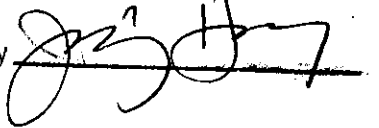


FILED
APR 30 2002

DEPARTMENT OF REAL ESTATE

By 

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of)

No. H-29061 LA

TRACY EDWARD SIMS,

L-2001060231

Respondent.

DECISION

The Proposed Decision dated April 1, 2002, 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 following correction is made:

Order, page 5, paragraph #3, "(Rev. 4/88)" is amended to read "(Rev. 1/99)".

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 May 20, 2002

IT IS SO ORDERED

April 24, 2002

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

TRACY EDWARD SIMS,

Respondent.

DRE Case No. H-29061 LA

OAH No. L2001060231

PROPOSED DECISION

This matter came on regularly for hearing before Felix W. Loya, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on February 7, 2002. David Edward Bruce, Real Estate Counsel, represented complainant Thomas McCrady. Respondent Tracy Edward Sims ("Respondent") was present and represented himself.

Oral and documentary evidence was received. The court left the record open until February 28, 2002. The court gave Respondent until February 21, 2002 to submit letters from brokers on his behalf and gave the Complainant until February 28, 2002 to file objections to the letters. The court gave both sides until February 28, 2002 to file briefs on whether Respondent was required to hold a real estate salesperson's license to perform his duties as a loan officer for Irwin Mortgage Corporation of Carson, California, for whom Respondent worked at the time of the hearing in this matter.

On February 20, 2002, the court received, by facsimile, a letter each from Ban-Cor and Tomarck Financial, Inc. The letters were marked for identification as Respondent's Exhibits D and E, respectively. On February 27, 2002, the court received, by mail, a letter brief with attachments from Complainant. The letter brief, which was marked for identification as Complainant's Exhibit 5, withdrew any allegations that Respondent was required to have a real estate salesperson's license in order to perform his duties as a loan officer for the Carson branch office of Irwin Mortgage Corporation where Respondent worked.

On February 28, 2002, the court received a facsimile from Complainant, which was marked for identification as Complainant's Exhibit 6. Complainant stated in Exhibit 6 that it had no objection to Respondent's Exhibits D and E provided they were admitted as administrative hearsay. The court received Exhibits D and E into evidence as administrative hearsay. The court admitted Exhibit 5 into evidence to the extent that it contained facts and was otherwise treated as a legal brief. The court treated Exhibit 6 solely as a legal brief. On February 28, 2002, the record was closed and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. Thomas McCrady filed the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the Department of Real Estate of the State of California (the "Department").

2. Respondent filed an application for a real estate salesperson license with the Department on October 11, 2002.

3. The Department issued a statement of issues in regard to Respondent's application. Respondent requested a hearing and the instant hearing ensued.

4. On March 2, 1999, in Hamilton County Court of Common Pleas, State of Ohio, in the case of *State of Ohio v. Sims*, Case No. B 9807565-B, Respondent pled guilty to one count of violating Ohio Revised Code sections 2925.03(A). By his plea, Respondent was convicted of trafficking in marijuana, a felony substantially related to the qualifications, functions, and duties of a real estate licensee under the criteria set forth in California Code of Regulations, Title 10, section 2910.

5. On March 2, 1999, Respondent was sentenced to serve one year in jail, with credit for 30 days. Respondent served the jail time in Ohio and then returned to California.

6. The facts and circumstances of Respondent's conviction are that Respondent put up 25% of the money needed to purchase 35 pounds of marijuana. To protect his investment, Respondent accompanied the shipment of the marijuana to Ohio, where a cousin of his involved in the venture lived. He was arrested in Ohio.

7. The following factors, indicating rehabilitation, exist:

a. Three years have passed since Respondent's conviction. Respondent has not had any other problems with the law during that time.

b. Since Respondent was released from jail, he has been gainfully employed. He worked as a real estate appraiser for about one year after he was released from jail. Respondent then worked for Tomarck Financial as an assistant to a mortgage broker for about six months. He then worked in the same capacity for Bancor for six months. He started working at Irwin Mortgage Corporation in December 2001 and was still working there at the time of the hearing in this case.

c. Respondent has been married for about five years and has two children: a 16-year old daughter and a five-year old son, both of whom Respondent drives to and from school each day.

d. Respondent lives in Torrance, California, and no longer associates with the cousin of his who was involved in the marijuana shipment.

e. Respondent and his family regularly attend services at Victory Outreach Center in Los Angeles.

f. Since his release from jail, Respondent has taken four courses on mortgage origination, as well as training classes on title insurance services, using a real estate calculator, and positive thinking.

g. Two mortgage companies are willing to hire Respondent. At least one of them is aware of Respondent's prior history.

h. Respondent is remorseful and has learned his lesson.

8. The following factor, indicating mitigation, exists: Respondent had not been convicted of any crime before 1999.

9. The Department has established criteria for rehabilitation from the denial of a license based upon conviction of a crime, found at California Code of Regulations, Title 10, section 2911, which are summarized as follows:

a. Subsection (a), requiring the passage of at least two years since the conviction, or more if there is a history of unlawful acts, is met here in that Respondent was last convicted more than three years ago and has not had any other involvement with the law.

b. Subsection (b), requiring restitution, is not applicable here because Respondent was not required to make restitution.

c. Subsection (c), suggesting expungement of the conviction, is not met here.

d. Subsection (d), requiring completion of the criminal probation, is not relevant here, as Respondent was not placed on probation.

e. Subsection (e), abstinence from drugs or alcohol that contributed to the crime, does not apply because it is not alleged and there is no evidence that Respondent used any drugs or alcohol before, during, or after committing the crime. Respondent had not sold drugs before he committed the crime for which he was convicted in 1999 and has not sold drugs since then.

f. Subsection (f), requiring payment of any fines, is not relevant, as Respondent was not ordered to pay any fines.

g. Subsection (g), requiring stability of family life and fulfillment of parental responsibility, is satisfied here. Respondent is married and is supporting and involved with his wife and children.

h. Subsection (h), requiring enrollment in or completion of educational or training courses, is partially fulfilled here in that Respondent has taken some courses on mortgage origination.

i. Subsection (i), requiring the discharge of debts to others, does not apply.

j. Subsection (j), requiring the correction of business practices leading to the conviction, is not applicable here. Although Respondent's conviction arose from his investment in a marijuana shipment, that investment had nothing to do with the business of real estate, and there is no evidence that Respondent engaged in such criminal conduct again.

k. Subsection (k), requiring involvement in community, church, or private programs for social betterment, is satisfied here to a limited extent. Respondent attends church regularly with his family, although he is not otherwise involved in community activities.

l. Subsection (l), requiring new and different social and business relationships, is satisfied here in that Respondent no longer associates with his Ohio cousin with whom he was involved in the marijuana shipment.

m. Subsection (m), requiring a change in attitude from the time of conviction to the present, is satisfied here. The year Respondent spent in jail changed his life. He embraced religion in jail, read the Bible, and became a committed Christian. Respondent learned that he cannot break the rules just because it is profitable to do so. Respondent has learned his lesson and will not repeat his mistakes. Respondent was credible in terms of demeanor and attitude. He testified candidly and forcefully.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing Factual Findings, the Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists for denial of Respondent's application for a real estate salesperson's license under Business and Professions Code sections 480(a)(1) and 10177(b) for his felony conviction for trafficking in marijuana, as set forth in Findings 4, 5, and 6. Such crime is substantially related to the qualifications, functions, or duties of the licensed activity.

2. The factors set forth in Finding 7 and the analysis of the criteria for rehabilitation contained in California Code of Regulations, Title 10, section 2911, as set forth in Finding 9, reveal that Respondent is on his way to being fully rehabilitated. Of the seven criteria applicable to Respondent, he satisfies, at least in part, all but one. There is no requirement that an applicant satisfy every criterion in the regulation.

3. The factor set forth in Finding 8 indicates that Respondent does not have a history of criminal behavior.

4. Therefore, it would not be against the public interest to issue Respondent a properly restricted real estate salesperson's license.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application for a real estate salesperson's license of respondent Tracy Edward Sims is denied; provided, however, a restricted real estate salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to the 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 this 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 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 three 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 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 real estate salesperson's license is issued subject to the
requirements of 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, other than real estate principles, advanced legal aspects of real estate,
advanced real estate finance or advanced real estate appraisal. If Respondent fails timely to
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, if Respondent has not satisfied the requirements for an
unqualified license under Section 10153.4, 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 issuance of the preceding restricted license.

Dated: April 1, 2002


FELIX W. LOYA

Administrative Law Judge
Office of Administrative Hearings

SACTO


BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-29061 LA
)
TRACY EDWARD SIMS,)
) OAH No. L-2001060231
)
_____) Respondent(s)

FILED
NOV 2 2001
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED HEARING ON APPLICATION

To the above-named Respondent(s):

By 

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 7, 2002, 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 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: November 2, 2001

By 
DAVID EDWARD BRUCE, Counsel

cc: Tracy Edward Sims
Stephen Goldberg, Esq.
Sacto.
OAH
RE 500 (Rev. 8/97)

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FILED
JUN 26 2001
DEPARTMENT OF REAL ESTATE

By *[Signature]*

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, JULY 19, 2001**, at the hour of **9:00 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.

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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.

Dated: June 26, 2001

By

DAVID EDWARD BRUCE, Counsel

cc: Tracy Edward Sims
Stephen Goldberg, Esq.
✓ Sacto.
OAH

5/10

DAVID EDWARD BRUCE, SBN 212539
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6905 (direct)
-or- (213) 576-6982 (office)

FILED
MAY 18 2001

DEPARTMENT OF REAL ESTATE

By



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)
TRACY EDWARD SIMS,)
Respondent.)

No. H- 29061 LA

STATEMENT OF ISSUES

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against TRACY EDWARD SIMS (Respondent), is informed and alleges in his official capacity as follows:

1

Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license on or about October 11, 2000, with the knowledge and understanding that any license issued as a result of said application would be subject to Section 10153.4(c) under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (Code).

1 On March 2, 1999, in the State of Ohio, Hamilton County
2 Court of Common Pleas, Respondent was convicted upon a guilty
3 plea to one count of violating Section 2925.03(A) of the Ohio
4 Revised Code (Trafficking in Marijuana - 5,000-20,000 grams), a
5 felony crime, which by its facts and circumstances involves moral
6 turpitude and is substantially related under Section 2910,
7 Chapter 6, Title 10 of the California Code of Regulations, to the
8 qualifications, functions or duties of a real estate licensee.
9

10 This crime constitutes cause for denial of Respondent's
11 application for a real estate license under Sections 480(a) and
12 10177(b) of the Code.
13

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

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1 WHEREFORE, Complainant prays that the above-entitled
2 matter be set for hearing and, that upon proof of the charges
3 contained herein, that the Commissioner refuse to authorize the
4 issuance of, and deny the issuance of, a real estate salesperson
5 license to Respondent TRACY EDWARD SIMS, and for such other and
6 further relief as may be proper under other applicable provisions
7 of law.

8 Dated at Los Angeles, California

9 this 18th day of May, 2001.

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11 _____
12 Deputy Real Estate Commissioner
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25 cc: Tracy Edward Sims
26 Thomas McCrady
27 ✓ Sacto
 AP