

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ERIC CRAIG LAWSON,

Respondent.

Case No. H-9562 SF

OAH No. N2006040609

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 6, 2006.

Real Estate Counsel Daniel E. Kehew represented complainant Charles W. Koenig, Deputy Real Estate Commissioner, State of California.

Respondent Eric Craig Lawson appeared and represented himself.

The matter was submitted on July 6, 2006.

FACTUAL FINDINGS

1. On May 19, 2005, respondent Eric Craig Lawson filed with the Department of Real Estate an application for a real estate salesperson license.

2. On September 12, 2000, respondent was convicted on his plea of no contest of a violation of Penal Code section 148, subdivision (a)(1) (resisting, delaying or obstructing a peace officer), a misdemeanor. Imposition of sentence was suspended on the conditions (among others) that respondent perform 15 days of service in the work alternative program, pay fines, fees, and restitution in the approximate amount of \$350, and complete three years of court probation.

This conviction arose out of an incident that occurred at about 11:30 p.m. on March 24, 2000, at a bar in San Ramon. Deputy Sheriff Echelmeier was performing a bar check in full uniform when he felt a kick in his buttocks. He turned around and saw respondent moving quickly away from him and trying to hide behind a customer. The deputy apprehended respondent, who told him, "I'm sorry. It was supposed to be funny. There were like four chicks around." When the deputy informed respondent that he was going to jail, respondent became abusive and combative, swearing at the deputy and challenging him

to fight. At the jail, respondent spit in the deputy's face. At the time of the incident, respondent was a 19-year-old student at the University of California, Davis.

3. On April 28, 2003, respondent was convicted on his plea of no contest of a violation of Penal Code section 242 (battery), a misdemeanor. Imposition of sentence was suspended on the conditions that respondent pay fines, fees, and restitution in the approximate amount of \$550, and complete one year of summary probation.

The facts and circumstances giving rise to this conviction are that, on February 14, 2003, respondent got into an argument with his former girlfriend. His former girlfriend informed the police that respondent had pushed her, and then punched her in the face, causing a bloody nose; respondent told the police that he pushed her and she fell over a bicycle. The incident occurred in the early morning hours at respondent's fraternity house in Davis. When the police arrived, they detected a strong odor of alcohol on respondent and the victim.

4. On January 12, 2005, respondent was convicted on his plea of no contest of a violation of Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon or force likely to produce great bodily injury), a felony. Respondent was sentenced to 180 days in jail, with credit for 13 days served, and ordered to complete three years of formal probation. Respondent was allowed to serve his jail time on a home electronic monitoring program. As conditions of probation, respondent was ordered (among other things) to pay fines and fees in the approximate amount of \$2,000, and restitution in an amount to be determined; abstain from the use or possession of alcohol; and participate in and complete a 30-hour anger management class. Respondent testified that he has served his sentence and completed the anger management class. He has been making monthly payments towards his fines and fees, and he is current on his payments; he has a remaining balance of approximately \$1,100. Respondent will remain on probation until January 2008.

The facts and circumstances giving rise to this conviction are that, on September 24, 2004, at about 1:45 a.m., respondent punched a man in the face with his fist, knocking him to the ground, unconscious. The incident occurred outside a bar in Davis. Respondent told the Davis police that the victim had called him a "fag" and taken a swing at him; respondent stated that he ducked and hit the victim in the face to defend himself. Respondent's statement to the police, however, was contradicted by numerous disinterested witnesses who saw the event. The witnesses told the police that there had been no previous argument between the victim and respondent and that respondent's attack on the victim was completely unprovoked - the victim never raised his hands and did not see respondent's punch coming. One witness stated that respondent's punch "came out of nowhere"; another witness stated that it was a "sucker punch."

At hearing, respondent testified that he had argued with a man inside the bar earlier in the evening. At the time of the incident, he was "120 percent sure" that the person he hit was the person he had argued with, but he now acknowledges that the victim was not the same

person. Respondent states that he had had four or five drinks, and he feels that his judgment was impaired.

5. On September 16, 2005, respondent submitted a Confidential – Interview Information Statement (RE 515) to the department; respondent completed a Conviction Detail Report for each of his convictions. In his description of the events leading to his 2000 conviction, respondent states that he was “not cooperative” and made “rude remarks” to a deputy sheriff, but omits any reference to kicking the deputy or spitting in the deputy’s face. His description of the events leading to the 2003 conviction states that the battery victim was a male, when in fact the victim was a female. His description of the events leading to the 2005 conviction states that he “felt compelled” to defend himself, but does not mention that he, respondent, threw the first punch.

