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BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

FILED

AUG 21 2013

BUREAU OF REAL ESTATE

By Norma Simmons

In the Matter of the Application of) BRE No. H-38563 LA
MARC H. MANDELL,) OAH No. 2013020025
Respondent.)
_____)

DECISION

The Proposed Decision dated July 24, 2013, 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 enclosed hereto for the information of respondent.

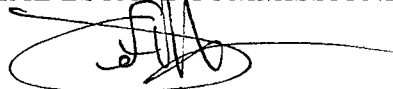
If and when a petition for removal of restrictions is submitted, all competent evidence of rehabilitation presented by the respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is enclosed for respondent's information.

SEP 10 2013 This Decision shall become effective at 12 o'clock noon on _____.

IT IS SO ORDERED

August 20, 2013

REAL ESTATE COMMISSIONER



By: **JEFFREY MASON**
Chief Deputy Commissioner

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

MARC H. MANDELL,

Respondent.

File No.: H-38563 LA

OAH No.: 2013020025

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on June 27, 2013.

James R. Peel, Staff Counsel, represented the Complainant.

Respondent appeared in person and was represented by Frank M. Buda, Attorney at Law.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. Complainant Robin Trujillo, a Deputy Real Estate Commissioner of the State of California, brought the Statement of Issues in her official capacity.

2. On October 20, 2011, Marc H. Mandell, Respondent herein, applied to the Department of Real Estate of the State of California for a real estate salesperson license.

Procedure

3. The Statement of Issues is brought under the provisions of section 10100, Division 4 of the Business and Professions Code. The hearing is conducted in accordance with

sections 11500 through 11528 of the Government Code. All pre-hearing jurisdictional requirements have been met.

4. At the direction of the Administrative Law Judge, without objection, Roman Numeral paragraph headings I through VI were replaced by numbers 1 through 6 for the convenience of the parties and the accuracy of the record.

Criminal Convictions

5. On October 7, 1997, when he was 21 years of age, Respondent and a friend stole a boxed stereo system in front of a Good Guys store in Valencia. As a result Respondent suffered the conviction set forth in Finding 6.

6. On January 8, 1998, in the Municipal Court of California for the County of Los Angeles, Respondent was convicted of violating Penal Code section 487, subdivision (a) (grand theft).

Substantial Relationship

7. Underlying elements of the conviction set forth in Finding 6 include the fraudulent taking of another's property, the employment of deceit to achieve an end and the doing of an unlawful act of conferring a benefit upon Respondent. Accordingly, the conviction bears a substantial relationship to the qualifications, functions or duties of a real estate licensee.¹

Failure to Disclose

8. In response to a question of the license application, to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY 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 marked the box denoted "No", and failed to reveal the conviction described in Finding 6. Respondent's failure to provide full disclosure was the result of negligence and not the result of intent to conceal the conviction from the Department. The negligent failure to disclose, therefore, does not constitute fraud, misrepresentation or deceit or knowingly making a false statement of fact but it is a material misstatement of fact. Respondent failed to exercise due care in filling out the application² resulting in a material misstatement of fact.

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¹ California Code of Regulations, title 10, section 2910, subdivisions (a) (1), (a) (4) and (a) (8).

² In this case the failure to fully disclose is not actionable under Business and Professions Code section 480 but is actionable under Business and Professions Code section 10177 as is set forth in the Legal Conclusions.

Rehabilitation and Character

9. Respondent timely completed all court ordered sanctions and did successfully complete probation. He has suffered no other conviction and has been in conformity to society's norms and rules of civil behavior since the time of the last misdemeanor. In particular, Respondent has paid his fines and fees on January 8, 1998, served one day in jail (with credit for one day served), filed proof of completion of his 200 hours of community service on December 22, 1998 and completed his 36 months of probation on or about January 8, 2001 without any other convictions or charges. The conviction was expunged (dismissed) by Court Order on June 26, 2013.

10. Respondent did take and complete all necessary pre-licensing courses and did take and pass the examination for real estate licensure. He, therefore, has completed training courses for economic self-improvement.

11. Respondent is presently employed at Western Pacific Marketing, a grocery retail store (Store) as the Company Vice-President and as a Store salesman. He manages the work of two assistants. His father, Fred Mandell is the President of the Store and credibly testified to his son's maturation since the time of the misdemeanor, to his present honest and trustworthy work ethic and as to his fealty to family and friends.

12. Respondent's sponsoring real estate broker is Beata Kulish Mandell (Beata), broker and founder of The Executive Realty Group who is also Respondent's wife. Respondent and Beata have known each other for approximately eight years and have been married for two and one-half years. Beata gave credible evidence as to Respondent's character traits of honesty and trustworthiness and as to his volunteer work at Temple. Part of her evidence included the following:

Marc has been working for over 12 years at the same company as the VP of Sales at Western Pacific Marketing and is exemplary in his work which requires dealing much like in real estate with tons of clients and owing a fiduciary duty to those clients. A few years ago I mentioned to Marc that I wanted him to come and work for my company: The Executive Realty Group. Especially, since he's fantastic in sales and currently working with over 40 manufacturing companies and representing some of the most lucrative brands out there. Therefore, I thought he would make an impeccable real estate agent and make a great addition to my team.

