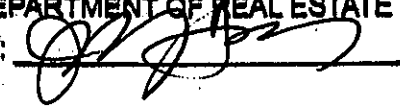


FILED

APR - 2 2009

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: 

* * * * *

In the Matter of the Application of)	No. H-35388 LA
)	
)	L-2008120100
JOHNNIE WILL STEPHENS,	)
)	
Respondent.	)
)	

DECISION

The Proposed Decision dated February 25, 2009, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made:

Factual Findings, page 1, paragraph No. 1, line 1,
"Complainant, John W. Sweeney" is amended to read
"complainant, Joseph Aliu".

Factual Findings, page 1, paragraph No. 2, line 2,
strike "The application is subject to the provisions of
Business and Professions Code section 10153.4".

Legal Conclusions, page 5, paragraph No. 6, last
Line, "duties of a real estate salesperson." is amended to
Read "duties of a real estate licensee."

Legal Conclusions, page 6, paragraph No. 8, line
3, "duties of a real estate salesperson." is amended to read
"duties of a real estate licensee."

The application for a real estate broker license is denied, but the right to a restricted real estate broker 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.

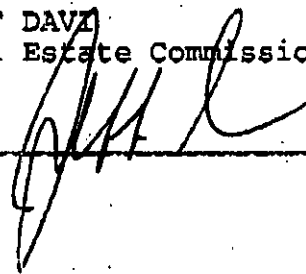
If and when application is made for a real estate broker license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria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

This Decision shall become effective at 12 o'clock
noon on April 22, 2009.

IT IS SO ORDERED

3/31/09

JEFF DAVIS
Real Estate Commissioner

A handwritten signature in dark ink, appearing to read 'JD', is written over a horizontal line.

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

JOHNNIE WILL STEPHENS,

Respondent.

Case No. H-35388 LA

OAH No. 2008120100

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings, on January 27, 2009, in Los Angeles, California.

Cheryl D. Keily, Counsel, Department of Real Estate, represented the complainant.

Johnnie Will Stephens appeared on his own behalf.

The case was submitted for decision on January 27, 2009.

FACTUAL FINDINGS

1. Complainant, ^{Joseph Ais} ~~John W. Sweeney~~, a Deputy Real Estate Commissioner of the State of California, filed the Statement of Issues in his official capacity on October 17, 2008.

2. Respondent made application to the Department of Real Estate of the State of California (Department) for a real estate broker license on or about August 6, 2007. ~~The application is subject to the provisions of Business and Professions Code section 10153.4.~~

Criminal Conviction History

3. On September 14, 2004, respondent was convicted in the Superior Court of California, County of Riverside, in Case Number RIM452935, on his plea of guilty, of violating Penal Code section 273d, subdivision (a) (inflicting corporal injury on a child), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on three years informal probation, with terms and conditions, including 30 days county jail, a 52-week Child Batterer's Treatment Program, and fines/restitution in the amount of \$1,068.

- a. The facts and circumstances of the conviction were these: On May 22, 2004, police were called to investigate a report of corporal punishment on J.S., respondent's then 14-year-old son. Respondent struck the child 5 to 10 times across the bottom with an extension cord. Some of the attempts were blocked by J.S.'s arm, resulting in minimal injury. J.S. did not require medical treatment.
- b. On the day of the incident, respondent's wife called respondent at work and asked him to return home to assist with J.S. The child and a friend, D.M., had gotten into a verbal altercation resulting in J.S. pushing the other boy's head through a bedroom window. When respondent arrived home, he observed the broken glass and the child D.M. with a bloody towel wrapped around his head.
- c. Respondent asked his son what had happened, however J.S. would not elaborate. Respondent learned the details from his wife. J.S. began asking respondent for money which respondent refused to provide. Communication over the incident deteriorated. In frustration, respondent admitted that he "gave him a whooping." The extension cord used by respondent was laying on the dresser in the child's room. After the "whooping," the child left on foot and went to the home of a neighbor who called police.
- d. Respondent completed all terms of probation and paid all fines/restitution. On December 4, 2008, the Superior Court dismissed the conviction pursuant to Penal Code section 1203.4. A certified record of expungement is in evidence.

4. Leading up to the incident, J.S. began exhibiting behavioral problems at age 12, while in seventh grade. His parents suspected drug use. He was increasingly defiant and disrespectful at home towards his mother and respondent. He was sneaking out of his home after midnight. On ten prior occasions, respondent and the child's mother called police to their home to counsel J.S. Respondent and the child's mother had attended several consultations at J.S.'s high school concerning the child's misconduct towards teachers and walking out of class. Before May 22, 2004, respondent had never hit or used any form of corporal punishment on his son and police had never been called to the home to investigate any form of abuse or punishment of the child. Social services did not file a petition regarding the incident.

