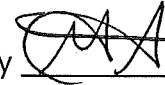


FILED

July 18, 2012

BEFORE THE DEPARTMENT OF REAL ESTATE
DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By 

In the Matter of the Application of)
)
 JASON ERNIE WOLF,)
)
 Respondent.)
_____)

NO. H-11336 SF
OAH NO. 2012030548

DECISION

The Proposed Decision dated June 14, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following correction is made to the Proposed Decision:

Conditions "4" and "5" of the Order are not adopted and shall not be a part of the Decision.

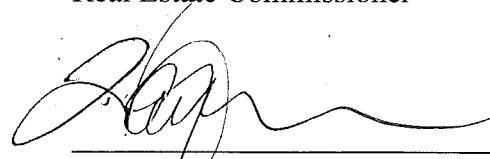
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy of Section 11522 is attached hereto for the information of Respondent.

If and when application is again 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 Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock noon on AUG 07 2012

IT IS SO ORDERED 7/17/2012

Real Estate Commissioner



By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JASON ERNIE WOLF,

Respondent.

Case No. H-11336 SF

OAH NO: 2012030548

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dianna L. Albini, State of California, Office of Administrative Hearings, on May 21, 2012, in Oakland, California.

Richard K. Uno, Counsel, Department of Real Estate, appeared on behalf of complainant, E.J. Haberer II.

Edgardo Gonzalez, Counsel, appeared on behalf of respondent Jason Ernie Wolf, who was also present.

The matter was submitted on May 21, 2012.

FACTUAL FINDINGS

1. On April 6, 2011, respondent Jason Ernie Wolf submitted his application to the Department of Real Estate for a real estate salesperson license. The Department denied respondent's application.

Respondent's conviction

2. On May 12, 2005,¹ in Mendocino County, respondent was convicted of violating Vehicle Code section 2800.2, (evading an officer), a felony, and violating Penal Code section 148, subdivision (a)(1) (delaying or obstructing an officer), a misdemeanor.

¹ On May 12, 2005, in Mendocino County respondent's separate criminal actions from 2004 and 2005 were consolidated. Respondent's conviction date for all matters is May 12, 2005.

Respondent's convictions are substantially related to the qualifications, functions or duties of a licensee.

3. The facts and circumstances of the convictions contained in Finding 2 are that on April 10, 2005, after six days at the rehabilitation facility, respondent left the facility stole a truck and "got high" using methamphetamines. The police were informed about respondent's location and he evaded police in an attempt to leave the area.

4. On that same date, respondent was convicted of violating Penal Code section 487, subdivision (a) (grand theft), Vehicle Code section 10851, subdivision (a) (taking a vehicle without the owners permission), and Penal Code section 12022.1 (commission of a crime while released from custody on bail or own recognizance), all felonies. Respondent's convictions are substantially related to the qualifications, functions or duties of a licensee.

5. The facts and circumstances of the conviction contained in Finding 4 are that on April 9, 2005, respondent released on bail and admitted to an inpatient rehabilitation facility. Respondent left the rehabilitation facility without permission and unlawfully took a truck, trailer and trencher from a construction site. Respondent also unlawfully removed clothing and equipment from the Little River Fire Department.

6. On that same date, respondent was convicted of violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance), and Penal Code section 12022, subdivision (a)(1) (armed with a firearm), both felonies. Respondent's convictions are substantially related to the qualifications, functions or duties of a licensee.

7. The facts and circumstances of the conviction contained in Finding 6 are that on February 24, 2005, respondent was in operating a vehicle under the influence of a controlled substance (methamphetamine), while armed with a loaded, operable .22 double nine revolver.

8. On that same date, respondent was convicted of violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance), a felony.

9. The facts and circumstances surrounding the conviction contained in Finding 8 are that on January 26, 2005, respondent was in possession of and under the influence of a controlled substance (methamphetamine) and unlawfully removed merchandise from Walmart. As it relates to this matter, based on the facts and circumstances of respondent's conviction for possession of a controlled substance, respondent's conviction is substantially related to the qualifications, functions or duties of a licensee.

10. Respondent was convicted of violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance), a felony.

11. The facts and circumstances surrounding the conviction contained in Finding 10 are that on March 12, 2004, respondent was in possession and under the influence of a controlled substance (methamphetamine) and unlawfully removed personal property belonging to Round Valley Indian Housing Authority. Respondent was also in possession of a .44-caliber Ruger revolver and a .22-caliber Marlin rifle. As it relates to this matter, based on the facts and circumstances of respondent's conviction for possession of a controlled substance, respondent's conviction is substantially related to the qualifications, functions or duties of a licensee.

12. As a result of respondent's May 12, 2005 convictions, on November 18, 2005, respondent was sentenced to the state prison for seven years. Respondent was subsequently transferred to the forest fighter response center. In January 2008, respondent was release on parole. On February 22, 2009, respondent was discharged from parole.

