

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 27 2000

DEPARTMENT OF REAL ESTATE

* * *

By Shelly Ely

In the Matter of the Application of))
DOUGLAS PAUL BOYENGA,))
Respondent.))
NO. H-7840 SF
N-2000070158

DECISION

The Proposed Decision dated October 11, 2000, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon
on November 16 2000.

IT IS SO ORDERED October 23, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of
DOUGLAS PAUL BOYENGA,

Respondent.

No. H-7840 SF

OAH No. N 2000070158

PROPOSED DECISION

On September 13, 2000, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Larry Alamao, Counsel, represented complainant.

Respondent Douglas Paul Boyenga was present throughout the proceeding but he was not otherwise represented.

The record was held open until September 29, 2000, for the purpose of affording respondent the opportunity to supplement the record with documentary evidence in support of his character for honesty, reliability and reformation from his past criminal activity. Respondent did not file with OAH any documentary evidence by Friday, September 29, 2000.

On September 29, 2000, the parties were deemed to have submitted the matter and the record closed.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt ("Complainant"), in his official capacity, as a Deputy Real Estate Commissioner of the State of California, made the statement of issues against respondent Douglas Paul Boyenga ("respondent").

2. On August 1, 1999, respondent signed an application for licensure as a real estate salesperson. On September 29, 1999, the Department of Real Estate received respondent's application for a real estate salesperson license.

The license has not issued as the application remains pending until the disposition of the instant administrative adjudication.

3. On April 6, 1999, the California Municipal Court for Alameda County, Berkeley-Albany Judicial District convicted respondent of violating California Health and Safety Code section 11358 (Unauthorized Cultivation, Harvesting or Processing Marijuana), a felony.

Respondent's unlawful acts comprise a crime involving moral turpitude that bears a substantial relationship to qualifications, functions or duties of a real estate license.

4. The facts and circumstances of the criminal acts that led to respondent's conviction in May 1999 result from a police raid upon respondent's house by Drug Enforcement Agency ("DEA") personnel on October 20, 1998. The DEA raid established that respondent had a sophisticated drug operation that included 143 marijuana plants growing under artificial lights in two rooms of his house. Law enforcement agents also seized 20 plastic bags of marijuana weighing more than 844 grams and a bag with \$4,283 in cash which related to respondent's unlawful cultivation, harvesting and processing of marijuana plants.

Respondent admits at the hearing of this matter that he sold the marijuana for purpose of making a profit through sells to medicinal marijuana distributors and to ordinary marijuana smokers.

5. As a consequence of the municipal court's conviction, the Alameda County Superior Court on May 18, 1999, conducted a sentencing hearing due to the felony status of respondent's criminal conviction.

The court placed respondent on probation for five years, over which time the court would suspend imposition of a sentence so long as respondent adheres to terms and conditions of probation. The terms and conditions of probation include a provision that respondent pay: a fine of \$5,000; a restitution fund fine of \$200; a drug program fee of \$100; a lab fee of \$50. Additionally, the court directed that respondent register as a narcotics offender under Health and Safety Code section 11590. And, the court commanded that should a probation officer so direct him that respondent would enroll in a drug abuse counseling, treatment or testing program. The court affirmed law enforcement's seizure of respondent's automobile, which was viewed as a part of his criminal enterprise. However, the court granted respondent credit for the seven days he spent in jail so that respondent avoided a lengthy prison term in the plea bargain.

Matters in Rehabilitation

6. Respondent asserts that he remains married.

7. Respondent claims that he has sought to maintain gainful employment since his 1999 conviction.

Respondent asserts that he currently works in the building trades for his brother, who is a licensed contractor.

8. Respondent proclaims that he has taken a real estate course to prepare for the Department's examination for licensure.

Matters that Negatively Impact on Respondent's Progress Towards Rehabilitation

9. Respondent's credibility is subject to attack¹ due to his felony conviction.

Respondent does not accurately² report past and current matters, and he fails to provide corroborating documents on topics that are contradicted by the record.

10. Less than six months elapsed between respondent's conviction and the date of his application for licensure as a real estate salesperson.

11. Respondent's probation from his felony conviction will not end until approximately April 5, 2004.

12. At the hearing of this matter, respondent produces no witness to give testimony regarding respondent's changed behavior, his attitude towards the past criminal activity or his current reputation for honesty and trustworthiness.

13. Respondent's attitude towards his criminal history is grounded upon a system of excuses. He points to business necessity and financial expediency as his motivation to enter his scheme with a man who may have betrayed his confidence. Moreover, respondent does not express remorse or regret for his involvement in the unlawful activity of pouring illegal drugs into the general society.

¹ Evidence Code section 788.

