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FILED

DEC 12 2007

DEPARTMENT OF REAL ESTATE

By Jean Arment

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of) No. H-9082 SF
)
 WILLIAM EDWARD STERLING,)
)
 Respondent.)
)

ORDER GRANTING UNRESTRICTED LICENSE

On April 28, 2005, a Decision was rendered herein denying the Respondent's application for 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 July 7, 2005, and Respondent has operated as a restricted licensee since that time.

On August 8, 2007, 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

1 record as a restricted licensee. Respondent has demonstrated to
2 my satisfaction that Respondent meets the requirements of law for
3 the issuance to Respondent of an unrestricted real estate
4 salesperson license and that it would not be against the public
5 interest to issue said license to Respondent.

6 NOW, THEREFORE, IT IS ORDERED that Respondent's
7 petition for removal of restrictions is granted and that a real
8 estate salesperson license be issued to Respondent subject to the
9 following understanding and conditions:

10 1. The license issued pursuant to this order shall be
11 deemed to be the first renewal of respondent's real estate
12 salesperson license for the purpose of applying the provisions of
13 Section 10153.4.

14 2. Within nine (9) months from the date of this order
15 respondent shall:

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

18 (b) Submit evidence of having taken and successfully
19 completed the courses specified in subdivisions (a) (1), (2), (3)
20 and (4) of Section 10170.5 of the Real Estate Law for renewal of
21 a real estate license.

22 3. Upon renewal of the license issued pursuant to this
23 order, respondent shall submit evidence of having taken and
24 successfully completed the continuing education requirements of
25 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
26 real estate license.

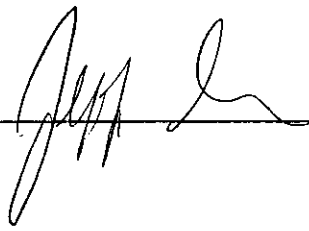
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This Order shall become effective immediately.

IT IS SO ORDERED 12-11, 2007.

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

WILLIAM EDWARD STERLING,

Respondent.

Case No. H-9082 SF

OAH No. N2005020344

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on March 16, 2005.

Real Estate Counsel Michael B. Rich represented complainant Deputy Real Estate Commissioner Les R. Bettencourt.

Respondent William Edward Sterling was present and represented himself.

The matter was submitted on March 16, 2005.

FACTUAL FINDINGS

1. Complainant Les R. Bettencourt filed the statement of issues in his capacity as a Deputy Real Estate Commissioner of the State of California.

2. On or about June 14, 2004, respondent William Edward Sterling filed with the Department of Real Estate an application for a real estate salesperson license. Respondent understood that if a license issued it would be subject to the conditions of section 10153.4 of the Business and Professions Code.

3. On or about November 4, 1999, respondent was convicted in the Municipal Court, County of Monterey, State of California, on his plea of nolo contendere to a violation of Vehicle Code section 23152, subdivision (b), driving an automobile with a blood alcohol level of .08 percent or more, a misdemeanor. Imposition of sentence was suspended and respondent was placed on court probation for five years. Stated terms and conditions included that respondent not drive a motor vehicle with alcohol in his system. Respondent was ordered to pay a \$900 fine and attend a First Offender Program. Respondent paid the fine and completed the program in October 2000.

4. On or about March 12, 2004, respondent was convicted in the Municipal Court, County of Monterey, State of California, on his plea of nolo contendere to a violation of Vehicle Code sections 23103/23103.5, (alcohol-related reckless driving), a misdemeanor. Imposition of sentence was suspended and respondent was placed on court probation for three years. Respondent was ordered to pay a \$1,500 fine and to attend a Senate Bill 38 program. Respondent is making payments on the fine. He enrolled in an 18-month Multiple Offender Program on April 1, 2004.

5. It was not established that any of the offenses involved moral turpitude per se or as committed. On each occasion respondent drove a motor vehicle after consuming alcohol. The first occasion occurred on September 8, 1999, when respondent was 22 years old. Respondent drove with a blood alcohol level of greater than .10 percent. The second occasion was on December 2, 2003, his brother's 21st birthday. Respondent agreed to drive his brother to a bar, intending that he would not drink himself. Respondent did drink and had a blood alcohol level of .08 percent when he was stopped by the police for an expired registration.

6. Respondent fully admits the offenses and accepts responsibility for them. He was forthright in his testimony about the circumstances of each offense.

7. Respondent does not appear to have a substance abuse problem. The second incident was an isolated relapse, as respondent had stopped drinking alcohol six months before he committed the second offense. Respondent has not consumed alcohol since December 2, 2003. Respondent was not required to attend Alcoholics Anonymous meetings by either of his probationary orders and he does not do so on his own. Respondent has found the 18-month Multiple Offender Program to be more instructive and insightful about the dangers of drinking and driving than the First Offender Program.

8. Respondent is 27 years old. He is single and supports himself. Respondent works full-time and attends college on a full-time basis as well. Respondent has almost completed an associate of arts degree in accounting from Monterey Peninsula College. For the past two semesters he has also taken college level classes at Calvary Chapel Monterey Bay. Respondent hopes to transfer to Golden Gate University in San Francisco this fall.

