

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
MAY 16 2011

DEPARTMENT OF REAL ESTATE

By [Signature]

* * *

In the Matter of the Application of)
MICHAEL SALVATORE PRIOLO,) NO. H-11044 SF
Respondent.) N-2011010906

DECISION

The Proposed Decision dated April 12, 2011, 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 broker license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. 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 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 JUN 06 2011, 2011.

IT IS SO ORDERED 5/12, 2011.

Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

MICHAEL SALVATORE PRIOLO,

Respondent.

Case No. H-11044 SF

OAH No. 2011010906

PROPOSED DECISION

Administrative Law Judge Karen E. Reichmann, State of California, Office of Administrative Hearings, heard this matter on March 21, 2011, in Oakland, California.

Annette Ferrante, Real Estate Counsel, represented complainant.

Eric Gravink, Esq., represented respondent Michael Salvatore Priolo, who was present at the hearing.

This matter was submitted for decision on March 21, 2011.

FACTUAL FINDINGS

1. Complainant E. J. Haberer II made the accusation in his official capacity as a Deputy Real Estate Commissioner of the State of California.

2. On February 4, 2010, respondent Michael Salvatore Priolo submitted an application for a real estate broker license. On the application, respondent was asked whether he had ever been convicted of a misdemeanor or felony. Respondent disclosed two misdemeanor DUI convictions.

3. On April 9, 2003, respondent was convicted in Santa Clara Superior Court of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (DUI with a blood alcohol content of .08 percent or higher). Respondent was sentenced to three years probation, on terms and conditions that included serving 12 days through a weekend work program, enrolling in a first offender program, and paying fines. Respondent satisfied all terms and conditions of his sentence.

Respondent was 19 years old. He was drinking alcohol at a party. Someone at the party tried to get in a fight with him. Respondent drove home intoxicated. He was pulled over.

Respondent disclosed this conviction on his application.

4. On February 9, 2004, respondent was convicted in Douglas County, Nevada, of a misdemeanor violation of Douglas County Criminal Code section 9.36.010 (trespassing), and a misdemeanor violation of Nevada Revised Statutes section 205.465 (possession of a document to establish false identification.) Imposition of sentence was suspended and respondent was ordered not to enter any alcohol or gaming establishments and to pay fines.

Respondent went on a snowboarding trip shortly before his 21st birthday, with friends who were over 21. Respondent went with them to a casino and used a fake identification. Respondent became intoxicated. Respondent was approached by a security guard and refused to show him his identification. He was asked to leave the premises and did not cooperate. A police officer arrived and respondent showed him the fake identification.

Respondent did not disclose these convictions on his application.

5. On March 11, 2008, respondent was convicted in Santa Clara County Superior Court of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (DUI with a blood alcohol content of .08 percent or higher). Respondent was sentenced to three years probation, on terms and conditions that included serving 18 days through a weekend work program, enrolling in a repeat offender program, and paying fines. Respondent has complied with all terms of probation, and probation has recently been completed.

Respondent attended a wedding rehearsal dinner with his girlfriend, a member of the wedding party. Respondent consumed alcohol. Respondent was pulled over driving home. He failed a field sobriety test and his blood alcohol content was above the legal limit.

Respondent disclosed this conviction on his application.

6. Respondent expressed remorse for his conduct. All of his convictions were alcohol-related. After his most recent DUI, respondent has abstained from drinking alcohol. Respondent does not use any drugs. The second DUI caused respondent to reevaluate his life and make changes. He is no longer hanging out with "party types." Respondent started attending Alcoholics Anonymous meetings in 2008, two days after his arrest. He initially attended meetings two or three times each week. He now attends meetings about twice a month. Respondent is not actively working on the 12 steps because he does not believe that he is an alcoholic. Attending A.A. is helpful to him as a means of self-discovery, and he benefits from sharing with and learning from others. Respondent enrolled in a sobriety program at Kaiser Permanente in early 2011. He attends individual and group counseling sessions twice a week. Respondent exercises and focuses on his career in lieu of drinking. He generally does not have the urge to drink alcohol.

7. Respondent attends St. Francis Episcopal Church in San Jose. He has been attending services approximately twice a month since 2008.

