

FILED

JAN 14 2009

DEPARTMENT OF REAL ESTATE

BY *[Signature]*

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
DARREN WILSON KERR,)
)
Respondent.)
_____)

No. H-4988 SAC
OAH No. 2008060602

DECISION

The Proposed Decision dated December 11, 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 Decision suspends or revokes one or more real estate licenses on grounds of the conviction of a crime.

The right to reinstatement of a revoked real estate license or to the reduction of a suspension is controlled by Section 11522 of the Government Code. A copy of Section 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on FEB - 4 2009

IT IS SO ORDERED 1-13-09

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DARREN WILSON KERR,

Respondent.

Case No. H-4988 SAC

OAH No. 2008060602

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings, on November 12, 2008, in Sacramento, California.

John Van Driel, Counsel, Department of Real Estate, represented the complainant.

Darren Wilson Kerr was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted on November 12, 2008.

FACTUAL FINDINGS

1. Complainant, Charles W. Koenig, a Deputy Real Estate Commissioner of the State of California, filed the Accusation in his official capacity on May 17, 2008.
2. Darren Wilson Kerr (respondent) is presently licensed under the Real Estate Law, Part 1 of Division 4 of the Business and Professions Code, as a real estate broker. Respondent's license was in full force and effect at all times relevant herein, and will expire on October 14, 2011, unless renewed.
3. On August 1, 2007, in the Superior Court of California, County of Alameda, in Case No. 82623, respondent was convicted, upon his plea of no contest, of making criminal threats, in violation of Penal Code section 422, a misdemeanor.¹ Respondent was sentenced

¹ Penal Code section 422 states:

Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat,

to two days in county jail and granted three years probation with conditions requiring him to attend a 52-week domestic violence program, participate in 20 hours of community service, not own or possess weapons, relinquish for destruction the firearm in his possession, stay away from "April Kanbergs," and pay fines/restitution in the amount of \$450.

4. The offense date was March 18, 2007. Officers from the Alameda Police Department responded to the home of Apryl Kanbergs regarding her report of criminal threats made against her by respondent. Ms. Kanbergs reported to police that respondent owned a pistol. Police conducted a records inquiry which showed that respondent had a .45 caliber handgun registered in his name. Respondent was arrested at the Islander Motel where he was living. He was served at the scene with an Emergency Protective Order protecting Ms. Kanbergs and her children. A Superior Court of Alameda County minute order dated April 3, 2007, indicates that respondent surrendered his weapons to police pending resolution of the case.

5. Relative to his application for a real estate broker/officer license, respondent completed a Department of Real Estate (department) "Confidential - Interview Information Statement." In this document, respondent disclosed his Penal Code section 422 conviction and provided an explanation of the incident. Respondent signed this statement on December 11, 2007, certifying that his disclosures were "true and correct."

In the attached "Conviction Detail Report," in the section entitled "Details of Crime," respondent provided no information regarding his involvement or culpability in any criminal wrongdoing. Respondent provided a detailed account of Ms. Kanbergs' and her mother's involvement in what he believed to be welfare fraud. He stated, "During a telephone conversation with here [sic] over issues with the children, I threatened to expose these numerous fraudulent activities. She retaliated by calling the police and stating that I verbally threatened here [sic] life." He stated that he pled no contest because the "D.A. would not drop it. due [sic] to lack of finances i [sic] was advised to plead N.C. to [a] misdemeanor, to

even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

For the purposes of this section, "immediate family" means any spouse, whether by marriage or not, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

"Electronic communication device" includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

which I regraeat [sic]. I feel That [sic] I was absolutely railroaded and astonshied [sic] that something like this could actually happen based soley [sic] on the word of a fraudulent decietfull [sic] person.”

In the section entitled “Explanation of Crime – Do you wish to offer an explanation as to why you committed this crime?,” respondent wrote, “I maintain innocence [sic].”

In the section entitled “Rehabilitation Efforts – What positive changes have you made in your life since this conviction?,” respondent wrote, “I no longer have any contact whatsoever with Apryl Kanbergs.”

