

FILED

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

SEP 24 2009

DEPARTMENT OF REAL ESTATE

[Handwritten Signature]

In the Matter of the Application of)
ERIC CRAIG LAWSON,)
Respondent.)

NO. H-10681 SF
OAH NO. 2009060026

DECISION

The Proposed Decision dated August 20, 2009, 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
OCT 14 2009

IT IS SO ORDERED 9-23-09

JEFF DAVI
Real Estate Commissioner

[Handwritten Signature]

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

ERIC CRAIG LAWSON,

Respondent.

Case No. H-10681 SF

OAH No. 2009060026

PROPOSED DECISION

On July 21, 2009, in Oakland, California, Perry O. Johnson, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter.

Real Estate Counsel Kenneth C. Espell represented complainant Joe M. Carrillo, Deputy Real Estate Commissioner, State of California.

Eric Craig Lawson (Respondent) appeared at the hearing, but he was not otherwise represented.

On July 21, 2009, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. On August 29, 2008, the Department of Real Estate received Respondent's application for a real estate salesperson license. Respondent signed the application on July 9, 2008. The application remains pending as the Department has refused to issue a license to Respondent due to his past acts and omissions that appear to disqualify him for licensure.
2. On May 19, 2005, Respondent first filed with the Department an application for a real estate salesperson license. On March 30, 2006, the Department filed a Statement of Issues that alleged Respondent's past criminal convictions operated as grounds for denial of a real estate license. On September 1, 2006, the Real Estate Commissioner issued a decision that denied Respondent's license application in Department Case number H-9562 SF. (The decision in Case number H-9562 SF had an effective date of September 21, 2006.)

Respondent's History of Criminal Convictions

a. September 2000 Conviction-Resisting, Obstructing or Delaying a Peace Officer

3. On September 12, 2000, under Case number 112013-8, in the California Superior Court for Contra Costa County, Respondent was convicted, on his plea of no contest, of violating Penal Code section 148, subdivision (a)(1) (Resisting, Delaying or Obstructing a Peace Officer) and Penal Code section 647, subdivision (f) (Public Intoxication-Alcohol), a misdemeanor.

4. The crime of resisting, delaying or obstructing a peace officer is substantially related to the qualifications, functions, or duties of a real estate licensee. And the crime of public intoxication by way of alcohol is substantially related to the qualifications, functions, or duties of a real estate licensee.

5. The facts and circumstances of Respondent's criminal conduct that resulted in the September 2000 conviction occurred in March 2000.

Around 11:30 p.m. on March 24, 2000, at a City of San Ramon (Contra Costa County) bar, a deputy sheriff was performing a bar check in full uniform. As the deputy sheriff moved through the bar patrons he felt a kick in his buttocks. As the deputy sheriff turned around, he observed Respondent moving quickly away from him and trying to hide among the bar's other patrons. The deputy sheriff apprehended Respondent, who told him, "I'm sorry. It was supposed to be funny. There were like four chicks around." The law enforcement officer detected Respondent to be drunk in the bar, even though Respondent had not reached his twenty-first birthday. After the deputy sheriff told Respondent that he was being arrested, Respondent became abusive, combative, and obscene in his language. After the deputy sheriff took him into custody, Respondent spat in the deputy's face.

A criminal complaint was filed against Respondent that alleged four counts, namely: two counts of battery upon an officer in violation of Penal Code section 243, subdivision (b); a single count of resisting, obstructing, or delaying a peace officer in violation of Penal Code section 148, subdivision (a)(1), and a single count of public intoxication by alcoholic beverages in violation of Penal Code section 647, subdivision (f). Under a plea bargain agreement, the prosecutor moved to dismiss the two counts made under Penal Code section 243, subdivision (b).

6. As a consequence of the September 2000 conviction, imposition of sentence was suspended during a three-year term of court probation. A term and condition of probation required Respondent to spend 15 days in county jail; but the court directed that the confinement term could be spent in a work alternative program through Yolo County. Also another term and condition of probation Respondent was required to pay fines, fees, and restitution in the approximate amount of \$350. And the court directed Respondent to "stay out of Club Access."

b. April 2003 Conviction-Battery

7. On April 28, 2003, under Case number 030-1215, in the California Superior Court for Yolo County, Respondent was convicted, on his plea of no contest, of violating Penal Code section 242 (Battery), a misdemeanor.