8. Respondent has a Bachelor's degree in real estate finance from San Diego State University. Respondent has been working in a non-licensed capacity under broker Mario Pinedo at Keller Williams. At the time of the hearing, respondent had been working for approximately six weeks. He has assisted Pinedo with commercial transactions. He disclosed his criminal history when he interviewed for the position. His employer is supportive, but will not be able to continue employing respondent if he does not get licensed. Respondent would like to continue working under Pinedo. He does not plan to work without supervision. Although respondent applied for a broker license, he is eager to enter the profession and would accept a salesperson license.

9. Respondent testified that he did not include his 2004 Nevada convictions on his application because he mistakenly assumed that he was only required to report California convictions. He admits that he did not read the application thoroughly and acknowledges that he was required to disclose convictions from all jurisdictions. He did not intend to hide anything from the Department.

10. Respondent's fiancée, Jaime Fanciullo, testified at the hearing. She works as a school psychologist. She has known respondent for seven years. When they met, respondent was in college. He was carefree and fun-loving. He had a lot of friends that he would party with. He was honest with Fanciullo about his convictions. She observed that he was remorseful and embarrassed.

Fanciullo remarked that respondent has a different circle of friends. He now develops closer relationships. Respondent did not have a constant battle with alcohol, but when he used it he would over-use it. After respondent's DUI conviction in 2008, he made changes in his life. He has grown up dramatically. He is focused on the future. She has not seen respondent drink in years. She confirmed that respondent attends alcohol counseling and A.A. meetings. She and respondent are careful about what events they attend and who they hang out with to make sure that respondent is not placed in any uncomfortable situations.

Fanciullo described respondent as "sincere, generous, honest, responsible, ambitious, and compassionate."

11. Respondent submitted a letter from Carrie Savage, of the Adult Early Recovery program at Kaiser Permanente. She writes that respondent enrolled in the program on January 28, 2011, and is in good standing.

12. Chris Alston, CEO of Keller Williams in Cupertino, writes that respondent disclosed his criminal history when seeking employment with him. Alston hopes to hire respondent as an active agent if he becomes licensed. Alston writes that Keller Williams "will oversee all of [respondent's] work" and is willing to comply with any requirements imposed by the department.

13. Mario Pinedo, commercial director at Keller Williams, writes that he hopes to have respondent join his team. Pinedo has observed respondent display "a high level of

professionalism" during his work in a non-licensed capacity. Pinedo notes that respondent was honest about his convictions during the hiring process.

14. Jack Leonard, respondent's friend, writes that respondent is "an upstanding citizen." He is aware of respondent's convictions and believes that respondent has made changes. Leonard writes that respondent abstains from alcohol.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b), and section 480, subdivision (a), authorize the Real Estate Commissioner to deny a real estate license to an applicant convicted of an offense which is substantially related to the qualifications, functions, or duties of a real estate licensee. Respondent's convictions for driving under the influence, trespassing, and possessing a false identification are substantially related to the qualifications, functions and duties of a real estate licensee. These offenses involved the use of misrepresentation to achieve an end, two convictions involving driving with the use of alcohol, the threat of substantial injury, and a pattern of repeated disregard for the law. (Cal. Code Regs., tit. 10, § 2910, subds. (a)(4),(8),(10) & (11).) Therefore, cause exists to deny respondent's real estate salesperson license by reason of the matters set forth in Findings 3, 4, and 5.

2. Business and Professions Code section 10177, subdivision (a), and section 480, subdivision (c), authorize the Real Estate Commissioner to deny a real estate license to an applicant who makes a material misrepresentation in his application. By failing to notify the Department that he suffered two misdemeanor convictions in Nevada in 2004, respondent made a material misrepresentation of fact in the application. Therefore, cause exists to deny respondent's application by reason of the matters set forth in Findings 2 and 4.

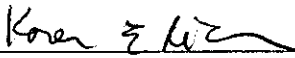
3. In California Code of Regulations, title 10, section 2911, the Department has established criteria to be used in evaluating the rehabilitation of an applicant who has committed a criminal offense. More than two years have passed since respondent's most recent conviction. Respondent has successfully completed probation, albeit only recently. Respondent's convictions all stemmed from his overuse of alcohol. Respondent has now abstained from alcohol for three years and regularly attends A.A. and counseling in order to remain sober. Respondent expressed remorse for his conduct. Respondent's failure to disclose his Nevada convictions was the result of his inattentiveness. This lack of attention does raise concerns about his ability to fulfill the duties of a real estate professional. Respondent has the support of his intended employing broker, who has expressed a willingness to supervise respondent's transactions. Although it would be against the public interest to grant respondent's application for a real estate broker license at this time, it would not be against the public interest to grant respondent a restricted real estate salesperson license, under appropriate terms and conditions. These conditions shall be in force for four years. This longer period of restriction is appropriate given that respondent has only recently completed probation for his most recent conviction. This longer period will protect the public as respondent continues with his rehabilitation.

