

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
APR 19 2005

DEPARTMENT OF REAL ESTATE

By L. Frost

In the Matter of the Application of)
PETER WHITNEY HALL,) NO. H-9068 SF
Respondent.) OAH NO. N-2005010159

DECISION

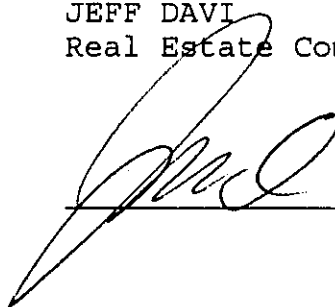
The Proposed Decision dated March 22, 2005, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon
on May 10, 2005.

IT IS SO ORDERED

JEFF DAVIS
Real Estate Commissioner

4-12-05


BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

PETER WHITNEY HALL,

Respondent.

Case No. H-9068 SF

OAH No. N2005010159

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on March 2, 2005.

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

Respondent Peter Whitney Hall was present and represented himself.

The matter was submitted on March 2, 2005.

FACTUAL FINDINGS

1. On July 19, 2004, respondent Peter Whitney Hall submitted to the Department of Real Estate an application for a real estate salesperson license. Any license issued pursuant to that application is subject to the provisions of Business and Professions Code section 10153.4.

2. On his application, respondent answered "no" in response to Question 25, which read, "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 citations which do not constitute a misdemeanor or felony offense." Respondent failed to disclose the conviction described in Factual Finding 3.

3. On April 25, 2003, in the Superior Court of California, County of Monterey, respondent was convicted, on a plea of guilty, of a violation of Vehicle Code section 12500, subdivision (a) (driving without a valid license), a misdemeanor. Imposition of sentence was suspended and respondent was placed on probation for three years on terms that included payment of a \$300 fine. Respondent's conviction has not been expunged.

4. Respondent's conviction was for an offense that occurred January 4, 2001, in Salinas. Respondent, who had recently opened a restaurant, borrowed an employee's truck to buy supplies for the restaurant. Respondent knew his driver's license was "in jeopardy" at the time because of a prior speeding ticket in Kings County. He was stopped by the Salinas police for driving a vehicle with an expired registration and for driving with a suspended driver's license. Court records show that respondent failed to appear for hearings on March 29, 2001, and March 14, 2003, and that in both instances the court issued bench warrants against him.

5. In addition to the Kings County speeding violation, respondent also had a number of DUI convictions. Respondent did not disclose any of these on his real estate license application.

6. Respondent filled out his license application in consultation with David Biagnini, a real estate licensee. Respondent was confused by Question 25, and concluded that traffic violations such as his April 25, 2003, conviction and his speeding and DUI convictions did not have to be disclosed. Respondent did not check with the Department of Real Estate to see if his conclusion was correct. Respondent now acknowledges that he should have disclosed the convictions, and regrets that he did not do so.

7. Respondent is 48 years old, and a divorced father. Respondent's father, who died in 1997, had been in the real estate business for 30 years. Respondent was an alcoholic for 20 years, participated in 1500 Alcoholics Anonymous meetings, and has been sober for seven years. He has served in youth baseball, basketball, and lacrosse coaching activities. Respondent is in a relationship with a professor at California State University, Monterey Bay, and she is pregnant with their child.

8. Moon Choe is a real estate broker at Marina Bay Real Estate in Marina. Respondent has done some work with Choe, and Choe testified that respondent is an honest person. Choe would consider respondent for employment.

9. Respondent submitted letters from Dean Bowman of De Anza Capital and Robert W. Ford. Bowman described respondent as an individual of integrity and feels that respondent would be an asset to the real estate field. Ford has known respondent in social and business relationships, and attended Alcoholics Anonymous meetings with respondent. Ford praised respondent's problem solving skills, commitment to personal service, and sobriety.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 480, subdivision (c), the Real Estate Commissioner may deny an application for a real estate license if the applicant knowingly made a false statement of fact required to be revealed in the application for such license. Under Business and Professions Code section 10177, subdivision (a), the commissioner may deny the issuance of a license to an applicant who has procured, or

attempted to procure, a real estate license by fraud, misrepresentation, or deceit, or by making any material misstatement of fact in an application for a real estate license. Respondent's failure to disclose his April 25, 2003, conviction (Factual Finding 2) constituted misrepresentation and a material misstatement of fact, and provides cause to deny his application pursuant to sections 480, subdivision (c), and 10177, subdivision (a).

2. Under Business and Professions Code section 480, subdivision (a), the commissioner may deny an application for a real estate license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of a real estate licensee. Respondent's conviction (Factual Finding 3) involved a knowing failure to drive without a valid license, and was thus substantially related to the qualifications, functions and duties of a real estate licensee. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(7)). Cause exists for denial of respondent's application under section 480, subdivision (a).

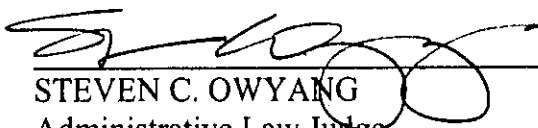
3. Under Business and Professions Code section 10177, subdivision (b), the commissioner may deny the issuance of a license to an applicant who has been convicted of a felony or a crime involving moral turpitude. The record did not establish that respondent's conviction involved moral turpitude.

4. The department's regulations set forth criteria for evaluating the rehabilitation of an applicant for a license. (Cal. Code Regs., tit. 10, § 2911.) It is noted that respondent's application was denied not only because of the April 2003 conviction, but also because he failed to disclose the conviction on his application. Moreover, respondent failed to disclose other convictions, and the record revealed a certain laxness on respondent's part in complying with statutory and court requirements. Less than two years have passed since his conviction and respondent remains on probation. His conviction has not been expunged. One witness and two letters generally supported respondent's license application, but none of these went into significant detail about respondent's work or character. Respondent asserts that he has made changes in his life and that he is ready to be a model real estate professional. Respondent also presented some evidence on the stability of his family life. On balance, however, there was insufficient evidence to establish respondent's rehabilitation.

ORDER

Respondent Peter Whitney Hall's application for a real estate salesperson license is denied.

DATED: *March 22, 2005*


STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

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

FILED
JAN - 5 2005

DEPARTMENT OF REAL ESTATE

By *L. Zin*

In the Matter of the Application of

PETER WHITNEY HALL,

}

Case No. H-9068 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, MARCH 2, 2005**, 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: JANUARY 5, 2005

DEPARTMENT OF REAL ESTATE

By *David B. Seals*
DAVID B. SEALS, Counsel *(12)*

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
DEC 22 2004

DEPARTMENT OF REAL ESTATE

Laurie G. Ziri

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)

No. H-9068 SF

12 PETER WHITNEY HALL,)

STATEMENT OF ISSUES

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 PETER WHITNEY HALL (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 July 19, 2004 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
25 10153.4 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

In response to Question 25 of said application, to wit: "Have you ever been convicted of any violation of law? ... If yes, complete #27 below.", Respondent answered "NO".

IV

On or about April 25, 2003, in the Superior Court of the California, County of Monterey, Respondent was convicted of violation of California Vehicle Code Section 12500(a) (Driving Without a Valid License), 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.

V


Respondent's failure to reveal the conviction set forth in Paragraph IV above in said application constitutes the attempt to procure 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 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 under other provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 13th day of December, 2004.