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FILED

MAR - 6 2013

DEPARTMENT OF REAL ESTATE
BY: *R. Hebert*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA
* * *

In the Matter of the Accusation of)	DRE No: H-37838 LA
)	OAH No: 2012040006
MICHAEL TURON,)	
)	
Respondent.)	
)	
)	

DECISION AFTER REJECTION

This matter came on for hearing before Howard Posner, Administrative Law Judge of the Office of Administrative Hearings (ALJ), at Los Angeles, California, on July 31, 2012. Diane Lee, Real Estate Counsel, represented the Complainant. Respondent appeared in person and represented himself.

Oral and documentary evidence was received. The record was closed on July 31, 2012. On August 29, 2012, the ALJ submitted a Proposed Decision which I declined to adopt as my Decision herein.

Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of my determination not to adopt the Proposed Decision of the ALJ

1 along with a copy of said Proposed Decision. Respondent was
2 notified that I would decide the case upon the record, the
3 transcript of proceedings held on July 31, 2012, and upon any
4 written argument offered by Respondent and Complainant. On
5 December 27, 2012, an Argument was received from Respondent.
6 Complainant submitted an Argument on December 28, 2012.

7 I have given careful consideration to the record in
8 this case, including the transcript of the proceedings of July
9 31, 2012. I have also considered the Arguments submitted by
10 Respondent and Complainant. The following shall constitute the
11 Decision of the Real Estate Commissioner in this proceeding:

12 FACTUAL FINDINGS

13 1. Complainant, Robin Trujillo, made the Accusation in
14 her official capacity as Deputy Real Estate Commissioner of the
15 State of California.

16 2. The California Department of Real Estate
17 ("Department") has licensed Respondent as a real estate
18 salesperson since July 31, 2006. The license will expire on July
19 30, 2014. On February 8, 2012, the Department brought the
20 Accusation, and Respondent timely requested a hearing.

21 3. Criminal Conviction

22 On February 9, 2009, in the Superior Court of
23 California, County of San Diego, Case No. CD216983, Respondent
24 was convicted on his guilty plea of possession of marijuana for
25 sale, in violation of Health & Safety Code Section 11359, a
26 felony. Respondent was arrested in October 2008. At hearing, he
27 testified that tenants renting a house from him used the house

1 for large-scale marijuana growing, and illegally diverted
2 electricity to run growing lights and related appliances.
3 Respondent testified at hearing that while he did not actively
4 grow or sell marijuana, he knew about the operation but did not
5 report it to police, object to it, or try to evict the tenants.
6 Other than Respondent's testimony at hearing and court records,
7 there was no other evidence about the crime: no police report was
8 introduced. Respondent was not convicted of tampering with
9 electric lines, but his plea agreement included an obligation to
10 pay \$10,000 to San Diego Gas & Electric. He was also fined \$680,
11 ordered to complete 45 days of community service and placed on
12 formal probation for three years. The sentencing order provided
13 that the fines and restitution could be paid at the rate of \$50
14 per month.

15 Factors in Mitigation and Rehabilitation

16 4. Respondent met all of the financial obligations
17 resulting from his conviction, including paying the \$10,000 in
18 restitution. On May 16, 2012, the court dismissed his
19 conviction, pursuant to Penal Code Section 1203.4.
20

21 5. Respondent further testified as follows:

22 a. Prior to the conviction, Respondent served on
23 active duty and as a reservist for the Marine Corps. He reached
24 the rank of Chief Warrant Officer 2, but resigned from the Marine
25 Corps due to his conviction. Respondent currently works as a
26 defense contractor for Raytheon, which requires a security
27 clearance.

1 b. In 2009, Respondent started a Master of Business
2 Administration program at the University of Phoenix. In May
3 2010, he completed the program.

4 c. Respondent mentors local secondary school students
5 in MESA (Mathematics, Engineering, Science, Achievement) program
6 once a week. Prior to the conviction, Respondent also did
7 substantial volunteer work with MESA and Toys for Tots.

8 d. Respondent was married in 2011. Respondent and his
9 wife are expecting a child in Fall 2012, and he continues to be
10 the primary caregiver for his daughter from a previous
11 relationship.

12 e. Respondent no longer rents to marijuana growers.

13 6. Three character letters from former superior
14 officers in the military who are also current co-workers were
15 introduced into evidence as administrative hearsay. They attest
16 to Respondent's dedication and trustworthiness.