ORDER

Respondent Michael Priolo's application for a real estate broker 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 the 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 or the removal of any of the conditions, limitations or restrictions attaching to the restricted license until four 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: 4-12-11


KAREN E. REICHMANN
Administrative Law Judge
Office of Administrative Hearings

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DEPARTMENT OF REAL ESTATE

By K. Contreras

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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11 In the Matter of the Application of)
12 MICHAEL SALVATORE PRIOLO,) NO. H- 11044SF
13 Respondent.) STATEMENT OF ISSUES

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15 The Complainant, E. J. HABERER II, in his official capacity as a Deputy Real
16 Estate Commissioner of the State of California (hereinafter "Complainant"), for cause of
17 Statement of Issues against MICHAEL SALVATORE PRIOLO (hereinafter "Respondent")
18 alleges as follows:

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20 On or about February 4, 2010, Respondent made application to the Department of
21 Real Estate of the State of California (hereinafter "the Department") for a real estate broker license.

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23 In response to Question 1 of Part D of said application, to wit: "Have you ever
24 been convicted of a misdemeanor or felony? Convictions expunged under Penal Code Section
25 1203.4 must be disclosed. However, you may omit traffic citations which do not constitute a
26 misdemeanor or felony", Respondent concealed and failed to disclose the conviction described in
27 Paragraph 4, below.

On or about April 9, 2003, in the Superior Court of the State of California, County of Santa Clara, Case No. CC301121, Respondent was convicted of violating Section 23152(b) of the California Vehicle Code (DUI with BAC of 0.08% or Higher) a misdemeanor, and a crime which bears a substantial relationship under Section 2910, Title 10, of the California Code of Regulations (hereinafter "the Regulations") to the qualifications, functions or duties of a real estate licensee.

On or about February 9, 2004, in the Tahoe Justice Court, County of Douglas, State of Nevada, Case No. 04-0079, Respondent was convicted of violating Section 9.36.010 of the Douglas County Code (Trespassing), a misdemeanor, and Section 205.465 of the Nevada Revised Statutes (Possession of Document to Establish False Identification), a misdemeanor, both crimes which bear a substantial relationship under Section 2910, Title 10, of the Regulations, to the qualifications, functions or duties of a real estate licensee.

On or about March 11, 2008, in the Superior Court of the State of California, County of Santa Clara, Case No. CC896783, Respondent was convicted of violating Section 23152(b) of the California Vehicle Code (DUI with BAC of 0.08% or Higher) while admitting a prior DUI, a misdemeanor, and a crime which bears a substantial relationship under Section 2910, Title 10, of the Regulations, to the qualifications, functions or duties of a real estate licensee.

Respondent's failure to reveal in his application for a real estate license the conviction set forth in Paragraph 4, above, constitutes the procurement of or 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 pursuant to the provisions of Sections 480(c) (Denial of License by Board –


1 False Statement of Fact on Application) and 10177(a) (Further Grounds for Disciplinary Action –
2 Attempted Procurement of License by Fraud/Misrepresentation/Deceit/Material Misstatement) of
3 the Business and Professions Code (hereinafter “the Code”).

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5 The facts alleged in Paragraphs 3 through 5, above, constitute cause for denial of
6 Respondent’s application for a real estate license under Sections 480(a) (Denial of License by
7 Board – Conviction of Crime) and 10177(b) (Conviction of Crime Substantially Related to
8 Qualifications, Functions or Duties of Real Estate Licensee) of the Code.

9 WHEREFORE, Complainant prays that the above-entitled matter be set for
10 hearing and, upon proof of the charges contained herein, that the Commissioner refuse to
11 authorize the issuance of, and deny the issuance of a real estate broker license to Respondent, and
12 for such other and further relief as may be proper under the provisions of the law.

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E. J. HABERER II
Deputy Real Estate Commissioner

20 Dated at Oakland, California,
21 this 18th day of November, 2010.