

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

DOUGLAS PAUL BOYENGA,

Respondent.

No. H-8319 SF

OAH No. N 2003030749

PROPOSED DECISION

Administrative Law Judge Victor D. Ryerson, Office of Administrative Hearings, State of California, heard this matter on June 5, 2003, in Oakland, California.

Department of Real Estate Counsel David A. Peters represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California.

Respondent Douglas Paul Boyenga appeared and represented himself.

The matter was submitted on June 5, 2003.

FACTUAL FINDINGS

1. On July 15, 2002, the Department of Real Estate (Department) received an application for a real estate salesperson license from respondent. The application was dated July 10, 2002.

2. On May 18, 1999, in the Superior Court, County of Alameda, respondent was convicted on a plea of nolo contendere of violating Section 11358 of the California Health and Safety Code (Unauthorized Cultivation, Harvesting or Processing of Marijuana), a felony. Respondent received a sentence of five years of probation and was ordered to pay fine of \$5000, restitution of \$200, and additional fees of \$250. He also forfeited his automobile.

3. The facts and circumstances of the conviction are that respondent engaged in indoor marijuana cultivation on his property. He grew the marijuana for sale to medicinal marijuana clubs under color of Proposition 215, but also sold some of it to individual buyers. His motivation for engaging in these activities was to "help pay the rent". Although he believed that growing marijuana for medicinal use was legal under Proposition 215, he concedes that the quantities he was growing and selling exceeded allowable limits, and he

also knew that the sales to private individuals were not sanctioned under Proposition 215. He characterized the rules upon which he relied as a "wishy-washy gray area."

4. Respondent entered into this enterprise with one Eric Hauser. Respondent and Hauser were roommates and conducted the business together. The two had a falling-out after respondent's arrest, apparently over money, and are no longer in contact with each other.

5. With his probation officer's assistance respondent's probation was progressively reduced by the court for good behavior, and he completed his probation on February 1, 2002, more than two years early. He has paid all of the fines and fees. His formal rehabilitation is therefore complete.

6. On February 7, 2003, the Court granted respondent's petition to expunge his record of the conviction under Section 1203.4 of the California Penal Code.

7. After his conviction respondent worked for about six months as a day trader. He was unable to continue this employment when the economy took a downturn, and he returned to working in residential construction and renovation with his older brother, a licensed contractor, his employment before he was convicted. He has renovated several homes and resold them at a substantial profit since his conviction.

8. Respondent is a graduate of San Jose State University. He was provisionally licensed as an appraiser, and worked in that field for about two years in 1992 and 1993. He has taken real estate courses and other coursework in junior college.

9. Respondent has not received any drug counseling, because his probation officer told him it was unnecessary, but he did receive counseling for depression after his conviction. His mother paid for this counseling.

10. Respondent and his wife dissolved their marriage after he was convicted. The dissolution was amicable, and he has satisfied any financial commitments to his ex-wife resulting from their dissolution. A letter from his ex-wife attesting to these facts corroborates respondent's testimony to this effect.

11. Within the past six months respondent participated in Habitat for Humanity for a five day period.

12. Respondent's goal is to take the broker's examination. He wants to be an agent or mortgage broker in a real estate related enterprise with other family members. His testimony about his aspirations and the family's plans to form this business were corroborated by his mother and sister-in-law, and is credible.

13. Respondent's application states that he has passed the real estate salesperson licensing examination twice, and he testified that he has completed all of the coursework for

a broker's license. The record does not otherwise indicate whether respondent has completed all of the courses required under Business and Professions Code Section 10153.4.

LEGAL CONCLUSIONS

1. Unauthorized Cultivation, Harvesting or Processing of Marijuana is a felony involving moral turpitude, and is substantially related to the qualifications, functions or duties of a real estate licensee. Respondent's conviction constitutes cause to deny respondent's license application under Business and Professions Code sections 480(a) and 10177(b).

