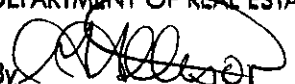


FILED
MAY -4 2011

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By: 

In the Matter of the Application of)

JOHN ANTHONY KEYS,)

Respondent.)

NO. H-11030 SF

OAH NO. 2011010005

CORRECTED DECISION

The Proposed Decision dated March 24, 2011, 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 with the following correction:

Caption on page 1 of the Proposed Decision, should state "In the Matter of the Application of:"

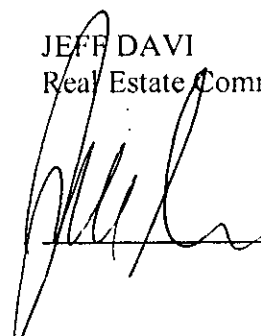
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a 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 salesperson 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 MAY 16, 2011.

IT IS SO ORDERED 04/22/2011

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JOHN ANTHONY KEYS,

Respondent.

Case No. H-11030 SF

OAH No. 2011010005

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on February 22 and March 1, 2011, in Oakland, California.

Jason D. Lazark, Counsel, Department of Real Estate (department) represented complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California.

John Anthony Keys (respondent) represented himself and was present throughout the administrative hearing.

The matter was submitted on March 1, 2011.

FACTUAL FINDINGS

1. On November 4, 2010, complainant signed the statement of issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.
2. On March 8, 2010, respondent applied to the department for a real estate salesperson license.
3. On July 9, 1990, in the General Court of Justice of the State of North Carolina, County of Onslow, respondent was convicted of violating two counts of North Carolina General Assembly section 14-56 (breaking and entering a motor vehicle), felonies, and one count of North Carolina General Assembly section 14-72 (larceny), a misdemeanor. Respondent was sentenced to three years in state prison for one count of breaking and entering and one count of larceny, followed by two years in state prison for the second count of breaking and entering. In addition, respondent was placed on supervised probation for three years on conditions that included substance abuse counseling at the discretion of his probation officer, and the payment of various fines and fees.

The facts and circumstances of the first underlying offense were that on March 7, 1990, respondent stole four tires and 16 lug nuts. On March 7, 1990, respondent committed the offense of breaking into and entering a 1982 Honda Accord with the intent to commit larceny. On April 6, 1990, respondent broke into a 1982 Toyota and took a Pioneer compact disc player and 57 compact discs. These convictions are substantially related to the qualifications, functions or duties of a real estate licensee.

4. On January 9, 1992, in the General Court of Justice of the State of North Carolina, County of Onslow, respondent was convicted of violating one count of North Carolina General Assembly section 14-72.1, subdivision (A) (shoplifting), a misdemeanor. Respondent was sentenced to 24 hours of community service within 30 days, a fee and ordered not to enter the Food Lion supermarket without the written consent of the manager. This conviction is substantially related to the qualifications, functions or duties of a real estate licensee.

5. On February 19, 1992, in the General Court of Justice of the State of North Carolina, County of Onslow, respondent was convicted of violating one count of North Carolina General Assembly section 14-54, subdivision (B) (breaking and entering), a misdemeanor. Respondent was sentenced to serve two years in state prison. This conviction is substantially related to the qualifications, functions or duties of a real estate licensee.

6. On February 8, 1994, in the General Court of Justice of the State of North Carolina, County of Onslow, respondent was convicted of violating two counts of North Carolina General Assembly section 14-72, subdivision (A) (larceny), misdemeanors, and one count of North Carolina General Assembly section 14-444 (intoxicated and disruptive). Respondent was sentenced to 24 months in custody. The larceny convictions are substantially related to the qualifications, functions or duties of a real estate licensee. The intoxicated and disruptive conviction is not substantially related to the duties, qualifications and functions of a real estate licensee on its own; however, when combined with the other convictions, it constitutes part of a pattern of repeated and willful disregard for the law.

7. On February 15, 1994, in the General Court of Justice of the State of North Carolina, County of Onslow, respondent was convicted of violating North Carolina General Assembly section 14-72 (larceny), section 14-56 (breaking and entering a motor vehicle), both felonies, and North Carolina General Assembly section 14-33, subdivision (b)(4) (assault of a police officer), a misdemeanor. Respondent was sentenced to six years in state prison. These convictions are substantially related to the qualifications, functions or duties of a real estate licensee.

The facts and circumstances underlying these offenses are that on April 12, 1993, respondent broke into and entered a motor vehicle with the intent to commit larceny and committed an assault of the officer investigating the offense; and, on July 3, 1993, while

employed at Sanders Ford, respondent took a motor vehicle from the dealership with the intent to convert it to his own use.

