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DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By 

* * * * *

In the Matter of the Application of)	No. H-28874 LA
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))
GERARD VERKUYLEN,	L-2001010088
))
))
Respondent.)
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DECISION

The Proposed Decision dated April 5, 2001, 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.

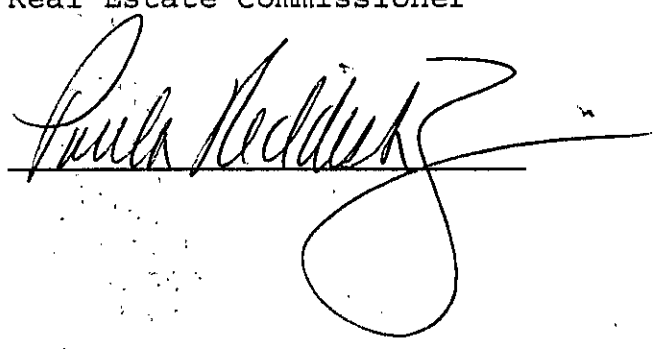
Pursuant to Section 11517(b)(3) of the Government Code, the Proposed Decision at page 4, Factual Findings #11, line 4, the word "ten" is amended to read "seven".

The application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, 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 appended hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on May 29, 2001.

IT IS SO ORDERED April 27, 2001.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

GERARD VERKUYLEN,

Respondent.

No. H-28874 LA

OAH No. L2001010088

PROPOSED DECISION

William O. Hoover, Administrative Law Judge, Office of Administrative Hearings, heard this matter on March 7, 2001, in Los Angeles, California.

Martha J. Rosett, Staff Counsel, represented Thomas McCrady, complainant.

Gerard Verkuylen, respondent, was present and represented himself.

The matter was submitted on March 7, 2001.

FACTUAL FINDINGS

1. Thomas McCrady, Deputy Real Estate Commissioner, Department of Real Estate ("Department"), State of California, made and filed this Statement of Issues in his official capacity. The filing was based on an evaluation of Gerard Verkuylen's application which revealed a felony drug conviction. Mr. Verkuylen has the burden of establishing by a preponderance of the evidence that he is entitled to issuance of a license.

2. Gerard Verkuylen ("respondent") submitted to the Department an application for a real estate salesperson's license, dated April 12, 2000, pursuant to Business and Professions Code section 10153.3 and subject to Business and Professions Code section 10153.4.

3. On December 12, 1992, before the United States District Court, Eastern District of Wisconsin, in Case Number 92-CR-141, respondent was convicted on his plea of *guilty* of a violation of Title 21, United States Code, section 841(a)(1) and 846 and Title 18, United States Code, section 2 (conspiracy to possess with intent to distribute in excess of 5 kilograms of cocaine). The offense involves moral turpitude and is substantially related to the qualifications, functions and duties of the licensed activity.

4. On April 1, 1993, respondent was sentenced to federal prison for a period of seventy-eight months and upon release from prison to be on supervised parole for four years. A letter, dated March 2, 2001, from his federal probation officer indicates that respondent began his term of supervised release (parole) on August 5, 1997. The letter further states that respondent's parole is scheduled to expire on August 4, 2001. The letter provides no information about respondent's conduct or progress while on parole. Respondent claimed that he attended college while in prison, taking classes in small business and accounting, and earned approximately ninety (90) units. He further testified that he received an associate degree (two years) in science in 1998 from Troy State College in Alabama. However, respondent did not provide any documentation in support of his educational claims. Additionally, respondent testified that he voluntarily attended a drug awareness course while in prison and went to a halfway house upon his release where he was drug tested twice a week. Again respondent provided no documentation to support his testimony. Further, respondent's testimony is somewhat misleading in that court records demonstrate that respondent was ordered by the court to participate in a drug testing and treatment program upon release from prison.

5. The specific facts and circumstances of the violation are unknown, however, count one of the federal superseding indictment (to which respondent pleaded guilty) indicates the conduct involved a conspiracy that covered the period January 1986 to August 1991. Respondent was involved with other individuals in the distribution of large quantities of cocaine in the state of Wisconsin. According to respondent's candid testimony at hearing, he initially began selling drugs in high school to support his own drug use. As time passed he became heavily involved in the drug culture, selling large quantities of illegal drugs for financial gain. Respondent admitted that his illegal activities were motivated by greed and permitted him to live a lifestyle that he enjoyed. He also testified that he was not actively engaged in illegal activity at the time of his arrest and had decided to abandon that activity. By that time, however, respondent had significantly benefited financially from his criminal activity, including the acquisition of real property. Respondent also asserted that he was not addicted to drugs and was not using during the period he was engaged in trafficking. Respondent's conviction and sentence also involved a forfeiture action whereby the tangible proceeds of his illegal activity (three parcels of real property and \$100,000 cash) were ordered confiscated by the court. There is an apparent inconsistency regarding respondent's testimony that he has suffered no other convictions. According to court records, the sentencing statement of reasons references a "prior drug offense." Respondent's explanation that a case in which marijuana was found in his home was "thrown out" does not adequately explain the matter.

