

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
JAN - 9 2004

DEPARTMENT OF REAL ESTATE

Laurie B. Zinn

In the Matter of the Application of)
MICHAEL VINCENT GREGORY,) NO. H-8547 SF
Respondent.) OAH NO. N-2003120038

DECISION

The Proposed Decision dated December 18, 2003, 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 January 29, 2004.

IT IS SO ORDERED December 30, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

John R. Liberator

BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of :

MICHAEL VINCENT GREGORY,

Respondent.

Case No. H-8547 SF

OAH No. N2003120038

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California on December 3, 2003.

James L. Beaver, Counsel, represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner.

Philip T. Bazzano, Esq., Hinton, Cochran & Borba, LLP, 50 Old Courthouse Square, Suite 601, Santa Rosa, CA 95404, represented respondent Michael Vincent Gregory who was present.

The matter was submitted on December 3, 2003.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt made and filed the statement of issues in his capacity as a Deputy Real Estate Commissioner of the State of California.
2. On or about May 27, 2003, respondent Michael Vincent Gregory filed with the Department of Real Estate an application for a real estate salesperson license. Respondent did so knowing that any license issued as a result of his application would be subject to the conditions of Business and Professions Code section 10153.4.
3. On or about April 29, 1991, respondent was convicted in the County Court, Pinellas County, Florida, on his plea of nolo contendere to a violation of Florida Statute 812.015(2), petit theft. Theft is a crime involving moral turpitude and is an offense that is substantially related to the qualifications, functions, and duties of a real estate licensee in that it involves the fraudulent appropriating of property belonging to another.

Respondent was placed on probation for six months, fined \$75, ordered to take a shoplifting awareness course, and to perform community service. Respondent complied with all terms and successfully completed his probation.

4. The facts and circumstances of the offense were that that respondent took two cartons of cigarettes from a Winn Dixie Grocery Store without paying for them. Respondent, who was 19 years old at the time, did so to impress two girls that were with him. Respondent had formerly been an employee of the store and knew whether the cartons were kept behind an information desk. He reached in and removed the cartons when the employee had left the booth. Respondent was apprehended in the parking lot.

5. Respondent has had no other criminal convictions.

6. Respondent answered "No" to Question No. 25 of the application, which asked him:

Have you ever been convicted of any violation of law?
Convictions expunged under Penal Code section 1203.4 must be disclosed. However, you may omit minor traffic violations which do not constitute a misdemeanor or felony offense.

The application further explains to the applicant what Question No. 25 means in these terms: "Convicted" as used in Question 25 includes a verdict of guilty by judge or jury, a plea of guilty or of nolo contendere, or a forfeiture of bail in municipal, superior or federal court. All convictions must be disclosed whether or not the plea or verdict was set aside, the conviction against you dismissed, or expunged or if you have been pardoned. Convictions occurring while you were a minor must be disclosed unless the record of conviction has been sealed under Section 1203.45 of the California Penal Code or Section 781 of the California Welfare and Institutions Code."

Respondent signed the application under penalty of perjury certifying that the answers and statements he gave therein were true and correct. Respondent's answer was neither true nor correct as respondent did not disclose his prior conviction as set forth in Factual Finding 3.

7. With respect to the completion of the application, respondent explained that he believed he was answering the question correctly. He did not remember all the details of the offense and thought that he had been a minor at the time of its commission. Respondent did not check any court records before completing the application. But even if he had been a minor at the time of the conviction (which he was not), the unambiguous language of the application required him to disclose the conviction. While it was not established that respondent was attempting to hide the conviction from the Department, it was established that respondent was not careful when he completed the application and signed it under penalty of perjury.

8. From February of 1990 to March of 2003 respondent was employed by Allstate Insurance Company. His most recent position, Senior Claims Adjustor, was the highest level adjustor position in the company. In that capacity respondent handled the most serious bodily injury claims filed against the company and had the authority to settle claims without management approval. Respondent earned numerous awards from Allstate during his tenure there, and was involved in organizing that agency's participation in the Cancer Society's Relay for Life.

Respondent left the company as it closed the branch he worked in and he did not wish to relocate to Sacramento.

9. Scott Van Der Linden was respondent's supervisor at Allstate from 1996 to July of 2002. He attests that respondent was an honest and loyal employee who demonstrated the highest integrity.

California attorneys Austin D. Garner and John E. Borba worked with respondent for several years in connection with their law firm's handling of cases for Allstate. Garner appeared in more than 15 settlement conferences with respondent; Borba appeared in more than 25. Each attests that respondent conducted himself professionally and honestly.

10. Respondent is single and has no children. In 1995 he earned two Bachelor of Arts degrees from the University of Southern Florida in Tampa Bay - one in speech therapy and one in gerontology.

