

FILED

DEC 27 2004

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of) No. H-7967 SF
DAVID LESTER BOX,)
Respondent.)

ORDER GRANTING UNRESTRICTED LICENSE

On October 4, 2001, a Decision was rendered herein denying the Respondent's application for a real estate license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on November 21, 2001, and Respondent has operated as a restricted licensee since that time.

On January 21, 2004, Respondent petitioned for the removal of restrictions attaching to his real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's

1 record as a restricted licensee. Respondent has demonstrated to
2 my satisfaction that he meets the requirements of law for the
3 issuance to him of an unrestricted real estate salesperson
4 license and that it would not be against the public interest to
5 issue said license to him.

6 NOW, THEREFORE, IT IS ORDERED that Respondent's
7 petition for removal of restrictions is granted and that a real
8 estate salesperson license be issued to him subject to the
9 following understanding and conditions:

10 1. The license issued pursuant to this order shall be
11 deemed to be the first renewal of respondent's real estate
12 salesperson license for the purpose of applying the provisions of
13 Section 10153.4.

14 2. Within nine (9) months from the date of this order
15 respondent shall:

16 (a) Submit a completed application and pay the
17 appropriate fee for a real estate salesperson license, and

18 (b) Submit evidence of having taken and successfully
19 completed the courses specified in subdivisions (a) (1),
20 (2), (3) and (4) of Section 10170.5 of the Real Estate
21 Law for renewal of a real estate license.

22 3. Upon renewal of the license issued pursuant to this
23 order, respondent shall submit evidence of having taken and
24 successfully completed the continuing education requirements of
25 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
26 real estate license.

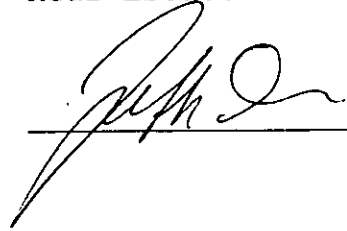
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This Order shall become effective immediately.

DATED: December 15, 2004

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 23 2001

DEPARTMENT OF REAL ESTATE

By Shelly Ely

* * *

In the Matter of the Application of)
DAVID LESTER BOX,)
Respondent.)

NO. H-7967 SF
N-2001070093

DECISION

The Proposed Decision dated September 21, 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, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. 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 application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, 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 November 12, 2001.

IT IS SO ORDERED October 4, 2001.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

DAVID LESTER BOX,

Respondent.

No. H-7967 SF

OAH No. N 2001070093

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on September 12, 2001, in Oakland, California.

Department of Real Estate Counsel Deidre L. Johnson represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California.

Joseph L. Moore, Attorney at Law, P.O. Box 6177, San Jose, California 95150-6177, represented respondent David Lester Box, who was present.

The matter was submitted on September 12, 2001.

FACTUAL FINDINGS

1. On November 21, 2000, respondent David Lester Box submitted to the Department of Real Estate (Department) an application for a real estate salesperson license.

2. On March 7, 1991, in the Superior Court of California, County of Santa Clara, respondent was convicted on a plea of guilty of violating Health and Safety Code section 11351 and Penal Code section 664 (attempted possession of controlled substance for sale), a felony. On April 2, 1991, imposition of sentence was suspended and respondent was sentenced to one year in county jail, with credit of 162 days for time served, and placed on formal probation.

3. On August 6, 1993, in the Municipal Court of California, Santa Clara County Judicial District, San Jose Facility, respondent was convicted on a plea of nolo contendere of violating Health and Safety Code section 11350(a) (possession of controlled substance), a felony, and he was certified to Santa Clara County Superior Court for further proceedings and judgment. On August 30, 1993, respondent was sentenced to one year and four months in state prison, with credit of 242 days for time served.

5. On August 20, 1993, respondent's probation on his 1991 conviction was revoked and he was sentenced to two years in state prison, with credit of 613 days for time served.

6. Respondent was released from prison on January 31, 1994. He completed parole on March 2, 1995.

7. Respondent had a long history of substance abuse and minor drug dealing before he was convicted of the drug offenses in 1991 and 1993. He started using drugs when he was 21 (he is now 50), and by his late 20's he was seriously addicted to cocaine and alcohol. Respondent's marriage broke up shortly after his son was born in 1979. He was convicted of cocaine possession in 1987, but he successfully completed a drug diversion program and the conviction was dismissed. Respondent's 1991 conviction resulted from an October 1990 arrest after purchasing what he thought was one kilo of cocaine from an undercover DEA agent. Respondent was convicted and his probation was revoked in August 1993 after probation officers found cocaine in his possession in January 1993.