9. Respondent regularly attends church at Calvary Chapel. He volunteers weekly to assist a blind pastor with his computer needs.

10. Respondent has worked for six years for a real estate property management firm in Monterey. Respondent started as a bookkeeper and currently works in the capacity of an accountant. Broker Lynn Morris Stockman testified in support of respondent at hearing. He has found respondent to be responsible, reliable and honest. He will use respondent in a licensed capacity should respondent obtain a salesperson license.

Stockman is aware of respondent's two convictions. He has seen no evidence at the workplace which would lead him to believe that respondent has a problem with alcohol and/or drugs.

11. Ivan Rodriquez Austria has known respondent for eight years. Austria is currently being trained by respondent to work for Stockman. In his opinion respondent is a man of highest integrity. Austria has seen no evidence at work or socially that respondent has a problem with alcohol.

LEGAL CONCLUSIONS

1. 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 an offense that is substantially related to the qualifications, functions or duties of a real estate licensee. An offense is deemed to be substantially related to the qualifications, functions, and duties of a real estate licensee if involves the doing of an unlawful act with the intent or threat of doing substantial injury to the person or property of another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Also deemed to be substantially related to the qualifications, functions, and duties of a real estate licensee are two or more convictions involving the consumption or use of alcohol when at least one of the convictions involve driving and the use or consumption of alcohol. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(11).)

By reason of the matters set forth in Factual Findings 3, and 4, respondent has been convicted of two misdemeanor offenses involving the consumption of alcohol and the driving of an automobile. The offenses are substantially related to the qualifications, functions, and duties of a real estate licensee under section 2910, subdivisions (a)(8) and (a)(11) of title 10 of the California Code of Regulations. Cause exists to deny the issuance of a real estate license pursuant to Business and Professions Code section 480, subdivision (a).

2. Under Business and Professions Code section 10177, subdivision (b), the Commissioner may deny an application for a real estate license if the applicant has been convicted of a felony, or of a crime involving moral turpitude. The offense of driving a vehicle while under the influence of alcohol is not a crime involving moral turpitude per se. (*In re Kelley* (1990) 52 Cal.3d 487,484.) By reason of the matters set forth in Factual Finding 5, it was not established that either of respondent's offenses involved moral turpitude as committed. Cause does not exist to deny the issuance of a real estate license under Business and Professions Code section 10177, subdivision (b).

3. In California Code of Regulations, title 10, section 2911, the Department has established criteria to be evaluated in determining the rehabilitation of an applicant with a criminal record. Respondent does not meet some of the relevant criteria. His most recent conviction is less than two years old. He remains on criminal probation and he has not yet fully paid his fine or completed the Multiple Offender Program. Respondent has not abstained from the use of alcohol for more than two years. Nevertheless, the second offense,

while evidencing a serious lack of judgment, does not appear to evidence a substance abuse problem. Rather, it evidences an immaturity and a lack of understanding by respondent about his inability to drink alcohol and to drive an automobile safely. The lesson appears to have been finally learned. Respondent has a stable work history with an employer who knows of respondent's convictions and is fully supportive of him. Respondent has a sustained enrollment in college. He has a conscientious involvement in his church. Respondent appears to be a forthright and honest young man of integrity. For these reasons, it is concluded that the protection of the public does not compel an outright denial of licensure. The public will be adequately protected by the following order, which allows respondent to obtain a real estate salesperson's license on a restricted basis.

ORDER

Respondent's application for a real estate salesperson license is denied by reason of Legal Conclusion 1; 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 10156.5 of said 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) 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.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or 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.

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:

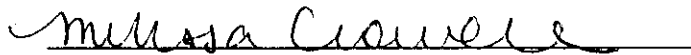
(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(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 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 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. The 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: April 6, 2005


MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

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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 and not otherwise.

III

On or about November 4, 1999, in the Municipal Court, County of Monterey, State of California, in case number PQ9901592, Respondent was convicted of a violation of Section 23152(b) of the California Vehicle Code (Driving under the influence while having a blood alcohol level of .08% or more), a crime 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

On or about March 12, 2004, in the Municipal Court, County of Monterey, State of California, in case number MS220237A, Respondent was convicted of a violation of Section 23103.5 of the California Vehicle Code (Substitute charge of Section 23103 in lieu of driving under the influence under Section 23152), a crime 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

The crimes of which Respondent was convicted, as alleged in Paragraphs III and IV, inclusive, collectively and/or individually, constitute cause for denial of Respondent's

1 application for a real estate license under Sections 480(a)
2 and/or 10177(b) of the California Business and Professions Code.

3 WHEREFORE, the Complainant prays that the above-
4 entitled matter be set for hearing and, upon proof of the charges
5 contained herein, that the Commissioner refuse to authorize the
6 issuance of, and deny the issuance of, a real estate salesperson
7 license to Respondent, and for such other and further relief as
8 may be proper under other provisions of law.

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12 LES R. BETTENCOURT
13 Deputy Real Estate Commissioner

14 Dated at Oakland, California,
15 this 21st day of December, 2004.
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