

FLAG

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**FILED**  
JUL 22 2011  
DEPARTMENT OF REAL ESTATE  
By [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Application of  
  
MICHAEL DAVID MANNING,  
  
Respondent.

No. H-8476 SF

ORDER GRANTING UNRESTRICTED LICENSE

On February 25, 2004, a Decision was rendered herein denying Respondent's application for a real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on April 29, 2004, and Respondent has operated as a restricted licensee since that time.

On January 18, 2011, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of

///

1 an unrestricted real estate salesperson license and that it would not be against the public interest  
2 to issue said license to Respondent.

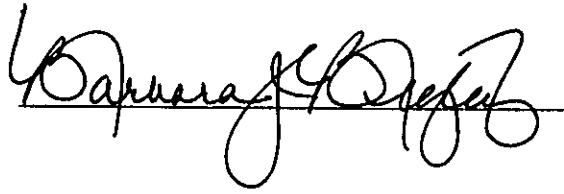
3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of  
4 restrictions is granted and that a real estate salesperson license be issued to Respondent if  
5 Respondent satisfies the following requirements:

- 6 1. Submits a completed application and pays the fee for a real estate  
7 salesperson license within the 12 month period following the date of this Order; and  
8 2. Submits proof that Respondent has completed the continuing education  
9 requirements for renewal of the license sought. The continuing education courses must be  
10 completed either (i) within the 12 month period preceding the filing of the completed  
11 application, or (ii) within the 12 month period following the date of this Order.

12 This Order shall become effective immediately.

13 IT IS SO ORDERED 7/5/11

14 BARBARA J. BIGBY  
15 Acting Real Estate Commissioner

16   
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

FILED  
MAR 11 2004

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Application of )	
MICHAEL DAVID MANNING, )	NO. H-8476 SF
Respondent. )	OAH NO. N-2003080114

DECISION AFTER REJECTION

The matter came on for hearing before Michael C. Cohn, Administrative Law Judge (hereafter ALJ) of the Office of Administrative Hearings, on September 11, 2003, in Oakland, California.

Deidre L. Johnson, Counsel, represented the Complainant. MICHAEL DAVID MANNING (hereafter Respondent) was present and represented himself.

On September 26, 2003, the ALJ rendered a Proposed Decision that the Department declined to adopt as the Decision herein. Pursuant to Section 11517(c) of the Government Code of the State of California, Respondent was served with notice of the determination not to adopt the Proposed Decision of the ALJ along

1 with a copy of said Proposed Decision. Respondent was notified  
2 that the case would be decided by the Real Estate Commissioner  
3 upon the record, the transcript of proceedings held on the above  
4 date, and upon any written arguments offered by Respondent and  
5 Complainant.

6 I have given careful consideration to the record in  
7 this case, including the transcript of proceedings held on  
8 September 11, 2003, and the arguments submitted by Complainant  
9 and Respondent.

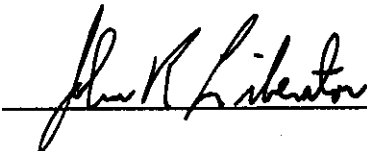
10 The following shall constitute the Decision of the  
11 Real Estate Commissioner in this proceeding:

12 The Proposed Decision dated September 26, 2003, is  
13 hereby adopted in full as the Decision in the above-entitled  
14 matter.

15 This Decision shall become effective at 12 o'clock noon  
16 on March 30, 2004.

17 IT IS SO ORDERED February 25, 2004.  
18

19 JOHN R. LIBERATOR  
20 Acting Real Estate Commissioner  
21

22   
23  
24  
25  
26  
27

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

MICHAEL DAVID MANNING,

Respondent.

Case No. H-8476 SF

OAH No. N2003080114

**PROPOSED DECISION**

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California on September 11, 2003.

Complainant Les R. Bettencourt, Deputy Real Estate Commissioner, Department of Real Estate, was represented by Deidre L. Johnson, Counsel.

Respondent Michael David Manning represented himself.

The matter was submitted on September 11, 2003.

**FACTUAL FINDINGS**

1. On December 19, 2002, Michael David Manning (respondent) filed with the Department of Real Estate (Department) his application for a real estate salesperson license. Any license issued as a result of that application would be subject to the conditions of Business and Professions Code section 10153.4.