6. After respondent was released from prison in February 1997, he quickly found employment disassembling buses. Within a few weeks, he applied for employment with and was hired at Temecula Creek Golf Course as a busboy. Respondent testified that he disclosed his conviction at that time. He later became a bartender then banquet captain and continues to work there as a supervisor in the food and beverage department. Respondent submitted a letter of recommendation from the department manager, dated March 6, 2001, that was highly complimentary of respondent's dedication, work ethic, honesty and trustworthiness. Respondent is entrusted with a variety of responsibilities including staff training and development, guest billing and cash management and is viewed as an asset to the organization. Although respondent indicated that he disclosed his conviction the reference letter makes no mention of the writers knowledge or awareness of that fact.

7. Respondent testified that in approximately June 1999, he worked part-time in the mortgage business at Guild Mortgage Company ("Guild") as a loan officer. He testified further that he was then recruited to work in the same capacity by Metro Inland Mortgage Company ("Metro") and that he worked there between December 1999 to June 2000. While employed at Metro he testified that he completed four loan transactions. Respondent stated that his entire family is in the real estate business in one facet or another and his employment at the aforementioned businesses involved family members. Respondent did not provide any testimonial or documentary evidence regarding this employment.

8. Respondent submitted another letter of recommendation from a close, personal friend who has known respondent for approximately one year. The letter, dated September 11, 2000, attests to respondent's honesty, integrity and trustworthiness. Respondent testified that this individual is aware of respondent's criminal background and respondent stated that he also rents from him. However, the writer makes no mention of his knowledge or awareness of respondent's criminal past. Respondent also testified that he attended real estate classes and passed his tests approximately 12 months ago, but provided no documentary evidence of the specific courses taken or completion dates. Evidence was admitted that indicated that as of November 2000, there was no record on file with the Department that respondent had successfully completed the courses required pursuant to Business and Professions Code section 10153.4. Nor did respondent present any evidence of current enrollment in any course of study, either vocational or educational.

9. In June or July 2000, respondent met Gene Foley, a licensed real estate salesperson, at the golf club. Foley, who testified on behalf of respondent, has operated Commercial Lending Services for seven years with his wife under the auspices of Robert McNall, a licensed real estate broker. Foley supervises 11 employees and has been in the business approximately 11 years. In August 2000, after several contacts with respondent, Mr. Foley hired respondent as his personal assistant. Foley has used this arrangement to teach respondent the business and believes respondent will be an asset to the company if Foley continues to work with him. Foley is working to obtain a mortgage broker's license with the intent of having his own business. Foley is aware of respondent's criminal background and testified that this knowledge does not affect his present opinion of

respondent. He further testified that McNall is also aware of respondent's background. McNall, however, did not testify and respondent did not submit any character reference from him on respondent's behalf. Although Foley evidenced a desire that respondent continue to work with him if licensed, it is unclear whether that arrangement would be acceptable to McNall as the licensed broker.

10. Respondent is not married at this time and has no children. He testified that he is involved in the Diabetes Foundation Fund and attends church regularly, but provided no documentary or testimonial support for this testimony. He also testified credibly that he moved away from all his prior drug connections in Wisconsin. While he professed family connections and support, no family members were present or testified or submitted written character references on respondent's behalf. Respondent indicated that he paid his court ordered fines early and this is consistent with the lack of evidence of any violation of his parole. He produced no evidence of any efforts to expunge his criminal record. At the time of the charged offenses, respondent was an adult, approximately 25-30 years of age. He fully accepts responsibility for his actions and appears to be motivated to become a law-abiding, productive member of society.