6. At hearing, respondent admitted to pleading no contest to the alleged crime, however, he stated that he “disagreed with the police report.” He explained the circumstances leading up to his arrest as follows: A week before his arrest, he received a call from Ms. Kanbergs stating “her boyfriend had broken into the house to try to strangle her.” Respondent visited the next day and police were present filling out a report. According to respondent, Ms. Kanbergs told him that she had a long standing “drug problem,” and she wanted respondent help watch the children so that she could get help for this problem. He stated she mostly slept for three days. While at her home, respondent found “some papers from welfare stating she did not know the whereabouts of the father, and indicating that she worked full-time.” Further, he stated that the maternal grandmother is a full-time child care provider and provide care of her grandchildren for free. Respondent also testified that Ms. Kanbergs’ boyfriend is “a methamphetamine addict,” “a parolee formerly housed at San Quentin for conspiracy to commit murder,” and had been “arrested for burglary” which was reported in the local newspaper. Respondent stated that he observed Ms. Kanbergs “pulled a needle out of the rafters next to the washer and dryer” and say, “See, this is what he leaves around.” She was referring to her boyfriend, Nathan. Ms. Kanbergs told the respondent that he was not the biological father of their son.² Respondent told Ms. Kanbergs he “would turn her in to welfare, that she doesn’t work and she does know the whereabouts of the father.” He states that when he got home, there were “five cop cars at his door.”

7. Respondent is 42 year of age. He has never been married. He states that his two children (a seven year old daughter and a five year old son) live with their mother and the same boyfriend she had at the time of the offense. Respondent pays monthly child support in the amount of \$425. He sees his children two to four days a week depending on school sessions. There was a lapse in visitation from March 22, 2007 to May 2008, due to respondent’s decision to move to Scottsdale, Arizona after losing his job at Bridge Capital, where he had worked for five months.³

² At hearing, respondent submitted a copy of genetic test results from LabCorp dated August 16, 2007. The lab report concludes that the probability of paternity as between respondent and his son, is 99.99%.

³ On September 12, 2007, respondent obtained an order from the Superior Court, Alameda County, authorizing him to complete his domestic violence program in Arizona. The court order states “Defendant moving to Arizona. Defendant will be doing DVC classes in Arizona.” However, respondent testified at hearing that he moved to Scottsdale, Arizona on March 22, 2007.

8. Respondent testified that he and Ms. Kanbergs have a better relationship now, he has "no animosity towards her," and they do not argue. They have peaceful contact for exchange of the children.

9. Re submitted copies of two e-mails purportedly sent to him from Ms. Kanbergs on August 21, 2008, and from the maternal grandmother, Chris, on September 13, 2008. Ms. Kanbergs' letter is addressed "To Whom It May Concern," and states that the domestic disagreements in March 2007, were the result of the "disillusion [sic] of our long term relationship" and "various disputes regarding the custody, visitation, & paternity of our children." She states that "the police were called during one such disagreement, and the incident was blown out of proportion." She stated that she and respondent are "now working together for the best interest of our children as co-parents." The letter describes respondent as "an excellent father." The e-mail from the maternal grandmother, states she is happy that he is in the children's lives and the positive effect it has had on the children.

10. Respondent submitted a letter sent from the department to respondent, dated August 29, 2008, stating that Apryl Kanbergs has submitted an online Salesperson Change Application seeking to be placed in respondent's employ. The letter requested that respondent complete the employing broker portion of the application on the "DRE web site" before processing can continue. Respondent stated that this letter established that he and Ms. Kanbergs have a good relationship since she seeks to work for him.

11. Respondent will be on criminal probation until July 21, 2010. He stated that he served three days in the Santa Rita Jail before he could post bail. He described the facility as "a filthy, dirty place." He contracted a "staph infection" on his hand, a portion of his hand had to be removed, and he almost lost his thumb.

12. Respondent completed 21 hours of service for the City of Benica Parks and Community Service Department in August 2007. Respondent complete 52 weeks (104 hours) of domestic violence classes. He submitted proof of completion and an "Exit Interview" completed on October 14, 2008. This document describes respondent's participation as "outstanding." Respondent reportedly stated that he has "learned" and gained an "understanding" of "my issues of anger." When asked his role and responsibility in the offense for which he was arrested, he stated, "Criminal threats on my ex-wife."

He testified that he had learned that domestic violence includes verbal, economic, sexual and physical abuse. He learned to identify the cycle of abuse, control triggers, and avoid getting "caught up" in this cycle. He stated that "everybody can get angry, it is what you choose to do with it" so it will not lead to unhealthy rage. He also learned skills on negotiation and compromise so that conflicts do not turn into argument and if they do, to "walk away." When asked if he had "anger issues" before attending the domestic violence program, respondent stated, "I believe so."