2. On July 23, 1996, respondent was convicted in Mariposa County, on his plea of guilty, of a misdemeanor violation of Vehicle Code section 23152(a) (driving under the influence of alcohol). Imposition of sentence was suspended and respondent was placed on probation for five years on conditions that included two days in jail with credit for two days already served, payment of a fine of \$1,830, restrictions on his driving privileges and participation in an alcohol abuse program.

3. On January 29, 2002, respondent was convicted in San Joaquin County, on his plea of nolo contendere, of a misdemeanor violation of Vehicle Code section 23152(b) (driving with a blood alcohol level of 0.08 or more). Imposition of sentence was suspended and respondent was placed on probation for five years on conditions that included five days in jail with credit for two days already served, payment of a fine of \$1,820, restrictions on his driving privileges and participation in an alcohol abuse program.

4. The incident that resulted in respondent's first conviction occurred in May 1996. He took a brief vacation at Yosemite National Park. He had some drinks at the lodge before he left for home. He was alone in his car when stopped by the Highway Patrol. The incident that resulted in respondent's second conviction occurred in December 2001. At the time, respondent was having trouble with his youngest son, who had developed a substance abuse problem. Respondent testified he just needed to get out of the house for a while. He had some drinks and was subsequently picked up on the DUI.

5. Respondent complied with all terms of probation imposed following his 1996 conviction. He is still on probation for his 2002 conviction and is in the process of completing his probationary requirements. He has paid all his fines and is currently attending the drinking driver program that was required by the court. He will complete that course in October 2003.

6. Respondent is 47 years old. He is self-employed as a manufacturers' representative for lawn and garden products. He has worked in that field since 1981. Since his last conviction, respondent has become an active and dedicated member of Alcoholics Anonymous. He says his participation in that program has changed his life. Although he completed the drinking driver program that was mandated at the time of his first conviction, he got little out of it—until he was in jail for his second conviction. Until that time, respondent viewed himself as a social drinker. But while in jail he remembered something that was said in his earlier class—that if you receive a second drunk driving conviction you are probably an alcoholic. He began attending AA meetings on December 16, 2001, three days after his arrest. He attended 90 meetings in the first 90 days and discovered he enjoyed going to the meetings. He immediately obtained a sponsor. He worked, and continues to work, the program very seriously. (He is currently working the 10<sup>th</sup> step.) In addition to his regular attendance at two weekly AA meetings, he is now an Inner Group representative and thereby participates in monthly AA business meetings. Respondent's last drink was the one that resulted in his DUI on December 13, 2001. Thus he recently marked 18 months of sobriety.

7. Respondent and his wife separated in 1999. She moved out of the house and respondent continued to reside there with his two sons. The divorce was final in July 2001. It was during that summer that respondent's younger son, who was then 18, developed a serious substance abuse problem. His behavior became erratic and irrational. This placed a great deal of stress on respondent and, as indicated above, it was while trying to take some time away from the situation that respondent was arrested for drunk driving. But respondent does not blame his divorce or his son's problems for his arrest. As he candidly admits, he drank when times were good, and he drank when times were bad.

8. Respondent is in the process of reconciling with his ex-wife. She moved back into the family home around April 2003. Respondent credits this to the changes in his life that resulted from his sobriety and participation in AA. Respondent's sons, who are now

20 and 23, reside with him and his wife. Their younger son is in rehabilitation from his substance abuse problems. Like his father, he is active in AA, including participating as an Inner Group representative.

9. Respondent is confident that he will be able to maintain his sobriety. But he looks at his situation realistically and knows that AA is a "one day at a time" program that he needs to constantly work at. Nevertheless, he states that, considering how many positive changes have occurred since he started AA, he can not imagine himself returning to his former habits.

10. Respondent's AA sponsor, who met him when respondent began attending meetings in December 2001, has developed a close friendship with him. He sees respondent at twice-weekly meetings and they speak almost daily. He has seen respondent change and grow in the way he thinks and the way he approaches maintaining sobriety. He has great confidence in respondent.

### LEGAL CONCLUSIONS

1. Under Business and Professions Code section 10177(b), cause for denial of an application for a real estate license exists if the applicant has been convicted of a crime involving moral turpitude. No appellate case has yet held that misdemeanor driving under the influence of alcohol is a crime involving moral turpitude within the meaning of the Real Estate Law. And in the context of attorney discipline proceedings, the California Supreme Court has consistently held that a conviction of misdemeanor DUI does not involve moral turpitude per se.<sup>1</sup> But even if a crime does not involve moral turpitude per se, the circumstances under which it was committed may involve moral turpitude. However, there is nothing in the circumstances of either of respondent's two convictions to indicate they involved moral turpitude. Therefore, no cause for denial of respondent's application exists under section 10177(b).

2. Under Business and Professions Code section 480(a), cause for denial of an application for a real estate license exists if the applicant has been convicted of a crime that is substantially related to the qualifications, functions and duties of a real estate licensee. As required by Business and Professions Code section 481, the Department has developed criteria to be used in considering whether a crime bears such a substantial relationship. Under title 10, California Code of Regulations section 2910(a)(8), an act or crime is deemed to be substantially related if it is done "with the intent or threat of doing substantial injury to the person or property of another." By getting behind the wheel of his vehicle while intoxicated, respondent twice acted with the threat (i.e., risk) of doing substantial injury to property or other persons. Cause for denial of his application thereby exists under section 480(a).

---

<sup>1</sup> *In re Kelley* (1990) 52 Cal.3d 487, 494; *In re Carr* (1988) 46 Cal.App.4th 1089.

3. Respondent has established that he has rehabilitated himself to the extent that it would not be against the public interest to permit him to hold a real estate salesperson license on an appropriately restricted basis. Although he is still on probation for his most recent conviction, respondent has substantially complied with the terms of that probation and will soon finish the remaining condition, completion of a drinking driver program. More importantly, respondent has demonstrated a significant change in attitude since his most recent arrest. He immediately became actively involved in AA. He has not had a drink since the one that resulted in his conviction. Both he and his sponsor are convinced he will maintain sobriety. Respondent's efforts have resulted in reconciliation with his ex-wife and the resumption of family life. Respondent's efforts have also undoubtedly had an impact on his son, who is also now in recovery. All the signs bode well for respondent. Considering his changed mindset, it is determined that permitting him to hold a restricted license would not put the public at risk. Because of the relative recency of respondent's sobriety, one condition of his restricted license should be continued attendance in a program such as AA.

#### ORDER

The application of respondent Michael David Manning 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 Section 10156.6 of said Code:

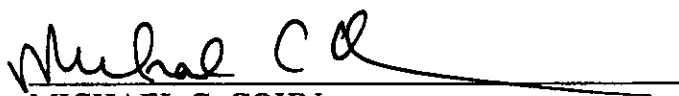
1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
  - (a) The conviction of respondent (including a plea of nolo contendere) of a crime that 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 nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two (2) 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.
4. Respondent shall continue participation in Alcoholics Anonymous during the duration of probation. Respondent shall be required to attend at least one AA meeting each week. On a quarterly basis, respondent shall submit to the Department dated and signed documentation confirming such attendance.
5. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. The suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.
6. Pursuant to Section 10154, if respondent has not satisfied the requirements for an unqualified license under Section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: September 26, 2003

  
MICHAEL C. COHN  
Administrative Law Judge  
Office of Administrative Hearings

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

FILED  
OCT 27 2003

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA  
\* \* \*

In the Matter of the Application of, )	
MICHAEL DAVID MANNING, )	No. H-8476 SF
Respondent. )	N-2003080114

NOTICE

TO: MICHAEL DAVID MANNING, Respondent.

YOU ARE HEREBY NOTIFIED that the Proposed Decision herein dated September 26, 2003, of the Administrative Law Judge is not adopted as the Decision of the Real Estate Commissioner. A copy of the Proposed Decision dated September 26, 2003, is attached for your information.

