

● **FILED**

BEFORE THE DEPARTMENT OF REAL ESTATE

APR - 4 2012

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE
BY: 

* * * * *

In the Matter of the Application of)
JACK SAMUEL STEVENSON,)
Respondent.)
_____)

No. H-37332 LA
L-2011080814

DECISION

The Proposed Decision dated February 16, 2012, 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.

This Decision shall become effective at 12 o'clock noon on April 24, 2012.

IT IS SO ORDERED

3/30/2012

Real Estate Commissioner


By WAYNE S. BELL
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of:

Jack Samuel Stevenson,

Respondent.

Case No. H-37332 LA

OAH No. 2011080814

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on January 17, 2012.

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

Respondent Jack Stevenson represented himself.

Oral and documentary evidence was received and the matter was submitted January 17, 2012.

The Department of Real Estate brings this Statement of Issues to deny Respondent's application for a real estate salesperson license. For the reasons set out below, a restricted license should be granted.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued this Statement of Issues in her official capacity.
2. On December 21, 2009, respondent applied for a real estate salesperson license. The Department refused to grant the application and respondent timely requested a hearing.

Criminal Conviction

3. On June 29, 2006, in Ventura County Superior Court case number 2002021271, respondent was convicted on his guilty plea of violating Penal Code section 148.5, subdivision (a) (false report of a crime), and convicted by a jury of violating Penal

Code section 550, subdivision (b)(1) (insurance fraud), both misdemeanors. Respondent had driven his car from Ventura to Los Angeles on May 15, 2001 to take the California real estate salesperson examination. When he drove into a guardrail getting off the freeway and damaged the car, he parked it at a meter, took the examination, and rode a train back to Oxnard. When he arrived at the Oxnard Transportation Center he reported to the police that he had parked the car at the Transportation Center parking lot in the morning, ridden the train to Los Angeles, and returned to find the car stolen. He then made a claim for a stolen car with his insurance company. Respondent's insurance policy had a lower deductible for theft (\$100) than for collision (\$1,000), and theft, unlike a collision for which respondent was at fault, was not an incident likely to raise respondent's premiums. In June 2001, when questioned by an insurance company attorney about the suspicious details of his claim (police in Los Angeles had found the car, which was equipped with an electronic tracking system, within hours after it was reported stolen, near where respondent had gone for the license examination, with a parking ticket made out at noon) respondent admitted that he had damaged the car and fabricated the story about the theft. Respondent's car was repaired and he paid the higher deductible. A year later, in June 2002,¹ he told an investigator for the Ventura County District Attorney's Major Fraud Unit that his original story about the theft was the correct one, and that the insurance company attorney had told him to change his story to facilitate processing his claim.

4. A judge signed an arrest warrant for the crimes on June 27, 2002. By that time respondent had obtained a real estate salesperson license, then moved to St. George, Utah, and was commuting between offices in St. George and Las Vegas as office manager for a mortgage company. Respondent testified at hearing (without any contrary evidence) that he was unaware of the warrant until 2006, when he applied for a state license in Nevada (where he had moved in 2004), and the warrant was discovered during the application process.² On his own initiative, respondent contacted the Ventura District Attorney's office and appeared in court. He was sentenced to 45 days in jail and three years unsupervised probation, and fined \$1,878.

5. On July 3, 2006, in Ventura County Superior Court case number 2006016418, Respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (driving with blood alcohol above 0.8%), a misdemeanor. Respondent was arrested for drunk driving while traveling from Las Vegas to Ventura for his June 29, 2006 convictions (see Factual Findings 3 and 4). Respondent was sentenced to two days in jail (to be served consecutively with his sentence for the two previous crimes) and three years of supervised probation, and ordered to pay \$2,765 in fines and fees. He was also ordered to abstain from alcohol, enroll in a nine-month DUI first offender program, and not drive a car without an ignition interlock device for one year.

¹ The District Attorney's office appears to have first become involved a year after respondent's claim was resolved. Nothing in the record explains why a year passed.

² Respondent's California license expired in 2005, while he was living in Nevada. He did not attempt to renew it.

Mitigation and Rehabilitation

6. The court in the drunk driving case changed respondent's supervised probation to unsupervised probation on August 21, 2008. Respondent paid all fines and fees and met all the terms of his probation. The conviction in the drunk driving case was dismissed under Penal Code section 1203.4 on January 30, 2011. His convictions in case number 2002021271 were dismissed under section 1203.4 on March 2, 2011.

7. Respondent began attending Alcoholics Anonymous meetings while on work release from his jail term. There was no evidence about whether he continued to do so. In Nevada in 2009, he took a "responsible alcohol" course in conjunction with his work as a restaurant manager. He attended a similar course given by the Oxnard Police Department in 2010.

8. In 2009, respondent and his family moved back to California, and now live in Camarillo. Respondent has worked as a restaurant manager since returning to California. In the course of his work, he has organized charitable or community events such as free dinners for Oxnard schoolchildren with good grades, and parties at the conclusion of breast cancer awareness walks.

9. Respondent and his wife have been married 22 years. They have three children together and another from her previous marriage. He and his wife have volunteered as chaperones for events at local Boys and Girls Clubs, where their children are active.

10. Respondent testified at hearing that his false report and insurance claim were wrong, irrespective of the outcome, because he was dishonest, and he imposed costs of investigation on the police, district attorney and insurance company.

LEGAL CONCLUSIONS

1. Cause exists to deny the license under Business and Professions Code sections 475, 480 and 10177,³ as alleged in paragraph 3 of the Statement of Issues. Section 480, subdivision (a)(1) (which, under section 475, governs a license denial under these circumstances) allows a board to deny a license to an applicant who has been "convicted of a crime," (even if the conviction has been expunged or dismissed under Penal Code section 1203.4) 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 10177, subdivision (b), which applies specifically to the Department, similarly allows it to deny a license to an applicant who has been convicted of "a crime substantially related to the qualifications, functions, or duties" of a real estate licensee. Under California Code of

³ Further references to the Business and Professions Code are cited as sections.

Regulations title 10, section 2910,⁴ the crime of insurance fraud and making a false report of crime (Factual Finding 3) is substantially related because:

- a. It involved "fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person" (CCR section 2910, subd. (a)(1));
- b. It involved "the uttering of a false statement" (subd. (a)(2));
- c. It involved "fraud, deceit, falsehood or misrepresentation to achieve an end" (subd. (a)(4));
- d. It involved an "unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator (subd. (a)(8));

2. CCR section 2912, subdivision (b) provides that a crime involving an attempt to commit any act listed in subdivision (a) is substantially related to a licensee's qualifications, functions or duties. Respondent's false statements to the police and his insurer were an attempt to reducing the amount he paid as the deductible amount under his policy, or his future premiums.

3. Respondent's drunk driving conviction (Factual Finding 5) does not, in itself, create cause to deny the license. Under CCR section 2910, subdivision (a)(11), more than a single such conviction is necessary to be substantially related to a licensee's qualifications, functions or duties. Subdivision (a)(11) provides instead that "[t]wo or more convictions involving the consumption or use of alcohol or drugs" establish substantial relationship "when at least one of the convictions involve driving and the use or consumption of alcohol or drugs." The conviction can nonetheless be considered as an aggravating factor in determining whether respondent is rehabilitated.

4. Respondent has the burden of showing rehabilitation. He has met the applicable criteria for rehabilitation set out in CCR section 2911:

- (a) It has been more than five years since his convictions (Factual Finding 3 and 5), meeting the criterion of "passage of not less than two years since the most recent criminal conviction" in section 2911, subdivision (a). Significantly, respondent committed the actions leading to his insurance-claim-related convictions in 2001 and 2002 (Factual Finding 3)
- (b) He paid all fines and other monetary penalties (subd. (g)) (Factual Finding 6).
- (c) He completed probation (subd. (e)) and his convictions have all been dismissed under Penal Code section 1203.4 (subd. (c)) (Factual Finding 6).
- (d) His longstanding marriage (Factual Finding 9) shows "[s]tability of family life and fulfillment of parental and familial responsibilities subsequent to the conviction" (subd. (h)).

⁴ Further references to the California Code of Regulations are cited as "CCR."

(e) His restaurant-business-related "responsible alcohol" courses in 2009 and 2010 (Factual Finding 7), meet the definition of "educational courses for economic self-improvement (subd. (i)), though they are given less weight than more substantial educational courses.

(f) Respondent's organizing community and charitable events (Factual Finding 8) may not rise to the level of "[s]ignificant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems" (subd. (l)), particularly since the monetary largesse is his employer's not respondent's, but as evidence of community involvement, it is entitled to some weight.

(g) Respondent's attitude has changed since the conduct in question (subd. (n)). His testimony shows an understanding of the problems his dishonesty caused, and he has been free of troubles with the law for more than five years (Factual Finding 10).

5. While Respondent has shown rehabilitation, the nature of the crime, which involved fraud, indicates a need for caution. The public interest will be best served if he is granted a restricted license.

ORDER

Respondent's application for a real estate salesperson license is denied; but 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 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 or 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:

(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 or revocation of that license.

DATED: February 16, 2012



HOWARD POSNER

Administrative Law Judge

Office of Administrative Hearings

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FILED

JUN 15 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- 37332 LA
12 JACK SAMUEL STEVENSON,)	<u>STATEMENT OF ISSUES</u>
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 JACK SAMUEL STEVENSON,
18 ("Respondent") alleges as follows:

19 1.

20 On or about December 21, 2009, 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 (CRIMINAL CONVICTIONS)

2 2.

3 On or about June 29, 2006, in the Superior Court of
4 California, County of Ventura, Case No. 2002021271, Respondent
5 was convicted of violating Penal Code Sections 148.5(a) (False
6 Report of a Crime), and 550(b)(1) (Insurance Fraud), both
7 misdemeanors. Said crimes bear a substantial relationship to
8 the qualifications, functions or duties of a real estate
9 licensee under Section 2910, Title 10, Chapter 6, California
10 Code of Regulations.

11 3.

12 On or about July 3, 2006, in the Superior Court of
13 California, County of Ventura, Case No. 2006016418, Respondent
14 was convicted of violating Vehicle Code Section 23152(b) (DUI,
15 Blood Alcohol above 0.8%), a misdemeanor. Said crime bears a
16 substantial relationship to the qualifications, functions or
17 duties of a real estate licensee under Section 2910, Title 10,
18 Chapter 6, California Code of Regulations.

19 4.

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

24
25 These proceedings are brought under the provisions of
26 Section 10100, Division 4 of the Business and Professions Code
27 of the State of California and Sections 11500 through 11528 of

1 the California Government Code.

2

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

10 Dated at Los Angeles, California: June 13, 2011.

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Robin Trujillo
Deputy Real Estate Commissioner

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25 cc: JACK SAMUEL STEVENSON
26 Robin Trujillo
27 Sacto