

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
JUN 15 2007

DEPARTMENT OF REAL ESTATE

By *[Signature]*

In the Matter of the Application of)
OVID LEE MORGAN,) NO. H-9944 SF
Respondent.) OAH NO. N2007031024

DECISION

The Proposed Decision dated May 14, 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, 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 JUL - 6 2007

IT IS SO ORDERED

6/13/07

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

OVID LEE MORGAN,

Respondent.

Case No. H-9944 SF

OAH No. N2007031024

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on April 18, 2007.

Real Estate Counsel Jeanine K. Clasen represented complainant E. J. Haberer II, a Deputy Real Estate Commissioner.

Respondent Ovid Lee Morgan was present and represented himself.

The matter was submitted for decision on April 18, 2007.

FACTUAL FINDINGS

1. On April 28, 2006, respondent Ovid Lee Morgan filed with the Department of Real Estate an application for a real estate salesperson license. If a license issues from this application, it will be subject to the conditions of Business and Professions Code section 10153.4.

2. 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." In response to this question, respondent checked the box "yes" and disclosed a 1989 battery conviction. He failed to disclose, however, a 1985 conviction of conspiracy to commit bank robbery/larceny. In so doing, respondent made a material misstatement of fact on his application for licensure.

3. On August 30, 1985, respondent was convicted in the United States District Court for the Northern District of California of a violation of section 371 of title 18 of the United States Code (conspiracy to commit bank larceny/embezzlement), a felony.

Imposition of sentence was suspended and respondent was placed on probation for three years on conditions that required him to make restitution in the amount of \$891.17, and to submit to counseling, treatment, and testing as directed by his probation officer.

4. The offense took place in April 1985. Respondent was married to a woman who was a bank teller, and they were friends with Terry Blunt. The three agreed to a scheme in which Blunt would commit a robbery at respondent's wife bank. It was agreed that respondent's wife would not give Blunt marked bills and would not sound an alarm. Respondent's role was to drive Blunt to and from the bank.

5. On July 13, 1989, respondent was convicted in San Francisco County of a violation of Penal Code section 273.5 (infliction of corporal injury upon a spouse), a misdemeanor. Imposition of sentence was suspended and respondent was placed on probation for three years.

6. This offense took place after respondent and his wife had separated. Respondent learned that she was involved with another man. He became jealous. Respondent found the man with his wife, became angry at her, and slapped her.

7. At the recommendation of his attorney, respondent completed a domestic violence course through Men over Violence.

8. The misdemeanor offense was expunged in 2003 pursuant to Penal Code section 1203.4.

9. In completing the application for licensure, respondent did not intend to mislead the Department with respect to his criminal record. Respondent is very believable that he does not hide his criminal past from anyone. He made a mistake in not disclosing the felony conviction, a mistake he fully acknowledges and for which he is apologetic.

10. At the time of the federal offense, respondent, his wife and Blunt were all serious cocaine users. Respondent knew he needed help, and tried to recover on his own. After years of trying, respondent entered a residential treatment program in 1992 and become clean and sober. Respondent relapsed in 1993, after which he spent six months at St. Anthony's Farm and six months at Covenant House. Respondent was clean for three and one-half years, and then relapsed again. Respondent went back into treatment and has been clean and sober since 1999.

11. Since 2002, respondent has been certified through the California Association of Addiction Recovery Resources as an Alcohol and other Drug Addiction Recovery Specialist (CAS). Additional continuing education is required to renew the certification. Respondent's certification is current.

12. Respondent has worked as a part-time recovery counselor since 2002. He currently works as a relief counselor with the Haight-Ashbury Free Clinic. He works

with clients in long-term residential facilities that have multiple and complex diagnoses. Respondent does one-on-one counseling as well as lead group meetings. From 2002-2005, respondent worked as a relief counselor with Baker Places in San Francisco.

13. With respect to his own sobriety, respondent attends Alcoholics Anonymous and Narcotics Anonymous meetings at least twice a week. He speaks often with his former recovery counselor and mentor, Salahudin Akbar, whom he now works with at the Haight-Ashbury Free Clinic.

14. Respondent also works on a full-time basis with St. Anthony's Foundation in San Francisco. He has been employed with St. Anthony's since 1999. His current position is as safety officer/reception. His job duties include intake, assessment, and referral as well as safety matters. Respondent is a very loyal and valued employee.

15. Respondent is 45 years old. Respondent is divorced from the mother of his two adult children, the woman who was involved in the two criminal offenses. He resides in Richmond with his long-time girlfriend. Respondent is close with his two children. Respondent has one grandchild whom he also sees regularly. Respondent has a good relationship with his former wife. She has two boys whom respondent has taken under his wing.

16. Respondent has been interested in real estate for many years. He has not been able to act on that interest until recently. Respondent has trained with Fred DeLeon of Infinity Financial in Foster City. DeLeon is aware of respondent's criminal record, and has offered him a position should he obtain a license from the Department.

17. Respondent submitted four letters of reference.

Salahudin Akbar attests that respondent "is without compromise relating to honesty, and when relating to humanity, he seems to epitomize compassion and concern."

Barbara S. Lewis, MFCC, has known respondent for more than six years. She attests that respondent is "a responsible, honest, conscientious person who has always been reliable and trustworthy."

Similar sentiments regarding respondent's character were written by respondent's sister, Celestine Duncan-Lindsay, and Loretta Cook.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 10177, subdivision (b), and 480, subdivision (a), together provide that the Commissioner may deny an application for a real estate license 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. (See *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554.)

Factual Finding 3: Respondent has been convicted of the felony offense of conspiracy to commit bank robbery/larceny. 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 intent of conferring a financial or economic benefit on the perpetrator. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Cause exists to deny respondent's application under Business and Professions Code section 10177, subdivision (b), as it interacts with Business and Professions Code section 480, by reason of the felony conviction.

Factual Finding 5: Respondent has been convicted of the misdemeanor offense of infliction of corporal injury on a spouse in violation of Penal Code section 273.5. As held by the court in *People v. Rodriguez* (1992) 5 Cal.App.4th 1398, the offense involves moral turpitude: "To violate Penal Code section 273.5 the assailant must, at the very least, have set out, successfully, to injure a person of the opposite sex in a special relationship for which society rationally demands, and the victim may reasonably expect, stability and safety, and in which the victim, for these reasons among others, may be especially vulnerable." (*Id.* at p. 1402.) The offense is substantially related to the qualifications, functions, or duties of a real estate licensee in that it involves the doing of an unlawful act within the intent or threat of doing substantial injury to another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Cause exists to deny respondent's application under Business and Professions Code section 10177, subdivision (b), as it interacts with Business and Professions Code section 480, by reason of the misdemeanor conviction.

2. Under Business and Professions Code section 10177, subdivision (a), the Commissioner may deny a real estate license if the applicant has attempted to procure a license by fraud, misrepresentation or deceit, or by making a material misstatement of fact in the application.

Factual Findings 2 and 9: Respondent made a material misrepresentation of fact regarding his criminal record on his application for licensure. Cause exists to deny respondent's application for a real estate salesperson license under Business and Professions Code section 10177, subdivision (a).

3. 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 is sufficiently rehabilitated so that it would be appropriate to issue him a real estate license. Respondent has shown strong evidence of rehabilitation. His last conviction occurred more than 17 years ago. It is clear that respondent is a much different man than he was when he committed these two offenses. Respondent has been clean and sober for more than eight years. He takes his sobriety seriously, as evidenced by his pursuit of a CAS certification and his employment in the field of substance abuse and recovery. Respondent is divorced from the woman with whom he was involved at the time of the two offenses. The domestic violence incident with his former wife appears to be an isolated one driven by emotion. Respondent has educated himself on domestic violence, his family circumstances have changed and stabilized,

and he has matured. Through his employment, respondent has been significantly and conscientiously involved in community programs designed to ameliorate social problems. Most importantly, respondent established through his testimony, and through others, that he has taken his rehabilitation seriously. The public will be adequately protected by the following order that allows respondent to obtain a real estate salesperson license on a restricted basis.

ORDER

The application of Ovid Lee Morgan for a real estate salesperson license is denied by reason of Legal Conclusions 1 and 2, jointly and for each of them; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7, and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.5:

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: May 14, 2007



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

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FILED
MAR 14 2007
DEPARTMENT OF REAL ESTATE
By H. Mat

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 OVID LEE MORGAN,) No. H-9944 SF
13 Respondent.) STATEMENT OF ISSUES
14)

15 The Complainant, E.J. HABERER II, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against OVID LEE MORGAN, also known as "Ovid Lee Morgan, Jr.",
18 (herein "Respondent"), alleges as follows:

19 I

20 Complainant, E.J. HABERER II, a Deputy Real Estate
21 Commissioner of the State of California, makes this Statement of
22 Issues in his official capacity.

23 II

24 On or about April 28, 2006, Respondent made
25 application to the Department of Real Estate of the State of
26 California (herein "the Department") for a real estate
27 salesperson license with the knowledge and understanding that,

1 pursuant to the provisions of Section 10153.3 of the Business
2 and Professions Code, any license issued as a result of said
3 application would be subject to the conditions of Section
4 10153.4 of the California Business and Professions Code (herein
5 "the Code").

6 III

7 In response to Question 25 of said application, to
8 wit: "Have you ever been convicted of any violation of law?
9 Convictions expunged under Penal Code Section 1203.4 must be
10 disclosed. However, you may omit minor traffic citations which
11 do not constitute a misdemeanor or felony offense," Respondent
12 concealed and failed to disclose the conviction described in
13 Paragraph IV, below.

14 IV

15 On or about August 30, 1985, in the United States
16 District Court for the Northern District of California (Case
17 Number CR 850518), Respondent was convicted of the crime of
18 Conspiracy To Commit Bank Larceny/Embezzlement in violation of
19 Section 371 of Title 18 of the United States Code, a felony and
20 a crime involving moral turpitude which bears a substantial
21 relationship under Section 2910, Title 10, California Code of
22 Regulations (herein, "the Regulations"), to the qualifications,
23 functions or duties of a real estate licensee.

24 V

25 On or about July 13, 1989, in the Superior Court of
26 the State of California, County of San Francisco (Case Number
27 W258468), Respondent was convicted of the crime of Domestic

Battery in violation of Penal Code Section 273.5, 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.

VI

In failing to reveal the conviction described in Paragraph IV, above, in said application, 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.

VII

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

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

7
8 
9 E.J. HABERER II
Deputy Real Estate Commissioner

10
11 Dated at Oakland, California,
12 this 8th day of March, 2007.