Prior administrative action

13. On September 6, 1996, the Board of Chiropractic Examiners issued license number DC 24670 to respondent. On October 12, 2007, the Board of Chiropractic Examiners revoked respondent's chiropractic license based on his prior convictions set forth in Findings 2 through 12, above.

Respondent's evidence

14. Respondent accepts full responsibility for his prior conduct. Respondent admits he is an addict and identifies his sobriety date as April 10, 2005. Respondent's criminal conduct began in 2004 and ended in May 2005 and coincided with his brother's suicide and respondent's methamphetamine addiction. Respondent has no history of criminal convictions prior to March of 2004. He has no subsequent criminal convictions following May 2005.

15. On December 22, 2003, while respondent was present in his home with his mother and girlfriend, his brother arrived. His brother, nine years his junior, went to the second floor, of respondent's home, took a pistol and shot himself in the head. His brother fell from the second floor balcony and landed outside. Respondent, hearing both the gunshot and seeing his brother fall from the house, ran to him. His brother was bleeding profusely from the head and not breathing. Respondent administered CPR until an ambulance arrived. On December 25, 2003, respondent's brother died. Thereafter, respondent spiraled downward and into heavy use of methamphetamines.

While incarcerated, respondent was able to detox from methamphetamines. Respondent was incarcerated for three years and served the remainder of his sentence at "fire camp" and was released on January 28, 2008.

16. Respondent identifies April 10, 2005 as his date of sobriety. He was able to “detox” and “get sober” while in prison. Following his release on parole in January 2008, respondent attended a 30-day recovery program. Thereafter, respondent attended Alcoholic Anonymous (AA) and Narcotic Anonymous (NA) meetings three times – per –week for the first year. He currently attends AA/NA meetings approximately twice a month and works with his sponsor.

17. Respondent is currently married, following a three and one-half year relationship with his wife. They have one child in common, a 16-month old daughter, and respondent is a step-father to his wife’s three teenagers. Respondent has worked over the past year and one-half at the post office. He has also worked at a real estate office for approximately four months. Respondent has taken real estate courses and passed the real estate license examination.

18. In July 2010, respondent completed 12 hours of continuing education course through Life Chiropractic College West. In January of 2011, respondent completed a continuing education course entitled Anatomy for the radiologic professional. In August 2011 respondent successfully completed a chiropractic training course that consisted of three patient education hours, four technique hours, and five radiology hours. On September 27, 2011, respondent paid the Board of Chiropractic Examiners \$2,185.50 for costs awarded to the Board of Chiropractic Examiners during his prior disciplinary action.

Expert evidence

19. Kevin T. Kelly, Ph.D., was present and testified at hearing. In 2005, Dr. Kelly was retained by respondent’s parents to determine whether respondent “could use substance abuse rehabilitation and, if so, in what setting? The issue of probation versus prison was addressed as well.” Dr. Kelly conducted two clinical interviews of respondent at the county jail, obtained a history, conducted a mental status examination and administered psychological testing. Dr. Kelly also interviewed respondent’s parents, a personal friend and respondent’s probation officer. Dr. Kelly reviewed samples of documents written by respondent prior to 2004 and a November 2004 letter, Dr. Kelly describes as “a revealing glimpse of the deterioration of mental status that had occurred subsequent to [respondent’s] methamphetamine addition.” Dr. Kelly also reviewed law enforcement investigative reports and preliminary hearing transcripts.

On June 30, 2005, Dr. Kelly prepared a report listing his opinions, recommendations and conclusions. Dr. Kelly diagnosed respondent as having methamphetamine dependence, but found no evidence that respondent suffered from a personality disorder. In 2005 Dr. Kelly concluded respondent was a good candidate for an outpatient treatment program with occasional monitoring.

20. On July 27, 2011, Dr. Kelly reassessed respondent and prepared a report related to respondent’s fitness to be re-issued a chiropractic license. Dr. Kelly conducted an interview with respondent, administered psychological tests, reviewed relevant medical

records and formed the opinions that “respondent appeared to have made a successful recovery from methamphetamine addiction and currently maintains a regime that facilitates stability and continued success in rehabilitation.” Dr. Kelly would not hesitate to recommend Mr. Wolf for licensing as a real estate salesperson or as a licensed chiropractor.

21. On May 16, 2012, Dr. Kelly performed a further assessment and report prior to a hearing before the Department and in anticipation of a hearing before the Board of Chiropractic Examiners. Dr. Kelly assessed respondent’s present status as suggesting stability and successful rehabilitation. Respondent demonstrated good insight into the origin of his addiction and into the steps necessary for recovery. Psychological testing performed by Dr. Kelly in 2005, 2009, 2011 and 2012 revealed that respondent did not have a personality disorder and demonstrated no signs of a mental health or behavioral disorder. Dr. Kelly opined that respondent “appeared to have made a successful recovery from methamphetamine addiction. He maintains a regime that facilitates stability and that is likely to result in continued success in rehabilitation.” Respondent has a strong support system in place consisting of family, community and work.

