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FILED

JUN 11 2014

BUREAU OF REAL ESTATE

By *J. D. ...*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Application of)	
ERIK FREDRICK KAISER,)	BRE No. H-39237 LA
Respondent.)	OAH No. 2014010223
)	

ORDER DENYING RECONSIDERATION

On April 19, 2014, a Decision adopting the Proposed Decision was rendered in the above-entitled matter. The Decision was to become effective on May 13, 2014 (and was stayed by separate Order to June 12, 2014).

On or about May 21, 2014, Respondent petitioned for reconsideration of the Decision After Rejection.

I have given due consideration to the petition of Respondent. I find no good cause to reconsider the Decision After Rejection, and reconsideration is hereby denied.

IT IS SO ORDERED

6/10/2014
Wayne S. Bell
REAL ESTATE COMMISSIONER

Wayne S. Bell

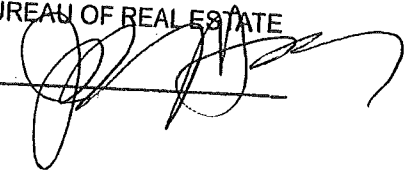
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FILED

MAY 06 2014

BUREAU OF REAL ESTATE

By 

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	BRE No. H-39237 LA
ERIK FREDRICK KAISER,)	OAH No. 2014010223
)	
Respondent.)	
_____)	

ORDER STAYING EFFECTIVE DATE

On April 19, 2014, a Decision was rendered in the above-entitled matter to become effective May 13, 2014.

IT IS HEREBY ORDERED that the effective date of the Decision is stayed for a period of 30 days to allow Respondent 10 days to file a petition for reconsideration.

The Decision of April 19, 2014, shall become effective at 12 o'clock noon on June 12, 2014.

DATED: MAY 5, 2014.

Real Estate Commissioner

By: 
Regional Manager

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FILED

APR 22 2014

BUREAU OF REAL ESTATE

By [Signature]

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of)	Cal BRE No. H-39237 LA
)	
ERIK FREDRICK KAISER,)	OAH No. 2014010223
)	
Respondent.)	

DECISION

The Proposed Decision dated March 19, 2014, 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. The earliest date on which the applicant may reapply for a license is one year from the effective date of this Decision.

If and when application is again made for this license, 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 for the information of respondent.

This Decision shall become effective at 12 o'clock noon on MAY 13 2014.

IT IS SO ORDERED 4/19/2014

REAL ESTATE COMMISSIONER

[Signature]
Wayne S. Bell

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Application of:

ERIK FREDRICK KAISER,

Respondent.

Case No. H -39237 LA

OAH No. 2014010223

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on March 11, 2014, in Los Angeles, California.

Diane Lee, Counsel, Bureau of Real Estate represented complainant, Robin Trujillo, a Deputy Real Estate Commissioner of the State of California.

Frank M. Buda, Attorney at Law, represented respondent Erik Fredrick Kaiser who was present throughout the administrative hearing.

The matter was submitted for decision on March 11, 2014.

FACTUAL FINDINGS

1. On March 4, 2014, complainant Robin Trujillo signed the first amended statement of issues in her official capacity as a Deputy Real Estate Commissioner of the State of California.

2. Erik Fredrick Kaiser (respondent) was previously licensed by the Department of Real Estate (bureau).¹ Respondent was initially licensed as a real estate salesperson on June 5, 1991. On May 31, 1996, the bureau issued a real estate broker license to respondent. Respondent's prior license expired on October 17, 2004.

¹ Effective July 1, 2013, the Department of Real Estate became known as the Bureau of Real Estate, Department of Consumer Affairs.

3. On September 13, 2010, respondent applied for a real estate salesperson license. The bureau denied the application and filed a statement of issues. On October 17, 2012, respondent withdrew his application and request for a hearing, and on October 26, 2012, the bureau dismissed the statement of issues.

4. On January 22, 2013, respondent applied for a real estate salesperson license. The bureau denied the application and filed the statement of issues, and this hearing followed.

Criminal Convictions

5. On January 10, 2002, in the District Court of Nevada, Clark County, respondent was convicted of violating Nevada Revised Statutes, sections 205.0832 and 205.0835 (theft), a felony. The maximum term of 30 months in prison was suspended and respondent was placed on probation for three years on conditions including, submitting to searches for the detection of stolen property or evidence fraudulent activities; completing eight hours of community service each month when not fully employed or in school; and, paying a \$500 fine and \$250 in restitution. On October 31, 2007, respondent's probation was revoked and he was sentenced to 30 months in prison with 179 days credit for time served, to run concurrently with the sentence in the conviction described in Factual Finding 6.

