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MAR - 8 2010

DEPARTMENT OF REAL ESTATE

By K. Mat

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * *

In the Matter of the Application of	)	
	)	NO. H-10781 SF
MISTERWILLIE DOUGLAS CLIFTON,	)	
	)	OAH NO. 2009101547
Respondent.	)	
	)	

DECISION

The Proposed Decision dated January 27, 2010, 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

MAR 29 2010.

IT IS SO ORDERED 3/2/2010.

JEFF DAVI
Real Estate Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of: MISTERWILLIE DOUGLAS CLIFTON, Respondent.	Case No. H-10781 SF OAH No. 2009101547

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on December 29, 2009.

John W. Barron, Counsel, represented complainant E. J. Haberer II, Deputy Real Estate Commissioner, State of California.

Respondent Misterwillie Douglas Clifton was present and represented himself.

The matter was submitted on December 29, 2009.

FACTUAL FINDINGS

1. Complainant E. J. Haberer II, Deputy Real Estate Commissioner, issued the statement of issues in his official capacity.

2. Effective April 17, 2007, respondent's prior application for a real estate salesperson license was denied by the Real Estate Commissioner. On June 22, 2009, respondent made a new application for a real estate salesperson license.

3. On December 12, 2003, respondent was convicted of violating Vehicle Code section 14601.1, subdivision (a) (knowingly driving with suspended license), a misdemeanor. Respondent was fined $100 and sentenced to two days in jail, with credit for two days already served.

4. On July 7, 2004, respondent was convicted of violating Penal Code section 148.9 (false name to peace officer), a misdemeanor. Respondent was fined $130 (with credit for time served this was reduced to $20) and was sentenced to three days in jail, with credit for three days already served.

5. On November 28, 2005, respondent was convicted, on his plea of nolo contendere, of misdemeanor violations of Penal Code sections 148, subdivision (a)(1) (willfully resisting, obstructing or delaying a peace officer), and 148.9 (false name to peace officer). Imposition of sentence was suspended and respondent was placed on probation for two years on conditions that included fines of nearly $500.

6. On October 10, 2006, respondent was convicted of violating Vehicle Code section 12500, subdivision (a) (driving without a license), a misdemeanor. Respondent was ordered to pay fines and fees. No probation was ordered.

Respondent's offense occurred on May 30, 2006. He was riding in a friend's car. She became ill and respondent offered to drive. Respondent's driver's license was suspended at the time.

7. Respondent's offenses took place when he was in his early to mid-twenties. He is now age 29 years old and has matured. He takes responsibility for his offenses and is striving to turn his life around.

8. Respondent has attended the College of San Mateo and MidAmerica Nazarene University. He is currently a student at Kaplan University, an online institution.

9. With the assistance of the Stanford Community Law Clinic, respondent is seeking expungements of this 2003, 2004, 2005, and 2006 convictions. No expungement orders had been granted at the time of the hearing in this matter.

10. Respondent has a five-year-old son. He shares custody with his son's mother.

11. Respondent has complied with all terms of probation, including payment of fines and fees. He is no longer on probation.

12. Respondent regularly attends the Community Church of East Palo Alto, where he serves as a coach for the church basketball team. Respondent also volunteers as a basketball and football coach at the East Palo Alto YMCA.

13. Respondent works for broker Eugene Blefari at Intero Real Estate Services in Los Altos. Blefari is willing to serve as respondent's sponsoring broker.

14. Respondent is willing to accept a restricted real estate salesperson license.

15. Respondent submitted an October 28, 2009 letter from Kathy Connolly. Connolly stated that she has known respondent since 1992, when she was his sixth grade homeroom teacher at Beechwood School in Menlo Park. Connolly wrote that respondent has always been personable, appreciative, and energetic, and that he has exceptional people skills, enthusiasm for bettering life for himself and his son. Connolly's letter did not mention respondent's criminal convictions.

LEGAL CONCLUSIONS

1. Under Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), the commissioner may deny the issuance of a license to an applicant who has been convicted of a crime that is substantially related to the qualifications, functions and duties of a real estate licensee. Respondent's convictions were for such crimes (Cal. Code Regs., tit. 10, § 2910, subds. (a)(4) (deceit, falsehood to achieve an end), (a)(7) (failure to comply with license requirement), and (a)(10) (repeated and willful disregard of law). Complainant has shown, and respondent does not contest, that cause exists to deny respondent's license application.

2. The department's regulations set forth criteria for evaluating the rehabilitation of an applicant for a license. (Cal. Code Regs., tit. 10, § 2911.) More than two years have passed since respondent's last conviction. He has complied with the terms of his probation. He is no longer on probation. He is seeking expungement of his criminal convictions. He has stability in his family life. He has worked to advance himself through employment and education. He has demonstrated significant and conscientious involvement in church and charitable efforts. He has not had additional convictions. Complainant acknowledges that respondent has made substantial progress in rehabilitation and is not opposed to the grant of a license on a restricted basis.

ORDER

The application of respondent Misterwillie Douglas Clifton 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 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 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: January 27, 2010

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE

By K. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

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In the Matter of the Application of MISTERWILLIE DOUGLAS CLIFTON, Respondent.	H-10781 SF STATEMENT OF ISSUES

The Complainant, E. J. HABERER, II, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against MISTERWILLIE DOUGLAS CLIFTON, (hereafter "Respondent"), is informed and alleges as follows:

1

Complainant makes this Statement of Issues against Respondent in his official capacity.

2

Effective April 17, 2007, in Case No. H-9784 SF, Respondent's prior application for a real estate salesperson license was denied by the Real Estate Commissioner pursuant to Section 480(a), 480(b), 10177(a) and 10177(b) of the California Business & Professions Code (hereafter "the Code"). On or about June 22, 2009, Respondent made new application to the Department of Real Estate for a real estate salesperson license.

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3

On or about October 10, 2006, in the Superior Court of the State of California, County of Santa Clara, Case No. BB620819, Respondent was convicted of violating Section 12500(a) of the California Vehicle Code (Driving Without License), a misdemeanor and a crime which bears a substantial relationship under Section 2910, Title 10, of the California Code of Regulations (hereafter "the Code"), to the qualifications, functions or duties of a real estate licensee.

4

On or about November 28, 2005, in the Superior Court of the State of California, County of Santa Clara, Case No. BB517008, Respondent was convicted of violating Section 148(a)(1) (Willfully Resisting/Obstructing/Delaying Peace Officer) and Section 148 (False Name to Peace Officer) of the California Penal Code, misdemeanors and crimes which bear a substantial relationship under Section 2910, Title 10, of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

5

On or about July 7, 2004, in the Superior Court of the State of California, County of Santa Clara, Case No. BB406919, Respondent was convicted of violating Section 148 of the California Penal Code (False Name to Peace Officer), a misdemeanor and a crime which bears a substantial relationship under Section 2910, Title 10, of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

6

On or about December 12, 2003, in the Superior Court of the State of California, County of Santa Clara, Case No. CC251421, Respondent was convicted of violating Section 14601.1(a) of the California Vehicle Code (Driving With Suspended License), a misdemeanor and a crime which bears a substantial relationship under Section 2910, Title 10, of the California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

7

Effective April 17, 2007, in Case No. H-9784 SF, Respondent's prior application for a real estate salesperson license was denied by the Real Estate Commissioner pursuant to Sections 480(a), 480(c), 10177(a) and 10177(b) of the Code.

8

Respondent's criminal convictions, described in Paragraphs 3 through 6, above, constitute cause for denial of Respondent's application for a real estate salesperson license pursuant to the provisions of Section 480(a) and 10177(b) of the 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 under the provisions of the law.

E. J. HABERER, II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 22nd day of October, 2009.