criminal conduct, his felony convictions prevent the Department from granting him an MLO license endorsement. On that basis, the law requires that his application be denied.

LEGAL CONCLUSIONS

1. An applicant for a license bears the burden to prove he should be granted a license. (*Martin v. Alcohol Beverage Control Appeals Bd.* (1959) 52 Cal.2d

238.) The burden of proof is a preponderance of the evidence (Evid. Code, § 115), which means "more likely than not." (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388.)

Cause for Denial

2. The Real Estate Commissioner shall deny an MLO license endorsement to an applicant who has been convicted of a felony "at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering." (Bus. & Prof. Code, § 10166.05, subd. (b)(1).) As set forth in the Factual Findings and Legal Conclusions as a whole, respondent's felony robbery and petty theft (with three priors) convictions involve acts of dishonesty and a breach of trust. Cause therefore exists to deny his application pursuant to Business and Professions Code section 10166.05, subdivision (b)(1). Moreover, the statute mandates denial and does not afford any discretion to grant the application based on rehabilitation evidence.

ORDER

Respondent Claudius Richard Johnson's application for a mortgage loan originator license endorsement is DENIED.

DATE: May 31, 2023

Danette C. Brown

Danette C. Brown

Administrative Law Judge

Office of Administrative Hearings