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FILED
SEP 01 2011
DEPARTMENT OF REAL ESTATE
By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

DANA ROY HEARON,

Respondent.

No. H-10499 SF

ORDER GRANTING UNRESTRICTED LICENSE

On December 12, 2008, a Decision was rendered herein denying Respondent's application for a real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on January 7, 2009, and Respondent has operated as a restricted licensee since that time.

On January 25, 2011, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of

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1 an unrestricted real estate salesperson license and that it would not be against the public interest
2 to issue said license to Respondent.

3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of
4 restrictions is granted and that a real estate salesperson license be issued to Respondent if
5 Respondent satisfies the following requirements:

6 1. Submits a completed application and pays the fee for a real estate
7 salesperson license within the 12 month period following the date of this Order; and

8 2. Submits proof that Respondent has completed the continuing education
9 requirements for renewal of the license sought. The continuing education courses must be
10 completed either (i) within the 12 month period preceding the filing of the completed
11 application, or (ii) within the 12 month period following the date of this Order.

12 This Order shall become effective immediately.

13 IT IS SO ORDERED

8/3/11

14 BARBARA J. BIGBY
15 Acting Real Estate Commissioner

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

DANA ROY HEARON,

Respondent.

Case No. H-10499 SF

OAH No. 2008080622

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on November 4, 2008.

David B. Seals, Counsel, represented complainant.

Edgardo Gonzalez, Attorney at Law, represented respondent, who was present.

The matter was submitted on November 4, 2008.

FACTUAL FINDINGS

1. Charles W. Koenig made the statement of issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. Dana Roy Hearon (respondent) made application to the Department of Real Estate, State of California (Department) for a real estate salesperson license on February 11, 2008.
3. In response to Question 1 in PART D – BACKGROUND INFORMATION of respondent's application, to wit: "Have you ever been convicted of a misdemeanor or felony? . . . If Yes, complete item 5.", respondent answered "Yes."
4. In response to item 5, which asked for an explanation of item 1 and/or 2, respondent failed to reveal a conviction on December 16, 1992, as set forth in Finding 6, below. Respondent had the reasonable belief that it was part of the conviction on December 8, 1992, set forth in Finding 5, below. Both convictions involved the same person. Respondent was not intentionally trying to mislead the Department.
5. On December 8, 1992, in the Superior Court of California, County of Santa Clara, respondent was convicted of a violation of Penal Code section 273.5, subdivision (a)

(infliction of corporal injury on a spouse or cohabitant), a felony, which is substantially related to the duties, qualifications and functions of a real estate licensee.

Respondent was placed on three years formal probation on the condition that he take a 24 week domestic violence class, pay a fine, and serve 57 days in jail.

6. On December 16, 1992, in the Superior Court of California, County of Santa Clara, respondent was convicted of a violation of Penal Code section 602.5 (unauthorized entry of dwelling), a misdemeanor and a crime which is substantially related to the duties, qualifications, and functions of a real estate licensee.

Respondent was sentenced to ten days jail time with credit for time served.

7. On July 29, 2002, in the Superior Court of California, County of Santa Clara, respondent was convicted of a violation of Vehicle Code section 23153, subdivision (a) (driving under the influence of alcohol or drugs and causing injury), a misdemeanor and a crime which is substantially related to the duties, qualifications, and functions of a real estate licensee.

Respondent had a blood alcohol level of 0.08 percent. He was placed on three years probation on the condition that he pay a fine, serve 15 days jail time and his driver's license was suspended for one year.

8. Respondent met all the terms and conditions of his three probations and received a Penal Code section 1203.4 dismissal of all his convictions. The felony was reduced to a misdemeanor and then dismissed pursuant to Penal Code section 1203.4.

9. Respondent presented a letter from the victim of the offenses set forth in Findings 5 and 6, above. She attests to respondent's good character and attributes the two 1992 convictions to "... some bad times ..."

10. Respondent has been employed at Marcus Millichap as an intern for eight months. Respondent has an accounting background, but wants to transition into commercial real estate. The Vice President and Regional Manager of Marcus Millichap testified at the hearing that he knows about respondent's convictions and is willing to supervise him. He finds respondent to be of high ethical character, a hard worker, and has had no problems or complaints.

