

FILED

DEC 29 2014

BEFORE THE BUREAU OF REAL ESTATE

BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

By 

* * *

In the Matter of the Application of)	NO. H-39555 LA
)	L-2014080526
DANNY JESSE NAVARRO, JR.,)	
)	
Respondent.)	
_____)	

DECISION

The Proposed Decision dated November 14, 2011 [sic], 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:

Page 1, Proposed Decision, paragraph 2, "Vertone" shall read: "Vetrone".

Page 1, Findings of Fact, paragraph 2, "dated August 7, 2007" shall read: "dated July 22, 2013".

Page 1, Findings of Fact, paragraph 3, "April 24, 2004, in the Superior Court of the State of California, County of Los Angeles, case number KA06954" shall read: "April 23, 2004, in the Superior Court of the State of California, County of Los Angeles, case number KA065954".

Page 8, Order, paragraph 6, "Post Office Box 187000, Sacramento, CA 95818-7000" shall read: "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 the respondent. Petitions for the removal of restrictions from a restricted license are controlled by Section 11522 of the Government Code. A copy of Section 11522 is enclosed herewith for the information of the 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 attached hereto for the information of the respondent.

This Decision shall become effective at 12 o'clock noon on

JAN 20 2015

IT IS SO ORDERED

12/18/2014
Real Estate Commissioner


WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

DANNY JESSE NAVARRO, JR.,

Respondent.

Case No. H-39555 LA

OAH No. 2014080526

PROPOSED DECISION

Ralph B. Dash, Administrative Law Judge, Office of Administrative Hearings, heard this matter on November 3, 2014, at Los Angeles, California.

Amelia V. ^{Vetrone}~~Vertone~~, Staff Counsel, represented Complainant.

Danny Jesse Navarro, Jr. (Respondent) represented himself.

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. Maria Suarez made the Statement of Issues in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Respondent filed his application, dated ^{July 22, 2013} August 7, 2007, with the Bureau of Real Estate (Bureau) for the salesperson's exam and licensure as a real estate salesperson. The application was denied and this hearing ensued.

3. On April ²³24, 2004, in the Superior Court of the State of California, County of Los Angeles, ~~State of California~~, case number KA06954, Respondent was convicted on his plea of nolo contendere to one count of violating Penal Code section 496d, subdivision (a), receiving stolen property, a felony. Imposition of sentence was suspended and Respondent was placed on formal probation for a period of three years on condition that he serve 365 days in the County Jail, with credit for 25 days (17 days actual custody and 8 days good time/work time). On January 31, 2007, the court entered its order terminating probation under the provisions of Penal Code section 1203.2 and 1203.2a.

The circumstance of this crime were that Respondent, together with his father, stole cars and took them to "chop shops" for disposal.

4. On September 22, 2005, in the United States District Court, Central District of California, case number CR04-1504JSL, Respondent was convicted on his guilty plea to one count of violating 21 United States Code 846, conspiracy to distribute methamphetamine. Respondent was committed to the Bureau of Prisons for 10 years and, upon release, placed on supervised release for five years on condition that, among other things, he participate in outpatient substance abuse treatment and submit to drug and alcohol testing as directed by his Probation Officer.

The facts and circumstances of the crime are that Respondent attempted to sell one pound of methamphetamine to an undercover officer.

5. Respondent testified on his own behalf in a straightforward, sincere and truthful manner. He was highly respectful of the Bureau and these proceedings. He did not attempt to palliate or vitiate his past conduct, but he did explain that he grew up in an environment where using drugs and stealing cars was "a way of life" and jail "was a thing to do." A lengthy stay in federal prison turned things around for Respondent. Of his stay there, he stated, "Federal Prison had a huge impact on my life. I don't regret it because it changed my life."

6. Respondent availed himself of all of the "benefits" federal prison had to offer. He "took all classes from reading to parenting" although he has no children. He took the General Educational Development test and earned his California High School Equivalency Certificate. He went through a nine-month behavior modification program which reduced his sentence by one year. His sentence was further reduced based on his completion of a six-month drug program and reduced yet again by his stay at a half-way house upon release. Respondent spent a total of seven years and eight months in federal prison. He was released on January 4, 2012.

7. While in prison Respondent was given the opportunity to help mentor juveniles. He would recount to them his past experiences and help guide them to living a better way of life. The following, taken from a letter dated September 27, 2011 (part of Exhibit A), by M. Williams, Counselor, confirmed Respondent's testimony in this regard. The letter reads, in part:

Danny was a vital part [of the prison's] youth intervention program. . . . The program worked in conjunction with Youth Detention Facilities, local area police organizations, County Teen Court, public schools from all over Santa Barbara County, and local Boys & Girls Clubs.

