

1 DEPARTMENT OF REAL ESTATE
 2 P. O. Box 187000
 3 Sacramento, CA 95818-7000
 4 Telephone: (916) 227-0789

FILED

SEP 24 2008

DEPARTMENT OF REAL ESTATE

By *L. Zin*

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BEFORE THE
 DEPARTMENT OF REAL ESTATE
 STATE OF CALIFORNIA

In the Matter of the Application of)	NO. H-10433 SF
)	
DAVID RUSSELL O'BRIEN,)	OAH NO. N-2008070126
)	
Respondent.)	<u>STIPULATION AND WAIVER</u>
)	

It is hereby stipulated by and between DAVID RUSSELL O'BRIEN (hereinafter "Respondent") and his attorney, Frank M. Buda, and the Complainant, acting by and through Angela L. Cash, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the First Amended Statement of Issues filed on August 8, 2008, in this matter:

A. Respondent acknowledges that he has received and read the Statement of Issues and the Statement to Respondent filed by the Department of Real Estate in connection with his application for a real estate salesperson license. Respondent understands that the Real Estate Commissioner may hold a hearing on this Statement of Issues for the purpose of requiring further proof of Respondent's honesty and truthfulness and to prove other allegations therein, or that she may in her discretion waive the hearing and grant Respondent a restricted real estate salesperson license based upon this Stipulation and Waiver. Respondent also understands that by filing the Statement of Issues in this matter the Real Estate Commissioner is

1 shifting the burden to Respondent to make a satisfactory showing that Respondent meets all the
2 requirements for issuance of a real estate salesperson license. Respondent further understands
3 that by entering into this stipulation and waiver, Respondent will be stipulating that the Real
4 Estate Commissioner has found that Respondent has failed to make such a showing, thereby
5 justifying the denial of the issuance to Respondent of an unrestricted real estate salesperson
6 license.

7 B. Respondent hereby admits that the allegations of the Statement of Issues filed
8 against Respondent are true and correct and requests that the Real Estate Commissioner in his
9 discretion issue a restricted real estate salesperson license to Respondent under the authority of
10 Section 10156.5 of the Business and Professions Code. Respondent further understands that any
11 such restricted license will be issued subject to and be limited by Section 10153.4 of the
12 Business and Professions Code.

13 C. Respondent is aware that by signing this Stipulation and Waiver, Respondent
14 is waiving Respondent's right to a hearing and the opportunity to present evidence at the hearing
15 to establish Respondent's rehabilitation in order to obtain an unrestricted real estate salesperson
16 license if this Stipulation and Waiver is accepted by the Real Estate Commissioner. However,
17 Respondent is not waiving Respondent's right to a hearing and to further proceedings to obtain a
18 restricted or unrestricted license if this Stipulation and Waiver is not accepted by the
19 Commissioner, and no portion of this Stipulation and Waiver shall have any force and effect
20 whatsoever if this Stipulation and Waiver is not accepted by the Commissioner.

21 D. Respondent further understands that the following conditions, limitations, and
22 restrictions will attach to a restricted license issued by the Department of Real Estate pursuant
23 hereto:

- 24 1. The license shall not confer any property right in the privileges to be
25 exercised including the right of renewal, and the Real Estate
26 Commissioner may by appropriate order suspend the right to exercise
27 any privileges granted under this restricted license in the event of:

- 1 a. The conviction of Respondent (including a plea of nolo
2 contendere) to a crime which bears a substantial relationship to
3 Respondent's fitness or capacity as a real estate licensee; or
4 b. The receipt of evidence that Respondent has violated provisions
5 of the California Real Estate Law, the Subdivided Lands Law,
6 Regulations of the Real Estate Commissioner, or conditions
7 attaching to this restricted license.
- 8 2. Respondent shall not be eligible to apply for the issuance of an
9 unrestricted real estate license nor the removal of any of the
10 conditions, limitations or restrictions attaching to the restricted license
11 until four (4) years have elapsed from the date of issuance of the
12 restricted license to Respondent.
- 13 3. With the application for license, or with the application for transfer to
14 a new employing broker, Respondent shall submit a statement signed
15 by the prospective employing broker on a form approved by the
16 Department of Real Estate wherein the employing broker shall certify
17 as follows:
- 18 a. That broker has read the Statement of Issues which is the basis
19 for the issuance of the restricted license; and
- 20 b. That broker will carefully review all transaction documents
21 prepared by the restricted licensee and otherwise exercise close
22 supervision over the licensee's performance of acts for which a
23 license is required.
- 24 4. Respondent's restricted real estate salesperson license is issued
25 subject to the requirements of Section 10153.4 of the Business and
26 Professions Code, to wit: Respondent shall, within eighteen (18)
27 months of the issuance of the restricted license, submit evidence


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satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Section 10153.2, other than real estate principles, advanced legal aspect 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. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, Respondent shall be automatically suspended effective eighteen (18) months after the date of its issuance, Respondent has submitted the required evidence of course completion and the Commissioner has given written notice to the Respondent of lifting of the suspension.

- 5. 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.

8/19/08

DATED



ANGELA L. CASH, COUNSEL
DEPARTMENT OF REAL ESTATE

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I have read the Stipulation and Waiver, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of a hearing on the Statement of Issues at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

8/12/08

DATED

David Russell O'Brien

DAVID RUSSELL O'BRIEN
Respondent

I have reviewed the Stipulation and Agreement as to form and content and have advised my client accordingly.

8-12-08

DATED

Frank M. Buda

FRANK M. BUDA
Attorney for Respondent

I have read the Statement of Issues filed herein and the foregoing Stipulation and Waiver signed by Respondent. I am satisfied that the hearing for the purpose of requiring further proof as to the honesty and truthfulness of Respondent need not be called and that it will not be inimical to the public interest to issue a restricted real estate salesperson license to Respondent.

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Therefore, IT IS HEREBY ORDERED that a restricted real estate salesperson license be issued to Respondent, if Respondent has otherwise fulfilled all of the statutory requirements for licensure. The restricted license shall be limited, conditioned, and restricted as specified in the foregoing Stipulation and Waiver.

This Order is effective immediately.

IT IS SO ORDERED 9-18-08

JEFF DAVI
Real Estate Commissioner

1 ANGELA L. CASH, Counsel (SBN 230882)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 -or- (916) 227-0805 (Direct)
7

FILED

AUG - 8 2008

DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
12 DAVID RUSSELL O'BRIEN,) No. H-10433 SF
13 Respondent.) FIRST AMENDED
14) STATEMENT OF ISSUES

15 The Complainant, Charles W. Koenig, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against DAVID RUSSELL O'BRIEN (herein "Respondent"),
18 alleges as follows:

19 I

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

23 II

24 On or about September 21, 2007, Respondent made
25 application to the Department of Real Estate of the State of
26 California (herein "the Department") for a real estate
27 salesperson license with the knowledge and understanding that,

1 pursuant to the provisions of Section 10153.3 of the Business
2 and Professions Code, any license issued as a result of said
3 application would be subject to the conditions of Section
4 10153.4 of the California Business and Professions Code (herein
5 "the Code").

6 III

7 In response to Question 25 of said application, to
8 wit: "Have you ever been convicted of any violation of law?
9 Convictions expunged under Penal Code Section 1203.4 must be
10 disclosed. However, you may omit minor traffic citations which
11 do not constitute a misdemeanor or felony offense", Respondent
12 concealed and failed to disclose the convictions described in
13 Paragraphs VI and VIII below.

14 IV

15 On or about March 12, 1988, in the Superior Court of
16 the State of California, County of Santa Clara, Respondent was
17 convicted of the crime of Obstruct/Resist Public Officer in
18 violation of Penal Code Section 148 and of the crime of Unlawful
19 to Drive Unless Licensed in violation of Vehicle Code Section
20 12500(a), each a misdemeanor and a crime involving moral
21 turpitude which bears a substantial relationship under Section
22 2910, Title 10, California Code of Regulations (herein "the
23 Regulations"), to the qualifications, functions or duties of a
24 real estate licensee.

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1 V

2 On or about July 2, 1990, in the Superior Court of the
3 State of California, County of Santa Clara, Respondent was
4 convicted of the crime of Under the Influence/Controlled
5 Substance in violation of Health and Safety Code Section 11550, a
6 misdemeanor, and of the crime of Possession for Sale/Controlled
7 Substance in violation of Health & Safety Code Section 11378, a
8 felony and each a crime involving moral turpitude which bears a
9 substantial relationship under Section 2910 of the Regulations,
10 to the qualifications, functions or duties of a real estate
11 licensee.

12 VI

13 On or about September 17, 1990, in the Superior Court
14 of the State of California, County of Santa Clara, Case Number
15 C9079911, Respondent was convicted of the crime of Under the
16 Influence/Controlled Substance in violation of Health and Safety
17 Code Section 11550, a misdemeanor and a crime involving moral
18 turpitude which bears a substantial relationship under Section
19 2910 of the Regulations, to the qualifications, functions or
20 duties of a real estate licensee.

