

FILED

JUN 28 2012

DEPARTMENT OF REAL ESTATE

By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)

NEIL NABIL SALEM,)

Respondent.)

NO. H-11238 SF

OAH NO. 2011120279

In the Matter of the Accusation of)

NEIL NABIL SALEM,)

Respondent.)

NO. H-11239 SF ✓

OAH NO. 2011120279

ORDER DENYING RECONSIDERATION

On May 29, 2012, a Decision was rendered in each of the above-entitled matters, both of which involved Neil Nabil Salem as the Respondent. The Decisions were to become effective June 18, 2012.

On June 13, 2012, Respondent petitioned for reconsideration of each of the Decisions of May 29, 2012.

I have given due consideration to the petition of Respondent for reconsideration. I find no good cause to reconsider either of the Decisions of May 29, 2012, and reconsideration of both of the Decisions is hereby denied. Therefore, the Decisions of the Real Estate Commissioner of May 29, 2012, shall each become effective at 12 o'clock noon on June 28, 2012.

IT IS HEREBY ORDERED

6/27/2012

Real Estate Commissioner

By: Wayne S. Bell
Chief Counsel

FILED

JUN 13 2012

DEPARTMENT OF REAL ESTATE

By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)

NEIL NABIL SALEM,)

Respondent.)

NO. H-11238 SF

OAH NO. 2011120279

In the Matter of the Accusation of)

NEIL NABIL SALEM,)

Respondent.)

NO. H-11239 SF

OAH NO. 2011120279

ORDER STAYING EFFECTIVE DATES

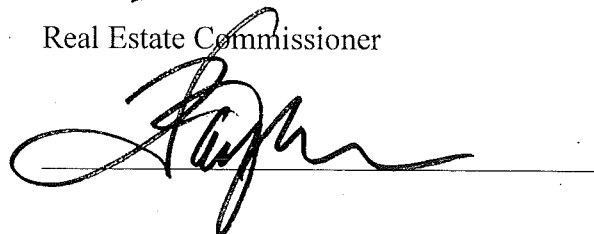
On May 29, 2012, a Decision was rendered in each of the above-entitled matters, each of which involved Neil Nabil Salem as the Respondent, to become effective June 18, 2012.

IT IS HEREBY ORDERED that the effective date of each of the above Decisions of the Real Estate Commissioner, signed on May 29, 2012, is stayed for a period of ten (10) days to consider Respondent's petition for reconsideration.

The above Decisions of the Real Estate Commissioner of May 29, 2012, shall become effective at 12 o'clock noon on June 28, 2012.

DATED: June 13, 2012

Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED

MAY 29 2012

DEPARTMENT OF REAL ESTATE

By *L. J. [Signature]*

* * *

In the Matter of the Accusation of)

NEIL NABIL SALEM,)

Respondent.)

NO. H-11239 SF

OAH NO. 2011120279

DECISION

The Proposed Decision dated April 25, 2012, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon on

JUN 18 2012

IT IS SO ORDERED May 29, 2012.

Real Estate Commissioner

[Signature]

By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

NEIL NABIL SALEM,

Respondent.

Case No. H-11239 SF

OAH No. 2011120279

PROPOSED DECISION

This matter was consolidated for hearing with the statement against issues filed against Neil Nabil Salem (Case No. H-11238 SF).

Administrative Law Judge Karen E. Reichmann, State of California, Office of Administrative Hearings, heard this matter on March 7, 2012, in Oakland, California.

Jason D. Lazark, Real Estate Counsel, represented complainant.

Frederick M. Ray and John Bishop, Attorney at Law, represented respondent Neil Nabil Salem, who was present at the hearing.

Submission of this matter was deferred for the filing of written closing arguments. Complainant's closing argument was received on March 21, 2012, and has been marked as Exhibit 14. Respondent's closing argument was received on March 21, 2012, and has been marked as Exhibit H. Complainant's reply brief was received on March 28, 2012 and has been marked as Exhibit 15. Respondent's reply brief was received on March 28, 2012 and has been marked as Exhibit I.

The record was closed and the matter was deemed submitted for decision on March 28, 2012.

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. Respondent Neil Nabil Salem is presently licensed and has license rights under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate broker.

