

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
NOV 10 2005

DEPARTMENT OF REAL ESTATE

By A. E. J.

* * *

In the Matter of the Application of)
GEOFFREY ADAM HODIES,)
Respondent.)

NO. H-9281 SF

OAH No. N-2005070782

DECISION

The Proposed Decision dated October 11, 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 NOV 30 2005.

IT IS SO ORDERED 10-26 2005.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

GEOFFREY ADAM HODIES,

Respondent.

Case No. H-9281 SF

OAH No. N2005070782

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on September 9, 2005.

Real Estate Counsel Michael B. Rich represented complainant E. J. Haberer II, a Deputy Real Estate Commissioner.

Respondent Geoffrey Adam Hodies was present and represented himself.

The matter was submitted on September 9, 2005.

FACTUAL FINDINGS

1. Complainant E. J. Haberer II filed the statement of issues in his capacity as a Deputy Real Estate Commissioner of the State of California.

2. On September 13, 2004, respondent Geoffrey Adam Hodies filed with the Department of Real Estate an application for a real estate salesperson license. Any license that issues from this application is subject to the conditions of Business and Professions Code section 10153.4.

3. On February 6, 2002, respondent was convicted in Contra Costa County on his plea of nolo contendere to a violation of Penal Code section 242/243, subdivision (e)(1), (battery against a spouse or cohabitant), a misdemeanor. The offense involves moral turpitude and is substantially related to the qualifications, functions, and duties of a real estate licensee.

Imposition of sentence was suspended and respondent was placed on court probation for three years. Respondent was ordered to serve 25 days in county jail (to be served through the Custody Alternative Bureau), pay \$1000 in fines, and attend a domestic violence program as directed by the probation officer.

4. The offense took place at respondent's home in Richmond on the afternoon of December 29, 2000. A former girlfriend came to respondent's house to pick up an item. A verbal altercation arose between the two of them. According to respondent, she keyed his car and he reacted by pushing her to the ground. Respondent wrestled with her on the ground; they kicked and hit each other. Respondent pulled her out of his garage and then keyed her car. The woman went to a neighbor's house and asked that the police be called.

The reporting police officer saw fresh key marks on both cars. The victim had large abrasions on her back consistent with being dragged on the ground.

5. Respondent completed all requirements of probation, including paying the fines and attending a 52-week course on domestic battery (Stand against Domestic Violence). Respondent's probation was terminated on December 16, 2003.

6. Respondent states that he has learned that it would have been better for him to walk away from the incident and call the police rather than to physically intervene like he did. While respondent admits committing the battery, his testimony tended to minimize his role in the incident.

7. Respondent paid restitution to the victim in a civil suit she filed against him.

8. John E. Kincaid, Ph.D., a clinical and forensic psychologist, performed an assessment of respondent on October 29, 2002. Dr. Kincaid concluded that although respondent tended to minimize his role in the battery, respondent did not pose a risk of harm to the public in connection with the structured environment of his professional practice as a chiropractor. He recommended that respondent continue with individual therapy to improve his social functioning.

9. Since January 1, 1990, respondent has been licensed as a chiropractor by the Board of Chiropractic Examiners. As a result of his criminal conviction, the Board instituted disciplinary proceedings against his chiropractor license. Respondent entered into a stipulation and agreement in Case No. 2003-04 on February 10, 2003. Effective March 12, 2003, the Board revoked respondent's license, stayed the revocation, and placed the license on probation for five years with stated terms and conditions. The discipline was based on admitted violations of Business and Professions Code section 1000-10 and title 10, California Code of Regulations, section 317, subdivisions (e), (g) and/or (h) (criminal conviction/unprofessional conduct).

10. Respondent has fully complied with the requirements of his probation to the Board of Chiropractic Examiners to date. A term of probation required that he undergo psychological therapy. Respondent has complied with that term by undergoing therapy with Dr. Kincaid. Respondent was required to complete a course in ethics. Respondent completed a three-unit course at a community college. Respondent remains on probation with the Board and is required to submit quarterly reports. The Board denied respondent's petition for an early termination of probation.

11. Respondent holds a certificate to practice as a Qualified Medical Evaluator before the Industrial Medical Council, Department of Industrial Relations. As a result of his criminal conviction, proceedings were commenced by this agency to discipline respondent's QME certificate. Respondent entered into a stipulation and waiver and effective September 18, 2003, in Case No. 2003-15692, the Council revoked respondent's certificate, stayed the revocation, and placed the certificate on probation for five years with stated terms and conditions. The discipline was based on respondent's understanding that if the allegations were proven they would constitute cause for discipline under Labor Code section 139.2, subdivision (m) (physician placed on probation by other relevant licensing agency), and Labor Code section 139.2, subdivision (k) (violation of material statutory or administrative duty - failure to inform the council of the probation and suspension).