8. On February 22, 1996, in the General Court of Justice of the State of North Carolina, County of Onslow, respondent was convicted of violating North Carolina General Assembly section 20-138.1, subdivision (A) (driving while intoxicated), a misdemeanor. This conviction is not substantially related to the duties, qualifications and functions of a real estate licensee on its own; however, when combined with the other convictions, it constitutes part of a pattern of repeated and willful disregard for the law.

9. On July 29, 1996, in the General Court of Justice of the State of North Carolina, County of Onslow, respondent was convicted of violating North Carolina General Assembly section 14-100 (obtaining property by false pretenses), a felony. This conviction is substantially related to the qualifications, functions or duties of a real estate licensee. The facts underlying the conviction are that on October 16, 1995, respondent attempted to pawn a television owned by someone else for \$75.

10. On June 11, 1996, in the General Court of Justice of the State of North Carolina, County of Onslow, respondent was convicted of violating North Carolina General Assembly section 14-33; subdivision (C)(2) (assault on a female), section 14-196, subdivision (A)(3) (harassing phone calls) and 14-159.13 (second degree trespass), misdemeanors. The conviction for assault on a female is substantially related to the qualifications, functions or duties of a real estate licensee. The harassing phone calls and trespass convictions when combined with the other convictions, constitute part of a pattern of repeated and willful disregard for the law.

11. On July 29, 1996, in the General Court of Justice of the State of North Carolina, County of Onslow, respondent was convicted of violating North Carolina General Assembly section 14-277.1 (communicating threats), a misdemeanor. This conviction is substantially related to the qualifications, functions or duties of a real estate licensee.

12. On his application for a real estate salesperson license, respondent identified most of the convictions listed above, but failed to identify those convictions which occurred on July 9, 1990, as well as one of the three convictions occurring on February 8, 1994 (for misdemeanor larceny) and two of the three convictions occurring on June 11, 1996 (for harassing phone calls and second degree trespass, both misdemeanors). Respondent did list the bulk of his convictions.

Respondent's Evidence

13. Respondent had a difficult childhood in North Carolina. His mother was a drug abuser and his father had left the family. His stepfather was a Marine and respondent planned to follow in his footsteps. At 16, he was sent to live with his stepfather's mother in Maryland. He fell in with the wrong crowd and got in trouble for making prank calls to a girl's home because he hung up whenever her grandmother answered the phone. His dreams

of joining the Marines were dashed when he was convicted for making prank telephone calls. When he was 19 years old, he returned to North Carolina and started drinking alcohol. He was homeless and drank to forget his problems. He stole to support himself. Respondent takes responsibility for his poor choices. His last conviction landed him in prison for one year and a day and he decided to change. He wrote a letter to a local community college from prison asking for help. That led to a turning point in his life. Respondent has not been convicted of a crime in nearly 15 years. He has fulfilled the terms of his probationary sentences.

14. Respondent blames his criminal background on his difficult upbringing, his youth, low self-esteem, bad influences and alcohol. When he filled out the license application, he could not recall all of the offenses of which he was convicted so he relied on a printout he received when he applied for a job with Wells Fargo. Respondent testified credibly that he did not intend to misrepresent his criminal record.

15. Respondent met his wife, Cheri Keys, over the phone while working for a telephone company. They developed a rapport and he moved to California in 1999 to be near her. They married and have three boys, ages eight, five and two. Respondent's wife wrote a letter in support of her husband's application, in which she describes him as "the most honest . . . and ethical person you could ever meet" despite the mistakes he made in his youth. Respondent's mother-in-law, who is aware of his criminal background, also wrote a letter in support of him, describing him as "an honest man, who is extremely dedicated to his family."

16. Respondent decided to quit drinking alcohol in 2001 following the birth of his first child.¹ Respondent has attended AA, but has not found it effective. He attends church twice per week and is active in various programs with his church. Respondent testified credibly concerning his commitment to a sober lifestyle, his faith and his family.

17. Respondent has two sisters, two brothers and several cousins. He has strong relationships with his siblings and cousins, all of whom are aware of his criminal background. Respondent's sisters Andrea Price and Tina Brooks wrote letters in support of his application. Price describes respondent as a "supportive and loving husband and devoted father" whose "personal strength and determination has brought him through so much." Brooks reports that respondent is an "amazing" father who has found his passion and become a productive member of society. Respondent's aunt, Bessie Jackson, also submitted a character reference in which she notes his complete turn around upon moving to California, marrying and obtaining steady employment. In her letter, respondent's aunt, Childlene Brooks, describes the changes she has observed in respondent, leading to him becoming an outstanding citizen, loving husband and reputable businessman.