5. Respondent's testimony at hearing was honest and credible. He did not attempt to minimize his conduct. He relayed a healthy appreciation for his son's developmental struggles and positive growth.

Mitigation/Rehabilitation

6. One year after the incident, respondent and the child's mother filed for divorce. The family law court granted custody of J.S. to respondent. The child has lived between the homes of his mother and respondent since the age of 15 according to an informal

arrangement between the parents. The child's parents secured and encouraged J.S. to see a youth counselor, which was not covered by insurance. The sessions provided "good results" until J.S. "broke out of it." Respondent has provided financially for his son's needs on a consistent basis. Respondent was actively involved in the school's parent teacher association (P.T.A.). Both before and after the incident, respondent's extracurricular activities with his son included coaching basketball, bowling, movies, and activities at the YMCA. J.S. is now 18 years of age. According to respondent, J.S.'s behavior began to improve markedly once he turned 17. Respondent describes his son as "a completely different person now. His maturity level improved." J.S. dropped out of high school but is now signed up to obtain his GED.

7. Respondent served in the United States Marine Corps for five and one half years as a military policeman. He received an honorable discharge on March 9, 1981. During his term of service he received decorations including two Good Conduct Medals.

8. Respondent has a Bachelor of Arts degree in accounting and a Master of Business Administration (M.B.A.) in accounting. Respondent owns an accounting business, which performs consulting, tax, bookkeeping and accounting services for small businesses and sole proprietors. Respondent's son, J.S., works at respondent's office doing payroll functions. Respondent seeks to add real estate to the services he can provide his clients. He submitted a letter from Dudley Sewell, President of the Corona Public Auction and a client of his accounting firm. Mr. Sewell described respondent as "organized, efficient, extremely competent, and has excellent rapport with people."

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Business and Professions Code section 480, subdivision (a)(1), states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

[¶]...[¶]

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

2. Business and Professions Code section 10177, subdivision (b),¹ states in relevant part:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following:

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

3. California Code of Regulations, title 10, section 2910 states, in relevant part:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

[¶] ... [¶]

¹ The language of Business and Professions Code section 10177, subdivision (b), was modified by the legislature, effective January 1, 2008, such that the Department is no longer required to prove that misdemeanor convictions occurring after that date involve moral turpitude. Respondent's application for licensure was filed August 6, 2007; hence, the Department has alleged and must establish moral turpitude for his misdemeanor conviction. (*Petropoulos v. Dept. of Real Estate* (2006) 142 Cal.App.4th 554, 565, 567.)

- (c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

Moral Turpitude

4. The California Supreme Court has divided crimes of moral turpitude into two groups. "The first group includes crimes in which dishonesty is an element (i.e., fraud, perjury, etc.). The second group includes crimes that indicate a 'general readiness to do evil.'" (*People v. Castro* (1985) 38 Cal.3d 301, 315; *People v. Chavez* (2000) 84 Cal.App.4th 25, 28.) Acts of moral turpitude encompass "everything done contrary to justice, honesty, modesty or good morals." (*Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d 30, 36.) Moral turpitude must be inherent in the crime itself to warrant cancellation or suspension of a license because of the conviction. (*Lorenz v. Board of Medical Examiners* (1956) 46 Cal.2d 684, 686.)

Respondent's misdemeanor conviction for a violation of Penal Code section 273d, subdivision (a), is a crime of moral turpitude. (*People v. Brooks* (1992) 3 Cal.App.4th 669.) The offense is committed by, "Any person who willfully inflicts upon any child cruel or inhuman corporal punishment or injury resulting in a traumatic condition." (Pen. Code, § 273d, subd. (a).)

Substantial Relationship

5. The crime of corporal injury on a child, as set forth in Finding 3, is substantially related to the qualifications, functions and duties of a real estate licensee as defined in California Code of Regulations, title 10, section 2910, subdivision (a)(8), the doing of an unlawful act with the intent or threat of doing substantial injury to the person of another.

Cause for Denial

6. Cause for denial of respondent's application for a real estate broker license exists pursuant to Business and Professions Code sections 480, subdivision (a)(1), and 10177, subdivision (b), in conjunction with California Code of Regulations, title 10, section (a)(8), by reason of Factual Finding 3, and Legal Conclusions 4 and 5, in that respondent has been convicted of misdemeanor corporal punishment, a crime of moral turpitude that is substantially related to the qualifications, functions and duties of a real estate ~~salesperson~~ *licensee*.

