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FILED
NOV - 6 2008
DEPARTMENT OF REAL ESTATE

K. Heberly

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	NO. H-30682 LA
TONY JOHN FORSYTHE,)
Respondent.)

ORDER DENYING UNRESTRICTED LICENSE

On November 18, 2004, a Decision was rendered herein denying Respondent's real estate salesperson license, but granting Respondent the right to apply for and be issued a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on January 11, 2005.

On or about August 14, 2007, Respondent petitioned for removal of restrictions attaching to Respondent's real estate salesperson license.

///

///

1 I have considered Respondent's petition and
2 the evidence submitted in support thereof. Respondent
3 has failed to demonstrate to my satisfaction that it
4 would be in the public interest to issue an unrestricted
5 real estate salesperson license to Respondent, in that:
6

7 I

8 Respondent applied to the Department of Real Estate
9 ("Department") for a real estate salesperson license on July
10 29, 2003.

11 On or about August 2, 1991, Respondent was convicted
12 of violating Penal Code Section 476a(a) (Insufficient
13 Funds:Checks). Respondent's crime involved moral turpitude and
14 is substantially related to the qualifications, functions and
15 duties of a real estate licensee.
16

17 Respondent failed to disclose the conviction on
18 Respondent's license application.
19

20 A Statement of Issues was filed against Respondent
21 alleging that there were grounds to deny Respondent's license
22 application pursuant to Business and Professions Code ("Code")
23 Sections 475, 480(a), 480(c), 10177(a) and 10177(b).

24 On December 13, 2004, a Decision became effective
25 which denied Respondent's license application, but gave
26 Respondent the right to apply for and be issued a restricted
27 real estate salesperson license.

II

The burden of proving rehabilitation rests with the petitioner (Feinstein v. State Bar (1952) 39 Cal. 2d 541).

A petitioner is required to show greater proof of honesty and integrity than an applicant for first time licensure. The proof must be sufficient to overcome the prior adverse judgment on the applicant's character (Tardiff v. State Bar (1980) 27 Cal. 3d 395).

The Department has developed criteria in Title 10, Chapter 6, California Code of Regulations ("Regulation") Section 2911 to assist in evaluating the rehabilitation of an applicant for reinstatement of a license. Among the criteria relevant in this proceeding are:

2911(c) - Respondent has not provided proof that Respondent's conviction has been expunged.

2911(i) - Respondent has not provided proof of completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.

2911 (j) - Respondent is the chief executive officer of Good Life Financial Management, Inc. Respondent has not provided proof that Good Life Financial Management, Inc. has paid a 2007 County tax lien in the amount of \$ 436, or a 2007 civil judgment in the amount of \$3,344.79.

2911(1) - Respondent has not provided proof of significant or conscientious involvement in community, church or social programs.

///

1 2911(n) - Respondent has not provided proof by his
2 own testimony, or evidence from others of a change in attitude.

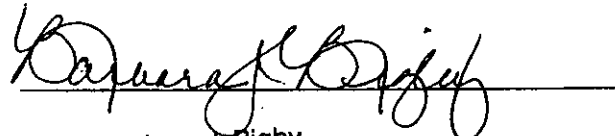
3 Given the fact that Respondent has not established
4 that Respondent has complied with Regulation 2911(c), 2911(i)
5 and 2911(j), 2911(l) and 2911(n), I am not satisfied that
6 Respondent is sufficiently rehabilitated to receive a real
7 estate salesperson license.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for the issuance to Respondent of an unrestricted
10 salesperson license is denied.

11 This Order shall become effective at 12 o'clock noon
12 NOV 26 2008
13 on _____

14 DATED: 10/31/08

15 JEFF DAVI
16 Real Estate Commissioner

17 
18
19 BY: Barbara J. Bigby
20 Chief Deputy Commissioner

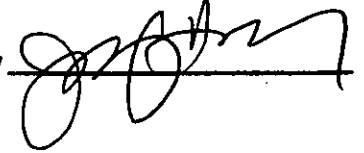
FILED
NOV 23 2004

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By



* * * * *

In the Matter of the Application of)

No. H-30682 LA

TONY JOHN FORSYTHE,

L-2004030229

Respondent.

DECISION

The Proposed Decision dated October 15, 2004, 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 December 13, 2004.

IT IS SO ORDERED

November 18, 2004

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
NOV 18 2004
DEPARTMENT OF REAL ESTATE

By 

In the Matter of the Application of

Tony John Forsythe,

Respondent.

Case No. H-30682 LA

OAH No. L-2004030229

PROPOSED DECISION

Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on July 28, 2004, at Los Angeles, California.

Darlene Averetta, Staff Counsel, represented Complainant.

Kevin E. Gallagher, Attorney at Law, represented Respondent.