2. Respondent is substantially rehabilitated.

a. Respondent admits being guilty of the acts for which he was convicted, and accepts responsibility for those acts. He admits that what he did was a mistake, and regrets that he engaged in the activities that resulted in his conviction. He has not engaged in the same or similar conduct since his conviction, and drug testing confirmed that he did not use drugs while he was on probation.

b. Respondent no longer associates with Eric Hauser, with whom he had operated the unlawful marijuana growing enterprise.

c. Respondent received counseling to deal with depression he experienced after he was convicted, is successfully employed, and has an amicable and cooperative relationship with his ex-wife, demonstrating that he is mature and responsible. His aspiration to participate in the creation and operation of a family real estate business indicates that he has realistic, concrete career goals, the attainment of which will deter him from engaging in future criminal activity. His conviction appears to be the result of an isolated instance of poor judgment, and is inconsistent with his history of hard work and enterprise. It is doubtful that he will revert to criminal behavior if he obtains a license from the Department of Real Estate, because that would jeopardize the accomplishment of his legitimate business goals.

3. Respondent has the strong support of other family members, who confirmed respondent's testimony concerning the plans to form a family business based upon real estate. It was apparent at the hearing that these family members have a close personal relationship. Respondent lived with his mother for three years after he was convicted. She testified that she is taking the licensing examination for real estate salesperson, and wants the respondent to join the rest of the family in its real estate venture. His sister-in-law, a licensed real estate salesperson, testified that the family has been taking real estate classes together, and that working together is "powerful." He has had a successful working relationship with his brother for many years. The degree of support he has from these family members, who share a mutual interest in creating a legitimate business involving activities licensed by this Department, will be a strong deterrent against any inclination he might have to return to criminal activity for personal gain.

4. It would not be contrary to the public interest to grant respondent a restricted real estate license.

ORDER

The application of respondent Douglas Paul Boyenga 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 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 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 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 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 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:

July 22, 2003



VICTOR D. RYERSON
Administrative Law Judge
Office of Administrative Hearings

FILED
MAR 17 2003

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

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Application of

DOUGLAS PAUL BOYENGA,

}

Case No. H-8319 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 5, 2003**, at the hour of **9:00 AM**, 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 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 his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: March 14, 2003

DEPARTMENT OF REAL ESTATE
By David A. Peters
DAVID A. PETERS, Counsel
RE 500 (Rev. 8/97)

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

FILED
FEB 19 2003

DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Application of)
11 DOUGLAS PAUL BOYENGA,) NO. H-8319 SF
12 Respondent.) STATEMENT OF ISSUES

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

17 I

18 Respondent made application to the Department of Real
19 Estate of the State of California for a real estate salesperson
20 license on or about July 15, 2002.

21 II

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

25 III

26 On or about May 18, 1999, in the Superior Court, County
27 of Alameda, Respondent was convicted of a violation of Section

1 11358 of the California Health and Safety Code (Unauthorized
2 Cultivation, Harvesting or Processing of Marijuana), a crime
3 involving moral turpitude which bears a substantial relationship
4 under Section 2910, Title 10, California Code of Regulations, to
5 the qualifications, functions, or duties of a real estate licensee.

6 IV

7 The crime of which Respondent was convicted, as alleged
8 in Paragraph III, constitutes cause for denial of Respondent's
9 application for a real estate license under Sections 480(a) and
10 10177(b) of the California Business and Professions Code.

11 PRIOR PROCEEDINGS

12 Effective November 16, 2000, in Case No. H-7840 SF
13 before the State of California Department of Real Estate, the
14 application of Respondent for a real estate salesperson license
15 was denied for violation of Sections 480(a) and 10177(b) of the
16 California Business and Professions Code.

17 WHEREFORE, the Complainant prays that the above-
18 entitled 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 under other provisions of law.

23
24 
25 LES R. BETTENCOURT
Deputy Real Estate Commissioner

26 Dated at Oakland, California,
27 this 20th day of January, 2003.