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BEFORE THE DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL EST

STATE OF CALIFORNIA

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In the Matter of the Application of) No. H-28886 LA
LEONARD GERARD AUBRY,) L-2000120244
Respondent(s).)

DECISION

The Proposed Decision dated February 27, 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.

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 April 5, 2001

IT IS SO ORDERED

March 13, 2001

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:

LEONARD GERARD AUBRY,

Respondent.

Case No. H-28886 LA

OAH No. L-2000120244

PROPOSED DECISION

Spencer A. Joe, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 15, 2001, in Los Angeles, California.

Chris Leong, Staff Counsel, represented the complainant.

Leonard Gerard Aubrey, respondent, represented himself.

Evidence was received, the record was closed and the matter was submitted.

FACTUAL FINDINGS

1. Official notice was taken that the complainant, Thomas McCrady, made and filed the Statement of Issues in his official capacity as Deputy Real Estate Commissioner of the State of California.
2. Respondent submitted an Application for a real estate salesperson's license ("Application") dated May 15, 2000. In response to Question 25 of the Application, respondent disclosed two criminal convictions.

3. Respondent was convicted on April 13, 1999, in the Superior Court of Los Angeles, case number KA041248, on a plea of guilty, of the criminal offense of Perjury, a violation of Penal Code section 118, a felony. This was a crime involving moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee. The facts and circumstances of this criminal conviction are that respondent obtained driver's licenses using the alias names of Jordan Lamont Banks and Michael Williams on June 23, 1995.
4. Respondent was sentenced to three years formal probation and 90 days of labor at the Los Angeles County Parks and Recreation Tree Farm. He was ordered to pay \$200 to the restitution fund.
5. Respondent continues to be on probation at this time. He has fulfilled his community service and has made restitution.
6. Respondent admitted that he signed Department of Motor Vehicle documents for a driver's license using false information. He testified that he did not use the fake identification cards and that when he was arrested he was not in possession of any fake identification cards. He testified that his sentencing "obligations" were completed. On cross-examination, he acknowledged that he continues to be on probation for another 13 months. Respondent offered no explanation regarding his motivation behind the bogus identification. His testimony was lacking in candor. In respondent's Application, his explanation regarding the perjury conviction, that he "signed on a application for D.M.V. that had wrong information on it" was deceitful and misleading.
7. Respondent was convicted on June 30, 1992, in the Municipal Court of Citrus Judicial District, County of Los Angeles, on a plea of no contest, of the criminal offense of Petty Theft, a violation of Penal Code section 484(g). This was a crime involving moral turpitude which is substantially related to the qualifications, functions and duties of a real estate licensee. The facts and circumstances of this criminal conviction are that respondent purchased tires from a dealer at a price respondent believed were suspiciously cheap. Respondent was arrested when he returned to pick up the tires and tendered his receipt. Respondent's 90 days jail sentence was suspended and he served 80 hours of community service. His two years of probation were satisfactorily completed.
8. Respondent is now working as an intern for Tarbell Realtors, a real estate office in Chino. Respondent submitted in evidence a letter of reference from the manager of this office.
9. Respondent affiliates himself with the Black Sports Agents Association ("BSAA"). He submitted in evidence a page from the BSAA website with his photograph. Respondent testified that he is not an agent for the athletes but purports to act as an advisor.

10. Respondent also submitted a reference letter from the Brotherhood Crusade by Danny Bakewell, president and CEO, and a letter from Faith Community Church by Senior Pastor James Reeve.

LEGAL CONCLUSIONS

1. Business and Professions Code section 10177 provides:

"The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information."

2. Cause to deny the issuance of a license was established under Business and Professions Code section 10177(b) as a result of respondent's criminal convictions, as set forth in Factual Findings 3 and 7.

3. The criteria for rehabilitation in found in Title 10, California Code of Regulations section 2911:

"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) Successful completion or early discharge from probation or parole.
- (e) 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.
- (f) Payment of the fine or other monetary penalty imposed in connection with a criminal conviction or quasi-criminal judgment.
- (g) 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.
- (h) Completion of, or sustained enrollment in, formal education or vocational training courses for economic self-improvement.
- (i) Discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.
- (j) Correction of business practices resulting in injury to others or with the potential to cause such injury.
- (k) Significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (l) 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.
- (m) 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.

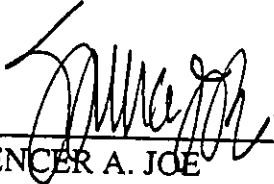
(4) Evidence from psychiatrists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances."

4. Respondent's most recent criminal conviction occurred less than two years ago and he has 13 months of probation remaining. The letters of references and the fact that respondent has made restitution does not satisfactorily establish or provide adequate assurance of rehabilitation.

ORDER

Respondent Leonard Gerard Aubry's Application for a real estate salesperson's license is DENIED.

Dated: February 27, 2001


SPENCER A. JOE
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-28886 LA

LEONARD GERARD AUBRY,

) OAH No. L-2000120244

Respondent(s)

FILED
DEC 18 2000
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON APPLICATION

To the above-named Respondent(s):

By Chris Leong

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on THURSDAY, FEBRUARY 15, 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 his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: December 18, 2000

By Chris Leong
CHRIS LEONG, Counsel

cc: Leonard Gerard Aubry
Sacto.
OAH

1 CHRIS LEONG, Counsel
2 State Bar No. 141079
3 Department of Real Estate
4 320 West Fourth Street, Suite 350
5 Los Angeles, California 90013-1105
6 Telephone: (213) 576-6982
7 -or- (213) 576-6910 (Direct)

FILED
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DEPARTMENT OF REAL ESTATE

By cm

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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11 In the Matter of the Application of)
12 LEONARD GERARD AUBRY,) NO. H-28886 LA
13 Respondent.) STATEMENT OF ISSUES
14 _____)

15 The Complainant, Thomas McCrady, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against LEONARD GERARD AUBRY ("Respondent"), alleges as follows:

18 I

19 Respondent made application to the Department of Real
20 Estate of the State of California for a conditional real estate
21 salesperson license on or about June 20, 2000. This license was
22 to be subject to Section 10153.4 of the Business and Professions
23 Code.

24 II

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

III

On or about April 13, 1999, in the Superior Court of Los Angeles, Superior East Judicial District, County of Los Angeles, California, case number KA041248, Respondent was convicted of violating Section 118 of the California Penal Code (Perjury), a felony and a crime involving moral turpitude which is substantially related under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

IV

On or about June 30, 1992, in the Municipal Court of Citrus Judicial District, County of Los Angeles, California, case number 92M05372, Respondent was convicted of violating Section 484(G) of the California Penal Code (Theft by use of access card), a crime involving moral turpitude which is substantially related under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

V

Respondent's criminal convictions, as alleged above in Paragraphs III and IV, constitute cause for denial of Respondent's application for a real estate salesperson license under Code Sections 480(a)(1) and 10177(b).

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

5 WHEREFORE, the Complainant prays that the above-
6 entitled matter be set for hearing and, upon proof of the charges
7 contained herein, that the Commissioner refuse to authorize the
8 issuance of, and deny the issuance of, a real estate salesperson
9 license to Respondent, LEONARD GERARD AUBRY, and for such other
10 and further relief as may be proper in the premises.

11 Dated at Los Angeles, California
12 this 4th day of December, 2000.
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15 THOMAS McCRADY
16 Deputy Real Estate Commissioner
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24 cc: Leonard Gerard Aubry
25 Thomas McCrady
26 Sacto.
27 GD