21 VII

22 On or about October 11, 1990, in the Superior Court of
23 the State of California, County of Santa Clara, Case Number
24 C9095076, Respondent was convicted of the crime of Possession for
25 Sale/Controlled Substance in violation of Health and Safety Code
26 Section 11378, a felony which bears a substantial relationship

27 ///

1 under Section 2910 of the Regulations, to the qualifications,
2 functions or duties of a real estate licensee.

3 VIII

4 On or about February 2, 1993, in the Superior Court of
5 the State of California, County of Santa Clara, Case Number
6 H0573947, Respondent was convicted of the crime of Failure to
7 Appear in violation of Vehicle Code Section 40508(a), a
8 misdemeanor and a crime involving moral turpitude which bears a
9 substantial relationship under Section 2910 of the Regulations,
10 to the qualifications, functions or duties of a real estate
11 licensee.

12 IX

13 On or about February 5, 1993, in the Superior Court of
14 the State of California, County of Santa Clara, Case Number
15 C9329930, Respondent was convicted of the crime of
16 Possess/Manufacture/ Sell Dangerous Weapon in violation of Penal
17 Code Section 12020(a), a misdemeanor and a crime involving moral
18 turpitude which bears a substantial relationship under Section
19 2910 of the Regulations, to the qualifications, functions or
20 duties of a real estate licensee.

21 X

22 On or about June 16, 1994, in the Superior Court of
23 the State of California, County of Santa Clara, Case Number
24 C9493901, Respondent was convicted of the crime of Possession
25 for Sale/Controlled Substance in violation of Health and Safety
26 Code Section 11378, a felony which bears a substantial

27 ///

1 relationship under Section 2910 of the Regulations, to the
2 qualifications, functions or duties of a real estate licensee.

3 XI

4 On or about September 24, 1996, in the Superior Court
5 of the State of California, County of Santa Clara, Case Number
6 C9685879, Respondent was convicted of the crime of Under the
7 Influence/Controlled Substance in violation of Health and Safety
8 Code Section 11550(a), a misdemeanor involving moral turpitude,
9 and which bears a substantial relationship under Section 2910 of
10 the Regulations, to the qualifications, functions or duties of a
11 real estate licensee.

12 XII

13 On or about June 20, 1997, in the Superior Court of
14 the State of California, County of Santa Clara, Case Number
15 C9726598, Respondent was convicted of the crime of Possession
16 for Sale/Controlled Substance in violation of Health and Safety
17 Code Section 11378, a felony, and of the crime of Under the
18 Influence/Controlled Substance in violation of Health and Safety
19 Code Section 11550(a), a misdemeanor involving moral turpitude,
20 and both bear a substantial relationship under Section 2910 of
21 the Regulations, to the qualifications, functions or duties of a
22 real estate licensee.

23 XIII

24 On or about February 28, 2001, in the Superior Court
25 of the State of California, County of Santa Clara, Case Number
26 EE014800, Respondent was convicted of the crime of Possession
27 for Sale/Marijuana in violation of Health and Safety Code

1 Section 23152(a), a misdemeanor and a crime involving moral
2 turpitude which bears a substantial relationship under Section
3 2910 of the Regulations, to the qualifications, functions or
4 duties of a real estate licensee.

5 XIV

6 In failing to reveal the convictions described in
7 Paragraphs VI and VIII above, Respondent procured or attempted
8 to procure a real estate license by fraud, misrepresentation, or
9 deceit, or by making a material misstatement of fact in said
10 application, which constitutes cause for denial of Respondent's
11 application for a real estate license under Sections 480(c) and
12 10177(a) of the Code.

13 XV

14 Respondent's criminal convictions, as described in
15 Paragraphs III through XIII above, constitute cause for denial of
16 Respondent's application for a real estate license under Sections
17 480(a) and 10177(b) of the Code.

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

24 
25 CHARLES W. KOENIG
26 Deputy Real Estate Commissioner

27 Dated at Sacramento, California,
this 8th day of August, 2008.

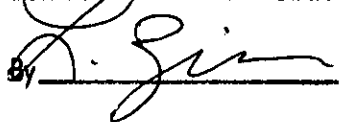
1 ANGELA L. CASH, Counsel (SBN 230882)
Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789
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JUN -9 2008

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2 and Professions Code, any license issued as a result of said
3 application would be subject to the conditions of Section
4 10153.4 of the California Business and Professions Code (herein
5 "the Code").