² Among other things, at the hearing of this matter respondent asserts that a devious or psychotic man who had leased the lower portion of his house duped him into starting the drug enterprise. Yet, the law enforcement and probation department reports indicate that respondent alone masterminded the sophisticated and highly developed marijuana growing system as operated in two rooms of his house.

Respondent offers a bizarre account that the evil or insane former co-drug grower tormented him with acts of vandalism at his real property; yet, respondent offers no documentation in support of the peculiar story. Moreover, the law enforcement reports in the record of this matter do not suggest that respondent encountered such trouble with a crazed former drug business associate.

14. Respondent is not credible that with the passage of the Medicinal Marijuana Proposition that he believed California law had decriminalized possession of marijuana. Yet, respondent does not offer competent documentary evidence or expert witness testimony on the general public perception on the passage of the ballot proposition that allowed use of medicinal marijuana, which has been attacked in courts by federal and state criminal prosecuting agencies.

15. Although a term of his criminal conviction probation requires that respondent register as a Drug Offender and that his probation officer may order him to participate in a drug counseling program, respondent provides no evidence at hearing that he has taken part in any drug treatment or counseling program since his conviction last year.

16. Respondent does not offer in evidence a record of expungement of the criminal conviction. Respondent provides no proof that he is free of the burdens of criminal probation.

17. Respondent does not provide documentary evidence that he has made full payment of the fines or other monetary penalties imposed in connection with his felony conviction. The total amount of the fines and fees imposed by the sentencing court in 1999 exceeds \$5,400.

18. Respondent provides no competent evidence that he has stability of his family life and that he has dutifully fulfilled familial responsibilities subsequent to the criminal conviction in 1999. Although he claims that he remains married, neither his wife nor any member of his family appears at the hearing of this matter.

19. Although respondent claims that he has taken real estate courses, respondent provides no competent evidence that he has completed, or been involved in sustained enrollment in, formal education or vocational training courses for economic self-improvement.

20. Respondent offers no proof that he has had significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.

CONCLUSIONS OF LAW

1. Business and Professions Code section 480, subd.(a) provides that the Department may deny a license on the ground that the applicant has "been convicted of a crime... (that)... is substantially related to the qualifications, functions or duties of the business ... for which (an) application is made."

Business and Professions Code section 10177, subd. (b) establishes that the Department may deny the issuance of a license to an applicant who has "been convicted of a felony or a crime involving moral turpitude."

Cause to deny respondent's application for licensure as a real estate salesperson exists under Business and Professions Code sections 480, subd.(a) and 10177, subd.(b), by reason of the matters set forth in Factual Finding 3.

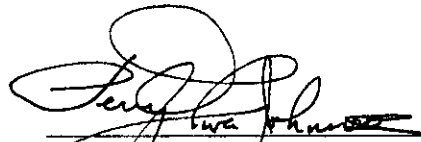
2. In light of the 1999 criminal conviction against respondent that involves the felony crime of engaging in the illegal drug production business, respondent has not attained a majority of the applicable criteria for rehabilitation as set out in Title 10, California Code of Regulations section 2911.

3. Respondent does not provide satisfactory evidence that it would be in the public interest to issue respondent a license, even on a restricted basis.

ORDER

The application of Respondent Douglas Paul Boyenga for a real estate salesperson license is denied.

DATED: October 11th, 2000


PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUN 29 2000

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

DOUGLAS PAUL BOYENGA

}

By Shelly Ely

Case No. H-7840-SF

OAH No.

Respondent

NOTICE OF HEARING ON APPLICATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at THE OFFICE OF ADMINISTRATIVE HEARINGS, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on WEDNESDAY--SEPTEMBER 13, 2000, at the hour of 2:30 PM, or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearing within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: JUNE 29, 2000

By Larry Alamas
Counsel

1 LARRY A. ALAMAO, Counsel
State Bar No. 47379
2 Department of Real Estate
P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
JUN 05 2000

DEPARTMENT OF REAL ESTATE

By *Juan Aranda*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 DOUGLAS PAUL BOYENGA) No. H- 7840 SF
13 Respondent.) STATEMENT OF ISSUES
14 _____)

15 The Complainant, LES R. BETTENCOURT, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against DOUGLAS PAUL BOYENGA (hereinafter "Respondent"),
18 is informed and alleges as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate salesperson
22 license on or about September 29, 1999.

23 II

24 Complainant, LES R. BETTENCOURT, a Deputy Real Estate
25 Commissioner of the State of California, makes this Statement of
26 Issues in his official capacity and not otherwise.
27

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

III

On or about May 18, 1999, in the Superior Court, County of Alameda, Respondent was convicted of a violation of Section 11358 of the California Health and Safety Code (Unauthorized Cultivation, Harvesting or Processing of Marijuana), a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

The crime of which Respondent was convicted, as alleged in Paragraph III, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

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



LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 25th day of May, 2000.