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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-29282 LA

GREGORY DENNIS OSBORNE,

L-2001110385

Respondent.

DECISION

The Proposed Decision dated January 24, 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 corrections are made:

Factual Findings, page 2, last paragraph, line 1 and 2, "had mad" is amended to read "has made".

Order, page 4, paragraph No. 3, line 3, "Rev. 4/88" is amended to read "Rev. 1/99".

Order, page 4, paragraph No. 3 of (b) is amended to read "That the employing broker will exercise reasonable supervision over the licensed activities of the salesperson".

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 March 18, 2002.

IT IS SO ORDERED February 22, 2002.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner



BY: John R. Liberator
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

GREGORY DENNIS OSBORNE,

Respondent.

Case No. H-29282 LA

OAH No. L2001110385

PROPOSED DECISION

On January 10, 2002, in Los Angeles, California, John D. Wagner, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Mary E. Work, Real Estate Counsel, Department of Real Estate, represented complainant.

Respondent was present and represented by Earl R. Wallace, Attorney at Law.

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

FACTUAL FINDINGS

1. Complainant Thomas McCrady made the Statement of Issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. On April 17, 2001, respondent applied to the Department of Real Estate of the State of California for a real estate salesperson license subject to the conditions of section 10153.4 of the Business and Professions Code.
3. On July 22, 1996, in the Municipal Court of Newport Beach, respondent was convicted on his plea of guilty of violating sections 484(a)- 488 (theft of personal property/petty theft) of the Penal Code. This crime was a misdemeanor involving moral

turpitude. It involved the fraudulent taking of property belonging to another. It is substantially related to the qualifications, functions or duties of a real estate licensee.

The facts and circumstances surrounding this conviction are that on the evening of April 6, 1996, respondent and a friend stole a wallet and cellular phone out of an unoccupied parked vehicle that had the passenger window open. Respondent and his friend were returning to a bar when they stole these items. As a result of his conviction, respondent received a suspended imposition of sentence and was placed on three years informal probation. He completed 160 hours of community service and paid fines and a restitution fee totaling approximately \$300.

At the time of the above petty theft when respondent returned to the bar, respondent was in possession of false identification and evidence of age (respondent was 20 years old). He showed this false identification to police officers. He was cited, and on May 5, 1996, he was convicted for this infraction.

4. On April 15, 1998, in the Santa Barbara Municipal Court, respondent was convicted on his plea of no contest of violating section 594(b) (4) (vandalism) of the Penal Code. This crime was a misdemeanor involving moral turpitude. It involved an unlawful act which caused substantial injury to the property of another. It is substantially related to the qualifications, functions or duties of a real estate licensee. As a result of this conviction, respondent received a suspended imposition of sentence and was placed on three years probation. The conditions of his probation included serving five days in the county jail, fines and assessments of \$325, and restitution.

The facts and circumstances surrounding this conviction are that on March 4, 1998, after taking a cab home from a bar, respondent and a friend began kicking automobiles. They caused damage of less than \$1,000.

5. Respondent is rehabilitating himself. Respondent is engaged to be married and has been working as a Marketing Assistant at Grubb & Ellis for the last 14 months. He has graduated from the University of California at Santa Barbara with a degree in Psychology and he no longer associates with the "friends" that were involved with him in the above crimes. He has matured and his attitude has become much more serious, with goals. His "partying days" are over.

MADE More than two years have elapsed since respondent's most recent conviction. He ~~had~~ **HAS** ~~and~~ restitution. His 1996 conviction for petty theft has been expunged and his 1998 conviction for vandalism is expected to be expunged within 30 days of the date of the hearing in this matter. Respondent's probation ended in April 2001. All fines, assessments, and restitution were paid. Respondent is now living at home without problems. He is considered a model son with good moral character by his father, the owner of a commercial property management corporation.

Although respondent is rehabilitating himself he is not yet fully rehabilitated. The above petty theft and vandalism convictions were misdemeanors and therefore serious, not "minor in nature". They are not mitigated by being described as "College High Jinks". They were committed when respondent was 20 years of age and older. He was a young adult and should have been acting as a responsible young adult.

LEGAL CONCLUSIONS

1. Grounds exist for denial of respondent's application for a real estate salesperson license pursuant to sections 480(a) and 10177(b) (convictions) of the Business and Professions Code, by reason of Findings 3 and 4, and for each of them.
2. Although respondent is not yet fully rehabilitated, the evidence of his continuing rehabilitation set forth in Finding 5 indicates that he should be granted a conditional restricted salesperson's license, as set forth in the following order.

ORDER

WHEREFORE, the following order is hereby made:

Respondent'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 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 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 Department of Real Estate which shall certify as follows: 1/99

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

AMENDED { (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 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 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, 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: January 24, 2002

John D. Wagner
JOHN D. WAGNER
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

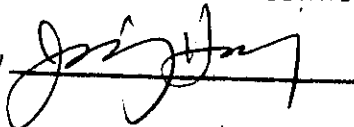
In the Matter of the Application of) Case No. H-29282 LA
)
GREGORY DENNIS OSBORNE,) OAH No. L-2001110385
)

Respondent(s)

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DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON APPLICATION

By 

To the above-named Respondent(s):

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, JANUARY 10, 2002, 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.

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

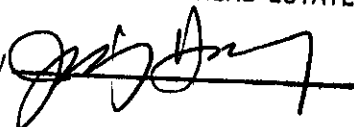
Dated: December 6, 2001

By 
MARY E. WORK, Counsel

cc: Gregory Dennis Osborne
Grubb & Ellis Company
Earl Wallace, Esq.
✓ Sacto.
OAH

5810

1 MARY E. WORK, Counsel
SBN 175887
2 Department of Real Estate
320 West 4th Street, Suite 350
3 Los Angeles, CA 90013-1105
4 Telephone (213) 576-6982
-Direct- (213) 576-6916
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By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	No. H-29282 LA
GREGORY DENNIS OSBORNE,)	<u>STATEMENT OF ISSUES</u>
Respondent.)	

14 The Complainant, Thomas McCrady, a Deputy Real Estate
15 Commissioner of the State of California, for Statement of Issues
16 against GREGORY DENNIS OSBORNE (hereinafter "Respondent"), is
17 informed and alleges as follows:

18 I

19 On or about April 17, 2001, Respondent applied to the
20 Department of Real Estate of the State of California for a real
21 estate salesperson license with the knowledge and understanding
22 that any license issued as a result would be subject to the
23 conditions of Section 10153.4 of the Business and Professions
24 Code (herinafter "Code").
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1 II

2 On or about April 15, 1998, Respondent was convicted
3 upon his plea of nolo contendere to violating Penal Code Section
4 594(b)(4) (Vandalism), a misdemeanor crime, which by its facts
5 and circumstances involved moral turpitude and is substantially
6 related under Section 2910, Title 10, California Code of
7 Regulations to the qualifications, functions or duties of a real
8 estate licensee.

9 III

10 On or about July 22, 1996, Respondent was convicted
11 upon his plea of guilty to violating Penal Code Sections 484(a)
12 and 488 (Theft of Personal Property/Petty Theft), misdemeanor
13 crimes, which by their facts and circumstances involved moral
14 turpitude and are substantially related under Section 2910, Title
15 10, California Code of Regulations to the qualifications,
16 functions or duties of a real estate licensee.

17 IV

18 The crimes for which Respondent was convicted, as
19 described above in Paragraphs II and III, constitute grounds for
20 denial of his application for a real estate license under
21 Sections 475(a), 480(a) and 10177(b) of the Code.

22 IN AGGRAVATION

23 V

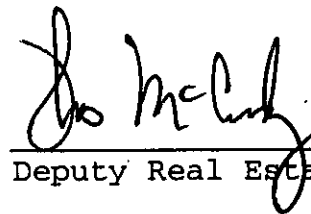
24 On or about May 5, 1996, Respondent was convicted of
25 violating Section 25661 of the Business and Professions Code
26 (False Evidence of Age and Identity; Use; Possession), an
27 infraction.

1 This Statement of Issues is brought under the
2 provisions of Section 10100, Division 4 of the Business and
3 Professions Code of the State of California and Sections 11500
4 through 11528 of the 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, GREGORY DENNIS OSBORNE, and for such other
10 and further relief as may be proper in the premises.

11 Dated at Los Angeles, California

12 this 8th day of November, 2001.

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Deputy Real Estate Commissioner

23 cc: Gregory Dennis Osborne
24 Grubb & Ellis Company
25 Thomas McCrady
26 J Sacto
27 EE