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OCT - 8 2009

DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of
HORN LOW,
Respondent.

No. H-8892 SF

ORDER GRANTING UNRESTRICTED LICENSE

On January 25, 2005, a Decision was rendered herein denying Respondent's application for a real estate salesperson 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 March 7, 2005, and Respondent has operated as a restricted licensee since that time.

On February 11, 2009, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of restrictions is granted and that a real estate salesperson license be issued to Respondent if, within twelve (12) months from the date of this order, Respondent shall:

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

(b) Submit evidence of having taken and successfully completed the
continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal
of a real estate license.

This Order shall become effective immediately.

IT IS SO ORDERED

JEFF DAVIS
Real Estate Commissioner

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JAN 28 2005

DEPARTMENT OF REAL ESTATE

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NO. H-8892 SF

OA# NO. L-2002090464

IT IS SO ORDERED 1-23, 2005.

JEFF DAVI
Real Estate Commissioner

Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

HORN LOW,

Respondent.

No. H-8892 SF

OAH No. N2004090464

PROPOSED DECISION

Administrative Law Judge Victor D. Ryerson, Office of Administrative Hearings, State of California, heard this matter on November 18, 2004, in Oakland, California.

Department of Real Estate Counsel Truly Sughrue represented complainant Les R. Bettencourt, Deputy Real Estate Commissioner, State of California.

J. Anne Rawlins, Attorney at Law, represented respondent Horn Low, who was present.

The matter was submitted on November 18, 2004.

FACTUAL FINDINGS

1. On March 4, 2004, respondent submitted to the Department of Real Estate (Department) an application for a real estate salesperson license.

2. On May 7, 1996, in the Superior Court of California, Sacramento County, respondent was convicted on a plea of nolo contendere of violating Penal Code section 487, subdivision (b)(3) (theft of personal property valued over \$400), a felony. The court sentenced him to serve 90 days in jail with one day's credit for time served, but he spent the remaining time in the Sheriff's Work Project. The court also ordered him to make restitution to the victim in the amount of \$11,812.62 and to pay a \$400.00 restitution fine plus various other fines and fees, and placed him on five years' formal probation.

Respondent completed his probation on May 6, 2001, after paying a total of \$14,868.88 in restitution, including interest. Initially he made scheduled payments of \$100.00 to \$150.00 per month, but he voluntarily increased the payments to \$300.00 per month after he obtained full-time employment. On June 5, 2002, the court reduced his offense to a misdemeanor under Penal Code section 17, subdivision (b), and expunged the

conviction pursuant to Penal Code section 1203.4 upon recommendation from his probation officer. He has no other convictions.

3. The following are the facts and circumstances of respondent's conviction.

At the time he committed the underlying offense respondent was attending the University of California at Davis (UCD) as an undergraduate, and was working to pay his educational and living expenses. Between 1994 and 1996 he was a sales associate at a succession of The Good Guys! stores in the San Francisco Bay Area and Sacramento, selling consumer electronics. The events that resulted in his conviction occurred when he was working at the Arden Way store in Sacramento.

Respondent stole merchandise from the store with the help of a group of accomplices. In some instances he would sell a low-value item like a package of batteries to the accomplice, but also give him a high-value item like a laptop computer to remove from the store. In other instances he would sell merchandise to the accomplice, who would remove the item from the store and put it in the trunk of respondent's car; respondent then processed a return of the item without actually receiving it for return to the store, and paid off the accomplice. Respondent stored the stolen merchandise in his home in Davis, and was selling it to make money until his arrest. The total value of the stolen merchandise was more than \$29,300.00.

Respondent was cooperative when the company's security personnel discovered this scheme and confronted him, and he returned items that were still in his possession and assisted the police in recovering other unsold items from his accomplices. He paid restitution to The Good Guys! for the remaining items.

Respondent offers no compelling explanation for his actions. He says that he saw an opportunity to commit the thefts and thought he could get away with it, and he did not appreciate the consequences. His parents were having domestic problems at the time of these events: His father had a gambling problem and had left his mother, and respondent says he wanted to help her pay the rent. However, he testified at the hearing that he does not like to make excuses for himself, and that he takes full responsibility for his actions. He blames nobody other than himself for what happened. His testimony to this effect seemed sincere.

4. Respondent completed his undergraduate degree at UCD while he was on probation, graduating in June 1998 with a Bachelor of Science degree in managerial economics. He found employment as an associate consultant with Peterson Consulting, a firm that specializes in litigation management, utilizing his technical expertise in database management and other information management activities. He was laid off in February 2003.

After he lost his job respondent started a dating service, Chemixtry, with four partners. He is still involved in this business venture.

In partnership with another entity, Beyond Entertainment, Chemixtry gives 25 percent of its proceeds to charities such as the Avon Breast Cancer Crusade, the Asian Battered Women's Shelter, and the Chinatown Community Development Center.

Respondent has also been employed part-time with Venturestar Group, a mortgage and real estate company, since February 2004. In his job at Venturestar he performs non-licensed activities and general administrative duties.

5. Respondent is a mature, serious and enterprising young man with an entrepreneurial bent. He enlisted in the U.S. Army Reserve in 1991, served on active duty for two years, and was honorably discharged in 1997. He traveled for a year between his release from active duty and the beginning of his undergraduate work at UCD. Apart from his conviction, his record of accomplishments reflects that he has led an exemplary life.

