

FILED

FEB 06 2014

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

BUREAU OF REAL ESTATE

By 

In the Matter of the Application of

JOHN PAUL MORENO,

Respondent.

)
) CalBRE NO. H-39126 LA
)
) OAH NO. 2013110055
)
)

DECISION

The Proposed Decision dated January 6, 2014, 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.

Pursuant to Section 11517(c)(2) of the Government Code, the following corrections are made to the Proposed Decision:

Paragraph 4 of the Order is not adopted and shall not be a part of the Decision.

Paragraph 5 of the Order is corrected to read "...Bureau of Real Estate, Post Office Box 137013, Sacramento, CA 95813-7013."


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 again 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 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 FEB 27 2014.

IT IS SO ORDERED 2/5/2014

REAL ESTATE COMMISSIONER



WAYNE S. BELL

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

JOHN PAUL MORENO

Respondent.

Case No. H-39126 LA

OAH No. 2013110055

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on December 5, 2013.

Amelia Vetrone, Staff Counsel, represented Complainant Maria Suarez, Deputy Real Estate Commissioner in the Bureau of Real Estate (Bureau).

Respondent John Paul Moreno represented himself.

Oral and documentary evidence was received and the matter was submitted December 5, 2013.

Complainant brings this Statement of Issues to deny Respondent's application for a real estate salesperson license. For the reasons set out below, the application is denied, but a restricted license is granted.

FACTUAL FINDINGS

Jurisdiction and Background

1. Complainant issued this Statement of Issues in her official capacity.
2. On June 10, 2011, Respondent applied for a real estate salesperson license. The Bureau refused to grant the application and Respondent timely requested a hearing.

Criminal Convictions

3. On September 3, 2003, in the United States District Court for the District of Hawaii, case number 1:02CR00487-001, respondent was convicted on his guilty plea of possession with intent to distribute methamphetamine (21 U.S.C § 841(a)(1), a felony. He was sentenced to 87 months in prison, followed by five years of supervised release.

4. On April 5, 2010, in Orange County Superior Court case number

09WM08058, Respondent was convicted on his guilty plea of driving under the influence of alcohol (Pen. Code, § 23152, subd. (a)) and driving with a blood alcohol content greater than .08 percent (Pen. Code, § 23152, subd. (b)), both misdemeanors. The counts to which he pleaded guilty alleged that his blood alcohol concentration was greater than .15 percent. He was fined \$737 and placed on three years of informal probation, conditions of which included attending a six-month alcohol program and a Mothers Against Drunk Driving victim's impact panel.

Mitigation and Rehabilitation

5. There was no evidence of the circumstances of either crime other than Respondent's testimony. Both his demeanor and the content of his testimony made him a credible witness. He testified that he got involved in delivering methamphetamine, for acquaintances who were already in the business of selling it, because his small business in Hawaii was in trouble. He testified at hearing that at the time of the offense, he was contributing to the support of his mother and autistic brother in California, but he stressed that there was no excuse for the crime. The drunk driving incident for which Respondent was convicted occurred a year before the 2010 conviction. Respondent and a friend went to Los Angeles for a business meeting, and Respondent drove them back to Orange County after drinking too much. He testified at hearing that he "nodded off" at the wheel.

6. While in federal prison, Respondent completed a course in computer-aided design and took general education courses. After he was released from federal prison in September 2007, he worked in film and theater production, including working in catering and as an extra, then spent a year employed by a friend with a business selling discount cards in Hawaii, who hired Respondent to establish the business in Las Vegas. Since November 2012, he has worked for a Las Vegas photo marketing and advertising company that provides such things as souvenir photographs at the Grand Canyon and open-air photo booths. He also completed a small-business "certification" course through Eastern Arizona College. His federal probation ended in 2012.

7. Respondent paid the fines, met the probation conditions and completed probation for his 2010 drunk driving conviction. The conviction has not been expunged.

8. Respondent is unmarried and has no children. He still contributes to the support of his mother and brother.

LEGAL CONCLUSIONS

1. As paragraph 4 of the Statement of Issues alleges, Respondent's convictions are cause to deny the license under Business and Professions Code¹ sections 475, 480 and

¹ Further references to section or "§" are to the Business and Professions Code, unless preceded by "CCR," which refers to title 10 of the California Code of Regulations.

10177, as alleged in paragraph 4 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 “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 Bureau, 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[.]” His conviction for trafficking in methamphetamine (Factual Finding 3) is substantially related because it is an “unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator.” (CCR § 2910, subd. (a)(8).) His drunk driving conviction (Factual Finding 4) is not substantially related. Complainant urges that in combination, the drunk driving conviction and methamphetamine conviction constitute conduct “which demonstrates a pattern of repeated and willful disregard of the law” (CCR § 2910, subd. (a)(10)), but two unrelated convictions for different offenses seven years apart do not form a “pattern.”

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

- (a) It has been more than ten years since the conviction that is a basis to deny the application (Factual Finding 4); meeting the criterion of “passage of not less than two years since the most recent criminal conviction” in CCR section 2911, subdivision (a).²
- (b) He paid all fines and other monetary penalties for both the 2003 and 2010 convictions. (CCR § 2911, subd. (g); Factual Finding 7.)
- (c) He has completed probation for both the 2003 and 2010 convictions. (CCR § 2911, subd. (e); Factual Findings 6 and 7.)
- (d) He has completed education and vocational training since the 2003 conviction. (CCR § 2911, subd. (i); Factual Finding 6.)
- (e) He is assuming and fulfilling familial responsibilities. (CCR § 2911, subd. (h); Factual Finding 8.)
- (f) Respondent has shown a change in attitude (CCR § 2911, subd. (n)), taking responsibility for his actions. (Factual Finding 5.)

3. Respondent’s felony conviction, caused by his turning to criminal conduct when his business was in difficulty, is cause for concern, but he has refrained from similar conduct for more than ten years. Concerns about protecting the public can be dealt with by restricting his real estate salesperson license.

² If the drunk driving conviction were to be considered part of a pattern of repeated and willful disregard of the law, nearly four years have passed since the drunk driving conviction, and nearly five years since the offense.

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 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 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 Bureau 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 Bureau 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: January 6, 2014

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

HOWARD POSNER

Administrative Law Judge

Office of Administrative Hearings

FILED

OCT 28 2013

1 AMELIA V. VETRONE, Counsel (SBN 134612)
2 Bureau of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

DEPARTMENT OF REAL ESTATE
BY: 

4 Telephone: (213) 576-6982
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6
7

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) No. H-39126 LA
12)
13 JOHN PAUL MORENO,) STATEMENT OF ISSUES
14)
15 Respondent.)
16)

15 The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the
16 State of California, acting in her official capacity, for Statement of Issues against JOHN PAUL
17 MORENO ("Respondent") alleges as follows:

18 1.

19 On or about June 10, 2011, Respondent made application to the Bureau of Real
20 Estate ("Bureau") of the State of California for a real estate salesperson license.

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(CRIMINAL CONVICTIONS)

2.

On or about September 3, 2003, in the United States District Court for the District of Hawaii, in Case No. 1:02CR00487-001, Respondent was convicted of violating Title 21, United States Code, Section 841(a)(1)(Possession with Intent to Distribute Methamphetamine), a felony. Said crime bears a substantial relationship to the qualifications, functions or duties of a real estate licensee under Section 2910, Title 10, Chapter 6, California Code of Regulations.

3.

On or about April 5, 2010, in the Superior Court of California, County of Orange, Case No. 09WM08058, Respondent was convicted of violating Vehicle Code Sections 23152(a) (Driving Under the Influence of Alcohol), and 23152(b)(Driving with Blood Alcohol Above .08%), both misdemeanors. Said crimes bear a substantial relationship to the qualifications, functions or duties of a real estate licensee under Section 2910, Title 10, Chapter 6, California Code of Regulations.

4.

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

These proceedings are brought under the provisions of Section 10100, Division 4 of the Business and Professions Code of the State of California and Sections 11500 through 11528 of the California Government Code.

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

6 Dated at Los Angeles, California: 24 October 2013.

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10 Maria Suarez
11 Deputy Real Estate Commissioner
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25 cc: John Paul Moreno
26 Maria Suarez
27 Sacto.