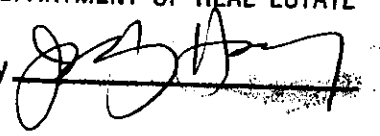


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FILED
MAY 03 2002
DEPARTMENT OF REAL ESTATE
By 

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of) NO. H-28363 LA
)
TOM LEON HORN,)
)
Respondent.)
)

ORDER GRANTING UNRESTRICTED LICENSE

On March 28, 2000, a Decision was rendered herein denying the Respondent's application for a real estate license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on May 1, 2000. Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On July 31, 2001, Respondent petitioned for the removal of restrictions attaching to his real estate salesperson license.

///

1 I have considered the petition of Respondent and the
2 evidence submitted in support thereof. Respondent has
3 demonstrated to my satisfaction that Respondent meets the
4 requirements of law for the issuance to Respondent of an
5 unrestricted real estate salesperson license and that it would
6 not be against the public interest to issue said license to
7 Respondent.
8

9 NOW, THEREFORE, IT IS ORDERED that Respondent's
10 petition for removal of restrictions is granted and that a real
11 estate salesperson license be issued to Respondent if
12 Respondent satisfies the following conditions within nine (9)
13 months from the date of this Order:

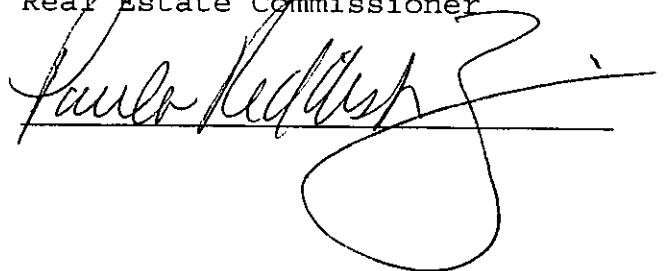
14 1. Submittal of a completed application and payment
15 of the fee for a real estate salesperson license.

16 2. Submittal of evidence of having since the most
17 recent issuance of an original or renewal real estate license,
18 taken and successfully completed the continuing education
19 requirements of Article 2.5 of Chapter 3 of the Real Estate
20 Law for renewal of a real estate license.

21 This Order shall be effective immediately.

22 Dated: April 30, 2002.

23 PAULA REDDISH ZINNEMANN
24 Real Estate Commissioner

25 
26

27 cc: Tom Leon Horn
16053 Valleywood Road
Sherman Oaks, CA 91403

FILED
APR 4 2000
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Janice B. Ison

* * * *

In the Matter of the Application of)	No. H-28363 LA
)	L-2000010518
TOM LEON HORN,)	
)	
Respondent.)	
)	

DECISION

The Proposed Decision dated March 7, 2000, 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 salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. 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 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 the 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 April 25, 2000.

IT IS SO ORDERED March 28, 2000.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:) NO. H-28363 LA
)
TOM LEON HORN,) OAH NO. L2000010518
)
) Respondent.)
_____)

PROPOSED DECISION

This matter was heard on February 25, 2000, at Los Angeles, California, by Jerry Mitchell, Administrative Law Judge of the Office of Administrative Hearings. The complainant was represented by Tuan Van Lai, Counsel. The respondent was present and represented by his son, John Horn, Attorney at Law.

FACTUAL FINDINGS

1. The Statement of Issues herein was made by Thomas McCrady in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. On or about August 2, 1999, Tom Leon Horn (respondent) made application to the Department of Real Estate (Department) for a real estate salesperson license.
3. On or about March 17, 1998, in Case No. YA034886 of the Superior Court of the State of California, County of Los Angeles, respondent was convicted, upon a plea of nolo contendere, of a felony violation of Section 350(a)(2) of the Penal Code (Counterfeit of Registered Mark), a crime involving moral turpitude which is substantially related to the qualifications, functions or duties of a real estate salesperson. The facts and circumstances were that respondent arranged the sale of some designer t-shirts that proved to be counterfeit. Imposition of sentence was suspended, and he was placed on three years probation on various conditions, including a \$5,000 fine, a penalty assessment, \$4,000.00 restitution and 100 hours of community service.
4. Respondent paid the fine, penalty assessment and restitution; performed twice the amount of community service he was required to perform; and on October 13, 1999, his conviction was reduced to a misdemeanor, probation was terminated, and he was granted the benefits of Section 1203.4 of the Penal Code. According to his testimony and a written statement that he verified while testifying, he has been in the clothing business for 35 years and was at one time, president of a multi-national

corporation with annual sales of more than a hundred million dollars. For the past ten years, he has been a self-employed broker of "off-price" and discontinued merchandise, doing business primarily by telephone, with the merchandise going directly from respondent's source to the buyer without coming into respondent's possession. According to respondent, the person who contacted him about buying the t-shirts in question turned out to be a private investigator whose job it was to ferret out counterfeit merchandise. Respondent asserts that he did not know and had no reason to suspect - from the price, the source or any other circumstance - that the t-shirts in question were not genuine. He asserts that he does not know, to this day, whether the t-shirts in question were counterfeit, but there is not likely to be a recurrence since he has left the merchandise brokering business entirely and is seeking to start a new career in real estate. He made a good impression while testifying, appeared appropriately remorseful, and submitted letters attesting to his good character. He is 65 years old and this is his only known conviction in what appears to be an otherwise law-abiding life.