¹ Respondent briefly relapsed in 2010 and was arrested for driving under the influence. He denies the allegations; the charges have been dropped.

18. Brandon and Kristine Potts, respondent's brother and sister-in-law, who are aware of his criminal history, commend his dedication to his family, friends and endeavors. They describe respondent as giving, generous, dependable, goal-oriented, driven and trusted in his community. Brandon Potts is a sergeant in the United States Marine Corps and his wife works at Sweetwater Elementary School.

19. Respondent's cousins, Anita Jackson and Paulette Brooks-Brightful, also submitted character letters. Jackson, who is aware of respondent's past, now considers him an inspiration and an exemplary citizen in his community. Brooks-Brightful, also aware of his criminal background, describes respondent as a God-fearing, family man who has surrounded himself with positive influences and found joy in his wife and children.

20. Several longtime friends have also submitted letters in support of respondent. Curtis Jones, a probation and patrol officer with the Department of Corrections in North Carolina, grew up with respondent while they were at Quantico military base. He is aware of respondent's criminal background and has seen him change after finding his identity, establishing himself professionally and becoming a member of a lovely family. Carl Kelly, an assistant golf professional at Peterson Air Force Base in Colorado, commends respondent for becoming a great father, loving husband, and church member who has a passion for his career and dedication to helping others. Timothy Addis, another boyhood friend, writes to advise that he has witnessed respondent grow into a dedicated, hard-working person as well as a devoted husband and father. Mannie De Jesus, acknowledged that respondent acted without wisdom in his youth, but has become a man of integrity. Patrick Reed, who has known respondent for over 20 years, notes that respondent overcame difficult situations in his younger days to become a well-respected father, son and dedicated professional. Cindy Hudson, another longtime friend, describes the changes in respondent as "drastic." She recalls respondent's home environment as a child as "tumultuous" and without consistent parenting. She praises respondent for his good values, hard work, integrity and spirituality that she has observed in him for more than a decade.

21. Respondent has been working in the loan industry since moving to California in 1999. From 2005 to 2008, respondent worked at First Keys Mortgage as a mortgage consultant. From February 2008 until November 2008, respondent worked for Pacific Funding Group as a mortgage consultant. From November 2008 until July 2010, respondent worked for United Lending Partners as a loan officer. Due to a change in the law, respondent would need a license from the Department of Corporations in order to continue as mortgage loan originator. Respondent withdrew his application when he learned that his criminal history precluded him from obtaining a license from the Department of Corporations.

22. United Lending Partner broker and owner Anthony Maddalon testified on respondent's behalf and submitted a character reference letter. Maddalon, who is aware of respondent's criminal background, described respondent as an "outstanding employee" and a solid producer. Maddalon follows up with every customer and respondent consistently receives outstanding marks in all categories and often receives referrals from past clients.

Maddalon is encouraging respondent to pursue a career in real estate and is willing to sponsor him as the broker of record through the company's real estate arm. From everything that he has seen over the past year, he believes respondent has learned from his mistakes and should be given the privilege of fulfilling his career aspirations.

23. Respondent also submitted letters from former clients Tish Johnson, Denise Nickolas, Benjamin Cordero and John Penacerrada, who have all been impressed with his professional ability, and Shawn Augustus, a co-worker at several companies who has been impressed with respondent's hard work and self-motivation.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (c), authorizes the denial of a license if the applicant has attempted to procure the license by fraud, misrepresentation, or deceit, or by making a material misrepresentation of fact. (See also Bus. & Prof. Code § 10177, subd. (c) which is specific to real estate licenses.) Because respondent's failure to list all of the convictions on his application was not intentional, this allegation is not proved. (Findings 12 and 14.)

2. Business and Professions Code section 480, subdivision (a), authorizes the denial of a license 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. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licenses, authorizes the denial of a license if the applicant has been convicted of a felony, or a crime that is substantially related to the qualifications, functions and duties of a licensee of the Department of Real Estate.

3. As set forth in Factual Findings 3 through 9, respondent has been convicted of numerous felonies, which constitutes cause to deny respondent's application.

4. California Code of Regulations, title 10, section 2910, sets forth 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 "[t]he fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person" (subd. (a)(1)); or the employment of fraud or misrepresentation to achieve an end (subd. (a)(4); or "the [d]oing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator" (subd. (a)(8)). Respondent's larceny, breaking and entering, and taking property under false pretenses convictions are therefore substantially related to the qualifications, functions or duties of a real estate licensee. A crime is also deemed to be substantially related if it involves doing an unlawful act with the intent or threat of doing substantial injury to the person or property of another (subd. (a)(8).) Respondent's convictions for assault on an officer, assault on a female, and communicating threats are also substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8).

