

FILED
JULY 18, 2008
DEPARTMENT OF REAL ESTATE

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By C. L.

* * * * *

In the Matter of the Accusation of)	No. H-34657 LA
JOSHUA MICHAEL DEMAREST,)	L-2008020560
Respondent.)	

DECISION

The Proposed Decision dated June 3, 2008, 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.

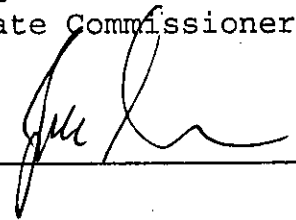
The Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on August 7, 2008.

IT IS SO ORDERED 7-10-08

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOSHUA MICHAEL DEMAREST,

Respondent.

Case No. H 34657 LA

OAH No. L2008020560

PROPOSED DECISION

Administrative Law Judge Deborah Myers of the Office of Administrative Hearings heard this matter on May 9, 2008, in Los Angeles, California.

Lisette Garcia, Staff Counsel, represented Robin Trujillo (Complainant). Joshua Michael Demarest (Respondent) represented himself.

Oral and documentary evidence was received, and the matter was submitted for decision on the hearing date.

The Administrative Law Judge makes the following factual findings and legal conclusions:

FACTUAL FINDINGS

1. Complainant brought this action in her official capacity as Deputy Real Estate Commissioner, State of California.

2. Respondent holds a conditional real estate salesperson license, issued by the Department of Real Estate (Department), on March 9, 2007. The license will expire on September 9, 2008, unless it is renewed and Respondent satisfies the educational requirements of Business and Professions Code section 10153.4.

3. On June 28, 2007, in the Superior Court of California, County of Los Angeles, in Case no. 7JB05186, Respondent was convicted, on his nolo contendere plea, of violating Penal Code section 31 (false information to police officer), a misdemeanor and a crime involving moral turpitude.

4. The court suspended imposition of sentence and placed Respondent on summary probation for 36 months under certain terms and conditions, including payment of \$1,121 in fines and fees.

5. The facts and circumstances surrounding the conviction are that Respondent was a passenger in a vehicle driven by a friend. They were driving home after a trip to Las Vegas. Respondent had been sleeping in the back seat without wearing a seatbelt. A police officer detained the vehicle for a traffic violation and asked Respondent for his identification. Respondent gave the police officer false information about his true identity by omitting his last name. He stated his name was 'Josh Michaels,' but did not give his last name. He also gave a false birth date, December 2, 1985, instead of December 2, 1983. The peace officer provided that information to his dispatcher, who was unable to confirm its validity. The peace officer then confronted, and Respondent admitted that he had lied. Respondent was on probation for the conviction described in Factual Finding 7 when he gave false information to the police officer.

6. Respondent minimized his culpability for providing false information to a peace officer. Respondent admitted he made a "horrible mistake" not because he made a false statement to a peace officer, but because he misplaced his California identification card.¹ Respondent stressed that he now keeps his identification with him at all times. The evidence established Respondent's identification card was on the floor of the vehicle inside a cup, and that Respondent immediately located it after he was confronted with his lie. However, Respondent's explanation that he provided incorrect information simply because he misplaced his identification card is not credible and shows that Respondent seeks to avoid responsibility for providing the false information in the first place. Respondent did not establish he forgot his true name and birth date, nor did he establish that he needed to review the information on his identification to refresh his memory as to what his true name and birth date were. When asked why he provided the false information, Respondent admitted he lied because he hoped he would not get cited for the seat belt violation and avoid prosecution. Respondent admitted he was afraid to reveal his true identity because his recent drunk driving conviction had gotten him in trouble, and he didn't want to get in trouble again.

7. As a factor in aggravation, on April 18, 2007, in the Superior Court of California, County of Los Angeles, in Case No. 6LT03360, Respondent was convicted, on his nolo contendere plea, of violating Vehicle Code section 23152, subdivision (b) (driving a vehicle with a blood alcohol count of .08 percent or higher), a misdemeanor.

8. The court suspended imposition of sentence and placed Respondent on summary probation for 36 months under certain terms and conditions, including completing a three month first offender alcohol program, attending 12 Alcoholics

¹ Respondent's driver's license had been suspended for his drunk driving conviction discussed in Factual Finding 7.

Anonymous (AA) meetings, paying fees and fines totaling \$1486 and obeying all laws.

9. The facts and circumstances surrounding the conviction are that Respondent "had too many margaritas" at an Acapulco Restaurant and drove his vehicle while intoxicated. En route to visiting another restaurant, Respondent was detained for a traffic violation. Respondent's blood alcohol level measured .17 percent, twice the legal limit.

