

FILED
SEP 06 2005

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By S. Lee

* * *

In the Matter of the Application of)
WILLIE JAMES GARNER,)
Respondent.)

NO. H-9195 SF
OAH No. N-2005050021

DECISION

The Proposed Decision dated August 3, 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, 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 SEP 26 2005.

IT IS SO ORDERED 8-17 2005.

JEFF DAVIS
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

WILLIE JAMES GARNER,

Respondent.

No. H-9195 SF

OAH No. N2005050021

PROPOSED DECISION

On June 27, 2005, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter.

Michael B. Rich, Counsel, represented Complainant.

Adam G. Slote, Attorney at Law, 100 Pine Street, Suite 750, San Francisco, California 94111, represented Respondent Willie James Garner, who appeared at the proceeding.

On June 27, 2005, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. On March 21, 2005, Complainant E. J. Haberer II (Complainant), in his official capacity as a Deputy Real Estate Commissioner of the State of California, made the statement of issues against Respondent Willie James Garner (Respondent).

2. On November 1, 2004, the Department of Real Estate first received Respondent's application for a real estate salesperson license. Respondent originally signed the application for license on October 29, 2004. Respondent made the application for licensure with knowledge and understanding that any license issued as a result of the application would be subject to the condition of Business and Professions Code section 10153.4.

The application remains pending as the Department has refused to issue a license to Respondent due to his past acts and omissions that appear to disqualify him for licensure.

False and Misleading Data in Application for Licensure

3. On October 29, 2004, under penalty of perjury that all answers and statements given by him were true and correct, Respondent signed an application for licensure as a real estate salesperson.

4. In response to item number 25 on the application for licensure as a real estate salesperson, respondent failed to fully disclose the record of his conviction as detailed herein in Factual Finding 6. And, under item 27 on the application, Respondent provided no information regarding the record of his conviction on January 19, 2000, in the California Superior Court in and for the County of Alameda.

By Respondent's failure to provide the Department with the true record of his convictions, he presented the Department with incorrect and false or misleading information regarding his history of convictions.

5. Respondent's failure to disclose the conviction he received in January 2000 indicates that Respondent attempted to procure a real estate license by fraud, misrepresentation, or deceit, or that he made a material misstatement of facts in the application. Respondent is not believed in his account that when he completed the Department's application for licensure that he did not believe he had a conviction for battery upon his wife.

Record of Criminal Convictions

January 2000 Conviction for Battery

6. On January 19, 2000, in case number 339688, the California Superior Court in and for the County of Alameda, Hayward Hall of Justice Division, convicted Respondent, on his plea of no contest, of violating Penal Code section 242 (Battery), a misdemeanor.

The crime of battery for which Respondent was convicted in January 2000 is substantially related to the qualifications, functions and duties of a real estate licensee.

7. Under the circumstances of Respondent's misconduct, the crime of simple battery is not a crime that involves moral turpitude. And Respondent's criminal act did not result in a felony conviction.

8. The facts and circumstances of the events that resulted in his conviction arose out of Respondent's acts on November 20, 1999. On that date, Respondent made physical contact with his wife at an instant in time when he was enraged by the woman's words and conduct.

9. By the consistency of his testimony, his attitude towards the proceedings, and his sincere expression of contrition and remorse, Respondent demonstrated that he was a credible¹ and reliable witness at the hearing of this matter.

On the day of his arrest, Respondent drove his mother on a tour through the Napa County wine country. The trip included his wife and two foster children, who then lived with Respondent. During the excursion Respondent heard his wife say, "I do not see a fucking camera." She also expressed disdain for the foster children. After reaching their residence and retreating to an upstairs-master bedroom, Respondent approached his wife to voice his objection to the woman's use of profanity in the presence of his mother, who has a Southern ethic towards use of foul language. Respondent's wife told Respondent, "Fuck-up you and your mother." With those profane and hostile words, Respondent pushed the woman, who fell backwards upon the bed. The woman's knee collided with an open drawer during her fall.

After pushing his wife, he only said to her, "I don't need this [turmoil]." Respondent immediately exited the master bedroom and walked to a smaller room down the hallway.