Respondent's convictions for trespass, harassing phone calls, intoxicated and disruptive behavior, and driving under the influence are deemed substantially related to the qualifications, functions and duties of a real estate licensee because they are part of a pattern of repeated and willful disregard of the law. By reason of the matters set forth in Findings 3 through 11, these convictions constitute cause to deny respondent's real estate salesperson license application pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

5. In California Code of Regulations, title 10, section 2911, the department has established criteria to be used in evaluating the rehabilitation of an applicant who has committed a criminal offense. The burden is on respondent to show that he is sufficiently rehabilitated so that it would be appropriate to allow him to obtain a real estate salesperson license. Respondent has met many of the factors to be considered in evaluating rehabilitation. Nearly 15 years have passed since the last conviction (passage of two years identified in subd. (a)); respondent successfully completed probation (subd. (e)); paid off fines imposed in connection with the criminal convictions (subd. (g)); enjoys a stable home life and fulfillment of parental and familial responsibilities (subd. (h)); has enrolled in real estate and broker training courses for economic self-improvement (subd. (i)); has been actively involved in church and church activities (subd. (l)); has moved away from North Carolina and formed new and different social relationships (subd. (m)); and importantly, has demonstrated a change in attitude from that which existed at the time of the convictions (subd. (n)). (Factual findings 13 to 23.)

6. In addition, respondent has worked successfully in the loan industry since moving to California more than a decade ago. There is no evidence he has failed to exercise his fiduciary responsibilities honestly and appropriately. He has the support of many friends, clients and relatives, most of whom are well aware of the mistakes he made in his youth. He also has the strong support of Anthony Maddalon, who testified on his behalf and has encouraged him to go forward with this application and is willing to supervise him at United Lending Partners. Under these circumstances, it would not be against public policy to grant respondent a restricted real estate salesperson license.

ORDER

Respondent John Anthony Keys' application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson 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 the authority of section 10156.6 of that Code:

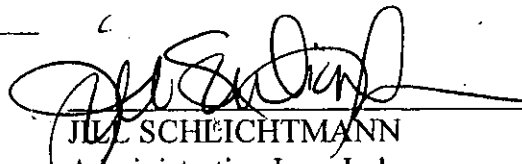
1. The restricted license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order

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.
 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 notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be ground for the suspension or revocation of that license.

DATED: _____

3/24/11



JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
APR 25 2011

DEPARTMENT OF REAL ESTATE

By [Signature]

In the Matter of the Application of)
)
JOHN ANTHONY KEYS,)
)
Respondent.)
_____)

NO. H-11030 SF
OAH NO. 2011010005

DECISION

The Proposed Decision dated March 24, 2011, 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 with the following correction:

Caption on page 1 of the Proposed Decision should state "In the Matter of the Application of:"

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 MAY 16 2011

IT IS SO ORDERED 4/22/11

JEFF DAVI
Real Estate Commissioner

[Signature]

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of:

JOHN ANTHONY KEYS,

Respondent.

Case No. H-11030 SF

OAH No. 2011010005

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on February 22 and March 1, 2011, in Oakland, California.

Jason D. Lazark, Counsel, Department of Real Estate (department) represented complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California.

John Anthony Keys (respondent) represented himself and was present throughout the administrative hearing.

The matter was submitted on March 1, 2011.

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1. On November 4, 2010, complainant signed the statement of issues in his official capacity as a Deputy Real Estate Commissioner of the State of California.
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3. On July 9, 1990, in the General Court of Justice of the State of North Carolina, County of Onslow, respondent was convicted of violating two counts of North Carolina General Assembly section 14-56 (breaking and entering a motor vehicle), felonies, and one count of North Carolina General Assembly section 14-72 (larceny), a misdemeanor. Respondent was sentenced to three years in state prison for one count of breaking and entering and one count of larceny, followed by two years in state prison for the second count of breaking and entering. In addition, respondent was placed on supervised probation for three years on conditions that included substance abuse counseling at the discretion of his probation officer, and the payment of various fines and fees.

The facts and circumstances of the first underlying offense were that on March 7, 1990, respondent stole four tires and 16 lug nuts. On March 7, 1990, respondent committed the offense of breaking into and entering a 1982 Honda Accord with the intent to commit larceny. On April 6, 1990, respondent broke into a 1982 Toyota and took a Pioneer compact disc player and 57 compact discs. These convictions are substantially related to the qualifications, functions or duties of a real estate licensee.

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employed at Sanders Ford, respondent took a motor vehicle from the dealership with the intent to convert it to his own use.

8. On February 22, 1996, in the General Court of Justice of the State of North Carolina, County of Onslow, respondent was convicted of violating North Carolina General Assembly section 20-138.1, subdivision (A) (driving while intoxicated), a misdemeanor. This conviction is not substantially related to the duties, qualifications and functions of a real estate licensee on its own; however, when combined with the other convictions, it constitutes part of a pattern of repeated and willful disregard for the law.

9. On July 29, 1996, in the General Court of Justice of the State of North Carolina, County of Onslow, respondent was convicted of violating North Carolina General Assembly section 14-100 (obtaining property by false pretenses), a felony. This conviction is substantially related to the qualifications, functions or duties of a real estate licensee. The facts underlying the conviction are that on October 16, 1995, respondent attempted to pawn a television owned by someone else for \$75.

10. On June 11, 1996, in the General Court of Justice of the State of North Carolina, County of Onslow, respondent was convicted of violating North Carolina General Assembly section 14-33, subdivision (C)(2) (assault on a female), section 14-196, subdivision (A)(3) (harassing phone calls) and 14-159.13 (second degree trespass), misdemeanors. The conviction for assault on a female is substantially related to the qualifications, functions or duties of a real estate licensee. The harassing phone calls and trespass convictions when combined with the other convictions, constitute part of a pattern of repeated and willful disregard for the law.

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Respondent's Evidence

13. Respondent had a difficult childhood in North Carolina. His mother was a drug abuser and his father had left the family. His stepfather was a Marine and respondent planned to follow in his footsteps. At 16, he was sent to live with his stepfather's mother in Maryland. He fell in with the wrong crowd and got in trouble for making prank calls to a girl's home because he hung up whenever her grandmother answered the phone. His dreams

of joining the Marines were dashed when he was convicted for making prank telephone calls. When he was 19 years old, he returned to North Carolina and started drinking alcohol. He was homeless and drank to forget his problems. He stole to support himself. Respondent takes responsibility for his poor choices. His last conviction landed him in prison for one year and a day and he decided to change. He wrote a letter to a local community college from prison asking for help. That led to a turning point in his life. Respondent has not been convicted of a crime in nearly 15 years. He has fulfilled the terms of his probationary sentences.

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15. Respondent met his wife, Cheri Keys, over the phone while working for a telephone company. They developed a rapport and he moved to California in 1999 to be near her. They married and have three boys, ages eight, five and two. Respondent's wife wrote a letter in support of her husband's application, in which she describes him as "the most honest . . . and ethical person you could ever meet" despite the mistakes he made in his youth. Respondent's mother-in-law, who is aware of his criminal background, also wrote a letter in support of him, describing him as "an honest man, who is extremely dedicated to his family."

16. Respondent decided to quit drinking alcohol in 2001 following the birth of his first child.¹ Respondent has attended AA, but has not found it effective. He attends church twice per week and is active in various programs with his church. Respondent testified credibly concerning his commitment to a sober lifestyle, his faith and his family.

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18. Brandon and Kristine Potts, respondent's brother and sister-in-law, who are aware of his criminal history, commend his dedication to his family, friends and endeavors. They describe respondent as giving, generous, dependable, goal-oriented, driven and trusted in his community. Brandon Potts is a sergeant in the United States Marine Corps and his wife works at Sweetwater Elementary School.

19. Respondent's cousins, Anita Jackson and Paulette Brooks-Brightful, also submitted character letters. Jackson, who is aware of respondent's past, now considers him an inspiration and an exemplary citizen in his community. Brooks-Brightful, also aware of his criminal background, describes respondent as a God-fearing, family man who has surrounded himself with positive influences and found joy in his wife and children.

20. Several longtime friends have also submitted letters in support of respondent. Curtis Jones, a probation and patrol officer with the Department of Corrections in North Carolina, grew up with respondent while they were at Quantico military base. He is aware of respondent's criminal background and has seen him change after finding his identity, establishing himself professionally and becoming a member of a lovely family. Carl Kelly, an assistant golf professional at Peterson Air Force Base in Colorado, commends respondent for becoming a great father, loving husband, and church member who has a passion for his career and dedication to helping others. Timothy Addis, another boyhood friend, writes to advise that he has witnessed respondent grow into a dedicated, hard-working person as well as a devoted husband and father. Mannie De Jesus, acknowledged that respondent acted without wisdom in his youth, but has become a man of integrity. Patrick Reed, who has known respondent for over 20 years, notes that respondent overcame difficult situations in his younger days to become a well-respected father, son and dedicated professional. Cindy Hudson, another longtime friend, describes the changes in respondent as "drastic." She recalls respondent's home environment as a child as "tumultuous" and without consistent parenting. She praises respondent for his good values, hard work, integrity and spirituality that she has observed in him for more than a decade.

