

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
AUG - 7 2001

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

* * *

In the Matter of the Application of)
ERNEST JOSEPH DAVIS,) NO. H-7933 SF
Respondent.) N-2001030534

DECISION

The Proposed Decision dated July 10, 2001, 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 August 27, 2001.

IT IS SO ORDERED August 1, 2001.

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

ERNEST JOSEPH DAVIS,

Respondent.

No. H-7933 SF

OAH No. N 2001030534

PROPOSED DECISION

On June 13, 2001 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 Ernest Joseph Davis ("respondent") appeared at the proceeding, but he was not otherwise represented.

On June 13, 2001, the parties 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.

2. On July 17, 2000 the Department of Real Estate received respondent's application for a real estate salesperson license.

The application remains pending as the Department has refused to issue a license to respondent due to his past acts and omissions that appear to disqualify him for licensure.

Record of 4th Criminal Conviction

3. On July 29, 1998, in case number 109170-1, the California Municipal Court for the County of Contra Costa, Delta Judicial District, convicted respondent, on his plea of no contest, of violating Penal Code section 470 (Forgery), a misdemeanor.

The crime for which respondent was convicted in January 1998 involves moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee.

4. The facts and circumstances of the events that led to respondent's 1998 conviction pertain to respondent's abuse of the name and credit worthiness of a former girl friend. A police report¹ in the records of the hearing shows that respondent procured a credit card by which respondent incurred thousands of dollars in bills, which adversely impacted his former girl friend.

Respondent's misconduct dates to August 1996. At the time while living with a woman named Jennifer Van Mastright ("crime victim"), but without her consent, respondent signed the name of the crime victim upon an application for a credit card. Respondent had entered his name on the application so as to secure a second card on the account for which his girlfriend was shown as the primary debtor. Respondent had signed the application for the credit card by using the name "Jennifer Davis." On the application, respondent falsely identified himself as the crime victim's husband.

In October 1997, respondent and his former girl friend ended their relationship. However, by the time the romantic relationship ended, respondent had amassed a debt of more than \$7,000 on the credit card that encumbered his former girl friend. Moreover, by January 1998, respondent failed to make several minimum monthly payments so that "delinquent" or negative credit report entries were made against the credit worthiness of the crime victim. When the bank canceled the credit card, the card had been seven months in an over due status.

In February 1998, the crime victim reported respondent's abuse of her credit history to secure a credit card for acquisition of consumer goods for respondent's gratification.

5. As a result of the July 1998 conviction, the Municipal Court in Contra Costa County placed respondent on probation for a two-year term. The court required respondent to pay \$100 to the state restitution fund. Also, the court ordered respondent not to maintain a checking account or charge account, nor to have any checks or credit cards in his possession.

3rd Criminal Conviction

6. On June 3, 1996, in case number 88237-96, the Municipal Court of the City of Reno, County of Washoe, State of Nevada, convicted respondent, on his plea of nolo contendere, of the offense of violating Reno Municipal Code section 8.08.020 (Battery), a misdemeanor.

¹ The report supplements and explains the fact of the conviction. Government Code section 11513, subdivision (d).

The crime for which respondent was convicted involves moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee.

7. The facts and circumstances of the incident that led to the June 1996 conviction stem from a melee on April 26, 1996, in a Reno restaurant. During the criminal incident, respondent joined two other men in a fight against other men, including a bartender and bouncers of the Reno facility.

8. As a consequence of the conviction, the Court ordered respondent to pay a fine of \$453. The fine represented the same amount of the bail respondent tendered in order to gain his release following his arrest.

Record of Second Conviction

9. At the hearing of this matter respondent acknowledged that on July 23, 1996, the California Municipal Court in and for Contra Costa County convicted him of a misdemeanor that stemmed from a fight in a bar located in Walnut Creek, California.

The crime for which respondent was convicted involves moral turpitude and is substantially related to the qualifications, functions and duties of a real estate licensee.

10. The facts and circumstances of the incident that led to the July 1996 conviction resulted from respondent's argument with another bar patron on matters of politics. Respondent physical harmed the bar patron by blows from respondent's fists.

Record of First Conviction

11. On November 19, 1990, in case number 134154-4, the California Municipal Court in and for Contra Costa County convicted respondent of violating Penal Code section 415 (Fighting; Noise; Offensive Words), a misdemeanor.

12. Respondent represents at the hearing of this matter that the November 1990 conviction resulted from his discharge of a shotgun, or a firearm weapon. Respondent claims that when he was 19 years old, he and a friend used a shotgun to shoot "common barn-yard pigeons [that were] domestic birds gone wild." California Highway Patrol officers supposedly concluded that respondent's use of firearms occurred at a site too close to the highway. Prosecution issued a complaint under Penal Code section 246.3. (Discharging Firearm in Grossly Negligent Manner), a misdemeanor.

13. The court in 1990 penalized respondent by requiring him to pay a fine of \$150. Also, the court set out "weapon ordered destroyed."

Matters in Rehabilitation

14. Respondent is now 30 years old.

15. Respondent represents that he has fulfilled the terms of probation for all four convictions.

As to the last conviction in 1998 for forgery, respondent compellingly proclaims that he has fully reimbursed the crime victim. His term of probation apparently ended in approximately July 2000.

16. Respondent asserts at the hearing of this matter that he has fully paid the credit card debt, or otherwise, reimbursed his crime victim or the credit card issuer of the debt associated with the credit card. Respondent claims that before court sentencing he paid \$7,200 in restitution so as to extinguish the crime victim's credit card debt.

17. Respondent has worked in the mortgage lending business for about five years.

In the past, respondent worked in a non-licensed role for First Commerce Security Bank. He performed duties pertaining to retail refinancing of home loans. He claims that he closed more than 350 loans without a single complaint from a consumer. He worked for that company beginning in 1996.

In 1998, Sierra Pacific Mortgage, a real estate mortgage lending firm in of Concord, California, employed respondent as a non-licensed loan processor. He is a wholesale account executive where he works with about seventy-five licensed brokers. Respondent current supervisor – Vincent McKinley – worked with respondent at the Commerce Security Bank.

18. Respondent represents at the hearing of this matter that in 1999 he was married and that now his family includes a one-year old son. He asserts that he is a homeowner who lives in Martinez, California.

Matters that Negatively Impact Upon Respondent's Progress towards Rehabilitation

19. When respondent completed the application for licensure, only about one year, 11 months and three weeks had passed since the July 29, 1998 conviction for forgery.

20. Respondent provides no proof that he has filed a petition under Penal Code section 1203.4 with the court that entered the conviction against him in late July 1998.

21. Regarding his criminal acts of illegally procuring a credit card by misuse of the identity and credit worthiness of a young woman, respondent expresses no remorse for the aggravation and psychic upheaval caused his crime victim.

22. Respondent's accounts are not persuasive of the facts underpinning his convictions by the Reno, Nevada Municipal court in June 1996 and the Contra Costa

Municipal Court in July 1993. Respondent cavalierly discounts the two convictions as flowing from bar fights. However, police reports in the record as to the two distinct incidents suggest that respondent has a disposition for violence or drunken, irresponsible anti-social misconduct.

At the hearing of this matter, respondent offers no evidence that he has received professional counseling or psychiatric counseling to aid him in coping with difficult situations without resorting to fist fights.

23. Respondent provides no evidence that has made any significant or conscientious involvement in a community, church or privately-sponsored program designed to provide social benefits or to ameliorate social problems or ills.

24. Respondent calls no witness to the hearing of this matter.

No one appears on respondent's behalf to offer evidence pertaining to respondent's reputation in his community for honesty and integrity.

No person comes to the hearing to describe respondent's attitude towards his past criminal action that led to the 1998 conviction.

The crime victim of respondent's forgery crime does not appear in this matter so as to corroborate portions of respondent's claim that the woman's criminal complaint was due to her vengeful disposition or wrath towards respondent following the break up of their relationship.

25. Respondent gives no competent evidence that he has told his employing real estate broker about his past criminal convictions, especially the recent conviction due to his forgery on an application for a credit card issued in the name of another person. Although respondent presents a letter, dated June 14, 2001, by the Branch Manager of the real estate mortgage lender that employs respondent. The letter's author merely alludes to being aware that respondent "has applied for a real estate license." The letter's author - Vincent McKinley expresses no knowledge of respondent's conviction of the crime of forgery. The broker's branch manager does not set out his knowledge of respondent's attitude towards respondent's past criminal misconduct.

No competent evidence exists that respondent's employer knows of the Department's rationale for its denial of respondent's application for licensure.

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

LEGAL CONCLUSIONS

1. Business and Professions Code section 480 establishes that the Commissioner may deny the issuance of a license to an applicant upon evidence that an applicant has been convicted of a crime.

Business and Professions Code section 10177, subdivision (b) sets forth that the Commissioner may deny the issuance of a license to an applicant who has been convicted of a crime involving moral turpitude.

Cause to deny the license application of respondent exists under Business and Professions Code sections 480 and 10177, subdivision (b), by reason of the matters set forth in Factual Findings 3, 6 and 9.

2. The criminal conviction described in Factual Finding 11 is a matter in aggravation to the factual findings described in Conclusion 1, above. Complainant provides no evidence that respondent's conviction, when he was 19 years old, was a felony or that the crime was an offense that involved moral turpitude.

3. The matters in rehabilitation, aggravation, and as well as matters that negatively reflect upon respondent's progress towards full rehabilitation as set forth in Findings 14 through 26 have been considered in making the following order.

4. Under the guidance and spirit of California Code of Regulations, title 10, section 2911, respondent has not introduced sufficient competent and persuasive evidence that he has attained a level of rehabilitation as indicated under the criteria for rehabilitation from a criminal conviction. Respondent's case lacks evidence from individuals with whom he works, lives, recreates or engages in business activity regarding respondent reputation in any particular community for honesty, integrity and disposition for peacefulness and meaningful commitment to good citizenship.

ORDER

The application for a real estate salesperson license by respondent Ernest Joseph Davis is denied.

DATED: July 10, 2001


PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

FILED
MAR 23 2001

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Application of
ERNEST JOSEPH DAVIS,

}

Case No. H-7933 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, the Elihu Harris State
Building, 1515 Clay Street, Suite 206, Oakland, California 94612

on June 13, 2001, at the hour of 1:30 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 Hearings 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: March 23, 2001

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel
for THOMAS C. LASKEN, Counsel

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FILED
MAR 16 2001

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 ERNEST JOSEPH DAVIS,) NO. H-7933 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 cause of
17 Statement of Issues against ERNEST JOSEPH DAVIS, alleges as
18 follows:

19 I

20 ERNEST JOSEPH DAVIS (hereafter Respondent), pursuant to
21 the provisions of Section 10153.3 of the Business and Professions
22 Code, made application to the Department of Real Estate of the
23 State of California for a real estate salesperson license on or
24 about July 17, 2000, with the knowledge and understanding that
25 any license issued as a result of said application would be
26 subject to the conditions of Section 10153.4 of the Business and
27 Professions Code.

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II

The Complainant, Les R. Bettencourt, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

III

On or about July 29, 1998, in the Municipal Court of the State of California, County of Contra Costa, Respondent was convicted of violation of California Penal Code Section 470 (FORGERY), a crime involving moral turpitude, and a crime 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

On or about June 3, 1996, in the Municipal Court of the City of Reno, County of Washoe, State of Nevada, Respondent was convicted of violation of Reno Municipal Code Section 8.08.020 (BATTERY), a crime involving moral turpitude, and a crime 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.

V

On or about July 23, 1996, in the Municipal Court of the State of California, County of Contra Costa, Respondent was convicted of violation of California Penal Code Section 415 (FIGHT; NOISE; OFFENSIVE WORDS), a crime involving moral turpitude, and a crime which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations,

1 to the qualifications, functions or duties of a real estate
2 licensee.

3 VI

4 On or about November 19, 1990, in the Municipal Court
5 of the State of California, County of Contra Costa, Respondent
6 was convicted of violation of California Penal Code Section 415
7 (FIGHT;NOISE;OFFENSIVE WORDS), a crime involving moral turpitude,
8 and a crime which bears a substantial relationship under
9 Section 2910, Title 10, California Code of Regulations, to the
10 qualifications, functions or duties of a real estate licensee.

11 VII

12 The crimes of which Respondent was convicted as alleged
13 above, jointly and/or severally, constitute cause for denial of
14 Respondent's application for a real estate license under Sections
15 480(a) and 10177(b) of the California Business and Professions
16 Code.

17 WHEREFORE, the Complainant prays that the above-entitled
18 matter be set for hearing and, upon proof of the charges
19 contained herein, that the Commissioner refuse to authorize the
20 issuance of, and deny the issuance of, a real estate salesperson
21 license to Respondent, and for such other and further relief as
22 may be proper in the premises.

23
24 

25 LES R. BETTENCOURT
Deputy Real Estate Commissioner

26 Dated at Oakland, California
27 this 6th day of March, 2001.