17 7. Respondent obtained treatment from psychologist
18 Edwin Yager, Ph.D who stated in his reports that Respondent was
19 forthright and sincere about wanting to reform his behavior.

20 LEGAL CONCLUSIONS

21 1. The crime set forth in Finding 3 is substantially
22 related to the qualifications, functions and duties of a licensee
23 of the Department under California Code of Regulations, Title 10,
24 section 2910, subdivision (a)(8) because possession of illegal
25 drugs for sale involves doing an "unlawful act with the intent of
26 conferring a financial or economic benefit upon the perpetrator.
27

1 2. Cause exists for suspension or revocation of
2 Respondent's license under Business and Professions Code sections
3 490 and 10177 subdivision (b) for a conviction of a crime, by
4 reason of Finding 3.

5 Criteria of Rehabilitation

6 3. Respondent's Accusation is governed by the Criteria
7 of Rehabilitation set forth in the California Administrative
8 Code, Section 2912, Title 10, Chapter 6, California Code of
9 Regulations ("Regulations"). Section 2912 provides as follows:
10 "The following criteria have been developed by the department
11 pursuant to Section 482(b) of the Business and Professions Code
12 for the purpose of evaluating the rehabilitation of a license
13 against whom an administrative disciplinary proceeding for
14 revocation or suspension of the license has been initiated on
15 account of a crime committed by the licensee."

16 4. Although Judge Posner held that Respondent had
17 satisfied the applicable rehabilitation criteria listed in
18 Regulation 2912, the appellate court has made clear that
19 rehabilitation as a matter of law does not exist. Rehabilitation
20 is a component of penalty, which is vested in the discretion of
21 the Board "subject only to 'manifest abuse'" *Windham v. Board of*
22 *Medical Quality Assurance*, 104 Cal.App.3d 461, 472, 473 (1980)
23 (quoting *Cadilla v. Board of Medical Examiners*, 26 Cal. App. 3d
24 961, 968 (1972)).

25 5. It should also be noted that Respondent was
26 released from probation less than six months before the hearing
27 date. "Since persons under the direct supervision of correctional

1 authorities are required to behave in exemplary fashion, little
2 weight is generally placed on the fact that a bar applicant did
3 not commit additional crimes . . . while on probation or parole."
4 *In Re Gossage*, 23 Cal. 4th 1080, 1099 (2000). Judge Posner noted
5 that "Respondent was convicted less than four years ago of a
6 felony, and has no real track record as a real estate licensee in
7 mitigation of that conviction." Therefore, insufficient time had
8 passed for Respondent to demonstrate rehabilitation.

9 6. The Real Estate Law and the disciplinary procedures
10 provided for in the Real Estate Law are designed to protect the
11 public and to achieve the maximum protection for the purchasers
12 of real property and those dealing with real estate licensees.
13 California Business and Professions Code Section 10050; *Handeland*
14 *v. Department of Real Estate*, 58 Cal. App. 3d 513 (1976).

15 7. It would be consistent with protection of the
16 public interest, to allow Respondent to obtain a restricted
17 license for a longer term.

18 ORDER

19 WHEREFORE, THE FOLLOWING ORDER is hereby made:

20 All licenses and licensing rights of Respondent
21 MICHAEL TURON are revoked' provided, however, a restricted real
22 estate salesperson license shall be issued to Respondent pursuant
23 to section 10153.5 of the Business and Professions Code if
24 Respondent makes application therefore any pays to the Department
25 of Real Estate the appropriate fee for the restricted license
26 within 90 days from the effective date of this Decision. The
27 restricted license issued to the Respondent shall be subjected to

1 all of the provisions of section 10156.7 of the Business and
2 Professions Code and to the following limitations, conditions and
3 restrictions imposed under authority of section 10156.6 of that
4 Code:

5 1. The restricted license issued to Respondent may be
6 suspended prior to hearing by Order of the Real Estate
7 Commissioner in the event of Respondent's conviction or plea of
8 nolo contendere to a crime which is substantially related to
9 Respondent's fitness or capacity as a real estate licensee.

10 2. The restricted license issued to Respondent may be
11 suspended prior to hearing by Order of the Real Estate
12 Commissioner on evidence satisfactory to the Commissioner that
13 Respondent has violated provisions of the California Real Estate
14 Law, the Subdivided Lands Law, Regulations of the Real Estate
15 Commissioner or conditions attaching to the restricted license.