11. While there is some evidence of rehabilitation by respondent, it is minimal. In evaluating the extent of rehabilitation, the provisions of California Code of Regulations section 2911 are instructive and were considered. Although respondent's conviction occurred over ten years ago and there is no evidence that he has engaged in any subsequent violation of law, rehabilitation is measured by more than law-abiding activity and the passage of time. It is also noted that respondent is still under the jurisdiction of the federal court and it is difficult to assess the naturally coercive and inhibiting effects that parole may have on respondent's behavior. Additionally, the individual for whom respondent works directly is not a licensed broker and there was insufficient evidence that the responsible licensee would agree to hire and be responsible for respondent, if he were to be licensed. On balance, the overall lack of persuasive evidence both testimonial and documentary was fatal to respondent's application. The conclusion is that it is simply too soon to conclude that respondent's licensure as a real estate salesperson is either warranted or appropriate at this time. Respondent had the burden of establishing that he is entitled to licensure by the Department. He has not met that burden.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 480(a) and 10177(b) provide that the Department may deny issuance of a real estate license to anyone convicted of any felony or a crime of moral turpitude, if the crime or act is substantially related to the qualifications, functions or duties of a licensee of the Department (See California Code of Regulations section 2910).

2. Cause for denial of respondent's application for criminal convictions involving dishonesty, fraud or deceit pursuant to Business and Professions Code sections 480(a)(1), (2)

and (3) and 10177(b); and which are substantially related to the qualifications, functions and duties of the licensed activity, pursuant to California Code of Regulations section 2910, exists by reason of Factual Findings 1 through 5.

3. Cause for issuance of a restricted (conditional) license based on a substantial showing of partial rehabilitation, pursuant to California Code of Regulations section 2911, has not been established by reason of Factual Findings 1 through 11.

ORDER

Respondent Gerard Verkuylen's application for a real estate salesperson license is DENIED.

Dated: 4/5/01



WILLIAM O. HOOVER
Administrative Law Judge
Office of Administrative Hearings

Sacto
Haley

FILED
JAN 12 2001
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By: Laura B. Stone

In the Matter of the Application of) Case No. H-28874 LA
) L-2001010088
GERARD VERKUYLEN,)
)
)
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 MARCH 7, 2001 at the hour of 10:00 a.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: January 12, 2001

DEPARTMENT OF REAL ESTATE

By: Martha J. Rosett
MARTHA J. ROSETT, Counsel

cc: Gerard Verkuylen
Sacto.
OAH

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MARTHA J. ROSETT, Counsel (SBN# 142072)
Department of Real Estate
320 West Fourth Street, Suite 350
Los Angeles, California 90013

By *Laur B. Stone*

Telephone: (213) 576-6982
-or- (213) 576-6914 (direct)

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of)	No. H- 28874 LA
GERARD VERKUYLEN,)	
)	<u>STATEMENT OF ISSUES</u>
Respondent.)	
_____)	

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against GERARD VERKUYLEN alleges as follows:

I

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

II

On or about April 12, 2000, pursuant to the provisions of Section 10153.3 of the Business and Professions Code, Respondent GERARD VERKUYLEN (hereinafter "Respondent") made application to the Department of Real Estate of the State of

1 California (Department) for a real estate salesperson license,
2 with the knowledge and understanding that any license issued as a
3 result of said application would be subject to the conditions of
4 Section 10153.4 of the California Business and Professions Code.

5 III

6 On or about April 23, 1993, in the United States
7 District Court, Eastern District of Wisconsin, in case number 92-
8 CR 141, Respondent was convicted on his plea of guilty to one
9 count of violating 21 USC 841(a) & 846; 18 USC 2 (conspiracy to
10 possess with intent to distribute cocaine), a felony and crime of
11 moral turpitude substantially related to the qualifications,
12 functions and duties of a real estate licensee. Respondent was
13 committed to the custody of the United States Bureau of Prisons
14 to be imprisoned for a term of 78 months, to be followed by a
15 term of four years supervised release.

16 IV

17 The conviction and acts described in paragraph III
18 above constitute grounds for denial of Respondent's application
19 for a California real estate license pursuant to Business and
20 Professions Code Section 480 and 10177(b).

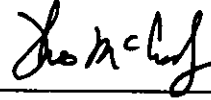
21 These proceedings are brought under the provisions of
22 Section 10100, Division 4 of the Business and Professions Code of
23 the State of California and Sections 11500 through 11528 of the
24 Government Code.

25 WHEREFORE, the Complainant prays that this matter be
26 set for hearing and, upon proof of the charges contained herein,
27 that the Commissioner refuse to authorize the issuance of, and



1 deny the issuance of, a real estate salesperson license to
2 Respondent GERARD VERKUYLEN and for such other and further relief
3 as may be proper under the law.

4 Dated at Los Angeles, California
5 this 22nd day of November, 2000.

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7 Deputy Real Estate Commissioner

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13 cc: GERARD VERKUYLEN
14 Sacto.
15 Thomas Mc Crady
16 AP
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