

FILED

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

APR - 8 2008

DEPARTMENT OF REAL ESTATE

* * *

In the Matter of the Application of)
RICHARD HOLLOWAY,)
Respondent.)

By K. Mar

NO. H-10253 SF

OAH NO. N2007120195

DECISION

The Proposed Decision dated March 4, 2008, 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 APR 24 2008.

IT IS SO ORDERED

4-2-08

JEFF DAVI
Real Estate Commissioner

Barbara J. Bigby

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

RICHARD HOLLOWAY,

Respondent.

Case No: H-10253 SF

OAH No. N2007120195

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on February 7, 2008.

Michael B. Rich, Counsel, represented complainant Charles W. Koenig, Deputy Real Estate Commissioner, State of California.

Respondent Richard Holloway was present and represented himself.

The matter was submitted on February 7, 2008.

FACTUAL FINDINGS

1. Complainant Charles W. Koenig, Deputy Real Estate Commissioner, issued the statement of issues in his official capacity.
2. Respondent Richard Holloway was born on December 27, 1969. He began using methamphetamine when he was 16, partly under the influence of peers and partly to control his weight. He also smoked marijuana. In his twenties, when he was "young and dumb," respondent did a lot of drugs and had numerous encounters with the police and numerous criminal convictions.
3. On September 18, 1990, respondent was convicted in Contra Costa County of violating Penal Code section 538, subdivision (d) (misrepresenting oneself as a police officer), a misdemeanor and a crime involving moral turpitude that bears a substantial relationship to the qualifications, functions and duties of a real estate licensee.
4. On May 15, 1991, respondent was convicted in Contra Costa County of five counts of violating Penal Code section 484, subdivision (f) (forgery with intent to defraud), a misdemeanor and a crime involving moral turpitude that bears a substantial relationship to the qualifications, functions and duties of a real estate licensee.

5. On March 1, 1993, respondent was convicted in San Diego County of violating Penal Code section 273.5 (willful infliction of corporal injury upon spouse/cohabitant), a misdemeanor and a crime involving moral turpitude that bears a substantial relationship to the qualifications, functions and duties of a real estate licensee.

6. On May 4, 1995, respondent was convicted in Contra Costa County of four counts of violating Penal Code section 273.5 (willful infliction of corporal injury upon spouse/cohabitant), felonies and crimes involving moral turpitude that bear a substantial relationship to the qualifications, functions and duties of a real estate licensee.

7. On January 3, 1997, respondent was convicted in Contra Costa County of four counts of violating Health and Safety Code section 11550 subdivision (a) (unlawfully under the influence of a controlled substance, methamphetamine), a misdemeanor.

8. On March 19, 1997, respondent was convicted in Contra Costa County of four counts of violating Health and Safety Code section 11550 subdivision (a) (unlawfully under the influence of a controlled substance, methamphetamine), a misdemeanor.

9. On January 27, 1998, respondent was convicted in Contra Costa County of four counts of violating Penal Code sections 484 and 666 (theft conviction with prior convictions), and 459 and 460, subdivision (b) (second degree burglary), felonies and crimes involving moral turpitude that bear a substantial relationship to the qualifications, functions and duties of a real estate licensee.

10. On September 16, 1998, respondent was convicted in Contra Costa County of four counts of violating Health and Safety Code sections 11378 subdivision (a) (unlawful possession for sale of a controlled substance, methamphetamine), and 11379.6 (unlawful manufacture of a controlled substance, methamphetamine) felonies and crimes involving moral turpitude that bear a substantial relationship to the qualifications, functions and duties of a real estate licensee.

11. Each of the convictions listed above occurred during the period that respondent abused drugs. He acknowledges that he had numerous convictions and served time in jail and on probation, but in some instances does not recall the facts and circumstances of his criminal conduct or the ensuing criminal prosecutions. Some of respondent's convictions have been expunged.

12. In response to Question 25 on his application, respondent indicated that he had been convicted of violations of the law. In response to Question 27, which required him to list his convictions, respondent attached several pages of court records that disclosed most, but not all, of his convictions. Respondent did not disclose the convictions set forth in Factual Findings 3 and 4. Although complainant alleges that respondent also failed to disclose the conviction set forth in Factual Finding 8, the record was inconclusive.

13. Respondent made a diligent attempt to disclose his criminal convictions to the department. He had gone to the Superior Court in Contra Costa County to retrieve the records of his convictions. The records he was able to retrieve listed most, but not all, of his convictions. Although respondent failed to list all of his convictions, he did not intend to mislead the department or conceal his history.

14. After hitting "rock bottom" in 1998, respondent began on the path to sobriety and recovery. He entered an alcohol and drug recovery program at Diablo Valley Ranch in Clayton, California. Respondent received one-on-one counseling and psychiatric help in that program. He learned that his life was reckless and out of control. He completed his stay there in 1999, after which he relocated to St. Phillip House, a clean and sober house located in Concord, California. Respondent stayed at St. Phillip House until the end of 2001.

15. Respondent completed 52 sessions in a domestic violence program in August 2000.

16. Respondent's sobriety date is July 1, 1998. He acknowledges that he is a drug addict, and will "always be a drug addict." Respondent attended Alcoholics Anonymous and Narcotics Anonymous meetings during his recovery. He still attends AA and NA. He has had the same sponsor for over seven years. He sponsors 18 others.

17. Respondent successfully completed and was terminated from probation on September 16, 2001. He has been off probation for more than six years.

18. From 1999 to 2001, respondent worked for Old Fashion Housecleaning.

19. Starting in July 2001, respondent was employed as the manager of a friend's Midas Muffler shop. In 2003 or 2004, respondent bought the franchise from his friend and became the owner and operator of the business. Respondent received licenses for the business from the state Bureau of Automotive Repair, the City of Concord, and the Contra Costa County Hazardous Materials Program. He ran the business successfully until 2006, when congestive heart failure required him to sell the business.

20. Respondent served as the Chair and President of Diablo Valley Ranch until 2006, when he resigned due to his health problems.

21. Respondent is currently employed in automobile sales at Michael Stead Chevrolet Cadillac in Walnut Creek.

22. Respondent is now about 38 years old. He leads a sober, positive and productive life. He is a responsible parent. A department report notes that respondent volunteers at his daughter's elementary school, has completed a 12-week co-parenting class, and is current on his child support obligation.

23. Respondent's mother, Margenette Wells, owns a real estate business and is willing to employ respondent. Wells was a witness in support of respondent. She testified that respondent is now clean and sober, has turned his life around, and is a wonderful father.

24. Respondent submitted letters of support from Robert Reinhard, Gina Carano-Burge, Jennifer Amador, Ted Filler and Jack Montilla. The letters attest to respondent's hard work, dedication to his family and friends, recovery and sobriety, and parental responsibility.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b), in conjunction with Business and Professions Code section 480, subdivision (a), provides 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. The convictions set forth in Factual Findings 3, 4, 5, 6, 9 and 10 are such crimes, and provide cause to deny his application.

2. The convictions set forth in Factual Findings 7 and 8 were not shown to involve moral turpitude. They do not provide cause to deny respondent's application.

3. Respondent's failure to disclose all of his convictions was a material misstatement of fact and provides cause to deny his application pursuant to Business and Professions Code sections 480, subdivision (c), and 10177, subdivision (a). Respondent attempted to recover, albeit unsuccessfully, the full record of his criminal convictions. He did not seek to mislead the department or conceal his history.

4. The department's regulations set forth criteria for evaluating an applicant's rehabilitation. (Cal. Code Regs., tit. 10, § 2911.) Some 10 years have elapsed since respondent's last conviction. He has successfully completed and been released from probation. Some of his convictions have been expunged. He successfully completed drug rehabilitation and has been clean and sober since 1998. He remains active in AA and NA, and sponsors others. He has provided community service. He has achieved a stable family life, managed and run his own business, and is responsibly employed. He has demonstrated a change in conduct and attitude from that which existed during the time he abused drugs and engaged in criminal conduct. Respondent has made a strong showing of rehabilitation and demonstrated that the public interest will be adequately protected by the grant of a restricted license.

ORDER

The application of respondent Richard Holloway for a real estate salesperson license is denied; 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

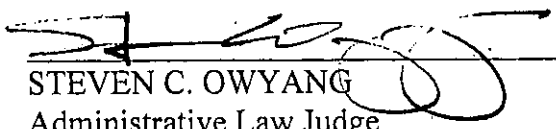
section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions Code section 10156.6:

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 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 Business and Professions Code section 10153.4, to wit: respondent shall, within 18 months of the issuance of the restricted license, submit evidence satisfactory to the commissioner of successful completion, at an accredited institution, of a course in real estate practices and one 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 18 months after the date of

its issuance. This 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 Business and Professions Code 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: March 4, 2008



STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

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FILED

NOV 21 2007

DEPARTMENT OF REAL ESTATE

By H. Mar

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

12 * * *

13 In the Matter of the Application of) H-10253 SF
14)
15 RICHARD HOLLOWAY,) STATEMENT OF ISSUES
16)
17 Respondent.)

18
19 The Complainant, CHARLES W. KOENIG, a Deputy Real
20 Estate Commissioner of the State of California, for Statement of
21 Issues against RICHARD HOLLOWAY also known as RICHARD ANTHONY
22 HOLLOWAY (hereinafter "Respondent"), is informed and alleges as
23 follows:

24 I

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 June 6, 2007, 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
3 10153.4 of the Business and Professions Code.

4 II

5 Complainant, CHARLES W. KOENIG, a Deputy Real Estate
6 Commissioner of the State of California, makes this Statement of
7 Issues in his official capacity and not otherwise.

8 III

9 In response to Question 25 of said application, to
10 wit: "Have you ever been convicted of any violation of law?",
11 Respondent answered "Yes" and disclosed the convictions set
12 forth in Paragraphs VI, VII, VIII, X and XI, below. Respondent
13 failed to disclose the conviction set forth in Paragraphs IV, V,
14 and IX, below.

15 IV

16 On or about September 18, 1990, in the Municipal
17 Court, County of Contra Costa, State of California, in case
18 number 129168-1, Respondent was convicted of violating Section
19 538d of the California Penal Code (Misrepresenting oneself as a
20 police officer), a misdemeanor and a crime involving moral
21 turpitude which bears a substantial relationship under Section
22 2910, Title 10, California Code of Regulations, to the
23 qualifications, functions, or duties of a real estate licensee.

24 V

25 On or about May 15, 1991, in the Municipal Court,
26 County of Contra Costa, State of California, in case number
27 136025-4, Respondent was convicted of five counts of violating

1 Section 484f of the California Penal Code (Forgery - with intent
2 to defraud, designs, makes, alters or counterfeits access card),
3 misdemeanors and crimes involving moral turpitude which bear a
4 substantial relationship under Section 2910, Title 10, California
5 Code of Regulations, to the qualifications, functions, or duties
6 of a real estate licensee.

7 VI

8 On or about March 1, 1993, in the Municipal Court,
9 County of San Diego, State of California, in case number
10 M659744DV, Respondent was convicted of violating Section 273.5 of
11 the California Penal Code (Willful infliction of corporal injury
12 upon spouse/cohabitant and/or the mother of his child), a
13 misdemeanor and a crime involving moral turpitude which bears a
14 substantial relationship under Section 2910, Title 10, California
15 Code of Regulations, to the qualifications, functions, or duties
16 of a real estate licensee.

17 VII

18 On or about May 4, 1995, in the Superior Court, County
19 of Contra Costa, State of California, in case number 165717-0,
20 Respondent was convicted of four counts of violating Section
21 273.5 of the California Penal Code (Willful infliction of
22 corporal injury upon spouse/cohabitant and/or the mother of his
23 child), felonies and crimes involving moral turpitude which bear
24 a substantial relationship under Section 2910, Title 10,
25 California Code of Regulations, to the qualifications, functions,
26 or duties of a real estate licensee.

27 ///

VIII

On or about January 3, 1997, in the Superior Court, County of Contra Costa, State of California, in case number 175282-3, Respondent was convicted of two counts of violating Section 459 and 460(b) of the California Penal Code (Second degree burglary), felonies and crimes involving moral turpitude which bear a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IX

On or about March 19, 1997, in the Superior Court, County of Contra Costa, State of California, in case number 176584-1, Respondent was convicted of violating Section 11550(a) of the California Health & Safety Code (Unlawfully under the influence of a controlled substance, to wit: methamphetamine), a misdemeanor and a crime involving moral turpitude which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

X

On or about January 27, 1998, in the Superior Court, County of Contra Costa, State of California, in case number 104954-3, Respondent was convicted of violating Section 484 and 666 of the California Penal Code (Theft conviction with prior convictions) and Section 459 and 460(b) of the California Penal Code (Second degree burglary), felonies and crimes involving moral turpitude which bears a substantial relationship under

1 Section 2910, Title 10, California Code of Regulations, to the
2 qualifications, functions, or duties of a real estate licensee.

3 XI

4 On or about September 16, 1998, in the Superior Court,
5 County of Contra Costa, State of California, in case number
6 184497-6, Respondent was convicted of violating Section 11378 of
7 the California Health and Safety Code (Unlawful possession for
8 sale of controlled substance, to wit: methamphetamine) and
9 Section 11379.6 of the California Health and Safety Code
10 (Unlawfully manufactures, produces, extracts, a controlled
11 substance, to wit: methamphetamine), felonies and crimes
12 involving moral turpitude which bear a substantial relationship
13 under Section 2910, Title 10, California Code of Regulations,
14 to the qualifications, functions, or duties of a real estate
15 licensee.

16 XII

17 The crimes of which Respondent was convicted, as
18 alleged in Paragraphs IV, V, VI, VII, VIII, IX, X, and XI,
19 above, individually and collectively, constitute cause for
20 denial of Respondent's application for a real estate license
21 under Section 480(a) and 10177(b) of the California Business and
22 Professions Code.

23 IX

24 Respondent's failure to reveal the convictions set
25 forth in Paragraphs IV, V, and IX, above, in said application
26 constitutes the procurement or attempted procurement of a real
27 estate license by fraud, misrepresentation, or deceit, or by

1 making a material misstatement of fact in said application,
2 which failure is cause for denial of Respondent's application
3 for a real estate license under Sections 480(c) and Sections
4 10177(a) of the California Business and Professions Code.

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

11
12
13 
14 CHARLES W. KOENIG
15 Deputy Real Estate Commissioner

16 Dated at Sacramento, California,
17 this 19th day of November, 2007.