

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED

NOV 14 2012

DEPARTMENT OF REAL ESTATE

By L. Frost

In the Matter of the Application of

STEPHEN ROBERT BRANAM,

Respondent.

NO. H-11419 SF

OAH NO. 2012080139

DECISION

The Proposed Decision dated October 9, 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 with the following exceptions:

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

1. Respondent's name in the caption on page 1 is corrected to read "STEPHEN ROBERT BRANAM".
2. Respondent's name in paragraph 3 on page 1 is corrected to read "Stephen Robert Branam".
3. Respondent's name in the first sentence of number 2 of the Factual Findings on page 1 is corrected to read "Stephen Robert Branam".
4. Respondent's name in the first sentence of the Order on page 8 is corrected to read "Stephen Robert Branam".
5. The provision of the Order in the first sentence on page 8 of the Proposed Decision, "if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision" is not adopted and shall not be a part of the Decision.

The application for a real estate broker license is denied, but the right to a restricted real estate broker 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 broker 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 DEC 04 2012.

IT IS SO ORDERED 11/9/2012

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:

Robert
STEPHEN ~~B~~. BRANAM,

Respondent.

Case No. H11419SF

OAH No. 2012080139

PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on September 18, 2012.

Jason Lazark, Counsel, Department of Real Estate, represented Complainant Robin S. Tanner, Deputy Real Estate Commissioner.

Katherine Vernon Ryan, Attorney at Law, represented Respondent Stephen ~~B~~. Branan who was present. *Robert*

The record was held open until October 2, 2012, to permit the parties to file a Joint Statement describing Respondent's felony conviction. The Joint Statement was received on September 27, 2012, marked for identification as Joint Exhibit 1, and admitted into evidence.

The matter was submitted on October 2, 2012.

FACTUAL FINDINGS

1. Complainant Robin S. Tanner filed this Statement of Issues in her official capacity as a deputy real estate commissioner for the Department of Real Estate, State of California (Department).

2. By application signed December 19, 2011, Stephen ~~B~~. Branan (Respondent) submitted an application to the Department for a real estate broker's license. The Department denied Respondent's application based upon his criminal record and this hearing followed. *Robert*

3. In the application, Respondent disclosed, as required, that he had a criminal conviction record. He attached to the application form a description of his criminal arrests and conviction history and related information. Respondent also submitted to the Department a completed interview information statement and conviction detail report forms.

Criminal Conviction Record

4. Respondent admits that on November 8, 1976, in Solano County Municipal Court, by his plea of guilty, he was convicted of violating Penal Code section 484 (petty theft). Respondent recalls that he was fined \$150 for the offense. No court records were submitted regarding this conviction.

5. Respondent admits that on an uncertain date in the 1970s, in Napa County Municipal Court, respondent was convicted of trespassing and hunting without a license. Respondent was fined \$125. No court records were submitted regarding this conviction.

6. Respondent and Complainant have stipulated to the following procedural history with respect to Respondent's felony conviction:

a. On June 28, 1983, in the Superior Court of California, County of Solano, Respondent was convicted by a jury of violating Penal Code section 187 (second degree murder), and Health and Safety Code section 11350 (possession of a controlled substance.)

b. On November 8, 1988, the appellate court reversed and remanded respondent's second-degree murder conviction and respondent was released pending a new trial.

c. On August 28, 1989, Respondent reached a plea agreement with the Solano County Office of the District Attorney whereby Respondent pled guilty to violating Penal Code section 187 (second degree murder). As part of the agreement, the Solano County Office of the District Attorney agreed not to oppose parole at a future parole hearing.

d. On July 15, 1993, it was determined that the Solano County Office of the District Attorney violated the terms of the plea agreement discussed in Paragraph 6(c) hereof, by opposing Respondent's parole. As a result, Respondent was allowed to withdraw the plea referenced in Paragraph 6(c), and enter a new plea to violating Penal Code section 192 (voluntary manslaughter). Respondent was thereafter remanded to the custody of the California Department of Corrections.

e. On August 13, 1993, Respondent was released from the custody of the California Department of Corrections.

7. The circumstances of the conviction are that in October, 1981, Respondent was living or staying with his girlfriend, who had recently given birth to a baby boy. Apparently while under the influence of drugs, over the period of one or more days, Respondent viciously and cruelly abused the baby resulting in the baby's death. He was arrested after paramedics responded to a call for assistance and found that the baby had been the victim of abuse.

Respondent's Evidence

8. At the time of Respondent's petty theft conviction, he was 19 years old. On Halloween, he and a number of friends came upon a large stack of pumpkins outside of a convenience store and one of the group said "let's grab a pumpkin." Respondent took a pumpkin, was caught, and paid a fine.