Respondent is persuasive that he did not punch or slap his wife on the night of November 20, 1999.

10. Complainant offered in evidence a police report by the San Leandro Police Department. The report is unreliable regarding the recordation of claims by the wife of Respondent.

The report shows Respondent's wife telling the arresting police officer that Respondent had physically abused her because Respondent had "been unemployed since October 1999 [and that he was] stressed over his job situation." But, evidence at the hearing of this matter showed that in November 1999 Respondent was employed as a consultant by J and A Associates. The report also reported the supposed victim to say that Respondent "swung his fist . . . and hitting [the woman] in the face with his hands several times. . . ." But, witnesses at the hearing of this matter recalled the woman to have no visible signs of having been struck in the face. Also, the police report set out that the arresting police officer "did not notice any visible signs of injury on" the woman's face.

11. As a consequence of the January 2000 conviction, the superior court suspended imposing a sentence upon Respondent and placed him on court probation for thirty-six months under specific terms and conditions.

The terms and conditions of probation included an order that Respondent spend be confined in county jail for two days, two days credit for time served. The court ordered Respondent to pay a fine of \$200. And the court directed Respondent to enroll in counseling

¹ Government Code section 11425.50, subdivision (b), third sentence.

and treatment program that entailed 16 weeks of anger management. The court directed Respondent to "be of good conduct and obey all laws." And the court commanded Respondent to not threaten, molest or annoy his wife.

Matters that Negatively Impact Upon Respondent's Progress towards Rehabilitation

12. At the hearing of this matter, Respondent's representations were not credible that he failed to disclose the fact of the conviction because of his mistake of fact. He is not believed when he asserts that when he prepared the application he did not believe that he had committed a crime when he pushed his wife and that he did not have a conviction for battery. Respondent is a college graduate who holds an MBA degree. A reasonable inference may be drawn that Respondent had the ability to read and understand the court documents upon which he entered a plea and accepted a conviction.

13. Respondent is not plausible that he did not fully appreciate a responsibility to fully answer the application's item 25. The item 25 reads: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? (YOU MAY OMIT CONVICTIONS FOR DRUNK DRIVING, RECKLESS DRIVING, AND MINOR TRAFFIC CITATIONS [THAT] DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE.). Under the application's item 27, the Department asked respondent to "COMPLETE ONE LINE FOR EACH VIOLATION AND PROVIDE [AN] EXPLANATION BELOW . . . INDICATE WHETHER EACH CONVICTION WAS A MISDEMEANOR OR FELONY AT THE TIME THE CONVICTION OCCURRED. . . ."

Respondent was vague and evasive at the hearing regarding a mistake on his part in providing comprehensive, honest and non-misleading responses to the application's items 25 and 27.

14. Respondent provides no proof that he has filed any petitions under Penal Code section 1203.4 with the court that entered the conviction against him in January 2000. The record of conviction has not been expunged.

15. Respondent was married to Ms. Melissa Garner for about two years. Over that period of time he and his wife did not engage in any physical violence or abuse, except for the incident that occurred in November 1999 that led to Respondent's conviction for battery.

Matters in Mitigation

16. Respondent was a high school valedictorian. He had been enrolled in a program in his native state of Louisiana where he attended his last year of high school part of a day, while spending the balance of the day in college level courses. In May of a particular year he received a high school diploma, and in September of the same year he received an Associates of Arts degree.

17. In May 1987, the Southeastern Louisiana University awarded Respondent bachelor of art degrees in business management as well as history/government. Thereafter he was enrolled in a student exchange program, where he taught "English as a Second Language" at a university in Mexico. Later, in 1989 Respondent received a MBA degree at Louisiana State University.

18. Before his arrest in November 1999 for simple battery, Respondent had maintained employment positions that called for the exercise of good judgment, diligence and attention to detail. From July 1993 until April 1995, Respondent worked as accounts receivable and collection manager for the San Francisco office of Howard, Rice, Nemerovski. From May 1995 until April 1999, Respondent worked as federal accounts credit manager for Sun Microsystems. For about six months that ended in December 1998, Respondent worked for Quadramed Corp as corporate credit and collections manager. Then Respondent became a consultant with the certified public accounting firm of J and A Associates.

