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FILED

SEP 22 2010

DEPARTMENT OF REAL ESTATE

BY L. Zui

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of

ARTURO RODRIGUEZ,

Respondent.

No. H-9243 SF

ORDER GRANTING UNRESTRICTED LICENSE

On October 12, 2005, a Decision was rendered herein denying Respondent's application for a real estate broker license, but granting Respondent the right to the issuance of a restricted real estate broker license. A restricted real estate broker license was issued to Respondent on December 3, 2005, and Respondent has operated as a restricted licensee since that time.

On January 20, 2010, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate broker 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

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

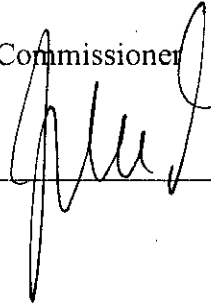
3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of
4 restrictions is granted and that a real estate broker license be issued to Respondent if Respondent
5 satisfies the following requirements:

6 1. Submits a completed application and pays the fee for a real estate broker
7 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 9-15-2016

14 JEFF DAVI
15 Real Estate Commissioner
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17 _____
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 19 2005
DEPARTMENT OF REAL ESTATE

* * *

By S. Kee

In the Matter of the Application of)
) NO. H-9243 SF
 ARTURO RODRIGUEZ,))
) N2005050509
) Respondent.)
_____))

DECISION

The Proposed Decision dated September 15, 2005, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

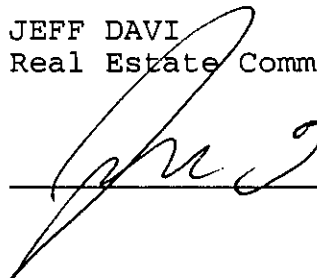
The application for a real estate broker license is denied, but the right to a restricted real estate broker license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when application is made for a real estate broker license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon on NOV 08 2005.

IT IS SO ORDERED 10-12 2005.

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of

ARTURO RODRIGUEZ,

Respondent.

Case No. H-9243 SF

OAH No. N2005050509

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on August 18, 2005.

Michael Rich, Counsel, represented complainant E.J. Haberer II, Deputy Real Estate Commissioner.

K. Randolph Moore, Attorney at Law, represented respondent Arturo Rodriguez.

The matter was submitted on August 18, 2005.

FACTUAL FINDINGS

1. Respondent Arturo Rodriguez filed with the department an application dated May 20, 2004 for a real estate broker license.
2. Respondent is licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) as a real estate salesperson.
3. In or around 1990, respondent was convicted of driving on a suspended license.¹
4. On May 14, 1991, respondent was convicted on his plea of no contest of a violation of Vehicle Code section 23152, subdivision (a) (driving under the influence), a misdemeanor. Respondent was ordered to pay a fine of \$1,000 and to attend a drinking driver program. He was placed on court probation for three years.

¹ The Statement of Issues alleges that respondent violated Vehicle Code section 14601.1, subdivision (a)(2), but no conviction documents for this offense were submitted into evidence. On his application for a broker license and his subsequent Conviction Detail Report, respondent admits to a conviction for driving on a suspended license, but does not specify the particular code section violated.

5. On December 28, 1993, respondent was convicted of a violation of Vehicle Code section 12500, subdivision (a) (driving without a valid license), a misdemeanor. On this offense, respondent was ordered to pay a fine. No further evidence was submitted on this conviction.

6. On April 20, 1998, respondent was convicted on his plea of no contest of a violation of Vehicle Code section 23152, subdivision (b), and Vehicle Code section 23165 (driving with a blood alcohol level 0.08 percent or higher, with a prior), a misdemeanor. Imposition of sentence was suspended on the conditions that respondent serve 20 days in jail, pay a fine of approximately \$1,500, and enroll in and complete the S.B. 38 Multiple Offender Drinking Driver Program. The court placed respondent on 18 months of supervised probation, to be followed by 18 months of court probation. The court ordered respondent not to drive with any alcohol in his blood during his period of probation.