The factual circumstances underlying the conviction occurred from 1997 to 2000 in Las Vegas, Nevada. Respondent and two other individuals had a business office in Las Vegas; they used personal information of three employees or potential employees to order credit cards in the employees' names, and to purchase computer equipment and other items for themselves without the employees' permission.

6. On April 20, 2007, in the Superior Court of California, County of Orange, respondent was convicted of violating five counts of Penal Code section 530.5 (using personal identifying information for an unlawful purpose), and three counts of Penal Code section 476, subdivision (a) (grand theft), all felonies. On June 15, 2007, respondent was sentenced to 40 months in state prison. In addition, respondent and his codefendant were ordered to pay \$24,000 in restitution.

The factual circumstances underlying the conviction occurred in 1999 and 2000, and involved similar offenses to those described in Factual Finding 5. Respondent and a colleague unlawfully used the personal information of two individuals (different from the victims in the Nevada case) to purchase computer equipment. Numerous companies were also harmed by respondent's conduct, including Gateway Computers, Dell Computers and Staples office supplies. The scheme involved respondent advertising jobs on the internet and obtaining personal information from the potential employees, which was used to obtain credit cards. Respondent then used the credit cards to purchase computer and other equipment. Respondent used the names Brian Wells, Clint Brown and Bart Simpson while engaging in this activity.

7. Respondent was originally charged with the criminal conduct described in Factual Finding 6 on July 10, 2000. Respondent was released on bail on July 19, 2000; on September 7, 2001, the bail was exonerated and respondent was remanded into custody. On October 2, 2001, respondent was released on his own recognizance. On May 10, 2002, respondent failed to appear and a warrant was issued for his arrest. Respondent fled to Canada where he remained until 2007, when he returned voluntarily to face the charges against him.

8. Respondent was paroled from state prison on February 1, 2009. He was discharged from parole on March 3, 2010.

Failure to Disclose Nevada Conviction

9. On the application respondent submitted to the bureau on September 13, 2010, respondent disclosed a felony conviction in Orange County; very little detail was provided with the disclosure. Respondent did not disclose the conviction in Nevada. In describing his criminal conduct, respondent stated:

In 2000 I was involved with some partners in whom employees were hired to facilitate the acquisition of business equipment for company and personal use. There were issues involved regarding identification of the employees and my partners which resulted in a 6/15/2007 conviction in which I spent 22 months in the CDC, CA Dept. of Corrections.

10. The bureau inquired about the Nevada conviction and on May 3, 2011, in his Confidential Interview Information Sheet, respondent further described his criminal conduct as follows:

From about November of 1997 to April of 2000, I was part of a group of people who obtained three people's identification information and [then] used the information to get credit to buy computer and other equipment. What I did was both stupid and wrong. There is no excuse for my actions. In March of 2007 I took responsibility for my crimes and I voluntarily returned to the U.S. to face my charges and take the consequences of my poor [judgment] and actions. I pled guilty to all crimes because I was guilty and it was time for me to own up to what I had done. I am very sorry for my actions.

On May 30, 2011, respondent signed conviction detail reports making substantially similar statements to the one quoted above to describe his nine felony convictions in California and Nevada.

11. After withdrawing his 2010 application, respondent reapplied for a salesperson license on January 22, 2013. On this application, respondent disclosed his Orange County and Nevada convictions. In describing his criminal conduct, respondent stated:

I am writing about my convictions since they are all related to my past. In 1999 I was arrested in Nevada involving victims in California, a few months later in 1999 or early 2000 I was arrested for the same legal issues in California stemming from the same activity and time frame. I was tried in two states under state laws instead of Federal court which is why I have two different state convictions. My sentencing in California was not until 2007. I have completed my parole without issue and have no legal pending issues.

* * *

The crimes involved business partners and I, using other individual employee's personal information to guarantee computer equipment for the company which was then sold to pay on those bills as well as to support the executive staff. The employees did not understand that they would be guaranteeing the equipment and were not consulted in that fact. This was wrong to do and I have understood this in my older age and have tried to make amends for my actions.

12. In the conviction detail reports respondent signed on June 9, 2013, respondent described his criminal conduct as being a part of a group that obtained three people's identification information and using the information to get credit to buy computer and other equipment. Respondent's description of his crimes on both applications and the conviction detail reports minimized his misconduct and the number of victims involved.

Respondent's Evidence

13. Respondent and his codefendant each paid "a few thousand dollars" toward the \$24,000 restitution order. Respondent borrowed \$18,000 from his mother to pay the balance. He has repaid \$2,200 of the debt to his mother.