12. Respondent did not intend to mislead the Council with respect to the discipline by the Board of Chiropractic Examiners. He understood from his attorney that the Council would be notified of the discipline automatically by the Board of Chiropractic Examiners. He understands that it was his obligation to inform the Council of the discipline and he accepts responsibility for his failure to do so.

13. It was not established that respondent's conduct in failing to notify the Council of the discipline imposed by the Board of Chiropractic Examiners amounted to fraud or dishonesty.

14. Respondent has fully complied with the requirements of his probation to the Industrial Medical Council. He remains on probation and is required to submit quarterly reports.

15. Respondent is married and is the father of a young child. Respondent has a 12-year-old daughter from a previous marriage for whom he pays child support. The child resides with her mother.

16. Respondent's interest in real estate stems from litigation he has been involved with over property he owns. His current wife is a real estate agent and they are both interested in becoming real estate brokers. Respondent has been offered a position with Ronald Green. Respondent may seek a position elsewhere if licensed.

17. Respondent's mother, Kelda Rinkleib, testified at hearing in support of respondent's character or honesty and integrity. Respondent submitted six letters from people who know him through business or professional relationships. All attest to his honesty and integrity in his business and professional dealings.

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. 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 turpitude¹. The Department has established criteria for determining whether a crime is substantially related to the qualifications, functions and duties of a real estate licensee. The criteria are set forth in section 2910 of title 10 of the California Code of Regulations.

2. Respondent's offense of a battery of a cohabitant is a crime involving moral turpitude as the conduct involves the violation of a relationship of trust. The offense is substantially related to the qualifications, functions or duties of a real estate licensee as it involves the doing of an unlawful act with the threat of doing substantial injury to the person of another (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8)). Cause exists to deny respondent's application under Business and Professions Code section 480, subdivision (a), and under section 10177, subdivision (b).

3. Under Business and Professions Code section 480, subdivision (a)(3), the Commissioner may deny an application for a real estate license if the applicant has done an act which if done by a licensee would be grounds for suspension or revocation of the license. Under Business and Professions Code section 10177, subdivision (f), the Commissioner may suspend or revoke the license of a real estate licensee, or deny an application for a real estate license to an applicant, who has had a license issued by another agency of this state revoked or suspended for acts that if done by a licensee would be grounds for suspension or revocation of a real estate license.

4. By reason of the discipline imposed by the Board of Chiropractic Examiners on respondent's chiropractic license as set forth in Finding 9, cause exists to deny respondent's real estate salesperson application pursuant to Business and Professions Code section 480, subdivision (a)(3), and section 10177, subdivision (f).

5. By reason of the discipline imposed by the Industrial Medical Council on respondent's QME certificate as set forth in Finding 11, cause exists to deny respondent's real estate salesperson application pursuant to Business and Professions Code section 480, subdivision (a)(3), and section 10177, subdivision (f).

6. Under Business and Professions Code section 10177, subdivision (j), the Commissioner may deny an application for licensure if the applicant has engaged in conduct which constitutes fraud or dishonest dealing. It is alleged that the discipline of respondent's QME certificate constitutes cause for denial under this provision. As set forth in Finding 13, it was not established that respondent's conduct underlying the discipline amounted to fraud

¹ The offense must be substantially related to the qualifications, functions, and duties of a real estate licensee. (*Brandt v. Fox* (1979) 90 Cal.App.3d 737, 748-749.)

or dishonest dealing. There is no cause for denial pursuant to Business and Professions Code section 10177, subdivision (j).

7. In California Code of Regulations, title 10, section 2911, the Department has established criteria to be used in evaluating the rehabilitation of an applicant with a criminal record. The burden is on respondent to show that he has sufficiently rehabilitated himself so that it would be appropriate to issue him a real estate license. More than three years have passed since the conviction and almost five years have elapsed since the underlying conduct. Respondent paid the fines associated with the offense, and paid restitution to the victim. His probation was terminated early. Respondent has a new and different social relationship than that which existed at the time of the offense. His family life has stabilized; he has remarried and has a young child. Respondent is attending to his parental obligations with both of his children. Respondent has been on probation with two other state agencies and has fully complied with the requirements they imposed on him. While respondent has tended to downplay his role in the offense, a sign of a lack of complete rehabilitation, he is continuing in therapy with Dr. Kincaid and presumably working on this issue. And, there is no evidence to suggest that respondent would pose a threat of physical harm to the real estate purchasing public. For these reasons, it is concluded that the public would not be put at risk by the Department issuing to respondent a restricted real estate license.