7. On October 29, 1998, respondent was convicted on his plea of no contest of a violation of Vehicle Code section 23152, subdivision (b), and Vehicle Code section 23165 (driving with a blood alcohol level 0.08 percent or higher, with a prior), a misdemeanor. Imposition of sentence was suspended on the conditions that respondent serve 59 days in jail, pay a fine of approximately \$1,500, and enroll in and complete the S.B. 38 Multiple Offender Drinking Driver Program. Respondent was placed on supervised probation for two years, to be followed by two years of court probation, and ordered to obey all laws as a condition of probation. The court suspended respondent's driver's license for 18 months, and ordered respondent not to drive a motor vehicle without an installed ignition interlock device for three years.

8. The facts and circumstances on this conviction are that respondent was stopped by authorities on July 25, 1998, while driving in San Mateo County. He had been drinking, and he was on probation for his April 1998 DUI conviction. Hoping to avoid a probation violation, respondent presented false identification to the officer. Respondent testified that, at the time of this offense, he had a defiant attitude that did not allow him to "see clearly;" he states that he was not thinking and reacted out of "fear and stupidity."

9. On May 27, 1999, respondent was convicted on his plea of no contest of a violation of Vehicle Code section 23152, subdivision (a) (driving under the influence), with a prior, a misdemeanor. Respondent was sentenced to 10 days in jail to be served through the Weekend Work Program, with credit for one day served. The court ordered respondent to pay a fine of \$1,600, and suspended his driver's license for 18 months. Respondent was placed on probation for three years, and ordered to install an ignition interlock device for one year.

10. This conviction arose out of respondent's arrest on November 13, 1998, for driving under the influence of marijuana. Respondent testified that he used to use marijuana recreationally until he "grew out of it."

11. On October 20, 1999, respondent was convicted on his plea of no contest of a violation of Vehicle Code section 14601.2, subdivision (a), and Vehicle Code section 14601.1, subdivision (b)(2) (driving while license is suspended for DUI, with a prior), a misdemeanor, and a violation of Vehicle Code section 23247, subdivision (e) (driving without a court-ordered ignition interlock device), a misdemeanor. On these offenses, respondent was sentenced to a total of 90 days in jail, ordered to pay a fine of approximately \$1,500, and ordered not to drive a vehicle without an installed ignition interlock device for three years. He was placed on three years of court probation on the conviction for driving on a suspended license, and three years of court probation on the conviction for driving without a court-ordered ignition interlock device.

12. This conviction was based on an incident that occurred on August 24, 1999, while respondent was driving a motor vehicle in San Mateo County.

13. On September 7, 2001, respondent signed a Salesperson Renewal Application and submitted it to the department. Question 3 on that application asks: "Within the past four year period have you been convicted of any violation of law? Convictions expunged under Penal Code section 1203.4 must be disclosed. However, you may only omit minor traffic citations which do not constitute a misdemeanor or felony offense." Respondent checked the box marked "No." Question 3 states "If yes complete items 15-16 on page 2." Items 15-16 call for a detailed explanation of each conviction. Under items 15-16, respondent did not identify any convictions. By signing the renewal application, respondent certified under penalty of perjury that his answers and statements on the application were true and correct.

14. When he completed his broker's application in 2004, respondent disclosed the convictions described above in Findings of Fact 3, 4, 5, 6, 7, 9 and 11. In addition, respondent disclosed a conviction in "1984-85" for driving without a license, and a conviction in "1986-87" for "hit and run."

15. Respondent is now 36 years old. He is single and lives alone. Since 2002, respondent has worked as a real estate and loan agent for Fidelity Brokers in Newark. If he is granted his broker's license, he intends to continue working for Fidelity Brokers.

16. Respondent has a long history of alcohol abuse leading to his last DUI arrest on August 24, 1999. Looking back to the time of his DUI convictions, respondent sees in himself "a lot of denial [and] defiance." He felt the drinking driver programs did not apply to him because he did not have a high blood alcohol level when he was arrested. Respondent thought that he was the victim, not the criminal; he felt his arrests were due to racial profiling, or that he had been on the "bad end of the stick." He believes, however, that he has matured since his last conviction in 1999, and that he is now in a "different place." He feels that even though the lessons of drinking driver classes did not stick the first time, the classes are important if "you're willing to be enlightened."

