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JUL 25 2005
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of)	No. H-31666 LA
)	
JONATHAN WAYNE CONEY II,)	L-2005030816
)	
Respondent.)	

DECISION

The Proposed Decision dated June 17, 2005, 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.

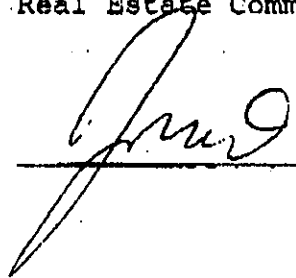
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a 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 August 15, 2005.

IT IS SO ORDERED 7-21-05, 2005.

JEFF DAVI
Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of:

JONATHAN WAYNE CONEY II,

Respondent.

Case No. H-31666 LA

OAH No. L2005030816

PROPOSED DECISION

The hearing in the above-captioned matter was held on May 18, 2005, at Los Angeles, California. Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, presided. Complainant was represented by James R. Peel, Counsel, Department of Real Estate. Respondent appeared on his own behalf.

Evidence was received, the case was argued, and the matter submitted for decision on the hearing date. The Administrative Law Judge hereby makes the following factual findings, legal conclusions, and orders.

FACTUAL FINDINGS

1. Complainant, Maria Suarez, filed the Statement of Issues in this matter while acting in her official capacity as a deputy real estate commissioner of the Department of Real Estate (Department), of the State of California.

2. Respondent Jonathan Wayne Coney II (Respondent or Coney) filed an application with the Department to obtain a real estate salesperson's license, on or about June 17, 2003. That license application disclosed that Respondent had been convicted of several crimes, and the Department declined to issue a license to him. He requested a hearing and this proceeding ensued.

3. (A) Respondent's first conviction entered against him on October 28, 1996, in the Superior Court of California, County of Riverside, in case number B96F2290B. Based on his guilty plea, Respondent was convicted of violating Penal Code section 459, burglary, a misdemeanor.

(B) The Court suspended the imposition of sentence on the condition that Respondent be placed on three years summary probation. The probation terms obligated Respondent to serve 75 days in the Banning Road Camp, on weekends, and he was required to pay restitution, as well as fines, penalties, and assessments of at least \$240.00. He was

ordered to obey all laws, and to stay away from the Desert Hills Stores. Other terms, standard to probation grants were imposed, such as the obligation to obey all laws, and to submit to searches.

(C) The facts and circumstances of the crime are not completely clear from the record, but according to Respondent he and another individual stole credit cards, and attempted to use them. This appears to be the reason why his probation terms required him to stay away from Desert Hills Stores.

4. (A) On July 14, 1998, Respondent was convicted of disturbing the peace in violation of Penal Code section 415. The conviction entered in the Municipal Court of California, County of Los Angeles, in case number 8WL00762, based on Respondent's plea of nolo contendere. The crime constituted a misdemeanor.

(B) The Court suspended imposition of sentence, and placed Respondent on three years summary probation. He was ordered to perform 10 days of CalTrans service, and to stay away from people involved in the case. In September 1999, the CalTrans obligation was changed to a community service obligation.

(C) This conviction arose out of an argument between Respondent and an ex-girlfriend.

5. (A) Respondent was convicted on August 16, 1999, of taking a vehicle without the owner's consent, in violation of Vehicle Code section 10851, subdivision (a). This conviction was entered in the Municipal Court, County of Los Angeles, Inglewood Judicial District, in case number 91W04488, as a misdemeanor.

(B) The imposition of the sentence was suspended, and Respondent was placed on three years summary probation, on the condition he serve one day in county jail, and pay fines, penalties, and assessments of \$641.00.

(C) According to Respondent, this crime occurred in the course of a dispute that arose out a transaction, with Respondent resorting to self-help.

6. (A) Respondent's last conviction occurred on January 27, 2000, in the Superior Court of California, County of Los Angeles, in case number KA046048. At that time he was convicted of two counts of violating Penal Code section 487, subdivision (a), grand theft, both being felonies.

(B) The Court suspended imposition of sentence, placing Respondent on summary probation, with the key condition being that he live for one year in a residential drug treatment program. He was also required to make restitution as directed by the Probation Department; that amount was ultimately set at \$10,274.69, and Respondent was allowed to make monthly payments.

(C) Respondent committed the thefts by passing counterfeit checks through private accounts, victimizing the account holders. Part of his scheme was to convince others that he was obtaining school loans on their behalf, exposing those persons to significant liability.

