

FILED
APR 16 2003

BEFORE THE DEPARTMENT OF REAL ESTATE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

Laura B. Stone

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In the Matter of the Application of)	No. H-29716 LA
MITCHELL DEREK TURNER,	L-2002120038
Respondent.	

DECISION

The Proposed Decision dated March 10, 2003, 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 May 6, 2003.

IT IS SO ORDERED

April 16, 2003

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

MITCHELL DEREK TURNER,

Respondent.

Case No. H-29716

OAH No. L2002120038

PROPOSED DECISION

Administrative Law Judge Muriel Evens, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California, on February 11, 2003.

Crhis Leong, Counsel, represented complainant Maria Suarez.

The Law Offices of Ashley Posner, by Ashley Posner, represented respondent.

The matter was submitted on February 11, 2003.

FACTUAL FINDINGS

1. Complainant Maria Suarez, a Deputy Real Estate Commissioner, made the Statement of Issues in her official capacity.

2. On or about May 1, 2002, respondent Mitchell Derek Turner filed an application for licensure as a real estate salesperson. Respondent had been previously licensed as a real estate salesperson from 1989 to 1998, however he ceased real estate work in or about 1993 as he pursued other business ventures.

3. On January 20, 2000, respondent entered a plea of *nolo contendere* in the Superior Court for the County of San Luis Obispo to violation of Penal Code section 459, second degree burglary of a vehicle, a misdemeanor and crime of moral turpitude substantially related to the qualifications, functions or duties of a real estate licensee. Respondent was sentenced to two years bench probation and ordered to pay fines of \$500.00 and various costs.

The facts and circumstances were that respondent has been diagnosed almost 20 years ago with certain psychiatric conditions which require medication. On or about January 14,

2000, respondent drove in his vehicle from the Los Angeles area to San Luis Obispo to spend the weekend. He has stopped taking his medication and became confused while taking a walk. He tried to enter a truck which he believed to be his, but could not gain entry. As a result, he broke into the truck. The police were called and respondent was arrested. At the time of the arrest, he was in an incoherent state.

4. When respondent takes his medication he is in good control and has not had other problems in the criminal justice system. There was no evidence that respondent had any disciplinary issues while licensed by the Department, although there were at least two earlier episodes, prior to licensure, where respondent had some difficulties after he failed to properly maintain his medication level. There is no guarantee respondent will not again discontinue use of his medication. However, respondent did learn from the experience in San Luis Obispo about the possible consequences he can face if he fails again to take his medication as prescribed.

LEGAL CONCLUSIONS

1. Grounds exist to deny respondent's application for licensure as a real estate salesperson pursuant to Business and Professions Code sections 480(a)(1) and 10177(b), criminal convictions, by reason of Finding 3.

2. Here respondent has shown the ability to maintain a real estate license, with his mental health condition, and suffer no disciplinary actions. In addition, he certainly realizes the importance of maintaining his medication. Respondent is able to act as a real estate agent without limitation. However, due to the recency of the conviction, a restricted license is appropriate.

ORDER

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:

(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 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: March 10, 2003



MURIEL EVENS
Administrative Law Judge
Office of Administrative Hearings

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-29716 LA
)
MITCHELL DEREK TURNER,) OAH No. L-2002120038
)
 _____)
 Respondent(s)

FILED
 DEC 18 2002
 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 **TUESDAY, FEBRUARY 11, 2003**, 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 18, 2002

By Chris Leong
CHRIS LEONG, Counsel

cc: Mitchell Derek Turner
/Sacto.
OAH

1 CHRIS LEONG, Counsel (SBN 141079)
2 Department of Real Estate
3 320 West Fourth Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6910 (Direct)

FILED
OCT - 9 2002
DEPARTMENT OF REAL ESTATE

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7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11 In the Matter of the Application of)
12 MITCHELL DEREK TURNER,) No. H-29716 LA
13 Respondent.) STATEMENT OF ISSUES
14)

15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against MITCHELL DEREK TURNER ("Respondent") alleges as follows:

18 I

19 Respondent, made application to the Department of
20 Real Estate of the State of California for a real estate
21 salesperson license on or about May 1, 2002.

22 II

23 Complainant, Maria Suarez, a Deputy Real Estate
24 Commissioner of the State of California, makes this Statement
25 of Issues in her official capacity.
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III

1 On or about January 20, 2000, in the Superior Court
2 of California, County of San Luis Obispo, Case No. F292538,
3 Respondent was convicted of violating Section 459 of the
4 California Penal Code (Second degree burglary of vehicle), a
5 misdemeanor and a crime involving moral turpitude which is
6 substantially related to the qualifications, functions and
7 duties of a real estate licensee.
8

IV

9 Respondent's conviction, as set forth in Paragraph
10 III, is cause to deny Respondent's real estate license
11 application pursuant to Business and Professions Code
12 Sections 480(a)(1) and 10177(b).
13

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

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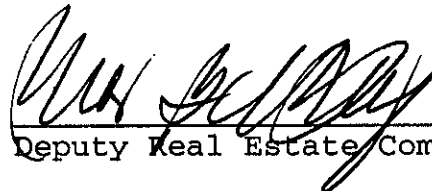
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1 WHEREFORE, the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the
3 charges contained herein, that the Commissioner refuse to
4 authorize the issuance of, and deny the issuance of, a real
5 estate salesperson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

8 Dated at Los Angeles, California

9 this 7th day of October, 2002.

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12 Deputy Real Estate Commissioner
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25 cc: Mitchell Derek Turner
26 Maria Suarez
27 Sacto.
EE