9. At the time of Respondent's conviction for hunting without a license, he was about 18 years of age and went duck hunting with friends. Respondent was fined \$125 for his failure to have the required license.

10. During Respondent's early twenties, taking drugs was at the center of his life. At this time he was living with his girlfriend, who had recently given birth to a baby boy. As a result of heavy drug use, on at least one occasion, Respondent had been up and without sleep for 72 hours. While on this drug binge, he caused the baby's death. There record is not clear as to what drug Respondent was using and Respondent did not testify regarding the details of how the death occurred. The crime was committed in 1981 and Respondent was convicted of second degree murder in 1983. Respondent credibly testified that his drug use was not an excuse for his conduct and he takes full responsibility for the baby's death.

11. While in prison, Respondent took college courses and participated in counseling. He also worked with sheet metal, which was a trade he had learned prior to going to prison. While in prison Respondent realized he had to change his attitude and life and began the rehabilitation process. He quit using drugs and has lived drug free ever since.

12. Respondent completed his sentence and was released from prison in 1993. Because Respondent was not placed on parole, it was up to him to find his own way to reintegrate into society, without the benefit of support or supervision. In order to get away from the people who had been a bad influence in his life prior to going to prison, he decided not to return to Vallejo where he had grown up. Instead, he briefly moved in with his mother in Berkeley. He had done sheet metal work before going to prison, and again found employment as a sheet metal worker in San Francisco. His last position was as a foreman. In this position, Respondent had responsibly for employee and customer checks, as well as customer and supplier relationships. His employer was aware of his conviction, but he did not discuss the facts of the conviction in detail with him.

13. Later the same year, Respondent moved to his own apartment where he met Kimberley Gretchen Kline, another tenant. Kline was licensed and working as a dental

hygienist at the time. Kline testified on Respondent's behalf. She explained Respondent told her about his criminal record about a month after they met. Kline felt he was no longer the "same person" who had committed the crime, but was and is honest, ethical, responsible, capable and optimistic. After dating for about six months, they decided to get married, and have been married for 19 years.

14. Respondent and his wife first began investing in real estate in 1994 when they purchased a house in Berkeley in need of repair. Three years later they were able to refinance that house, and begin buying other properties in Berkeley. Together with his wife, Respondent has continued to buy, improve and rent or sell properties in this manner in Berkeley, Sacramento and in New Orleans. He has been self employed and has worked full time in the real estate business since 2002.

15. Respondent owned an apartment building and three houses in New Orleans that were badly damaged as a result of Hurricane Katrina. In 2006 he moved to New Orleans to perform repairs to his property, and during this time also volunteered with various community organizations to help cleanup other homes. Respondent has also performed some community service in California on behalf of the homeless.

16. Respondent and his wife currently live in Sacramento where they are restoring a house he inherited from his mother. Respondent has a "passion for real estate," has taken numerous courses in the field, and received a Certificate of Achievement in Real Estate from Merritt College in 2010. Respondent has passed the examination to become a real estate broker and would like to hold a broker's license to enhance his present work. He does not intend to operate a brokerage or employ other realtors, but would like to have access to listings and to be able to perform transactions himself, without having to engage another broker.

17. In support of his application, Respondent submitted numerous character letters from former employers and others who have known him for many years. The owner of a sheet metal business where Respondent worked wrote:

I hired [Respondent] as my head foreman at J+J and he was employed there for about three years. Steve's duties were wide and various....In dealing with our clients (from homeowners to big corporations) [Respondent] was the front line representative for J+J once a job project started. He had a duty to me as his employer and a responsibility to the clients for their interest as well, in which he performed both to the upmost.

One of Respondent's neighbors, Arvalea Nelson, Ph.D., is a psychologist. She writes:

I am so pleased that Mr. Branham plans to make his living as a Realtor. As a 30-year psychologist and a 10-year neighbor of his, I feel qualified to testify as to his integrity and commitment to civic responsibility. He will be a true asset to this profession.

Daniel Russo, the attorney who represented Respondent at his criminal trial and during the entire time he was incarcerated, strongly supports his application, notwithstanding his deep knowledge of the facts of his conviction. He writes:

[F]or an extended period of my career I represented both plaintiffs and defendants in litigation arising out of ethical obligations of state licensed real estate brokers and agents. [Respondent] I believe is an honest, ethical individual whose past tragic life has informed his world view to make him a more concerned sensitive individual. Given what he went through it would have been easy for him to shift responsibility for his conduct to others. Mr. Banam refused to do that in the past and refuses to do it now.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), together provide that a real estate broker's license may be denied if the applicant has been convicted of a felony or a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee.

In California Code of Regulations, title 10, section 2910 the Department has established criteria to be considered when evaluating whether a crime or act is substantially related to the licensed activity of real estate sales. Subdivision (a)(1) is the "fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person." Subdivision (a)(8) of section 2911 is "doing of any unlawful act with the intent or threat of doing substantial injury to the person or property of another." Petty theft and hunting without a license are included under subdivision (a)(1), and violent crimes, including manslaughter, are included under subdivision (a)(8).

Cause exists to deny Respondent's application by reason of the misdemeanor convictions set forth in Findings 4 and 5, and the felony conviction set forth in Findings 6 and 7.

2. As legal cause for denial exists, the next question to be addressed is whether Respondent has demonstrated sufficient rehabilitation to warrant licensure. Department regulations, found at California Code of Regulations, title 10, subdivision 2911 contain criteria to assist in the difficult assessment of rehabilitation and consequent risk to the public

safety presented by an applicant who has been convicted of a crime. Given the heinous nature of the Respondent's felony conviction, compliance with all of the most relevant criteria is required. These are: (1) whether more than two years have passed since the last conviction, (Cal. Code Regs., tit. 10, § 2911, subd. (a)); (2) abstinence from the use of controlled substances or alcohol for not less than two years, (Cal. Code Regs., tit. 10, § 2911, subd. (b)); (3) demonstrated "stability of family life" subsequent to the convictions; (Cal. Code Regs., tit. 10, § 2911, subd. (h).); (4) completion of formal education or vocational training courses for economic self improvement (Cal. Code Regs., tit. 10, § 2911, subd. (i)); (5) conscientious involvement in community social benefit programs (Cal. Code Regs., tit. 10, § 2911, subd. (l)); (6) new social relationships from those that existed at the time of the offense at issue, (Cal. Code Regs., tit. 10, § 2911, subd. (m)); and, (7) change in attitude from that which existed at the time of the conduct in question (Cal. Code Regs., tit. 10, § 2911, subd. (n)).

3. At the hearing, respondent credibly addressed each of these criteria. It has been 36 years since Respondent's misdemeanor convictions and 31 years since the commission of the offense for which Respondent was incarcerated. It has been 19 years since respondent was released from prison. While drugs were central to respondent's life at the time the time of his felony conviction, the evidence was that respondent has completely abstained from the use of illegal drugs since the early 1980's, and alcohol is not a factor in his life. Respondent has been married for 19 years, and his wife continues to hold respondent in high in high regard. Respondent has completed a series of courses in real estate and passed the broker's examination. When the opportunity has arisen, Respondent has engaged in community service activities, particularly in the aftermath of Katrina, and in an ongoing manner with respect to the homeless in California. Following his release from prison, Respondent made a conscious effort not to engage with the people he knew at the time of his conviction, but moved to a different city to start over. Most importantly, respondent has accepted responsibility for his acts and the evidence supports the conclusion that he is a far different person today than he was in 1981.

4. Complainant argues that Respondent has failed to demonstrate sufficient rehabilitation to warrant licensure, citing *In re Menna* (1995) 11 Cal. 4th 945. Menna was an attorney who had been disbarred in his home state of New Jersey, and following a prison term, came to California and sought admission to the California Bar. While practicing law in New Jersey, he diverted hundreds of thousands of dollars from client trust accounts to his own use in order to pay gambling debts. He also manufactured illegal drugs. After being released from prison Menna overcame his gambling addiction, and his California Bar application was supported by numerous letters of reference. In denying him admission to the California Bar, the Supreme Court said that on these facts, an applicant must demonstrate "the most clear and convincing evidence that efforts made toward rehabilitation have been successful." The court stated that the letters were entitled to "great weight," but the court refused to grant his bar application, finding that not only recovery from the gambling addiction, but "unblemished, exemplary conduct" was required. The court said: "considering that applicant's compulsive gambling began in 1978, shortly after his admission to the New Jersey Bar, and that he engaged in a continuous course of professional and criminal

misconduct for a period of five years, ending only with his arrest in 1983, his five and one half years of unsupervised good conduct is not a sufficient period of time to demonstrate genuine reform." In particular, the court pointed to Menna's failure to make any sustained or significant efforts toward making restitution to his victims or paying back taxes, which jointly amounted to hundreds of thousands of dollars.

5. Complainant cited another case involving attorney discipline, *In re Trebilcock*, (1981) 30 Cal.3d 312, for the proposition that respondent has not demonstrated sufficient rehabilitation to be given a broker's license. In 1978, attorney Trebilcock committed six robberies over a period of two and one-half months. Trebilcock argued that he had been emotionally disturbed at the time of the robberies, but had since been rehabilitated and offered psychiatric testimony in support of his position. The State Bar Court disagreed, and the Supreme Court affirmed finding, "While candid admission of misconduct in full acknowledgment of wrongdoing may be a necessary step in the process, it is only a first step. In our view, a sure indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice law."