21. Respondent has been working in the loan industry since moving to California in 1999. From 2005 to 2008, respondent worked at First Keys Mortgage as a mortgage consultant. From February 2008 until November 2008, respondent worked for Pacific Funding Group as a mortgage consultant. From November 2008 until July 2010, respondent worked for United Lending Partners as a loan officer. Due to a change in the law, respondent would need a license from the Department of Corporations in order to continue as mortgage loan originator. Respondent withdrew his application when he learned that his criminal history precluded him from obtaining a license from the Department of Corporations.

22. United Lending Partner broker and owner Anthony Maddalon testified on respondent's behalf and submitted a character reference letter. Maddalon, who is aware of respondent's criminal background, described respondent as an "outstanding employee" and a solid producer. Maddalon follows up with every customer and respondent consistently receives outstanding marks in all categories and often receives referrals from past clients.

Maddalon is encouraging respondent to pursue a career in real estate and is willing to sponsor him as the broker of record through the company's real estate arm. From everything that he has seen over the past year, he believes respondent has learned from his mistakes and should be given the privilege of fulfilling his career aspirations.

23. Respondent also submitted letters from former clients Tish Johnson, Denise Nickolas, Benjamin Cordero and John Penacerrada, who have all been impressed with his professional ability, and Shawn Augustus, a co-worker at several companies who has been impressed with respondent's hard work and self-motivation.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (c), authorizes the denial of a license if the applicant has attempted to procure the license by fraud, misrepresentation, or deceit, or by making a material misrepresentation of fact. (See also Bus. & Prof. Code § 10177, subd. (c) which is specific to real estate licenses.) Because respondent's failure to list all of the convictions on his application was not intentional, this allegation is not proved. (Findings 12 and 14.)

2. Business and Professions Code section 480, subdivision (a), authorizes the denial of a license 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. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licenses, authorizes the denial of a license if the applicant has been convicted of a felony, or a crime that is substantially related to the qualifications, functions and duties of a licensee of the Department of Real Estate.

3. As set forth in Factual Findings 3 through 9, respondent has been convicted of numerous felonies, which constitutes cause to deny respondent's application.

4. California Code of Regulations, title 10, section 2910, sets forth 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 "[t]he fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person" (subd. (a)(1)); or the employment of fraud or misrepresentation to achieve an end (subd. (a)(4); or "the [d]oing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator" (subd. (a)(8)). Respondent's larceny, breaking and entering, and taking property under false pretenses convictions are therefore substantially related to the qualifications, functions or duties of a real estate licensee. A crime is also deemed to be substantially related if it involves doing an unlawful act with the intent or threat of doing substantial injury to the person or property of another (subd. (a)(8).) Respondent's convictions for assault on an officer, assault on a female, and communicating threats are also substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivision (a)(8).

Respondent's convictions for trespass, harassing phone calls, intoxicated and disruptive behavior, and driving under the influence are deemed substantially related to the qualifications, functions and duties of a real estate licensee because they are part of a pattern of repeated and willful disregard of the law. By reason of the matters set forth in Findings 3 through 11, these convictions constitute cause to deny respondent's real estate salesperson license application pursuant to Business and Professions Code sections 480, subdivision (a), and 10177, subdivision (b).

5. In California Code of Regulations, title 10, section 2911, the department has established criteria to be used in evaluating the rehabilitation of an applicant who has committed a criminal offense. The burden is on respondent to show that he is sufficiently rehabilitated so that it would be appropriate to allow him to obtain a real estate salesperson license. Respondent has met many of the factors to be considered in evaluating rehabilitation. Nearly 15 years have passed since the last conviction (passage of two years identified in subd. (a)); respondent successfully completed probation (subd. (e)); paid off fines imposed in connection with the criminal convictions (subd. (g)); enjoys a stable home life and fulfillment of parental and familial responsibilities (subd. (h)); has enrolled in real estate and broker training courses for economic self-improvement (subd. (i)); has been actively involved in church and church activities (subd. (l)); has moved away from North Carolina and formed new and different social relationships (subd. (m)); and importantly, has demonstrated a change in attitude from that which existed at the time of the convictions (subd. (n)). (Factual findings 13 to 23.)