10. Respondent is 24 years old. Beginning March 2007, Respondent has worked as a loan officer for Victor Gutierrez, his broker at Excel Funding. He is still employed in that capacity. He anticipates graduating from El Camino College with an Associate in Science degree in Business by June 2008. Respondent attends church every Sunday at Holy Trinity Church in San Pedro, California. He occasionally attends AA meetings voluntarily, his most recent visit being in March 2008.

11. Respondent has not fully addressed the seriousness of his alcohol problem. On question 18 of his Confidential Interview Information Statement, given to the Department in response to their inquiry regarding his convictions, Respondent denied that he had a drinking problem; that he had ever obtained treatment for a drinking problem; and that he had been a member of AA to address a drinking problem. These statements were false because Respondent had a conviction for driving under the influence of alcohol; he had completed a court ordered drunk driving program; and he attended 12 AA meetings as part of his sentence. Nor has Respondent abstained from the use of alcohol, having consumed alcohol within the last two months. Respondent provided no details regarding the circumstances of that recent alcohol use.

12. Respondent has complied with some of the terms and conditions of his two recent criminal probation orders. He completed a three-month drunk driving program and attended 12 AA meetings. Respondent has paid his fines pursuant to both probationary orders. He remains on probation until at least June 28, 2010.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's real estate salesperson license, pursuant to Business and Professions Code section 490 and 10177, subdivision (b), for having a criminal conviction which is substantially related to the qualifications, functions or duties of a licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(2), (a)(8), and (a)(10), as set forth in Findings 3 through 6.

2. Business and Professions Code section 490 authorizes the suspension or revocation of a license if the licensee is convicted of a crime which is substantially related to the qualifications, functions and duties of the licensed profession. Business

and Professions Code section 10177, subdivision (b), authorizes the Commissioner to suspend or revoke a license when the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a real estate licensee.

3. Respondent's conviction for violating Vehicle Code section 31, knowingly providing false information to a peace officer, is substantially related to the qualifications, functions or duties of a real estate license pursuant to California Code of Regulations, title 10, section 2910, subdivisions (a)(2), for uttering a false statement; (a)(8), for committing an unlawful act which confers a financial benefit (seeking to avoid criminal prosecution and fine assessments); and (a)(10), for demonstrating a pattern of repeated disregard for the law, as set forth in Factual Findings 3 through 9.

4. Vehicle Code section 31 provides that:

No person shall give, either orally or in writing, information to a peace officer while in the performance of his duties under the provisions of this code when such person knows that the information is false.

5. Respondent's providing false information to a peace officer is a crime that involves moral turpitude because it involves an act of dishonesty. Respondent knowingly gave false information to a peace officer to try to escape criminal liability. In *In re Cooper*, (1971) 5 Cal.3d 256, an attorney was found to have committed an act of moral turpitude when he knowingly made false statements to the court concerning how he had obtained federal grand jury transcripts. He plead guilty to two counts of contempt of court. The supreme court, after reviewing the entire record and considering all the facts and circumstances, concluded that the attorney's conduct in misbehaving in the presence of a federal court so obstructed the administration of justice that it involved moral turpitude. Providing false information to a peace officer is analogous to providing false information to a court.

6. Further, as a factor in aggravation, Respondent has a 2007 drunk driving conviction, for which Respondent was on probation when he provided false information to the peace officer.

7. Respondent evinced a lack of candor and trustworthiness when he provided the police officer with false information about his identity. The dishonest nature of Respondent's convictions demonstrates he lacks the necessary integrity required of a real estate licensee. Honesty and integrity are essential characteristics of a real estate licensee. *Golde v. Fox*, (1979) 98 Cal App 3d 167.

8. The Department has enacted regulations for use in the assessment of whether a licensee is rehabilitated, which are found at California Code of Regulation, title 10, section 2912, subdivisions (a) through (m). Respondent has satisfied only a

few of the Department's criteria for rehabilitation: the criteria set forth in section 2912, subdivision (l), in that Respondent demonstrated involvement in religious activities; subdivision (g), as he has paid his criminal fines; and subdivision (k), because he has furthered his formal education and anticipates earning a 2008 Associate of Science degree.

9. Respondent does not meet the criteria set out in section 2912, subdivision (a), in that two years have not passed since his 2007 conviction involving false information to a police office and his 2007 conviction involving drunk driving. Respondent's convictions have not been expunged (§ 2912, subd. (c)) and he remains on two criminal probations, until at least April 18, 2010 and June 28, 2010. (§2912, subd. (e).)

10. Respondent did not establish that he had a change in attitude from that which existed at the time of the commission of his crimes. (§2912, subd. (m).) Respondent did not fully acknowledge the wrongfulness of his actions because he minimized his responsibility for providing false information to a peace officer. Nor did he appreciate the seriousness of his drinking and driving problem, and he is not fully committed to his sobriety.

11. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." *Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940. A truer indication of rehabilitation is sustained good conduct over an extended period of time. *In re Menna* (1995) 11 Cal.4th 975, 991. The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. *Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.

12. Respondent's recent conviction for providing false identification to a police officer reflects poorly on his integrity as a real estate agent and a loan officer. His conduct goes to the very heart of real estate loan transactions. Real estate licensees in the mortgage business have access to their clients' confidential financial information and personal identity information which could easily be misused.


13. The totality of the evidences establishes that Respondent would pose a risk to the public if he is permitted to retain his license. A real estate licensee must possess the requisite honesty and integrity which is so critical to the profession. Respondent's testimony and criminal acts demonstrate a lack of candor and trustworthiness. Respondent has failed to demonstrate that he has been sufficiently rehabilitated from his criminal conduct. He has engaged in a recent pattern of unlawful activity.

ORDER

WHEREBY THE FOLLOWING ORDER is hereby made:

The real estate salesperson license and licensing rights of Respondent Joshua Michael Demarest are revoked.

Date: June 3, 2008



DEBORAH MYERS
Administrative Law Judge
Office of Administrative Hearings

5/2/08
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FILED
JAN 22 2008
DEPARTMENT OF REAL ESTATE

By C. N.

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-34657 LA
12)
13 JOSHUA MICHAEL DEMAREST,) A C C U S A T I O N
14) Respondent.)

15 The Complainant, Robin Trujillo, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against JOSHUA MICHAEL DEMAREST ("Respondent"), is informed and
18 alleges in her official capacity as follows:

19 I

20 At all times herein mentioned, Respondent was and is
21 presently licensed by the Department of Real Estate of the State
22 of California ("Department") as a real estate salesperson under
23 the Real Estate Law, Part 1 of Division 4 of the California
24 Business and Professions Code ("Code").

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II

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2 Pursuant to the provisions of Code Section 10153.3,
3 Respondent was originally licensed as a salesperson with the
4 Department on or about March 9, 2007. Respondent's conditional
5 salesperson license will be suspended if the education
6 requirement pursuant to Code Section 10153.4 has not been met by
7 September 9, 2008.

8 III

9 On or about June 28, 2007, in the Superior Court of
10 California, County of Los Angeles, in Case No. 7JB05186, as part
11 of a plea agreement, Respondent pled nolo contendere to and was
12 convicted of violating Vehicle Code Section 31 (knowingly give
13 false information to peace officer), a misdemeanor. The
14 underlying facts of said crime involve moral turpitude and bear
15 a substantial relationship under Section 2910, Title 10, Chapter
16 6, California Code of Regulations, to the qualifications,
17 functions or duties of a real estate licensee.
18

19 IN AGGRAVATION

20 IV

21 On or about April 18, 2007, in the Superior Court of
22 California, County of Los Angeles, in Case No. 6LT03360, as part
23 of a plea agreement, Respondent pled nolo contendere to and was
24 convicted of violating Vehicle Code Section 23152(B) (drive
25 vehicle with B.A.C. of .08% or more), a misdemeanor.
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1
2 The crime of which Respondent was convicted, as
3 alleged in Paragraph III above, constitutes cause under Code
4 Sections 490 and 10177(b) for the suspension or revocation of
5 all licenses and license rights of Respondent under the Real
6 Estate Law.

7 WHEREFORE, Complainant prays that a hearing be
8 conducted on the allegations of this Accusation and, that upon
9 proof thereof, a decision be rendered imposing disciplinary
10 action against all licenses and/or license rights of Respondent,
11 JOSHUA MICHAEL DEMAREST, under the Real Estate Law (Part 1 of
12 Division 4 of the Business and Professions Code) and for such
13 other and further relief as may be proper under other applicable
14 provisions of law.

15 Dated at Los Angeles, California

16 this 8 day of January, 2008.
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19 
20 Deputy Real Estate Commissioner

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22
23
24 cc: Joshua Michael Demarest
25 NDNJ, Inc.
26 Sacto.
27 Robin Trujillo