7. Respondent's convictions for burglary and grand theft are convictions for crimes of moral turpitude. In the circumstances, all four of the convictions are substantially related to the duties, qualifications, and functions of a real estate salesperson, as the convictions indicate dishonesty, or a pattern of disregard for the law.

8. Respondent's probation was extended in the grand theft case so that he would have time to pay off the restitution claim. He completed probation in January 2005, after paying all the restitution and fines, an amount well over \$10,000. The extension of probation followed a recommendation from the probation officer in February 2002, so that Respondent could complete payment. It was noted then that Respondent's performance of probation had been "exemplary;" a probation report indicated he was meeting all his obligations, and making efforts to pay restitution on what had to be a limited income. (Ex. 7, last page.) By then Respondent had completed his drug program and was employed as a barber.

9. Respondent is now licensed by the Board of Barbering and Cosmetology, and has been since December 2001. He has been gainfully employed as an apprentice or as a barber for approximately five and one-half years. He married in July 2000, and has two children from that marriage; a child from another relationship lives out of state. He was at one time in arrears on his support for that child, but has brought himself current. He completed a course needed to become a barber, and he and his wife have been more recently attending school. Respondent has taken some real estate courses, and he participates in community activities, including a program to mentor young people. He relates that his criminal conduct was a function of his youth and bad associates, people he no longer has contact with. Respondent was credible in his demeanor when testifying, by affect, eye contact, and a straightforward response to questions.

LEGAL CONCLUSIONS

1. Cause exists to deny the Respondent's application for a real estate salesperson's license pursuant to sections 480, subdivision (a), and 10177, subdivision (b), of the Business and Professions Code, and California Code of Regulations (CCR), title 10¹, section 2910, subdivisions (a)(1), (a)(2), (a)(4), (a)(8), and (a)(10), for his convictions of two crimes of moral turpitude, substantially related to the duties, qualifications, and functions of a real estate licensee. This Conclusion is based on Factual Findings 3(A) through 3(C), 6(A) through 6(C), and 7.

¹ All subsequent citations to the CCR shall be to title 10 thereof.

2. Cause exists to deny Respondent's application for a real estate salesperson's license pursuant to section 480, subdivision (a) of the Business and Professions Code, and CCR section 2910, subdivisions (a)(1), (a)(2), (a)(4), (a)(8), and (a)(10), for his conviction of four crimes substantially related to the duties, qualifications, and functions of a real estate licensee. This Conclusion is based on Factual Findings 3(A) through 7.

3. The Department has enacted regulations for the purpose of evaluating whether an applicant with a criminal record has been rehabilitated; they are found at CCR section 2911. Respondent meets many of the criteria set out in the regulation.

(A) The Department looks for the passage of at least two years since the last conviction, with a longer period where there is more than one conviction. (CCR § 2911, subd. (a).) Here it has been five years since Respondent's last conviction.

(B) Restitution to any person who has suffered monetary losses. (Subd. (b).) Here Respondent has made complete restitution.

(C) Successful completion of probation. (Subd. (e).) Respondent has complete all probation imposed upon him.

(D) Abstinence from the use of alcohol or controlled substances. (Subd. (f).) Respondent has completed a drug program and is living a sober lifestyle.

(E) Payment of fines and penalties. (Subd. (g).) It is inferred that all fines have been paid, as all probation terms have been satisfied; further, some of the dockets received in evidence show payment of fines.

(F) Stability of family life and fulfillment of parental responsibilities. (Subd. (h).) Respondent has been married for five years, and is supporting all his children.

(G) Completion of, or enrollment in education or training programs. (Subd. (i).) The record discloses that Respondent has apprenticed as a barber and obtained a license, and he has completed courses needed to obtain a real estate license.

(H) Significant involvement in community and church programs designed to provide social benefits. (Subd. (l).) Respondent is participating in such programs.

(I) New and different social relationships. (Subd. (m).) Respondent has cut the ties to his old associates, spending time on his job, or with his family.

(J) Change in attitude from that held at the time of his criminal acts. (Subd. (n).) Here Respondent attested credibly to such a change, and some corroboration is found in the probation report cited in Finding 8.

The purpose of proceedings of this type is to protect the public, and not to punish the Respondent. (E.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Respondent meets virtually all the criteria of rehabilitation, excepting that found in subdivision (c), as his convictions have not been expunged. In all the circumstances, it appears that the public can be adequately protected if he were issued a restricted license.

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 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

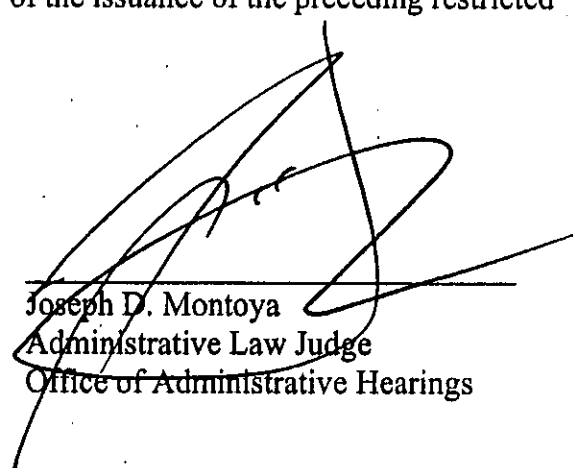
(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent's restricted real estate salesperson 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 a course in real estate practices and one 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.

2. 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.

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.

June 17, 2005



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

3/20/05
1 JAMES R. PEEL, Counsel (SBN 47055)
2 Department of Real Estate
3 320 West Fourth Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 -or- (213) 576-6913 (Direct)

FILED
FEB 10 2005
DEPARTMENT OF REAL ESTATE

[Signature]

7 BEFORE THE DEPARTMENT OF REAL ESTATE

8 STATE OF CALIFORNIA

9 * * *

10 In the Matter of the Application of) No. H-31666 LA
11 JONATHAN WAYNE CONEY II,) STATEMENT OF ISSUES
12 Respondent.)
13

14
15 The Complainant, Maria Suarez, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against JONATHAN WAYNE CONEY II (Respondent) is informed and
18 alleges in her official capacity as follows:

19 I

20 On or about June 17, 2003, Respondent applied to the
21 Department of Real Estate of the State of California for a real
22 estate salesperson license with the knowledge and understanding
23 that any license issued as a result of that application would be
24 subject to the conditions of Section 10153.4 of the Business and
25 Professions Code.
26
27

II

On or about October 28, 1996, in the Superior Court of California, County of Riverside, in Case No. B96F2290B, Respondent was convicted of violating Penal Code Section 459 (burglary).

III

On or about July 14, 1998, in the Municipal Court of West Los Angeles Judicial District, County of Los Angeles, State of California, in Case No. 8WL00762, Respondent was convicted of violating Penal Code Section 415 (disturb the peace).

IV

On or about August 16, 1999, in the Municipal Court of Inglewood Judicial District, County of Los Angeles, State of California, in Case No. 9IW04488, Respondent was convicted of violating Vehicle Code Section 10851(a) (take vehicle without owner's consent).

V

On or about January 27, 2000, in the Superior Court of Los Angeles, Superior East Judicial District, County of Los Angeles, State of California, in Case No. KA046048, Respondent was convicted of violating Penal Code Section 487(a) (grand theft).

VI

The matters described above in Paragraphs II through V involve moral turpitude and are substantially related to the functions, duties and responsibilities of a real estate licensee.

VII

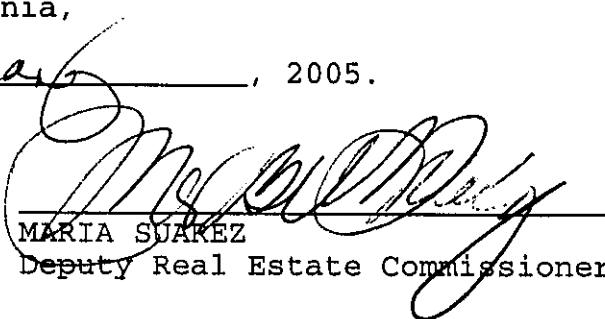
The matters described in Paragraphs II through V constitute cause for denial of Respondent's application for a real estate salesperson license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

The Statement of Issues is brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500 through 11528 of the Government Code.

WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent JONATHAN WAYNE CONEY II and for such other and further relief as may be proper in the premises.

Dated at Los Angeles, California,

this 20th day of January, 2005.


MARIA SUAREZ
Deputy Real Estate Commissioner

cc: Jonathan Wayne Coney II
Maria Suarez
Sacto.
JJ