8. The crime of battery is substantially related to the qualifications, functions, or duties of a real estate licensee.

9. The facts and circumstances giving rise to his April 2003 conviction are that, on February 14, 2003, at about 1 o'clock at night, Respondent engaged his former girlfriend in a heated argument that led to his use of physical force. The police officer who investigated the incident heard Respondent's former girlfriend explain that Respondent had pushed her, and then punched her in the face, causing her to sustain a bloody nose. The police heard Respondent say his former girlfriend, who was under the influence of alcohol, came to his room in a fraternity house to suggest that Respondent, his current girlfriend and the former girlfriend engage in sexual acts, which prompted him to push his former girlfriend from the threshold to his room so that the woman tripped over a bike, fell and blooded her nose. The investigating police officers detected Respondent to be under the influence of alcoholic beverages when he was being questioned.

10. As a consequence of the April 2003 conviction, the court suspended imposition of sentence and placed Respondent on summary probation for 12 months under certain terms and conditions. The terms and conditions of probation required Respondent to pay fines and fees of about \$550.

c. January 2005 Conviction- Assault With a Deadly Weapon or Force Likely to Produce Great Bodily Injury

11. On January 12, 2005, under Case number 04-6107, in the California Superior Court for Yolo County, Respondent was convicted on his plea of no contest of violating Penal Code section 245, subdivision (a)(1) (Assault With a Deadly Weapon or Force Likely to Produce Great Bodily Injury), a felony.

The crime of assault with a deadly weapon or force likely to produce great bodily injury is substantially related to the qualifications, functions, or duties of a real estate licensee.

12. The facts and circumstances giving rise to Respondent's January 2005 conviction occurred on September 24, 2004, at about 1:45 a.m. On that date and at that approximate time, Respondent, while intoxicated by alcoholic beverages, punched a man in the face with his fist, which rendered the man unconscious. Before he punched the crime victim outside a bar in Davis, Respondent became angry with two male patrons within the premises of the bar and an argument ensued. After he exited the bar, he observed an individual who appeared to be one of the men he had argued with while inside the bar.

Police heard the witnesses to the incident make spontaneous exclamations that Respondent was seen to have launched an unprovoked attack upon the victim, whose injuries required hospitalization on the night of Respondent's attack. Before striking the victim "square in the face," Respondent had asked the man: "Are you the Homo from inside?"

On September 27, 2004, the county district attorney filed a complaint that alleged Respondent's felony offense of committing a battery with serious bodily injury as well as an enhancement charge, as prescribed under Penal Code section 422.7 (Hate Crime). The enhancement charge alleged that Respondent's felony had been committed due to the victim's perceived sexual orientation. But under a plea bargain agreement the hate crime enhancement allegation was dismissed.

13. As a consequence of the January 2005 conviction, the court suspended imposition of sentence and placed Respondent on a three-year term of formal probation, which required him to be supervised and controlled by a probation officer. The court directed Respondent to spend 180 days in jail, with credit for 13 days served. The court allowed Respondent to serve the term of confinement through a home electronic monitoring program. Also as a component of the terms and conditions of probation, the court directed Respondent: to pay fines and fees in the approximate amount of \$2,000, to make full restitution to the crime victim in an amount to be determined; to abstain from the use or possession of alcohol; and to participate in and complete a 30-hour anger management class.

Matters in Mitigation and Respondent's Background

14. At the time of the incident in March 2000, when he kicked a police officer and spat in the arresting officer's face, Respondent was a 19-year-old student at the University of California, Davis.

15. Respondent is a graduate of Clayton Valley High School. In 2004, he graduated from UC Davis with a bachelor's degree in economics and a minor in communications.

16. Respondent is 28 years old as he has a date of birth of February 12, 1981.

Respondent is not married, but he has a live-in girlfriend, who cohabitates with him at Respondent's personal residence in Concord. Respondent has no children.

Matters in Rehabilitation

17. Respondent's last conviction occurred three years, eight months before the date he filed his most recent application for licensure. And his last conviction occurred four and one-half years before the hearing of this matter.

18. In 2006, Respondent completed the anger management counseling. He found that anger management class was valuable in his personal development.

19. Since graduating from college, Respondent has engaged in sales. In March 2004, WorldWide Express employed Respondent as an account executive to sell shipping services to the business market. He worked for WorldWide Express until September 2004. From November 2004 until October 2007, Diablo Funding Group in Walnut Creek hired Respondent to work as an Administrative Loan Assistant. Then from November 2007 until June 2008, RPM employed Respondent as a Loan Coordinator. In late 2007, Land Home Financial employed Respondent as a Loan Officer.

20. Respondent compellingly proclaimed that he is embarrassed by his record of convictions. He emphasizes that he takes full responsibility for the misconduct committed by him. Respondent persuasively noted that immaturity and alcohol abuse played large roles in his past misbehavior.

21. Over the past two or three school years during the four-month season for competition (November through February) Respondent volunteers 10 to 15 hours per week as an assistant wrestling coach at Clayton Valley High School. (He was a competitive wrestler in high school, as well as a collegiate wrestler during his freshman year at UC Davis.)

