

FILED

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

AUG 12 2008

DEPARTMENT OF REAL ESTATE

* * *

By L. Henry

In the Matter of the Application of)
)
 TYLER LAMONT BARKER,)
)
 Respondent.)

NO. H-10396 SF
OAH NO. 2008060026

DECISION

The Proposed Decision dated July 9, 2008, 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. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy 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 appended hereto.

This Decision shall become effective at 12 o'clock noon
on SEP - 1 2008.

IT IS SO ORDERED 8-8-08

JEFF DAVI
Real Estate Commissioner

Barbara J. Bigby

BY: Barbara J. Bigby
Chief Deputy Commissioner

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

TYLER LAMONT BARKER,

Respondent.

Case No. H-10396 SF

OAH No. 2008060026

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 2, 2008.

David B. Seals, Counsel, represented complainant Charles W. Koenig, a Deputy Real Estate Commissioner.

Mitchell L. Abdallah, Attorney at Law, represented respondent Tyler Lamont Barker, who was present.

The matter was submitted for decision on July 2, 2008.

FACTUAL FINDINGS

1. On October 2, 2007, respondent Tyler Lamont Barker applied to the Department of Real Estate for a real estate salesperson license.

Criminal Convictions

2. On January 24, 1991, respondent was convicted in Santa Clara County, on a plea of nolo contendere, of a misdemeanor violation of Penal Code section 148.9 (providing false identification to a police officer). The offense is one that involves moral turpitude, and it is substantially related to the qualifications, functions, or duties of a real estate licensee. Respondent was fined \$50 and assessed a \$65 penalty.

Respondent does not remember the event. The police report suggests that respondent refused to identify himself to police officers who were investigating another incident.

3. On January 4, 1995, respondent was convicted in Santa Clara County, on his guilty pleas, of felony violations of Penal Code section 207, subdivision (a) (kidnapping), Penal Code sections 211/212.5, subdivision (b) (robbery), and Penal Code sections 459/460, subdivision (a) (first degree burglary). The kidnapping and robbery offenses carried enhancements for use of a firearm in violation of Penal Code section 12022, subdivision (a)(1). Each offense is substantially related to the qualifications, functions, or duties of a real estate licensee. Respondent was sentenced on February 22, 1995, to state prison for the aggregate term of seven years, four months, with credit for time served.

4. The facts and circumstances of these offenses were not fully developed at hearing. It appears that the offenses arose ~~of~~ but a \$5,000 debt owed to respondent by the victim. The victim suggested that he had the money but that it was at the home of a third person. Respondent, his older brother, and their cousin, took the victim to the third person's home which they broke into. The police were called, and handguns were taken from the house by respondent's brother and cousin. The three were arrested after driving away from the scene. All three were sentenced to state prison for their roles in the offenses.

Other Matters

5. Respondent was released on parole in August 1998. He served three years on parole, and was discharged on September 1, 2001.

Within two weeks of being released on parole, respondent obtained employment as a driver of a street sweeping vehicle. He held that position for six months, and then transferred to a new position. For the last two years, respondent has been employed by Broadcom, an electronic company, as a Shipping Specialist in the warehouse. For a year before that, respondent was employed by Independent Electric as a driver.

6. Respondent is 38 years old. He is married and has five children. In addition to his own children, he is a surrogate father to Ronald Purcelle, a young man who lives next door to him. By all accounts, respondent is a devoted husband, father, and son to his seriously ill father, who lives with respondent. He also is a good friend to his neighbors. Three of respondent's neighbors, Darryl Pearson, Sheila George, and Purcelle, testified at hearing to his good character, his good heart, and to his inspiration of others in the community. Letters from family member Timothy Rin, and from Joanie B. Crombie and Rachel Austin-Camplis, co-workers of respondent's wife, attest to respondent's good and kind character.

7. Respondent is a volunteer for his son's athletic teams, including being an assistant coach for a Pop Warner football team. He volunteers each year for the East Palo Alto Children's Day.

Shannon Pekary is the Executive Director of the Ravenswood Youth Athletic Association. She has known respondent for two years. In a letter dated July 1, 2008, Pekary

confirms respondent's efforts on behalf of its youth basketball and soccer leagues and to his good character. She writes: "He appears to be an excellent father, and has always positively encouraged his son . . . on and off the field and court. I want to emphasize this, as I cannot say that about all of our fathers who participate in our sports leagues, and I find it to be an excellent indicator of character."

8. Amelia Middel is a real estate salesperson with Coldwell Banker in Menlo Park. She has been respondent's mentor in the real estate field. If respondent obtains a license, he has been offered a position with the firm. In a letter dated July 1, 2008, Middel attests to respondent's good character and recommends his licensure.

