

FILED

DEPARTMENT OF REAL ESTATE

OCT 12 2011

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

BY: 

In the Matter of the Application of) No. H-37262 LA
)
) L-2011061001
JOSEPH R. ROGERS,)
)
)
Respondent.)
_____)

DECISION

The Proposed Decision dated September 12, 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, but the right to a restricted real estate salesperson license is granted to respondent. 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.

NOV 01 2011 This Decision shall become effective at 12 o'clock noon on _____.

IT IS SO ORDERED 10/4/11

BARBARA J. BIGBY
Acting Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JOSEPH R. ROGERS,

Respondent.

Case No. H-37262 LA

OAH No. 2011061001

PROPOSED DECISION

Michael R. Diliberto, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 16, 2011, in Los Angeles, California.

Julie L. To, Real Estate Counsel, represented Joseph D. Aiu (Complainant), Deputy Real Estate Commissioner of the State of California Department of Real Estate (Department).

Joseph R. Rogers (Respondent) appeared at the hearing and represented himself.

Oral and documentary evidence was received and the matter was submitted for decision on August 16, 2011. The Administrative Law Judge makes his factual findings, legal conclusions and orders as follows.

FACTUAL FINDINGS

1. Complainant filed the Statement of Issues in his official capacity.
2. Respondent applied to the Department for a real estate salesperson license on February 9, 2010, which the Department denied. The Statement of Issues was filed on May 11, 2011. Respondent filed his Request for Hearing on May 24, 2011, and this hearing ensued.

Criminal Convictions

3. On April 20, 2005, in the Superior Court of the State of California, County of Riverside, Case Number RIF105380, Respondent was convicted, after a jury found him guilty of violating Health and Safety Code sections 11379.6, subdivision (a) (manufacturing a controlled substance, to wit, cocaine/cocaine base), 11351.5 (sale of cocaine base), and 11352, subdivision(a) (transportation/sale/distribution of a controlled substance), all felonies. The court sentenced Respondent to five years in jail for violating Health and Safety Code section

11379.6, four years in jail for violating Health and Safety Code section 11351.5, and four years in jail for violating Health and Safety Code section 11352, subdivision (a), to be served concurrently (less credit for 32 days served). Respondent was also placed on parole for a term of 13 months, and ordered to perform 22 days of community service for the California Department of Transportation and pay fees and a restitution fine in the sum of \$1338. He ultimately served two years in jail and completed his 13-month parole in 2008.

4. The facts and circumstances underlying the conviction are that on August 17, 2002, Respondent sat in his parked car at a gas station in possession of rock cocaine that he intended to sell. When the police approached his car, he sped away and led the police on a high-speed freeway chase. During the chase, witnesses saw Respondent throw a blue bag out of the car window. The police retrieved the bag, which contained five ounces of cocaine base packaged in twenty separate bags weighing approximately one-quarter ounce each. When the police ultimately stopped Respondent, he had \$1720 cash in his pants pocket. At hearing, Respondent stated that he and a friend cooked powder cocaine into rock cocaine at Respondent's mother's house and that he was attempting to sell cocaine on the day of his arrest. He also expressed regret for his bad judgment and any harm his actions caused others. In his statement to the Department he was candid about his crime, stating that from 2000 to 2002, he converted powder cocaine into rock cocaine and sold it, and that he got involved with the wrong crowd selling drugs because it seemed to be an easy way to make money.

5. On January 24, 2001, in the Superior Court of the State of California, County of Riverside, Case Number PEF004660, Respondent was convicted, after his plea of guilty, of violating Penal Code section 273.5, subdivision (a) (infliction of corporal injury on spouse or cohabitant) and Vehicle Code section 2800.1, subdivision (a) (evading a peace officer), both misdemeanors. The court placed Respondent on summary probation for a term of three years under various terms and conditions, including an order to perform 20 hours of community service, complete a 52-week domestic violence batterers program, pay fines, fees and restitution in the sum of \$400, and to refrain from negative contact with the victims of his crime. The facts and circumstances underlying the conviction are that on July 11, 2000, Respondent got into an argument with his former girlfriend which escalated into a physical confrontation. At hearing, Respondent admitted that he scratched his girlfriend's arm during the altercation. In his statement to the Department he disclosed his crime and admitted that as he attempted to leave the altercation, she restrained him, and he pushed her and left. He also stated that after the police followed behind his car and turned on their police lights, he did not stop until he reached his home, resulting in the charge for evading a peace officer.

Rehabilitation

6. Respondent's two convictions occurred more than two years ago (more than six and ten years, respectively). Respondent's conviction in 2005 for manufacturing, selling and transporting rock cocaine involved profoundly serious conduct that involves moral turpitude.

