

FILED

OCT - 8 2008

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

B. Contreras

* * *

In the Matter of the Application of)
MATTHEW ROGERS,)
Respondent.)

NO. H-10335 SF

N-2008040332

DECISION

The Proposed Decision dated September 8, 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.

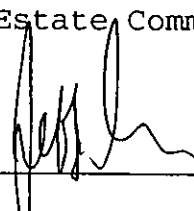
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a 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 October 28, 2008.

IT IS SO ORDERED 10-1, 2008.

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

MATTHEW ROGERS,

Respondent.

Case No. H-10335 SF

OAH No. 2008040332

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on June 26, 2008, in Oakland, California.

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

Peter Ryan, Attorney at Law, represented respondent Matthew Rogers, who was present.

The record was held open for respondent to submit a letter from his probation officer. This letter was received on August 7, 2008, marked as Exhibit D, and admitted in evidence as administrative hearsay. On August 7, 2008, the record was closed and the matter was deemed submitted for decision.

FACTUAL FINDINGS

1. Respondent Matthew Rogers submitted to the Department of Real Estate an application for a real estate salesperson license. The application was dated August 17, 2007, and the department received it on September 5, 2007.

2. On June 2, 2005, respondent was convicted on a plea of nolo contendere of violating Health and Safety Code section 11351 (possession of a controlled substance for sale), a felony. On August 19, 2005, imposition of sentence was suspended and respondent was placed on supervised probation for three years. The conditions of probation required respondent to serve six months in county jail, with the jail term modifiable to entry and completion of a residential treatment program; to abstain from using or possessing intoxicating beverages and controlled substances; to submit to chemical testing; and to seek and maintain treatment, counseling or therapy, as directed by his probation officer.

3. The facts and circumstances of this conviction are that on December 17, 2004, following a traffic stop for erratic driving, respondent was found to have in his vehicle numerous baggies of cocaine and marijuana. He had purchased the drugs for himself and his friends, "fronting" the money with the expectation that his friends would repay him for their share of the drugs. Respondent was 20 years old at the time.

4. Respondent served three months in jail before being released to an in-patient treatment program (Daytop). He spent five months in Daytop but did not complete the program because he could not afford to stay there any longer. Respondent spent a small amount of time in jail to complete his sentence.

5. Respondent is a high school graduate who attended Sonoma State University for one semester. He started using drugs with friends in high school. By the time of his arrest, respondent's drug use had escalated to the point where he was "partying and using excessively." His relationship with his parents was strained, and his judgment was clouded. Respondent views his arrest as an intervention that caused him to reevaluate his priorities and get his life back on track. He has not used drugs since his arrest, and he no longer associates with people who use drugs (except for some friends who might use drugs but not around respondent). Respondent attended 12-step meetings for awhile after getting out of the Daytop program, but he no longer does so. However, because of the changes in his attitude and lifestyle, respondent feels confident that he can stay drug-free.

6. Respondent has become closer to his family, and for one and one-half years he has been living with his girlfriend, a school psychologist who never used drugs. Respondent works full-time in construction and plans to take courses to obtain a contractor's license once he has the requisite experience. His mother has been a licensed real estate broker for 25 years, with an office in Burlingame, and real estate is the family business. Respondent's parents own 300 to 400 rental units (including one which respondent and his girlfriend rent), and his father and sister are licensed real estate salespersons. Respondent's father has been getting respondent involved in managing the family's rental properties, and respondent would like to help his parents as a real estate licensee. Respondent sees his mother every day and his father almost every day, and he socializes with them and plays golf with his father. Before respondent's grandmother passed away in the last year, he and his mother took turns caring for her. Respondent plays Gaelic football for the San Francisco Celts, with one game a week and practices at least one night a week.

7. Respondent has complied with all the conditions of his criminal probation. On August 7, 2008, his probation officer wrote a letter in which he stated: "[Respondent] is currently satisfying all conditions of probation; is well on his way to successfully completing this probation grant on August 19, 2008. He has not suffered any probation revocation matters."

8. Respondent's parents and girlfriend came to the hearing and testified in support of his application for a real estate license. Respondent's mother, Barbara Rogers, is

willing to teach her son about the real estate business and closely supervise his activities as a licensee.

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

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), and section 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, and the felony or crime is substantially related to the qualifications, functions or duties of a real estate licensee.¹

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. Under subdivision (a)(8), a crime is deemed to be substantially related if it involves "[d]oing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator"

2. Possession of a controlled substance for sale inherently involves illegal activity for personal gain, regardless of the facts in respondent's case. As such, this crime is one of moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8). Respondent's felony conviction of this crime constitutes cause to deny his license application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

3. Respondent's arrest almost four years ago, at age 20, was the wake-up call he needed to stop using drugs and turn his life in a positive direction. Since then, respondent has led a productive, drug-free and family-centered life. It is presumed that he successfully completed criminal probation in August 2008. Real estate is the family business, and respondent's mother is a real estate broker who is willing to supervise him if he is granted a license. Respondent has established that he is sufficiently rehabilitated that it would not be contrary to the public interest to grant him a real estate salesperson license on a restricted basis.

ORDER

The application of respondent Matthew Rogers for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to him

¹ Business and Professions Code section 10177, subdivision (b), was amended, effective January 1, 2008, to eliminate the "moral turpitude" language, but the pre-2008 version of the statute is applicable in this matter because respondent filed his license application before the amendment.

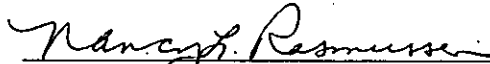
pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of Business and Professions 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. Respondent's conviction, including by 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. 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 the 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 three 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 real estate 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 Real Estate 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. 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 of the suspension.

5. Pursuant to Business and Professions Code section 10154, if respondent has not satisfied the requirements for an unqualified license under Business and Professions Code 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: September 8, 2008



NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

1 DANIEL E. KEHEW, Counsel (SBN 231550)
2 Department of Real Estate
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4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0425 (Direct)

FILED

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DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 MATTHEW ROGERS,)
13 Respondent.)
14 _____)

H-10335 SF

STATEMENT OF ISSUES

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

19 I

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

23 II

24 Respondent made application to the Department of Real
25 Estate of the State of California for a real estate salesperson
26 license on or about September 5, 2007, with the knowledge and
27 understanding that any license issued as a result of said

1 application would be subject to the conditions of Section 10153.4
2 of the Business and Professions Code (hereinafter "Code").

3 III

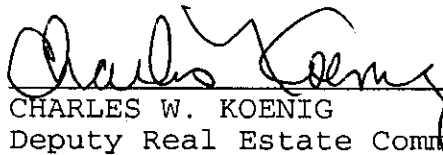
4 On or about August 19, 2005, in the Superior Court of
5 the State of California, County of San Mateo, Respondent was
6 convicted of Possession of a Controlled Substance for the Purpose
7 of Sale in violation of Health and Safety Code Section 11351, a
8 felony and crime involving moral turpitude that bears a
9 substantial relationship under Section 2910, Title 10, of the
10 California Code of Regulations, to the qualifications, functions,
11 or duties of a real estate licensee.

12 IV

13 Respondent's conviction, described in Paragraph III,
14 above, constitutes cause for denial of Respondent's application
15 for a real estate license under Sections 480(a) and 10177(b) of
16 the Code.

17 V

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

24 
25 CHARLES W. KOENIG
26 Deputy Real Estate Commissioner

27 Dated at Sacramento, California
this 18th day of March, 2008.