

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JUL 13 2006

DEPARTMENT OF REAL ESTATE

By S. Fe

* * *

In the Matter of the Application of)
DAMON ANTHONY BURRIS,)
Respondent.)
NO. H-1889 FR
OAH No. N2006030353

DECISION

The Proposed Decision dated June 9, 2006, 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. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, 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 appended hereto for the information of Respondent.

This Decision shall become effective at 12 o'clock noon
on AUG 02 2006.

IT IS SO ORDERED 7-12 2006.

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

DAMON ANTHONY BURRIS,

Respondent.

Case No. H-1889 FR

OAH No. N2006030353

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on May 24, 2006.

Department of Real Estate Counsel Michael B. Rich represented Complainant John W. Sweeney, Deputy Real Estate Commissioner.

Respondent Damon Anthony Burris represented himself.

The record closed on May 24, 2006.

FACTUAL FINDINGS

1. Complainant John W. Sweeney filed the Statement of Issues in his official capacity as a deputy real estate commissioner for the Department of Real Estate, State of California.

2. On December 16, 2004, Damon Anthony Burris (Respondent) filed an application for a real estate salesperson license with the Department. The application was filed with the understanding that any license issued as a result would be subject to the conditions of Business and Professions Code section 10153.4.

3. The application form requires the disclosure of all criminal convictions. Respondent provided a list of arrests that he obtained from the Newport Police Department. He also disclosed that he was arrested by the Hollywood Police Department in 1996, but was "unable to get the arrest information." Respondent also wrote that he was convicted in Hollywood in 1996 and received "1 day jail-time served," but did not reveal what the conviction was for.

Criminal Convictions

4. On January 8, 1996, in the Los Angeles County Municipal Court, Respondent was convicted by his plea of nolo contendere of a misdemeanor violation of Penal Code section 415, disturbing the peace. Respondent was ordered to pay a fine of \$100 before June 10, 1996. As of March 14, 2005, he had not paid the fine.

Respondent's conviction resulted from an incident on January 6, 1996. Police were called by fire department officials to evacuate a nightclub because of severe overcrowding. The police report identifies violent action by three named persons, not including Respondent. He was arrested, along with 21 others, for failure to disperse from the scene of a riot.

5. On February 18, 1996, in the Orange County Municipal Court, Respondent was convicted by his plea of guilty of a misdemeanor violation of Penal Code section 459/460, subdivision (b), second degree burglary. The court docket appears to indicate that Respondent serve three days in jail.

6. On February 16, 1999, in the Orange County Municipal Court, Respondent was convicted by his plea of nolo contendere of misdemeanor violations of Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level of .08 percent or more.

Respondent was placed on probation for three years pursuant to standard conditions, including to not drive after drinking alcohol, and ordered to pay fines and fees totaling approximately \$1,276. In addition, Respondent was ordered to complete programs including the First Offender Program.

On August 17, 1999, Respondent was found in violation of the terms and conditions of his probation due to failures to make timely payments and complete the ordered programs. The Court ordered probation reinstated and modified. It appears that community service was added as a condition of probation.

On November 30, 1999, probation was again revoked. Respondent had failed to complete the Youthful Drunk Driving Program. A bench warrant was issued. On December 27, 1999, Respondent was again found to have violated probation. Court records reveal numerous incidents of failure to make payments and complete probation requirements. On January 8, 2002, proof of community service was filed. And on May 3, 2002, probation was found expired and the case status changed to "Close."

7. On December 27, 1999, in the Orange County Municipal Court, Respondent was convicted by his plea of nolo contendere of misdemeanor violations of Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, Vehicle Code section

14601.2, subdivision (a), driving while license suspended for driving under the influence, and Vehicle Code section 14601.5, subdivision (a), refusing a chemical test.

Respondent was again placed on probation for three years pursuant to standard conditions, including to not drive after drinking alcohol, and ordered to pay fines and fees totaling approximately \$1,276. In addition, Respondent was ordered to complete programs including an "18 Month Multiple Offender Program" and to serve 90 days in county jail.

The docket in this matter is similar to that in the previous DUI matter. Respondent's probation was revoked and reinstated during 2000 and 2001. He failed to complete programs as ordered. On June 20, 2002, he was taken into custody and the three days of jail time that was stayed on November 2, 2002, was "imposed to begin forthwith." The record does not reveal when or if the case was closed.