16 3. Respondent shall not be eligible to apply for the
17 issuance of an unrestricted real estate license nor for the
18 removal of any of the conditions, limitations or restrictions of
19 a restricted license until four (4) years have elapsed from the
20 effective date of this Decision.

21 4. Respondent shall submit with any application for
22 license under an employing broker, or any application for
23 transfer to a new employing broker, a statement signed by the
24 prospective employing real estate broker on a form approved by
25 the Department of Real Estate which shall certify:

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1 (a) That the employing broker has read the Decision of
2 the Commissioner which granted the right to a
3 restricted license; and

4 (b) That the employing broker will exercise close
5 supervision over the performance by the restricted
6 licensee relating to activities for which a real estate
7 license is required.

8 5. Respondent shall, within nine months from the
9 effective date of this Decision, present evidence satisfactory to
10 the Real Estate Commissioner that Respondent has, since the most
11 recent issuance of an original or renewal real estate license,
12 taken and successfully completed the continuing education
13 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
14 for renewal of a real estate license. If Respondent fails to
15 satisfy this condition, the Commissioner may order the suspension
16 of the restricted license until the Respondent presents such
17 evidence. The Commissioner shall afford Respondent the
18 opportunity for a hearing pursuant to the Administrative
19 Procedure Act to present such evidence.

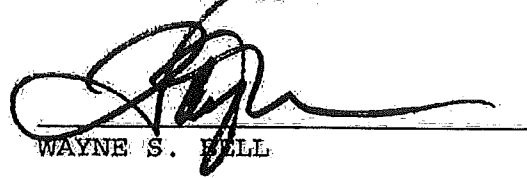
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21 6. Respondent shall notify the Commissioner in writing
22 within 72 hours of any arrest by sending a certified letter to the
23 Commissioner at the Department of Real Estate, Post Office Box 187000,
24 Sacramento, CA 95818-7000. The letter shall set forth the date of
25 Respondent's arrest, the crime for which Respondent was arrested and
26 the name and address of the arresting law enforcement agency.
27 Respondent's failure to timely file written notice shall constitute an

1 independent violation of the terms of the restricted license and shall
2 be grounds for the suspension or revocation of that license.

3 This Decision shall become effective at 12 o'clock noon
4 on MAR 26 2013.

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7 IT IS SO ORDERED 3/6/2013.

8 REAL ESTATE COMMISSIONER

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10 
11 WAYNE S. BELL

Handwritten initials/signature

FILED

OCT 19 2012

DEPARTMENT OF REAL ESTATE
BY: *R. Milderholt*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of

MICHAEL TURON,

Respondent.

No. H-37838 LA

OAH No. 2012040006

NOTICE

TO: MICHAEL TURON, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated August 29, 2012, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated August 29, 2012, is attached for your information.

In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on July 31, 2012, any written argument hereafter submitted on behalf of Respondent and Complainant.

Written argument of Respondent to be considered by me must be submitted within 15 days after receipt of the transcript of the proceedings of July 31, 2012, at the

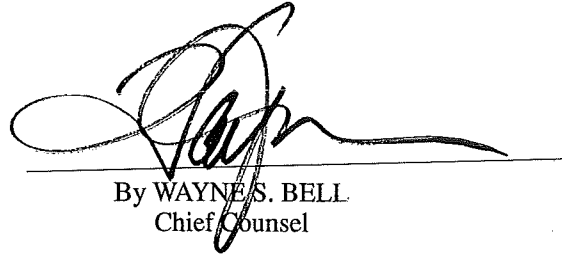
1 Los Angeles office of the Department of Real Estate unless an extension of the time is granted
2 for good cause shown.

3 Written argument of Complainant to be considered by me must be submitted
4 within 15 days after receipt of the argument of Respondent at the Los Angeles office of the
5 Department of Real Estate unless an extension of the time is granted for good cause shown.

6 DATED: _____

9/28/2012

7 Real Estate Commissioner

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11 By WAYNE S. BELL
12 Chief Counsel

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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

Michael Turon,

Respondent.

Case No. H- 37838 LA

OAH No. 2012040006

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on July 31, 2012.

Diane Lee, Staff Counsel, represented complainant Robin Trujillo, Deputy Real Estate Commissioner, Department of Real Estate (Department).

Respondent Michael Turon represented himself.

At hearing the Accusation was amended to delete an allegation that respondent's license had expired. Oral and documentary evidence was received and the matter was submitted July 31, 2012.

The Department brings this Accusation to revoke respondent's real estate salesperson license. For the reasons set out below, respondent's license is revoked, but he may apply for a restricted real estate salesperson license.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued the Accusation in her official capacity.
2. The Department has licensed Respondent as a real estate salesperson since July 31, 2006. The license will expire July 30, 2014. On February 8, 2012, the Department brought this Accusation to revoke respondent's license, and respondent timely requested a hearing.

Criminal Conviction

3. On February 9, 2009, in San Diego Superior Court, Case No. CD216983,

respondent was convicted on his guilty plea of possession of marijuana for sale in violation of Health and Safety Code section 11359, a felony. Respondent was arrested in October 2008. At hearing, he testified that tenants renting a house from him used the house for large-scale marijuana growing, and illegally diverted electricity to run growing lights and related appliances. Respondent testified at hearing that while he did not actively grow or sell marijuana, he knew about the operation but did not report it to the police, object to it, or try to evict the tenants. Other than respondent's testimony at hearing and court records, there was no other evidence about the crime: no police report was introduced. Respondent was not convicted of tampering with electric lines, but his plea agreement included an obligation to pay \$10,000 in restitution to San Diego Gas & Electric. He was also fined \$680, ordered to complete 45 days of community service and placed on formal probation for three years. The sentencing order provided that the fines and restitution could be paid at the rate of \$50 per month.

Mitigation and Rehabilitation

4. Respondent met all the financial obligations resulting from his conviction, including paying the \$10,000 in restitution. On May 16, 2012, nine months before his probation would normally end, the court dismissed his conviction pursuant to Penal Code section 1203.4 and terminated his probation.

5. Respondent enlisted in the Marine Corps after completing high school in 1994. After two years of active duty, he returned to civilian life but remained a Marine reservist. While working to support himself and a daughter who was born in 1997, he obtained a degree in electrical engineering from San Diego State University in 2000. He worked at Raytheon Corporation for about four years before being recalled to active duty in 2004. He trained aircraft mechanics at Camp Pendleton before his unit was deployed to Iraq for seven months in 2005. Respondent returned to Raytheon in 2006 (and acquired his real estate license that year), but was once again recalled to active duty as a commander of an aircraft maintenance unit, in February 2007. He reached the rank of Chief Warrant Officer 2,¹ but resigned from the Marine Corps because of his conviction. He now operates testing facilities at Raytheon's Space and Airborne Systems division in El Segundo. Raytheon is a prominent defense contractor, and respondent's work there requires a security clearance.

6. In 2009 respondent began a Master of Business Administration program at the University of Phoenix. He completed the degree in May 2010. An advanced degree will help to advance his career at Raytheon.

7. Through Raytheon's auspices, respondent mentors local secondary school students in the MESA (Mathematics, Engineering, Science, Achievement) program one afternoon per week. He also did substantial volunteer work with MESA and Toys for Tots

¹ Warrant officer is a rank given to technical specialists and experts who have distinguished themselves as enlisted personnel. They are considered higher in rank than all enlisted personnel but lower in rank than any commissioned officer. They normally do not command in combat.

during his active Marine duty, and for that volunteer work was awarded an Outstanding Volunteer Service Medal in June 2008 for “outstanding public service” that “significantly enhanced the Marine Corps’ reputation throughout the local San Diego area” and “made a positive impact on civil-military relations.”

8. Respondent introduced character letters from three former superior officers in the military, one of whom also worked with respondent at Raytheon. The letters all date from after his arrest (two of them date from after his conviction), and were written to support respondent’s attempt to remain a Marine warrant officer. They all described respondent as dedicated, resourceful, trustworthy and proficient at his job. Two of them noted that he is a devoted single parent.

9. Respondent separated from his daughter’s mother when his daughter was three months old, and his daughter has lived with him ever since, except when he was deployed overseas, when she lived with her mother. Respondent got married in 2011. He and his wife are expecting a child in fall 2012.

10. Respondent has worked very little as a real estate salesperson. He plans to become more involved in real estate when he retires from his job at Raytheon.

11. After his arrest in October 2008, respondent sought the assistance of psychologist Edwin Yager in “getting back on the straight and narrow path,” as Dr. Yager quoted respondent in a report. Respondent saw his legal troubles as a continuation of behavioral problems that had plagued him since he returned from Iraq. The purpose of seeking treatment may have been to convince a judge or prosecutor that leniency was in order (Dr. Yager’s second and last report says, in essence, that treatment has been a success, and that Dr. Yager recommends “all possible leniency”) but is dated March 26, 2009, about six weeks after respondent was sentenced. Dr. Yager’s reports both describe respondent as forthright and sincere about wanting to reform his behavior.

12. Respondent no longer rents a house to marijuana growers.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's license under Business and Professions Code² sections 490 and 10177, subdivision (b), as alleged in paragraph 5 of the Accusation. Section 490, subdivision (a) allows a board to suspend or revoke a license when the licensee “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 the license was issued,” and Section 10177, subdivision (b), allows the Department, specifically, to suspend or revoke a real estate license if the licensee has been convicted of “a crime substantially related to the qualifications, functions, or duties” of a real estate licensee. Respondent’s

² Statutory references are to the Business and Professions Code, unless otherwise stated.

conviction is substantially related under California Code of Regulations, title 10, section 2910³ subdivision (a)(8), because possession of illegal drugs for sale involves doing an “unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator[.]”

2. Respondent has the burden of showing rehabilitation. The Department’s criteria for rehabilitation are set out in CCR section 2912, and include passage of not less than two years since the most recent criminal conviction, payment of restitution, expungement of the conviction, completion or early discharge from probation, payment of fines, “[s]tability of family life and fulfillment of parental and familial responsibilities” since the conviction, formal education or vocational training, significant or conscientious involvement in community or charitable activities, different social and business relationships from those existing when the crime was committed, and change in attitude since the conduct in question.

3. Respondent meets the criteria for rehabilitation. It has been more than two years since his conviction. (CCR § 2912, subd. (a); Factual Finding 3.) He has paid the required restitution and fines. (CCR § 2912, subds. (b) and (g)); Factual Finding 4.) He completed probation early and his conviction has been expunged. (CCR § 2912, subds. (e) and (c); Factual Finding 4.) Respondent has always been conscientious in meeting his parental responsibilities, and his marriage last year indicates that his family life has become more stable. (CCR § 2912, subd. (j); Factual Findings 8 and 9.) He has completed formal education for economic self-improvement. (CCR § 2912, subd. (k); Factual Finding 6.) He has shown significant and conscientious involvement in community programs designed to provide social benefits. (CCR § 2912, subd. (m); Factual Finding 7.) His no longer renting to marijuana growers (Factual Finding 12) is a change in business relationships. (CCR § 2912, subd. (i).) His conduct since his arrest, and Dr. Yager’s reports (Factual Finding 11) indicate a change in attitude. (CCR § 2912, subd. (a).)

4. Respondent was convicted less than four years ago of a felony, and has no real track record as a real estate licensee in mitigation of that conviction. But he has made a strong showing of rehabilitation. Any concerns about his fitness to retain his license can be met by allowing him a restricted license.

ORDER

All licenses and licensing rights of respondent Michael Turon under the Real Estate Law⁴ are revoked; but a restricted real estate broker license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code if respondent applies for and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to respondent shall be subject to all the provisions of Section 10156.7 of the Business and Professions

Not
Adopted

³ Further references to the California Code of Regulations are cited as “CCR.”

⁴ Section 10000 et. seq.

Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of that Code:

1. The restricted license issued to respondent may be suspended before hearing by Order of the Real Estate Commissioner in the event of respondent's conviction or plea of nolo contendere to a crime which is substantially related to respondent's fitness or capacity as a real estate licensee.

2. The restricted license issued to respondent may be suspended before hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner 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 the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or for the removal of any of the conditions, limitations or restrictions of a restricted license until two years after the effective date of this Decision.

4. Respondent shall, within nine months from the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner that respondent has, since the most recent issuance of an original or renewal real estate license, taken and successfully completed the continuing education requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate license. If respondent fails to satisfy this condition, the Commissioner may order the suspension of the restricted license until the respondent presents such evidence. The Commissioner shall afford respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present such evidence.

5. 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.

6. Respondent shall submit with any application for license under an employing broker, or any application for transfer to a new employing broker, a statement signed by the prospective employing real estate broker on a form approved by the Department of Real Estate which shall certify:

(a) That the employing broker has read the Decision of the Commissioner which granted the right to a restricted license; and

Not
Adopted

*Not
Adopted*

(b) That the employing broker will exercise close supervision over the performance by the restricted licensee relating to activities for which a real estate license is required.

DATED: August 29, 2012

Howard Posner

HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings