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**FILED**

FEB 28 2010

DEPARTMENT OF REAL ESTATE

By *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\*\*\*

In the Matter of the Application of	)	No. H-31316 LA
	)	
LYLE DEAN ELLIOTT,	)	
	)	
Respondent.	)	
	)	

ORDER GRANTING UNRESTRICTED LICENSE

On June 10, 2005, a Decision was rendered herein denying the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on August 6, 2005 and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent since that time.

On or about January 11, 2010, Respondent petitioned for removal of restrictions of said real estate salesperson license.

I have considered Respondent's petition and the evidence and arguments submitted in support thereof. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate

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

3 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal  
4 of restrictions is granted and that a real estate salesperson license be issued to Respondent, if  
5 Respondent satisfies the following conditions within twelve (12) months from the date of this  
6 Order:

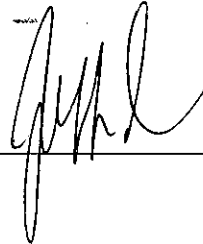
7  
8 1. Submittal of a completed application and payment of the fee for a real estate  
9 salesperson license.

10 2. Submittal of evidence of having, since the most recent issuance of an original  
11 or renewal real estate license, taken and successfully completed the continuing education  
12 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a license.

13 This Order shall be effective immediately.

14 Dated: 2-16-2010

15  
16 JEFF DAVI  
17 Real Estate Commissioner

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**FILED**  
JUN 20 2005  
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

By K. Schubert

\* \* \* \* \*

In the Matter of the Application of)	No. H-31316 LA
)	
)	
LYLE DEAN ELLIOTT,	L-2005020242
)	
)	
Respondent.	
)	

DECISION

The Proposed Decision dated May 23, 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 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 of Section 11522 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 attached hereto.

This Decision shall become effective at 12 o'clock noon on JUL 11 2005.

IT IS SO ORDERED

6-10-05

JEFF DAVIS  
Real Estate Commissioner

[Signature]

BEFORE THE  
DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

In the Matter of the Application of:

LYLE DEAN ELLIOTT,

Respondent.

Case No. H-31316 LA

OAH No. L2005020242

**PROPOSED DECISION**

On May 6, 2005, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Elliott Mac Lennan, Counsel, represented complainant.

Respondent was present and represented himself.

The matter was submitted on May 6, 2005.

**FACTUAL FINDINGS**

1. Maria Suarez, Deputy Real Estate Commissioner of the State of California (Department) filed Statement of Issues No. H-31316 LA in her official capacity on September 17, 2004. Respondent filed a timely Notice of Defense.

2. On July 28, 2003, respondent signed a Salesperson License Application and submitted it to the Department.

3. On January 21, 1998, in the Orange County Superior Court, respondent pled guilty and was convicted of one count of violating Penal Code section 647, subdivision (a), lewd conduct in a public place, a misdemeanor. The court placed respondent on informal probation for three years on condition, among others, he pay a fine and fees of \$350.00, complete 120 hours of public service work for Caltrans, and stay away from Santiago Park.

Respondent paid the fine and fees and completed the public service obligation. On April 7, 2004, the court expunged the conviction pursuant to Penal Code sections 1203.4/1203.4a.

4. Respondent committed the offense on October 7, 1997. According to the police report, police officers of the Santa Ana Police Department's vice detail were conducting an investigation into lewd conduct at Santiago Park. An officer observed respondent enter a restroom. The officer waited a few seconds and then entered. He observed respondent standing in front of one urinal. The officer stood in front of the second urinal. Respondent began looking at the officer and smiled. The officer noticed respondent was moving his left shoulder in a back and forth motion and he did not hear respondent urinate. Respondent made eye contact with the officer twice and smiled at him. The officer walked away and stood behind respondent, who turned around and faced the officer. Respondent's erect penis was exposed and he masturbated while he made eye contact with the officer. The officer and his backup officer arrested respondent.

At the hearing, respondent did not dispute the accuracy of the description of the offense contained in the police report.

5. On September 1, 1987, in the Los Angeles County Municipal Court, Long Beach Judicial District, respondent pled nolo contendere and was convicted of violating Penal Code section 415(2), fighting, causing loud noises, using offensive words in a public place, a misdemeanor. The court placed respondent on summary probation for one year and ordered him to pay a fine and fees totaling \$238.00. He paid the fine and fees. On June 7, 2004, the court expunged the conviction pursuant to Penal Code sections 1203.4/1203.4a.

6. Respondent committed the offense on July 28, 1987. According to the police report, respondent was observed by a police officer to be masturbating his exposed, erect penis while in his car parked in the parking lot of a public park near a restroom.

7. Respondent's convictions involve moral turpitude and are substantially related to the qualifications, functions, or duties of a real estate salesperson. California Code of Regulations, title 10, section 2910, subdivisions (a)(5) and (10).

8. Respondent is 51 years of age. He spent most of his working career in the field of human resources. He worked for Toro Company for nearly 12 years, a Japanese company for two years, and for Denny's for more than six years. He managed a Copy Club for two years and was a marketing consultant for several months.

Respondent began working for Keller Williams Realty in 2003, a company which develops single family residences in the Palm Springs area. Respondent worked with buyers in helping them select upgrades or options on their homes. If licensed, he plans to remain with Keller Williams and will move to the sales side of the business.

Respondent expressed remorse for the conduct which led to the two convictions and was determined never to repeat it. He recognized he was wrong, he had hurt others, he had

lost his dignity and self-respect, and after the second arrest in 1997, he decided to do something about his behavior. He saw a therapist for more than a year. He also began attending Sexual Compulsive Anonymous meetings. This is a twelve-step program, and he continues to attend meetings at least twice a week. He now sponsors two other individuals. Since 1997, he does not go to parks and no longer engages in public sex acts.

9. Michael Hilgenberg is the broker-owner of Keller Williams. He has been a broker for 29 years and has worked in the Palm Springs area for 19 years. He is active with the local, state, and national Boards of Realtors. He testified at the hearing that respondent's work is exemplary, and he based that on his observation of respondent's work and the comments he has received from his customers. He has never received a complaint about respondent's work, and would hire him if respondent were issued a license. In a letter to the Department, Mr. Hilgenberg wrote that respondent was one of the most loyal and dedicated colleagues he had worked with. He learned about respondent's criminal convictions when respondent applied for and was denied a license by the Department.

10. Heath Hilgenberg is a licensed salesperson and a sales manager for Keller Williams. He recruits agents and supports their work. He also is active with the local board of realtors. He interacts with respondent on a daily basis and has found respondent to be very professional with an exceptionally strong work ethic. He is particularly impressed with the way respondent handles the stress buyers' experience when they purchase their homes. He has found respondent to be honest and truthful with him and believes respondent is an asset to his company. He also learned of respondent's criminal convictions when respondent applied for and was denied a license by the Department.

## LEGAL CONCLUSIONS

1. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence. See, *California Administrative Hearing Practice* (Second Edition), "The Hearing Process," sections 7.51-7.53, pp. 352-354, and the cases cited therein.

2. Business and Professions Code section 480 provides in pertinent part:

*(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:*

*(1) Been convicted of a crime . . .*

*. . . The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made . . .*

3. Business and Professions Code Section 10177 provides in pertinent part:

*The commissioner . . . may deny the issuance of a license to an applicant, who has done any of the following . . .*

*(b) Entered a plea of guilty [to] . . . a felony or a crime involving moral turpitude . . .*

4. Cause to deny respondent a real estate salesperson license was established pursuant to Business and Professions Code sections 480, subdivision (a) and 10177, subdivision (b), conviction of crimes involving moral turpitude and substantially related to the qualifications, functions, and duties of a real estate salesperson by reason of Findings 3 through 7.

5. California Code of Regulations, title 10, section 2911 sets forth the Department's criteria of rehabilitation. The evidence in light of those criteria show respondent was convicted of two offenses involving lewd public conduct, one 18 years ago and another seven years ago. Respondent completed probation on his most recent conviction more than four years ago. Both convictions have been expunged after respondent successfully completed probation.

Following the second arrest, respondent addressed his behavior in a mature and thoughtful manner. He sought therapy and assistance from a twelve-step program. He continues to attend meetings and sponsors others. He has worked for several companies prior to entering the field of real estate and his work history demonstrates he has been a successful employee.

Respondent entered real estate two years ago and his employer is impressed with his work. Mr. Hilgenberg wants to keep him with the company and have him enter the sales side. He was aware of respondent's past and appears to have no concerns that respondent would again engage in lewd conduct in public.

Respondent's demeanor while he testified showed him to be a serious, honest, mature, and remorseful individual who recognized his mistakes and acted to change his behavior. He has not been arrested or charged with similar acts of misconduct in eight years.

Taking into consideration all of the evidence and respondent's demeanor while testifying, respondent established he may be entrusted with a real estate license. However, because respondent has been convicted of multiple offenses, there is enough concern to require that the license be a restricted one.

6. Cause to grant respondent's application for a restricted real estate salesperson's license was established by reason of Findings 8, 9, and 10 and Legal Conclusion 5.

ORDER

The application of respondent Lyle Dean Elliott for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to section 10156.5 of the Business and Professions Code. The restricted license issued to respondent shall be subject to all of the provisions of section 10156.7 of the Business and Professions Code and to the following limitations, conditions, and restrictions imposed under authority of section 10156.6 of said Code:

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

(a) The conviction of respondent (including a plea of nolo contendere) of a crime 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 (2) years have elapsed from the date of issuance of the restricted license to respondent.

3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate which shall certify as follows:

(a) That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

(b) That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent's restricted real estate salesperson license is issued subject to the requirements of section 10153.4 of the Business and Professions Code, to wit: respondent shall, within eighteen (18) months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of two of the courses listed in section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the Department



satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective eighteen (18) months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.

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.

DATED: 5/23/05



ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings

*Accto  
JLW*

1 ELLIOTT MAC LENNAN, SBN 66674  
Department of Real Estate  
2 320 West 4th Street, Ste. 350  
Los Angeles, California 90013-1105  
3  
4 Telephone: (213) 576-6911 (direct)  
-or- (213) 576-6982 (office)

**FILED**  
SEP 21 2004  
DEPARTMENT OF REAL ESTATE

By *K. M. ...*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

10	In the Matter of the Application of )	No. H-31316 LA
11	LYLE DEAN ELLIOTT )	<u>STATEMENT OF ISSUES</u>
12	Respondent. )	
13	)	

14 The Complainant, Maria Suarez, a Deputy Real Estate  
15 Commissioner of the State of California, for Statement of Issues  
16 against LYLE DEAN ELLIOTT (Respondent) is informed and alleges in  
17 her official capacity as follows:

18 1.

19 Respondent made application to the Department of Real  
20 Estate of the State of California for a real estate salesperson  
21 license on or about August 7, 2003, subject to Section 10153.4(c)  
22 under the Real Estate Law (Part 1 of Division 4 of the California  
23 Business and Professions Code) (Code) with the knowledge and  
24 understanding that any license issued as a result of said  
25 application would be subject to the conditions of Section 10153.4  
26 California Business and Professions Code) (Code).  
27

1 2.

2 On January 21, 1998, in the Superior Court of the State  
3 of California, County of Orange, in Case No. 97CM11749,  
4 respondent was convicted upon a guilty plea to one count of Penal  
5 Code Section 647(a) (disorderly conduct - lewd conduct in a  
6 public place), a misdemeanor crime involving moral turpitude and  
7 substantially related under Section 2910, Chapter 6, Title 10 of  
8 the California Code of Regulations, to the qualifications,  
9 functions or duties of a real estate licensee. On April 7, 2004,  
10 the conviction was dismissed pursuant to Penal Code 1203.4.  
11

12 3.

13 On September 1, 1987, in the Municipal Court of the  
14 Long Beach Judicial District, County of Los Angeles, State of  
15 California, in Case No. 87M00753, respondent was convicted upon a  
16 plea of nolo contendere to one count of Penal Code Section 415(2)  
17 (fighting, causing loud noise, using offensive words in a public  
18 place), a misdemeanor crime involving, by its facts and  
19 circumstances, moral turpitude and substantially related under  
20 Section 2910, Chapter 6, Title 10 of the California Code of  
21 Regulations, to the qualifications, functions or duties of a real  
22 estate licensee.  
23

24 ///

25 ///

26 ///

1 4.

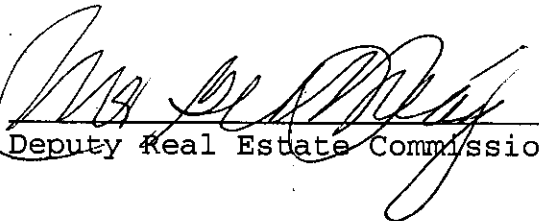
2 These crimes constitutes cause for denial of  
3 respondent's application for a real estate license under Sections  
4 480(a) and/or 10177(b) of the Business and Professions Code.

5 These proceedings are brought under the provisions of  
6 Section 10100, Division 4 of the California Business and  
7 Professions Code and Sections 11500 through 11529 of the  
8 California Government Code.

9 WHEREFORE, the Complainant prays that 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 LYLE DEAN ELLIOTT and for such other and  
14 further relief as may be proper in the premises.

15 Dated at Los Angeles, California

16 this *17<sup>th</sup>* day of *September* 200*4*

17  
18  
19   
20 Deputy Real Estate Commissioner  
21  
22  
23  
24

25 cc: Lyle Dean Elliott  
26 Maria Suarez  
27 Sacto  
SJR