8. Respondent completed the Department's Confidential Interview Information Statement and attached a statement where he discusses the facts and circumstances surrounding his convictions. He also testified about them.

a. 1995 trespass: Respondent wrote that he was at a concert that was shut down for fire code violations. He saw a beer bottle hit a police officer and was arrested with many others.

b. 1996 burglary: Respondent stole a six-pack of beer from Albertson's. He wrote that he was trying to be a hero to his friends by obtaining beer for the group. Respondent acknowledged that he was drinking "a lot" during this period.

c. February 1999 DUI: Respondent wrote that his conviction caused him to start "thinking about the possibility of changing [his] lifestyle." He was drinking less, but still drinking. Respondent testified that he did not immediately enroll in a program and so had to re-enroll. He then did not complete it because of the second DUI case. Respondent stated that he made payments to the court with checks drawn on accounts with insufficient funds.

d. December 1999 DUI: Respondent wrote that he lived in "a sober living house" and attended Alcoholics Anonymous for three and one-half years as a result of this conviction. He wrote "I learned that if I continued to let alcohol control my life I would eventually hurt myself or someone else. My problem with alcohol caused an enormous amount of strain on me and my loved ones."

9. Respondent testified that he eventually satisfied the requirement that he complete an alcohol program in January of 2003. He last went to an AA meeting about one and one-half years ago with his father, who he describes as an alcoholic. Respondent decided to stop attending and drink again when he was 25. He worked the "twelve steps" but does not consider himself an alcoholic. He last drank alcohol about two weeks ago and no longer has a "sobriety date."

Respondent described himself as "directionless and driveless" during the time he was arrested and convicted. He drank to excess until "the date of my second DUI." He had blacked out for five hours and was "completely scared." Respondent believes that he drank because of the social group he was in and because his mother was a flight attendant and gone a lot. He no longer feels a compulsion to drink.

10. Respondent has worked for one year as a real estate assistant and feels that this is where he wants to be. He believes that he has come a long way in life and asserts "that feels good." Respondent will turn 29 next month and "would be proud to have the state behind him." He apologized for not knowing all the details of his past.

11. Justin Linder testified on Respondent's behalf. Linder has known Respondent for about one year. They met when Respondent was working as a waiter in a restaurant where Linder and his wife were eating. Linder is in the mortgage business and has been licensed as a real estate salesperson himself for about seventeen months. Linder did not realize that Respondent "had all of these problems." He has observed Respondent drink in a social setting and not drive a car afterwards. Linder has "seen nothing but improvements" in the year he has known Respondent.

12. Respondent presented no other evidence of rehabilitation other than his own testimony. He provided no documentary evidence or other corroboration of completion of the sober living program he referenced or of AA meeting attendance.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that a real estate license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the profession. Department regulations (Cal. Code Regs., tit. 10, § 2910) contain criteria that define "substantially related" in connection to the real estate profession. Standing alone, Respondent's conviction for trespass is not substantially related to real estate and therefore does not give cause for denial. The criteria do define burglary, a crime of dishonesty (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8)), and two or more convictions for drinking and driving (Cal. Code Regs., tit. 10, § 2910, subd. (a)(11)) as substantially related crimes. And taken together, Respondent's convictions constitute substantially related crimes because they evidence a pattern of repeated and willful disregard of the law. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(10).) Hence, cause exists to deny Respondent's application pursuant to this section.

2. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be denied if the applicant has been convicted of a felony or a crime of moral turpitude. Respondent's convictions are all misdemeanors; hence, moral turpitude must exist if they are to provide cause for denial under this section.

Moral turpitude is a concept difficult to define. It has been described as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general” and as “innately a relative concept depending upon both contemporary moral values and the degree of its inimical quality.” (*Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d 30, 36.) It is well settled that theft crimes involve moral turpitude, hence Respondent’s burglary conviction gives cause for denial.

3. None of Respondent’s remaining convictions involve moral turpitude *per se*, that is, none by definition require an intention to do an act which would be judged to be evil by generally accepted community standards of morality. Crimes that are not *per se* crimes of moral turpitude, however, may nevertheless be found to involve it due to their circumstances. Trespassing is not a crime of moral turpitude either *per se* or under the circumstances of its commission by Respondent.

4. This leaves the driving under the influence of alcohol and related convictions. No case has yet held that a misdemeanor DUI conviction involves moral turpitude *per se*, however, drunk driving may be found to have involved moral turpitude if the conduct is repeated. (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1757.) Taken together, then, Respondent’s DUI convictions provide cause to deny licensure pursuant to Business and Professions Code section 10177, subdivision (b).

