

2010

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of)
JASON KIPP WINICKI,
Respondent.

No. H-37220 LA

L-2011051151

FILED

SEP 21 2011

DEPARTMENT OF REAL ESTATE
BY: 

DECISION

The Proposed Decision dated August 18, 2011, 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.

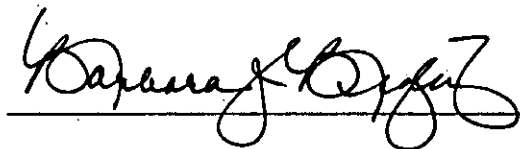
The application for a real estate salesperson license is denied. If and when application is again made for this license, all competent evidence of rehabilitation presented by respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on October 11, 2011.

IT IS SO ORDERED

9/19/11

BARBARA J. BIGBY
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JASON KIPP WINICKI,

Case No. H- 37220 LA

OAH No. 2011051161

Respondent.

PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 1, 2011.

Amelia V. Vetrone, Staff Counsel, represented Robin Trujillo (Complainant), a Deputy Real Estate Commissioner in the Department of Real Estate (Department), State of California.

Jason Kipp Winicki (Respondent) represented himself.

Oral and documentary evidence was received, and the matter argued.

The case was submitted for decision on August 1, 2011.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in this proceeding in her official capacity.

2. On November 2, 2010, Respondent applied to the Department of Real Estate of the State of California, for a real estate salesperson license. The application was denied and this hearing ensued.

3. On July 6, 1988, in the Municipal Court of Glendale Judicial District, County of Los Angeles, Respondent, upon his guilty plea, was convicted of violating Penal Code section 484f, subdivision (2), forging name on credit card, a misdemeanor. The court

placed Respondent on summary probation for a period of two years upon certain terms and conditions including paying a fine of \$562.00. Respondent satisfied the terms and conditions imposed by the court. The conviction has not been expunged.

4. The facts and circumstances surrounding Respondent's conviction are as follows: Respondent was 18 years old. He went to a shopping mall with a 17 year old friend. The friend had a credit card he had stolen from a girl they both knew. Since the friend was 17 he could not use a credit card. The friend asked Respondent to buy a watch using the card. The friend said the card belonged to his aunt. Respondent used the card and was arrested.

5. Respondent stated that he does not see his friend anymore.

6. Respondent has no other convictions.

7. Respondent was previously licensed by the California Horse Racing Board as a jockey agent. This was six or seven years ago. Respondent did not disclose this licensure on his current real estate salesperson license application. Respondent stated his failure to disclose this was an oversight.

8. Respondent believes that, if he obtains a real estate license, he has a prospective employer who is aware of his criminal conviction. (It should be noted that no broker signed the broker certification on Respondent's license application however.)

9. For the past three years, Respondent has been self-employed. He owns a company that engages in resale distribution of safety products. He has been so employed for the past three years.

10. Respondent is married and has three children ages 14, 11 and 5. He participates in youth sport activities with his children.

11. Attached as a cover to Respondent's license application is a one page form stating: "Help Avoid Denial of Your License Application – Failure to Disclose Pertinent Information May Result in Denial of Your License Application and/or Delays." It urged applicants to disclose if in doubt and that "ever" means "ever."

12. Question 1 in Part D of Respondent's real estate salesperson license application asked: "HAVE YOU EVER BEEN CONVICTED OF A MISDEMEANOR OR FELONY? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER YOU MAY OMIT TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY." Respondent checked the box denoting "No" and failed to reveal his conviction described in Factual Findings 3 and 4 above.

13. Respondent stated that he failed to disclose his conviction because he was in doubt as to whether he had been convicted and he also thought that the record of the conviction was dismissed when you completed probation. No authority was submitted by Respondent in support of these contentions. Respondent is bound by his guilty plea and cannot re-litigate his conviction in this proceeding. *Arneson v. Fox* (1980) 28 Cal3d 440, 449.

LEGAL CONCLUSIONS

1. These proceedings are brought under the provisions of Business and Professions Code section 10100 et seq. and Government Code sections 11500 through 11528.

2. Respondent's criminal conviction set forth in Factual Findings 3 through 5 is substantially related to the qualifications, functions or duties of a licensee of the Department as more fully described in the California Code of Regulations, title 10, section 2910, subdivision (a) (8), in that it involved doing an unlawful act with the intent of conferring a financial or economic benefit upon Respondent.

3. Pursuant to Business and Professions Code sections 475, subdivision (a) (2); 480, subdivision (a), (1) and 10177, subdivision (b), cause exists to deny Respondent's application for a real estate license, in that Respondent has been convicted of the crime set forth in Factual Findings 3 through 6 that is substantially related to the qualifications, functions and duties of a licensee of the Department.

4. Respondent's failure to reveal his criminal conviction in his license application to the Department, under the circumstances of this case, constitutes an attempt to procure a real estate license by making a material misstatement of fact which is grounds for denial of the issuance of a real estate license pursuant to the provisions of Business and Professions Code 475, subdivision (a) (1), 480, subdivision (c) and 10177, subdivision (a). Factual Findings 10 through 12.


5. The Department's Criteria of Rehabilitation, set forth in California Code of Regulations, title 10, section 2911, provide the factors to be considered in evaluating the rehabilitation of an applicant for a license issued by the Department. Under the criteria, two years are required to have elapsed since Respondent's latest criminal conviction. In this case, it has been nearly twenty three years since Respondent's criminal conviction. Respondent is to be commended for his clean record since that time. He has satisfied all of the terms and conditions imposed by the court. He is successfully raising his family. Respondent has clearly demonstrated a sustained change in attitude and social contacts since he was involved in the events leading to his conviction. However, candor is required of the Department's licensees. Respondent's failure to disclose his conviction on his application is a serious matter. It is recognized that Respondent is very embarrassed over his conviction and has sought to keep the information from everyone. From the Department's standpoint, it must

know the background of all its licensees to insure appropriate protection for the public. Under these circumstances, Respondent's application should be denied at this time.

ORDER

Respondent Jason Kipp Winicki's application for a real estate salesperson license is denied.

Dated: August 18, 2011.

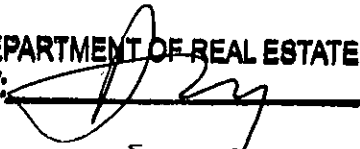

N. GREGORY TAYLOR
Administrative Law Judge
Office of Administrative Hearings

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FILED

APR 22 2011

DEPARTMENT OF REAL ESTATE
BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) No. H- 37220 LA
12 JASON KIPP WINICKI,) STATEMENT OF ISSUES
13 Respondent.)
14 _____)

15 The Complainant, Robin Trujillo, a Deputy Real Estate
16 Commissioner of the State of California, acting in her official
17 capacity, for Statement of Issues against JASON KIPP WINICKI
18 ("Respondent"), is informed and alleges as follows:

19 1.

20 On or about November 2, 2010, Respondent made
21 application to the Department of Real Estate of the State of
22 California for a real estate salesperson license.

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1 FIRST CAUSE FOR DENIAL

2 (CRIMINAL CONVICTION)

3 2.

4 On or about July 6, 1988, in the Municipal Court of
5 Glendale Judicial District, County of Los Angeles, State of
6 California, Case No. 88M03206, Respondent was convicted of
7 violating Penal Code Section 484f(2) (Forging Name on Credit
8 Card), a misdemeanor. Said crime bears a substantial
9 relationship to the qualifications, functions or duties of a
10 real estate licensee under Section 2910, Title 10, Chapter 6,
11 California Code of Regulations.

12 3.

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

17
18 SECOND CAUSE FOR DENIAL

19 (FAILURE TO DISCLOSE)

20 4.

21 In response to PART D, Question 1 of the license
22 application, to wit: "HAVE YOU EVER BEEN CONVICTED OF A
23 MISDEMEANOR OR FELONY? **CONVICTIONS EXPUNGED UNDER PENAL CODE**
24 **SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT TRAFFIC**
25 **CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY."**,
26 Respondent marked the box denoted "No," and failed to reveal the
27 conviction described in Paragraph 2, above.

1 5.

2 Respondent's failure to reveal the conviction set
3 forth herein in Paragraph 2 in his license application
4 constitutes an attempt to procure a real estate license by
5 fraud, misrepresentation, or deceit, or by making a material
6 misstatement of fact, or by knowingly omitting to state a
7 material fact in said application, which is grounds for denial
8 of the issuance of a license under Business and Professions Code
9 Sections 475(a)(1), 480(c), and/or 10177(a).

10 These proceedings are brought under the provisions of
11 Section 10100, Division 4 of the Business and Professions Code
12 of the State of California and Sections 11500 through 11528 of
13 the California Government Code.

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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, JASON KIPP WINICKI,
6 and for such other and further relief as may be proper under
7 other applicable provisions of law.

8 Dated at Los Angeles, California: April 12, 2011.

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12 Robin Trujillo
13 Deputy Real Estate Commissioner

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25 cc: JASON KIPP WINICKI
26 Robin Trujillo
27 Sacto