14. While he was in custody, respondent availed himself of various courses, including anger management training, a life connections class, a bridging education program, a vocational janitorial course, and class entitled 40 Days of Purpose Driven Life.

15. In 2012, respondent worked as a bartender and server for C'est La Vie Restaurant. In 2012 and 2013, respondent worked as a bartender for Colette's Catering Services. In March 2013, respondent began working as a recruiter for RE/MAX TerraSol Real Estate.

16. Leo Betancourt, the broker/manager of RE/MAX TerraSol, wrote a letter and testified at hearing in support of respondent's application for licensure. Betancourt is aware of respondent's criminal convictions and his failure to disclose the Nevada conviction on his 2010 application. Betancourt obtained his salesperson license in 1998 and his broker license in 2004. Betancourt first met respondent in 2011 when respondent expressed an interest in working at the business. Betancourt relocated his office in March 2013, and opened a second office in Orange, California. Since that time, he has hired an additional 35 to 40 sales agents. Betancourt now has approximately 60 agents (both sales and broker associates) working under his license. Respondent has been instrumental in assisting Betancourt in identifying agents to bring to the company.

Betancourt believes that respondent is remorseful about his criminal conduct. Respondent has worked hard and been an asset to Betancourt's business. Betancourt believes that respondent is a good fit in his agency and is willing to supervise him if he obtains a restricted salesperson license.

17. Respondent recently attended an annual RE/MAX training conference. He completed training sessions on recruiting, negotiating and building business. Respondent recently received a thank you card from an agent that joined the TerraSol office as a result of respondent's efforts.

18. Respondent's mother submitted a character letter and testified on respondent's behalf. Respondent has lived with his mother since being released from custody in 2009. Respondent's mother believes that he has become more responsible since the time he committed criminal conduct; he shows respect for the wellbeing of others and follows through with his plans now. Respondent's mother supports her son's application for licensure.

19. In 2009 and 2010, respondent completed six courses in construction at Orange Coast Community College; he is working toward his associate of arts degree.

20. Robert Brooks, a friend of respondent's for over 38 years, testified at hearing in support of respondent's application for licensure. Brooks is aware of respondent's convictions and that respondent failed to disclose the Nevada conviction on his initial application. Respondent has expressed remorse to Brooks about his criminal conduct. In Brooks's opinion, respondent has changed since the time he committed his crimes. Brooks believes that respondent deserves another chance.

21. Respondent submitted letters from his brother, Brad Kaiser, and friends, Lara Hayes and Terri Lee; all three express their belief that respondent has changed over time and they support his application for licensure.

22. In 2003, while respondent lived in Canada, he donated \$819 worth of construction equipment to Habitat for Humanity. On April 23, 2011, respondent volunteered his time to help clean a local beach.

23. Respondent testified that he failed to disclose his Nevada conviction in the 2010 application because he had forgotten about it and did not realize that it was a separate conviction because it was part of the same conduct and involved similar facts. After the bureau notified him that he had failed to disclose the conviction, he decided to withdraw the application due to the error. Respondent's testimony on this point was not credible.

24. Respondent testified that of the individuals whose identities were used to purchase the computer equipment, one or two worked for the business where he worked; most were people responding to job advertisements. He believes that there were up to eight victims. Respondent concedes that he erred when he stated that there were three victims on the conviction detail reports he submitted to the bureau.

25. Respondent reports that his aliases, Clint Brown and Bart Simpson, were used as stage names when he was working as an actor.

26. Respondent agrees that fleeing the country while the charges were pending against him was the wrong thing to do. Respondent has not seen the individuals with whom he committed the crimes since he fled in 2002.

LEGAL CONCLUSIONS

1. Business and Professions Code sections 475, subdivision (a)(2), and 480, subdivision (a), authorize 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 crime that is substantially related to the qualifications, functions and duties of a licensee of the bureau.

2. California Code of Regulations, title 10, section 2910, sets for the criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves "[t]he fraudulent taking, obtaining, appropriating or retaining of funds or property belonging to another person" (subd. (a)(1)); "forging or altering on of an instrument" (subd. (a)(2)); the employment of fraud or misrepresentation to achieve an end (subd. (a)(4)); "the [d]oing of any unlawful act with the intent of conferring a financial or economic benefit upon the perpetrator" (subd. (a)(8)); or, demonstrates a pattern of willful disregard of the law (subd. (a)(10)).

Respondent's convictions for theft and the use of personal identifying information for an unlawful purpose are substantially related to the qualifications, functions or duties of a real estate licensee. By reason of the matters set forth in Findings 5 and 6, cause exists to deny respondent's application for a real estate salesperson license pursuant to Business and

Professions Code sections 475, subdivision (a)(2), 480, subdivision (a), and 10177, subdivision (b).