11. Respondent's friend, who is a successful artist, testified at the hearing that he knows about the convictions and finds respondent to be a changed person. As respondent gets older, he becomes more focused and wants to settle down. He knew respondent and his girlfriend when the conduct that led to the convictions occurred. It was a volatile relationship. Respondent's friend, a registered nurse, also testified on respondent's behalf. She has lived with respondent for the past ten years. There has never been a problem with violence or alcohol. She is aware of the convictions. She finds respondent to be a kind and

generous person. She also finds him honest and a man of integrity. She has witnessed a change in attitude over the years. He has become a trustworthy person.

12. Respondent presented four letters attesting to his good character. Both his father and mother wrote letters on his behalf. They are proud of respondent's accomplishments and find that he has matured in the last few years. Respondent also presented two additional letters from friends and business acquaintances. They both also find respondent to be dedicated, passionate, hard working, and ethical.

13. Respondent has demonstrated sufficient rehabilitation to warrant a restricted real estate salesperson license. It would not be against the public interest.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 3, 4, and 6, cause for denial does not exist pursuant to Business and Professions Code section 10177, subdivision (a). Respondent did not attempt to procure a real estate license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in his application. While he did fail to list one of his convictions, it was a misdemeanor that was related to the felony that he did list on the application and he listed the most recent misdemeanor.

2. By reason of the matters set forth in Findings 5, 6, and 7, cause for denial does exist pursuant to Business and Professions Code section 10177, subdivision (b). Respondent was convicted of three crimes that are substantially related to the duties, qualifications, and functions of a real estate salesperson pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(8) and (9).

3. Respondent has demonstrated sufficient mitigation, extenuation, and rehabilitation to warrant a restricted license.

ORDER

Respondent Dana Roy Hearon's application 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 the 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 section 10156.6 of said 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 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.

DATED: 11/19/04

Ruth S. Astle

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

FILED

AUG 12 2008

DEPARTMENT OF REAL ESTATE

By R. Henry

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)	
)	H-10499 SF
12 DANA ROY HEARON,)	
)	<u>STATEMENT OF ISSUES</u>
13 Respondent.)	
)	

14
15 The Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the
16 State of California, for Statement of Issues against DANA ROY HEARON (hereinafter
17 "Respondent") alleges as follows:

18 I

19 Respondent made application to the Department of Real Estate of the State of
20 California for a real estate salesperson license on or about February 11, 2008.

21 II

22 Complainant makes this Statement of Issues in his official capacity.

23 III

24 In response to Question 1 in PART D – BACKGROUND INFORMATION of
25 said application, to wit: "Have you ever been convicted of a misdemeanor or felony? ...If yes,
26 complete item 5.", Respondent answered "YES".
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In response to item 5 which asked for an explanation of item 1 and/or 2, Respondent failed to reveal the conviction discussed in Paragraph VI below.

V

On or about December 8, 1992, in the Superior Court of California, County of Santa Clara, Respondent was convicted of violation of California Penal Code Section 273.5(a) (Inflict Corporal Injury on Spouse, Etc.), a felony which is substantially related under Section 2910, Title 10, California Code of Regulations (hereinafter the "Regulations"), to the qualifications, functions or duties of a real estate licensee.

VI

On or about December 16, 1992, in the Superior Court of California, County of Santa Clara, Respondent was convicted of violation of California Penal Code Section 602.5 (Unauthorized Entry of Dwelling), a crime which is substantially related under Section 2910 of the Regulations, to the qualifications, functions or duties of a real estate licensee.

VII

On or about July 29, 2002, in the Superior Court of California, County of Santa Clara, Respondent was convicted of violation of California Vehicle Code Section 23153(a) (Driving Under the Influence of Alcohol or Drugs and Causing Injury), a misdemeanor which is substantially related under Section 2910 of the Regulations, to the qualifications, functions or duties of a real estate licensee.

VIII

Respondent's failure to reveal the conviction set forth in Paragraph VI above in said application constitutes the attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in said application, which failure is cause for denial of Respondent's application for a real estate license under Section 10177(a) of the California Business and Professions Code.

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IX

The crimes of which Respondent was convicted, as alleged in Paragraphs V through VII above constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions 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 11th day of August, 2008.