6. In addition, respondent has worked successfully in the loan industry since moving to California more than a decade ago. There is no evidence he has failed to exercise his fiduciary responsibilities honestly and appropriately. He has the support of many friends, clients and relatives, most of whom are well aware of the mistakes he made in his youth. He also has the strong support of Anthony Maddalon, who testified on his behalf and has encouraged him to go forward with this application and is willing to supervise him at United Lending Partners. Under these circumstances, it would not be against public policy to grant respondent a restricted real estate salesperson license.

ORDER

Respondent John Anthony Keys' application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson 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 the authority of section 10156.6 of that Code:


1. The restricted 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.
 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 notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Department of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of Respondent's arrest, the crime for which Respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure to timely file written notice shall constitute an independent violation of the terms of the restricted license and shall be ground for the suspension or revocation of that license.

DATED: _____

3/24/11



JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

FUG

1 Jason D. Lazark, Counsel (SBN 263714)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 General: (916) 227-0789
6 Direct: (916) 227-0822

FILED
NOV 30 2010.
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 JOHN ANTHONY KEYS,) No. H-11030 SF
13 Respondent.) STATEMENT OF ISSUES

14
15 The Complainant, E. J. HABERER II, acting in his official capacity as a Deputy
16 Real Estate Commissioner of the State of California, for Statement of Issues against JOHN
17 ANTHONY KEYS (herein "Respondent"), alleges as follows:

18 1.

19 On or about March 8, 2010, Respondent made application to the Department of
20 Real Estate of the Sate of California for a real estate salesperson license.

21 2.

22 In response to Question 23 of said application, to wit: "Have you ever been
23 convicted of any violation of a misdemeanor or a felony? Convictions expunged under Penal
24 Code § 1203.4 must be disclosed. However, you may omit minor traffic citations which do not
25 constitute a misdemeanor or felony offense," Respondent concealed and failed to disclose the
26 convictions described below in Paragraphs 3, 4, 7, 15 and 16.

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3.

On or about July 9, 1990, in the General Court of Justice of the State of North Carolina, Onslow County, Jacksonville Seat of Court, Case Nos. 90-CrS-4795 and 90-CrS-4945, Respondent was convicted of violating felony Section 14-56 of the North Carolina General Assembly (breaking and entering a motor vehicle) and misdemeanor Section 14-72 of the North Carolina General Assembly (larceny), crimes which bear a substantial relationship under Section 2910, Title 10, of the California Code of Regulations (herein "the Regulations") to the qualifications, functions or duties of a real estate licensee.

4.

On or about July 9, 1990, in the General Court of Justice of the State of North Carolina, Onslow County, Jacksonville Seat of Court, Case No. 90-CrS-6639, Respondent was convicted of violating Section 14-56 of the North Carolina General Assembly (breaking and entering a motor vehicle), a felony which bears a substantial relationship under Section 2910, Title 10, of the Regulations to the qualifications, functions or duties of a real estate licensee.

5.

On or about February 19, 1992, in the General Court of Justice of the State of North Carolina, Onslow County, Jacksonville Seat of Court, Case No. 92CR 000758, Respondent was convicted of violating Section 14-54(B) of the North Carolina General Assembly (breaking and entering), a misdemeanor which bears a substantial relationship under Section 2910, Title 10, of the Regulations to the qualifications, functions or duties of a real estate licensee.

6.

On or about October 9, 1992, in the General Court of Justice of the State of North Carolina, Onslow County, Jacksonville Seat of Court, Case No. 91CR 017425, Respondent was convicted of violating Section 14-72.1(A) of the North Carolina General Assembly (shoplifting), a misdemeanor which bears a substantial relationship under Section

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1 2910, Title 10, of the Regulations to the qualifications, functions or duties of a real estate
2 licensee.

3 7.

4 On or about February 8, 1994, in the General Court of Justice of the State of
5 North Carolina, Onslow County, Jacksonville Seat of Court, Case No. 93CR 021797,
6 Respondent was convicted of violating Section 14-72(A) of the North Carolina General
7 Assembly (larceny), a misdemeanor which bears a substantial relationship under Section 2910,
8 Title 10, of the Regulations to the qualifications, functions or duties of a real estate licensee.

9 8.

10 On or about February 8, 1994, in the General Court of Justice of the State of
11 North Carolina, Onslow County, Jacksonville Seat of Court, Case No. 93CR 021798,
12 Respondent was convicted of violating Section 14-72(A) of the North Carolina General
13 Assembly (larceny), a misdemeanor which bears a substantial relationship under Section 2910,
14 Title 10, of the Regulations to the qualifications, functions or duties of a real estate licensee.

15 9.

16 On or about February 8, 1994, in the General Court of Justice of the State of
17 North Carolina, Onslow County, Jacksonville Seat of Court, Case No. 93CR 003528,
18 Respondent was convicted of violating Section 14-444 of the North Carolina General Assembly
19 (intoxicated and disruptive), a misdemeanor which bears a substantial relationship under Section
20 2910, Title 10, of the Regulations to the qualifications, functions or duties of a real estate
21 licensee.

22 10.

23 On or about February 15, 1994, in the General Court of Justice of the State of
24 North Carolina, Onslow County, Jacksonville Seat of Court, Case Nos. 93-CrS-21796 & 6160,
25 Respondent was convicted of violating Section 14-72 of the North Carolina General Assembly
26 (larceny) and Section 14-56 of the North Carolina General Assembly (breaking and entering a

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1 motor vehicle), felonies which bear a substantial relationship under Section 2910, Title 10, of
2 the Regulations to the qualifications, functions or duties of a real estate licensee.

3 11.

4 On or about February 15, 1994, in the General Court of Justice of the State of
5 North Carolina, Onslow County, Jacksonville Seat of Court, Case No. 93-CrS-6162,
6 Respondent was convicted of violating Section 14-33(b)(4) of the North Carolina General
7 Assembly (assault on an officer), a misdemeanor which bears a substantial relationship under
8 Section 2910, Title 10, of the Regulations to the qualifications, functions or duties of a real
9 estate licensee.

10 12.

11 On or about July 29, 1996, in the General Court of Justice of the State of North
12 Carolina, Onslow County, Jacksonville Seat of Court, Case No. 95-CrS-19411, Respondent was
13 convicted of violating Section 14-100 of the North Carolina General Assembly (obtaining
14 property by false pretenses), a felony which bears a substantial relationship under Section 2910,
15 Title 10, of the Regulations to the qualifications, functions or duties of a real estate licensee.

16 13.

17 On or about February 22, 1996, in the General Court of Justice of the State of
18 North Carolina, Onslow County, Jacksonville Seat of Court, Case No. 94CR 022341,
19 Respondent was convicted of violating Section 20-138.1(A) of the North Carolina General
20 Assembly (driving while intoxicated), a misdemeanor which bears a substantial relationship
21 under Section 2910, Title 10, of the Regulations to the qualifications, functions or duties of a
22 real estate licensee.

23 14.

24 On or about June 11, 1996, in the General Court of Justice of the State of North
25 Carolina, Onslow County, Jacksonville Seat of Court, Case No. 96CR 005701, Respondent was
26 convicted of violating Section 14-33(C)(2) of the North Carolina General Assembly (assault on

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1 a female), a misdemeanor which bears a substantial relationship under Section 2910, Title 10, of
2 the Regulations to the qualifications, functions or duties of a real estate licensee.

3 15.

4 On or about June 11, 1996, in the General Court of Justice of the State of North
5 Carolina, Onslow County, Jacksonville Seat of Court, Case No. 96CR 007599, Respondent was
6 convicted of violating Section 14-196(A)(3) of the North Carolina General Assembly (harassing
7 phone calls), a misdemeanor which bears a substantial relationship under Section 2910, Title 10,
8 of the Regulations to the qualifications, functions or duties of a real estate licensee.

9 16.

10 On or about June 11, 1996, in the General Court of Justice of the State of North
11 Carolina, Onslow County, Jacksonville Seat of Court, Case No. 94CR 007600, Respondent was
12 convicted of violating Section 14-159.13 of the North Carolina General Assembly (second
13 degree trespass), a misdemeanor which bears a substantial relationship under Section 2910, Title
14 10, of the Regulations to the qualifications, functions or duties of a real estate licensee.

15 17.

16 On or about July 29, 1996, in the General Court of Justice of the State of North
17 Carolina, Onslow County, Jacksonville Seat of Court, Case No. 94CR 020526, Respondent was
18 convicted of violating Section 14-277.1 of the North Carolina General Assembly
19 (communicating threats), a misdemeanor which bears a substantial relationship under Section
20 2910, Title 10, of the Regulations to the qualifications, functions or duties of a real estate
21 licensee.

22 18.

23 In failing to reveal the convictions described above in Paragraphs 3, 4, 7, 15 and
24 16, Respondent procured or attempted to procure a real estate license by fraud,
25 misrepresentation, or deceit, or by making a material misstatement of fact in said application,
26 which constitutes grounds for denial of Respondent's application for a real estate license under
27 Sections 480(c) and 10177(a) of the Code.

Respondent's criminal convictions, as described above in Paragraphs 3 through 17 constitute grounds for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the Code.

WHEREFORE, 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.



E. J. HABERER, II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 4th day of November, 2010.