The record was left open until October 12, 2004 to permit Respondent the opportunity to obtain information relating to a court diversion program. Counsel for Respondent notified the Administrative Law Judge that he was unable to obtain the information, and the record was closed.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Proposed Decision.

* * * * *

FINDINGS OF FACT

1. Maria Suarez made the Statement of Issues in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent filed his application, dated July 23, 2003, with the Department of Real Estate (Department) for licensure as a real estate salesperson. The application was denied and this hearing ensued.

3. On his application, Respondent failed to disclose, when required to do so, that he had been convicted of the crime set forth in Finding 4.

4. On August 2, 1991, in the Superior Court of the State of California, County of Orange, Respondent was convicted on his plea of guilty to six counts of violating Penal Code Section 476a, subdivision (a), writing checks with insufficient funds. This is a crime of theft which is substantially related to the functions, duties and qualifications of a Department licensee. The conviction was so long ago that the actual court records could not be obtained. The only available document was the Disposition of Arrest and Court Action form that was sent to various law enforcement agencies. According to that document, Respondent was placed on probation for a period of thirty-six months and ordered to make restitution.

5. Respondent admitted that he wrote six checks on a joint account he shared with his then girlfriend, now his wife, not knowing the account had been closed. This was during a period of his life when he was drinking heavily. Respondent was not arrested, but rather responded to a letter from the District Attorney, informing him of the pending charges. Respondent went to court voluntarily to resolve the matter. According to Respondent, at his sentencing, the court, known for its innovative methods of dealing with drug dependency, allowed Respondent to go into a form of "diversion."¹ That is, Respondent agreed to enter and remain in a sober living facility for a period of nine months. He was also required to report in person to the court on a quarterly basis for two years to provide proof of his continued sobriety, such as records of his residence in the sober living facility, attendance at AA meetings, and the like. Respondent was also required to work at the facility; this he did, spending nine months in the kitchen, peeling potatoes. Respondent was also required to, and did, make full restitution for the bad checks, totaling approximately \$2000.

6. Respondent testified that it was his understanding, and his recollection, that when he successfully completed his residency in the sober living facility, and maintained his sobriety for two years, his diversion from the criminal justice system was complete, and he had no criminal record. Prior to submitting his application, to make sure his record was clear, Respondent checked with the Orange County Superior Court, which had no record of any conviction. This is consistent with the successful completion of diversion; there is no conviction of record.

7. Respondent built on his success at the sober living facility. He has been clean and sober since 1991. He has been, and continues to be, a very active member of AA. Not only does he sponsor others, but he makes presentations about sobriety at local hospitals and jail facilities. Rather than attempting to conceal his past conduct, he uses it as an example in his presentations. Everyone in his social circle knows of his past conduct. There is no doubt that had Respondent believed he had a criminal record, he would have disclosed it on his application.

¹ Respondent testified that there was an "alcohol related incident" (driving under the influence) that was also pending at the time of his sentencing, and that was how the diversion came about.

8. Respondent has been a productive, law abiding member of society since 1991. He has been steadily employed since that time. He has also earned his Bachelor's and Master's degrees. He is married with children, and is the sole support of his family. He is active in fund raising for the PTA. Respondent has been employed by a financial management company for the past two years. If licensed, he will be able to substantially increase his income by writing mortgage loans for his clients, rather than sending his clients to other licensees, as he does now.

9. During the hearing, Respondent was polite and respectful of the Department and these proceedings. His testimony was simple, direct and believable. He did not attempt to palliate nor vitiate his conduct. He did not parse words, nor spar with counsel on cross-examination. His presentation was sufficient to make a Finding that his licensure would not adversely affect the public interest. However, out of an abundance of caution, and because no written record exists that Respondent was in fact diverted from the criminal justice system, it is appropriate to restrict Respondent's initial licensure as a real estate salesperson.

* * * * *

CONCLUSIONS OF LAW

1. Respondent's conviction, as set forth in Finding 4, constitutes ground for denial of his application under the provisions of Business and Professions Code Sections 480, subdivision(a)(1) and 10177, subdivision (b).

2. Respondent did not attempt to obtain a real estate license by knowingly making a false statement on his application, nor by any other means of deception or fraud. Thus, cause does not exist to deny the application under the provisions of Business and Professions Code sections 475, subsection (a)(1), 480, subsection (c) and/or 10177, subdivision (a), by reason of Findings 5 through 7.

3. Respondent has satisfied the Department's criteria for rehabilitation (California Code of Regulations, title 10, section 2911), as set forth in Findings 5 through 9.

* * * * *

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:

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

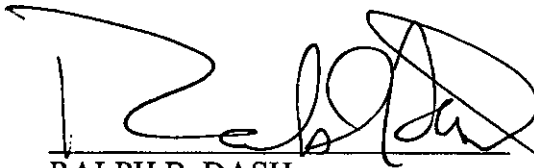
(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

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.

Date: 10-15-04

A handwritten signature in black ink, appearing to read 'R. B. Dash', written over a horizontal line.

