

FILED

JUN - 3 2013

DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
BY: James B. Mason

STATE OF CALIFORNIA

* * * * *

In the Matter of the Application of) No. H-38599 LA
ANGEL D. REYES,) L-2013020028
Respondent.)

DECISION

The Proposed Decision dated April 15, 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 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 JUN 24 2013.

IT IS SO ORDERED

May 6, 2013
Real Estate Commissioner

By: Jeffrey Mason
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

Angel D. Reyes

Respondent.

Case No. H-38599 LA

OAH No. 2013020028

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on March 14, 2013.

James R. Peel, Staff Counsel, represented Complainant Veronica Kilpatrick, Deputy Real Estate Commissioner in the Department of Real Estate (Department).

Respondent Angel Reyes represented himself.

Oral and documentary evidence was received and the matter was submitted March 14, 2013.

The Department 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 June 27, 2011, 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 February 5, 2009, in Riverside Superior Court, case number RIM526215, respondent was convicted on his guilty plea of inflicting on a child cruel or inhuman corporal punishment or an injury resulting in a traumatic condition (Pen. Code, § 273d, subd. (a)), a misdemeanor. He was fined \$821, sentenced to 20 days in jail and placed on 48 months of

summary probation, terms of which included completing a 52-week child abuse class.

4. Both respondent and his wife, Luvia Reyes, testified about the January 5, 2009 incident that led to the conviction. The "child" was respondent's 16-year-old stepdaughter (Luvia's daughter), and the incident was an altercation about her boyfriend, whom she had been forbidden to see. The stepdaughter had run away from home because of the boyfriend and had returned, after two months, about three weeks before the incident. She attempted to leave again on the night in question, and when respondent and Luvia attempted to stop her, it turned into a scuffle involving pushing, grabbing and holding. The only observed injuries in the police report were "red discoloration on right cheek" and "red marks on right side of neck," which are consistent with what respondent and Luvia told the police at the time and their testimony at hearing.

Mitigation and Rehabilitation

5. Respondent's jail time was completed in part through electronic monitoring. He finished paying his fine on August 9, 2009. In March 2010 he completed his "52 week Child Batters Treatment Program." At hearing, he called it "the best thing I've ever done." Respondent's probation ended in February 2012, about a year early. His conviction has not been expunged. He has no other convictions.

6. Respondent's stepdaughter lived with him and his wife another three years. She now lives with her fiancé (not the young man who was at the center of the trouble in 2009) in Oceanside, working as a part-time bank teller and going through background checks to work in the San Diego Sheriff's Department. Luvia testified that respondent has apologized to the stepdaughter repeatedly, and she and respondent are now best of friends.

7. Respondent has been married to Luvia Reyes for 15 years. They have a nine-year-old son together. Respondent has a 20-year-old daughter from a previous marriage who lives in Santa Ana.

8. Respondent stays at home with his son, and has a home business designing and producing signs for the real estate industry.

9. Respondent volunteers by barbecuing at fundraising events for foster care homes.

LEGAL CONCLUSIONS

1. Cause exists to deny the license under Business and Professions Code¹ sections 475, 480 and 10177, as alleged in paragraph 4 of the Statement of Issues. Section

¹ Statutory references are to the Business and Professions Code, unless otherwise stated.

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” that 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[.]” Respondent’s conviction (Factual Findings 3 and 4) is substantially related under CCR section 2910, subdivision (a)(8) in that it involved doing an unlawful act “with the intent or threat of doing substantial injury to the person or property of another.”

2. Respondent has the burden of showing rehabilitation from his conviction. He has met most of the applicable criteria for rehabilitation set out in CCR section 2911:

- (a) It has been more than 4 years since his conviction (Factual Finding 5), meeting the criterion of “passage of not less than two years since the most recent criminal conviction” in CCR section 2911, subdivision (a).
- (b) He has paid all fines and other monetary penalties. (CCR § 2911, subd. (g); Factual Finding 5.)
- (c) He has completed probation for the conviction, alleged in the Statement of Issues, but his conviction has not been expunged under Penal Code section 1203.4. (CCR § 2911, subds. (c) and (e); Factual Finding 5.)
- (e) His family life is stable, and he meets his parental responsibilities. (CCR § 2911, subd. (h); Factual Findings 7 and 8.)
- (f) His activities to aid foster homes (Factual Finding 9) may not amount to significant involvement in programs to provide social benefits or ameliorate social problems (CCR § 2911, subd. (i), but they do show social involvement.
- (g) Respondent has shown a change in attitude since the incident (CCR § 2911, subd. (n)), both in his relationship with his stepdaughter and in his embracing the lessons of the abusers program he attended. (Factual Finding 6.)

3. Respondent’s conviction resulted from the special circumstances of being a parent dealing with a rebellious adolescent. It creates little cause for concern about how respondent will deal with a real estate salesperson’s responsibilities, which are unlikely to involve disobedient teenagers. Any such concern can be addressed by granting him 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 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 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

(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: April 15, 2013

A handwritten signature in cursive script, appearing to read "Howard Posner", written over a horizontal line.

HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings