

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

JAE DUCK PARK

Respondent

Case No. H-8252 SF

OAH No. N2003020488

PROPOSED DECISION

This matter was heard before Robert R. Coffman, Administrative Law Judge, Office of Administrative Hearings, State of California, in Oakland, California, on May 1, 2003.

The respondent, Jae Duck Park, was personally present and was represented by his attorney, James J. Park.

David Peters, Counsel for the Department of Real Estate, represented the complainant, Les R. Bettencourt.

FACTUAL FINDINGS

1. Les R. Bettencourt made the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent made application to the Department of Real Estate for a real estate salesperson license on or about May 21, 2002, with the knowledge and understanding that any license issued as a result of his application would be subject to the conditions of section 10153.4 of the Business and Professions Code.

3. On or about June 6, 1991, in the Municipal Court, County of Alameda, State of California, respondent was convicted of violating Penal Code section 148.9 (providing false information to a peace officer), a crime involving moral turpitude which bears a substantial relationship to the qualification, functions, or duties of a real estate licensee.

4. On or about April 11, 1994, in the Municipal Court, County of Alameda, State of California, respondent was convicted of violating Vehicle Code section 23152(a) (driving under the influence).

5. In response to Question 25 of the application for a real estate license, "Have you ever been convicted of any violation of law?," respondent answered "No."

6. The circumstances of the 1991 conviction were that on May 10, 1991, respondent was stopped on a traffic violation and was asked by the officer for his driver's license. After responding that he did not have a driver's license in his possession, he was asked for "any ID," so he showed the officer the vehicle registration form, which was in his wife's name.

On the 1991 conviction respondent was sentenced to three years probation.

No evidence was offered as to the circumstances surrounding the 1994 conviction for driving under the influence. On that conviction respondent was placed on probation for three years on conditions, including payment of a fine and four days in the county jail.

7. Before answering Question 25 on the application for a real estate license respondent inquired about his 1994 conviction with the clerk's office, Alameda County Superior Court, and was told the case had been terminated. This is corroborated by the court record (Exhibit 5 in evidence) which states, in part, "Case Terminated 4-11-97." Respondent understood that to mean the case had been cleared and he would not have to disclose it on his application.

At the time respondent submitted his application he had forgotten about the 1991 conviction. He only remembered it when a Department of Real Estate representative showed him the record of conviction.

8. In September 2002 respondent's 1991 conviction was expunged, i.e., dismissed under the provisions of Penal Code section 1203.4.

9. Respondent is employed as a warehouse manager in South San Francisco.

10. While respondent's explanations for his failure to reveal on his application his two convictions would ordinarily seem suspect, they were consistent with respondent's demeanor, appearance and behavior at the hearing in this matter.

Respondent is a native of Korea. He came to the United States in 1985. His command of the English language is limited and it can be inferred it was even more limited in 1991. The court record of the 1991 conviction indicates a Korean language

interpreter was present to interpret for him. That matter arose out of a traffic stop and respondent's misunderstanding of what the officer required of him.

Respondent has difficulty in understanding relatively simple questions put to him in English. At the hearing in this matter he was not only nervous and emotional, but he displayed a poor grasp of the questions put to him, and a limited ability to provide responsive answers. He also has a rather severe hearing problem that exacerbates his lack of ability to understand and communicate in English. Given his unfamiliarity with American law and court proceedings it is understandable that he regarded the 1991 matter as a relatively minor traffic violation, and hence forgot about it and/or did not consider it a conviction of a crime that required disclosure on the application for a real estate license.

LEGAL CONCLUSIONS

1. Cause was established to deny the application under sections 480(a) and 10177(b) of the Business and Professions Code, under the facts in Findings 3 and 4.
2. Cause was established to deny the application under sections 10177(a) and 480(c) of the Business and Professions Code, under the facts in Finding 5.
3. While respondent did not intentionally falsify his application for a real estate license, he did make a material misrepresentation of fact by failing to disclose his two convictions.
4. Respondent's failure to reveal his convictions on the application was not from a lack of honesty, but from the factors set forth in Finding 10.
5. The suggestion may have merit that respondent might have difficulty understanding real estate transactions, particularly those involving complex matters.¹ There is no question that knowledge of real estate law and practice and the ability to apply such knowledge to concrete situations should be an important element in evaluating candidates for a license. However, respondent's ability or inability to do so is not an issue in this matter. The factors listed in Finding 10 are relevant to respondent's failure to disclose his convictions.
6. Respondent's conviction for providing false identification is twelve years old. It appears to be a one time isolated event. Respondent has one driving under the influence conviction. There is no evidence that he has a drinking problem. There is no evidence that he has operated a vehicle while under the influence or with a blood alcohol

¹ Respondent's attorney's representation that respondent will be primarily representing those fluent in the Korean language may ameliorate this concern.

content in excess of the legal minimum, other than on the one occasion in 1994. Issuing respondent a restricted license would not be against the public interest.

ORDER


Respondent'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 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 Business and Professions Code and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of the 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) 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; or
 - (b) 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.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two 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:
 - (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 performance by the restricted licensee relating to activities for which a real estate license is required.

4. Respondent's restricted real estate salesperson license is issued subject to the provisions of section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the 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 eighteen (18) months after the date of its issuance. Said suspension 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 the 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: 5-7-03



ROBERT R. COFFMAN
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
FEB 14 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

JAE DUCK PARK,

Case No. H-8252 SF

OAH No.

By Shelly Ely

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, ELIHU M. HARRIS BUILDING, 1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612 on THURSDAY--MAY 1, 2003, at the hour of 1:30 P.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: FEBRUARY 14, 2003

By

David A. Peters

DAVID A. PETERS,

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 Telephone: (916) 227-0789
7 -OR- (916) 227-1126 (DIRECT)

FILED

NOV 23 2002

DEPARTMENT OF REAL ESTATE

By Laurie L. Zee

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 JAE DUCK PARK,)
13 Respondent.)

No. H-8252 SF

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 JAE DUCK PARK (hereinafter "Respondent"), is
18 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 May 21, 2002, with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to the conditions of Section 10153.4
25 of the Business and Professions Code.

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II

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

In response to Question 25 of said application, to wit: "Have you ever been convicted of any violation of law?", Respondent answered "No".

IV

On or about June 6, 1991, in the Municipal Court, County of Alameda, Respondent was convicted of a violation of Section 148.9 of the California Penal Code (Providing false identification to a peace officer), 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.

V

On or about April 11, 1997, in the Municipal Court, County of Alameda, Respondent was convicted of a violation of Section 23152(a) of the California Vehicle Code (Driving while under the influence of any alcoholic beverage or drug), 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.

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VI

The crimes of which Respondent was convicted, as alleged in Paragraphs IV and V, 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.

VII

Respondent's failure to reveal the convictions set forth in Paragraphs IV and V above in said application constitutes the procurement of a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which failure is cause for denial of Respondent's application for a real estate license under Sections 480(c) and 10177(a) 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 B. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 29th day of October, 2002.