FILED
MAR 27 2007
DEPARTMENT OF REAL ESTATE
BY

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of	)	
	)	NO. H-9784 SF
MISTERWILLIE DOUGLAS CLIFTON, SR.,	)	
	)	OAH NO. N-2006120776
Respondent.	)	
	)	

DECISION

The Proposed Decision dated February 20, 2007, 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. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon on APR 17 2007.

IT IS SO ORDERED March 21, 2007.

JEFF DAVI
Real Estate Commissioner

BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of: MISTERWILLIE DOUGLAS CLIFTON, SR., Respondent.	Case No. H-9784 SF OAH No. N2006120776

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California, on February 1, 2007.

Complainant Charles W. Koenig, Deputy Real Estate Commissioner, was represented by Angela L. Cash, Counsel, Department of Real Estate.

Respondent Misterwillie Douglas Clifton, Sr., represented himself.

The matter was submitted for decision on February 1, 2007.

FACTUAL FINDINGS

1. On October 25, 2005, respondent Misterwillie Douglas Clifton, Sr., submitted to the Department of Real Estate an application for a real estate salesperson license. Any license issued pursuant to that application would be subject to the provisions of Business and Professions Code section 10153.4. The department denied respondent's application and he appealed.

2. a) On December 12, 2003, respondent was convicted, on his plea of guilty, of a misdemeanor violation of Vehicle Code section 14601.1, subdivision (a), knowingly driving with a suspended license. Upon conviction, respondent was fined $100 and sentenced to two days in jail, with credit for two days already served.

b) The incident that resulted in this conviction occurred on June 1, 2002. Respondent believes his license was suspended for failure to pay a ticket or for a failure to appear. He maintains he was notified of the suspension. It was not shown that this crime involved moral turpitude.

3. a) On July 7, 2004, respondent was convicted, on his plea of guilty, of a misdemeanor violation of Penal Code section 148.9, falsely identifying self to a peace officer, a crime involving moral turpitude. Upon conviction, respondent was fined $130 (with credit for time served this was reduced to $20) and was sentenced to three days in jail, with credit for three days already served.

b) In December 2003, respondent had confronted a woman in his mother's neighborhood who had been making derogatory remarks. After leaving the confrontation, he was "swarmed" by three or four police officers. Respondent testified that this was his first run-in with the police and he was nervous. Fearing the woman had accused him of doing something he had not done, respondent gave the officers a fictitious name and said he had a driver's license, but that it was not with him. The officers discovered respondent's true identity when they took his wallet out of his pocket and found his identification.

4. a) On November 28, 2005, respondent was convicted, on his plea of nolo contendere, of misdemeanor violations of Penal Code sections 148, subdivision (a)(1), willfully resisting, obstructing or delaying a peace officer, and 148.9, falsely identifying self to a peace officer, both crimes involving moral turpitude. Upon conviction, imposition of sentence was suspended and respondent was placed on probation for two years on conditions that included fines of nearly $500.

b) The incident that resulted in this conviction occurred on October 10, 2005. Respondent was scheduled to take the real estate licensing examination on October 11. When he was stopped for a traffic violation on October 10 he was afraid that his driver's license was suspended, and that his car would then be towed, leaving him no way to get to the examination the following day. So respondent gave the officer a friend's name. The officer ran a check and could not find a record of that name with the birth date respondent had given. When the officer attempted to put respondent in his patrol car, respondent fled. He was captured by officers after a foot pursuit. After he was handcuffed, respondent apologized to the officers and said he ran because he did not want his car towed.

5. Respondent signed his application for a real estate license on October 20, 2005. Respondent checked "no" in response to question 25, which read, "Have you ever been convicted of any violation of law? . . . you may omit minor traffic citations which do not constitute a misdemeanor or felony offense." He also checked "no" to question 26, which read, "Are there any criminal charges pending against you at this time?" In checking "no" to these questions, respondent knowingly made false and material misstatements of facts required to be revealed on an application.

6. a) On October 10, 2006, respondent was convicted, on his plea of nolo contendere, of a misdemeanor violation of Vehicle Code section 12500, subdivision (a), knowingly driving without a valid license. Upon conviction, respondent was fined about $300.

b) The incident that resulted in this conviction occurred on May 30, 2006. Respondent was with a friend who was not feeling well, so he drove her car. He asserts he did not know his license had been suspended. It was suspended for failure to pay a ticket. It was not shown that this crime involves moral turpitude.

7. Respondent is 26 years old. He has a two-year-old son for whom he shares joint custody with the child's mother. He makes child support payments. Respondent believes he has "learned [his] lesson from his past conduct and that he has matured as a father. He has paid his fines from his first three convictions. It was not clear if he has paid the fines from his most recent conviction. Respondent is still on probation for his 2005 conviction.

8. Respondent attended three years of college. He worked for a time in 2003 as a para-educator in special education for the San Mateo County Office of Education. He is currently waiting for a fingerprint clearance so he can work there again. In the meantime, his only employment is providing day care for his sister's two children.

9. Concerning his failure to report his 2003 and 2004 convictions, respondent said he was "just rushing through" the application and did not notice that he was required to report "all" convictions, both felonies and misdemeanors. He assumed the question was only asking for felony convictions. Respondent stated, "I carelessly read my application." Concerning his failure to report the charges that were then pending against him, respondent repeatedly said that he did not report these charges because he did not find out anything was pending against him until sometime after his application, when someone at the Department of Real Estate told him he had been put on probation. Respondent asserts he thought he had taken care of this arrest in court and that "it was over." This, of course, does not explain the failure to report. Respondent was arrested on October 10. He completed the application 10 days later. He had not yet gone to court for this arrest and therefore could not have "taken care" of it before completing the application.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), together provide that an application for a real estate license may be denied if the applicant has been convicted of a felony or a crime involving moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee. Cause for denial of respondent's application exists pursuant to these sections by reason of the convictions set forth in Findings 3 and 4, all of which involved moral turpitude and are substantially related to the qualifications, functions and duties of a real estate licensee pursuant to California Code of Regulations, title 10, section 2910, subdivision (4), employment of deceit, falsehood or misrepresentation to achieve an end. No similar cause exists for the convictions set forth in Findings 2 and 6 since neither are felonies or involve moral turpitude.

2. Business and Professions Code sections 480, subdivision (c), and 10177, subdivision (a), together provide that a license may be denied if the applicant knowingly made a false and material misstatement of fact required to be revealed on an application. Cause for denial of respondent's application exists pursuant to these sections by reason of the matters set forth in Finding 5. Respondent knew he had been convicted of two crimes yet did not report them because he did not think he had to report misdemeanors. His explanation for his failure to report the pending charge against him was not credible.

3. Respondent's crimes are relatively recent: one conviction was just over three years ago, the other was little more than a year ago. He is still on probation for this latter conviction. While it is to respondent's credit that he has paid his fines, that he has matured, and that he is fulfilling his obligations to his son, he has failed to present sufficient evidence to show that since his convictions he has rehabilitated himself to the extent that issuance of a license would be warranted. In addition, respondent's failure to report his convictions and his pending charges on his application place his honesty and integrity into question. It would not be in the public interest to grant respondent a license at this time.

ORDER

The application of respondent Misterwillie Douglas Clifton, Sr., for a real estate salesperson license is denied.

DATED: February 20, 2007

MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

ANGELA L. CASH, Counsel (SBN 230882)
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DEPARTMENT OF REAL ESTATE
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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of MISTERWILLIE DOUGLAS CLIFTON, SR, Respondent.	No. H-9784 SF STATEMENT OF ISSUES

The Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against MISTERWILLIE DOUGLAS CLIFTON, SR (herein "Respondent"), alleges as follows:

I

Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

II

On or about October 25, 2005, Respondent made application to the Department of Real Estate of the State of California (herein "the Department") for a real estate salesperson license with the knowledge and understanding that,

pursuant to the provisions of Section 10153.3 of the Business and Professions Code, any license issued as a result of said application would be subject to the conditions of Section 10153.4 of the California Business and Professions Code (herein "the Code").

III

In response to Question 25 of said application, to wit: "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 concealed and failed to disclose the convictions described in Paragraphs V, VI, VIII and IX below.

IV

In response to Question 26 of said application, to wit: "Are there any criminal charges pending against you at this time", Respondent concealed and failed to disclose the pending criminal charge described in Paragraph VII, below.

V

On or about December 12, 2003, in the Superior Court of the State of California, County of Santa Clara, Case Number CC251421, Respondent was convicted of the crime of Driving With License Suspended in violation of Vehicle Code Section 14601.1(a), a misdemeanor and a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"),

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to the qualifications, functions or duties of a real estate licensee.

VI

On or about July 7, 2004, in the Superior Court of the State of California, County of Santa Clara, Case Number BB406919, Respondent was convicted of the crime of False Identification to a Police Officer in violation of Penal Code Section 148.9, a misdemeanor and a crime involving moral turpitude which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

VII

At all times mentioned herein between October 10, 2005 and November 28, 2005, as Respondent well and truly knew at the time, criminal charges were pending against Respondent in the Superior Court of the State of California, County of Santa Clara, Case No. BB517008, alleging violations by Respondent of Penal Code Section 148(a)(1) and Penal Code Section 148.9, each a misdemeanor and a crime involving moral turpitude which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

VIII

On or about November 28, 2005, in the Superior Court of the State of California, County of Santa Clara, Case Number BB517008, Respondent was convicted of the crime of Obstructing a Police Officer in violation of Penal Code Section 148(a)(1), and

of the crime of False Identification to a Police Officer in violation of Penal Code Section 148.9, each a misdemeanor and a crime involving moral turpitude which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

IX

On or about October 10, 2006, in the Superior Court of the State of California, County of Santa Clara, Case Number BB620819, Respondent was convicted of the crime of Driving Without a Valid License in violation of Vehicle Code Section 12500(a), a misdemeanor and a crime involving moral turpitude which bears a substantial relationship under Section 2910 of the Regulations to the qualifications, functions or duties of a real estate licensee.

X

In failing to reveal the convictions described in Paragraphs V, VI, VIII and IX above, and the pending charges described in Paragraph VII, above, Respondent procured or attempted to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which constitutes 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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XI

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

WHEREFORE, Complainant prays that the 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 proper in the premises.

CHARLES W. KOENIG
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 1st day of December, 2006.