

DEPARTMENT OF REAL ESTATE

By K. Contreras

In the Matter of the Application of)
GURDEV SINGH,)
Respondent.)

N-2006120141

JEFF DAVI
Real Estate Commissioner

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Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

GURDEV SINGH,

Respondent.

Case No. H-9745 SF

OAH No. N2006120141

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings heard this matter on January 19, 2007, in Oakland, California.

Daniel E. Kehew, Counsel, represented the complainant E. J. Haberer II, Deputy Real Estate Commissioner of the State of California.

Respondent Gurdev Singh appeared on his own behalf.

The matter was submitted on January 19, 2007.

FACTUAL FINDINGS

1. Official notice is taken that complainant E. J. Haberer II made the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. On March 30, 2006, the Department of Real Estate (Department) received an application for a real estate salesperson license from Gurdev Singh (respondent). The application was dated March 27, 2006, and signed under penalty of perjury.

3. Question 18 of the application asks, "HAVE YOU USED ANY OTHER NAMES (i.e., maiden name, AKA's etc.)?" Respondent answered "No" in response to question 18. Respondent's answer to question 18 was false or misleading in that respondent used the name Gurdev Singh Thandi at all times prior to receiving citizenship on September 18, 1996.

4. Question 25 of the application asks, "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED

UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE.” Respondent marked “Yes” in response to question 25 and disclosed the conviction set forth in Finding 5. Respondent’s answer to question 25 was misleading in that he failed to disclose that he had also been convicted of the offense set forth in Finding 6.

5. On April 18, 2006, in the Superior Court of the State of California for the County of Santa Clara, respondent was convicted, upon a plea of nolo contendere, of violating Penal Code section 415.1 (fighting/challenging to fight in a public place), a misdemeanor. Respondent’s offense is a crime, which under the facts of this case, involves moral turpitude and bears a substantial relationship to the qualifications, functions or duties of a real estate salesperson. (See *People v. Rodriguez* (1992) 5 Cal.App.4th 1398 [willful violation of a special relationship involving expectations of safety and stability, with intent to injure, connotes the general readiness to do evil that defines moral turpitude].)

Respondent was ordered to complete a 16-week anger management course and pay a \$337.55 fine, or a domestic violence class would be imposed pursuant to Penal Code section 1203.097. Respondent represents he paid the fine and successfully completed the anger management course.

Respondent was originally charged with battery of a spouse, but the charge was later reduced to fighting/challenging to fight in public pursuant to a plea bargain. According to the police report, on January 24, 2006, following an argument between respondent and his wife, one of the couple’s sons called the police. Respondent’s wife reluctantly told police (through her son who acted as an interpreter) that she was choked and hit by respondent, and that her cheek hurt. A son (not the reporting party) told police his mother and father (respondent) were arguing and his father strangled his mother with her shawl. When his mother stated she could not breathe, his father hit her in the face. When questioned by police, respondent denied that he had hit, pushed, attempted to strangle or engaged in any physical violence against his wife. At hearing respondent admitted he “was out of control” when the incident occurred, but claimed that at most he gently grabbed his wife’s shawl. Respondent’s claim that he gently grabbed his wife’s shawl while he was out of control, and did not hit, strangle or otherwise use physical violence against his wife was not credible.

6. On September 2, 1999, in the Superior Court of the State of California for the County of Santa Clara, respondent was convicted, upon a plea of nolo contendere, of violating Penal Code section 415, subdivisions (1), (2), and (3).1 (fighting/loud noise offensive words in a public place), a misdemeanor.

Imposition of sentence was suspended and respondent was placed on two years of court probation on terms and conditions that included completing 80 hours of volunteer service, payment of fines totaling \$370 and completion of an anger management program. Respondent represents he successfully completed probation.

Respondent was originally cited on June 13, 1999, for assault and battery, but the charge was later reduced pursuant to a plea bargain. According to respondent, he had hired a man to perform work at his home. After respondent paid him, the man returned and demanded additional payment. A physical altercation ensued and the police were called. Respondent claims no one was hurt and that the judge reduced the charges against him because respondent was not at fault. In November 2006 respondent filed a petition with the court to have the conviction expunged. The petition is pending.

7. At hearing respondent acknowledged that he failed to list his 1999 criminal conviction on his application. He did not offer a clear explanation regarding his failure to list the conviction.

8. With respect to his April 2006 conviction, respondent explained that he had asked his wife to call one of their adult sons to ask the son to provide the funds to start a business. Respondent had not spoken to the son for almost three years and that is why he had his wife call. Respondent's wife told him the son did not want to start a business. Respondent became angry and began arguing with his wife, which ultimately resulted in the police being called. Respondent maintains he only pled guilty to a criminal offense to put an end to multiple court appearances, which were causing him to lose employment income. However, he admits grabbing his wife's shawl and that such conduct was wrong.

9. With respect to his failure to list the name Thandi on his application, respondent asserts he simply misunderstood question 18 and denies any intent to deceive the Department. Respondent explained that although he was naturalized under the name Gurdev Singh Thandi, he "dropped the name Thandi" when he gained citizenship. Respondent testified that all of his credit cards, his driver's license and other documents now only bear the name Singh. Respondent also pointed out that he sent in a copy of his naturalization certificate, which contains the name Gurdev Singh Thandi, with his application. Respondent acknowledged using the name Thandi Trucking for a trucking business that he owns, but noted that Thandi Trucking is a fictitious business name and not a name he uses personally.

10. A review of respondent's credit cards, insurance license and court records reveals that all of these documents contain only the name Gurdev Singh. A copy of respondent's naturalization certificate with the name Thandi is also a part of the application packet (Exhibit 2) submitted by respondent to the Department. Respondent's use of the fictitious business name Thandi Trucking for his trucking company establishes a current business use of the name Thandi by respondent but does not establish a current personal use of the name. After considering all of the evidence, it is found that respondent previously used the name Thandi and that he failed to include that name on his application for licensure. However, it is further found that respondent mistakenly failed to list the name Thandi on his application and there was no intent by respondent to deceive the Department with respect to his prior use of the name Thandi.

11. Respondent is 53 years old. He was born in India, but became a naturalized United States citizen on September 18, 1996. Respondent and his wife live in San Jose, California. They have been married for over 30 years and have five children, four of whom are now adults. Respondent is self-employed as a truck driver for his own company, Thandi Trucking. Respondent also holds an insurance license, which is valid through June 30, 2008. Respondent regularly volunteers at the Sheik temple where he worships.

12. Respondent failed to offer any evidence that he has successfully completed all of the courses required under Business and Professions Code section 10153.4.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b), provides that a license application may be denied if the applicant has been convicted of a felony or a crime involving moral turpitude. Respondent has been convicted of a crime involving moral turpitude, as set forth in Factual Finding 5.

2. The fact that a crime involves moral turpitude does not end the inquiry. Business and Professions Code section 480, subdivision (a), requires that in order for a crime to serve as a basis for denial of an application for licensure it must be substantially related to the qualifications, functions or duties of the business or profession for which application is made. (See *Petropolous v. Department of Real Estate* (2006) 142 Cal.App.4th 554 [Department must prove both that the misdemeanor crime involves moral turpitude and that it is substantially related to the duties of a real estate licensee].) Respondent's convictions are substantially related under title 12, California Code of Regulations, section 2910, subdivision (a)(8) [doing of an unlawful act with intent to confer a financial benefit upon the perpetrator or intent or with intent to injure the person or property of another]. Cause for denial of respondent's application exists pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), in that respondent has been convicted of a crime involving moral turpitude which bears a substantial relationship to the qualifications, functions or duties of a real estate salesperson, as set forth in Factual Finding 5.

3. The misdemeanor offense set forth in Factual Finding 6 does not involve moral turpitude. There is no cause for denial under Business and Professions Code section 10177, subdivision (b), by reason of this conviction.

4. Cause for denial of respondent's application exists pursuant to Business and Professions Code sections 480, subdivision (c) and 10177, subdivision (a) [attempting to procure a license by fraud, misrepresentation, deceit or material misstatement in the application] in that respondent failed to disclose that he had been convicted of fighting/challenging to fight in a public place, a misdemeanor, on his application for licensure, as set forth in Findings 4 and 7.

5. Cause for denial of respondent's application exists pursuant to Business and Professions Code sections 480, subdivision (c) and 10177, subdivision (a) [attempting to

procure a license by fraud, misrepresentation, deceit or material misstatement in the application] in that respondent failed to disclose his prior use of the name Thandi on his application for licensure, as set forth in Finding 9.

6. This is a close case. However, it is determined that notwithstanding respondent's prior convictions and his failure to list the name Thandi or his 1999 conviction on his application for licensure, it would not be against the public interest to grant him a real estate salesperson license upon appropriate terms and conditions. It is of concern that the incident resulting in respondent's most recent conviction occurred only slightly more than a year ago. However, a review of the circumstances of respondent's offense indicates that his conduct was an emotional reaction to a personal conflict with his wife of over 30 years. There is no evidence of prior similar incidents between respondent and his wife and respondent has successfully completed a 16-week anger management course. Although respondent failed to list his 1999 conviction, the conviction occurred over seven years ago, was relatively minor and was not shown to involve moral turpitude or be substantially related to the qualifications, functions or duties of a real estate salesperson. It must also be noted that no elements of fraud, dishonesty or corrupt purpose were involved in respondent's offenses. With respect to respondent's failure to list the name Thandi on his application, the evidence was persuasive that this was simply a mistake on his part and that there was no intent to deceive. It therefore seems that with proper supervision respondent will be able to perform the duties of a real estate salesperson.


ORDER

The application of respondent Gurdev Singh for a real estate salesperson license is denied; 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 three (3) 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 courses listed in section 10153.2, other than real estate principals, 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 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 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: 3/6/07


CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE

By K. Contreras

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

11 * * *

12 In the Matter of the Application of)
13 GURDEV SINGH,) H-9745-SF
14 Respondent.) STATEMENT OF ISSUES
15)

16 The Complainant, E. J. HABERER II, a Deputy Real Estate
17 Commissioner of the State of California, for Statement of Issues
18 against GURDEV SINGH (hereinafter "Respondent"), is informed and
19 alleges as follows:

20 I

21 Complainant, E. J. HABERER II, 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 March 30, 2006, 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 In response to Question 18 of said application, to
6 wit: "Have you used any other names (i.e., maiden name, AKA's,
7 etc.)?", Respondent concealed and failed to disclose his use of
8 the other name "Thandi", as described in Paragraph IV, below.

9 IV

10 At all times prior to receiving citizenship on or
11 about September 18, 1996, Respondent used the name "Gurdev Singh
12 Thandi."

13 V

14 In response to Question 25 of said application, to
15 wit: "Have you ever been convicted of any violation of law?",
16 Respondent concealed and failed to disclose the conviction
17 described in Paragraph VI, below.

18 VI

19 On or about September 2, 1999, in the Superior Court
20 of California, County of Santa Clara, Respondent was convicted
21 of FIGHTING/LOUD NOISE/OFFENSIVE WORDS IN A PUBLIC PLACE in
22 violation of Penal Code Section 415(1)(2)(3), a misdemeanor and
23 crime involving moral turpitude that bears a substantial
24 relationship under Section 2910, Title 10, California Code of
25 Regulations (hereinafter "Regulations"), to the qualifications,
26 functions, or duties of a real estate licensee.

27 \\\

VII

On or about April 18, 2006, in the Superior Court of California, County of Santa Clara, Respondent was convicted of FIGHTING/CHALLENGING TO A FIGHT IN A PUBLIC PLACE in violation of Penal Code Section 415.1, a misdemeanor and crime involving moral turpitude that bears a substantial relationship under Section 2910, Title 10, of the Regulations, to the qualifications, functions, or duties of a real estate licensee.

VIII

Respondent's criminal convictions, described above, constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the Code.

IX

Respondent's failure to reveal in said application the other name set forth in Paragraph IV, above, and failure to reveal the conviction set forth in Paragraph VI, above, individually and jointly constitute the procurement of or attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which failure is cause for denial of Respondent's application for a real estate license under Sections 480(c) and 10177(a) of the Code.

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

E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California
this 2nd day of November, 2006.