11. If respondent obtains a real estate license he has a position waiting for him at Coldwell Banker in Petaluma.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 480, subdivision (a) and section 10177, subdivision (b), the Commissioner may deny the issuance of a license to an applicant who has entered a plea of guilty or nolo contendere to "a felony, or a crime involving moral turpitude," if the crime is "substantially related to the qualifications, functions, or duties" of a real estate licensee. By reason of the matters set forth in Factual Findings 3 and 4, respondent was convicted of a misdemeanor offense of petty theft more than 13 years ago. By reason of the matters set forth in Factual Findings 3, 5, 8, 9, 10 and 11, it is concluded that respondent has demonstrated that he is rehabilitated from this conviction.

Under Business and Professions Code section 480, subdivision (c), an application for licensure may not be denied solely on the basis of a misdemeanor conviction if the applicant has met all applicable criteria developed by the agency or board to evaluate the rehabilitation of the applicant. Respondent has done this. His application may not be denied under Business and Professions Code section 480.

Cause does exist to deny respondent's application under Business and Professions Code section 10177, subdivision (b). But in light of the age of the conviction and the rehabilitation demonstrated by respondent, it would not be in the interests of justice to deny respondent's application on this basis.

2. Under Business and Professions Code sections 480, subdivision (c), the Real Estate Commissioner may deny an application for licensure if the applicant knowingly makes a false statement of fact required to be revealed in the application. Under Business and Professions Code section 10177, subdivision (a) the Commissioner may deny an application for a real estate license if the applicant attempted to procure a real estate license by fraud, misrepresentation or deceit, or made any material misstatement of fact in the application for licensure. By reason of the matters set forth in Factual Findings 6 and 7, it was established that respondent made a material misstatement of fact in his application for licensure. Cause exists to deny respondent's application for licensure under Business and Professions Code section 10177, subdivision (a).

3. All matters set forth in the Factual Findings were considered in reaching the conclusion that the public will be adequately protected by allowing respondent to obtain a conditional license on a restricted basis. It is of concern that respondent completed his application for licensure in a manner which was careless at best. Nevertheless, it was not established that respondent has a dishonest character or is otherwise unfit to hold a real estate license. Respondent's lengthy career at Allstate suggests just the opposite. The public will be adequately protected by the following order:

ORDER

Respondent's application for a real estate salesperson license is denied by reason of Legal Conclusion 2; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.6 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 said Code:

1. 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 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 respondent of lifting of the suspension.

2. 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.

3. 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 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; or

(b) 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.

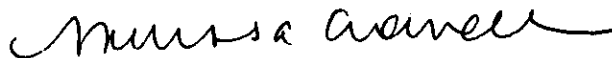
4. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two (2) years have elapsed from the date of issuance of the restricted license to respondent.

5. 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 license is required.

DATED: December 18, 2003



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

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

FILED
OCT 27 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

MICHAEL VINCENT GREGORY,

Case No. H-8547 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, CA 94612** on **WEDNESDAY, DECEMBER 3, 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 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 his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: OCTOBER 27, 2003

DEPARTMENT OF REAL ESTATE

By James L. Beaver
JAMES L. BEAVER, Counsel (12)

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)
7

FILED
OCT - 6 2003

DEPARTMENT OF REAL ESTATE

By Laurie G. Zier

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 MICHAEL VINCENT GREGORY,)
13 Respondent.)

No. H-8547 SF

STATEMENT OF ISSUES

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15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against MICHAEL VINCENT GREGORY (hereinafter
18 "Respondent") alleges as follows:

19 I

20 Respondent, pursuant to the provisions of Section
21 10153.3 of the Business and Professions Code, made application
22 to the Department of Real Estate of the State of California for
23 a real estate salesperson license on or about May 27, 2003 with
24 the knowledge and understanding that any license issued as a
25 result of said application would be subject to the conditions of
26 Section 10153.4 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.

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 April 29, 1991, in the County Court, Pinellas County, Florida, Respondent was convicted of a violation of Florida Statute 812.015(2) (Petit Theft), 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

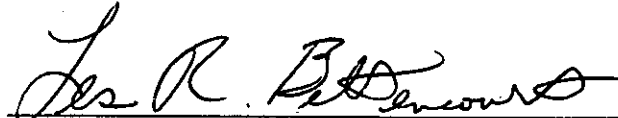
Respondent's failure to reveal the conviction set forth in Paragraph IV above, in said application constitutes the attempted procurement of a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which is cause for denial of Respondent's application for a real estate license under Section 10177(a) and 480(c) of the California Business and Professions Code.

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VI

The crime of which Respondent was convicted, as alleged in Paragraph IV above, 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 in the premises.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 25th day of September, 2003.