22. Since 2008, respondent has sought treatment at the Mendocino Community Health Clinic, Inc. (clinic) for issues of chronic pain and addiction. Respondent receives counseling at the clinic with Michael Mabanglo, LCSW, PhD. A joint letter dated June 21, 2011 from Dr. Mabanglo and Michael Carnevale D.O., indicate that respondent’s methamphetamine addiction is in full remission and that he “produced appropriate urine toxicology screens for the past three years.” Respondent has followed up regularly with his medical provider and is committed to regular quarterly follow up appointments.

23. A January 11, 2010 letter from Michael Carnevale DO to the Board of Chiropractic Examiners was submitted at hearing by respondent. Dr. Carnevale’s letter notes that respondent ‘sought me [Carnevale] out secondary to my specialty in pain and addiction, he [respondent] is highly motivated to avoid relapse of drug addiction. Pt [respondent] has kept appointments and complied with all requested testing. He is doing well with prescribed medications and there has been no evidence of prescription medicine misuse or abuse. From a standpoint of addiction recovery, I would recommend reinstatement with appropriate monitoring and follow up.”

24. A May 16, 2012 letter from Beverly Sanders Realty Company was submitted at hearing by respondent. Beverly Sanders has known respondent for the past three years and is aware of his prior criminal history. She is willing to employ him as a salesperson.

25. A May 3, 2012 letter from United States Postal Service Postmaster Michael Stafford in Covelo, California was submitted by respondent at hearing. Respondent has been employed by the postal service since June of 2010. Stafford finds respondent to be on time and dependable and is someone who holds a position of trust and responsibility. Stafford notes that respondent has moved beyond his past and turned his life around.

26. 14 additional character letters were submitted at hearing by respondent. All letters share the common theme that respondent has accepted responsibility for his mistakes and turned his life around.

LEGAL CONCLUSIONS

Convictions

1. Pursuant to Business and Professions Code section 480, subdivision (a), the Commissioner may deny an application for a real estate salesperson license if the applicant has been convicted of an offense that is substantially related to the qualifications, functions, or duties of a real estate licensee. Pursuant to Business and Professions Code section 10177, subdivision (b), an application may be denied if the applicant has been convicted of a felony.

2. California Code of Regulations, title 10, section 2910, sets forth criteria for consideration in determining whether a license should be denied on the basis of the conviction of a crime or on the basis of an act or conviction that is substantially related to the qualifications, functions or duties of a licensee.

Pursuant to California Code of Regulations, title 10, section 2910, the following crimes and acts have been determined to be substantially related” Subdivision (a)(1) obtaining property belonging to another person. Subdivision (a)(8), doing any unlawful act with the threat of doing substantial injury to the person of another is substantially related to the qualifications, functions or duties of a real estate licensee. Subdivision (a)(10), conduct which demonstrates a pattern of repeated and willful disregard of law. Subdivision (a)(11), two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use of alcohol or drugs.

By reason of the matters set forth in Findings 2 through 12, cause exists to deny respondent’s application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

Prior administrative action

3. Effective October 10, 2007, the Chair of the Board of Chiropractor Examiners revoked respondent’s chiropractic license. By reason of the matters set forth in Finding 13, cause exists to deny respondent’s application under Business and Professions Code section 10177, subdivision (f).

Rehabilitation

4. The Department’s criteria of rehabilitation are set forth in California Code of Regulations, title 10, section 2911, and all relevant sections have been considered. Respondent has accepted full responsibility for his actions. It has been more than seven years since respondent’s most recent conviction and more than three years since he was

release from parole. Respondent has successfully completed the terms and conditions of parole. Respondent has maintained his sobriety since 2005 without relapse. He continues to participate in AA/NA and private counseling. Respondent appears to have a stable family life. Respondent has been employed since his release in 2008 and supports his family financially. He has taken continuing education courses in the areas of real estate and chiropractic treatment. Respondent has no prior or subsequent criminal conduct other than the period of December 2004 to May of 2005. Respondent is involved in his community. He has a change in attitude from that which existed in 2004 to 2005. Respondent has paid to the Board of Chiropractic Examiners the investigative costs awarded in the prior administrative proceeding.

The ultimate question is whether respondent poses a threat to the public. The answer is no. By reason of the matters set forth in Findings 14 through 26, there is evidence of respondent's good character and significant steps toward his rehabilitation. For these reasons, it would not be contrary to the public interest to issue respondent a restricted real estate salesperson license.

ORDER

The application of respondent Jason Ernie Wolf, 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 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 suspend the right to exercise any privileges granted under this restricted license prior to hearing by Order of the Real Estate Commissioner in the event of:

(a) The conviction of respondent (including by 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 an approved by the Department of Real Estate which shall certify:

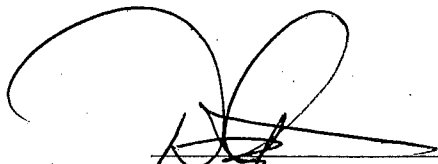
(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and,

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

4. Respondent's restricted real estate license is issued subject to the provisions of section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen months of 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 Business and Professions Code 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 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: 6/14/12



DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings

Not adopted