6. Respondent is now 25 years old. He is single and has no children.

Respondent graduated from UC Davis in June 2004 with a bachelor’s degree in economics and a minor in communications.

Since graduation, respondent has focused on sales work. He characterizes himself as an outgoing person with good communications skills; he enjoys sales work because he finds that it suits his personality and allows him to be in control of his earning potential. Respondent worked for a short time as a sales representative for a travel agency. He then worked for six months as an account executive for WorldWide Express, selling DHL shipping services to the business market.

Respondent has been working as an Administrative Loan Assistant for Diablo Funding Group in Walnut Creek since November 2004. Respondent states that he “eats, sleeps, and breathes” real estate. He has taken loan officer training, and attended several real estate seminars. Respondent hopes to become a mortgage broker, which will allow him to take advantage of his degree in economics, his communication skills, and his social skills.

7. Respondent states that he is embarrassed by his convictions, and ashamed of them. While he emphasizes that he takes full responsibility for what he did, respondent feels that immaturity and alcohol use played a large role. Respondent used his time on house arrest to try to grow and change for the better. He also feels that the anger management class was valuable; he used the class to try to understand what “sets him off” so that he can avoid making poor decisions in the future.

Respondent feels that he has learned from his experiences, and that he has put his alcohol and anger problems behind him. He realizes the importance of being a good person, and of practicing more self-control, particularly with alcohol. Respondent has curtailed his use of alcohol significantly. Now he only drinks in connection with social events at work; the last time he had a drink was six weeks ago at an office mixer. Respondent feels that he no longer has a drinking problem.

Respondent intends to have his felony conviction reduced to a misdemeanor as soon as possible. He has apologized to the Alameda County Sheriff's Office for the circumstances leading to his first conviction.

8. Respondent spends 10 to 15 hours per week as an assistant wrestling coach at Clayton Valley High School. He was a competitive wrestler in high school, where he was captain of the wrestling team for three years. Respondent states that he enjoys helping people, and he tries to be a positive role model for his athletes; he tells them about his own experiences so that they can learn from his mistakes.

9. Brad Barroso is the branch manager for Diablo Funding Group in Walnut Creek. He submitted a letter on respondent's behalf. Barroso praises respondent for his work ethic, his honesty, and his integrity. He states that respondent is very intelligent and has exceeded every goal the firm has set for him. Barroso strongly supports respondent's application for a salesperson license. Barroso does not mention respondent's convictions.

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

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 480, subdivision (a), a license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. California Code of Regulations, title 10, section 2910, sets forth the criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves "[d]oing of any unlawful act with the intent of . . . doing substantial injury to the person or property of another" (subd. (a)(8)), or "[c]onduct which demonstrates a pattern of repeated and willful disregard of law" (subd. (a)(10).)

2. Respondent's three convictions are substantially related to the qualifications, functions or duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivisions (a)(8) and (10). Cause exists under Business and Professions Code section 480, subdivision (a), to deny respondent's application for a salesperson license.

3. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be denied if the applicant has been convicted of a felony or a crime involving moral turpitude. Although section 10177, subdivision (b), does not contain the "substantially related" language, the law is clear that a conviction is not actionable under that section unless it is substantially related to the qualifications, functions or duties of a real estate salesperson.¹

¹ *Brandt v. Fox* (1979) 90 Cal.App.3d 737.

A violation of Penal Code section 245, subdivision (a)(1), is a felony and a crime of moral turpitude.²

While a violation of Penal Code section 148, subdivision (a)(1), is not a crime of moral turpitude per se, the circumstances under which it is committed may involve moral turpitude. In this case, the evidence established that respondent committed a battery on a deputy sheriff. Battery on a peace officer is a crime of moral turpitude.³ The circumstances of respondent's crime, therefore, reveal that it was a crime of moral turpitude.

Respondent's convictions for violations of Penal Code sections 245, subdivision (a)(1), and 148, subdivision (a)(1), constitute cause to deny his application under Business and Professions Code section 10177, subdivision (b).

