

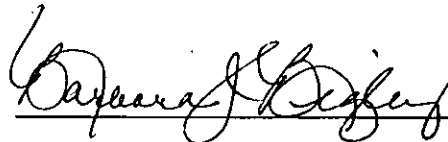
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a 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 September 2, 2008.

IT IS SO ORDERED 8/12, 2008.

JEFF DAVI
Real Estate Commissioner



Handwritten signature of Barbara J. Bigby, Chief Deputy Commissioner, written over a horizontal line.

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

Wael Mohd Tayara,

Respondent.

Case No. H-10364 SF

OAH No. 2008050107

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 17, 2008.

Real Estate Counsel Mary F. Clarke represented complainant Charles W. Koenig, Deputy Real Estate Commissioner, State of California.

Shawn Parr, Attorney at Law, represented respondent Wael Mohd Tayara, who was present.

The matter was submitted on June 17, 2008.

FACTUAL FINDINGS

1. On June 4, 2007, respondent Wael Mohd Tayara submitted to the Department of Real Estate (department) an application for a salesperson license. Charles W. Koenig, acting solely in his official capacity as a Deputy Real Estate Commissioner of the State of California, filed a statement of issues which alleges that respondent has been convicted of a crime. Respondent filed a notice of defense.

2. On November 10, 2004, respondent was convicted on his plea of nolo contendere of a violation of Penal Code sections 484/488 (petty theft), a misdemeanor and a crime of moral turpitude that is substantially related to the qualifications, functions or duties of a real estate salesperson. Imposition of sentence was suspended and respondent was placed on court probation for one year subject to the conditions (among others) that he serve two days in jail and pay fines, fees, and assessments in the approximate amount of \$300. Respondent was permitted to serve his jail sentence by performing community service. He has paid the required fines, fees, and assessments and completed his probation. On April 25, 2008, respondent's conviction was dismissed pursuant to Penal Code section 1203.4.

3. The facts and circumstances leading to this conviction are that, on July 22, 2004, respondent took three ties, with a value of \$244, from Nordstrom without paying for them.

4. Respondent is a 33-year-old native of Syria. He came to the United States in 1999. Respondent graduated from California State University, East Bay in 2005 with a bachelor's degree in computer information systems. He has been married since 2006.

5. Respondent disclosed his conviction on his application and described the circumstances surrounding his offense in a Confidential – Interview Information Statement. In his statement respondent wrote that he was shopping at Nordstrom on July 22 and he “wanted to buy a couple of ties for work, but [he] didn’t have the money.” He went on to state, “I honestly cannot explain why I committed this stupid crime. I was younger, in school, with no family and I made a very stupid choice without thinking. It was totally out of character, has never happened before or since and will never happen again.” At hearing, respondent again acknowledged that he took the ties because he could not afford them, and reiterated that the crime “came out of nowhere. I regret it and I’m very disappointed.”

6. After graduation respondent went to work for American Prime Funding. He had worked there for about one and one-half years when the company went out of business. Respondent then went to work for Calwide Mortgage and Realty for about a year. Since September 2007, respondent has been employed as a loan processor for Infinity Funding Group, Inc.

Matthew Thomas Castro is a licensed real estate broker and he is the designated officer of Infinity Funding Group. In a declaration dated June 13, 2008, Castro states that he is aware of respondent's theft conviction. According to Castro, respondent has always complied with the company's regulations, has conducted himself professionally, and has demonstrated respect for the rules and regulations that govern real estate activities. Castro states that he is aware of the strict supervisory requirements that would apply to him if respondent were granted a restricted license. He is willing to undertake those responsibilities if respondent is issued a restricted license.

7. Respondent is an active member of the Oakland Mosque. For the past three or four years, he has been attending meetings and services at the mosque about once a week. He also performs volunteer services for the mosque and the Oakland Islamic Center. When he was still attending college, respondent decided that if he graduated and found a good job, he would donate \$20,000 to the mosque, and he has done so.

Hamoud Albshayyer is the president of the Oakland Mosque and Mohammed Chebbi is a member of the mosque. In separate declarations dated June 13, 2008, Albshayyer and Chebbi state that they are aware of respondent's conviction and that, through their interactions with him, they know that he regrets his crime. They have both found respondent to be honest and trustworthy in their dealings with him.

8. Respondent has changed his social circle since he graduated from college. Now he spends his time with his wife and with other professionals. Respondent believes that a real estate license will open new career opportunities for him and will provide additional financial support for him and his wife, who wants to go to college.

9. Based upon respondent's testimony, which is corroborated by the declarations of Castro, Albshayyer, and Chebbi and by respondent's conduct over the past four years, it is determined that respondent's attitude toward his offense has changed since 2004.

10. Respondent has not completed all of the courses required pursuant to section 10153.4 of the Business and Professions Code.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), together provide that a real estate license may be denied if the applicant has been convicted of a crime of moral turpitude that is substantially related to the qualifications, functions or duties of a licensee. Cause exists under these provisions to deny respondent's application for a real estate salesperson license by reason of the matters set forth in Finding 2.

2. Respondent has the burden of proving that he is sufficiently rehabilitated from his conviction so that it would not be contrary to the public interest to award him a salesperson license. The department has established criteria to assist in the evaluation of an applicant's rehabilitation. (Cal. Code Regs., tit. 10, § 2911.)

3. Since 2004, respondent has made substantial progress toward satisfying the department's criteria of rehabilitation. It has been over three and one-half years since his conviction. He completed probation successfully and his conviction has been expunged. He has completed his formal education at California State University, East Bay, where he earned his bachelor's degree. Respondent has married and has a stable family life. He has established new social and business relationships since 2004. For the past several years, he has been actively involved in his mosque and, in addition to volunteering his time, he has made a substantial financial contribution to the Oakland Islamic Center. Respondent's broker is aware of respondent's conviction; he has found respondent to be a trustworthy employee and he is willing to supervise respondent if respondent is granted a restricted license. Most importantly, respondent's attitude has changed since he committed his offense in 2004. Respondent's rehabilitation has progressed to the point that it would not be contrary to the public interest to grant him a restricted license.

ORDER

The application of respondent Wael Mohd Tayara for a real estate salesperson license is denied; provided, 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 the 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 that 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 a course in real estate principles 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 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: July 10, 2008



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

1 MARY F. CLARKE, Counsel (SBN 186744)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0780 (Direct)

FILED

APR 17 2008

DEPARTMENT OF REAL ESTATE

By K. Max

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 WAEL MOHD TAYARA,) H-10364 SF
13 Respondent.) STATEMENT OF ISSUES
14)

15 The Complainant, CHARLES W. KOENIG, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against WAEL MOHD TAYARA (herein "Respondent") is informed
18 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 June 4, 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 (herein "Code").

3 III

4 On or about November 10, 2004, in the Superior Court of
5 California, County of Santa Clara, Respondent was convicted of
6 the crime of Petty Theft in violation of Section 484/488 of the
7 Penal Code, a misdemeanor and a crime involving moral turpitude
8 that bears a substantial relationship under Section 2910, Title
9 10, Chapter 6 of the California Code of Regulations, to the
10 qualifications, functions, or duties of a real estate licensee.

11 IV

12 Respondent's criminal convictions, described in
13 Paragraph III, above, constitutes cause for denial of Respondent's
14 application for a real estate salesperson license pursuant to the
15 provisions of Sections 480(a) and 10177(b) of the Code.

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

22
23
24 
25 CHARLES W. KOENIG
Deputy Real Estate Commissioner

26 Dated at Sacramento, California
27 this 14th day of April, 2008.