3. On March 25, 2010, respondent submitted an application to the Department to become the designated broker-officer of Financial Partners, Inc., a licensed real estate corporation. On this application, respondent was asked whether he had ever been convicted of a misdemeanor or felony. Respondent answered "no." This application was signed under penalty of perjury. Respondent's answer was false because at the time he signed the application, he had been convicted of a felony as discussed below in Finding 4.

4. On February 10, 2010, respondent was convicted in the Superior Court of California, County of Glenn, on his plea of guilty, of violating Health and Safety Code section 11350 (possession of a controlled substance), a felony. Respondent was sentenced to three years formal probation, on terms and conditions which included attending drug and alcohol education programs, attending narcotics anonymous meetings twice a week, 24 hours community service, drug testing, refraining from possessing a firearm or ammunition, and payment of fines and fees. Respondent was sentenced pursuant to Penal Code section 1210.1, also known as "Proposition 36," a program for non-violent drug offenders. Respondent's plea agreement notified respondent that if the conviction were ultimately dismissed following completion of probation, he would still be required to disclose his arrest and conviction on any application for state licensure.

The facts and circumstances of the offense are that on October 2, 2009, respondent was driving from his residence in Mountain View to his vacation property in the Six Rivers National Forest. Respondent was pulled over for speeding. The patrol officer observed an assault rifle, a high capacity magazine and marijuana in respondent's vehicle and placed respondent under arrest. During a search incident to the arrest, the officer found a baggie containing cocaine in respondent's pocket.

5. Respondent violated probation. He suffered a misdemeanor conviction on September 30, 2010, as discussed in Finding 7. He failed to submit to drug testing on eight occasions in 2010 and was ordered to perform additional community service. On April 6, 2011, respondent was placed in custody after submitting a positive drug test and failing to provide required reports to his probation officer.

6. On June 21, 2011, the Superior Court granted respondent's request to dismiss the conviction pursuant to Penal Code section 1210.1. The Superior Court's order notes that its dismissal order "does not relieve [respondent] of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for . . . licensure by any state or local agency."

7. On September 30, 2010, respondent was convicted in the Superior Court of California, County of Santa Clara, on his plea of nolo contendere, of violating Penal Code section 12316, subdivision (b) (possession of ammunition while prohibited from owning a firearm), a misdemeanor. Imposition of sentence was suspended and respondent was placed on probation for two years.

The facts and circumstances of the offense are that on June 14, 2010, respondent went to meet with a probation officer in San Jose because he was hoping to have supervision of his Proposition 36 probation transferred from Glenn County to Santa Clara County. During this meeting, respondent consented to a search of his vehicle. Ammunition and marijuana were discovered in the car. A probation search of respondent's residence three days later uncovered additional ammunition and marijuana.

8. Regarding his conviction for possession of cocaine, respondent testified that the cocaine did not belong to him, but was given to him by somebody to give to somebody else. Respondent denied using cocaine and denied selling cocaine. Regarding his subsequent conviction for possession of ammunition while on probation, respondent stated that he was unaware that there was any ammunition in his vehicle when he went to visit the probation office in San Jose. Respondent's testimony regarding the circumstances surrounding his convictions was not credible.

9. Respondent is an avid hunter. He visits his vacation property often, especially during hunting season. He owns approximately 50 rifles. Respondent gave the rifles to his friend to store while he is on probation and forbidden from possessing weapons and ammunition. He described the ammunition discovered in his vehicle and at his residence as "stray bullets."

10. Respondent stated that when he filled out his application to become the designated broker-officer of Financial Partners, Inc., he did not believe that he was required to disclose his February 10, 2010 conviction because he was participating in a diversion program. He stated that he thought it was a "deferred entry of judgment" and would be dismissed. Respondent further stated that his attorney told him that once his conviction is dismissed he would not have to disclose it.

11. Respondent testified that he uses medical marijuana regularly for intense headaches caused by an aneurysm he suffered in 2001. He claimed to have a medical marijuana prescription, although he did not present evidence to corroborate this claim. He stated that he does not have a medical marijuana identification card.

12. Respondent attended outpatient substance abuse treatment and Narcotics Anonymous meetings as directed by the Superior Court. He worked through some of the 12 steps. He stopped going when he was no longer required to go. He does not have a sobriety date. He did not abstain from using marijuana during the time he was attending substance abuse programs. He would refrain from using marijuana prior to going to counseling and NA meetings out of respect for others.

13. Respondent has been licensed as a real estate salesperson since 2002 and as a real estate broker since 2008. Respondent has worked primarily on loans rather than sales. There have been no prior disciplinary actions against respondent.

14. Respondent works for University Investments as a loan processor. He works under broker Rod Mann.

15. Respondent is 32 years old. He is married and has two young children. Respondent supports his family.

16. Since 2006, respondent has volunteered regularly with the Advisory Commission on Consumer Affairs in Santa Clara County, assisting consumers with grievances.

17. Respondent completed his court-ordered community service by volunteering at the events sponsored by the Mormon Church and at a homeless shelter. He stated that he performed more than the required number of community service hours.

18. Justin Sanderson testified on behalf of respondent. Sanderson has known respondent for 17 years, since they were in high school together. They are friends and see each other approximately once a month. Respondent assisted Sanderson in the purchase of his home and with a refinancing his home mortgage. Sanderson was satisfied with respondent's performance both times and has recommended him to others. Sanderson described respondent as honest, trustworthy, and a great husband and father.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177, subdivision (b), and section 490 authorize the Real Estate Commissioner to discipline a licensee who is convicted of an offense which is substantially related to the qualifications, functions, or duties of a real estate licensee. The Department has established criteria for evaluating whether an offense is substantially related in Code of Regulations, title 10, section 2910. Respondent's convictions for possession of cocaine and possession of ammunition while on probation are substantially related to the qualifications, functions, or duties of a real estate licensee because they demonstrate a pattern of repeated and willful disregard of the law. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).) Respondent's conviction for possession of ammunition while on probation, as well as his violations of probation for his cocaine conviction, demonstrate a willful failure to comply with a court order. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).)

Penal Code section 1210.1 states that after a conviction has been dismissed following successful completion of Proposition 36 probation, the defendant shall be "released from all penalties and disabilities resulting from the offense of which he or she has been convicted" and that the dismissed conviction may not be "used in any way that could result in the denial of any employment, benefit, license, or certificate." This language suggests that the Department may not discipline a licensee based on a conviction which has been dismissed pursuant to Penal Code section 1210.1.

Accordingly, cause exists to suspend or revoke respondent's real estate broker license by reason of the matters set forth in Finding 7, but not by reason of respondent's conviction for possession of cocaine, in light of the matters set forth in Finding 6.

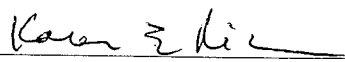
2. Business and Professions Code section 10177, subdivision (a), authorizes the Real Estate Commissioner to discipline a real estate license of a licensee who knowingly makes a material misrepresentation on an application. By failing to inform the Department about his conviction for possession of cocaine, respondent made a material misrepresentation on his March 25, 2010 application. Therefore, cause exists to suspend or revoke respondent's license for a real estate salesperson license by reason of the matters set forth in Findings 3 and 4.

3. In California Code of Regulations, title 10, section 2912, the Department has established criteria to be used in evaluating the rehabilitation of a licensee who has committed a criminal offense. Here, fewer than two years have passed since respondent's conviction for possession of ammunition. He committed the offense while on probation. Respondent remains on probation until September 2012. Respondent minimized his conduct and did not express remorse for the actions which lead to his conviction. His testimony at the hearing was not credible. Of further concern is the fact that respondent made a material misrepresentation on his March 25, 2010 application to become the designated broker-officer of Financial Partners, Inc. Although respondent had been convicted of a felony just a few weeks prior to filling out the application, respondent stated that he had never been convicted of a crime. The fact that the conviction was later dismissed under Penal Code section 1210.1 did not relieve respondent of the obligation to truthfully disclose the conviction when he filled out the application on March 25, 2010. Respondent's misstatement on his application casts doubt on whether he is able to fulfill the duties of a real estate broker with the necessary honesty and integrity. Taking into consideration all the evidence presented at the hearing, respondent has not shown sufficient rehabilitation to justify retaining his license. It would be against the public interest to allow respondent to remain licensed, even on a restricted basis.

ORDER

All licenses and licensing rights of respondent Neil Nabil Salem under the Real Estate Law are revoked.

DATED: 4-25-2012


KAREN E. REICHMANN
Administrative Law Judge
Office of Administrative Hearings