

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE

APR 18 2010

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

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By B. Contreras

In the Matter of the Application of)

No. H-36249 LA
L-2009120150

JASON GREGORY ARNOLD,

Respondent.

DECISION

The Proposed Decision dated February 12, 2010, 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.

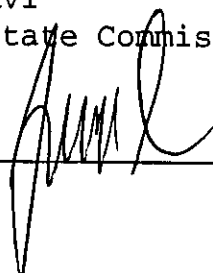
If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria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

This Decision shall become effective at 12 o'clock
noon on May 10, 2010.

IT IS SO ORDERED

3/24/2010

JEFF DAVI
Real Estate Commissioner



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DEPARTMENT OF REAL ESTATE

By K. Contreras

In the Matter of the Application of:

JASON GREGORY ARNOLD,

Respondent.

File No.: H-36249 LA

OAH No.: 2009121050

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on January 14, 2010.

James Demus, Staff Counsel, represented the Complainant.

Respondent appeared in person and represented himself.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. Complainant Maria Suarez, a Deputy Real Estate Commissioner of the State of California, brought the Statement of Issues in her official capacity.

2. On October 15, 2007, Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license.

Disclosure

3. In response to Question 25 of the license application, to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE", Respondent marked the box denoted "Yes", but failed to reveal the convictions set forth in Findings 6 and 8. His failure to do so was the result of negligence and not the result of intent to conceal the convictions from the Department. The negligent failure to disclose, therefore, does not constitute fraud, misrepresentation or deceit but it is a material misstatement of fact. Respondent failed to exercise due care in filling out the application.¹

Criminal Convictions

4. On June 20, 2001, Respondent was convicted in the Superior Court of California, County of Los Angeles, Case No. YA044879, for violating three (3) counts of Penal Code section 459 (burglary), a felony.

5. On May 7, 2003, Respondent was convicted in the Superior Court of California, County of Los Angeles, Case No. YA053935, for violating Penal Code section 476 (passing a fictitious check), a felony.

6. On May 7, 2003, Respondent was convicted in the Superior Court of California, County of Los Angeles, Case No. SA045136, for violating Penal Code section 475, subdivision (b), (forgery), a felony.

7. Underlying elements of each crime include the fraudulent taking property belonging to another, the employment of deceit to achieve an end and the doing of an unlawful act of conferring a benefit upon Respondent. Accordingly, each crime bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.²

Aggravation

8. On May 16, 2000, Respondent was convicted in the Superior Court of California, County of Los Angeles, Case No. 0IW02357, for violating Penal Code section 602(1) (trespass: occupied property without consent), a misdemeanor.

¹ In this case the failure to fully disclose is not actionable under Business and Professions Code sections 475 or 480 but is actionable under Business and Professions Code section 10177 as is set forth in the Legal Conclusions.

² California Code of Regulations, title 10, section 2910, subdivision (a) (1), (a) (4) and (a) (8).

Mitigation

9. The crimes set forth in Findings 4, 5 and 6 occurred during years when Respondent was in college away from home and when he was young (late teen to early adult). These circumstances do not excuse Respondent's criminal conduct but do mitigate same.

Rehabilitation and Character

10. As a result of the 2003 convictions Respondent served two years in State prison. He has completed all other court ordered sanctions in all cases. He has suffered no other conviction. He is, presently, in compliance and conformity with society's norms and rules. Serving time in prison was a humbling experience and Respondent has no desire to again commit any crime.

11. Respondent did take pre-licensing real estate courses (principles, practice, finance) and did pass the licensing examination in August, 2007. He therefore has completion of training courses for economic self-improvement.

12. Respondent is presently employed as an assistant at L.E.D. Financial Group (LED) a company owned by his father, Le Francis Arnold. He also works from time to time for Excellence of Lynwood, Inc. – Century 21 (E.O.L.). EOL's designated broker, Evelyn Arnold is Respondent's grandmother and sponsoring broker. He has worked at LED and EOC with diligence and trustworthiness.

13. Respondent has new and different social relationships from those which existed at the time and times of his criminal conduct. He now has colleagues at work as friends and he has a supportive girlfriend. He is now under the positive influence of his father, a licensed real estate broker since 1976, his grandmother, a licensed real estate broker since 1967, and his mother, a licensed real estate salesperson since 1976 and a licensed and certified real estate appraiser.

14. Respondent's grandmother, mother and father all gave credible testimony on behalf of Respondent and attested to his maturation, his present trustworthiness and his desire to be a productive member of society. Respondent, now in close contact with his immediate family, has stability of family life and fulfills familial obligations.

15. Respondent was open, honest and candid in his testimony and is contrite and remorseful about his criminal past. He has a change in attitude from that which existed in 2003. That change was evidenced by the credible testimony of Respondent corroborated by the credible testimony of his father, his mother and his grandmother. Respondent, at present, is a mature adult and Respondent, at present, is a socially and professionally responsible person.

LEGAL CONCLUSIONS

Applicable Authority

1. These proceedings are brought under the provisions of section 10100, Division 4 of the Business and Professions Code of the State of California and Government Code section 11500 through 11528.

Violations

2. Cause exists for denial of Respondent's application for a real estate license pursuant to Business and Professions Code section 475, subdivision (a)(2), 480, subdivision (a) and 10177, subdivision (b) by reason of Findings 4, 5 and 6, separately and in combination.

3. Cause exists for denial of Respondent's application for a real estate license pursuant to Business and Professions Code section 10177, subdivision (a) by reason of Finding 3 in that the failure to disclose constituted a material misstatement of fact.

4. No cause exists for denial of Respondent's application pursuant to Business and Professions Code sections 475, subdivision (a)(1) or 480, subdivision (c), by reason of Finding 3 in that the failure to disclose did not constitute knowingly making a false statement of material fact or knowingly making a false statement of fact.

Licensing Considerations

5. California Code of Regulations, title 10, section 2911 sets forth criteria of rehabilitation that have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), to evaluate the rehabilitation of an applicant for issuance of a license in considering whether or not to deny the issuance on account of a crime or act committed by the applicant. In sum, this matter involves a thrice convicted young felon – Respondent- whose immediate family members – all competent, licensed professionals – credibly opined that Respondent is now reformed. Respondent's last convictions are seven years remote and Respondent has met other applicable criteria by reason of Findings 10 through 15. Accordingly, licensure of Respondent on a restricted status under the close supervision of a real estate broker is consistent with the public interest. Under a two year suspension, Respondent will carefully review all real estate transaction documents to avoid inadvertent mistakes such as the one set forth in Finding 3.

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 10153.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subjected 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 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's 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 10153.5, 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 10153.5, 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 10153.5 until four years after the date of the issuance of the preceding restricted license.

Dated:

February 12, 2010



RICHARD J. LOPEZ

Administrative Law Judge

Office of Administrative Hearings

RJL:rfm

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DEPARTMENT OF REAL ESTATE
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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of) NO. H-36249 LA
)
JASON GREGORY ARNOLD,) STATEMENT OF ISSUES
)
Respondent.)

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for Statement of Issues
against JASON GREGORY ARNOLD, ("Respondent"), is informed and
alleges in her official capacity as follows:

1.

On or about October 15, 2007, Respondent made
application to the Department of Real Estate of the State of
California for a real estate salesperson license.

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1 FIRST CAUSE FOR DENIAL

2 (CRIMINAL CONVICTIONS)

3
4 2.

5 On or about May 7, 2003, Respondent was convicted in
6 the Superior Court of California, County of Los Angeles, Case
7 No. YA053935, for violating California Penal Code Section 476
8 (make/pass a fictitious check), a felony. Said crime bears a
9 substantial relationship under Section 2910, Title 10, Chapter
10 6, California Code of Regulations, to the qualifications,
11 functions or duties of a real estate licensee.

12 3.

13 On or about May 7, 2003, Respondent was convicted in
14 the Superior Court of California, County of Los Angeles, Case
15 No. SA045136, for violating California Penal Code Section 475(b)
16 (forgery), a felony. Said crime bears a substantial
17 relationship under Section 2910, Title 10, Chapter 6, California
18 Code of Regulations, to the qualifications, functions or duties
19 of a real estate licensee.

20 4.

21 On or about June 20, 2001, Respondent was convicted in
22 the Superior Court of California, County of Los Angeles, Case
23 No. YA044879, for violating three (3) counts of California Penal
24 Code Section 459 (burglary), a felony. Said crimes bear a
25 substantial relationship under Section 2910, Title 10, Chapter
26 6, California Code of Regulations, to the qualifications,
27 functions or duties of a real estate licensee.

1 5.

2 In aggravation, on or about May 16, 2000, Respondent
3 was convicted in the Superior Court of California, County of Los
4 Angeles, Case No. 0IW02357, for violating California Penal Code
5 Section 602(1) (trespass: occupied property without consent), a
6 misdemeanor.

7 6.

8 The crimes of which Respondent was convicted, as
9 alleged in Paragraphs 2 through 4 above, constitute cause for
10 denial of Respondent's application for a real estate license
11 under Business and Professions Code Sections 475(a)(2), 480(a)
12 and 10177(b).

13 SECOND CAUSE FOR DENIAL

14 (FAILURE TO REVEAL CONVICTIONS)

15 7.

16 In response to Question 25 of the license application,
17 to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW?
18 CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE
19 DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH
20 DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE", Respondent
21 failed to reveal the convictions described in Paragraphs 3 and 5
22 above.

23 8.

24 Respondent's failure to disclose the conviction, as
25 set forth in Paragraph 3 above, in his license application,
26 constitutes an attempt to procure a real estate license by
27 fraud, misrepresentation, or deceit, or by making a false

1 statement of material fact required to be revealed in said
2 application, which is grounds for denial of the issuance of a
3 license under Business and Professions Code Sections 475(a)(1),
4 480(c) and 10177(a).

5 These proceedings are brought under the provisions of
6 Section 10100, Division 4 of the Business and Professions Code
7 of the State of California and Sections 11500 through 11528 of
8 the California Government Code.

9 WHEREFORE, the Complainant prays that the above-
10 entitled matter be set for hearing and, upon proof of the
11 charges contained herein, that the Commissioner refuse to
12 authorize the issuance of, and deny the issuance of, a real
13 estate salesperson license to Respondent, JASON GREGORY ARNOLD,
14 and for such other and further relief as may be proper in the
15 premises.

16 Dated at Los Angeles, California

17 this 10th day of September, 2009.

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21 Maria Suarez
22 Deputy Real Estate Commissioner
23
24
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26
27

cc: Jason Gregory Arnold
Excellence of Lynwood, Inc.
Maria Suarez
Sacto.