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7 In response to Question 25 of said application, to
8 wit: "Have you ever been convicted of any violation of law?
9 Convictions expunged under Penal Code Section 1203.4 must be
10 disclosed. However, you may omit minor traffic citations which
11 do not constitute a misdemeanor or felony offense", Respondent
12 concealed and failed to disclose the convictions described in
13 Paragraphs VI and VIII below.

14 IV

15 On or about March 12, 1988, in the Superior Court of
16 the State of California, County of Santa Barbara, Respondent was
17 convicted of the crime of Theft Under \$100 in violation of
18 Colorado Revised Statute Section 18-4-203, a misdemeanor and a
19 crime involving moral turpitude which bears a substantial
20 relationship under Section 2910, Title 10, California Code of
21 Regulations (herein "the Regulations"), to the qualifications,
22 functions or duties of a real estate licensee.

23 V

24 On or about July 2, 1990, in the Superior Court of the
25 State of California, County of Santa Barbara, Respondent was
26 convicted of the crime of Petty Theft in violation of Penal Code
27 Section 484(a), a misdemeanor and a crime involving moral

1 turpitude which bears a substantial relationship under Section
2 2910 of the Regulations, to the qualifications, functions or
3 duties of a real estate licensee.

4 VI

5 On or about September 17, 1990, in the Superior Court
6 of the State of California, County of Santa Clara, Case Number
7 C9079911, Respondent was convicted of the crime of Under the
8 Influence/Controlled Substance in violation of Health and Safety
9 Code Section 11550, a misdemeanor and a crime involving moral
10 turpitude which bears a substantial relationship under Section
11 2910 of the Regulations, to the qualifications, functions or
12 duties of a real estate licensee.

13 VII

14 On or about October 11, 1990, in the Superior Court of
15 the State of California, County of Santa Clara, Case Number
16 C9095076, Respondent was convicted of the crime of Possession for
17 Sale/Controlled Substance in violation of Health and Safety Code
18 Section 11378, a felony which bears a substantial relationship
19 under Section 2910 of the Regulations, to the qualifications,
20 functions or duties of a real estate licensee.

21 VIII

22 On or about February 2, 1993, in the Superior Court of
23 the State of California, County of Santa Clara, Case Number
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25 Appear in violation of Vehicle Code Section 40508(a), a
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2 licensee.

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7 Possess/Manufacture/ Sell Dangerous Weapon in violation of Penal
8 Code Section 12020(a), a misdemeanor and a crime involving moral
9 turpitude which bears a substantial relationship under Section
10 2910 of the Regulations, to the qualifications, functions or
11 duties of a real estate licensee.

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13 On or about June 16, 1994, in the Superior Court of
14 the State of California, County of Santa Clara, Case Number
15 C9493901, Respondent was convicted of the crime of Possession
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22 of the State of California, County of Santa Clara, Case Number
23 C9685879, Respondent was convicted of the crime of Under the
24 Influence/Controlled Substance in violation of Health and Safety
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27 ///

1 the Regulations, to the qualifications, functions or duties of a
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8 Code Section 11378, a felony, and of the crime of Under the
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10 Code Section 11550(a), a misdemeanor involving moral turpitude,
11 and both bear a substantial relationship under Section 2910 of
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14 XIII

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23 XIV

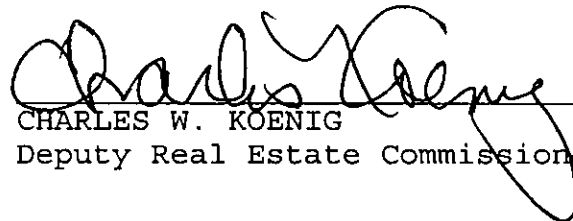
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2 application for a real estate license under Sections 480(c) and
3 10177(a) of the Code.

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5 Respondent's criminal convictions, as described in
6 Paragraphs III through XIII above, constitute cause for denial
7 of Respondent's application for a real estate license under
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9 WHEREFORE, Complainant prays that the above-entitled.
10 matter be set for hearing and, upon proof of the charges
11 contained herein, that the Commissioner refuse to authorize the
12 issuance of, and deny the issuance of a real estate salesperson
13 license to Respondent, and for such other and further relief as
14 may be proper in the premises.

15
16 
17 CHARLES W. KOENIG
18 Deputy Real Estate Commissioner

18 Dated at Sacramento, California,
19 this 6th day of June, 2008.