Respondent drank because it was part of his social life. He also thinks that, during one period of his life, he drank because he was depressed when his girlfriend of five years broke up with him. Respondent has a new girlfriend now and she is helping him be a better person. He is close to her family, and she is close to his. Respondent has a different set of friends now than he had when he was drinking.

Respondent does not drink alcohol now, and he has not had a drink in about four years. He does not consider himself an alcoholic; he attended AA only when he was required to do so. He last went to an AA meeting about three weeks before the hearing as a "reminder." Respondent feels that there is no room for alcohol in his life because of his athletics and his career. He started an adult soccer team that plays in a Monday Night league in Hayward. Respondent plays on the team; he is also the manager, the coach, and the sponsor. He acknowledges that there is no community service aspect to his involvement with soccer – he states that "we're just soccer lovers." Nevertheless, he will share his own experiences if a teammate is having problems with alcohol abuse. Respondent has friends on the team and he does their real estate transactions. In addition to taking classes for his broker's license, respondent has obtained an appointment as a notary public. He has not had any legal troubles for the last five years. Respondent feels that he would be letting himself down if he started drinking again.

Respondent believes that his faith has helped him; he attends St. Timothy's Catholic Church once a month and feels that the church gives direction to his life.

17. Respondent acknowledges that he failed to disclose his convictions when he completed his Salesperson Renewal Application in 2001. He explained that he did not appreciate the value of detail or of filling out the form completely. Respondent also testified that, when he filled out the Renewal Application, he thought his convictions were for "traffic offenses" and that the department did not need to know about them. After submitting the Renewal Application, respondent started taking classes for his broker's license and it became "quite clear" to him that he had made a "grave error" when he did not disclose his convictions. Respondent now believes that disclosing criminal convictions to the department is a very important issue.

18. Respondent submitted nine letters in support of his application for a broker's license. Two of the letters are from persons associated with his soccer team; they praise his attitude, his sportsmanship and his organizational skills. The remaining seven letters are from real estate clients, all of whom are also friends or family members. These letters commend respondent for his professional skills, and report that he was honest and trustworthy in the conduct of their real estate transactions.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), provides that a license may be denied if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession.

2. Business and Professions Code section 10177, subdivision (b), provides that a real estate license may be denied if the applicant has been convicted of a felony or a crime involving moral turpitude. Often described as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general” or as something “contrary to the accepted and customary rule of right and duty between man and man,” moral turpitude is “innately a relative concept depending upon both contemporary moral values and the degree of its inimical quality.”²

3. California Code of Regulations, title 10, section 2910, sets forth the criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves “[w]illfully violating or failing to comply with a statutory requirement that a license, permit or other entitlement be obtained from a duly constituted public authority before engaging in a business or course of conduct” (subd. (a)(7)), “[c]ontempt of court or willful failure to comply with a court order” (subd. (a)(9)), “[c]onduct which demonstrates a pattern of repeated and willful disregard of the law” (subd. (a)(10)), or “[t]wo or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involve driving and the use or consumption of alcohol or drugs” (subd. (a)(11)).

4. Respondent’s crime of driving on a suspended license in or around 1990 was not a crime of moral turpitude, but this offense is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, sections 2910, subdivisions (a)(7) and (a)(10). This conviction constitutes cause to deny respondent’s license application under Business and Professions Code section 480, subdivision (a).

5. A violation of Vehicle Code section 12500 (driving without a valid license) is not a crime involving moral turpitude, but the offense committed by respondent is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, sections 2910, subdivisions (a)(7) and (a)(10). Respondent’s 1993 conviction of this offense constitutes cause to deny his license application under Business and Professions Code section 480, subdivision (a).

6. A violation of Vehicle Code section 14601.2, subdivision (a), and Vehicle Code section 14601.1, subdivision (b)(2) (driving while license is suspended for DUI, with a prior), is not a crime involving moral turpitude, but the offense committed by respondent is

² *Rice v. Alcoholic Beverage Control Appeals Board* (1979) 89 Cal.App.3d 30, 36.

substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, sections 2910, subdivisions (a)(7) and (a)(10).³ Respondent's October 1999 conviction of this offense constitutes cause to deny his license application under Business and Professions Code section 480, subdivision (a).