8. Respondent has not used alcohol or drugs since his arrest in January 1993. During his incarceration in the Santa Clara County Jail prior to sentencing, he participated in the JET (Jail Education and Training) program, a very intense drug program, and when he got to Soledad prison, he went to nightly NA/AA (Narcotics Anonymous/Alcoholics Anonymous) meetings. Respondent had previously participated in the JET program when he was in jail on his 1991 conviction, but he had gone back to using drugs after his release. He now sees that he was not fully committed to changing his lifestyle at that time. Of great significance to respondent is the fact that he did not tell his son the truth when he went to jail on the first conviction. (He told his son that he was moving to Canada.) Respondent believes his dishonesty set him up for failure in his recovery. When he was sentenced to prison in 1993, respondent told his son the truth about his drug and alcohol problem and that he was going to prison. His son cried, and this helped strengthen respondent's resolve to change. Being in prison was a very sobering experience, and respondent became determined that he would not end up there again.

9. In the first 90 days after he was released from prison, respondent attended at least 90 NA/AA meetings. For about the next three years, he attended five to seven meetings a week. Since then, respondent has attended meetings less regularly, on an "as needed" basis. He has no contact with former associates who used drugs, and he is not around drugs and alcohol, other than in social situations where someone may have a beer with dinner, for example.

10. Respondent's main support network is through his church, the First United Methodist Church in Campbell. After he got out of jail on his 1991 conviction and before his 1993 arrest, he attended this church with a friend who was a member and met the pastor, Richard Corson. Corson corresponded with respondent while he was in prison and encouraged him to turn his life around. He invited respondent back to the church community after

his release from prison, and respondent began attending services and gradually involving himself in more church activities. He is a long-time member of a men's support group, he sang in the choir, and he has served in many volunteer positions and on a number of church committees. Corson has developed a close relationship with respondent as his friend, counselor and spiritual guide. In his testimony at the hearing, Corson praised respondent as a trustworthy, responsible and faithful member of the church community.

11. Since he got out of prison, respondent has worked hard to build a strong relationship with his son. He voluntarily paid a large sum of money to his ex-wife for child support, and he supported his son financially when he went to college. His son now lives in San Diego and is self-supporting. Respondent invited his son to be present last January when he spoke publicly to his church about his drug and alcohol problems and the role of the church in his recovery.

12. After he got out of prison, respondent began working in the moving industry. He worked for Mayflower and United Van Lines, and he became a certified moving consultant in 1996. Respondent currently works in sales for Ace Worldwide Moving and Storage, going to people's homes and giving estimates for moving services. For the last three years, he was the president of the California Chapter of Certified Moving Consultants.

13. About a year ago, respondent had been laid off and he became interested in a career in real estate. An agent at Century 21-Champion in San Jose referred him to their training program. Respondent completed the eight-week program, and he attends weekly sales meetings at Century 21-Champion in the hope that he will eventually get his real estate salesperson license and be able to work there. John Piper, the co-owner and broker of record, and Elise Erwin, the vice-president for sales and head of the coaching program for new agents, testified on respondent's behalf. They both feel confident that respondent will be an honest, ethical and trustworthy agent. He will be required to complete the one-year coaching program in which he will be closely supervised. Respondent has been forthright with Piper and Erwin about his criminal record and past substance abuse problem.

14. Many of respondent's friends and associates submitted letters on his behalf, attesting to the positive changes he has made in his life, his honesty, trustworthiness and good character.

15. Respondent has not completed all the courses required under Business and Professions Code section 10153.4.

LEGAL CONCLUSIONS

1. Complainant alleges that each of respondent's convictions constitutes cause to deny his application for a real estate license under Business and Professions Code sections 480(a) and 10177(b). Section 480(a) authorizes the denial of a license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Section 10177(b), which is specific to real estate

licenses, authorizes the denial of a license if the applicant has been convicted of a felony or a crime involving moral turpitude. Although the latter statute does not contain the "substantially related" language, the law is clear that a conviction is not actionable under this section unless it is for a crime that is substantially related to the qualifications, functions or duties of a real estate licensee.¹

Title 10, California Code of Regulations section 2910 sets forth the criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves "[d]oing any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator..." (subd. (a)(8)), and an attempt to commit such a crime is also substantially related (subd. (b)).

2. Respondent's 1991 conviction for attempted possession of a controlled substance for sale was for a crime involving moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee. The crime of possession of a controlled substance for sale meets the substantial relationship criteria because it involves illegal activity for personal gain. An attempt to commit this crime likewise is substantially related. Cause to deny respondent's license application exists under Business and Professions Code sections 480(a) and 10177(b).