6. Complaint is correct that both cases set a high standard for rehabilitation following the conviction of serious crimes. However, both of these cases involved individuals who sought membership in the bar after relatively short periods of time following the misconduct at issue. In Trebilcock's case, at most a few years had passed prior to his request for reinstatement, while Menna sought bar admission five years after his release from prison. These time periods must be contrasted with the 31 years since the commission of Respondent's offense and 19 years since Respondent has been released from prison. During this period, Respondent has been unsupervised and the evidence was his conduct has been "exemplary." This is the kind of "sustained conduct over an extended period" the court had in mind.

7. The Trebilcock court also discussed the purpose of administrative hearings following misconduct, stating "The purpose of disciplinary proceedings is not primarily to punish errant practitioners, but rather to determine their fitness to continue to practice law, which inquiry we undertake on review for the protection of the public." In this case, the judicial system has punished Respondent for a very serious crime. Respondent has taken responsibility for his wrongdoing, eliminated drugs from his life, and lived strictly in accordance with the law since his release from prison nearly 20 years ago. The heinous nature of Respondent's crime makes this a difficult case, but it must be decided on the Department's criteria rather than the emotion associated with the nature of the offense. Based upon the Department's criteria for rehabilitation and in light of Respondent's conduct since his release from prison in 1993, denying a restricted broker's license would serve as additional punishment, rather than public protection. The public will be adequately protected by the following order.

ORDER

^{Robert}
The application of Stephen ~~B.~~ Branam for a real estate broker's license is denied; however, a restricted real estate broker's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code, ~~if Respondent makes application therefore and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision.~~ 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 that 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 no low 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 That 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. Respondent shall not, during the period of restriction, employ or supervise any real estate salesperson.

DATED: October 9, 2012


KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings

Section 11522 of the Government Code of the State of California:

11522. Reinstatement of License or Reduction of Penalty. A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty. (Added by Stats. 1945, Ch. 867; amended by Stats. 1985, Ch. 587.)

CRITERIA OF REHABILITATION (*Denial*)

RE 573 (Rev. 10/03)

Your application for a real estate license or your petition to reinstate your real estate license has been denied. The reason(s) for denial is on the grounds set forth in the attached Decision or Order Denying Reinstatement. Set forth below is the Criteria of Rehabilitation. These criteria have been developed by the Department of Real Estate as guidelines to assist an applicant or former licensee to establish a rehabilitation program and in the presentation of his or her case should application again be made for licensure or a petition filed for either reinstatement of a license or removal of restrictions from a restricted license.

Not all of the factors listed in the criteria will be applicable in the case of every person who has had a license application or petition for reinstatement or removal of restrictions denied. Nor will each factor necessarily be given equal weight in evaluating the person's rehabilitation. Each person must decide which of these factors are applicable to his or her case and should then take appropriate steps toward rehabilitation to the end of satisfying the Real Estate Commissioner that it would not be against the public interest to grant the license in question.

2911. Criteria of Rehabilitation (*Denial*). The following criteria have been developed by the department pursuant to Section 482(a) of the Business and Professions Code for the purpose of evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant:

- (a) The passage of not less than two years since the most recent criminal conviction or act of the applicant that is a basis to deny the departmental action sought. (A longer period will be required if there is a history of acts or conduct substantially related to the qualifications, functions or duties of a licensee of the department.)
 - (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the applicant.
 - (c) Expungement of criminal convictions resulting from immoral or antisocial acts.
 - (d) Expungement or discontinuance of a requirement of registration pursuant to provisions of Section 290 of the Penal Code.
 - (e) Successful completion or early discharge from probation or parole.
 - (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the conduct which is the basis to deny the departmental action sought is attributable in part to the use of controlled substances or alcohol.
 - (g) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
 - (h) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction or conduct that is the basis for denial of the agency action sought.
- (i) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
 - (j) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
 - (k) Correction of business practices resulting in injury to others or with the potential to cause such injury.
 - (l) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
 - (m) New and different social and business relationships from those which existed at the time of the conduct that is the basis for denial of the departmental action sought.
 - (n) Change in attitude from that which existed at the time of the conduct in question as evidenced by any or all of the following:
 - (1) Testimony of applicant.
 - (2) Evidence from family members, friends or other persons familiar with applicant's previous conduct and with his subsequent attitudes and behavioral patterns.
 - (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
 - (4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances.
 - (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.