13. Respondent attended California State University, Sacramento, and received a bachelor's degree in business administration in 1995. Before obtaining his broker license, respondent worked as a car salesman, and as a loan officer for Ameriquest Mortgage. Respondent has also worked for his father who has a contracting business.

Respondent has been licensed as a real estate broker since November 1999. He has never been licensed as a real estate sales person. He stated that his entire income comes from his brokering activities, which consists primarily of originating home loans including CALPERS loans. According to respondent, most brokers do not process CALPERS loans "because they cannot make enough money on them" due to the fee cap of 1.25 percent. He stated he had "done these loans for free to \$500." Respondent has only been involved in three transactions that were not loans. He has written only two purchase contracts. He "did one listing for a person who came to me for a second" who was facing foreclosure. Respondent's office does not employ any sales persons or office staff. His office is in an industrial park in Benecia, California and is owned by respondent's father who provides the space "free of charge."

Respondent states that he has been audited twice. During a 2003 general audit, he was told by the auditor that he had one of the highest scores in the state. During a 2004 complaint audit involving a single file, the complaint was found meritless.

14. Respondent is not involved in any community or privately-sponsored programs designed to provide social benefit or to ameliorate social problems. He stated he is a good father and an unselfish mortgage broker in that he "make[s] half of what an average loan officer makes. No subprime, no excessive fees, no unfair business dealings."

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Business and Professions Code section 490 states in relevant part:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

2. Business and Professions Code section 10177, subdivision (b), states in relevant part:

The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, ...

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, 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.

3. California Code of Regulations, title 10, section 2910, subdivisions (a)(8) and (c), state:

(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 Code, the crime or act shall be deemed to be substantially related to the qualifications, functions or duties of a licensee of the Department within the meaning of Sections 480 and 490 of the Code if it involves:

[¶]...[¶]

(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.

[¶]...[¶]

(c) If the crime or act is substantially related to the qualifications, functions or duties of a licensee of the department, 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.

Moral Turpitude

4. A criminal act involves moral turpitude if it involves a serious breach of a duty owed to another or to society. (*In re Stuart K. Lesansky* (2001) 25 Cal.4th 11, 16; [citing *In re Johnson* (1992) 1 Cal.4th 689, 699; *In re Calaway* (1977) 20 Cal.3d 165, 169-170; *In re Higbie* (1972) 6 Cal.3d 562, 569-570].) Acts of moral turpitude are acts which involve "bad character" and "readiness to do evil." (*People v. Zataray* (1985) 173 Cal.App.3d 390, 400.) A crime of moral turpitude is "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." (*In re Craig* (1938) 12 Cal.2d 93, 97.)

Respondent's misdemeanor conviction for making criminal threats against his ex-girlfriend and the mother of his child (Findings 3 and 4), amounts to a crime of moral turpitude. "The knowing infliction of mental terror is equally deserving of moral condemnation." (*People v. Thornton* (1992) 3 Cal.App.4th 419, 423, 424.)

Cause for Discipline

5. The crime for which respondent was convicted, as set forth in Findings 4 and 5, was substantially related to the qualifications, functions and duties of a real estate licensee as defined in California Code of Regulations, title 10, section 2910, subdivision (a)(8), doing of any unlawful act with the intent or threat of doing substantial injury to the person or property of another.

6. Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's license and licensing rights pursuant to Business and Professions Code sections 490 and 10177, subdivision (b), by reason of Findings 3 and 4, and Legal Conclusions 4 and 5, in that respondent has been convicted of crimes involving moral turpitude that are substantially related to the qualifications, functions and duties of a real estate salesperson.⁴

⁴ In cases involving discipline of an existing license, a higher standard of proof, clear and convincing evidence, is required because revocation or suspension affects a vested right. (*Clerici v. D.M.V.* (1990) 224 Cal.App.3d 1016, 1023.)