22. Respondent has completed several courses of study that have resulted in him receiving certificate of completion. Some of those courses were: Credit line Financial School of Leadership Development course titled "DANTOTSU: Striving to be the Best of the Best,": issued June 20, 2007; National City Mortgage CalHFA Broker Training, issued on an unknown date; and, California Housing Finance Agency course titled "Policies and Procedures-Homeownership Programs" training, issued September 12, 2007;

23. Respondent has the respect and admiration of individuals who work in the real estate industry and related occupations. He offered six letters¹ that supplement and explain his testimony at the hearing of this matter.

24. Respondent's personal stability is attained through his three-year relationship with a live-in girlfriend, as well as his close relationship with his father, who resides in Clayton, and his sister who lives in Walnut Creek. His grandparents live in Northern California and he has ties with them.

¹ Letter, dated May 16, 2008, by Donnie Rath, Appraiser/Owner, Rath Appraisal Services; letter, dated May 20, 2008, by Jenn Alejandro, Escrow Officer, North American Title Company; John Hollinger, RPM Residential Pacific Mortgage; letter, dated June 10, 2008, by Nicki Milatos Heyman, Loan Agent-Partner, RPM Residential Pacific Mortgage; letter, dated July 30, 2008, by Joseph D. Mathews, Attorney at Law; and, letter, dated July 30, 2008, by David White, Broker of Record/CFO, Land Home Financial Services, Inc.

Matters that Suggest Respondent Is Not Fully Rehabilitated.

25. No superior court has issued an order under Penal Code section 1203.4 to expunge any of the three records of conviction that were recorded between September 2000 and January 2005.

26. As a result of the January 2005 felony conviction for battery that caused serious bodily injury to his crime victim, the court placed Respondent on formal probation for three years. Although it may be inferred that the three-year term of probation expired in January or February 2008, Respondent offered no documentary evidence at the hearing of this matter that the court, in fact, has discharged him from probation.

27. Respondent provided no competent, corroborating evidence that he has paid restitution to the crime victim for the injuries the man sustained as a result of the punch thrown by Respondent that rendered the victim unconscious.

28. Respondent expressed no contrition or sincere sorrow for the injury that the injury he caused his crime victim due to the felony crime he committed in September 2004.

29. Although Respondent asserts that since mid-2006 he has totally abstained from the use of alcohol and that he believes that he has no current drinking problem, Respondent has a record of three convictions that all pertain to his consumption of intoxicating drinks. Respondent offered no evidence that he has completed a counseling program or that he has participated in a behavior modification program, such as Alcoholics Anonymous, so as to assure the Department that he is not subject to resume being adversely affected by his abuse of alcoholic beverages.

Other Matters

30. Respondent called no witness to the hearing of this matter. No one appeared on Respondent's behalf to offer evidence pertaining to Respondent's reputation in his community for honesty and integrity. No person came to the hearing to describe Respondent's attitude towards his past criminal actions that led to the conviction mentioned above.

31. Respondent did not show proof that he has significant and conscientious involvement in community, church or privately sponsored programs designed to provide social benefits or to ameliorate social problems.

LEGAL CONCLUSIONS

1. The burden of proof and the burden of persuasion is on Respondent to show that his application for licensure as a real estate salesperson should be granted because he is qualified for the license and that the Commissioner has no cause to deny his application. (Gov. Code, § 11504; *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.)

2. Business and Professions Code section 480, subdivision (a), provides that the Department may deny a license on the ground that the applicant has "been convicted of a crime. . . [that]. . . is substantially related to the qualifications, functions or duties of the business . . . for which [an] application is made."

Business and Professions Code section 10177, subdivision (b), establishes that the Department may deny the issuance of a license to an applicant who has "[e]ntered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee"

3. 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. A crime is deemed to be substantially related if it involves "[d]oing of any unlawful act with the intent of . . . doing substantial injury to the person or property of another." (subd. (a)(8)) And, substantial relationship arises from "[c]onduct which demonstrates a pattern of repeated and willful disregard of law" (subd. (a)(10).) When Respondent knocked out a man outside a bar where it appears the victim was surprised by the blow, Respondent's felony offense demonstrated an unlawful act with the intent of doing substantial injury to another person. And when Respondent committed criminal conduct that led to three convictions within a span of less than five years, he demonstrated a pattern of repeated and willful disregard of law.

Respondent's three convictions are substantially related to the qualifications, functions or duties of a real estate salesperson under California Code of Regulations, title 10, section 2910, subdivisions (a)(8) and (10).

4. Cause exists under Business and Professions Code sections 10177, subdivision (b), and 480, subdivision (a), to deny Respondent's application for a real estate salesperson license, by reason of Factual Findings 3, 4, 7, 8, 11, and 12.

5. Respondent has met many of the Department's criteria of rehabilitation. He has completed his college education; he has completed the jail sentence and the anger management class imposed by his latest conviction, and he is current on payments toward his fine. He has been gainfully employed since he graduated from college, and the broker-in-charge at office which employs Respondent as well as other persons involved in the real estate industry have written letters that praise his work ethic; he has become a homeowner and, Respondent appears to have reformed his disposition towards rowdiness and public drunkenness since his last conviction.

But there are concerns regarding him becoming a real estate licensee. Respondent proclaims that he abstains from alcoholic beverages, but he offered no proof that he has received behavior modification counseling to assure his avoidance of alcohol abuse. And even though at the hearing of this matter Respondent asserted that he now takes full

responsibility for his crimes, his written communication to the Department suggests he has a tendency to obfuscate or diminish offensive aspects of his past. This latter factor suggests that Respondent may not disclose to consumers or real estate professionals certain unappealing or unattractive aspects of a transaction or real property parcel so as to benefit himself.

The seriousness of Respondent's criminal history along with his recent completion of probation along with the lack of evidence that he is fully committed to avoidance of abuse of alcoholic beverages coupled with his lack of full candor in written descriptions of his past and other concerns prevent Respondent from gaining an unrestricted real estate salesperson license. But, it would not be contrary to the public interest to grant Respondent's application for a real estate salesperson on a restricted basis.

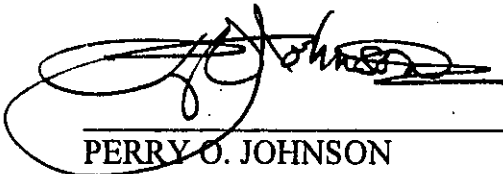
ORDER

The application for a real estate salesperson license by Respondent Eric Craig Lawson 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 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 nor 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 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 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 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: August 20, 2009



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

1 KENNETH C. ESPELL, Counsel (SBN 178757)
2 Department of Real Estate
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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)	NO. H-10681 SF
13	ERIC CRAIG LAWSON,)	<u>STATEMENT OF ISSUES</u>
14)	
15	Respondent.)	

16 The Complainant, JOE M. CARRILLO in his official capacity as a Deputy Real
17 Estate Commissioner of the State of California, for this Statement of Issues against ERIC
18 CRAIG LAWSON, (hereinafter "Respondent"), is informed and alleges as follows:

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20 On or about May 19, 2005, Respondent made application to the Department of
21 Real Estate of the State of California for a conditional real estate salesperson license. On or
22 about March 30, 2006, a Statement of Issues was filed by the Department alleging certain
23 criminal convictions as grounds for denial of the conditional real estate license. On or about
24 September 1, 2006, with an effective date of September 21, 2006, in Department of Real Estate
25 case number H-9562 SF, Respondent's license application was denied.

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2 On or about August 29, 2008, Respondent made a new application to the
3 Department of Real Estate of the State of California for a real estate salesperson license.

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5 On or about September 12, 2000, in the Superior Court of California, County of
6 Contra Costa, Respondent was convicted of violating Penal Code Section 148(a) (1) (Resisting,
7 Obstructing, or Delaying a Peace Officer), a misdemeanor and crime that bears a substantial
8 relationship under Section 2910, Title 10, California Code of Regulations (hereinafter the
9 "Commissioner's Regulations"), to the qualifications, functions, or duties of a real estate
10 licensee.

11 4

12 On or about April 28, 2003, in the Superior Court of California, County of Yolo,
13 Respondent was convicted of California Penal Code Section 242 (Battery), a misdemeanor and
14 crime that bears a substantial relationship under Section 2910 of the Commissioner's Regulations
15 to the qualifications, functions, or duties of a real estate licensee.

16 5

17 On or about January 12, 2005, in the Superior Court of California, County of
18 Yolo, Respondent was convicted of violating California Penal Code Section 245(a) (1) (Assault
19 With Deadly Force or Means Likely to Produce Great Bodily Injury), a felony and crime that
20 bears a substantial relationship under Section 2910 of the Commissioner's Regulations, to the
21 qualifications, functions, or duties of a real estate licensee.
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24 The crimes of which Respondent was convicted, in paragraphs 3 through 5 as
25 alleged, above, constitute cause for denial of Respondent's application for a real estate license
26 under Sections 480(a) and 10177(b) of the California Business and Professions Code.

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WHEREFORE, the 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 under other provisions of law.



JOE M. CARRILLO
Deputy Real Estate Commissioner

Dated at Sacramento, California,
this 11 day of May, 2009.