19. Respondent has been a foster parent. In late 1999, Respondent and his wife were foster parents to two small boys. Even after the return of the boys to their natural mother, Respondent has maintained contact with the boys, who currently spend voluntary week-ends with him and accompany him to church services.

20. Respondent asserted that the results of a background check as preformed in April 2003 led him to believe that he had no record of a conviction.

In the Spring of 2003, in pursuit of an accounting-type position with the law office of Littler Mendelson, Respondent received a copy of a background check titled "HireWise Report." The report summary showed for the criminal records search "clear," even though the report showed his addresses in Alameda County. The report, as presented to Respondent in May 2003, indicated-for Alameda County, which was his county of residence-no felony or misdemeanor conviction.

Even though he received the inaccurate report through an employment process, Respondent, a college graduate with a master's degree, knew or should have known of the consequences of his court appearance where the superior presented him with documents that established the conviction. Respondent attended a counseling course and he knew that if he failed to complete the course failure would result in the court imposing a penalty upon him.

Witnesses on Matters of Mitigation and Rehabilitation

21. Respondent called six witnesses to the hearing to offer evidence regarding Respondent's reputation. But, Respondent was accompanied to the hearing site by about a dozen or more individuals.

a. David Dickson is employed as a sergeant with the Alameda County Sheriff's Department. He is currently a watch commander on the midnight shift. He has been a deputy sheriff about 22 years.

Deputy Sheriff Dickson has known Respondent for about 15 years. They are friends who talk regularly, that is, about every other day, and they see each other nearly every week. Deputy Sheriff Sergeant Dickson views Respondent as being his "best friend." The men also are deacons, and therefore regular members, of the same church.

On the day of the arrest, Deputy Sheriff Dickson learned of Respondent's arrest for simple battery. He recalls receiving at about 3 o'clock in the morning a telephone call from Respondent. From that time Respondent has expressed his extreme embarrassment and remorse for the incident. Deputy Sheriff Dickson heard Respondent lament shortly after the arrest in November 1999 that he was very ashamed for being drawn into the incident that involved violence and anger, and that he has higher standards for himself. Respondent told him that he had pled no contest and that he received a conviction.

Deputy Sheriff Dickson understands the role of Respondent in his capacity of deacon at the Harmony Missionary Baptist Church. As a deacon, Respondent has a primary mission of serving church members and to act as the pastor's "right-hand men." Respondent is a mentor to junior deacons of the church, which includes monthly meetings with the young men where he instructs and guides them through an array of topics such as "being good citizens," and "preparation for service as a deacons in the church." Also Respondent is a member of the Finance Committee where he has exhibited qualities of trust and fidelity to the functions and duties of that committee. Respondent has been an integral and trusted member of the committee for a number of years.

Respondent has contributed time and energy to the Special Olympics work. Also in the vicinity of Telegraph Avenue and 40th Street in Oakland, Respondent has exhibited generosity to homeless persons who congregate near premises of the church. Respondent has purchased, with his own resources, food and lodging for persons in need.

Respondent has a composed, even disposition, and has not shown a loss of control to Deputy Sheriff Dickson. Over the 15 years of knowing Respondent, Deputy Sheriff Dickson never has seen Respondent display a fit of anger.

Respondent is one of the most respected persons known by Deputy Sheriff Dickson. Respondent is regarded as an honorable person in the community known by Deputy Sheriff Dickson.

Deputy Sheriff Dickson senses that Respondent made a mistake in providing an inaccurate and incorrect response to the Department on the licensure application regarding the existence of a record for a criminal conviction.

b. Carlton L. Spicer, a resident of Northridge, California, is an accountant. He is the managing senior partner in the accounting and tax form preparation firm of J and A Associates.

In about 1998 or 1999, Mr. Spicer met Respondent when they both worked for Quadramed, a medical services corporation. The men were both managers in the accounting unit of Quadramed. Respondent handled corporate receivables and collections work for the company.

In January 1999, Mr. Spicer and others organized and began operations of J and A Associates. Mr. Spicer asked Respondent to join the new business as a consultant.

At the time of Respondent's arrest for simple battery in November 1999, Respondent was employed as a consultant with the firm of Mr. Spicer. On the day after his arrest, Respondent informed Mr. Spicer of the arrest for battery. Respondent made an immediate disclosure of the November 1999 arrest to Mr. Spicer because J and A Associates had contracts for the provision of accounting services to law firms and other clients that required criminal records clearance for its agents and subcontractors.

Mr. Spicer views Respondent as an individual who exudes complete integrity. Respondent is an individual who exhibits outstanding work functions. Respondent is an outgoing individual who is easy to work alongside in work place settings.

Respondent has never shown a bad temper. Mr. Spicer views Respondent as being mild mannered and pleasant at all times. In very stressful situations, Respondent has the characteristics of putting the best spin on the situation.

Mr. Spicer knows Respondent's former spouse, Melissa. Mr. Spicer maintains an ongoing professional relationship with Respondent's former wife. Mr. Spicer understands the cordial and good relationship that now exists between Respondent and his former wife.

Due to Respondent's traits, skills and work habits, Mr. Spicer would unquestionably trust Respondent to handle a real estate transaction on his behalf. Mr. Spicer perceives Respondent to possess the requisite abilities to comply with the disclosure documents and forms that are associated with a real estate transaction.

c. Reverend Albert Leon Cobbs, pastor of the Harmony Missionary Baptist Church, came to the hearing of this matter on behalf of Respondent. The church is situated at 4113 Telegraph Avenue in Oakland, California. He has been pastor of the church for 32 years.

Rev. Cobbs knows Respondent as being a faithful and trusted officer of his church.

He recalls knowing Respondent for "close around 20 years" or "quite a while." Respondent was elevated from church member into a role of deacon. Respondent attained the church designation and could be "appointed over the business" of the church because he was faithful church member who was honest, "filled with the Holy Ghost and with wisdom."

Rev. Cobbs learned of Respondent's alleged physical abuse upon his spouse, by way of a telephone call received early on the Sunday morning after the Saturday night incident.

On the Sunday morning following the night of her alleged beating, Rev. Cobbs closely observed Respondent's former wife, who was then a choir member. As the woman, who he considered a "very light-skinned" woman, sang in the choir, Rev. Cobbs did not see any bruises to the face of the fair skinned woman. Rev. Cobbs holds a low opinion of Respondent's former wife as a woman who did not have a good reputation for truthfulness.

When Respondent personally told Rev. Cobbs about the incident, Respondent was very sorry, sad and embarrassed. But he never made an admission that he punched the face of his then spouse.

When Respondent's former wife told Rev. Cobbs that Respondent had punched her in the face, Rev. Cobbs did not believe the woman. Her face had no bruise or disfigurement.

Rev. Cobbs views Respondent as a very dependable and trustworthy man. Respondent handles about \$250,000 in cash for the church.

Rev. Cobbs holds Respondent in high regard. Respondent is a generous individual who spends his own money to help the needy. Within the church, Respondent tutors students and acts as a mentor for candidates for deaconship in the church. Respondent has been striving to do good works. He is an honest individual.

d. Ms. Mary Brooks appeared at the hearing on behalf of Respondent. Ms. Brooks is the Church Administrator for the Harmony Missionary Baptist Church. She has held the administrator's job for about five years, although she has been a member of the church for 22 years.

Ms. Brooks has known Respondent for 18 or 19 years. She also knows the former wife of Respondent.

Ms. Brooks knows that Respondent has a reputation to be "very, very honest." Respondent is very trustworthy with the money entrusted to him as a member of the Finance Committee. Respondent has taken his own money to add to church receipts in order to balance books of the church Finance Committee.

e. Vicki Williams is a licensed real estate professional.

Ms. Williams expressed that it is essential that persons of integrity work in the "sub-prime" component of real estate mortgage lending. She views Respondent as a person who would be an asset to the real estate industry that services the sub-prime area.