Fitness for Licensure

7. The department has developed guidelines for use in evaluating the rehabilitation of an applicant for issuance of a license. (Cal. Code Regs., tit.10, § 2911 subs. (a)-(n).) Additionally, the context in which qualifying crimes or acts were committed goes to the question of weight to be accorded the offending conduct in considering the disciplinary action to be taken. (Cal. Code Regs., tit. 10, § 2910, subd. (c).)

8. In consideration of these guidelines, in 2004, respondent was convicted of inflicting corporal punishment on his son, a crime that is substantially related to the qualifications and duties of a real estate ~~salesperson~~ ^{licensee}. The circumstances surrounding the incident are unique. Though the child had been exhibiting behavioral problems at home and at school, his parents had tried interventions that included asking police to speak to the child. On the incident date, respondent's wife called him home from work after their teen-age son, J.S., had pushed another boy's head through a window. J.S. was uncooperative and would not respond to questions. Respondent admits he became frustrated and acted in a way he had never before done. This incident was five years ago. Respondent has paid all fines/restitution and is not on probation. In December 2008, the Superior Court dismissed the conviction.

9. Respondent is 51 years old. One year after the incident, the family court awarded custody of J.S. to respondent. Respondent enjoys a positive and responsible relationship with his son, J.S. who is now 18 years old and works part-time at respondent's accounting practice. Respondent is a decorated former marine and has built a successful accounting practice as evidenced by the letter of a current client. Respondent's testimony at hearing was honest, credible, and forthright.

Conclusion

10. Respondent has sustained his burden to establish that he can be licensed at this time without harm to the public, with appropriate restrictions and conditions.

ORDER

The application of Johnnie Will Stephens., for a real estate broker license is denied by reason of Legal Conclusions 4, 5 and 6; provided, however, that pursuant to Legal Conclusions 7 through 10, a restricted real estate broker license shall be issued to respondent pursuant to Business and Professions Code section 10156.5. The restricted license issued to 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 two (2) years have elapsed from the date of issuance of the restricted license to respondent.

Dated: February 25, 2009



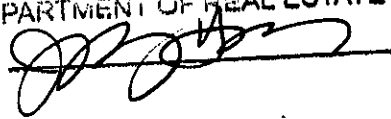
DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

1 CHERYL D. KEILY, Counsel (SBN 94008)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 (Direct) (213) 576-5770

FILED

OCT 17 2008

DEPARTMENT OF REAL ESTATE
BY: 

8
9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Application of) NO. H- 35388 LA
13)
14 JOHNNIE WILL STEPHENS,)
15) STATEMENT OF ISSUES
16)
17 Respondent.)
18)

16 The Complainant, Joseph Aiu, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Statement
18 of Issues against JOHNNIE WILL STEPHENS, aka Johnnie Stephens,
19 ("Respondent"), is informed and alleges as follows:

20 1.

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

24 ///

25 ///

26 ///

2.

Respondent made application to the Department of Real Estate of the State of California for a real estate broker license on or about August 6, 2007.

3.

(CRIMINAL CONVICTION)

On or about September 14, 2004, in the California Superior Court, County of Riverside, in Case No. RIM452935, Respondent was convicted of violating California Penal Code Section 273d(a) (Inflict Corporal Injury on Child), a misdemeanor. The underlying facts of this criminal conviction involve moral turpitude, and bear a substantial relationship under Title 10, Chapter 6, Section 2910, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

4.

The crime of which Respondent was convicted, as alleged herein above in Paragraph 3, constitutes cause for denial of Respondent's application for a real estate license under Code Sections 475(a)(2); 480(a)(1) and/or 10177(b).

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.

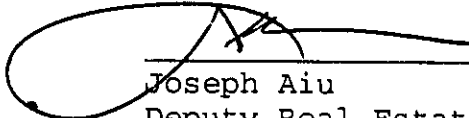
///

///

1
2 WHEREFORE, Complainant prays that the above entitled
3 matter be set for hearing and, upon proof of the charges
4 contained herein, that the Commissioner refuse to authorize the
5 issuance of, and deny the issuance of, a real estate salesperson
6 license to Respondent, JOHNNIE WILL STEPHENS, and for such other
7 and further relief as may be proper under other provisions of
8 law.

9 Dated at San Diego, California

10 this 15 day of October, 2008.
11
12
13

14
15 
16 Joseph Aiu
17 Deputy Real Estate Commissioner
18
19
20
21
22
23
24
25

26 cc: JOHNNIE WILL STEPHENS
27 Joseph Aiu
Sacto.