13. Respondent and Beata have one child, Skylar an infant girl of seven months. They attend Temple together and are active in the Temple's programs – such as Shabbat dinners – designed to provide social benefits. Additionally, Respondent is a volunteer for the

Foundation Fighting Blindness. Respondent's responsibilities as a husband and father have provided gravitas to his life. Respondent has stability of family life and fulfills all parental and familial obligations as evidenced from a number of credible written attestations of Respondent's present character.

14. Others credibly testified on Respondent's behalf including his sister Dana Mandell (Attorney recruiter for O'Melveny & Myers LLP). Melissa S. Lewkowicz (Attorney and friend) Marc H. Schwartz (Real Estate Salesperson at Executive Realty and Gulf War Veteran). In sum, each credibly testified to Respondent's present good character and fitness for licensure. An excerpt from Mr. Schwartz' evidence is an exemplar of the character evidence:

He is a very giving individual and supports both religious and non denominational charities. He has always been very open with me and is always there to offer critical support when needed.

I met Marc through my Broker years ago, but have since gone on to develop our own very close friendship. As a professional realtor, a former US Army war veteran and as a member of the same community, I would vouch for Marc anytime, putting my name on the line.

Marc not only assists in running a family business very effectively but is a great consultant to me and my broker in either real estate or non real estate specific matters.

He is critical in making suggestions for our marketing campaigns and he always stresses the truth in advertising both out of compliance and in basic human integrity.

15. Respondent was open, honest and candid in his testimony. He once was an irresponsible youth who engaged in an act of theft. Over the years he changed his friends, now accepts the responsibility of being a parent and husband and has reoriented his moral compass. He is now a mature adult who is professionally and socially responsible.

LEGAL CONCLUSIONS

1. Business and Professions Code (Code) section 480 provides in pertinent part:

- (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of section 1203.4 of the Penal Code.

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- (c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

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2. Code section 10177 provides in pertinent part:

The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

- (a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

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- (b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee and the time for appeal has elapsed or the judgment of conviction has been affirmed

on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

Application of Law to Facts

3. Cause exists for denial of Respondent's application for a real estate license pursuant to Business and Professions Code section 480, subdivision (a) (1) and 10177, subdivision (b) by reason of Finding 6 when combined with Finding 7.

4. Cause exists for denial of Respondent's application for a real estate license pursuant to Business and Professions Code section 10177, subdivision (a) by reason of Finding 8 in that the failure to disclose constituted a material misstatement of fact.

5. No cause exists for denial of Respondent's application pursuant to Business and Professions Code section 480, subdivision (c), by reason of Finding 8 in that the failure to disclose did not constitute knowingly making a false statement of fact.

Licensing Considerations

5. The objective of a license application proceeding is to protect the public³, the licensed profession, maintain integrity, high standards and preserve public confidence in licensees of the Department. The purpose of proceedings of this type is not to punish the Respondent. In particular, the statutes relating to Department licensees are designed to protect the public from any potential risk of harm. The law looks with favor upon those who have been properly rehabilitated.

6. With regard to the public interest, California Code of Regulations, title 10, section 2911 sets forth criteria of rehabilitation that have been developed by the Department, pursuant to Business and Professions Code section 482, subdivision (a), to evaluate the rehabilitation of an applicant in considering whether or not to deny the issuance of a license after a crime or wrongful act committed by the applicant. The conviction is remote and Respondent is rehabilitated from the same and the conviction is an aberration. However, Respondent's failure to disclose is recent. Accordingly, licensure of Respondent on a restricted status for a period of time under the close supervision of a real estate broker is consistent with the public interest. Under a two year restriction, Respondent will carefully review all real estate transaction documents to avoid conduct such as the one set forth in Finding 8.

³ *Camacho v. Youde* (1975) 95 Cal. App. 3d, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal. App. 3rd 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal. App. 4th 810, 816.

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 10153.5 of the Business and Professions Code. The restricted license issued to the
Respondent shall be subjected 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 said 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 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.

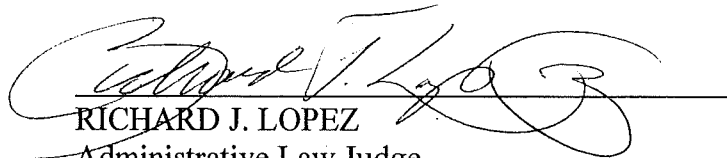
4. Respondent's restricted real estate salesperson's license is issued subject to the
requirements of section 10153.4 of the Business and Professions Code, to wit: Respondent
shall, within eighteen (18) months of the issuance of the restricted license, submit evidence
satisfactory to the Commissioner of successful completion, at an accredited institution, of a
course in real estate practices and one of the courses listed in section 10153.5, other than real
estate principles, advanced legal aspects of real estate, advanced real estate finance or

advanced real estate appraisal. If Respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to Respondent of lifting of the suspension.

5. Pursuant to section 10154, if Respondent has not satisfied the requirements for an unqualified license under section 10153.5, Respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to section 10153.5 until four years after the date of the issuance of the preceding restricted license.

Dated:

July 24, 2013



RICHARD J. LOPEZ

Administrative Law Judge

Office of Administrative Hearings

RJL:ref