Ms. Williams described Respondent's volunteer work for non-profit charitable enterprises and his efforts in mentoring young people in the corporate world. Ms. Williams was especially informative in describing Respondent's great work with *City Flight* magazine's community enhancement efforts.

f. Valerie Jane Volo Villaraza came to the hearing in support of Respondent.

Since October 2002 Ms. Villaraza has been a licensed real estate broker. Her company name is Emery Bay Associates, doing business as Better Homes Realty. The broker's office is located in Emeryville, California. The company focuses on residential real estate sales.

Ms. Villaraza is also licensed by the California State Bar.

In April 2004, Ms. Villaraza received a referral regarding Respondent from Ms. Vernell Owens and Ms. Carolyn Brown, who are licensed real estate salespersons.

Currently Respondent performs administrative duties for Emery Bay Associates. Respondent works as the personal assistant to Ms. Villaraza.

Ms. Villaraza is willing to offer Respondent a salesperson position after he acquires license status.

Ms. Villaraza knows Respondent's reputation for honesty and trustworthy. She has no reservation on the matter of hiring Respondent as a salesperson. But she only learned in October 2004 of Respondent's January 2000 conviction. When Respondent became associated with her broker's office, Respondent did not disclose his criminal act of battery upon his wife.

Matters in Rehabilitation

22. Respondent's single criminal conviction in January 2000 grew out of an incident that occurred in November 1999. Respondent's criminal conduct occurred nearly five years before the date of the licensure application as signed by Respondent.

23. In January 2003 Respondent completed the 36-month period of court (informal) probation due to the conviction for battery.

24. More than five years have passed since the date of Respondent's conviction for battery. Respondent expressed contrition for his act of pushing his wife, which was conduct that he realizes was a crime.

25. On June 19, 2000, the Superior Court for Alameda County made a record that noted Respondent had filed proof of completion of a 16-week anger management counseling program.

26. After completing the required weeks of counseling in anger management, Respondent returned to the facility to serve as a volunteer. He devoted time to counseling men who been troubled by emotional problems pertaining to impulse control and anger management.

27. At the hearing of this matter, Respondent expressed remorse for his past unlawful behavior and criminal misconduct. He articulated that the past act of simple battery upon his wife, at a moment of justifiable rage, does not reflect his true character.

28. Respondent holds no ill regard towards his former wife. In recent years since the date of their divorce, Respondent has loaned money to the woman so that she could pay her rent. About one and one-half months before the hearing date, Respondent and his former wife went out for a dinner together.

29. Since the date of his conviction in January 2000, Respondent has pursued gainful employment.

In November 1999, Respondent worked as a consultant in accountancy for J and A Associates. From May 2000 until February 2001, Respondent worked for Sunsweet Growers as Accounts Receivable Manager. Then in January 2002 Respondent worked until January 2003 as senior associate with Onsite Associates of San Francisco.

At the time of the hearing of this matter, Respondent worked at two different endeavors. He continues to work as a consultant with J and A Associates. And Respondent is employed as an administrative assistant for the broker-in-charge of Emery Bay Associates, a real estate broker franchise doing business under the name of Better Homes Realty, which is located in Emeryville, California.

Ultimate Finding

30. The weight of evidence shows that the public interests will not be endangered by Respondent holding a real estate salesperson license on a restricted basis for a term of three years.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (c), provides that the Department may deny a license on the ground that "the applicant knowingly made a false statement of fact required to be revealed in the application for such license."

Business and Professions Code section 10177, subdivision (a), establishes that the Department 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...."

Cause to deny Respondent's application for licensure as a real estate salesperson exists under Business and Professions Code sections 480, subdivision (c), and 10177 subdivision (a), by reason of the matters set forth in Factual Findings 4, 5, 12 and 13.

2. Business and Professions Code section 480, subdivision (a), provides that the Department may deny a license on the ground that the applicant has "been convicted of a crime . . . (that) . . . is substantially related to the qualifications, functions or duties of the business . . . for which (an) application is made."

Cause to deny Respondent's application for licensure as a real estate salesperson exists under Business and Professions Code section 480, subdivision (a), by reason of the matters set forth in Factual Finding 6.

3. Business and Professions Code section 10177, subdivision (b), establishes that the Department may deny the issuance of a license to an applicant who has "been convicted of a felony or a crime involving moral turpitude."

No cause exists to deny Respondent's application for licensure as a real estate salesperson exists under Business and Professions Code section 10177, subdivision (b), by reason of the matters set forth in Factual Finding 7.

4. The matters in mitigation and rehabilitation as well as evidence from witnesses as set forth in Findings 16 through 30 have been considered in making the following order.

5. As set out in California Code of Regulations, title 10, section 2911, by reason of Factual Findings 21 through 30, Respondent has successfully attained a majority of the criteria for rehabilitation from the criminal conviction. But, the false statements on the application for licensure cast doubt on Respondent's honesty and conscientiousness in completing documents as filed with the Department, which is a state government agency.

6. Ordinarily, the failure to provide true and accurate information on the Department's application for licensure, coupled with his criminal conviction for use of violence, indicate that it would be against the public interest to allow Respondent to hold a

real estate salesperson license. However, with the tremendous support of witnesses, who have come to know very well the reputation of Respondent for honesty and dedication to his church, and Respondent's work as an accountant, the public interest will not be adversely affected were Respondent to be issued a real estate salesperson license on a restricted basis. Evidence further showed Respondent to have made great contributions to non-religious, civic activities such as his volunteer work for *City Flight* magazine and the organization associated with the magazine. But, an unrestricted license cannot be extended to Respondent due to his questionable response to the license application's question regarding his possession of a record of a criminal conviction. Although he asserted that an employment background check showed he did not have a conviction, Respondent knew or should have known the days he spent in jail, his appearance in criminal court and the fines that he paid.

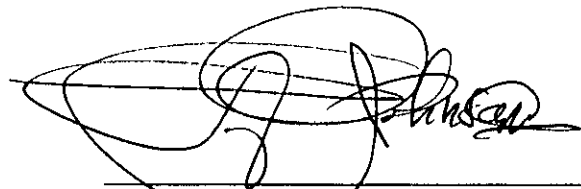
ORDER

The application for a real estate salesperson license by Respondent Willie James Garner is denied; 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 10156.6 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 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 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 a course in real estate practices and one 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.
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: August 3, 2005



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P. O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0789
8

FILED
APR 14 2005

DEPARTMENT OF REAL ESTATE

By J. Eary

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Application of)
12) No. H-9195 SF
13 WILLIE JAMES GARNER,)
14) STATEMENT OF ISSUES
Respondent.)

15 The Complainant, E. J. HABERER II, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against WILLIE JAMES GARNER (hereinafter "Respondent"), is
18 informed 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 November 1, 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 10153.4
25 of the Business and Professions Code.

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1 II

2 Complainant, E. J. HABERER II, a Deputy Real Estate
3 Commissioner of the State of California, makes this Statement of
4 Issues in his official capacity and not otherwise.

5 III

6 In response to Question 25 of said application, to wit:
7 "Have you ever been convicted of any violation of law?",
8 Respondent answered "No".

9 IV

10 On or about January 19, 2000, in the Municipal Court,
11 County of Alameda, State of California, Respondent was convicted
12 of a violation of Section 242 of the California Penal Code
13 (Battery), a crime involving moral turpitude and/or which bears a
14 substantial relationship under Section 2910, Title 10, California
15 Code of Regulations, to the qualifications, functions, or duties
16 of a real estate licensee.

17 V

18 The crime of which Respondent was convicted, as alleged
19 in Paragraph IV, constitutes cause for denial of Respondent's
20 application for a real estate license under Sections 480(a)
21 and/or 10177(b) of the California Business and Professions Code.

22 VI

23 Respondent's failure to reveal in the Application the
24 conviction described in Paragraph IV, above, constitutes an
25 attempt to procure a real estate license by fraud,
26 misrepresentation, or deceit, or by making a material
27 misstatement of fact in the application, which failure is cause

1 for denial of Respondent's license application under Sections
2 480(c) and/or 10177(a) of the California Business and Professions
3 Code.

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

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12 
13 E. J. HABERER II
Deputy Real Estate Commissioner

14 Dated at Oakland, California,
15 this 21 day of March, 2005.
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