ORDER

Respondent's application for a real estate salesperson license is denied by reason of Legal Conclusions 2, 4 and 5, jointly and for each of them; 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

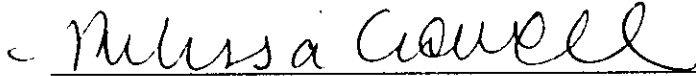
(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

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: October 11, 2005



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

FILED
JUN 22 2005

DEPARTMENT OF REAL ESTATE

By

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9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA
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13 In the Matter of the Application of)
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NO. H-9281 SF

STATEMENT OF ISSUES

28 The Complainant, E.J. HABERER II, a Deputy Real Estate
29 Commissioner of the State of California, for Statement of Issues
30 against GEOFFREY ADAM HODIES (hereinafter "Respondent"), is
31 informed and alleges as follows:

32 I

33 Respondent made application to the Department of Real
34 Estate of the State of California for a real estate salesperson
35 license on or about September 13, 2004, with the knowledge and
36 understanding that any license issued as a result of said
37 application would be subject to the conditions of Section
38 10153.4 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 On or about February 6, 2002, in the Superior Court,
7 County of Contra Costa, State of California, Respondent was
8 convicted of a violation of Section 242 and 243(e)(1) of the
9 California Penal Code (Battery committed against spouse, former
10 spouse, fiancée, fiancé, cohabitant), a crime involving moral
11 turpitude and/or a crime which bears a substantial relationship
12 under Section 2910, Title 10, California Code of Regulations, to
13 the qualifications, functions, or duties of a real estate
14 licensee.

15 IV

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

20 V

21 On or about March 12, 2003, before the Board of
22 Chiropractic Examiners of the State of California, Case No.
23 2003-304, Respondent's chiropractic examiner license was revoked
24 pursuant to stipulation and the revocation was stayed for a
25 period of five years subject to terms and conditions. Said
26 revocation and stay were based upon Respondent's conviction as
27 set forth in Paragraph III, above, as violative of Business and

1 Professions Code § 1000-10 and Title 16, California Code of
2 Regulations, Section 317(e), (g) and/or (h).

3 VI

4 Respondent's acts which resulted in the proceedings
5 and order described in Paragraph V, above, are acts which if
6 done by a real estate licensee would be grounds for the
7 suspension or revocation of a California Real Estate License and
8 are substantially related to the qualifications, functions or
9 duties of a real estate licensee pursuant to Section 2910, Title
10 10, of the California Code of Regulations.

11 VII

12 The revocation of Respondent's chiropractic examiner
13 license as described in Paragraph V, above, constitutes cause
14 for denial of Respondent's application for a real estate license
15 under Sections 480(a)(3), and 10177(f) of the Business and
16 Professions Code.

17 VIII

18 On or about September 18, 2003, before the Industrial
19 Medical Council, Department of Industrial Relations of the State
20 of California, Case No. 2003-15692, Respondent's certificate to
21 practice as a Quality Medical Evaluator to the Industrial
22 Medical Council was revoked pursuant to stipulation and the
23 revocation was stayed for a period of five years subject to on
24 terms and conditions. Said revocation and stay were based upon:
25 1.) the revocation of Respondent's chiropractic examiner license
26 as set forth in Paragraph V, above, as violative of Labor Code
27 Section 139.2(m); and, 2.) Respondent's failure to notify the

1 Industrial Medical Council of the revocation of his chiropractic
2 examiner license as violative of Labor Code Section 139.2(m).

3 IX

4 Respondent's acts which resulted in the proceedings
5 and order described in Paragraph VIII, above, are acts which if
6 done by a real estate licensee would be grounds for the
7 suspension or revocation of a California Real Estate License and
8 are substantially related to the qualifications, functions or
9 duties of a real estate licensee pursuant to Section 2910, Title
10 10, of the California Code of Regulations.

11 X

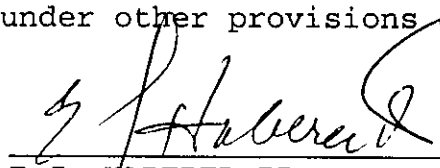
12 The cancellation of Respondent's Quality Medical
13 Evaluator license as described in Paragraph VIII, above,
14 constitutes cause for denial of Respondent's application for a
15 real estate license under Sections 480(a)(3), 10177(f) and
16 10177(j) of the Business and Professions Code.

17 WHEREFORE, the Complainant prays that the above-
18 entitled matter be set for hearing and, upon proof of the
19 charges contained herein, that the Commissioner refuse to
20 authorize the issuance of, and deny the issuance of, a real
21 estate salesperson license to Respondent, and for such other and
22 further relief as may be proper under other provisions of law.

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E.J. HABERER II
Deputy Real Estate Commissioner

26 Dated at Oakland, California,

27 this 22 day of June, 2005.