Danny brought a youthful approach to the program and his insightful look on his past choices that brought him to prison. He used a calm approach when speaking to the youth participants, whose ages ranged from twelve all the way to eighteen. Danny offered good advice on how to focus themselves on important things like family and self-respect. He also spoke on the negative

impacts of gang life and how to disassociate themselves from that lifestyle. He was a real blessing to our youth program.

8. Respondent also received kudos from the program's director. In a letter dated October 7, 2011 (part of Exhibit A), K. Liberatore, Ph.D., Drug Abuse Program Coordinator at the Federal Correctional Complex where Respondent was incarcerated, had, in part, this to say:

This letter is in appreciation for your willingness to participate in the Big Brother Mentor Program. . . . You have displayed assertiveness and dedication by going above and beyond the program requirements . . . becoming a senior mentor in the . . . Program. Your actions to uphold a leadership position . . . speak volumes to your character and potential to positively influence others. Your open-mindedness toward a new challenge, your honesty to hold others accountable as well as yourself, and your caring for other community members is to be commended.

For the past several months, you have held yourself to a higher standard by being the example and role model to others within the community. You were a positive influence for others by demonstrating the eight attitudes for change; responsibility, willingness, open-mindedness, gratitude, caring, objectivity, humility and honesty. You have encouraged others to meet a higher potential by showing your support to other community members offering support and honest feedback.

9. Since his release from prison Respondent has continued his education. He is now one class shy of earning his Associate of Arts degree in Business Administration. He reads many self-help books and has learned how to avoid aberrant behavior triggers such as "hanging around with old friends."

10. Currently, Respondent works for Keller Williams Realty doing general office work. His employer knows of his criminal past. Respondent offered seven reference letters, part of Exhibit A, from his co-workers. The following, taken from a letter written by Judy Norman Sharp, real estate broker, confirms the real estate firm's willingness to hire him:

As the future employing broker for Danny, I am pleased to see his progress in pursuing a career in real estate. He attends classes in real estate business practice, ethics, customer service, as well as contracts and disclosures. He has been observing our best agents in their daily real estate activities such as open houses and prospecting.

I am aware of his past issues. However, I believe Danny has learned some hard lessons, and I believe he will be a great asset to the real estate business as well as my brokerage. Please issue his license so that he can begin his contributions to our industry.

11. Respondent is motivated to keep his life on the level. He lives with his family (except for his father) and has an entirely new social network. He has been drug free since 2004, which was also the last time the evidence showed Respondent engaged in criminal conduct. He has asked his probation officer for early termination of probation, but has not yet received a response. He desires to continue his work with at-risk juveniles, a desire Respondent called "his calling." Respondent concluded his testimony with the following: "I have a success story that needs to be told."

12. Even though Respondent is still on criminal probation, his renaissance as an upright citizen is remarkable. Based on all the foregoing, it is found that Respondent's rehabilitation is sufficiently complete to warrant his licensure, on a restricted basis, at this time.

* * * * *

CONCLUSIONS OF LAW

1. Business and Professions Code section 480 provides, in 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 which 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.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

2. Business and Professions Code section 482 provides:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

3. Business and Professions Code section 10177, subdivision (b), provides that an application for licensure may be denied if the applicant:

(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.

4. California Code of Regulations, title 10, section 2910, provides as follows:

(a) When considering whether a license should be denied, suspended or revoked on the basis of the conviction of a crime, or on the basis of an act described in Section 480(a)(2) or 480(a)(3) of the Business and Professions Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Bureau within the meaning of Sections 480 and 490 of the Business and Professions Code if it involves:

(1) The fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person.

(2) Counterfeiting, forging or altering of an instrument or the uttering of a false statement.

(3) Willfully attempting to derive a personal financial benefit through the nonpayment or underpayment of taxes, assessments or levies duly imposed upon the licensee or applicant by federal, state, or local government.

(4) The employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end.

(5) Sexually related conduct affecting a person who is an observer or non-consenting participant in the conduct or convictions which require registration pursuant to the provisions of Section 290 of the Penal Code.

(6) Willfully violating or failing to comply with a provision of Division 4 of the Business and Professions Code of the State of California.

(7) Willfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct.

(8) Doing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator or with the intent or threat of doing substantial injury to the person or property of another.

(9) Contempt of court or willful failure to comply with a court order.

(10) Conduct which demonstrates a pattern of repeated and willful disregard of law.

(11) Two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs.

