

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JOSEPH BRENDAN CODY,

Respondent.

No. H-8765 SF

OAH No. N2004050565

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on September 16, 2004, in Oakland, California.

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

John J. Conneely, Attorney at Law, represented respondent Joseph Brendan Cody, who was present.

The matter was submitted on September 16, 2004.

FACTUAL FINDINGS

1. Respondent Joseph Brendan Cody submitted to the Department of Real Estate (Department) an application for a real estate salesperson license. The application was dated February 11, 2003, and the Department received it on March 7, 2003.

2. On November 6, 1986, in the Superior Court of California, County of San Mateo, respondent was convicted on a plea of nolo contendere of a violation of Penal Code section 484 (petty theft). On January 8, 1987, respondent was placed on probation for one year. When he completed probation the conviction was expunged.

3. The facts and circumstances of this conviction are that on July 10, 1986, the brother of respondent's roommate and the brother's friend robbed a Domino's Pizza delivery person of two pizzas in the vicinity of respondent's apartment. The brother was staying with respondent and his roommate, so he and his friend brought the stolen pizzas to their apartment. Respondent was not involved in the robbery and did not know about the crime before the pair arrived with the pizzas. The perpetrators then left, and respondent does not know where the pizzas ended up. Not long after that, a police officer came to respondent's

apartment and questioned him. Respondent denied any knowledge of the robbery. When the police later obtained information that led them back to respondent, he was charged with grand theft and petty theft. Respondent explains that he entered the plea to petty theft because the pizzas were brought to his apartment after the robbery. Respondent was 19 years old at the time.

4. In or about January 1990, in the Superior Court of California, County of San Mateo, respondent was convicted of a violation of Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol).

5. On August 20, 1992, in the Superior Court of California, County of San Mateo, respondent was convicted on a plea of nolo contendere of a violation of Penal Code section 647, subdivision (f) (disorderly conduct – under the influence). Imposition of sentence was suspended and respondent was placed on court probation for two years. He was ordered to abstain from the use or possession of alcoholic beverages and to pay a fine and fees totaling \$325.

6. On or about July 8, 1994, in the Superior Court of California for the City and County of San Francisco, respondent was convicted of a violation of Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol).

7. On or about November 17, 1995, in the Superior Court of California, County of San Mateo, respondent was convicted of a violation of Penal Code section 647, subdivision (f) (disorderly conduct – under the influence).

8. On December 10, 2002, in the Superior Court of California, County of San Mateo, respondent was convicted on a plea of nolo contendere of a violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level 0.08 percent or more). Imposition of sentence was suspended and respondent was placed on court probation for three years. Conditions of probation included serving 48 hours in the County Jail, with a recommendation to the Sheriff's Work Program, and paying a fine and fees totaling \$1,356. Because this was respondent's first DUI offense in seven years, he was required to complete the First Offender Drinking Driver Program.

9. Respondent is a recovering alcoholic, and his DUI convictions in 1990, 1994 and 2002 and his disorderly conduct convictions in 1992 and 1995 reflect a long history of alcohol abuse. Respondent was required to complete a Drinking Driver Program after each DUI conviction. In connection with the probation on his 1994 conviction, respondent participated in a treatment program at the Biochemical Restoration Project in Burlingame. This program, which he completed on March 4, 1997, involved 40 hours of group and individual sessions and a three-month follow-up. When he was convicted in 1995, respondent was ordered to attend 75 AA meetings. He fulfilled this requirement between October 1995 and March 1996. After March 1996, respondent attended AA "off and on" and did not drink for six years. Not long before his DUI arrest on October 5, 2002, respondent relapsed and started drinking again. His current sobriety dates from that last arrest, when he

woke up in jail and realized that he had a six-year-old daughter, a home and too much to lose to keep drinking. He wrote out a list of the positives and negatives of drinking and found that there were no positives. Since then, respondent has been actively involved in AA, attending meetings every day for awhile and now attending three or four meetings per week. He has a sponsor with whom he talks almost every day, and he frequently reads the Big Book of AA. Respondent completed the First Offender Drinking Driver Program on February 28, 2003. He has attended Alanon to deal with issues related to his mother's alcoholism. (In addition to his mother, two of respondent's brothers are also alcoholics.) Respondent is more committed to sobriety now than he was from 1996 to 2002, and he has a better network of support for his recovery. He did not have an AA sponsor before, and he used to feel he could handle alcohol, which he now knows he cannot.

10. Respondent has paid his fine and fees, and he is in compliance with the terms and conditions of his criminal probation. He is scheduled to complete probation in December 2005.

11. For the last seven and one-half years, respondent has worked in the title insurance business, first for Fidelity National Title Insurance and, for the last three and one-half years, Stewart Title of California. As a marketing representative he calls on real estate brokers, mortgage brokers and others who use title insurance services. Respondent is seeking a real estate license so he can talk more knowledgeably with persons in the real estate field. He fully disclosed his criminal convictions on his license application.

12. Respondent has an A.A. degree in Physical Education from Skyline College in San Bruno. He has refereed and coached sports at various levels since he was a teenager. For the last seven years, he has officiated at junior college and Division 2 NCAA college basketball games. He also coaches youth sports in San Mateo County.

13. As a member of the San Mateo Elks Lodge for the last six years, respondent has volunteered his time for various fundraising events. He recently started working with the Make-a-Wish Foundation to organize a golf tournament.

14. Respondent is 37 years old, and he has owned his own home in Belmont since 2000. He shares legal and physical custody of his eight-year-old daughter with the girl's mother. Respondent has 48 percent visitation, and his daughter spends two weeknights and every other weekend with him. He also pays child support to his daughter's mother.

15. Respondent submitted letters of reference from numerous friends and associates who know him from his work in the title insurance business or his sports activities. They praise him for his honesty, integrity, reliability, professionalism and community involvement. Several persons made reference to respondent's past problems with alcohol, attesting to his commitment to sobriety.

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

LEGAL CONCLUSIONS

1. California Code of Regulations, title 10, 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 of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator...” (subd. (a)(8)), “[c]onduct which demonstrates a pattern of repeated and willful disregard of the law” (subd. (a)(10)), or “[t]wo or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol and drugs” (subd. (a)(11)).

2. Respondent’s petty theft conviction (Finding 2) was for a crime involving moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8). This conviction therefore constitutes cause to deny respondent’s license application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

3. Respondent’s three DUI convictions (Findings 4, 6 and 8) were for crimes involving moral turpitude that are substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(10) and subdivision (a)(11). Each conviction therefore constitutes cause to deny respondent’s license application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

4. A violation of Penal Code section 647, subdivision (f) (disorderly conduct – under the influence) does not involve moral turpitude, but in the case of respondent’s 1992 and 1995 convictions (Findings 5 and 7), that crime is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(10) and subdivision (a)(11). Each conviction therefore constitutes cause to deny respondent’s license application under Business and Professions Code section 480, subdivision (a). The convictions do not constitute cause for denial under Business and Professions Code section 10177, subdivision (b).

5. Although respondent’s long history of alcohol abuse presents cause for concern, he has now been sober for two years and he has a strong support network for maintaining his sobriety. Since his last arrest two years ago, respondent has led a stable and law-abiding life. He is a responsible single parent, an honest and reliable professional in the title insurance business, and an involved member of his community. Even though he has yet to complete his criminal probation, there is no reason to believe that respondent will abandon his positive lifestyle when he is no longer constrained by probation. It would not be contrary to the public interest to grant him a restricted real estate license.

ORDER


The application of respondent Joseph Brendan Cody 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 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; or
 - 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: October 13, 2004



NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

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

FILED
AUG - 4 2004

DEPARTMENT OF REAL ESTATE

By *David B. Seals*

In the Matter of the Application of

JOSEPH BRENDAN CODY,

Case No. H-8765 SF

OAH No. N-2004050565

Respondent

**FIRST AMENDED
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 **THURSDAY, SEPTEMBER 16, 2004**, at the hour of **9:00 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 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: AUGUST 4, 2004

DEPARTMENT OF REAL ESTATE

By

David B. Seals
DAVID B. SEALS, Counsel

(17)

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

FILED

MAY 25 2004

DEPARTMENT OF REAL ESTATE

By Laurie G. Zier

In the Matter of the Application of

JOSEPH BRENDAN CODY,

Case No. H-8765 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 **THURSDAY, AUGUST 5, 2004**, at the hour of **9:00 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 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.

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Dated: MAY 25, 2004

DEPARTMENT OF REAL ESTATE

By David B. Seals
DAVID B. SEALS, Counsel

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
APR 30 2004

DEPARTMENT OF REAL ESTATE

By Laurie A. Zini

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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|----|-------------------------------------|---|----------------------------|
| 11 | In the Matter of the Application of |) | No. H-8765 SF |
| 12 | JOSEPH BRENDAN CODY, |) | <u>STATEMENT OF ISSUES</u> |
| 13 | Respondent. |) | |

14
15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against JOSEPH BRENDAN CODY (hereinafter "Respondent")
18 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 March 7, 2003 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 California 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

On or about January 8, 1987, in the Superior Court of California, County of San Mateo, Respondent was convicted of violation of California Penal Code Section 484 (Petty Theft), a crime involving moral turpitude and/or which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

IV

In or about January of 1990, in the Superior Court of California, County of San Mateo, Respondent was convicted of violation of California Vehicle Code Section 23152(a) (Driving Under the Influence of Alcohol), a crime involving moral turpitude and/or which bears a substantial relationship under Section 2910 of the Regulations, to the qualifications, functions or duties of a real estate licensee.

V

On or about August 20, 1992, in the Superior Court of California, County of San Mateo, Respondent was convicted of violation of California Penal Code Section 647(f) (Disorderly Conduct - Under the Influence), a crime involving moral turpitude and/or which bears a substantial relationship under Section 2910

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

3 VI

4 On or about July 8, 1994, in the Superior Court of
5 California for the City and County of San Francisco, Respondent
6 was convicted of violation of California Vehicle Code Section
7 23152(a) (Driving Under the Influence of Alcohol), a crime
8 involving moral turpitude and/or which bears a substantial
9 relationship under Section 2910 of the Regulations, to the
10 qualifications, functions or duties of a real estate licensee.

11 VII

12 On or about November 17, 1995, in the Superior Court of
13 California, County of San Mateo, Respondent was convicted of
14 violation of California Penal Code Section 647(f) (Disorderly
15 Conduct - Under the Influence), a crime involving moral turpitude
16 and/or which bears a substantial relationship under Section 2910
17 of the Regulations, to the qualifications, functions or duties of
18 a real estate licensee.

19 VIII

20 On or about December 10, 2002, in the Superior Court of
21 California, County of San Mateo, Respondent was convicted of
22 violation of California Vehicle Code Section 23152(b) (Driving
23 While Having a 0.08 or Higher Blood Alcohol), a crime involving
24 moral turpitude and/or which bears a substantial relationship
25 under Section 2910 of the Regulations, to the qualifications,
26 functions or duties of a real estate licensee.


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IX

The crimes of which Respondent was convicted, as alleged in Paragraphs III through VIII above constitute 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 under other provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 26th day of April, 2004.