

FILED

SEP 29 2014

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

BUREAU OF REAL ESTATE
By S. Black

In the Matter of the Application of)
MICHAEL PHILLIP KRAMER,)
Respondent.)

No. H-11612 SF
OAH No. 2013120706

DECISION

The Proposed Decision dated September 8, 2014, 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)(c) of the Government Code, the following correction is made to the Proposed Decision:

On page 7 of the Proposed Decision, item number 4, the address for the Commissioner at the Bureau of Real Estate should be changed and corrected to read:

“... Post Office Box 137007, Sacramento, CA 95813-7007.”

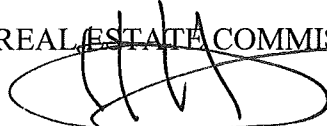
The application for a real estate license is denied, but the right to a restricted real estate license is granted to Respondent. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

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 OCT 20 2014.

IT IS SO ORDERED SEP 26 2014

REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

MICHAEL PHILLIP KRAMER,

Respondent.

Case No. H-11612 SF

OAH No. 2013120706

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on August 28, 2014, in Oakland, California.

Richard Uno, Counsel III, represented complainant, Robin S. Tanner, a Deputy Real Estate Commissioner of the State of California.

Robert F. Hahn, Gould & Hahn, represented respondent, who was present throughout the administrative hearing.

The matter was submitted for decision on August 28, 2014.

FACTUAL FINDINGS

1. Robin S. Tanner made the statement of issues in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Michael Phillip Kramer (respondent) applied to the Bureau of Real Estate (bureau) for a real estate salesperson license on June 20, 2013.

Criminal History

3. On July 10, 2001, in the Municipal Court of the State of New Jersey, Bernards Township, respondent was convicted of violating 2C:35-10a(4) of the New Jersey Criminal Code (possession of 50 grams or less of marijuana), a felony. Respondent was ordered to pay a fine of \$250 and associated fees, and was required to complete two days of community service. Respondent paid the fines and completed the community service. The violation occurred on January 26, 2000.

4. On April 20, 2001, in the Superior Court of the State of New Jersey, County of Somerset, respondent was convicted of violating 2C:35-5a(1) and 2C:35-5b(1) (distributing marijuana), 2C:35-7 (distributing marijuana within 1,000 feet of school property), and 2C:35-5a(1), 2C:35-5b(12) and 2C:5-2 (conspiracy to distribute marijuana), felonies. Several of the charges were merged for sentencing. Respondent was sentenced to three years' probation, 90 days in county jail, 60 hours of community service, and various fines and fees. Respondent served the 90 days in jail, completed the community service and paid the fines.

The facts underlying the convictions occurred in May 2000, when respondent and a friend sold less than an ounce of marijuana to an adult undercover agent within 1,000 feet of a high school.

5. On February 6, 2001, in the Municipal Court of the State of New Jersey, Township of Milburn, respondent was convicted of violating 2C:20-11B(2) (shoplifting), a misdemeanor. Respondent was ordered to pay a \$500 fine and related costs. He paid the fine in full.

The incident occurred on January 19, 2001, when respondent and a friend attempted to steal clothing valued at less than \$200 from Neiman Marcus.

Incomplete Criminal History Disclosure on Application

6. In response to a question asking whether he had ever been convicted of a crime, respondent answered in the affirmative. However, when asked to list and detail the convictions, he identified only the conviction for distributing marijuana.

Respondent's Evidence

7. Respondent accepts full responsibility for his criminal history. He agrees that he made poor decisions in his youth. Respondent was attending community college when these incidents occurred. Respondent testified credibly that he was shaken by the conviction for distributing marijuana and decided to turn his life around. The two lesser convictions, for shoplifting and possession of less than 50 grams of marijuana, were not as significant to him since he was not ordered to serve time in jail.

8. Respondent filled out the application on the day he took the real estate examination and was somewhat distracted. He was focused on his more serious conviction for distributing marijuana and forgot the others. Once the bureau questioned him about it, he cooperated fully in assisting the bureau to obtain the records. Respondent makes no excuses for his lapse in failing to report the two lesser charges. He pledges to be much more careful and performing research necessary, to accurately complete any important documents in the future.