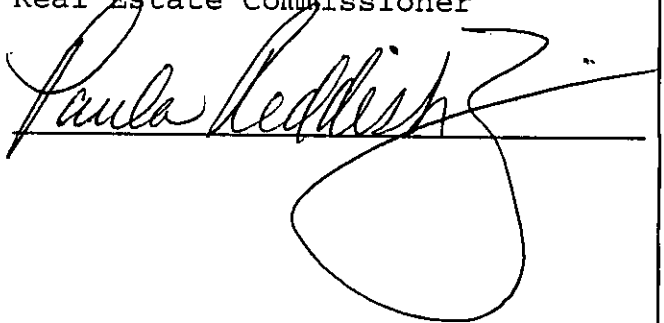
In accordance with Section 11517(c) of the Government Code of the State of California, the disposition of this case will be determined by me after consideration of the record herein including the transcript of the proceedings held on September 11, 2003, and any written argument hereafter submitted on behalf of Respondent and Complainant.

1           Written argument of Respondent to be considered by me  
2 must be submitted within 15 days after receipt of the transcript  
3 of the proceedings of September 11, 2003, at the Sacramento  
4 office of the Department of Real Estate unless an extension of  
5 the time is granted for good cause shown.

6           Written argument of Complainant to be considered by me  
7 must be submitted within 15 days after receipt of the argument of  
8 Respondent at the Sacramento office of the Department of Real  
9 Estate unless an extension of the time is granted for good cause  
10 shown.

11           DATED: October 8, 2003

12  
13           PAULA REDDISH ZINNEMANN  
14           Real Estate Commissioner

15             
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

MICHAEL DAVID MANNING,

Respondent.

Case No. H-8476 SF

OAH No. N2003080114

**PROPOSED DECISION**

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California on September 11, 2003.

Complainant Les R. Bettencourt, Deputy Real Estate Commissioner, Department of Real Estate, was represented by Deidre L. Johnson, Counsel.

Respondent Michael David Manning represented himself.

The matter was submitted on September 11, 2003.

**FACTUAL FINDINGS**

1. On December 19, 2002, Michael David Manning (respondent) filed with the Department of Real Estate (Department) his application for a real estate salesperson license. Any license issued as a result of that application would be subject to the conditions of Business and Professions Code section 10153.4.

2. On July 23, 1996, respondent was convicted in Mariposa County, on his plea of guilty, of a misdemeanor violation of Vehicle Code section 23152(a) (driving under the influence of alcohol). Imposition of sentence was suspended and respondent was placed on probation for five years on conditions that included two days in jail with credit for two days already served, payment of a fine of \$1,830, restrictions on his driving privileges and participation in an alcohol abuse program.

3. On January 29, 2002, respondent was convicted in San Joaquin County, on his plea of nolo contendere, of a misdemeanor violation of Vehicle Code section 23152(b) (driving with a blood alcohol level of 0.08 or more). Imposition of sentence was suspended and respondent was placed on probation for five years on conditions that included five days in jail with credit for two days already served, payment of a fine of \$1,820, restrictions on his driving privileges and participation in an alcohol abuse program.

4. The incident that resulted in respondent's first conviction occurred in May 1996. He took a brief vacation at Yosemite National Park. He had some drinks at the lodge before he left for home. He was alone in his car when stopped by the Highway Patrol. The incident that resulted in respondent's second conviction occurred in December 2001. At the time, respondent was having trouble with his youngest son, who had developed a substance abuse problem. Respondent testified he just needed to get out of the house for a while. He had some drinks and was subsequently picked up on the DUI.

5. Respondent complied with all terms of probation imposed following his 1996 conviction. He is still on probation for his 2002 conviction and is in the process of completing his probationary requirements. He has paid all his fines and is currently attending the drinking driver program that was required by the court. He will complete that course in October 2003.

6. Respondent is 47 years old. He is self-employed as a manufacturers' representative for lawn and garden products. He has worked in that field since 1981. Since his last conviction, respondent has become an active and dedicated member of Alcoholics Anonymous. He says his participation in that program has changed his life. Although he completed the drinking driver program that was mandated at the time of his first conviction, he got little out of it—until he was in jail for his second conviction. Until that time, respondent viewed himself as a social drinker. But while in jail he remembered something that was said in his earlier class—that if you receive a second drunk driving conviction you are probably an alcoholic. He began attending AA meetings on December 16, 2001, three days after his arrest. He attended 90 meetings in the first 90 days and discovered he enjoyed going to the meetings. He immediately obtained a sponsor. He worked, and continues to work, the program very seriously. (He is currently working the 10<sup>th</sup> step.) In addition to his regular attendance at two weekly AA meetings, he is now an Inner Group representative and thereby participates in monthly AA business meetings. Respondent's last drink was the one that resulted in his DUI on December 13, 2001. Thus he recently marked 18 months of sobriety.