5. As cause for denial exists, the burden shifts to Respondent to demonstrate that the public would not be at risk by his licensure. The Department has also enacted regulations (Cal. Code Regs., tit. 10, § 2911) that contain criteria to assist in the difficult assessment of rehabilitation and consequent risk to the public safety presented by an applicant with a criminal conviction record. These include passage of time, significant changes in attitude and behavior and other relevant factors. Respondent’s history of criminal convictions concludes in 1999, however, his last probationary period did not conclude until 2003 when he presented proof that he finally completed the required alcohol program. Respondent’s criminal conduct was most often connected with alcohol use, but his presentation regarding his current relationship with alcohol was confusing. Respondent has not obtained expungement orders concerning any of his convictions. His only character evidence was from a friend of one year. And, he submitted no letters of reference or corroboration of his statements regarding the “sober living house” experience or other matters.

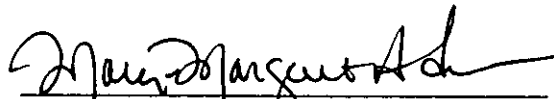
6. A primary purpose of the licensing scheme for real estate professions is to protect the public from dishonest and unscrupulous licensees. It is particularly important that real estate salespersons possess the character traits of honesty and integrity and that they are committed to following the law. Respondent’s criminal record reveals not only convictions, but a disregard of the Court’s probation-related orders.

It appears that Respondent is in the process of changing his attitude and behavior and it is hoped that he continues on that path. Measured against the criteria and other considerations, however, it is concluded that the evidence of rehabilitation is insufficient in this matter to justify the issuance of a license, even on a restricted basis, at this time.

ORDER

The application of Damon Anthony Burris for a real estate salesperson license is denied.

DATED: June 9, 2006


MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

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FILED
FEB 18 2006
DEPARTMENT OF REAL ESTATE
By B. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 DAMON ANTHONY BURRIS,) H-1889 FR
13 Respondent.) STATEMENT OF ISSUES
14)

15 The Complainant, JOHN W. SWEENEY, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against DAMON ANTHONY BURRIS (hereinafter "Respondent"), is
18 informed and alleges as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate salesperson
22 license on or about December 16, 2004, with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to the conditions of Section
25 10153.4 of the Business and Professions Code.

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II

Complainant, JOHN W. SWEENEY, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity and not otherwise.

III

On or about January 8, 1996, in the Municipal Court, County of Los Angeles, State of California, in case number 95H03935, Respondent was convicted of violating Section 415 of the California Penal Code (Unlawfully fighting or challenging to fight in a public place, maliciously disturbs another by unreasonable noise, offensive words in a public place), a crime involving moral turpitude and/or a crime which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

IV

On or about February 18, 1996, in the Municipal Court, County of Orange, State of California, in case number 96HM08735, Respondent was convicted of violating Section 459 and 460(b) of the California Penal Code (Second degree burglary), a crime involving moral turpitude and/or a crime which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

V

On or about February 16, 1999, in the Municipal Court, County of Orange, State of California, in case number 99HM00252,

1 Respondent was convicted of violating Section 23152(a) of the
2 California Vehicle Code (Unlawfully driving a vehicle while
3 under the influence of alcohol) and of violating Section
4 23152(b) of the California Vehicle Code (Driving under the
5 influence while having a blood alcohol level of .08% or more), a
6 crime involving moral turpitude and/or a crime which bears a
7 substantial relationship under Section 2910, Title 10,
8 California Code of Regulations, to the qualifications,
9 functions, or duties of a real estate licensee.

10 VI

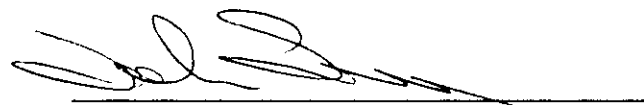
11 On or about December 27, 1999, in the Municipal Court,
12 County of Orange, State of California, in case number 99HM07635,
13 Respondent was convicted of violating Section 23152(a) of the
14 California Vehicle Code (Unlawfully driving a vehicle while
15 under the influence of alcohol), Section 14601.2(a) of the
16 California Vehicle Code (Knowingly driving while license
17 suspended for driving under the influence), and Section 14601.5
18 of the California Vehicle Code (Knowingly driving while driver's
19 license suspended or revoked for having been convicted of
20 driving under the influence), crimes involving moral turpitude
21 and/or crimes which bear a substantial relationship under
22 Section 2910, Title 10, California Code of Regulations, to the
23 qualifications, functions, or duties of a real estate licensee.

24 VII

25 The crimes of which Respondent was convicted, as
26 alleged in Paragraphs III, IV, V, and VI, above, individually
27 and/or collectively, constitute cause for denial of Respondent's

1 application for a real estate license under Sections 480(a)
2 and/or 10177(b) of the California Business and Professions Code.

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

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11 
12 JOHN W. SWEENEY
13 Deputy Real Estate Commissioner

14 Dated at Fresno, California,
15 this 16th day of February 2006.

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