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

5010
BEFORE THE DEPARTMENT OF REAL ESTATE

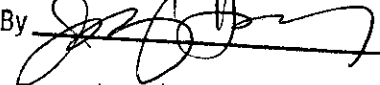
STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-30682 LA
TONY JOHN FORSYTHE,)
OAH No. L-2004030229
Respondent(s)

FILED
APR 16 2004
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 WEDNESDAY, JULY 28, 2004, 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.

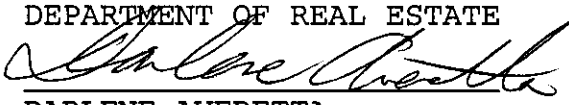
You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented 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.

Dated: April 16, 2004

DEPARTMENT OF REAL ESTATE
By 
DARLENE AVERETTA
Assistant Chief Counsel

cc: Tony J. Forsythe
Kevin E. Gallagher, Esq.
Sacto.
OAH
RE 500 (Rev. 8/97)

5070

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-30682 LA

TONY JOHN FORSYTHE,

) OAH No. L-2004030229

Respondent(s)

FILED
MAR 18 2004
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON APPLICATION

By [Signature]

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 WEDNESDAY, APRIL 21, 2004, 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.

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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.

DEPARTMENT OF REAL ESTATE

Dated: March 18, 2004

By

[Signature]

DARLENE AVERETTA

Assistant Chief Counsel

cc: Tony J. Forsythe
Sacto.
OAH

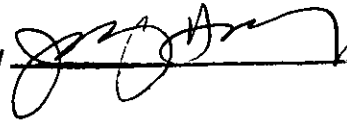
Kevin E. Gallagher, Esq.
RE 500 (Rev. 8/97)

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
5 -Direct- (213) 576-6916
6
7
8



DEPARTMENT OF REAL ESTATE

By 

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

11 In the Matter of the Application of)
12)
12 TONY JOHN FORSYTHE,)
13)
13 Respondent.)
14)

No. H-30682LA

STATEMENT OF ISSUES

15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against TONY JOHN FORSYTHE (hereinafter "Respondent"), is
18 informed and alleges as follows:
19

20 I

21 The Complainant, Maria Suarez, a Deputy Real Estate
22 Commissioner of the State of California, makes this Statement of
23 Issues against Respondent in her official capacity.

24 II

25 On or about July 29, 2003, Respondent applied to the
26 Department of Real Estate of the State of California (hereinafter
27 "Department") for a real estate salesperson license with the

1 knowledge and understanding that any license issued would be
2 subject to the conditions of Section 10153.4 of the Business and
3 Professions Code (hereinafter "Code").

4 III

5 In response to Question 25 of said application, to wit;
6 "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW?
7 Convictions expunged under Penal Code Section 1203.4 must be
8 disclosed. However, you may omit minor traffic citations which
9 do not constitute a misdemeanor or felony offense," Respondent
10 answered "No."

11 IV

12 On or about August 2, 1991, in the Superior Court of
13 California, County of Orange, in Case No. HBW218401PO,
14 Respondent, upon his plea of guilty, was convicted of violating
15 Section 476a(a) of the Penal Code (Insufficient Funds:Checks), a
16 misdemeanor crime of moral turpitude that is substantially
17 related under Section 2910, Title 10, California Code of
18 Regulations to the qualifications, functions or duties of a real
19 estate licensee.

20 V

21 FIRST CAUSE OF ACTION
(FAILURE TO REVEAL CRIMINAL CONVICTION)

22 Respondent's failure to disclose the conviction set
23 forth in Paragraph IV, above, in said application, constitutes
24 the attempted procurement of a real estate license by
25 misrepresentation, fraud or deceit or by making an material
26 misstatement of fact in an application which is cause for denial
27

1 of issuance of a license to an applicant under Sections
2 475(a)(1), 480(c) and 10177(a) of the California Business and
3 Professions Code (hereinafter "Code").

4
5 SECOND CAUSE OF ACTION
6 (CRIMINAL CONVICTION)

7 VI

8 Further, the above crime that Respondent has been
9 convicted of, constitute cause for denial of his application
10 under Section 475(a)(2), 480(a) and 10177(b) of the Code.

11 WHEREFORE, Complainant prays that a hearing be
12 conducted on the allegations of this Statement of Issues and that
13 upon proof thereof, that the Commissioner refuse to authorize the
14 issuance of, and deny the issuance of a real estate license to
15 Respondent, TONY JOHN FORSYTHE, and for such other and further
16 relief as may proper in the premises.

17
18
19 

20 MARIA SUAREZ
21 Deputy Real Estate Commissioner

22 Dated at Los Angeles, California,
23 this 23rd day of January, 2004.

24 cc: Tony John Forsythe
25 Maria Suarez
26 SACTO
27 JJ