3. Business and Professions Code sections 475, subdivision (a)(1), and 480, subdivision (c), authorize the denial of a license when the applicant knowingly omits a material fact in an application for licensure. Business and Professions Code section 10177, subdivision (a), authorizes the bureau to deny the issuance of a license to an applicant who has attempted to procure a real estate license by making a material misstatement of fact in an application.²

Respondent's failure to disclose his 2002 felony conviction in Nevada on his 2010 application constitutes cause to deny his 2013 application. (Factual Findings 9 and 23.)

4. In California Code of Regulations, title 10, section 2911, the bureau 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's nine felony convictions involved the misuse of personal information and theft. While 14 years have passed since the conduct occurred, he continued his criminal conduct in fleeing the country while the charges were pending in California and while he was on probation in Nevada. Respondent's failure to disclose his Nevada conviction on his 2010 application, and his attempts to minimize his misconduct in both applications and conviction detail reports, indicate that respondent is not rehabilitated. (Factual Findings 5, 6, 9 through 12, 23 and 24.)

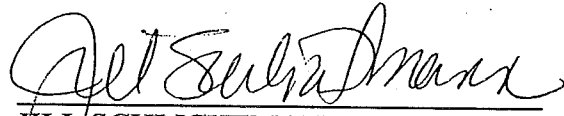
5. The purpose of this proceeding is not to further punish respondent for his criminal conduct (*Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 958, fn. 10), but to ensure that real estate salespersons will be honest, truthful, and worthy of the fiduciary responsibilities they bear (*Harrington v. Department of Real Estate* (1989) 214 Cal.App.3d 394, 402). At this time, the protection of the public compels the denial of respondent's application.

² Respondent argues that pursuant to Business and Professions Code section 480, subdivision (c), in order to provide a basis to deny the application, the misstatement or omission must have been made on the application that is currently being considered, rather than on a prior application, because of the use of the word "the" instead of "an" in the statute. This argument is rejected; however, even if that were correct, Business and Professions Code sections 475, subdivision (a)(1), and 10177, subdivision (a), establish a basis for denial of the application based upon misstatements, or the omission of information, on a previous application.

ORDER

Respondent Erik Frederick Kaiser's application for a real estate salesperson license is denied.

DATED: 3/19/14



JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings

Sachs Files

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2 Bureau of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013
5 Telephone: (213) 576-6982
6 (Direct) (213) 576-6907

FILED

MAR 04 2014

BUREAU OF REAL ESTATE

By *[Signature]*

BEFORE THE BUREAU OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11	In the Matter of the Application of)	No. H-39237 LA
12	ERIK FREDRICK KAISER,)	<u>FIRST AMENDED</u>
13	Respondent.)	<u>STATEMENT OF ISSUES</u>
14	_____)	

15 This First Amended Statement of Issues amends the
16 Statement of Issues filed on December 30, 2013. The
17 Complainant, Robin Trujillo, a Deputy Real Estate Commissioner
18 of the State of California, acting in her official capacity, for
19 Statement of Issues against ERIK FREDRICK KAISER aka Erik Fred
20 Kaiser aka Brian Wells aka Clint Brown aka Bart Simpson
21 ("Respondent") alleges as follows:

22 1.

23 On or about September 13, 2010, Respondent made
24 application to the Bureau of Real Estate of the State of
25 California for a real estate salesperson license. On or about
26 October 17, 2012, Respondent withdrew this application.

27 ///

1 2.

2 On or about January 22, 2013, Respondent made
3 application to the Bureau of Real Estate of the State of
4 California for a real estate salesperson license.

5
6 (CRIMINAL CONVICTIONS)

7 3.

8 On or about January 10, 2002, in the District Court of
9 Nevada, Clark County, Case No. 01C173392-1, Respondent was
10 convicted of violating Nevada Revised Statutes 205.0832 and
11 205.0835 (theft), a felony. Said crime bears a substantial
12 relationship to the qualifications, functions, or duties of a
13 real estate licensee under Section 2910, Title 10, Chapter 6,
14 California Code of Regulations.

15 4.

16 On or about June 15, 2007, in the Superior Court of
17 California, County of Orange, California, Case No. 00HF0750,
18 Respondent was convicted of violating four counts of California
19 Penal Code sections 530.5 (using personal identifying
20 information for unlawful purpose, to wit: falsely personating
21 another with intent to convert property of another to own use)
22 and four counts of California Penal Code sections 487(a) (grand
23 theft), all felonies. Said crimes bear a substantial
24 relationship to the qualifications, functions, or duties of a
25 real estate licensee under Section 2910, Title 10, Chapter 6,
26 California Code of Regulations.

27 ///

1 5.

2 The crimes of which Respondent was convicted as
3 alleged above constitute cause for denial of Respondent's
4 application for a real estate license under California Business
5 and Professions Code sections 475(a)(2), 480(a), and 10177(b).

6 (FAILURE TO REVEAL CONVICTION)

7 6.

8 In response to Part D - Question 1 of his license
9 application made on or about September 13, 2010, to wit: "HAVE
10 YOU EVER BEEN CONVICTED OF A MISDEMEANOR OR FELONY? CONVICTIONS
11 EXPUNGED UNDER PENAL CODE SECTION 1203.4 MUST BE DISCLOSED.
12 HOWEVER, YOU MAY OMIT TRAFFIC CITATIONS WHICH DO NOT CONSTITUTE
13 A MISDEMEANOR OR FELONY. IF YES, COMPLETE ITEM 5," Respondent
14 answered "Yes," but failed to reveal the conviction described in
15 Paragraph 3, above. Respondent's failure to reveal this
16 convictions in his license application constitutes knowingly
17 making a false statement of material fact required to be
18 revealed in said application, which is grounds for denial of the
19 issuance of a license under California Business and Professions
20 Code sections 475(a)(1), 480(c), and 10177(a).

21 These proceedings are brought under the provisions of
22 Section 10100, Division 4 of the Business and Professions Code
23 of the State of California and Sections 11500 through 11528 of
24 the California Government Code.

25 WHEREFORE, the Complainant prays that the above-
26 entitled matter be set for hearing and, upon proof of the
27 charges contained herein, that the Commissioner refuse to

1 authorize the issuance of, and deny the issuance of, a real
2 estate salesperson license to Respondent, ERIK FREDRICK KAISER,
3 and for such other and further relief as may be proper under
4 other applicable provisions of law.

5 Dated at Los Angeles, California: March 4, 2014.

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9 Robin Trujillo
Deputy Real Estate Commissioner
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24 cc: ERIK FREDRICK KAISER
25 Surf City Equities, Inc.
26 Robin Trujillo
27 Sacto

Sack Flax

1 DIANE LEE, Counsel (SBN 247222)
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7

FILED
DEC 30 2013
BUREAU OF REAL ESTATE
By *[Signature]*

8 BEFORE THE BUREAU OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of) No. H-39237 LA
12)
12 ERIK FREDRICK KAISER,) STATEMENT OF ISSUES
13)
13 Respondent.)
14)

15 The Complainant, Robin Trujillo, a Deputy Real Estate
16 Commissioner of the State of California, acting in her official
17 capacity, for Statement of Issues against ERIK FREDRICK KAISER
18 aka Erik Fred Kaiser aka Brian Wells aka Clint Brown aka Bart
19 Simpson ("Respondent") alleges as follows:

20 1.

21 On or about January 22, 2013, Respondent made
22 application to the Bureau of Real Estate of the State of
23 California for a real estate salesperson license.

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1 (CRIMINAL CONVICTIONS)

2 2.

3 On or about January 10, 2002, in the District Court of
4 Nevada, Clark County, Case No. 01C173392-1, Respondent was
5 convicted of violating Nevada Revised Statutes 205.0832 and
6 205.0835 (theft), a felony. Said crime bears a substantial
7 relationship to the qualifications, functions, or duties of a
8 real estate licensee under Section 2910, Title 10, Chapter 6,
9 California Code of Regulations.

10 3.

11 On or about June 15, 2007, in the Superior Court of
12 California, County of Orange, California, Case No. 00HF0750,
13 Respondent was convicted of violating four counts of California
14 Penal Code Sections 530.5 (using personal identifying
15 information for unlawful purpose, to wit: falsely personating
16 another with intent to convert property of another to own use)
17 and four counts of California Penal Code Sections 487(a) (grand
18 theft), all felonies. Said crimes bear a substantial
19 relationship to the qualifications, functions, or duties of a
20 real estate licensee under Section 2910, Title 10, Chapter 6,
21 California Code of Regulations.

22 4.

23 The crimes of which Respondent was convicted as
24 alleged above constitute cause for denial of Respondent's
25 application for a real estate license under California Business
26 and Professions Code Sections 475(a)(2), 480(a), and 10177(b).
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WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of, a real estate salesperson license to Respondent, ERIK FREDRICK KAISER, and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California: Dec. 19,

2013.


Robin Trujillo
Deputy Real Estate Commissioner

cc: ERIK FREDRICK KAISER
Surf City Equities, Inc.
Robin Trujillo
Sacto