4. Respondent has the burden of proving that he has rehabilitated himself sufficiently from his convictions that it would not be contrary to the public interest to grant his application for licensure. The department has established criteria to guide the evaluation of an applicant's rehabilitation.⁴

Respondent has satisfied some of the department's criteria of rehabilitation. He has completed his college education; he has completed the jail sentence and the anger management class imposed by his latest conviction, and he is current on payments toward his fine; he has been gainfully employed since he graduated from college, and his supervisor at Diablo Funding Group speaks highly of him; and, he seems to have changed his attitude since his last conviction. Respondent states that he is determined to become a good person and a positive role model, and his statements seem to be sincere.

But it is early in respondent's rehabilitation. Respondent suffered three convictions, all involving violence, in less than five years; his most recent conviction – for his most serious and disturbing crime – was less than two years ago. Respondent will remain on probation for that offense until January 2008. It is true that respondent has cut back dramatically on his drinking, but he is required to do so by the terms of his probation. And, while respondent testified that he takes full responsibility for his crimes, his written statements to the department glossed over, or simply omitted, the most troubling facts about his crimes. Undoubtedly, embarrassment played a part in respondent's lack of candor, but his written statements create the impression that he has not fully accepted responsibility for his conduct. Respondent has made a promising start toward his rehabilitation; more time is necessary, however, for respondent to demonstrate that he does not present a threat of

² *People v. Thomas* (1988) 206 Cal.App.3d 689, 700.

³ *People v. Lindsay* (1989) 209 Cal.App.3d 849, 857.

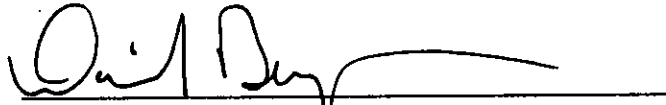
⁴ California Code of Regulations, title 10, section 2911.

violence. At this time, it would be contrary to the public interest to grant respondent's application for a real estate salesperson license, even on a restricted basis.

ORDER

The application of Eric Craig Lawson for a real estate salesperson license is denied.

DATED: July 28, 2006



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

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FILED
MAR 30 2006

DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of)
13 ERIC CRAIG LAWSON,) H-9562 SF
14 Respondent.) STATEMENT OF ISSUES
15)

16 The Complainant, CHARLES W. KOENIG, a Deputy Real
17 Estate Commissioner of the State of California, for Statement of
18 Issues against ERIC CRAIG LAWSON (hereinafter "Respondent"), is
19 informed and alleges as follows:

20 I

21 Complainant, CHARLES W. KOENIG, a Deputy Real Estate
22 Commissioner of the State of California, makes this Statement of
23 Issues against Respondent in his official capacity.

24 II

25 Respondent made application to the Department of Real
26 Estate of the State of California for a real estate salesperson
27 license on or about May 19, 2005, with the knowledge and

1 understanding that any license issued as a result of said
2 application would be subject to the conditions of Section 10153.4
3 of the Business and Professions Code (hereinafter "Code").

4 III

5 On or about September 12, 2000, in the Superior Court
6 of California, County of Contra Costa, Respondent was convicted
7 of Resisting, Obstructing, or Delaying a Peace Officer in
8 violation of Penal Code Section 148(a)(1), a misdemeanor and
9 crime involving moral turpitude that bears a substantial
10 relationship under Section 2910, Title 10, California Code of
11 Regulations (hereinafter "Regulations"), to the qualifications,
12 functions, or duties of a real estate licensee.

13 IV

14 On or about April 28, 2003, in the Superior Court of
15 California, County of Yolo, Respondent was convicted of Battery
16 in violation of Penal Code Section 242, a misdemeanor and crime
17 involving moral turpitude that bears a substantial relationship
18 under Section 2910, Title 10, of the Regulations, to the
19 qualifications, functions, or duties of a real estate licensee.

20 V

21 On or about January 12, 2005, in the Superior Court of
22 California, County of Yolo, Respondent was convicted of Assault
23 With Deadly Force or Means Likely to Produce Great Bodily Injury
24 in violation of Penal Code Section 245(a)(1), a felony and crime
25 involving moral turpitude that bears a substantial relationship
26 under Section 2910, Title 10, of the Regulations, to the
27 qualifications, functions, or duties of a real estate licensee.

1 VI

2 Respondent's criminal convictions, described in
3 Paragraphs III, IV, and V above, individually and collectively
4 constitute cause for denial of Respondent's application for a
5 real estate license under Sections 480(a) and 10177(b) of the
6 Code.

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

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16 
17 CHARLES W. KOENIG
18 Deputy Real Estate Commissioner
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20 Dated at Sacramento, California
21 this 27th day of March, 2006.
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