Rehabilitation

7. The department has developed guidelines to evaluate the rehabilitation of a licensee, which are set forth in California Code of Regulations, title 10, section 2912.⁵

⁵ The criteria developed by the department and set forth in California Code of Regulations, title 10, section 2912, for the purpose of evaluating the rehabilitation of a licensee against whom an administrative disciplinary proceeding for revocation or suspension of the license has been initiated, on account of a crime committed by the licensee, include the following, in relevant part:

- (a) The passage of not less than two years from the most recent criminal conviction that is "substantially related" to the qualifications, functions or duties of a licensee of the department. (A longer period will be required if there is a history of criminal convictions or acts substantially related to the qualifications, functions or duties of a licensee of the department.)
- (b) Restitution to any person who has suffered monetary losses through "substantially related" acts or omissions of the licensee:
- (c) Expungement of the conviction or convictions which culminated in the administrative proceeding to take disciplinary action.
- (d) Expungement or discontinuance of a requirement of registration pursuant to the provisions of Section 290 of the Penal Code.
- (e) Successful completion or early discharge from probation or parole.
- (f) Abstinence from the use of controlled substances or alcohol for not less than two years if the criminal conviction was attributable in part to the use of a controlled substance or alcohol.
- (g) Payment of any fine imposed in connection with the criminal conviction that is the basis for revocation or suspension of the license.
- (h) Correction of business practices responsible in some degree for the crime or crimes of which the licensee was convicted.
- (i) New and different social and business relationships from those which existed at the time of the commission of the acts that led to the criminal conviction or convictions in question.
- (j) Stability of family life and fulfillment of parental and familial responsibilities subsequent to the criminal conviction.
- (k) Completion of, or sustained enrollment in, formal educational or vocational training courses for economic self-improvement.
- (l) Significant and conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.
- (m) Change in attitude from that which existed at the time of the commission of the criminal acts in question as evidenced by any or all of the following:
 - (1) Testimony of applicant.
 - (2) Evidence from family members, friends or other persons familiar with the licensee's previous conduct and with subsequent attitudes and behavioral patterns.

8. In consideration of the department's rehabilitation guidelines, respondent was arrested in March 2007 on charges that he made criminal threats against his ex-girlfriend, Ms. Kanbergs. He was convicted of the crime on August 1, 2007. Hence it has been less than two years from his most recent criminal conviction and his probation extends to July of 2010. He has no history of prior convictions, however, a violation of Penal Code section 422, is a serious crime and the elements of the crime bare this out. "Section 422 does not punish casual statements which a reasonable person would ignore." (*Thornton, supra* 3 Cal.App.4th at p. 423.) Penal Code section requires each of the following elements:

- (1) that the defendant willfully threatened to either kill or seriously injure another person;
- (2) that the defendant intend that the person threatened understand the statement to be a threat;
- (3) that the text of the statement and the surrounding circumstances led the person threatened to believe that the defendant would soon execute that threat; and
- (4) the person threatened was placed in actual and reasonable fear for the safety of either himself or his family.

(*Ibid.*) The fact that respondent owned a .45 caliber handgun and the victim had knowledge of this fact, supports a reasonable believe that a threat made by respondent to harm Ms. Kanbergs would and could be carried out.

Respondent's testimony at hearing was completely devoid of any personal responsibility for the conduct leading to his arrest and conviction. He made no mention of the statements he is alleged to have uttered to Ms. Kanbergs. Instead, his entire testimony regarding the circumstances of the incident focused on allegations that Ms. Kanbergs was committing fraud, the maternal grandmother was committing fraud, Ms. Kanbergs was a drug addict, syringes were being stashed her home, and her boyfriend was a methamphetamine addict, parolee and felon who had committed crimes of murder and burglary. His testimony lacked credibility in that he offered no support for his charges and pointed to no action he took to protect his children from what would, if true, pose a serious risk of harm in the mother's care. Instead, the mother was granted a stay away order against respondent and in a move which belies his grave concerns, respondent moved to Arizona for job related reasons.

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- (3) Evidence from probation or parole officers or law enforcement officials competent to testify as to applicant's social adjustments.
 - (4) Evidence from psychiatrists, clinical psychologists, sociologists or other persons competent to testify with regard to neuropsychiatric or emotional disturbances
 - (5) Absence of subsequent felony or misdemeanor convictions that are reflective of an inability to conform to societal rules when considered in light of the conduct in question.

9. At no time did respondent address the “criminal threats on my ex-wife” that he reportedly admitted during his October 2008 domestic violence exit interview. Respondent’s hearing testimony most closely coincided with his previous December 2007 statements to the department in the “Conviction Detail Report.” He basically repeated the same details of the crime, which tend to place all blame on the mother of his children, while maintaining his own “innocence.” (Finding 5.) Hence, there has been no “change in attitude from that which existed at the time of the commission of the criminal acts” (Cal. Code of Regs., tit. 10, §2912, subd. (m)), which reflects a lack of rehabilitation on respondent’s part.

10. Respondent wrote in the “Conviction Detail Report” that he pled to the charged offense because the “D.A. would not drop it” and “due to lack of finances.” The certified record of respondent’s conviction of Penal Code section 422, is considered conclusive evidence of his guilt of the offense. (*Arneson v. Fox* (1980) 28 Cal.3d.440, 449.) Hence, respondent’s declaration of innocence demonstrates a lack of rehabilitation. He is able to recite what he learned in his 52-week domestic violence course, but there is no evidence he has internalized this information as it applies to his own past conduct.

11. Respondent was ordered to complete 20 hours of community service as a condition of probation. There is proof in the form of a letter from the City of Benicia, Parks and Community Service Department, that respondent complied with this order. However, respondent did not discuss what services he performed and clearly did not continue in this or any related community service endeavor. Hence, there has been no “significant or conscientious involvement in community, church or privately-sponsored programs designed to provide social benefits or to ameliorate social problems.” (Cal. Code Regs., tit. 10, § 2912, subd. (l).)

12. In mitigation, respondent has established regular visitation with his children since his return to California in May 2008. His contact with them is noted to be positive. His relationship with Ms. Kanbergs functions for the “peaceful” exchange of the children. (Finding 8.) Respondent’s loan origination practices appear to be sound. (Finding 13.)

However, respondent’s conduct and attitude is not aligned with the expectations of a real estate licensee. “One of the general aims of the Commissioner’s power to regulate real estate licensees is to ensure that the holders of state licenses will be honest and truthful in their dealings and will maintain a good relationship. (*Stickel v. Harris* (1987) 196 Cal.App.3d 575, 588.) Respondent’s offense demonstrated an inappropriate and aggressive response to a stressful or conflicted situation. Real estate agents are involved in a competitive business that often includes stressful interactions and negotiations with other agents and members of the public. His testimony and responses to the department’s investigation into his conviction, indicate a lack of credibility and rehabilitation and present a risk to the public.

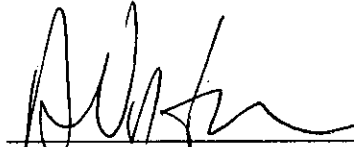
Conclusion

13. Under all the facts and circumstances herein, it would be contrary to the public interest to permit respondent to retain a real estate broker license, with or without restrictions.

ORDER

All licenses and licensing rights of respondent Darren Wilson Kerr under the Real Estate Law are revoked pursuant to Factual Findings 3 through 14 and Legal Conclusions 4 through 12, jointly and individually.

Dated: December 11, 2008



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

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2 Department of Real Estate
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FILED

MAY 20 2008

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
DARREN WILSON KERR,)	H-4988 SAC
Respondent.)	<u>ACCUSATION</u>

15 The Complainant, Charles W. Koenig, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against DARREN WILSON KERR (hereinafter "Respondent"),
18 is informed and alleges as follows:

I

20 Complainant, Charles W. Koenig, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation
22 against Respondent in his official capacity.

II

24 Respondent is presently licensed and/or has license
25 rights under the Real Estate Law, Part 1 of Division 4 of the
26 Business and Professions Code (hereinafter "the Code").

27 ///

1 III

2 At all times herein mentioned, from and after
3 October 15, 1999, Respondent was and now is licensed by the
4 Department of Real Estate (herein "Department") as a real estate
5 broker.

6 IV

7 On or about August 1, 2007, in the Superior Court of
8 the State of California, County of Alameda, Case Number 82523,
9 Respondent was convicted of the crime of Criminal Threats in
10 violation of Penal Code Section 422, a misdemeanor and a crime
11 involving moral turpitude, which bears a substantial
12 relationship under Section 2910, Title 10, California Code of
13 Regulations, to the qualifications, functions, or duties of a
14 real estate licensee.

15 V

16 The facts alleged above constitute cause under
17 Sections 490 and 10177(b) of the Code for suspension or
18 revocation of Respondent's license under the Real Estate Law.

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a Decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondent
5 under the Code, and for such other and further relief as may be
6 proper under provisions of law.

7
8 
9 CHARLES W. KOENIG
Deputy Real Estate Commissioner

10 Dated at Sacramento, California
11 this 17th day of May, 2008.