LEGAL CONCLUSIONS

1. The conviction set forth in Factual Finding 3 constitutes cause under Sections 480(a)(1) and 10177(b) of the Business and Professions Code for refusal to issue the applied-for license.

2. Although cause exists for refusal to issue the license for which respondent has applied, he may nevertheless be issued a restricted license pursuant to Section 10156.5 of the Business and Professions Code. In determining whether such a license should be issued, due consideration was given to all relevant factors, including the criteria of rehabilitation set forth in Section 2911 of Title 10, California Code of Regulations. Respondent meets all but one of those criteria. His conviction has been expunged. His 36-month probation was terminated after less than 17 months. The conviction did not result from the use of controlled substances or alcohol. His fine and penalty have been paid. The stability of his family life was demonstrated by the fact that he was represented at the administrative hearing by his son, an attorney. He has taken the necessary courses to prepare for a career in real estate. There is no evidence that he has adjudicated debts or monetary obligations to others. He has corrected the business practices that resulted in his conviction by leaving that business altogether. He performed twice the community service he was required to perform. And his testimony indicated an appropriately remorseful attitude.

3. The one criterion set forth in Section 2911 that respondent does not meet is the passage of at least two years since his conviction. However, it is not necessary to meet every one of the criteria in Section 2911 in order to be considered sufficiently rehabilitated for the issuance of a restricted license, and the fact that respondent's conviction is relatively recent is offset by the fact that it was his only conviction in 65 years of an otherwise law-abiding life. Also, having a restricted license is tantamount to being on probation, and respondent did so well while on criminal probation that his

felony conviction was reduced a misdemeanor and his 36-month probation was terminated after less than 17 months. It is, therefore, concluded that it would not be against the public interest to issue him a restricted license pursuant to Section 10156.5 of the Business and Professions Code.

ORDER

Respondent's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to him pursuant to Section 10156.5 of the Business and Professions Code. The restricted license 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 nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until one year has elapsed from the date of issuance of the restricted license.

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 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.

4. Respondent's restricted license shall be issued pursuant to Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2 of said code, other than real estate principles advanced legal aspects of real estate, advanced real estate finance or advanced real 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 (18) months after the date of its issuance. Said 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 Section 10154 of the Business and Professions Code, if respondent has not satisfied the requirements for an unqualified license under Section 10153.4 of said code, 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 preceding restricted license.

DATED: March 7, 2000



JERRY MITCHELL
Administrative Law Judge

Copy to [unclear]

FILED
FEB 9 2000

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * *

By Laura B. Orona

In the Matter of the Application of) Case No. H-28363 LA
) L-2000010518
TOM LEON HORN,)
)
Respondent(s))

NOTICE OF HEARING ON APPLICATION

To the above-named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California, on **FEBRUARY 25, 2000** at the hour of **1:30 p.m.** or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay for his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: FEB 9 2000

DEPARTMENT OF REAL ESTATE

By: James R. Peel
JAMES R. PEEL, Counsel

cc: Tom Leon Horn
John R. Horn
Sacto., OAH

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II

The complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

III

On or about March 17, 1998, in the Superior Court for the County of Los Angeles, State of California, Respondent was convicted of violating Penal Code Section 350(A)(2) (Sale counterfeit mark). Said crime is a felony involving moral turpitude and bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.

IV

The crime of which Respondent was convicted, alleged in Paragraph III above, constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a)(1) and 10177(b) of the California Business and Professions Code.

These proceedings are brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500 through 11528 of the Government Code.

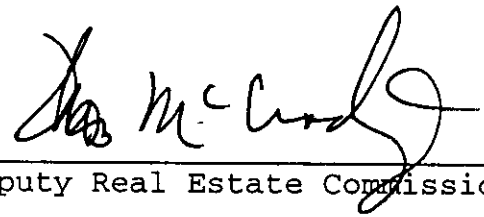
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WHEREFORE, the complainant prays that the above
entitled matter be set for hearing and, upon proof of the charges
contained herein, that the Commissioner refuse to authorize the
issuance of, and deny the issuance of, a real estate salesperson
license to Respondent, as may be proper in the premises

Dated at Los Angeles, California

This 13th day of January, 2000.



Deputy Real Estate Commissioner

cc: Tom Leon Horn
Sacto.
EC
TM

JRP:lbo