7. Respondent and his wife separated in 1999. She moved out of the house and respondent continued to reside there with his two sons. The divorce was final in July 2001. It was during that summer that respondent's younger son, who was then 18, developed a serious substance abuse problem. His behavior became erratic and irrational. This placed a great deal of stress on respondent and, as indicated above, it was while trying to take some time away from the situation that respondent was arrested for drunk driving. But respondent does not blame his divorce or his son's problems for his arrest. As he candidly admits, he drank when times were good, and he drank when times were bad.

8. Respondent is in the process of reconciling with his ex-wife. She moved back into the family home around April 2003. Respondent credits this to the changes in his life that resulted from his sobriety and participation in AA. Respondent's sons, who are now

20 and 23, reside with him and his wife. Their younger son is in rehabilitation from his substance abuse problems. Like his father, he is active in AA, including participating as an Inner Group representative.

9. Respondent is confident that he will be able to maintain his sobriety. But he looks at his situation realistically and knows that AA is a "one day at a time" program that he needs to constantly work at. Nevertheless, he states that, considering how many positive changes have occurred since he started AA, he can not imagine himself returning to his former habits.

10. Respondent's AA sponsor, who met him when respondent began attending meetings in December 2001, has developed a close friendship with him. He sees respondent at twice-weekly meetings and they speak almost daily. He has seen respondent change and grow in the way he thinks and the way he approaches maintaining sobriety. He has great confidence in respondent.

### LEGAL CONCLUSIONS

1. Under Business and Professions Code section 10177(b), cause for denial of an application for a real estate license exists if the applicant has been convicted of a crime involving moral turpitude. No appellate case has yet held that misdemeanor driving under the influence of alcohol is a crime involving moral turpitude within the meaning of the Real Estate Law. And in the context of attorney discipline proceedings, the California Supreme Court has consistently held that a conviction of misdemeanor DUI does not involve moral turpitude per se.<sup>1</sup> But even if a crime does not involve moral turpitude per se, the circumstances under which it was committed may involve moral turpitude. However, there is nothing in the circumstances of either of respondent's two convictions to indicate they involved moral turpitude. Therefore, no cause for denial of respondent's application exists under section 10177(b).

2. Under Business and Professions Code section 480(a), cause for denial of an application for a real estate license exists if the applicant has been convicted of a crime that is substantially related to the qualifications, functions and duties of a real estate licensee. As required by Business and Professions Code section 481, the Department has developed criteria to be used in considering whether a crime bears such a substantial relationship. Under title 10, California Code of Regulations section 2910(a)(8), an act or crime is deemed to be substantially related if it is done "with the intent or threat of doing substantial injury to the person or property of another." By getting behind the wheel of his vehicle while intoxicated, respondent twice acted with the threat (i.e., risk) of doing substantial injury to property or other persons. Cause for denial of his application thereby exists under section 480(a).

---

<sup>1</sup> *In re Kelley* (1990) 52 Cal.3d 487, 494; *In re Carr* (1988) 46 Cal.App.4th 1089.

3. Respondent has established that he has rehabilitated himself to the extent that it would not be against the public interest to permit him to hold a real estate salesperson license on an appropriately restricted basis. Although he is still on probation for his most recent conviction, respondent has substantially complied with the terms of that probation and will soon finish the remaining condition, completion of a drinking driver program. More importantly, respondent has demonstrated a significant change in attitude since his most recent arrest. He immediately became actively involved in AA. He has not had a drink since the one that resulted in his conviction. Both he and his sponsor are convinced he will maintain sobriety. Respondent's efforts have resulted in reconciliation with his ex-wife and the resumption of family life. Respondent's efforts have also undoubtedly had an impact on his son, who is also now in recovery. All the signs bode well for respondent. Considering his changed mindset, it is determined that permitting him to hold a restricted license would not put the public at risk. Because of the relative recency of respondent's sobriety, one condition of his restricted license should be continued attendance in a program such as AA.

#### ORDER

The application of respondent Michael David Manning 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 Section 10156.6 of said Code:

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 that 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 nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two (2) 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

*not adopted*

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.

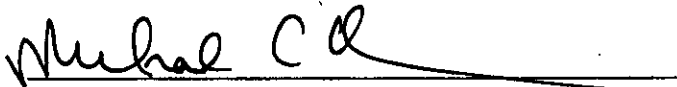
4. Respondent shall continue participation in Alcoholics Anonymous during the duration of probation. Respondent shall be required to attend at least one AA meeting each week. On a quarterly basis, respondent shall submit to the Department dated and signed documentation confirming such attendance.

5. Respondent's restricted real estate salesperson license is issued subject to the requirements of Section 10153.4 of the Business and Professions Code, to wit: Respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. The suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.

6. Pursuant to Section 10154, if respondent has not satisfied the requirements for an unqualified license under Section 10153.4, respondent shall not be entitled to renew the restricted license, and shall not be entitled to the issuance of another license which is subject to Section 10153.4 until four years after the date of the issuance of the preceding restricted license.

*not adopted*

DATED: September 26, 2003

  
MICHAEL C. COHN  
Administrative Law Judge  
Office of Administrative Hearings



FILED  
AUG - 6 2003

**BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA**

DEPARTMENT OF REAL ESTATE

By Kathleen Conners

*In the Matter of the Application of*

MICHAEL DAVID MANNING,

}

Case No. H-8476 SF

OAH No.

*Respondent*

**NOTICE OF HEARING ON APPLICATION**

**To the above named respondent:**

**You are hereby notified** that a hearing will be held before the Department of Real Estate at

**OFFICE OF ADMINISTRATIVE HEARING  
THE ELIHU HARRIS STATE BUILDING  
1515 CLAY STREET, SUITE 206  
OAKLAND, CALIFORNIA 94612**

on **SEPTEMBER 11, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

*Dated:* AUGUST 5, 2003

By Deidre L. Johnson  
DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel  
SBN 66322  
2 Department of Real Estate  
P. O. Box 187000  
3 Sacramento, CA 95818-7000  
4 Telephone: (916) 227-0789

FILED  
JUL 24 2003

DEPARTMENT OF REAL ESTATE

By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Application of )  
12 MICHAEL DAVID MANNING, ) NO. H-8476 SF  
13 Respondent. ) STATEMENT OF ISSUES  
14 )

15 The Complainant, LES R. BETTENCOURT, a Deputy Real  
16 Estate Commissioner of the State of California, for cause of  
17 Statement of Issues against MICHAEL DAVID MANNING, alleges as  
18 follows:

19 I

20 MICHAEL DAVID MANNING (hereafter Respondent), pursuant  
21 to the provisions of Section 10153.3 of the Business and  
22 Professions Code made application to the Department of Real  
23 Estate of the State of California for a real estate salesperson  
24 license on or about January 10, 2002, with the knowledge and  
25 understanding that any license issued as a result of said  
26 application would be subject to the conditions of Section 10153.4  
27 of the Business and Professions Code.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

II

The Complainant, LES R. BETTENCOURT, 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 July 23, 1996, in the Municipal Court of the State of California, County of Mariposa, Respondent was convicted of violation of Vehicle Code Section 23152(a) (DRIVING UNDER THE INFLUENCE OF ALCOHOL), 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

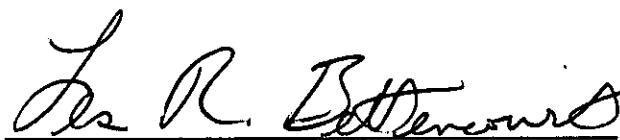
On or about January 29, 2002, in the Municipal Court of the State of California, County of San Joaquin, Respondent was convicted of violation of Vehicle Code Section 23152(b) (DRIVING WITH 0.08 OR MORE BLOOD ALCOHOL), a crime involving moral turpitude, and/or a crime which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations, to the qualifications, functions, or duties of a real estate licensee.

V

The crimes of which Respondent was convicted as alleged above constitute cause for denial of Respondent's application for a real estate license under Sections 480(a) and/or 10177(b) of the California Business and Professions Code.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

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, and for such other and further relief as may be proper in the premises.

  
LES R. BETTENCOURT  
Deputy Real Estate Commissioner

Dated at Oakland, California  
this 8th day of July, 2003.