9. In August 2001, in order to get his life on track, respondent took his parents' advice and moved to San Francisco to attend the Academy of Art University. Respondent has not used controlled substances since moving to California.

10. Respondent graduated with a Bachelors of Fine Arts degree in graphic design on December 18, 2004, with a 3.5 grade point average. Respondent has remained in California since moving here in 2001, and has surrounded himself with law-abiding professionals. He has been continuously employed since graduating. He spent several years as a graphic design consultant working for advertising agencies in Los Angeles.

11. In 2007, respondent returned to San Francisco and purchased a three-unit building which he renovated. Respondent's family has a history of working in real estate. In addition to performing freelance graphic design work, respondent has furthered his interest in the San Francisco real estate market. With his family's support, he has purchased and renovated two additional multi-unit properties. Respondent has been successful in purchasing and renovating real estate and would like to become licensed to further his real property investment experience.

12. Vincent Trunzo, a technology consultant who has known respondent for four to five years, testified at hearing in support of respondent's licensure. Trunzo is involved in the real estate market in the Bay Area. He buys, renovates and sells properties. Trunzo hopes to work on joint real estate projects with respondent. Trunzo has seen respondent's renovated properties and has been very impressed with his construction knowledge, his design ability, and his evaluation of properties. He has found respondent to be very reliable and knowledgeable concerning the San Francisco real estate market.

Trunzo is aware of respondent's criminal history, and his failure to list all of the convictions on his license application. Despite knowing this, he would be willing to take financial risks as a partner of respondent's in a real estate venture. Trunzo considers respondent to be trustworthy and responsible.

13. Joseph Theisen, a real estate salesperson, testified at hearing in support of respondent's licensure. Theisen works with Brown & Co. in San Francisco, and has been licensed since 2008. He works mainly in residential real estate. Theisen first met respondent in 2007 when respondent was a tenant in a building he owned. Respondent lived in the unit for two years. Theisen has represented respondent and respondent's family members in several real estate transactions. Over the past seven years, Theisen has observed respondent become very successful at purchasing and renovating several properties. He considers respondent to be truthful, reliable and trustworthy. Theisen has observed respondent demonstrate strong skills in evaluating real property opportunities, designing the renovation, and keeping costs down. He has worked with respondent to evaluate and develop real estate properties.

Theisen is fully aware of respondent's criminal history and his failure to fully disclose it on the application. Nevertheless, he is supportive of respondent's licensure and would be

willing to participate in his supervision if respondent obtains a restricted license; Theisen would also recommend that his broker supervise respondent's restricted license.

14. Geoffrey Evergettis, who has known respondent for 12 years, testified at hearing in support of respondent's licensure. When respondent first moved to San Francisco, they were housemates for three years. After respondent returned from Los Angeles in 2007, respondent again moved in with Evergettis for one year. Evergettis considers respondent to be reliable, trustworthy and a good friend. He is aware of respondent's criminal history and of his failure to disclose all of it on his application; knowing respondent, he believes the failure to disclose was an honest mistake. He has never known respondent to be untruthful.

Evergettis has observed respondent mature over the years, and he has seen the high quality residential renovations respondent has completed. He considers respondent to be very knowledgeable regarding construction and renovation projects. Evergettis has also observed respondent to be very successful in his graphic design career. He would be very comfortable hiring respondent to represent him in a real estate transaction; he trusts him completely.

15. Respondent submitted several character reference letters. Michael Ping, of Blackhawk Investments Corporation, has known respondent for five years and believes he would be a fine addition to the real estate profession. Christopher Pessy, of California Mortgage Advisers, has found respondent to be honest and trustworthy in working with him on real estate transactions over the past seven years. Matthew Knight, an accounting and financial consulting professional, considers respondent to be honest and knowledgeable in the area of real estate. Leigh Holmes, an energy engineer, has known respondent for 10 years; he has observed respondent to conduct himself with integrity, and praises respondent's communication skills and hardworking nature. Aaron White, an investment adviser, who has known respondent for 10 years, has been impressed with respondent's vision, creativity, ambition, resourcefulness and success in the real estate market. He has observed respondent to demonstrate fairness and moral character in his business dealings. Rolland Mattoon, a manager with Chase Bank, submitted a character reference for respondent as well. Mattoon has known respondent for 16 years and considers him to be ethical, honest and creative.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), authorizes the bureau to deny a license to an applicant who has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licenses, authorizes the denial of a license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions and duties of a real estate licensee.

2. California Code of Regulations, title 10, section 2910, sets forth criteria for determining whether a crime is substantially related to the qualifications, functions and duties of a real estate licensee. A crime is deemed to be substantially related to the licensed activity if it involves the fraudulent taking, obtaining, appropriating or retaining of funds belonging to another person (subd. (a)(1)), the employment of fraud or deceit to achieve an end (subd. (a)(4)), committing an unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator (subd. (a)(8)), or conduct that demonstrates a pattern of repeated and willful disregard of the law (subd. (a)(10)).

Respondent's petty theft conviction is substantially related to the qualifications, functions and duties of a licensee as set forth in subdivisions (a)(1), (a)(4) and (a)(8). Respondent's conviction for distributing marijuana would be substantially related to a licensee's qualifications, functions and duties under subdivision (a)(8). Respondent's marijuana possession is not, in and of itself, substantially related to a licensee's qualifications, functions and duties; however, when combined with the other convictions, they constitute a pattern of repeated disregard of the law, and are substantially related to the qualifications, functions and duties of a licensee pursuant to subdivision (a)(10).

Respondent's criminal conduct, as set forth in Factual Findings 3 through 5, was therefore substantially related to the qualifications, functions and duties of a real estate licensee. Cause exists to deny respondent's application for licensure pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

3. Business and Professions Code sections 480, subdivision (c), and 10177, subdivision (a), authorize the bureau to deny a license to an applicant who has made a material misstatement on the application. As set forth in Factual Findings 6 and 8, respondent failed to list his complete criminal history on the application. Even assuming the misstatement was unintentional, it constitutes a material misstatement and cause for denial of the application. (See, *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1994) 22 Cal.App.4th 1814, 1821-1822.) Cause to deny the application therefore exists pursuant to Business and Professions Code sections 480, subdivision (c), and 10177, subdivision (a).

4. California Code of Regulations, title 10, section 2911, sets forth criteria for evaluating whether an applicant has been sufficiently rehabilitated. Respondent has satisfied many of the criteria. Respondent's most recent conviction took place in 2001, 13 years ago (passage of two years identified in subd. (a)). Respondent successfully completed probation and has abstained from the use of controlled substances for 13 years. (subds. (e) and (f).) Respondent has a stable family life. (subd. (h).) Respondent has completed formal education at the Academy of Art University. (subd. (i).) Respondent moved from New Jersey to California in order to form different social and business relationships following his criminal conduct. (subd. (m).) Finally, he has demonstrated a change in attitude from that which he had during the time he was involved in criminal behavior, as shown by his testimony, the testimony of colleagues and the letters he presented from friends and business associates. (subd. (n).) (Factual Findings 7 through 15.)

5. Respondent's criminal history occurred many years ago when he was young and immature. He has successfully turned his life around and it appears unlikely that he will return to criminal behavior. The fact that he failed to list the lesser criminal charges is troubling; however, he did list the most serious offenses. Respondent appeared sincere when he testified that he had forgotten to list the relatively minor offenses and was very remorseful for having done so. He took full responsibility for his misdeeds. Respondent has established that he is sufficiently rehabilitated so that it would not be contrary to the public interest to grant him a restricted real estate license.

ORDER


Respondent Michael Phillip Kramer's application for a real estate salesperson 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 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 the 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 the restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for removal of any of the conditions, limitations or restrictions of a 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 Bureau 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 shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file a written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: September 8, 2014



JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings