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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

OCT - 8 2009

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

In the Matter of the Application of)
NEAL PATRICK RENZI,)
Respondent.)

NO. H- 35726 LA
OAH NO. L-2009040273

DECISION

The Proposed Decision dated September 4, 2009 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)(C) of the Government Code:

ORDER on page 7 of the Proposed Decision, is revised to read:

"The application of Respondent Neal Patrick Renzi for a real estate salesperson license is denied."

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
October 28, 2009.

IT IS SO ORDERED 10/8/2009

JEFF DAVI
Real Estate Commissioner

[Signature]

By WAYNE S. BELL,
Chief Counsel

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

NEAL PATRICK RENZI,

Respondent.

DRE Case No. H-35726 LA

OAH No. 2009040273

PROPOSED DECISION

This matter was heard on August 6, 2009, at Los Angeles, California, by David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California. Neal Patrick Renzi (Respondent) was present and represented himself. Maria Suarez (Complainant), Deputy Real Estate Commissioner, was represented by Lissete Garcia, Counsel for the Department of Real Estate (Department).

Oral and documentary evidence was received, and the matter was submitted for decision on August 6, 2009.

FACTUAL FINDINGS

Jurisdiction and Application

1. Complainant brought the Statement of Issues in her official capacity.
2. On March 7, 2008, Respondent submitted an application for a real estate salesperson's license.
3. On the application, question number 23 asks whether Respondent had ever been convicted of a crime. If the answer is "yes," the applicant is instructed to provide detailed information in response to question 27. Respondent checked the box stating "Yes," and provided the information requested concerning the convictions set forth below in Findings 4 and 10. Respondent did not set forth information concerning the convictions set forth below in Finding 7.

Convictions

4. On February 20, 1997, Respondent was convicted, after his plea of guilty, of violating Penal Code section 245, subdivision (a)(1), assault with a deadly weapon, a felony. (*People v. Neal Renzi*, Superior Court, County of San Diego, case number SCD125481.) On

May 20, 1997, Respondent was placed on probation for three years on terms and conditions, including that he serve 120 days in county jail and pay a fine.

5. Respondent completed his sentence. On June 25, 2008, Respondent's petition for relief under Penal Code section 1203.4 was granted, and the charge was reduced to a misdemeanor, the finding of guilt was set aside and the complaint was dismissed.

6. The conviction relates to events that occurred when Respondent was 18 years old. He and a neighbor were on poor terms because the neighbor did not like Respondent's college lifestyle, which included parties and loud music. Respondent thought the neighbor had arranged for Respondent's car to be towed. When he saw the neighbor, they argued and fought. Respondent and his friend punched the neighbor.

7. On April 5, 1999, Respondent was convicted, after his plea of nolo contendere, of violating Penal Code section 240, assault, and section 242, battery, both misdemeanors. (*People v. Neal Renzi*, Superior Court, County of Orange, case number 98SM50739.) Imposition of sentence was suspended and Respondent was placed on conditional probation for three years on terms and conditions, including that he submit to drug testing, attend weekly counseling for six months, attend four Alcoholics Anonymous meetings per week for one year, and complete 120 hours of CalTrans service. Respondent was also ordered to have no contact with Martin Duncan.

8. Respondent completed his sentence. On June 23, 2008, Respondent's petition for relief under Penal Code section 1203.4 was granted, and the findings of guilt were set aside and the complaint was dismissed.

9. The convictions relate to events that occurred on June 22, 1998, when Respondent was 21 years old. Respondent and five friends were at a community pool, drinking, and were drunk. Respondent stated that "somebody said something and I started to fight." The police report (Exhibit 5) explains that Respondent accused Mr. Duncan of saying something about Respondent's girlfriend, which Mr. Duncan denied. Respondent punched Mr. Duncan several times, including after Mr. Duncan had been pushed to the ground.

10. On April 19, 1999, Respondent was convicted, after his plea of guilty, of violating Penal Code section 241, subdivision (b), assault on a police officer; section 422, terrorist threats; and section 647, subdivision (f), public intoxication, all misdemeanors. (*People v. Neal Renzi*, Superior Court, County of Orange, case number 99HM00600.) Imposition of sentence was suspended and Respondent was placed on informal probation for three years on terms and conditions, including that he serve 60 days in the alternative sentencing program, pay fines and fees, submit to drug testing, attend 24 Alcoholics Anonymous meetings in the next six months, and complete 27 days of CalTrans service.

11. Respondent completed his sentence. On June 26, 2008, Respondent's petition for relief under Penal Code section 1203.4 was granted, and the findings of guilt were set aside and the complaint was dismissed.

12. The convictions relate to events that occurred on February 1, 1999. Respondent wrote in the application (Exhibit 2) that he was drunk on Super Bowl Sunday, "said bad words to police officers, and spit at a police officer and missed." Respondent testified that, after a party, at 1:00 a.m. he went to a store to buy cigarettes. The store was closed and he kicked the door. Many police officers arrived. They rushed him, used pepper spray, and threw him to the pavement. Respondent stated that his head was injured and that he got upset and said things to them, and spit at the officer who was taking his picture.

13. When Respondent filled out his application, he was rushed because he was applying for a job that required a license. Respondent mailed a request for criminal history information to the FBI on January 28, 2008, and stated that he received the reply, dated January 31, 2008, before filling out his application on February 1, 2008. The FBI printout (Exhibit B) references the convictions described in Findings 4 and 10, but not the convictions described in Finding 7. Respondent was aware of the events underlying the convictions described in Finding 7, but testified that he was unsure if there had been any convictions.

14. Respondent also submitted a request for criminal history information to the California Department of Justice (DOJ) and received a response dated March 12, 2008 (Exhibit C). This report refers to the three separate cases and the convictions that resulted.

15. Respondent did not submit any supplement or update to his application after receiving the DOJ report.

16. An attachment to the application (Exhibit 2) explains the importance of supplying truthful and complete information regarding convictions, and explains that failure to disclose such information may be considered an attempt to obtain the license by fraud or misrepresentation and may result in denial of the application. The instructions also inform the applicant that the Department will obtain records from both the FBI and DOJ.

Rehabilitation and Other Evidence

17. On March 27, 2008, Respondent was sent a letter from the Department that additional information was needed before action could be taken on his application, and that his application was forwarded to a district office. (Exhibit F.) On August 26, 2008, Senior Deputy Commissioner Anthony Vo asked Respondent to fill out and return to him the Department forms used to gather information on an applicant's background, including criminal convictions. (Exhibits 7 and K.) Respondent never returned those forms. On the same date, Mr. Vo sent letters to different courts and police departments seeking documents related to the convictions set forth in Findings 4, 7 and 10. Respondent felt harassed and intimidated by Mr. Vo because, on the one hand the DRE letters stated his application was under review, while on the other hand Mr. Vo's letters to police and courts stated that Respondent's application was under investigation. Respondent believed that by giving conviction information to Mr. Vo he might somehow incriminate himself.

18. Respondent requested a copy of his application from the Department and when he received it in December 2008, he confirmed that he had not included information of the convictions set forth in Finding 7.

19. At the hearing, Respondent submitted a Notice of Disclosure (Exhibit Q) including information on the convictions set forth in Findings 4, 7 and 10.

20. Respondent has been actively involved in taking college courses. On June 2, 2006, he was awarded a Bachelor of Arts degree in communications and French, with a minor in European studies. Respondent worked for a mortgage company for about eight months in 2007 and 2008, and became interested in real estate. In 2007 and 2008, he passed six courses in real estate subjects at Saddleback College. In the Spring of 2008, he passed courses in accounting and escrows at Irvine Valley College. Respondent also studies Tae Kwon Do, and received his Dan Certificate in March 2009.

21. In 2001 Respondent became active in a church, and for the past three years has been a children's Pastor.

22. Respondent's father died when he was 15 years old, and he did not receive much guidance after that. He and his friends often drank and fought people. However, Respondent testified that his convictions have held him back and that he has realized that he made mistakes. He is single and now lives with his mother. He is not employed.

