

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of:

Balvinder Singh

Respondent.

Case No. H-37283 LA

OAH No. 2011061301

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 25, 2011.

Cheryl D. Keily, Staff Counsel, represented Complainant Sylvia Yrigollen, Deputy Real Estate Commissioner in the Department of Real Estate (Department).

Balvinder Singh (Respondent) represented himself.

Oral and documentary evidence was received and the matter was submitted August 2, 2011.

The Department of Real Estate brings this Statement of Issues to deny Respondent's application for a mortgage loan originator license endorsement. Because the Department is legally precluded from granting the application, it must be denied.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued this Statement of Issues in her official capacity.
2. On August 27, 2010, Respondent, a licensed real estate broker, applied for a mortgage loan originator license endorsement. The Department refused to grant the application, Respondent timely requested a hearing, and this proceeding ensued.

Criminal Conviction

3. On August 13, 1986, Respondent was convicted on his guilty plea of making a false statement on a passport application, in violation of Title 18, Section 1542 of the United States Code, a felony. Respondent, who was born in India, attempted to become an

American citizen, or be considered one, by stating on the application that he was born in Los Angeles. He was sentenced to five years probation, which the court terminated after three years. Respondent has not received a pardon for this conviction.

4. Respondent became a United States citizen in 1990. He obtained a real estate salesperson license in 1991 and a real estate broker license in 1995. He has been accredited as an Enrolled Agent, qualified to represent taxpayers before the Internal Revenue Service, since 1994. Respondent submitted eight letters attesting to his character and honesty from persons who know him personal or professionally.

LEGAL CONCLUSIONS

1. Cause exists to deny the license under Business and Professions Code¹ sections 480 and 10166.05, subdivision (b), as alleged in paragraph 3 of the Statement of Issues. Section 480, subdivision (a)(1) allows a board to deny a license to an applicant who has been "convicted of a crime," if the crime is "substantially related to the qualifications, functions, or duties of the business or profession for which application is made." (§480, subd. (a)(3)(B).) Section 10166.05, subdivision (b)(2), enacted in 2009, requires that the Department deny an application for a mortgage loan originator endorsement unless the applicant has never been convicted of a felony at "any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering." This statute is substantially identical to a 2008 federal statute, Title 12 United States Code section 5104(b)(1)(B). The Department has promulgated regulations making it clear that this is a lifetime ban, and an absolute one: California Code of Regulations Title 10, section 2945.3 provides, "A felony conviction at any time in the applicant's personal history where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering is cause for denial of the application. These restrictions constitute a ban on the real estate licensee's ability to apply for a license endorsement. These restrictions are not subject to mitigation or rehabilitation."²

2. Respondent was convicted of the crime of making a false statement on a passport application, which involves dishonesty (Factual Finding 3). Under Title 12 United States Code section 1542, it is punishable by a maximum sentence of ten years in prison for a first offense with no aggravating circumstances, which makes it Class D felony, as defined in 18 United States Code section 3359(a). Because he was convicted of a felony involving dishonesty, he comes within the absolute ban on applying for a mortgage originator license endorsement.

¹ All further statutory references are to the Business and Professions Code, unless otherwise stated.

² Business and Professions Code section 10166.05, subdivision (b) provides that "any pardon of a conviction shall not be considered a conviction for purposes of this subdivision," which seems to say, if unclearly, that a pardon removes the ban. Respondent was not pardoned.

3. Respondent is a fully rehabilitated, responsible member of the community, and the Department has accepted his rehabilitation as a fact by issuing and renewing his licenses for 20 years (Factual Finding 4). But for the very specific purposes of an application for mortgage loan originator license endorsement, rehabilitation cannot be considered, and the license endorsement cannot be granted.

ORDER

The application of Balvinder Singh for a mortgage loan originator license endorsement is denied.

DATED: September 6, 2011

Howard Posner

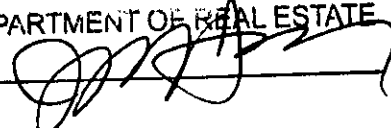
HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings

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FILED

MAY 19 2011

DEPARTMENT OF REAL ESTATE
BY: 

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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12 In the Matter of the Application of) NO. H-37283 LA
13 BALVINDER SINGH,)
14) STATEMENT OF ISSUES
15 Respondent.)

16 The Complainant, Sylvia Yrigollen, a Deputy Real
17 Estate Commissioner of the State of California, for cause of
18 Statement of Issues against BALVINDER SINGH, aka Balvinder
19 Gidda, ("Respondent"), is informed and alleges as follows:

20 1.

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

24 2.

25 Respondent is presently licensed and/or has license
26 rights under the under the Real Estate Law (Part 1 of Division 4
27

1 of the Business and Professions Code, hereinafter "Code") as a
2 real estate broker.

3 3.

4 On or about August 27, 2010, Respondent made
5 application to the State of California Department of Real
6 Estate (hereinafter "the Department") for a mortgage loan
7 originator license endorsement (hereinafter "license
8 endorsement").

9 4.

10 On or about August 13, 1986, in the United States
11 District Court, Central District of California, Case No. CR 86-
12 478, Respondent was convicted of violating Title 18, Section
13 1542 of the United States Code (False Statement in Application
14 for Passport), a felony, and a crime involving fraud,
15 dishonesty, a breach of trust, or money laundering.

16 5.

17 The facts alleged in Paragraph 4, above, constitute
18 cause for denial of Respondent's application for a license
19 endorsement under Section 480(a) (Denial of License by Board -
20 Conviction of Crime) and Section 10166.05(b) (Conviction of
21 Felony Crime) of the Code.
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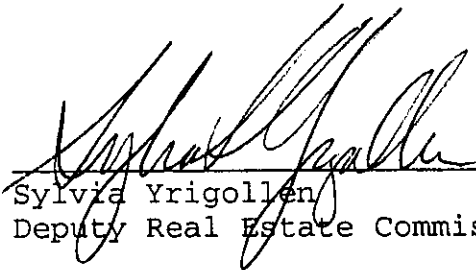
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Statement of Issues, and
3 that upon proof thereof, a decision be rendered that the
4 Commissioner refuse to authorize the issuance of, and deny the
5 issuance of, a license endorsement to Respondent BALVINDER
6 SINGH, and for such other and further relief as may be proper
7 under the provisions of law.

8 Dated at Sacramento, California

9 this 17th day of May, 2011.

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14 Sylvia Yrigollen
15 Deputy Real Estate Commissioner
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26 cc: BALVINDER SINGH
27 Sylvia Yrigollen
Sacto.