9. Respondent testified at hearing in a manner consistent with one who is telling the truth. His regret for his conduct in 1995 is genuine as are his commitments to living a nonviolent lifestyle devoted to his family, friends and community.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 10177, subdivision (b), read in conjunction with Business and Professions Code section 480, subdivision (a), the Commissioner may deny an application for a real estate license if the applicant has been convicted of a felony, or a crime that involves moral turpitude, which bears a substantial relationship to the qualifications, functions, or duties of the licensed activity. (*Department of Real Estate v. Petropoulos* (2006) 142 Cal.App.4th 554.)

2. The felony offenses of which respondent was convicted (robbery, kidnapping and burglary) are each substantially related to the qualifications, functions, or duties of a real estate licensee as they involved the doing of an unlawful act with the intent or threat of doing substantial injury to another. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(8).) Each conviction provides a separate cause to deny respondent's application pursuant to Business and Professions Code section 10177, subdivision (b), read in conjunction with Business and Professions Code section 480, subdivision (a).

3. The misdemeanor offense of which respondent was convicted (false identification to a police officer) is an offense that involves moral turpitude. The offense is substantially related to the qualifications, functions, or duties of a real estate licensee as it involved fraudulent conduct. (Cal. Code Regs., tit. 10, § 2910, subd. (a)(4).) This conviction provides cause to deny respondent's application pursuant to Business and Professions Code section 10177, subdivision (b), read in conjunction with Business and Professions Code section 480, subdivision (a).

4. In California Code of Regulations, title 10, section 2911, the department has established criteria to be used in evaluating the rehabilitation of an applicant with a criminal record. The felony offenses which respondent committed are the basis of the department's concern regarding respondent's licensure. The offenses were serious and violent. Nevertheless,

respondent meets a great many of the relevant criteria of rehabilitation, including the passage of more than six years since completion of parole, stability of family life, consistent employment, community involvement, a change in people he associates with, and most importantly, a change in attitude from that which existed at the time of the offenses. Respondent has been honest, trustworthy, and nonviolent in all his dealings since his release from prison, and he has been honest and forthright with the department regarding his criminal record. For these reasons, it does not appear that respondent poses a risk of harm to the real estate-buying public. The public will be adequately protected by the following order, which allows respondent to obtain a real estate license on a restricted basis.

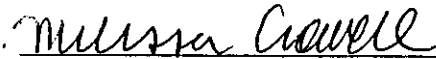
ORDER

The application of Tyler Lamont Barker for a real estate salesperson license is denied; provided, however, 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 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 Business and Professions Code section 10156.6:

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 the 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 or 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.

DATED: July 9, 2008



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED

MAY 15 2008

DEPARTMENT OF REAL ESTATE

By K. Max

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 TYLER LAMONT BARKER,)
13 Respondent.)

H- 10396-SF

STATEMENT OF ISSUES

14
15 The Complainant, Charles W. Koenig, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against TYLER LAMONT BARKER (hereinafter "Respondent")
18 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 October 2, 2007.

23 II

24 Complainant, Charles W. Koenig, a Deputy Real
25 Estate Commissioner of the State of California, makes this
26 Statement of Issues in his official capacity.

27 ///

1 III

2 On or about January 24, 1991 in the Superior Court of
3 the California, County of Santa Clara, Respondent was convicted
4 of violation of California Penal Code Section 148.9 (False
5 Identification to Peace Officer), a misdemeanor and a crime
6 involving moral turpitude which is substantially related under
7 Section 2910, Title 10, California Code of Regulations (herein
8 "the Regulations"), to the qualifications, functions or duties
9 of a real estate licensee.

10 IV

11 On or about January 4, 1995 in the Superior Court of
12 California, County of Santa Clara, Respondent was convicted of
13 violation of California Penal Code Section 207(a) (Kidnapping),
14 Section 211/212.5(b) (Robbery), and Section 459/460(a) (1st
15 Degree Burglary), all felonies and all with Section 12022(a)(1)
16 enhancements (Committing Felony With Firearm) and all of which
17 are substantially related under Section 2910 of the Regulations,
18 to the qualifications, functions or duties of a real estate
19 licensee.

20 V

21 The crimes of which Respondent was convicted, as
22 alleged in Paragraphs III and IV above constitute cause for
23 denial of Respondent's application for a real estate license
24 under Sections 480(a) and 10177(b) of the California Business
25 and Professions Code.

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27 ///

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

7
8 
9 CHARLES W. KOENIG
10 Deputy Real Estate Commissioner

11 Dated at Sacramento, California
12 this 9th day of May, 2008.