(b) The conviction of a crime constituting an attempt, solicitation or conspiracy to commit any of the above enumerated acts or omissions is also deemed to be substantially related to the qualifications, functions or duties of a licensee of the Bureau.

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the Bureau, the context in which the crime or acts were committed shall go only to the question of the weight to be accorded to the crime or acts in considering the action to be taken with respect to the applicant or licensee.

5. Pursuant to its statutory mandate, the Bureau has established criteria for rehabilitation from conviction of a crime to be considered in a licensing proceeding. The applicable criteria, set forth in California Code of Regulations, title 10, section 2911, are summarized as follows:

- The passage of not less than two years from the most recent criminal conviction.
- Expungement of the conviction.
- Successful completion or early discharge from probation or parole.
- Payment of any fine imposed in connection with the criminal conviction.

- New and different social and business relationships.
- Stability of family life and fulfillment of parental and familial responsibilities.
- Completion of, or enrollment in, educational or vocational training courses.
- Significant involvement in community, church, or privately-sponsored programs.
- Change in attitude from that which existed at the time of the commission of the criminal acts.

6. Applying Findings 3 and 4 to Conclusions 1, 4 and 5 (denial based on criminal convictions), cause exists to deny Respondent's application. Collectively, the crimes show a pattern of willful disregard for the law (Regulation 2910, subdivision (a)(10)) and each of the theft convictions is a separate ground for license denial under Regulation 2910 subdivision (a)(8).

7. As can be seen from Findings 5 through 11, Respondent has met most of the criteria, applicable to him, that the Bureau considers relevant to the issue of rehabilitation. (Finding 12 and Conclusion 5). Of course, rehabilitation is a qualitative determination, not quantitative. One cannot just add up those criteria that have been met and those that have not in order to determine whether or not a person has been rehabilitated. These factors are just indicators that a person has changed his or her ways and is, therefore, unlikely to reoffend. No one of them alone – in fact not all of them together – can guarantee that an individual is truly rehabilitated. Therefore, merely meeting these criteria does not excuse a person from responsibility for his or her prior criminal conduct nor entitle him or her to a license.

8. Rehabilitation is evaluated on the basis of two different scales. One is an internal, attitudinal scale and the other is an external objective scale. In other words, Respondent must present evidence both of a state of mind and a state of facts showing he has been rehabilitated. The state of mind demonstrating rehabilitation is one that has a mature, measured appreciation of the gravity of the misconduct and remorse for the harm caused. Acceptance of responsibility is a necessary prerequisite to establishing rehabilitation. Respondent has met his burden of providing evidence that he has the requisite state of mind to establish rehabilitation, by reason of Findings 5 through 11.

9. The rehabilitative state of facts is demonstrated by a track record of conduct that convinces and assures the Bureau that the public would be safe in granting Respondent the privileges of licensure. Respondent's last criminal conviction was in 2005 and he has been clean and sober since 2004. There has been no evidence that Respondent has engaged in any criminal act since his last conviction. Respondent has a stable family life and a support network of new and different friends. More importantly, Respondent has about him the attitude of one who has changed his old ways and who will guard against a return thereto. Respondent has thus provided evidence (Findings 5 through 11) of the requisite state of facts necessary to establish his rehabilitation to the extent that the public would not be put at risk by Respondent's licensure, provided the initial license issued is restricted as set forth below.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application of Respondent for a real estate salesperson's license is denied; provided, however, a restricted salesperson's license shall be issued to Respondent pursuant to Section 10156.5 of the Business and Professions Code. All examination and experience requirements shall be met prior to the issuance of the restricted license. The restricted license issued to 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 issued under authority of Section 10156.6 of said Code.

1. Said restricted license may be suspended without prior hearing by order of the Real Estate Commissioner in the event that Respondent is convicted, including a conviction by plea of nolo contendere, to a crime which bears a significant relation to Respondent's fitness or capacity as a real estate licensee.
2. Said restricted license may be suspended without prior 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 report in writing to the Bureau of Real Estate as the Real Estate Commissioner shall direct by separate written order issued while the restricted license is in effect, such information concerning Respondent's activities for which a real estate license is required as the Commissioner shall deem appropriate to protect the public interest.
4. 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 of a restricted license until two (2) years have elapsed from the effective date of this order.
5. Respondent shall submit with his application for a restricted license under an employing broker -- or his application for transfer to a new employing broker -- a statement signed by the prospective employing broker which shall certify:
 - (a) That he or she has read the decision of the Commissioner which granted the right to a restricted license;
 - (b) That he or she will exercise close supervision over the performance by the restricted licensee of activities for which a real estate license is required.
6. 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.

Date: 11-14-11



RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings