

FILED
OCT. 29, 2007
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

By C. Z

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In the Matter of the Application of)	No. H-33914 LA
NORLEN JAMES EWELL,)	L-2007070514
Respondent.)	

DECISION

The Proposed Decision dated October 12, 2007, 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.

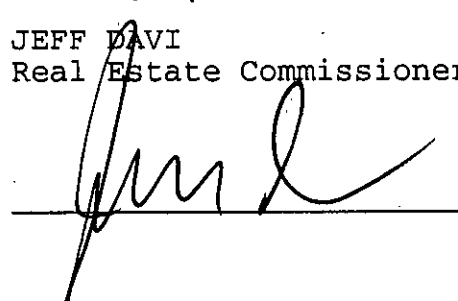
If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is attached hereto.

This Decision shall become effective at 12 o'clock noon on November 19, 2007.

IT IS SO ORDERED

10/24/07

JEFF DAVI
Real Estate Commissioner



BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

NORLEN JAMES EWELL,

Respondent.

Dept. No. H-33914 LA

OAH No. L2007070514

PROPOSED DECISION

This matter was heard on September 14, 2007, in Los Angeles, by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California.

Norlen James Ewell (Respondent) was present and represented himself.

Janice Waddell, Deputy Real Estate Commissioner (Complainant), was represented by Lissete Garcia, Counsel for the Department of Real Estate (Department).

Oral and documentary evidence was received and the matter was argued and submitted on September 14, 2007. This decision was due by October 15, 2007.

FACTUAL FINDINGS

1. Complainant brought the Statement of Issues in her official capacity.
2. On July 17, 2006, Respondent made an application to the Department for a real estate salesperson license. Respondent previously held a conditional salesperson license from 1999 to 2003. In 2003, that license expired.
3. a. On September 29, 2004, in the Superior Court of California, County of Orange, West Justice Center, case number 04WM03137, Respondent was convicted, on his plea of guilty, of violating California Penal Code section 243, subdivision (e)(1)(domestic violence battery), a misdemeanor and a crime of moral turpitude. (*Padilla v State Personnel Board* (1992) 8 Cal.App.4th 1136 .)
- b. Imposition of sentence was suspended and Respondent was placed on three years informal probation with terms and conditions which included: serve 10 days in jail (or perform CalTrans work in lieu of jail), pay fines, and attend and complete a Batterer's Treatment Program.

c. The underlying events leading to Respondent's conviction were that Respondent had a fight with his girlfriend wherein he grabbed her throat and she suffered some scratching and bruising.

4. After his conviction, Respondent attended and completed a Batterer's Treatment Program. In that program, he learned what is unacceptable conduct and also how to control himself in an escalating situation. Respondent is presently an assistant to a Project Manager for Paragon Partners, Ltd., a real estate company. Prior to his present employment, Respondent was employed by Triple Net as an administrative assistant and he was voted "employee of the quarter" in 2003. Respondent no longer sees the girlfriend involved in the altercation that led to his conviction. Since his conviction, he has had one additional girlfriend and that relationship had no domestic violence problems and was stable. Respondent established that he has changed his attitude since his conviction by acknowledging his mistake and by learning how to control himself.

LEGAL CONCLUSIONS AND DISCUSSION

1. Cause does not exist to deny Respondent's application for a real estate salesperson license under Business and Professions Code section 480, subdivision (a), based on the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554. In *Petropoulos*, supra, the court held that Business and Professions Code section 490 did not provide independent statutory authority for the Department to discipline a licensee based on criminal convictions. This same analysis should apply to Business and Profession Code sections 480 and 475, which are similar to Business and Professions Code section 490, except that they apply to an applicant for licensure, rather than a person who already possesses a license. (Factual Findings 2-4.)

2. Cause exists to deny Respondent's application for a real estate salesperson license pursuant to Business and Professions Code section 10177, subdivision (b), in that his conviction is substantially related to the qualifications, functions, or duties of a real estate salesperson and involved moral turpitude, as discussed below.

Substantial Relationship

California Code of Regulations, title 10, section 2910, defines by regulation instances where acts are deemed to be substantially related to the qualifications, functions, or duties of a licensee. Under subdivision (a)(8), doing an unlawful act with the threat of doing substantial injury to the person of another is substantially related to the qualifications, functions, or duties of a licensee. Respondent's conviction is substantially related to the qualifications, functions, or duties of a real estate salesperson under this subdivision because Respondent's girlfriend could have been more seriously injured during their scuffle. (Factual Finding 3.)

Moral Turpitude

a. A criminal conviction can form the basis for denial of an application for a real estate salesperson's license if the crime is a felony or a crime involving moral turpitude. (Bus. & Prof. Code, § 10177, subd. (b).) Respondent suffered one misdemeanor conviction.

b. Although not amenable to a precise definition, "moral turpitude" connotes a readiness to do evil, an act of baseness, vileness or "depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1757, quoting from *People v. Mansfield* (1988) 200 Cal.App.3d 82, 87.)

c. Conviction of some crimes, such as murder and fraud, establishes moral turpitude per se. Other crimes do not necessarily establish moral turpitude per se; however, the particular circumstances of the underlying offense must be reviewed to determine if the conviction involved moral turpitude. (*In re Hurwitz* (1976) 17 Cal.3d 562.) In this case, Respondent's conviction is for domestic violence which has been found to be a crime of moral turpitude. (*Padilla*, supra.) (Factual Finding 3.)

3. Criteria have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), for the purpose of evaluating the rehabilitation of an applicant for licensure in considering whether or not to deny the issuance of a license on account of a crime committed by the applicant. These criteria, found at California Code of Regulations, title 10, section 2911, are summarized as follows:

- Subsection (a) passage of at least two years since the conviction;
- Subsection (b) restitution;
- Subsection (c) expungement of the conviction;
- Subsection (d) expungement of the requirement to register as a sex crime offender;
- Subsection (e) completion of the criminal probation;
- Subsection (f) abstinence from drugs or alcohol that contributed to the crime;
- Subsection (g) payment of any criminal fines or penalties;
- Subsection (h) stability of family life;
- Subsection (i) enrollment in or completion of educational or training courses;
- Subsection (j) discharge of debts to others;
- Subsection (k) correction of business practices causing injury;
- Subsection (l) significant involvement in community, church or private programs for social betterment;
- Subsection (m) new and different social and business relationships; and
- Subsection (n) change in attitude from the time of conviction to the present, evidenced by testimony of the applicant and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns.

4. Respondent has addressed, and satisfied, a sufficient number of these criteria of rehabilitation to justify a restricted license. For example, two years have passed since Respondent suffered his convictions and Respondent has completed his criminal probation. Respondent no longer associates with his former girlfriend, was involved in a stable relationship subsequent to his conviction, and his employment history reveals that he is able to conduct himself professionally at work. Further, Respondent has taken, and completed, a batterer's training program wherein he learned how to control his temper and he has changed his attitude. The following order will sufficiently protect the health, safety and welfare of the public. (Factual Findings 2-4.)

ORDER

Respondent Norlen Ewell'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 Business and Professions Code section 10156.5. The restricted license issued to the Respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 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:

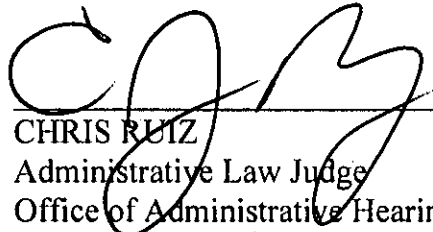
(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(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 Business and Professions Code section 10153.4, 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.

DATED: October 12, 2007.


CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

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2 On or about September 29, 2004, in the Superior Court
3 of California, County of Orange, West Justice Center, Case
4 No. 04WM03137, Respondent was convicted of violating California
5 Penal Code Section 243(e)(1) (domestic violence battery), a
6 misdemeanor. The underlying facts of said crime involve moral
7 turpitude and bear a substantial relationship under Section
8 2910, Title 10, Chapter 6, California Code of Regulations, to
9 the qualifications, functions or duties of a real estate
10 licensee.

11 III

12 The crime of which Respondent was convicted, as
13 alleged in Paragraph II above, constitutes cause for denial of
14 Respondent's application for a real estate license under
15 Business and Professions Code Sections 475(a)(2), 480(a), and
16 10177(b).

17 These proceedings are brought under the provisions of
18 Section 10100, Division 4 of the Business and Professions Code
19 of the State of California and Sections 11500 through 11528 of
20 the California Government Code.
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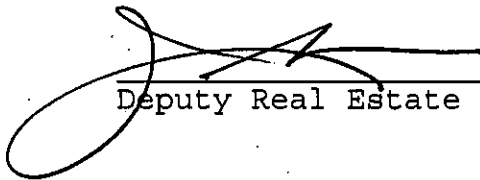
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1 WHEREFORE, the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the
3 charges contained herein, that the Commissioner refuse to
4 authorize the issuance of, and deny the issuance of, a real
5 estate salesperson license to Respondent, NORLEN JAMES EWELL,
6 and for such other and further relief as may be proper in the
7 premises.

8 Dated at Los Angeles, California

9 this 18 day of April, 2007.

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13 Deputy Real Estate Commissioner
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24 cc: Norlen James Ewell
25 Janice Waddell
26 Sacto.
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