23. Respondent did not supply any character references or supporting testimony.

24. Although Respondent presents a record of accomplishments that includes many of the criteria that the Department seeks (see Legal Conclusion 6), perhaps the most significant indicia of his lack of rehabilitation was the attitude and demeanor he displayed during the hearing. Respondent did not want to answer questions concerning his convictions, and it was necessary to explain to him the possibility that a record of contempt could be made for failure to do so. Respondent was arrogant and showed little remorse. His concerns about his convictions were that they prevented him from getting jobs, and he expressed little contrition for the people who he attacked, including his college neighbor, who Respondent said did not agree with his lifestyle, as if this and the belief that the neighbor had his car towed somehow justified Respondent's felony assault. Similarly, Respondent offered no sign of contrition for his fight with Mr. Martin, other than to say that, when he saw Mr. Martin's sister ten years later at a reunion, he apologized to her. Respondent presented himself as one who deserved his license, and he was resentful of the Department's efforts to obtain the very information that he refused to supply. The evidence supports the inference that Respondent was likely aware of his second conviction when he failed to disclose it on his application, but believed he could get away with the nondisclosure because the conviction did not appear on his FBI record. Less than two months after signing his application, when Respondent became aware that the DOJ records included all of his convictions, he made no effort to provide that information to the Department. When Respondent received a copy of his application and was certain that all of his convictions had not been disclosed, he made no

effort to provide full disclosure to the Department. Respondent waited until the hearing, more than 18 months after he signed his application, to provide a disclosure of all of his convictions.

LEGAL CONCLUSIONS AND DISCUSSION

Based upon the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to deny Respondent's application for a real estate broker's license pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b), because Respondent has been convicted of crimes that are substantially related to the qualifications, functions, or duties of a real estate salesperson, which crime involves moral turpitude. (See Factual Findings 4 through 12.)

2. The Department has issued regulations that specify the types of crimes that are "substantially related" to the qualifications, functions, or duties of an applicant for a real estate broker's license. Respondent's convictions are "substantially related" under California Code of Regulations, title 10 (CCR), section 2910, subdivision (a)(8), for doing an unlawful act with the threat of substantial injury to another, and subdivision (a)(10), for a pattern of repeated and willful disregard of law.

3. Although not amenable to a precise definition, "moral turpitude" connotes a readiness to do evil, 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, contrary to the accepted and customary rule of right and duty between man and man." (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1757, quoting from *People v. Mansfield* (1988) 200 Cal.App.3d 82, 87.)

4. The crime of assault with a deadly weapon has been determined to be a crime of moral turpitude (*People v. Ewell* (1988) 206 Cal.App.3d 171). Further, the factual circumstances of Respondent's other offenses include fighting with someone else in public, and while drunk, as well as threatening police officers who responded to his drunken, threatening acts. These facts establish the necessary element of Respondent's actions that are contrary to the accepted rules of society and duties that each person owes to another for it to be determined that Respondent's other convictions, under the circumstances, were for crimes involving moral turpitude.

5. Cause exists to deny Respondent's application for a real estate broker's license pursuant to Business and Professions Code section 480, subdivision (c) and section 10177, subdivision (a), because Respondent made a false statement in his application by failing to disclose his April 5, 1999 convictions. (See Factual Findings 2 and 7.)

6. Criteria have been developed by the Department to evaluate the rehabilitation of an applicant who has committed a crime. These criteria, found at CCR section 2911, are summarized as follows:

Subdivision (a), passage of at least 2 years since the conviction or the underlying acts;
Subdivision (b), restitution;
Subdivision (c), expungement of the conviction;
Subdivision (d), expungement of the requirement to register as an offender;
Subdivision (e), completion of, or early discharge from, the criminal probation;
Subdivision (f), abstinence from drugs or alcohol that contributed to the crime;
Subdivision (g), payment of any criminal fines or penalties;
Subdivision (h), stability of family life;
Subdivision (i), enrollment in or completion of educational or training courses;
Subdivision (j), discharge of debts to others, or earnest efforts to do so;
Subdivision (k), correction of business practices causing injury;
Subdivision (l), significant involvement in community, church or private programs for social betterment;
Subdivision (m), new and different social and business relationships; and
Subdivision (n), change in attitude from the time of conviction to the present, evidenced by: testimony of the applicant and others, including family members, friends or others familiar with his previous conduct and subsequent attitudes and behavior patterns, or probation or parole officers or law enforcement officials; psychiatric or therapeutic evidence; and absence of subsequent convictions.

7. 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.

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, Petitioner 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. The rehabilitative state of facts is demonstrated by a track record of conduct that convinces and assures the Board that the public would be safe in granting full privileges of licensure to respondent.