He was convicted in 2001 for corporal injury upon his former girlfriend. He acknowledged both crimes by candidly disclosing them in his statement to the Department and admitting the crimes at hearing. For the controlled substance conviction, he served two years in jail, completed the court-ordered 13-month parole in 2008 and completed his community service and paid the court-ordered restitution. For the corporal injury conviction, Respondent completed his court-ordered 20 hours of community service (by working as a court clerk in the courthouse in the County of Riverside), the 52-week batterers' program, and his probation, and paid his fines, fees and restitution. Neither conviction is expunged.

7. Respondent is 36 years old, married for three years, with two children, ages eight and 14. He obtained a bachelor of science degree in kinesiology from California Baptist University in Riverside California in 2003 and passed the Department's salesperson exam in 2009. Since 2007, he has worked as an assistant for Leslie Douglas, a licensed broker and President of Executive Realty and Home Loans, Inc. in Riverside, California. From 2002 to 2005, he was employed by Empire Capital Mortgage while he was out on bond for his controlled substance arrest. He assisted City of Perris councilmember Al Landers in establishing a housing down payment assistance program by which the City of Perris provides second mortgages to homebuyers. The program was launched in 2008 and to date has helped approximately 260 people to purchase their homes. After his arrest, for three and one-half years, he served in a men's mentorship program with Temple Mission Baptist Church in San Bernardino, California, where he counseled youths at monthly social events and weekly follow-up meetings. Respondent has coached a high school football team and volunteered with the March of Dimes Foundation since 2007 and has attended church for the past 10 years.

8. Respondent presented himself as an articulate, forthright and credible witness. He expressed regret for his bad judgment in manufacturing and selling drugs and the harm suffered by others resulting from his conduct. Since his arrest for corporal injury, he and his former girlfriend are on friendly terms and they last spoke six months ago without incident. He is gaining valuable real estate experience as a broker's assistant and is determined to work hard as a salesperson to support his family. If licensed, he has the opportunity to be hired as a salesperson by Executive Realty and Home Loans, Inc. and by Preferred Realtor Associates. He has had no contact since August 17, 2002 with the friend who was involved in his drug crimes with him. There was no evidence that Respondent has committed any other crimes or had any other encounters with the criminal justice system.

9. Mark Douglas (Douglas), who testified on Respondent's behalf at the hearing, is Chief Executive Officer of Executive Realty and Home Loans, Inc. He is a licensed salesperson with 25 years of real estate experience. He and his wife, Leslie Douglas, have owned and operated Executive Realty and Home Loans, Inc. for 12 years. Douglas met and hired Respondent four years ago to work as an assistant for his wife. Respondent candidly disclosed his convictions to Douglas during his initial interview. Leslie Douglas is the President and broker of record and Douglas is Chief Executive Officer and oversees the daily

office activities. If Respondent becomes a licensed salesperson, Douglas is prepared to directly supervise Respondent. Douglas stated that after hiring Respondent as an assistant, he has already advanced to the level of an office manager capable of performing all tasks except for transactions. Respondent's duties include reviewing contracts and documents to ensure that the paperwork is in order, networking to bring in new business, and helping with supplies. Douglas employs 16 agents, some of whom consult with Respondent when they have real estate questions. To increase his knowledge, Respondent attends real estate seminars with Douglas. After working with Respondent for four years, Douglas has determined that he is a diligent worker and a good person.

10. Respondent submitted a January 13, 2010 character reference statement from Leslie Douglas, President and broker of record of Executive Realty and Home Loans, Inc., who states:

[Respondent] has worked as my assistant for over 2 years now, he is an excellent assistant, and has been a quick learner. When I first hired [him] he shared with me about his previous difficulties but knowing he had paid his debt to society and had tremendous potential I was very impressed with him and have had no regrets. It was one of the best decisions I could have made. [Respondent] now wants to go further in his career and has taken the necessary courses and successfully passed his real estate exam. Upon receipt of his license [he] will be able to take on new responsibilities and will enrich my company and his ability to excel as a salesperson.

11. Respondent submitted an undated letter from Al Landers (Landers), President and Chief Executive Officer of Preferred Realtor Associates in Perris, California. There was no evidence of whether Respondent told Landers about his crimes. Landers' letter states:

I have known [Respondent] for the last 20 years. What a fine young man he has grown up to be. [He] has been involved with various business, charitable and community projects in our city and county for a number of years. In my business dealing with him, I have found that he conducts his business with the utmost integrity and a sincere desire to better the community.

I have served as a member of the Perris City Council for the last 15 years. His mother, Rita Rogers, has served on the Council for the last 12 years. I am the First Elected mayor of our city. I also own and operate Preferred Realtor Associates. I have 15 agents and I would welcome [Respondent] with open arms in my firm. He is very trust-worthy and I would trust him with anything I have.

12. Respondent submitted a March 19, 2010 letter from Dr. C. Fred Workman (Workman), Chairman of the Board, Inland Empire Division of the March of Dimes

Foundation. Workman stated that for the last 3 years Respondent has participated as a volunteer for March of Dimes Foundation events, such as the organization's annual walk, annual Real Estate Leaders Awards Dinner, and other events.

13. Respondent submitted a January 11, 2010 letter from Andre Mitchell of Perris Valley Youth Association Sports, who states in relevant part:

I have known [Respondent] for approximately 8 years. We met while he was coaching youth basketball in the city of Perris, CA. I am the President of Perris Valley Youth Association Sports [and] a full time law enforcement officer. [Respondent] is dependable, responsible, honest and courteous. He regrets the choices he made in the past. He realizes choices made today can change the course of his life forever.

LEGAL CONCLUSIONS

Applicable Law

1. Business and Professions Code section 10177, subdivision (b), in conjunction with Business and Professions Code sections 475, subdivision (a)(2) and 480, subdivision (a)(1), allow the Commissioner of Real Estate to deny an application for a real estate salesperson license when the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee.

Substantial Relationship

2. California Code of Regulations, title 10, section 2910, defines acts or instances that shall be deemed substantially related to the qualifications, functions, or duties of a licensee, to be considered in determining whether a real estate salesperson's license should be denied. Under California Code of Regulations, title 10, section 2910, the following conduct, among other conduct, is substantially related to the qualifications, functions, or duties of a real estate salesperson: doing 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. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).)

Cause for Denial

3. Cause exists to deny Respondent's application pursuant to Business and Professions Code section 10177, subdivision (b), in conjunction with Business and Professions

Code sections 475, subdivision (a)(2) and 480 subdivision (a)(1), in that he was convicted of crimes substantially related to the qualifications, functions, or duties of a licensee. Respondent was convicted of selling a dangerous controlled substance capable of causing substantial injury to his victims, and he admitted his crimes at hearing. He was also convicted of inflicting corporal injury upon his former girlfriend, he pled guilty to the crime, and admitted his crime at hearing. (Factual Findings 3 through 5 and Legal Conclusion 2.)

Criteria for Rehabilitation

4. Having found that Respondent's criminal conduct is substantially related to the qualifications, functions, or duties of a real estate salesperson, it must be determined whether Respondent has been rehabilitated from his criminal conduct. California Code of Regulations, title 10, section 2911, provides the criteria to evaluate the rehabilitation of an applicant in considering whether or not to deny the issuance of a license based on a crime committed by the applicant.

5. Respondent has substantially satisfied the Department's applicable criteria for rehabilitation. He was convicted in 2005 for manufacturing, transporting and selling rock cocaine, a serious crime of moral turpitude that involves harm to the victims of his crimes, including possibly minors. He acknowledged his crimes by candidly disclosing them in his statement to the Department and admitting them at hearing. More than two years have passed since the date of Respondent's two convictions, which occurred more than six and ten years ago, respectively. (Cal. Code Regs., tit. 10, § 2911, subd. (a)). He had paid all of his court-ordered restitution. (Cal. Code Regs., tit. 10, § 2911, subd. (b).) The convictions are not expunged (Cal. Code Regs., tit. 10, § 2911, subd. (d)). For the controlled substance conviction, he served two years in jail and completed his court-ordered 13-month parole in 2008 and his community service requirement. For the corporal injury conviction, Respondent completed his court-ordered 20 hours of community service (by working as a court clerk in the courthouse in the County of Riverside). He also completed the 52-week batterers' program and his probation. (Cal. Code Regs., tit. 10, § 2911, subd. (e)). He paid the court-ordered fines and fees in full for his convictions (Cal. Code Regs., tit. 10, § 2911, subd. (g)). Respondent has a stable family life and three-year marriage (Cal. Code Regs., tit. 10, § 2911, subd. (h)). He obtained a bachelor of science degree in kinesiology from California Baptist University in Riverside, California in 2003, passed the Department's salesperson exam in 2009, and currently attends real estate training seminars. (Cal. Code Regs., tit. 10, § 2911, subd. (i).)

6. Respondent participates in various community activities. He assisted City of Perris councilmember Al Landers in establishing a housing down payment assistance program in which the City of Perris provides second mortgages to homebuyers. The program was launched in 2008 and to date has helped approximately 260 people to purchase their homes. After his arrest, for three and one-half years, he served in a men's mentorship program with Temple Mission Baptist Church in San Bernardino, California, where he counseled youths at

monthly social events and weekly follow-up meetings. Respondent has coached a high school football team and volunteered with the March of Dimes Foundation since 2007, and has attended church for the past 10 years. (Cal. Code Regs., tit. 10, § 2911, subd. (l).) He no longer associates with the friend who was involved with him in the controlled substance crimes (Cal. Code Regs., tit. 10, § 2911, subd. (m)). While the controlled substance crimes are serious felony crimes of moral turpitude, he was remorseful about his criminal actions and the effect his conduct had on the victims of his crimes. Since his arrest for corporal injury, he and his former girlfriend are on friendly terms and they last spoke six months ago without incident. He has turned his life around to become a productive member of society and a role model for youths. From 2002 to 2005, he was employed by Empire Capital Mortgage while he was out on bond for his controlled substance arrest. He candidly disclosed his convictions to the Department and to the owners of Executive Realty and Home Loans, Inc., who mentor him at his job as an assistant for the broker of record and are prepared to hire and supervise him as a salesperson. The owner of Preferred Realtor Associates is also prepared to hire Respondent as a salesperson. (Cal. Code Regs., tit. 10, § 2911, subd. (n).) (Factual Findings 6 through 13.)

7. Taking into consideration the totality of the evidence, including Respondent's change in attitude from that which existed when he committed his crimes more than six and ten years ago, as demonstrated by his service to the community to improve the lives of others and his service as a role model for youths, coupled with the on-the-job real estate mentoring and support he receives from the owners of Executive Realty and Home Loans, Inc., it would not be against the public interest to issue a restricted license subject to appropriate terms and conditions. (Factual Findings 6 through 13.)

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 10156.5 of the Business and Professions Code. The restricted license issued to the Respondent shall be subject 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 the authority of Section 10156.6 of that 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 years have elapsed from the date of issuance of the restricted license to Respondent.

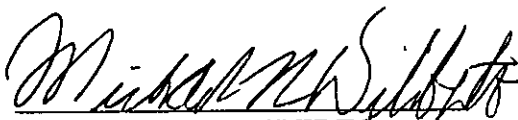
3. With the application for license, or with the application for transfer to a new employing broker, Respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(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 shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension of that license.

DATED: September 12, 2011

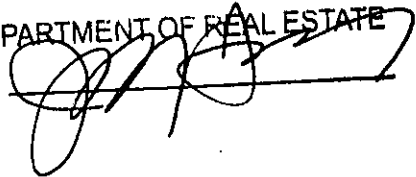

MICHAEL R. DILIBERTO
Administrative Law Judge
Office of Administrative Hearings

JULIE L. TO, Counsel (SBN 219482)
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FILED

MAY 11 2011

DEPARTMENT OF REAL ESTATE
BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	NO. H-37262 LA
JOSEPH R. ROGERS,)
Respondent.)
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The Complainant, Joseph D. Aiu, a Deputy Real Estate Commissioner of the State of California, for Statement of Issues against JOSEPH R. ROGERS, a.k.a. Joseph Raymond Rogers ("Respondent"), is informed and alleges as follows:

1.

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

2.

On or about February 9, 2010, Respondent made application to the Department of Real Estate of the State of California for a real estate salesperson license.

3.

On or about April 20, 2005, in the Superior Court of the State of California, County of Riverside, in Case No. RIF105380, Respondent was convicted of violating Health and Safety Code Section 11379.6(A) (manufacturing a controlled substance, to wit, cocaine/cocaine/base), Health and Safety Code Section 11351.5 (sale of cocaine base), and Health and Safety Code Section 11352(A) (transportation/sale/distribution of a controlled substance, to wit, cocaine base), all felonies. Respondent was sentenced to 5 years prison for violation of Health and Safety Code Section 11379.6, 4 years prison for violation of Health and Safety Code Section 11351.5, and 3 years prison for violation of Health and Safety Code section 11352(A) to be served concurrently. In addition, Respondent was sentenced to: 13 months parole, 22 days of CalTrans service and ordered to: pay restitution and \$10,000 Parole Revocation fine.

4.

On or about January 24, 2001, in the Superior Court of the State of California, County of Riverside, in Case No. PEF004660, Respondent was convicted of violating Penal Code Section 273.5(a) (infliction of corporal injury on spouse) and Vehicle Code Section 2800.1(A) (evading a peace officer), both misdemeanors. Respondent was sentenced to 36 months probations, 20 hours of community service and ordered to: pay restitution, complete 52 weeks of domestic violence treatment, and pay \$200 to domestic violence fund.

5.

These crimes, by their facts and circumstances, bear a substantial relationship under Section 2910, Title 10, Chapter 6, California Code of Regulations, to the qualifications, functions or duties of a real estate licensee.

6.

The crimes of which Respondent was convicted, constitute cause for denial of Respondent's application for a real estate license under Business and Professions Code Sections 475(a)(2), 480(a), and 10177(b).

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WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, JOSEPH R. ROGERS, and for such other and further relief as may be proper in the premises.

Dated at San Diego, California,

this 77 day of April, 2011.

Joseph D. Aiu
Deputy Real Estate Commissioner

cc: JOSEPH R. ROGERS
Executive Realty & Home Loans
Joseph D. Aiu
Sacto