3. Respondent's 1993 conviction was for a felony – possession of a controlled substance, but this crime does not have (and the statement of issues does not allege that it has) a substantial relationship to the qualifications, functions or duties of a real estate licensee. Accordingly, this conviction does not constitute cause to deny respondent's license application under Business and Professions Code sections 480(a) and 10177(b).

4. Although respondent's 1993 conviction is not actionable, it does show a lack of rehabilitation from his 1991 conviction, and respondent would not argue with this. However, since his last conviction, respondent has turned his life around and made excellent progress in his rehabilitation. He has been clean and sober for eight years, and he has a strong support system in place for his continued recovery. Since he was released from prison seven years ago, respondent has led a productive and law-abiding life. He is respected by friends and associates for his honesty and integrity. Respondent has established that he is sufficiently rehabilitated that it would not be contrary to the public interest to grant him a restricted real estate license.

ORDER

The application of respondent David Lester Box for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to him 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 Busi-

¹ *Brandt v. Fox* (1979) 90 Cal.App.3d 737.

ness and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that 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. Respondent's conviction, including by a plea of nolo contendere, of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.
 - b. 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 the 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 one year has 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 real estate license is required.
4. Respondent's restricted real estate salesperson license is issued subject to the requirements of section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within 18 months of the issuance of the restricted license, submit evidence satisfactory to the Real Estate Commissioner of successful completion, at an accredited institution, of two of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective 18 months after the date of its issuance. Said sus-

pension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.

5. Pursuant to section 10154, if respondent has not satisfied the requirements for an unqualified license under section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: September 21, 2001

Nancy L. Rasmussen
NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

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

FILED
JUL 06 2001

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

DAVID LESTER BOX

By Shelly Ely

Case No. H-7967 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 12, 2001, at the hour of 10:30 A.M., 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: JULY 6, 2001

By

Larry Alamao

LARRY ALAMAO,

Counsel

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187000
5 Sacramento, CA 95818-7000
6
7 Telephone: (916) 227-0789
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FILED
JUN 20 2001

DEPARTMENT OF REAL ESTATE

By Shelly Fly

9 BEFORE THE
10 DEPARTMENT OF REAL ESTATE
11 STATE OF CALIFORNIA
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13 * * *

14 In the Matter of the Application of)
15 DAVID LESTER BOX,)
16 Respondent.)

NO. H-7967 SF
STATEMENT OF ISSUES

17 The Complainant, LES R. BETTENCOURT, a Deputy Real
18 Estate Commissioner of the State of California, for Statement of
19 Issues against DAVID LESTER BOX (hereinafter "Respondent"), is
20 informed and alleges as follows:

21 I

22 Respondent made application to the Department of Real
23 Estate of the State of California for a real estate salesperson
24 license on or about November 21, 2000, with the knowledge
25 and understanding that any license issued as a result of said
26 application would be subject to the conditions of Section 10153.4
27 of the Business and Professions Code.

1 II

2 Complainant, LES R. BETTENCOURT, a Deputy Real Estate
3 Commissioner of the State of California, makes this Statement of
4 Issues in his official capacity and not otherwise.

5 III

6 On or about March 7, 1991, in Case No. 144648 in the
7 Superior Court, County of Santa Clara, Respondent was convicted
8 of a violation of Section 11351 of the California Health and
9 Safety Code and Section 664 of the California Penal Code
10 (Attempted Possession of Controlled Substance for Sale), a felony
11 involving moral turpitude which bears a substantial relationship
12 under Section 2910, Title 10, California Code of Regulations, to
13 the qualifications, functions, or duties of a real estate
14 licensee.

15 IV

16 On or about August 6, 1993, in Case No. 163523, in the
17 Superior Court, County of Santa Clara, Respondent was convicted
18 of a violation of Section 11350(A) of the California Health and
19 Safety Code (Possession of a Controlled Substance), a felony.

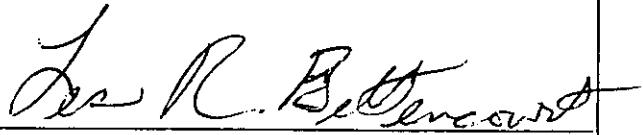
20 V

21 The crimes of which Respondent was convicted, as
22 alleged in Paragraphs III and IV, constitute cause for denial of
23 Respondent's application for a real estate license under Sections
24 480(a) and 10177(b) of the California Business and Professions
25 Code.

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27 ///

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

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11 
12 LES R. BETTENCOURT
13 Deputy Real Estate Commissioner

14
15 Dated at Oakland, California,
16 this 1st day of June, 2001.