7. A violation of Vehicle Code section 23247, subdivision (e) (driving without a court-ordered ignition interlock device) is not a crime involving moral turpitude, but the offense committed by respondent is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, sections 2910, subdivision (a)(10). Respondent's 1999 conviction of this offense constitutes cause to deny his license application under Business and Professions Code section 480, subdivision (a).

8. Although contemporary moral values condemn drunk driving, 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.⁴

But even if a crime does not involve moral turpitude per se, the circumstances under which it was committed may involve moral turpitude. Here, respondent was convicted of four DUIs between 1991 and 1999. After his first DUI conviction in 1991, respondent was required to complete a drinking driver course. If respondent was not aware of the dangers of drunk driving before he took that course, he certainly knew after he completed it. After the 1991 conviction, however, respondent had three more convictions in 1998 and 1999. Continuing the same dangerous activity despite the knowledge of the risks:

is indicative of a 'conscious indifference or "I don't care attitude" concerning the ultimate consequences' of the activity [Citation omitted] from which one can certainly infer a 'depravity in the private and social duties which a man owes to his fellowman, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.'⁵

³ Counsel for complainant argues that because respondent violated a condition of probation when he drove with a suspended license, the offense is also substantially related to the duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(9) (contempt of court or willful failure to comply with a court order). But a condition of probation is not a court order, as such, and violation of a condition of probation is not contempt of court. (*People v. Johnson* (1993) 20 Cal.App.4th 106, 111-113.) Therefore, respondent's offense is not substantially related to the duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(9).

⁴ *In re Kelley* (1990) 52 Cal.3d 487, 494; *In re Carr* (1988) 46 Cal.3d 1089.

⁵ *People v. Forster* (1994) 29 Cal.App.4th 1746, 1757.

Respondent's DUI convictions in 1991, April 1998, October 1998, and May 1999 are found to constitute crimes involving moral turpitude. Respondent's DUI convictions are substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, sections 2910, subdivisions (a)(10) and (a)(11). Each of respondent's four DUI convictions constitutes cause to deny respondent's license application under Business and Professions Code section 480, subdivision (a), and Business and Professions Code section 10177, subdivision (b).

9. The Statement of Issues does not allege respondent's failure to disclose his convictions on his 2001 Salesperson Renewal Application as a basis for denying his broker's application. Respondent's failure to disclose, however, is alleged as a matter in aggravation of respondent's Vehicle Code convictions.

10. Respondent has an atrocious record of DUI offenses, driving with a suspended license, and other probation violations. It appears, however, that respondent has put his legal problems behind him. His last DUI offense was over six years ago, and it has been almost six years since his last conviction. He stopped drinking over four years ago, and he has completed his criminal probation. There is no evidence of any probation violations or other legal problems since 1999. Respondent's failure to disclose his convictions on his 2001 Salesperson Renewal Application raises a question about his honesty and trustworthiness in completing official documents. Since then, however, respondent appears to have learned his lesson, as he fully disclosed his convictions on his broker's application. Respondent has been working as a real estate salesperson since at least 2002, and there is no evidence of any misconduct as a licensee. And, although respondent's reference letters are from friends and family members, they attest to his honesty and trustworthiness in completing their real estate transactions. Respondent seems to be determined to maintain the personal and professional progress he has made over the last five years. For these reasons, it would not be contrary to the public interest to grant respondent a restricted broker's license.

ORDER

The application of Arturo Rodriguez for a real estate broker license is denied;
provided, however, a restricted real estate broker license shall be issued to respondent
pursuant to Business and Professions Code section 10156.5. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 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 which is substantially related to respondent's fitness or capacity as a real estate licensee; or

(b) The receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.

DATED: September 15, 2005



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

1 MICHAEL B. RICH, Counsel
2 State Bar No. 84257
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0789

FILED
MAY 11 2005

DEPARTMENT OF REAL ESTATE

By S. E. O.

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 ARTURO RODRIGUEZ,) No. H-9243 SF
13 Respondent.) STATEMENT OF ISSUES

14
15 The Complainant, E.J. HABERER II, a Deputy Real Estate
16 Commissioner of the State of California, for Statement of Issues
17 against ARTURO RODRIGUEZ, (hereinafter "Respondent"), is informed
18 and alleges as follows:

19 I

20 On or about May 24, 2004, Respondent made application
21 to the Department of Real Estate of the State of California for a
22 real estate broker license

23 II

24 Complainant, E.J. HABERER II, a Deputy Real Estate
25 Commissioner of the State of California, makes this Statement of
26 Issues in his official capacity and not otherwise.

27 ///

1 III

2 In or about 1990, in the Municipal Court, County of
3 Santa Clara, State of California, Respondent was convicted of a
4 violation of Section 14601.1(a)(2) of the California Vehicle Code
5 (Driving on suspended or revoked license with prior conviction),
6 a crime involving moral turpitude and/or a crime which bears a
7 substantial relationship under Section 2910, Title 10, California
8 Code of Regulations, to the qualifications, functions, or duties
9 of a real estate licensee.

10 IV

11 On or about May 14, 1991, in the Municipal Court,
12 County of Alameda, State of California, in case number 263591,
13 Respondent was convicted of a violation of Section 23152(a) of
14 the California Vehicle Code (Unlawfully driving a vehicle while
15 under the influence of alcohol), a crime involving moral
16 turpitude and/or a crime which bears a substantial relationship
17 under Section 2910, Title 10, California Code of Regulations, to
18 the qualifications, functions, or duties of a real estate
19 licensee.

20 V

21 On or about December 28, 1993, in the Municipal Court,
22 County of San Mateo, State of California, Respondent was
23 convicted of a violation of Section 12500 of the California
24 Vehicle Code (Unlawful driving without a valid driver's license),
25 a crime involving moral turpitude and/or a crime which bears a
26 substantial relationship under Section 2910, Title 10, California

27 ///

1 Code of Regulations, to the qualifications, functions, or duties
2 of a real estate licensee.

3 VI

4 On or about April 20, 1998, in the Municipal Court,
5 County of San Mateo, State of California, in case number
6 NM280694A, Respondent was convicted of a violation of Section
7 23152(b) of the California Vehicle Code (Driving under the
8 influence while having a blood alcohol level of .08% or more), a
9 crime involving moral turpitude and/or a crime which bears a
10 substantial relationship under Section 2910, Title 10, California
11 Code of Regulations, to the qualifications, functions, or duties
12 of a real estate licensee.

13 VII

14 On or about October 29, 1998, in the Municipal Court,
15 County of San Mateo, State of California, in case number
16 NM286705A, Respondent was convicted of a violation of Section
17 23152(b) of the California Vehicle Code (Driving under the
18 influence while having a blood alcohol level of .08% or more), a
19 crime involving moral turpitude and/or a crime which bears a
20 substantial relationship under Section 2910, Title 10, California
21 Code of Regulations, to the qualifications, functions, or duties
22 of a real estate licensee.

23 VIII

24 On or about May 27, 1999, in the Municipal Court,
25 County of Alameda, State of California, in case number 182540,
26 Respondent was convicted of a violation of Section 23152(a) of
27 the California Vehicle Code (Unlawfully driving a vehicle while

1 under the influence of alcohol), a crime involving moral
2 turpitude and/or a crime which bears a substantial relationship
3 under Section 2910, Title 10, California Code of Regulations, to
4 the qualifications, functions, or duties of a real estate
5 licensee.

6 IX

7 On or about October 20, 1999, in the California
8 Municipal Court, County of San Mateo, case number NM297237A,
9 Respondent was convicted of violating Section 14601.2(a) of the
10 California Vehicle Code (Knowingly driving while license
11 suspended for driving under the influence) and Section 23247(e)
12 of the California Vehicle Code (Unlawfully operating vehicle not
13 equipped with a functioning ignition interlock device), crimes
14 involving moral turpitude and/or crimes which bear a substantial
15 relationship under Section 2910, Title 10, California Code of
16 Regulations, to the qualifications, functions, or duties of a
17 real estate licensee.

18 X

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

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