8. Respondent's evidence of rehabilitation is insufficient to justify granting his license application at this time. Respondent did not present witnesses or declarations or letters of reference of his good character or of his rehabilitation—there was no independent evidence, just his own word. Further, although Respondent could show technical compliance with many of the criteria of rehabilitation, that is, the "track record of conduct" noted above, his presentation was totally lacking in sincerity to demonstrate a change in attitude deserving


of licensure at this time. Finally, Respondent failed to disclose his convictions and did not have a convincing explanation for his failure to do so. (Factual Findings 17 through 24.)

9. Real estate transactions typically involve a substantial amount of paperwork, including numerous written disclosures that are required by law. Respondent's lack of understanding of the necessity to be complete and truthful in preparing his own license application indicates a potential problem in allowing him to be licensed and, thereby, to participate in such real estate transactions. In the practice of a real estate licensee, "[h]onesty and integrity are deeply and daily involved in various aspects of the practice." (*Golde v. Fox* (1979) 98 Cal.App.3d 167, 176.) "The public exposing themselves to a real estate licensee has reason to believe that the licensee must have demonstrated a degree of honesty and integrity in order to have obtained such a license." (*Id.* at 177-178.) Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402.) "If appellant's offenses reflect unfavorably on his honesty, it may be said he lacks the necessary qualifications to become a real estate salesperson." (*Harrington, supra.*) "The Legislature intended to insure that real estate brokers and salespersons will be honest, truthful and worthy of the fiduciary responsibilities which they will bear." (*Harrington, supra; Ring v. Smith* (1970) 5 Cal.App.3d 197, 205.) Respondent has not established that he is entitled to such licensure.

ORDER

The application of Respondent Neal Patrick Renzi for a real estate ^{salesperson} broker's license is denied.

DATED: September 4, 2009.


DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

FIRST CAUSE FOR DENIAL
(CRIMINAL CONVICTIONS)

II

On or about May 20, 1997, in the Superior of the State of California, San Diego County, Case No. SCD125481, Respondent was convicted of violating Penal Code Section 245(A)(1) (assault with a deadly weapon), 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.

III

On or about April 5, 1999, in the Superior of the State of California, Orange County, Case No. 98SM50739, Respondent was convicted of violating Penal Code Section 240 (assault) and Penal Code Section 242 (battery), 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.

IV

On or about April 19, 1999, in the Superior of the State of California, Orange County, Case No. 99HM00600, Respondent was convicted of violating Penal Code Section 241(B) (assault on a peace officer), Penal Code Section 422 (terrorist threats), and Penal Code Section 647(F) (public intoxication), 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.

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V

The crimes of which Respondent was convicted, as alleged in Paragraphs II, III and IV 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).

SECOND CAUSE FOR DENIAL
(FAILURE TO REVEAL CONVICTION)

VI

In response to Question 25 of the license application, to wit: "HAVE YOU EVER BEEN CONVICTED OF ANY VIOLATION OF LAW? CONVICTIONS EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED. HOWEVER, YOU MAY OMIT MINOR TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE A MISDEMEANOR OR FELONY OFFENSE", Respondent marked the box denoted "Yes", however, he failed to reveal the conviction described in Paragraph III above.

VII

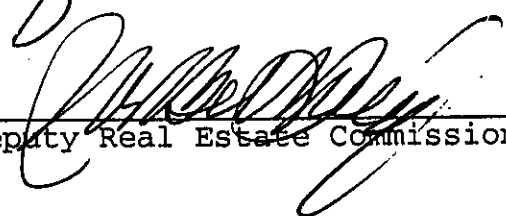
Respondent's failure to disclose the conviction, as set forth in Paragraph III above, in his license application, constitutes the attempt to procure a real estate license by fraud, misrepresentation, or deceit, or by making a false statement of material fact required to be revealed in said application, which is grounds for denial of the issuance of a license under Business and Professions Code Sections 475(a)(1), 480(c) and 10177(a).

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

Dated at Los Angeles, California
this 19th day of February, 2009.



Deputy Real Estate Commissioner

cc: Neal Patrick Renzi
Newport Mortgage and Investments/Jeffrey Carl Ault
Maria Suarez
Sacto.