Respondent has participated in a number of social and community service activities, starting in his undergraduate years before his arrest and conviction. As a freshman and sophomore he was active in Alpha Phi Omega, a national service organization. He also started a local fraternity in Davis with a group of friends, the activities of which included blood donation, cancer drives, and participation in Davis Picnic Day.

6. Respondent is embarrassed about his conviction, but he also accepts its existence. He told his fellow Alpha Phi Omega members about his arrest immediately afterward. One of the members, Roger Tanamachi, who has remained respondent's friend since they graduated from college, has observed that respondent has become more humble since his conviction.

Tanamachi would not be reluctant to engage in business transactions with respondent if he were licensed.

7. Janis Loughlin, respondent's supervisor when he worked at Peterson Consulting, was unaware of his conviction at that time, but testified that respondent was a diligent worker, and that she never had occasion to question his honesty and integrity when he was there. She would not hesitate to hire him now, and believes he deserves to be licensed.

8. Ken Wei, Broker/CEO of Venturestar Mortgage, respondent's current employer, furnished a letter of recommendation for the hearing. Wei is respondent's sponsoring broker. He supports respondent's license application and attests that respondent is a hard worker, and that he is honest, reliable, efficient and organized. Wei says that he will personally monitor respondent's transactions closely and ensure that he abides by the Department's rules and regulations.

9. Five additional letters of recommendation, including one from respondent's brother, attest to his character and to the fact that he has turned his life around since his conviction.

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

LEGAL CONCLUSIONS

1. Cause to deny respondent's license application exists under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), by reason of the matters set forth in Factual Findings 2 and 3. The conviction was for a crime involving moral turpitude and deemed to be substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(1), (a)(2), (a)(4), and/or (a)(8).

2. Although respondent's crime involved serious acts of dishonesty, fraud and deception, respondent has taken full responsibility for his crime, paid his debts to society and the victim, and persevered in leading an honest and productive life since his arrest. He shows no inclination to return to criminal behavior of any sort in the future. Respondent is rehabilitated.

3. Respondent's rehabilitation is reflected by his satisfaction of the following criteria set forth in title 10, California Code of Regulations, section 2911, which have been developed by the Department pursuant to Business and Professions Code section 482, subdivision (a):

- a. Respondent's one and only conviction occurred more than eight years ago.
- b. Respondent made full and timely restitution to the victim.
- c. Respondent's conviction was reduced from a felony to a misdemeanor and expunged by the court upon recommendation from his probation officer.
- d. Respondent successfully completed his five-year probation.
- e. Respondent paid all fines and fees imposed by the court.
- f. Respondent completed his undergraduate degree at UCD.
- g. Respondent has had significant involvement in community- and privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- h. Respondent has established new and different social and business relationships from those which existed at the time of the conduct that resulted in his conviction.
- i. Respondent's attitude has changed from that which existed at the time of his criminal conduct, as evidenced by the following:

(a) Respondent's own testimony, which demonstrated his recognition of the seriousness of his wrongdoing and a desire to distance himself from it permanently.

(b) Testimony and letters from friends and a family member familiar with respondent's previous conduct and with his subsequent attitudes and behavioral patterns, which uniformly indicate that the change in respondent's behavior is total and enduring.

(c) The total absence of any subsequent felony or misdemeanor conviction, which would reflect an inability to conform to societal rules. To the contrary, respondent's conduct since his conviction has been exemplary.

4. In light of the foregoing findings and conclusions, it would not be contrary to the public interest to grant respondent a restricted conditional real estate license.

ORDER

The application of respondent Horn Low 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:

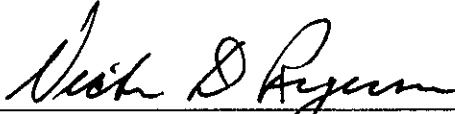
a. Respondent's conviction, including by a plea of nolo contendere, of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

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: January 4, 2005



VICTOR D. RYERSON
Administrative Law Judge
Office of Administrative Hearings

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

FILED

SEP 20 2004

DEPARTMENT OF REAL ESTATE

In the Matter of the Application of

HORN LOW,

Case No. H-8892 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, NOVEMBER 18, 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: SEPTEMBER 20, 2004

DEPARTMENT OF REAL ESTATE

By

Truly Sughrue
TRULY SUGHRUE, Counsel

FILED

AUG 24 2004

DEPARTMENT OF REAL ESTATE

By: *Jay S*

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2 State Bar No. 223266
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4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0781
8

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Application of)
12 HORN LOW,)
13 Respondent.)
14

No. H-8892 SF
STATEMENT OF ISSUES

15 The Complainant, LES R. BETTENCOURT, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against HORN LOW (hereinafter "Respondent"), is informed
18 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 March 4, 2004.

23 II

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

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III

On or about May 7, 1996, in the Superior Court, County of Sacramento, Respondent was convicted of a violation of Section 487(B)(3) of the California Penal Code (Theft Personal Property Valued Over \$400), 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.

IV

The crime of which Respondent was convicted, as 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 under other provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 19th day of July, 2004.